CAS-02641-G8G7M5

IN MATTER OF A PLANNING APPEAL
BEFORE PLANNING AND ENVIRONMENT DECISIONS WALES

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

CLOSING SUBMISSIONS ON BEHALF OF
VALE COMMUNITIES UNITE

A. INTRODUCTION AND OVERVIEW

Summary of VCU's position

1. Vale Communities Unite ("VCU") firmly opposes the Appellant's hybrid application comprising:

   > *an outline application for the demolition of existing buildings and erection of 44.75ha Class B1/B2/B8 Business Park, car parking, landscaping, drainage infrastructure, ecological mitigation and ancillary works (all matters reserved aside from access) within Area A and a full application for change of use from agricultural land to country park (Use Class D2) within Area B*

2. As explained in the Chair of VCU's updated statement, the Appellant's hybrid application will inevitably lead to the destruction '*of a productive working farm, which should be seen as an asset to the Vale of Glamorgan and should not be lost.*'[1]

3. VCU strongly urge the Inspector to refuse the Appellant's hybrid application for planning permission for the following reasons (in summary):

   a. The proposed development is unequivocally in conflict with the development plan because:

      i. The application is for, in both form and substance, a general business park for B1/B2/B8, which is explicitly <u>not supported</u> by the Vale of Glamorgan Local Development Plan 2011-2026 ("LDP").

[1] Phil Gibbs, Updated Statement (24 February 2026), para 21.

ii. Moreover, Futures Wales requires a justification for the loss of a productive farm, and none has been established. In any event, the loss of the farm is obviously a material consideration heavily weighted against the grant of planning permission.

b. The proposed development is not viable (as is common ground). One of the key consequences of the non-deliverability of the development is that it cannot realise any of the socioeconomic benefits relied upon by the Appellant.

c. The Environmental Statement ("ES") is inadequate. In general terms, the ES both undervalues the current baseline in various respects, and underrepresents the harms inflicted by the proposed development. An overarching deficiency in the ES is the lack of information as to what precisely will end up on the Site.

d. In addition, and in any event (even if the proposed development is in compliance with the development plan), all other material considerations (individually and cumulatively) militate strongly against the grant of development. In particular, the proposed development will result in the following unacceptable impacts:

   i. a net loss of biodiversity;

   ii. significant adverse impacts on climate change;

   iii. harm to several heritage assets;

   iv. adverse traffic impacts;

   v. harm to the landscape and character of the area.

4. There is simply no rational basis for granting the hybrid planning permission sought by the Appellant in the present circumstances. VCU therefore invites the Inspector to recommend that the Welsh Ministers refuse planning permission.

The parties and the community's response to the development proposal

5. VCU is a representative of members of the community of the Vale of Glamorgan who firmly oppose the loss of a working and longstanding farm, and its replacement with a speculative industrial business park. VCU was formed in 2019, in response to the Appellant's initial

application for planning permission, and has comprehensively engaged with the local planning process throughout. VCU wishes to express its gratitude that its participation in the inquiry has been facilitated through its status as a statutory 'invited party'.

6. There is overwhelming public opposition to the development. As recorded in the Officer's Report (prepared for the 1 March 2023 planning committee meeting), over 500 objections were received in response to the initial public consultations. This inquiry has also heard directly from concerned councillors and local residents objecting to the scheme, as well as Barry Town Council.

7. The Local Planning Authority ("LPA") has explicitly taken a position of neutrality. The LPA neither supports nor objections to the application. It is necessary therefore to consider the report of the LPA's planning officer ("the Officer's Report") of 1 March 2023 in light of the LPA's decision not to support the present appeal.

8. Insofar as VCU has been able to ascertain, remarkably, no other third party has ever actually expressed positive support for this proposed development at any stage in this application's life.

Expert evidence and the Inspector's role as expert tribunal

9. In the context of the present appeal, it is important to note that, as an expert tribunal, it is well established to be open to the Inspector to reject the evidence of expert witnesses (even if the expert evidence is unchallenged or uncontradicted). In *Kentucky Fried Chicken (GB) Ltd v Secretary of State for the Environment and Anor* [1978] 1 EGLR 139, Lord Widgery CJ observed:

   > *the Inspector (who is a man of experience, and above all, specialised qualifications, who is sent to assess a problem of this kind) is supposed to use his own knowledge and, if I may say so, commonsense as well … he is not bound to accept the evidence of experts. It is exactly the same situation that justices and juries find themselves in when experts of great distinction go into the witness box before them. The inspector is no more bound to accept the evidence of the experts than are they.*[2]

10. Indeed, the Inspector has a '*unique role, in which he exercises his own planning judgment on site, and he is not confined to evaluating the evidence placed before him, like a judge'*

[2] See also: *Georgiou v Secretary of State for Communities and Local Government* [2011] EWCA Civ 775, para 14, and *Macarthur v Secretary of State for Communities and Local Government* [2013] EWHC3 (Admin), para 61.

(*Macarthur v Secretary of State for Communities and Local Government* [2013] EWHC3 (Admin), para 60).

B. PRELIMINARY LEGAL ISSUES

11. Three legal issues have been raised during the course of the Inquiry which the Inspector has invited the main parties' views on. Before turning the substance of the appeal, VCU briefly addresses those three issues.

Validity of the non-determination appeal

12. The first issues goes to the heart of the Inquiry's jurisdiction. Pursuant to section 78(2) and (3) of the Town and Country Planning Act 1990 ("the 1990 Act"), an appeal against non-determination cannot be made until after the expiry of '*such extended period as may at any time be agreed upon in writing between the applicant and the authority*' (insofar as material). In the event that the appeal had been made before the expiry of that period, then the appeal is invalid.

13. It is common ground that the appeal was made on 29 March 2023.[3] Accordingly, if the deadline had been extended by agreement from 27 February 2023 to 31 March 2023, then the appeal is not valid, and that is the end of the matter.

14. Although no evidence of an agreement in writing has been proffered by either the Appellant or the LPA, there are several contextual factors which must be addressed, that, on their face, militate in favour of the finding that there had, in fact, been such an agreement:

    a. First, the '*Agreed Extension of Time'* date on the LPA's planning portal website is '*31 March 2023*' (emphasis added).

    b. Secondly, at the planning committee meeting on 1 March 2023 (after the expiry of the earlier deadline of 27 February 2023), managing director of L&G, Andrew McPhillips was in attendance, and raised no issue as to the timing of the LPA's meeting or the lack an extension. Mr Parker was also in attendance.

    c. Thirdly, as of the morning of Day 2 of the Inquiry (Tuesday 24 March 2026), all of the

[3] It is also now understood to be common ground that the key date for the purposes of section 78(2)-(3) is not the date that the appeal was '*entered'* but the date that the notice of appeal was made. Although the Appellant had initially contended that the date the appeal was entered (11 November 2024) conclusively disposed of this issue, that was a matter corrected by the Appellant during a later session on Tuesday 24 March.

parties were under the impression that the deadline had been extended to 31 March 2023. During the morning session, the Appellant stated that the deadline had been extended to 31 March 2023 (although this position was withdrawn later on the same day).

15. Ultimately, the issue of the validity of the appeal is a matter that will require resolution by the Inspector.

Other two preliminary legal issues

16. VCU does not advance the submissions either that: (a) the original ES has not been formally superseded, and (b) there has been a failure to consult pursuant to regulation 24.

C. THE SITE

17. The Site is approximately 113.4ha.[4] The Site comprises (in summary):
    a. a farmhouse, an associated yard with barns and agricultural outbuildings;
    b. agricultural fields;
    c. ancient woodland;
    d. broad leaved semi-natural woodland;
    e. grasslands;
    f. hedgerows;
    g. scrubs;
    h. Whitelands Brook;
    i. Bullhouse Brook, and;
    j. a standing waterbody.

18. VCU draws attention to four particular features of the Site.

(1) Model Farm is a working productive farm

19. Model Farm is presently occupied by a tenant farmer, Gethin Jenkins and his family. The Jenkins family have worked on Model Farm since 1935.

20. Model Farm currently produces food, by way of crops and livestock products. Some 99.5ha of the Site is permanent pasture.[5] For example, as noted in the Appellant's documents:

[4] The Appellant's Environmental Statement, Chapter 7 Socieconomic Benefits, para 7.4.3.
[5] The Appellant's Environmental Statement, Chapter 7 Socioeconomic Benefits, para 7.4.3.

a. Paragraph 9.7.13 of the ecology chapter of the Appellant's ES observes: '*Area A is primarily made up of a working farm that comprises rotational cropland (both cereal and non-cereal), grazing pasture for cattle and sheep and improved grassland used for hay/silage. The non cereal croplands were parcels of wildflower species with different parcels having one or two abundant species.'*

b. Paragraph 3.2.65 of the Appellant's Preliminary Ecology Appraisal (dated August 2024) noted that three parcels of arable land were growing common wheat (*Triticum aestivum*).

21. Model Farm therefore currently makes an unequivocal contribution to land supply for food contribution.[6]

22. The Appellant's ES makes the explicit assumption that the current management of Model Farm '*will be maintained and continue as currently and will include the regular grazing and routine cutting of most of the grasslands within the Site. The agricultural land is likely to continue to be rotated annually with cereal and non-cereal crops and wildflower plants cultivated in most of the arable parcels*' (at paragraph 9.8.1).

23. It is therefore also important not to lose sight of the fact that Model Farm has a present and future socioeconomic value as a working, productive farm.[7]

(2) Model Farm is exceptionally biodiverse

24. It is common ground that Model Farm supports an array of protected species (including bats, dormice, and otters), priority species (badgers), and habitats (including species-rich hedgerows).

25. The evidence before the Inspector indicates that additional protected species are present at Model Farm that have not been confirmed by the Appellant, such as Barn Owls, as well as priority species, including (for example) grass snake, slow worm, adder, terrestrial invertebrates and CHEGD fungi.

[6] Contrary to the bare assertion made by Darren Parker in his proof of evidence at paragraph 3.2.
[7] The direct and indirect employment benefits (only) have been calculated on behalf of the Appellant in the socioeconomics chapter of the ES (see para 7.4.61). No socioeconomic benefits evidence has been offered by the Appellant during this appeal.

26. There is also indelible evidence that there are native pure black poplars on site – the rarest and most endangered tree in the UK.[8]

27. Model Farm's biodiversity is also managed in a manner which is '*rarely observed*.'[9] Specifically, arboreal practice at the farm does not involve harvesting mature trees, nor removing naturally fallen trees. Trees are not protectively managed for public safety, as they are located on private land. It therefore allows for natural processes.

28. Moreover, as private agricultural land, the biodiversity on the farm is generally protected against the types of impacts that arise from access by the general public.

29. Accordingly, Model Farm has a rich biodiversity.

(3) Model Farm makes a positive contribution to settings of a series of heritage assets

30. There are several heritage assets in the immediate vicinity of the Site. These include:
    a. Lower Porthkerry Farmhouse (Grade II);
    b. Upper Porthkerry Farmhouse (Grade II);
    c. Church Farmhouse (Grade II*);
    d. Outbuilding to Church Farmhouse (Grade II*);
    e. Church of St Curig (Grade II*);
    f. Porthkerry Conservation Area;
    g. Former Egerton Grey House Hotel (a locally listed county treasure);
    h. Porthkerry Viaduct (Grade II*), and;
    i. Welford Farm (a locally listed county treasure).

31. It is common ground that the Site positively contributes to the setting of all of the identified heritage assets.[10] In general terms, an important part of the settings for all of these heritage assets is the rural context. The Site plays a part in providing that rural context.

(4) Model Farm has an unspoilt rural landscape and visual character

32. As explained by Mr Gibbs, and as will have been identifiable during the site visit, Model Farm

[8] CD6.22 Ecological Statement from Emma Williams (Ecologist), paras 5.7-5.11.
[9] CD6.22 Ecological Statement from Emma Williams (Ecologist), para 5.12.
[10] The Appellant's Built Heritage Statement (June 2019), para 3.34 (Porthkerry farmhouses); paras 3.42 and 3.44 (Church farmhouse groupings); para 3.49 (Church of St Curig); paras 3.53-3.55 (Porthkerry Conservation Area); paras 3.57-3.58 (Porthkerry Viaduct); para 3.64-3.65 (Former Egerton Grey Hotel). In addition, in cross-examination, Mr Price also agreed that the Site contributed positively to the setting all of the identified heritage assets.

is *'is a sight to behold and something the community treasures.'*

33. The Site is a part of the Vale of Glamorgan Rural Landscape, which is a *'relatively untrammelled and evolved surviving agricultural and historic landscape*'. It is also within the Porthkerry Rural Landscape.[11]

D. THE PROPOSED DEVELOPMENT

Overview

34. The proposed development indivisibly comprises:

    a. An outline application for a mixture of employment uses B1 (Business), B2 (General industrial) B8 (Storage and distribution) as well as car parking, landscaping, drainage infrastructure and other ancillary works (referred to as 'Area A'). All matters are reserved except (possibly) for access.

    b. A full application for the change of use of the southern part of the farm from agricultural land to recreational open space, forming an extension of Porthkerry Country Park (referred to as 'Area B').

Area A: The Business Park

35. According to the 'Parameter Plan: Land Use & Storey Heights', it is proposed that 12 plots (with 13 buildings) will be built over Area A, with an aggregate floor space of 132,598 sq.m. In brief:
    a. Four plots will be B2/B8, six plots will be B1/B8, two plots will be B1 Office, and one plot will be B8.
    b. There will be five buildings of a maximum height of 16m, four will have a maximum height of 14m, and four will have a maximum height of 10m.[12]

36. However, beyond those bare parameters, there is a stark lack of detail as to what exactly would end up on Area A if permission is granted, even for an outline application. The exact material requirements of the proposed development have been defined extremely loosely.

37. First, the use classes are extremely wide, and encompass a diverse array of possible users. For

[11] CD5.35 Appeal Version CLEAN – ES Chapter 5 Landscape and Visual – Final, paras 5.3.51 to 5.3.52.
[12] JCD0064-004-I-210511.

example, B8 encompasses distribution centers, logistics hubs, storage units (of various types), and warehousing, B2 enables general industrial processes, manufacturing, and industrial production, and B1 enables administrative officers, research and development, and light industry.

38. There are no conditions restricting the types of uses within the broad use classes. It is clear from Christopher Sutton's evidence that an '*open and flexible'* approach to sectors has been taken in terms of considering the marketable viability of the proposed development. Mr Sutton has explained that he has assessed whether the proposed development would meet regional market demand for general industrial or office uses.[13]

39. As such, there is no clear notion of what will actually end up on the Site (if anything, as addressed below).

40. Secondly, there is no clear picture as to what the appearance or design of the buildings will be. No detailed drawings are available. The Appellant has produced indicative concept designs only, which are expressly subject to change on the face of the Appellant's own design brief document.

41. Thirdly, there will be a spine road corridor into the proposed development on Area A, as well as other vehicular and pedestrian access roads into the 12 plots. There are no plans concretely identifying the access to, and around, the Site.

42. Fourthly, and relatedly, neither the car parking provision nor car park location are not identified within the Indicative Concept Masterplan, or the Parameter Plan: Land Use & Storey Heights.

43. Finally, the Parameter Plan: Green Infrastructure[14] does not itself prescribe concrete landscaping and other green infrastructure mitigation. Rather, the ecological mitigation options identified in the plan's key (for example, new woodland, new mixed species scrub planting, and so on) are specifically defined as '*options'* only.

44. Accordingly, the Appellant is seeking an outline application to be granted for a large, complex development and associated infrastructure, despite the proposed development apparently not having progressed beyond the concept stage.

[13] Christopher Sutton, Economic Deliverability, Cross-examination on Friday 27 March 2026.
[14] JCD0064-006-J-210607. See also: Condition 29.

Area B: Porthkerry Country Park Extension

45. In Area B, the change in use from agricultural land to recreational open space (standing in the shadow of the business park on Area A) will also result in inherently significant impacts (in general terms). The land will be subject to a fundamental '*change in context'*, to use the Appellant's phraseology.[15]

46. In particular, areas which are currently completely left undisturbed would become part of Porthkerry Country Park, and therefore open space. Where trees once would be permitted to stand and fall naturally, trees would necessarily be required to be felled and cleared for public safety.

47. As a park open to the public, Porthkerry Country Park is subject to high footfall, dog fouling, and other impacts from recreational use by people. During the site visit, the Inspector will have had the opportunity to see the *'full'* and '*great ease'* of access within Porthkerry Country Park, described by Ms Williams in response to questions from the Inspector during her oral evidence.[16]

E. DEVELOPMENT PLAN: PRINCIPLE OF DEVELOPMENT

48. Pursuant to section 38(3) of the Planning and Compulsory Purchase Act 2004, the 'development plan' is:

    (a) the National Development Framework for Wales,

    (b) any strategic development plan for an area that includes all or part of that area, and

    (c) the local development plan for that area.

49. In the present context, the development plan is therefore: (a) Futures Wales: The National Plan 2040 ("Futures Wales"), and (b) the adopted LDP.

Interpretation of the adopted Local Development Plan Policies

50. The interpretation of the key policies of the LDP is understood to be common ground.

51. First, MG9 allocates 77.4ha (gross) '*land adjacent to Cardiff Airport and Port Road, Rhoose*

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[15] CD.16 Appellant's Ecology Proof of Evidence, paras 2.2.2; 2.2.42-43, and; 3.1.3.

[16] Tuesday 24 March 2026.

(part of St Athan - Cardiff Airport Enterprise Zone).' The supporting text to MG9 makes clear that the Site is (at para 6.52):

> *6.52…for the needs of the aerospace industry and high tech manufacturing, encouraging investment from the regional and sub-regional market place*

52. Secondly, MG10 provides as follows:

> ***POLICY MG10***
>
> ***ST ATHAN - CARDIFF AIRPORT ENTERPRISE ZONE***
>
> *Land is allocated adjacent to Cardiff Airport and Port Road, Rhoose (77 ha) and at the aerospace business park St Athan (305ha) for the development of 382 hectares of strategic employment land (class B1, B2 and B8) forming part of the St Athan – Cardiff Airport Enterprise Zone. The development of the enterprise zone will be guided by a masterplan to include the following elements:*
>
> *• The refurbishment of the existing 70,000 sqm hanger at St Athan (17.95 ha);*
>
> *• An aerospace business park north and south of the runway at St Athan;*
>
> *• A business park for aviation support services at Picketston (11.79 ha);*
>
> *• A new northern access road at the St Athan Enterprise Zone (Policy MG16 refers);*
>
> *<u>• New aerospace, education, research and development, manufacturing, office and other ancillary development at the Cardiff Airport and gateway development zone (77 ha);</u>*
>
> *• A 42 hectare extension to Porthkerry Country Park (Policy MG28 refers);*
>
> *• Provision of sustainable transport infrastructure; and*
>
> *• The incorporation of sustainable energy centre at the Cardiff Airport and gateway development zone.* (Emphasis added)

53. The proposed development falls within the fifth bullet point of MG10 – the *'[n]ew <u>aerospace</u>, education, research and development, manufacturing, office and other ancillary development at the Cardiff Airport and gateway development zone (77 ha)'* (emphasis added). When that bullet point is interpreted properly in context, and in light of the policy as a whole, it is clear that '*aerospace'* applies to the entirety of the types of use on the Site. Any other reading, divorcing the types of use from each other, would be wholly inconsistent the meaning of the policy when read as a whole.

54. The supporting text removes any potential residual ambiguity. As is well established, supporting text is a legitimate aid and '*plainly relevant to the interpretation of a policy'* (albeit that supporting text cannot trump policy): R. *(on the application of Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567, para 18.

55. In respect of MG10, it states (insofar as material) at para 6.56:

> *This site is not allocated to meet local market 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. 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.* (Emphasis added)

56. The LDP therefore makes unequivocally clear that the Site's allocation is not for general B1, B2 and B industrial development, but rather, for the aerospace industry, in light of the Site's geographical proximity to Cardiff Airport.

57. This position is expressly acknowledged by Mr Parker in his proof of evidence, at paragraph 1.18, in the following terms:

> *Development in the Enterprise Zone (EZ) is to focus on the aerospace and defence sectors. The policy is clear that it is not allocated to meet local market demand for general industrial or office uses, but rather to cater specifically for the needs of the aerospace industry and high-tech manufacturing.* (Emphasis added)

Application of the LDP

58. The proposed development is plainly in conflict with the LDP. The proposed development is for general industrial or office uses, which is flatly contradictory with MG9 and MG10.

The description of development

59. First, within the description of development, the use classes of the proposed development are as follows: '*Class B1/B2/B8 Business Park*'. There is no qualification as to '*Aerospace Business Park*', as per the allocation in the policy text of MG9.

60. Accordingly, if granted, the proposed development would simply be '*Class B1/B2/B8 Business Park*'. There is no restriction whatsoever within the description of development as to the type of use within those classes that ends up on the Site.

61. Secondly, there are equally no restrictions upon the type of use of the Site by way of conditions either. There is no condition, for example, restricting the use within the broad use classes to the '*aerospace*' sector.

62. Accordingly, on the face of the application before the Inspector, the proposed development is plainly not in compliance with the development. If permission was granted, any sector could end up on the Site – it could simply meet market demand for general industrial or office uses, contrary to the clear policy intent.

The substance of the Appellant's application

63. Thirdly, on the evidence before the Inspector, as a matter of fact, the overwhelming likelihood is that the Site will not be used exclusively by the aerospace sector.

64. The clear thrust of the Appellant's evidence, in particular through the Delivery Report (November 2024) and Mr Sutton's evidence, was that the Appellant is not intending to limit the Site to the aerospace sector.

65. During cross examination, Mr Sutton acknowledged that his Proof of Evidence did not address the marketability of the Site within the aerospace sector, but considered a wide range of potential sectors. These included, for example:
    a. *'operational administrative headquarters or depots for the public sector, utility companies or private sector'*;
    b. *'manufacturing – papermill, composiote materials, automative, furniture manufacturers'*;
    c. a data centre;
    d. energy sector businesses or offices;
    e. fintech;
    f. cyber security;
    g. life sciences.[17]

66. Overall, Mr Sutton, in cross examination, agreed that the marketability exercise that had been completed was to assess whether the proposed development would meet regional market demand for general industrial or office uses.[18]

67. Equally, during cross examination, Mr Sutton emphasized the necessity of being '*open and flexible'*, observing (in essence) that a site could be established to focus on one particular sector,

[17] See, for example: CD6.12 Economic Development Proof of Evidence, paras 2.6; 3.1.1; 3.2.1; 3.3.1; 3.3.4; 3.3.5; 3.3.7, and 3.3.8.
[18] When asked '*you have looked at whether the proposed development would meet local market demand for general industrial or office uses?'*, Mr Sutton's answer was '*yes'*, but with the caveat that he considered '*regional'* rather than '*local'* demand (Day 5).

that sector could face economic downturn, and then the site has to move onto something else. Mr Sutton's evidence is therefore clear that the marketability assessment undertaken on behalf of the Appellant had not been limited to the aerospace industry and high-end manufacturing.

68. Therefore, the Appellant's approach to the use of the Site, in substance, is expressly not supported by the LDP.

Reliance on Condition 40

69. The Appellant appears to see the problem, and unsuccessfully attempts to address it by the inclusion of Condition 40, which provides:

    The application(s) for reserved matters shall be accompanied by a statement which explains how that phase of development shall comply with the strategic objectives of the Enterprise Zone and Local Development Plan, specifically to create a business destination that caters for the needs of the aerospace industry and high tech manufacturing.

70. Condition 40 is not a pre-commencement condition, and as such, the Appellant need only submit a statement to begin development (as long as other unrelated reserved matters are approved). There is no process of approval of the statement by the LPA, and no scope for the LPA to reject the Appellant's statement.

71. As such, all the Appellant needs to do is just submit a statement. The statement could in effect merely say, in effect '*we have marketed to aerospace industry and high tech manufacturing*'.

72. During cross examination, Mr Parker accepted that Condition 40 did not require anything more than a statement being made, and that there was no scope for the LPA for reject that statement.

73. In all practical terms, therefore, the statement that would be required by condition 40 is meaningless. Condition 40 does not cure the development's non-compliance with the LDP. Mr Parker accepted that Condition 40 does not, on its own, make the development policy compliant.[19] It merely amounts to an inadvertent, tacit acknowledgement of the problem by the Appellant.

Application of the LDP: Conclusion

74. If granted, on the basis of the description of development and planning conditions, there is no

[19] Cross examination of Mr Parker (Day 6)

restriction on the type of use that ends up on the Site. Moreover, the evidence before the Inspector is that the Appellant is considering all avenues in terms of regional market demand for general office and industrial use.

75. Indeed, in the context of the proposed development not being viable (and being a loss leader at the outset), it can be readily inferred that the Appellant will not have the luxury of choice of tenants due to the financial imperative of mitigating the financial loss the Site is bound to incur.

76. For completeness, the LPA's Officer's Report does not actually grapple with this issue. The proposed development's compliance with the LDP appears to be assumed, but no reasons justifying that conclusion are identified. In any event, as set out above, the LPA has taken an expressly neutral stance on the appeal.

Loss of a productive farm and Best and Most Versatile Agricultural Land

Development plan and planning policy requirements

77. In overarching terms, Futures Wales emphasizes the importance of protecting all agricultural land, and in particular, productive agricultural land. Futures Wales states (at p 27):

    Our productive land is a vital resource. Agriculture has shaped our landscapes and supported our rural and market towns for generations. We must continue to value and protect our agricultural land and ensure it can feed and support us.

78. Whilst Futures Wales also refers to the grading system for Best and Most Versatile Agricultural Land ("BMVAL"), the text itself plainly states that all productive land is '*vital*', and should be valued and protected.

79. More specifically, PPW12 also requires that, in respect of development management decisions, 'considerable weight' should be given to protecting BMVAL form its development, because of its special importance. It states (at paras 3.58 to 3.59):

    3.58 Agricultural land of grades 1, 2 and 3a of the Agricultural Land Classification system (ALC)16 is the best and most versatile, and should be conserved as a finite resource for the future.

    3.59 When considering the search sequence and in development plan policies and development management decisions considerable weight should be given to protecting such land from development, because of its special importance.

    Land in grades 1, 2 and 3a should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural

grades is unavailable, or available lower grade land has an environmental value recognised by a landscape, wildlife, historic or archaeological designation which outweighs the agricultural considerations. If land in grades 1, 2 or 3a does need to be developed, and there is a choice between sites of different grades, development should be directed to land of the lowest grade.

80. Moreover, MD7 of the LDP provides:

POLICY MD7 - ENVIRONMENTAL PROTECTION

Development proposals will be required to demonstrate they will not result in an unacceptable impact on people, residential amenity, property and / or the natural environment from either:

1. Pollution of land, surface water, ground water and the air;

2. Land contamination;

3. Hazardous substances;

4. Noise, vibration, odour nuisance and light pollution;

5. Flood risk and consequences;

6. Coastal erosion or land stability;

7. The loss of the best and most versatile agricultural land; or

8. Any other identified risk to public health and safety.

Where impacts are identified the Council will require applicants to demonstrate that appropriate measures can be taken to minimise the impact identified to an acceptable level. Planning conditions may be imposed or legal obligation entered into, to secure any necessary mitigation and monitoring processes. (Emphasis added)

Application of the agricultural land policies to the appeal

81. The proposed development falls foul the policies governing development on productive farm land, and BMVAL in particular, in the following regards:

a. First, the Site will result in a loss of productive agricultural land which is not consistent with the general statement within Futures Wales. It has not been justified.

b. Secondly, the specific loss of grade 3a agricultural land has effectively been ignored by the Appellant. Mr Parker's tentative suggestion that one only needs to take account of a loss of BMVAL of 20ha or more is not borne out in the development plan or policy. The obligation to consult Welsh Government is only triggered in respect of BMVAL losses higher than 20ha (pursuant to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012). However, that does not translate into a

position whereby losses below 20ha can simply ignored. Neither Futures Wales nor PPW12 include a 'minimum loss' threshold. The loss of BMVAL, in the context of this scheme, is unacceptable, and must be given weight in the planning balance.

F. VIABILITY/ECONOMIC DEVELOPMENT

Overview

82. It is common ground that this development proposal is not viable. It is also common ground that if the project is not viable, then no benefits can be realized.[20]

83. The non-viability of the development proposal is plainly a material consideration that weighs overwhelmingly against the development proposal, which would inevitably result in the loss of Model Farm as a productive working farm. Contrary to the Appellant's contention, it is a key consideration.

84. The extent of the loss, as calculated by the Appellant, is set out in the 2024 Delivery Report, at para 5.4.8, in the following terms:

    We have prepared our appraisal assuming an eight-year marketing period and note this leads to a loss of - £6.86 million based upon total costs in the order of £183.29 million.

85. This is an increase in the loss shown within the 2019 Delivery Report of £6.175m (which was not spelled out on the face of the report).[21]

86. For the avoidance of doubt, and although Mr Parker seemed to dispute this during his oral evidence, on the face of the 2024 Delivery Report, and indeed as a matter of common sense, a loss of £6.86 million must mean a loss as compared to the break-even position (i.e. £0). Any other interpretation would result in para 5.4.8 being rendered totally incoherent.

VCU's submissions on the consequences of the development's non-viability

87. VCU makes four submissions on the Appellant's assessment of the extent of the non-viability of the proposed development.

88. First, the Appellant's most recent calculation of costs is dated from 2024, and is now currently

[20] Cross examination of Mr Parker (Day 6). It is important to note that the authors of the socioeconomics chapter did not provide evidence in the inquiry.
[21] Avison Young, Viability Assessment (May 2020), para 4.1.4.

wholly out of date. It is common ground that, in general terms, costs of material fuel and labour have gone up over time. The only safe inference that can be made is that the costs estimates proffered by the Appellant in this Inquiry are less than the likely costs that would actually be incurred.

89. Secondly, the costs estimates themselves are inherently unreliable. In particular, as pointed out to Mr Parker during cross examination, the Appellant's costs estimates have halved between 2019 and 2024. Specifically:

    a. In the 2019 Delivery Report (at para 5.3.2): *'£15.0 million allocated for ground works and servicing and £6.0 million allocated for road works',* being a total of £21m.

    b. In the 2024 Delivery Report (at para 5.4.6): '*£10.426 million allocated for ground works, utilities and road works*'.

90. Mr Parker's suggestion that the difference could be accounted by reference to the relatively minor decrease in gross external area of the unites on the Site between 2019 and 2024 lacks any credibility.

91. Ultimately, Mr Parker nor Mr Sutton was able to comprehensively speak to the costs assessment during cross examination, which Mr Parker explained during his cross examination was prepared by a third party.

92. Thirdly, there is no evidence confirming what the funding gap is that would be required to be met to get the development off the ground, and moreover, that the funding gap would be met. However, the following is tolerably clear on the basis of the information that is before the inquiry:

    a. The 2024 Delivery Report estimates the total costs as £183.29 million (at para 5.4.8).

    b. The 2019 Delivery Report states that the proposed development's '*delivery is however reliant upon intervention to enable L&G to invest an estimated £67m'* (at para 1.3.3).

93. Mr Parker's suggestion that all the Appellant would require is the £6.8m loss to be covered by public funding to pay the £183m to implement the development defies all logic, and is inconsistent with what is said in the 2019 Delivery Report regarding the quantum of L&G's proposed investment. The effect of his evidence was that all that was required was for the development to break even.

94. There is also no evidence as to what financing would be required in order for the Appellant to secure a 5% profit (which Mr Sutton stated in his oral evidence had been accepted by the Appellant in respect of a development elsewhere), let alone the more common, and likely to be required, commercial standard profit percentage of 15%.[22]

95. Its clear that, contrary to Mr Parker's assertions, a very significant (which in this context, seems likely to be in the magnitude of, at least, tens of millions, if not over a hundred million) is required to be advanced to L&G to bring this scheme in reality.

96. It appears that there is an implicit underlying assumption that the public sector, in some form, will step in to some unspecified degree. In particular, the 2024 Deliverability Report notes (At para 5.4.11):

> *The attached appraisal illustrates the challenge of delivering a major project of this nature and marginal returns for a scheme of this type. As highlighted above, employment sites of scale are usually brought forward in conjunction by, or with, the public sector and nearby examples include Bro Tathan, Aberthaw (former power station) and Brocastle where a £10 million package of groundworks was placed in 2021 by Welsh Government.*

97. There is no basis on which it can be rationally concluded that Welsh Government, or any other public body, would provide a substantial grant, or otherwise advance funds, to the Appellant to bring this loss leading project to fruition. Mr Sutton and Mr Parker have merely speculated as to the prospect of obtaining public funding. For example, in re-examination, Mr Parker referred to his experience of the Welsh Development Agency in relating his experience of securing public sector investment for job creation – however, the Welsh Development Agency no longer exists (having been abolished in 2006).[23] In any event, there is simply no evidence from Welsh Government, or anyone else.

98. Fourthly, there is also, at the very least, serious doubt that (if the proposed development is actually implemented) it would be able to successfully compete against Welsh Government owned or funded competitors, such as Brocastle, Bro Tathan and Cardiff Parkway. Not only do many of the identified competitors have logistical advantages, such as proximity to the strategic highway network, the M4, or public transport (in the case of Cardiff Parkway), but they also have (already

[22] Avison Young Viability Assessment Report (May 2020), para 4.37.
[23] Pursuant to the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (SI 2005/3226).

secured) public funding (or are in public ownership).

99. Moreover, Mr Sutton explained that even at the Brocastle site, there are currently empty units, and related that prospect tenants had pulled out at various stages. Accordingly, even the competitor sites, with their advantages, are not full.

100. Finally, and in any event, before the Inspector, there is no evidence of actual interest in the Site from anyone, let alone from aerospace businesses.

Independent viability evidence before the Inspector

101. In respect of viability, the Inspector does have the benefit of the genuinely independent expertise of Avison Young. Avison Young were instructed by the LPA in October 2019, as an independent expert, to review and assess the viability work that had been prepared on the Appellant's behalf, including in particular, the 2019 Deliverability Report. Avison Young produced a review report in May 2020, and a further updating report in 2022.[24]

102. In brief, Avison Young's clear view was that the project would be '*significantly unviable'*.[25] Although the Avison Young reports date from 2020 and 2022, as noted above, the Appellant's own assessment of its costs has, against gravity, only decreased (not increased) in the face of market forces, and general costs rises. Therefore, Avison Young's conclusions remain relevant and forceful today. In particular, the 2022 report explained:

> *8.2 Our opinion is that where construction and finance costs have changed, there has been little to no variation on incomes and capital values, and land values, which have remained consistent with the previous report we produced. Any development appraisal would therefore show a higher cost and finance charge*
>
> *8.3 In conclusion, based on the material changes we have outlined, it is our opinion that any development appraisal will very clearly show that the viability of this development would outline a further loss over and above the level of losses we previous indicated in our report. We are of the opinion that the significant increase in construction and potential finance costs would not be offset by any material increase in the rental or capital value being generated with those figures remaining largely unchanged since our previous report.*
>
> *8.4 Whilst no development appraisal has been completed, we believe that assuming a finance charge, it is fair to expect it would be unviable to at least an additional circa*

[24] The sequencing on evidence before the LPA is summarized in the Officer's Report at p 110. The instruction emails are available on the LPA's planning portal website.
[25] Avison Young, Viability Review (2022), para 5.8.

£5 million, and potentially more.

103. As matters stand today, the loss is highly likely to be even greater, and the extent of the non-viability understated by the Appellant.

Viability: conclusion

104. Accordingly, the non-viability of the proposed development is a material consideration that is obviously relevant to the grant of planning consent, and weighs overwhelmingly against it in the planning balance (and indeed, is (in of itself) a reason justifying refusal).

G. INDEPENDENCE OF THE APPELLANT'S EXPERTS

105. The Appellant's technical experts are all drawn from RPS. It is an inevitable inference from the evidence heard during the inquiry that the RPS experts cannot be treated as being fully independent.

106. During the inquiry, it has emerged that:

   a. Mr Parker was instructed to advance the site allocation for inclusion within the LDP as far back as 2006-2008. Mr Parker continued his role for the Appellant when he moved to RPS in 2010.

   b. No RPS technical witness had a formal letter of instruction. Mr Oliver described his involving starting upon the receipt of an email from Mr Parker essentially asking for help. Mr Parker's digital 'tap on the shoulder' was effectively confirmed as a pattern of 'instruction' by the evidence of other witnesses, including Mr Price and Mr Wilson. This was also confirmed by the oral evidence of Mr Parker.

   c. RPS' technical witnesses appeared (to varying degrees) to be interchangeable.

   d. There does not appear to have been any conflict checks, nor any control of information as between the different witnesses. Indeed, Mr Wilson and Mr Price attended site together.

   e. No single witness was responsible for generating all of the relevant information on a given matter. For example, the ES chapter on ecology was not prepared by Mr Oliver, and the Landscape and Visual Impact Assessment was not prepared by Mr Wilson.

107. Presently, RPS' Mr Parker continues to act as the Appellant's planning agent, and is advancing the appeal on their behalf. In particular, RPS prepared and submitted the Statement of Case in this appeal.

108. No global letter of instruction has been provided, but in light of all the material before the Inspector, the inference that must be drawn is that RPS is being paid to achieve a particular outcome: securing planning permission, and that objective contaminates the independence of the technical experts.

109. In light of the role of RPS in the appeal, and the approach taken by (in particular) Mr Parker in sourcing internal RPS technical experts, the weight that can be attached to their evidence must necessarily be reduced.

H. ADEQUACY OF THE ENVIRONMENTAL STATEMENT

110. In general terms, the ES does not adequately assess the likely effects of the proposed development on the environment.

111. During the course of the inquiry, three clear common themes emerged from the totality of the Appellant's technical evidence. These overarching themes feature in all of the technical witnesses' evidence.

112. First, the Appellant has generally undertaken an inadequate and incomplete baseline assessment of the Site, across all disciplines. The result that all experts undervalue the baseline conditions of the Site to various degrees. Indeed, Mr Oliver noted (during examination in chief) that parts of the ES chapter on ecology made *'relatively harsh judgments'* in the context of its assessment of the grasslands (for example).

113. A key feature of this theme was evidence of limited field surveys, and a lack of personal familiarity with the Site, in particular, from technical witnesses in ecology, heritage, and landscape and visual impact.

114. Secondly, the significant uncertainties about the proposed development severely hampered the ability of technical witnesses to assess the proposed development's potential impacts. As summarized above, even as an outline application, the details are threadbare. This critically limits the reliability of the assessment of harm and effects of the proposed development. This was most

stark in the context of the climate change evidence, but was a recurrent problem across all technical disciplines.

115. Thirdly, the necessity of extensive mitigation was a universal refrain. In general terms, the mitigation relied upon by the Appellant to attempt to render the proposed development acceptable is uncertain and unevidenced. Mitigation has not been secured through detailed, let alone enforceable or precise mechanisms.

116. Mitigation is instead attempted to be secured through speculative future conditions, which are themselves inherently vague – falling foul of the requirements for conditions to be precise and enforceable (which was accepted by Mr Parker during cross examination in respect of, in particular, condition 5).

117. In general terms, the upshot of these themes is that: (a) the Site's current baseline condition has been undervalued, (b) likely impacts arising from the proposed development have either been missed or underestimated, and (c) unsustainable assumptions regarding mitigation have been made in attempt to unsuccessfully render the unacceptable tolerable.

I. OUTLINE PERMISSION NOT APPROPRIATE

118. Against the vast extent of the uncertainties in the present bare outline permission, as to what will be on the business park, and who will use and occupy it, the ES fails to assess environmental effects on a '*reasonable worst-case scenario*', in contravention of the precautionary principle.

119. As a matter of law, it is well established that the use of outline permissions is not inherently inconsistent with the requirements of the EIA regime, but critically a '*bare outline application would not comply with those requirements*' (*Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 555 (Admin), para 75 citing *R v Rochdale MBC ex parte Milne* [2001] Env LR 22). In *Rochdale* itself, Sullivan J held:

> *93. In my judgment, integrating environmental assessment into the domestic procedure for seeking outline planning permission, which acknowledges this need for flexibility for some kinds of building projects, is not contrary to the objectives of the Directive…. Provided the outline application has acknowledged the need for details of a project to evolve over a number of years, within clearly defined parameters, provided the environmental assessment has taken account of the need for evolution, within those parameters, and reflected the likely significant effects of such a flexible project in the environmental statement, and provided the local planning authority in granting outline*

> *planning permission imposes conditions to ensure that the process of evolution keeps within the parameters applied for and assessed, it is not accurate to equate the approval of reserved matters with "modifications" to the project. The project, as it evolves with the benefit of approvals of reserved matters, remains the same as the project which was assessed.*

120. In this appeal and in general terms, as considered further below, the inputs into the EIA process have been too uncertain for an adequate environmental assessment to be carried out. There has not been a reasonable worst-case scenario analysis for any of the likely environmental effects, across the board.

121. Moreover, as noted above, save for a limited number of parameters providing ranges for the sizes of units on the Site, the purported '*parameters'* relied upon concern <u>indicative</u> green infrastructure, for example, or mere '*options'* for mitigations.

122. In his oral evidence, Mr Oliver referred to assessing the impacts of this outline application as being '*fundamentally challenging'*. Ultimately, however, the problems are deeper. It has emerged through the evidence heard by the Inquiry that the use of a bare outline application is not a lawful approach, in EIA terms, for a development of this complexity, nature and scale. This is addressed further below in the context of each type of environmental impact that has been sought to be assessed.

J. ECOLOGY AND BIODIVERSITY

Overview: Ecology and biodiversity

123. The proposed development will have an adverse impact on ecology, and result in a net biodiversity loss. The proposed development therefore does not satisfy the relevant legal and policy biodiversity tests. The proposed development's impact on ecology weighs significantly against the grant of permission.

Net Benefit for Biodiversity: legal and policy framework

Environment (Wales) Act 2016

124. Under section 6(1) of the Environment (Wales) Act 2016, public authorities *'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.*'

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

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

126. Notably, Audit Wales published a report in March 2025, addressing compliance with the section 6 duty. The upshot of the report is that the nature emergency has not been a high enough priority for public authorities, and there has been significant non-compliance.

Planning Policy Wales

127. Planning Policy Wales (12th Ed) ("PPW") makes important provision for protecting the environment, and securing biodiversity. PPW came into force on 7 February 2024. In summary (and amongst other things):

    a. Development proposals <u>must</u>:
        i. consider the need to support the maintenance and enhancement of biodiversity and the resilience of ecosystems
        ii. safeguard protected species and species of principal importance and existing biodiversity assets from direct, indirect or cumulative adverse impacts that affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water, air and soil, including peat; and
        iii. secure the maintenance and enhancement of ecosystem resilience and resilient ecological networks by improving diversity, extent, condition, and connectivity (para 6.4.3).

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

128. Importantly, PPW also makes provision for the application of the section 6 biodiversity and

resilience of ecosystems duty:

> <u>*Biodiversity and Resilience of Ecosystems Duty (Section 6 Duty)*</u>
>
> *6.4.5 Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species (not including non native invasive species), locally or nationally and must work alongside nature and it must provide a net benefit for biodiversity and improve, or enable the improvement, of the resilience of ecosystems. A net benefit for biodiversity is the concept that development should leave biodiversity and the resilience of ecosystems in a significantly better state than before, through securing immediate and long-term, measurable and demonstrable benefit, primarily on or immediately adjacent to the site. The step-wise approach outlined below is the means of demonstrating the steps which have been taken towards securing a net benefit for biodiversity. In doing so, planning authorities must also take account of and promote the resilience of ecosystems, in particular the following attributes, known as the DECCA Framework:*
>
> *• diversity between and within ecosystems;*
>
> *• the extent or scale of ecosystems;*
>
> *• the condition of ecosystems including their structure and functioning;*
>
> *• the connections between and within ecosystems; and*
>
> *• adaptability of ecosystems including their ability to adapt to, resist and recover from a range of pressures likely to be placed on them through climate change for example.*
>
> *…*
>
> *6.4.11 Planning authorities must follow a step- wise approach to maintain and enhance biodiversity, build resilient ecological networks and deliver net benefits for biodiversity by ensuring that any adverse environmental effects are firstly avoided, then minimized, mitigated, and as a last resort compensated for. Enhancement must be secured by delivering a biodiversity benefit primarily on site or immediately adjacent to the site, over and above that required to mitigate or compensate for any negative impact.*
>
> *6.4.12… Where biodiversity enhancement proportionate to the scale and nature of the development is not proposed as part of an application, significant weight will be given to its absence, and unless other significant material considerations indicate otherwise, it will be necessary to refuse permission. Enhancement measures could include on-site, locally relevant, habitat creation and/or could be part of the development itself favouring the use of native species using biodiverse nature-based solutions such as SuDS, green roofs, grassland management for wildflowers or reptile refugia, woodland*

expansion, and wetland creation.

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

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

129. The ‘step-wise approach’ prescribed by PPW is set out at para 6.4.15. In broad terms, it sets out a hierarchy requiring: (a) avoidance of harm, (b) minimization of impact, (c) mitigation and, as a last resort (d) compensation. If compensation cannot be achieved, planning permission must be refused. This is also often referred to as the ‘mitigation hierarchy’.

Vale of Glamorgan Council’s LDP

130. MD9 of the LDP, ‘Promoting Biodiversity’, provides:

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

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

development must avoid any adverse impact on wildlife or biodiversity features on (or in close proximity to) a development site. When this is not possible, developers must be able to justify any adverse impacts and illustrate how the development has been designed to minimise the impact on biodiversity.

132. SP10 further requires that development proposals must preserve and where appropriate enhance

the rich and diverse built and natural environment and heritage of the Vale of Glamorgan.

133. On 30 July 2021, the Council declared a 'nature emergency', to protect biodiversity in the county. The nature emergency was declared unanimously at a meeting of the full council.

Reliability of Tim Oliver's evidence

134. The weight that can be attached to Mr Oliver's evidence is limited by the following factors:

   a. First, Mr Oliver's involvement in the project was limited. The primary work on ecology, including the ES chapter and the field survey programme, was undertaken by his colleague, Lloyd Richards (who did not give evidence). Mr Oliver fairly acknowledged that his role was to provide an oversight and managerial function.

   b. Secondly, it is plain that Mr Oliver was not personally familiar with the Site. On Mr Oliver's recollection, during cross examination, before March 2023 he had spent across Areas A and B, approximately 7 to 8 hours (a fully working day), and, previously in 2019, 2 and a half hours or so during the evening for a bat emergence survey at the farm buildings. Mr Oliver therefore acknowledged that he had spent a relatively small amount of time on the Site. He also acknowledged that he did not have a detailed knowledge of habitat specifics.[26]

   c. Thirdly, despite Mr Oliver's acknowledgment that field surveys were '*everything*', Mr Oliver was not in attendance on site for any of the key species-specific surveys.

135. By contrast, Emma Williams has both (a) a deep familiarity with the Site, and (b) has personally carried out extensive field surveys. Moreover, as Ms Williams explained in cross examination, she specifically kept her personal and professional distance from the Model Farm campaign, and thereby safeguarded her independence.

The baseline assessment of the Site is inadequate

136. In order to understand the likely ecological impact of a proposed development on a site, it is necessary to establish, before planning permission: (a) first, the presence or absence of protected or priority species, and (b) the extent that the present species may be affected by the proposed development. Mr Oliver accepted, as a matter of general practice, that that is the case, save for the caveat (in summary) that, in some instances, multiple repeat surveys are needed over a period

[26] Day 3, Cross examination of Mr Oliver.

of several years, after planning permission, and mitigation is '*sound enough'* to address the ultimate data set.

137. There are four critical limitations of the Appellant's ecological baseline assessment that render the overall assessment inadequate, and undermine Mr Oliver's conclusions as to the likely impact of the proposed development on the Site.

138. As a preliminary observation, it is important context that the desk-based assessment of the baseline conditions on the Site, undertaken in January 2023 (and updated in July 2024), is unlikely to be comprehensive and reliable. This is because South East Wales Biodiversity Records Centre ("SEWBRC"), the data source for biodiversity records relied upon, collects data provided voluntarily.

139. As Mr Oliver accepted during cross examination, private land owners do not usually supply biodiversity data on their land, and so the SEWBREC records is of limited value. Indeed, in cross examination, Mr Oliver noted that there were not '*very many records from the parts of Model Farm*.' This heightens the importance of ensuring that comprehensive and robust field surveys were undertaken.

(1) Critical surveys not undertaken at all

140. First, the Appellant failed completely to carry out certain surveys. In particular, certain protected and priority species-specific surveys were simply not attempted, and there has been no updated tree survey or arboricultural impact assessment (since 2019).

Obligation to establish baseline before planning permission decision

141. The CIEEM Guidelines for Preliminary Ecological Appraisals (2018) ("the CIEEM Guidelines") prescribes good practice principles. Insofar as material, it states (at paras 2.8 to 2.9):

> *2.8 In most circumstances, it will be necessary to conduct a field survey to support a PEA. Exceptions include circumstances where there are access constraints, perhaps because of land ownership issues. Where the site has not been visited by an ecologist, this should be clearly stated in the PEAR, and any limitations resulting from this should be reported in full.*
>
> *2.9 Field surveys should consider both habitats and species, focussing upon protected and priority habitats and/or species.*

142. The CIEEM Guidelines further provide the following example scope of a preliminary ecological appraisal (within Box 2). Insofar as material, it states:

2) An assessment of the possible presence of protected or priority species, and (where relevant) an assessment of the likely importance of habitat features present for such species, with reference to available desk study information. This should include:

- *Plants*
- *Fungi*
- *Terrestrial and aquatic invertebrates*
- *Fish (where relevant, based on an assessment of any watercourses and water bodies present);*
- *Amphibians (including both breeding and terrestrial habitat)*
- *Reptiles*
- *Breeding, wintering and migratory birds*
- *Bats (including potential roost sites, and foraging and commuting habitats/features)*
- *Other protected or priority mammal species, as relevant*

143. In cross examination, Mr Oliver accepted that it was a well-established principle that it is not acceptable to leave the carrying out of surveys to conditions, after planning permission has been granted, except in exceptional circumstances.

144. This is also a policy requirement, set out in the Welsh Government's Technical Advice Note 5 at para 6.2.2 in the following terms:

> 6*.2.2 It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It is considered best practice that such a survey is carried out before planning application is submitted. Planning permission should not be granted subject to a condition that protected species surveys are carried out and, in the event that protected species are found to be present, mitigation measures are submitted for approval. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of them being present. However, the level of likelihood that should trigger a requirement for developers to undertake surveys should be low where there is a possibility that European protected species might be present…*

145. In *Bagshaw v Wyre BC* [2014] EWHC 508 (Admin), the High Court endorsed paragraph 99 of the *Biodiversity and geological conservation: circular* 06/2005, which provides (at para 33(i):

> *It is essential that the presence or otherwise of protected species, and the extent that*

they may be affected by the proposed development, is established before planning permission is granted…

146. This position is also summarized in the CIEEM Guidelines (at para 3.11):

> *UK and UK Devolved Administration Government guidance states that under normal circumstances surveys should be completed and any necessary measures to protect biodiversity should be in place, through conditions and/or planning obligations, before permission is granted. Consequently, it is not normally appropriate to produce an EcIA which contains recommendations for further survey, where such surveys are material to the assessment. In such cases, production (and submission) of an EcIA should be delayed until all relevant surveys have been completed. The need for such surveys will be identified in a PEAR, where one is produced, or can be communicated to the client by alternative means where a PEAR is not produced. The need to carry out further surveys should only be secured through planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted*

147. Accordingly, the upshot is that the ecological baseline must be established, through surveys, <u>before</u> planning permission is granted, except in exceptional circumstances.

<u>Critical surveys not carried out before application for planning permission</u>

148. Several species-specific surveys were not carried out, that should have been undertaken.

149. First, no survey was carried out in respect of barn owls. It is common ground that a barn owl's absence at the Site cannot be reliably determined unless a survey has been carried that is specifically designed to monitor for barn owls.[27]

150. In Mr Oliver's rebuttal statement, he sought to address this problem (in particular) by: (a) first, contending that there were sub-optimal habitats for barn owls and their prey species within Area A, (b) secondly, by relying on the lack of any incidental observations of barn owls during bat transect and emergence surveys, and (c) thirdly, the lack of any signs of barn owls during '*internal inspections of safely accessible farm outbuildings in 2018'* (paras 1.1.46 to 1.1.48).

151. However, Mr Oliver's position does not withstand scrutiny. Taking each limb of the rebuttal in turn:

[27] Day 3, cross examination of Mr Oliver.

a. First, no surveys of the pasture fields were undertaken, no were any surveys conducted for small mammals (such as field voles, field mice, shrews and other rodent prey species). It is therefore not credible to discount the possibility of habitats on the Site capable of sustaining barn owl prey. This is especially the case given that the Appellant's own PEA 2024 noted that there were suitable commuting, foraging and nesting habitat for harvest mouse, with '*grassland fringes and scrub mosaics offering shelter and protection from predation*' (at para 3.3.17). In any event, Mr Oliver accepted that habitats, albeit sub-optimal, were available.

b. Secondly, Mr Oliver's reliance on bat transect and emergence surveys is wholly misplaced. As Mr Oliver accepted in cross examination, a bat surveyor is not looking for owls – indeed, they are specifically using bat detectors that rely on ultra sound (which barn owls do not use). Bat emergence and transect surveys do not involve looking at the ground for barn owl pellets or feathers. In any event, Mr Oliver accepted that a barn owl's absence at the Site cannot be reliably determined unless a survey has been carried that is specifically designed to monitor for barn owls.

c. Thirdly, the RPS field surveyors did not fully access the barns and outbuildings. As explained in the Ecological Surveys Report dated 11 October 2019 (at para 3.2.1), access '*into buildings within the barn complex was limited due to health and safety precautions. Several sections of the barn complex had unstable ceilings or roofs and due to this, the internal inspection was restricted to open hay/storage barns and one first floor location.*' The outbuildings which were deemed safe to inspect were only looked at in 2018. Accordingly, the internal inspections were limited, and cannot be relied upon to discount the presence of barn owls.

152. In any event, no barn owl survey was carried out after Ms Williams brought the presence of barn owls on the Site to the Appellant's attention in her proof of evidence in March 2025 (at para 5.27). Mr Oliver accepted that a barn owl survey could have been done, either alongside the other species-specific surveys carried out in 2023-2024, or between 1 April 2025 and 1 April 2026.

153. Secondly, there were no reptile surveys undertaken, and no attempt to determine if there were breeding populations on the Site, despite (a) the desk top study having identified 88 records within the search area, including grass snake *Natrix helvetica*, slow worm *Anguis fragilis* and adder *Vipera berus*, (b) the ES acknowledging that reptiles are important within the context of the Site, and (c) that suitable habitat is identified within Area B and on the southern fringes of

Area A (ES Chapter 9, paras 9.7.68-9.7.70). Instead, the ES merely assumed that there were low numbers of reptiles on the Site.

154. Thirdly, there were no terrestrial invertebrates undertaken either, despite: (a) 68 records of relevant species being identified within the search area of the desk top study, (b) suitable habitats having been identified, and (c) the ES acknowledging that terrestrial invertebrates are important in the context of the Site (ES Chapter 9, paras 9.7.71-9.7.75).

155. Fourthly, no survey for amphibians (other than great crested newts) was carried out, despite 51 records of amphibians being identified by the desk top study (including common toads having been identified within the Site in 2023), and brooks and a water body being present on the Site (ES Chapter 9, paras 9.7.64-9.7.66).

156. Fifthly, no fungi survey was undertaken, in particular, no DNA survey testing for grassland fungi in order to identify CHEGD species, nor a woodland and tree fungi survey within the areas of ancient woodland.

157. Sixth, there has been no updated arboricultural impact assessment or tree survey (since 2019). The arboricultural impact assessment in 2019 advised that it was '*essential to consider the relationship between the proposed development and the retained trees to identify what precautions are necessary, proportionate and appropriate*' (at para 5.2). This has not been done.

158. Seventh, there has been no arable botany survey (see Ms William's Proof of Evidence, at para 6.2).

159. The failure to undertake appropriate surveys has several consequences. In particular, it is not possible to determine what mitigation measures might be appropriate. For example, the LPA's Biodiversity SPG requires that barn owl nests are replaced a ratio of 1:1, unless only one nest is found, in which case the ratio is 2:1 (at p 65). Without identifying the number of nests on site, it is not possible to know how many replacement nests are needed.

<u>No exceptional circumstances justifying surveys for new species post-planning permission</u>

160. In cross examination, Mr Oliver accepted that there were no exceptional circumstances justifying new species-specific surveys being conditioned to be undertaken in the event planning permission is granted. Mr Oliver referred only to the '*complication'* of the application being for outline permission, and that the scale of development made the assessment '*unusual'* and '*more challenging'*.

161. However, condition 7 requires that the following surveys to be undertaken after planning permission is granted:

   a. An environmental DNA survey testing for grassland fungi in each permanent grassland in Area B identifying the CHEGD species that are present to inform future management.
   b. An invertebrate survey of the areas of ancient woodland conducted over four survey visits covering spring, early summer, late summer and early autumn.
   c. A woodland and tree fungi survey of the areas of ancient woodland conducted over survey visits in early and late autumn.

162. Condition 32 also requires a broadly framed, and unspecified *'pre- construction protected species survey'* be carried out in the event that planning permission is granted. Notwithstanding the imprecise scope of the condition, it is plainly inappropriate to leave the establishment of the presence of further protected species until after the grant of planning permission. There are no exceptional circumstances justifying the establishment of the accurate baseline conditions on the Site until after permission is granted.

163. In re-examination, Mr Oliver sought to contend that certain exceptional circumstances identified within the CIEEM guidance did apply to the present application. Those are, as set out in Box 4 on p 11, as follows:

> *There are a limited number of circumstances where further surveys may not be necessary to the determination of the planning application. Instead they may be conditioned and submitted after determination of the application. These limited circumstances are set out in BS 42020:2013 Clause 9.2.4 and include where:*
> *a) original survey work will need to be repeated because the survey data might be out of date before commencement of the development project;*
> *b) there is a need to inform the detailed ecological requirements for later phases of projects that might occur over a long period and/or multiple phases;*
> *b) adequate information is already available and further surveys would not make any material difference to the information provided to the decision-maker to determine the planning permission, but where further survey is required to satisfy other consent regimes e.g. a European Protected Species (EPS) licence;*
> *b) there is a need to confirm the continued absence of a protected or priority species or to establish the status of a mobile protected or priority species that might have moved, increased or decreased within the site; or*

b) there is a need to provide detailed baseline survey information to inform detailed post-project monitoring. (Emphasis added)

164. In light of Mr Oliver's unequivocal answers on exceptional circumstances in cross examination, it must be inferred that his identification of exceptional circumstances can only feasibly attempt to justify repeat surveys for species that have already been surveyed. There was no justification for conditioning the survey of new species, that had not previously been surveyed.

165. In any event, the lack of a justification is borne out by consideration of the exceptions flagged in the CIEEM Guidelines themselves. None of the five exceptional circumstances suggested within Box 4 of the CIEEM Guidelines justify deferring new species surveys until after the grant of planning permission in the present circumstances.

166. Accordingly, the failure to undertake necessary surveys renders the Appellant's assessment of the baseline conditions on the Site incomplete and inadequate.

(2) Surveys did not target Area B

167. Secondly, the species-specific surveys were mostly carried out in Area A, and not Area B. As Appendix 9.2 - Protected Species Report (dated August 2024) ("the PEA 2024") explains (at para 1.1.2):

> *Collectively, these areas are referred to as the 'Site' within this report. Most of the updated ecological surveys have targeted Area A. Where areas outside of Area A have been surveyed, this is stated.*

168. As such, the desk-based survey has been the primary source for the baseline assessment of Area B, with its inherently limited value.

169. This approach is not consistent with the CIEEM Guidelines which states that, although a field survey study area will need to determined on a case-by-case basis, *'[i]n most cases this will include all of the land within the 'site' boundary, plus additional 'off-site' areas where relevant to the assessment'* (at para 2.13).

170. In cross examination, Mr Oliver explained the rationale for not undertaking any species-specific surveys within Area B. He stated that an assumption had been made that the habitats within Area B would be retained, and where possible, enhanced.

171. However, as further explained below, that assumption is not borne out. The retention and

enhancement of habitats is contingent on, amongst other things, limitations on access being imposed within Area B, which is inherently unlikely, given that is not in the nature of open space and a public park generally, nor specifically, Porthkerry Country Park. Accordingly, the failure to conduct species-specific surveys within Area B is a severe limitation on the reliability and comprehensiveness of the ecological baseline assessment relied upon by the Appellant.

(3) Surveys relied upon are out of date

172. Thirdly, the baseline ecological surveys that were done on behalf of the Appellant are out of date. As the PEA 2024 explains (at para 2.3.5):

> *Most ecological data remain valid for only short periods due to the inherently transient nature of the subject. The survey results contained in this report are considered accurate for a minimum of 18 months (CIEEM, 2019), assuming no significant considerable changes to the site's conditions.*

173. All of the species-specific surveys were carried out prior to August 2024. For example, the dormouse surveys were conducted between September and November 2023, the bat surveys took place between August 2023 and June 2024, and the otter and badger surveys between September 2023 and May 2024.

174. Despite the opportunity to submit a updated proof of evidence for the purposes of the postponed hearing, the Appellant did not attempt to update the baseline data. A precautionary approach is therefore required taken in considering the present baseline value of the Site.

(4) The baseline assessments underplayed the biodiversity value of the Site

175. As explained in Ms Williams' proof of evidence, the surveys themselves underplay the biodiversity value of the habitats and species on the Site. There was an overarching lack of due diligence (at para 5.17). For example, hedgerows were '*far more abundant and floristically interesting than reported, with species such as Primula vulgaris, Vicia sepium, Arum maculatum, Viola odorata, Stellaria graminea'* (at para 5.13), and badger setts present on the Site were not identified (at para 5.14).

The assessment underestimates impacts

176. In any event, the Appellant's ES and Mr Oliver's evidence underestimates the impacts of the proposed development on the Site. In general terms, the impacts include the following:

    a. First, the proposed development will result in the absolute loss of certain habitats. The proposed development will lead to the fragmentation, degradation or partial loss of

other habitats.

b. Secondly, as a result of such impacts, there will be consequential impacts on the species that rely those habitats.

177. By way of an illustrative example, in the context of bats (a European protected species), existing roosts (in farm buildings and trees) will be lost, hedgerows relied upon for foraging and commuting will be lost (and in Area A, there will be a permanent fragmentation of the hedgerows), as well as an increase in artificial light and noise. All of which will have potentially severe adverse effects (in particular, in respect of lesser horseshoe bats).[28]

178. The proposed development will also result in a suite of impacts arising from what Mr Oliver has referred to in his proof of evidence as a '*change in context*' (see paras 2.2.2, 2.2.42-43, and 3.1.3). The phrase '*change in context'* minimizes a multitude of sins. It is a subtle shorthand for an important range of the significant effects that the proposed development will have.

179. Here, because this is a bare outline, rather than a full, application, it is not possible to know what exactly the likely full range of changes in context will be. As noted above, assessing the impact of this outline application was described by Mr Oliver as *'fundamentally challenging*'.

180. In particular, we don't know: (a) what will be in the industrial units (which is of particular importance in determining the operational environmental impacts – a plastics factory will be different in impacts to a logistics hub, for example), (b) what the lighting will be, (c) the vehicular access arrangements, (d) parking and number of vehicles on site, and (e) the type and volumes and noise will likely to occur on site. This is a fundamental, and irretrievable, limitation of the ES.

181. Area A will be unavoidably subject to a fundamental change. The agricultural fields will effectively be concreted over, and replaced with industrial units, the spine access road, car park and other access roads (amongst other things). Area A will therefore be subject to, in particular, marked increases in noise, emissions and light.

182. As such, even in respect of retained habitats with Area A, the industrial development on the Site will result in material effects on species. For example, more than half of W1, ancient woodland,

[28] See, for example, the letter of Hawkeswood Ecology dated October 2019, at paras 6.3 to 6.4.

which includes some intermittent black poplars, is within Area A.[29] Mr Oliver only subtly acknowledges this, in general terms, in his proof of evidence (at para 3.1.3):

> *There are also expected to be effects on the behaviour of species in parts of Area A once operational where there is a change in the context of retained habitats*.

183. This illustrates how the phrase '*change in context'* understates the magnitude of the changes that would occur on Area A. For example, it is clear from the indicative concept masterplan that the field adjacent to the hedgerow in which the presence of dormice (again, a European protected species) was confirmed will be concreted over. There will also be a loss of 2km of hedgerow habitat (1.6km of which is species rich),[30] which provides necessary connectivity between habitats, and for foraging and commuting.

184. Area B's *'change in context'* from agricultural land to open space will also result in a series of significant impacts. In particular, there will be:

    a. a higher footfall from visitors;

    b. an increased presence of dogs (and therefore dog fouling);

    c. a fundamental change in the management of the woodlands (including the ancient woodlands) in order to prioritise public safety, resulting in the felling (and therefore absolute loss) of trees (including, inevitably, mature trees), and;

    d. difficulties in the retention of logs from felled trees (which form habitats for (amongst other things) terrestrial invertebrates and fungi) due to theft for log burning.[31]

185. Overall, these impacts in Area B have not been properly assessed and taken into account within the ES, or otherwise by the Appellant in this application. In his oral evidence, Mr Oliver suggested that there ought to be some form of access limitations within Area B, if it becomes open space. With regard to the ancient woodland specifically, Mr Oliver stated that a '*controlled access model is required'*.

186. However, as Ms Williams observed in her oral evidence, there are presently no limitations on public access within Porthkerry Country Park (which includes Cliff Wood Golden Stairs, a Site

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[29] ES Volume 3, Appendix 9.1, Preliminary Ecological Appraisal (2024), para 3.2.5.
[30] Mr Oliver's Proof of Evidence, para 2.2.17.
[31] See Mrs Williams' Proof of Evidence, para 6.5.

of Special Scientific Interest[32]), and there is no evidence that any limitations will sought to be imposed (let alone policed) in future, including from the Vale of Glamorgan Countryside Service. There is no '*controlled access model*' proffered by the Appellant, nor have any other type of limitations been proposed. Indeed, Area B will be beyond the Appellant's control, as the land will be transferred to the LPA.

187. The only safe inference to be made, therefore, is that there will be no limitations on access to any parts of Area B.

188. As a result of Mr Oliver's abstract reliance on unspecified and un-proposed limitations on public access within Area B, the adverse impacts arising from the '*change of context*' from private farm to country park and open space are inevitably understated.

Reliance on uncertain mitigation

189. The Appellant relies upon uncertain, unspecified or unproven mitigation in order to attempt to render the ecological impacts of the proposed development acceptable. The 'mitigation' relied upon by the Appellant is, at best, a loose ambition.

190. First, the Green Infrastructure Statement does no more than set out the relevant policies and standards, and amounts merely to a general commitment to attempt to comply with those policies and standards.[33] It is of no material assistance in determining what mitigation may be implemented, and the likely effectiveness of any such mitigation.

191. Secondly, the Green Infrastructure Parameter Plan merely refers to '*<u>proposed</u>*' and '*<u>indicative</u>*' infrastructure, as well as '*ecological mitigation <u>options</u>*'.[34] No such measures are therefore concretely secured by condition 5. It therefore suffers the same flaws.

192. Thirdly, the Appellant's effective fallback position is reliance on the 'Detailed Biodiversity Management Strategy', which does not exist. There is no indication of the actions or details of how any mitigation is likely to be accomplished. It unacceptably leaves mitigation for some future point (potentially years down the line). There are no specific restrictions included within the outline application.

193. There is therefore no evidence as to precisely what mitigation (if any) will actually be

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[32] ES Appendix 9.1, Preliminary Ecological Appraisal 2024, para 3.1.2.
[33] CD5.20.
[34] ES Volume 2, Figure 2.5 (JCD0064-006-J-210607).

implemented, and how if effective (if at all) any such mitigation is likely to be.

194. By way of illustrative examples:

a. In respect of bats, there is no specific mitigation secured through the proposed conditions. In his proof of evidence, Mr Oliver states that mitigation for the loss of bat roosts would '*comprise the installation of a range of bat boxes on trees'*, and '*integrated bat boxes into new buildings and built structures within the development would also be adopted where practical'* (at para 2.2.8). However, it is not known whether it would be '*practical'* to adopt any integrated bat boxes. Mr Oliver cannot be counted as mitigation. It is, at best, a potential idea for mitigation.

b. As to habitats, in general terms, the new hedgerow, woodland and scrub planting is a relatively small footprint (especially on Area A). There is also no evidence of an ecotone or transitional area between new landscaping and existing woodland (as advised by the 2019 tree survey, at para 9.2.51). Notably, 2km of hedgerow will be lost in Area A alone (1.6km of which is species rich). Mr Oliver untenably relies upon woodland and mixed scrub to compensate for the loss of hedgerow (Proof of Evidence, para 2.2.20). In any event, there is no certainty that the new green infrastructure will become species rich, especially in the *'change of contexts'* in both Areas A and B. There is no realistic sense in which the new green infrastructure could achieve mitigation.

c. There are no specific protections for the black poplars (which even if hybrid, are a rare species).

195. Overall, therefore, the Inspector has before him, at best, a 'plan to plan'. It is not possible to safely conclude that mitigation will be sufficient. The frequent refrain was simply that the negative impacts would all be dealt with later. However, the application for the principle of development is being determined now. It is simply not enough.

Conclusion: The proposed development will result in a biodiversity net loss

196. The concluding contention advanced by Mr Oliver that the proposed development would result in a biodiversity net benefit is ultimately a bare assertion wholly underpinned by any methodology, and flies in the face of the evidence (Proof of Evidence, para 2.3.3). It is an untenable contention.

197. Rather, it is obvious on the basis of the entirety of the evidence before the Inspector, and the lack

of any specific secured mitigation, that the proposed development would, in fact, inevitably lead to biodiversity net loss.

198. Area A is a net biodiversity loss. Indeed, during cross examination, Mr Oliver accepted that the proposed development would result in a net biodiversity loss in Area A.

199. Area B is also a net biodiversity loss. The contrary contention is simply not borne out by the evidence, and rather, relies solely on the unproven and untested assumption of successful mitigation.

200. There is no off-site compensation or mitigation, relied upon, and as such, biodiversity must be assessed on the basis of the Site alone.

201. The legislative and policy tests have therefore not been met:

   a. First, there is no meaningful sense in which the duty prescribed by section 6 of the Environment (Wales) Act 2016 to *'maintain and enhance biodiversity functions'*, and '*in so doing promote the resilience of ecosystems*' could be met by the Welsh Ministers in granting permission.

   b. Secondly, there has been no discernible attempt to comply with the PPW mitigation hierarchy (pursuant to para 6.4.4), and the PPW requirement to secure the maintenance and enhancement of ecosystem resilience and ecological networks (para 6.4.3).

   c. Thirdly, Policy MD9 of the LDP is not met because: (i) the proposed development does not conserve or enhance biodiversity interests; (ii) the need for the development does not 'clearly outweigh' the biodiversity value of the Site, and (iii) the impacts of the development have not been demonstrated to be satisfactorily mitigated or acceptably managed.

202. Moreover, NRW's standing advice to planning authorities is that planning permission '*be refused if development will result in the loss or deterioration of ancient woodland, given that ancient woodland is irreplaceable unless there are wholly exceptional reasons.'*[35] There is plainly the risk of loss and deterioration of ancient woodland, and there are no wholly exceptional reasons.

203. As such, the unacceptable adverse ecological impact of the proposed development on the Site is,

[35] Natural Resources Wales, Advice to planning authorities considering proposals affecting ancient woodland. It is cited at footnote 2 to the letter of the Woodland Trust to the LPA at para 26 May 2022.

in and of itself, a justification for refusing permission.

K. CLIMATE CHANGE

Overview: Climate change

204. Insofar as material, the ES' key conclusions are that: (a) the proposed development would result in a significant moderate adverse effect on climate change (as a result of greenhouse gas emissions from operational activities) (at para 8.13.7), but (b) *'further operational mitigation measures will be investigated and then implemented into the detailed design',* which once adopted, would then result in a minor adverse effect (therefore, not non-significant in EIA terms) (at para 8.13.8). The downgrade is explained in a single sentence.

205. VCU advances two submissions as to the climate change impacts of the proposed development. In summary:

    a. First, the GHG emission assessment within the ES is subject to a series of important limitations, especially with regards to operational activities, which will likely have resulted in an underestimation of the proposed development's climate change impacts.

    b. Secondly, and in any event, the mitigation relied upon within the ES to downgrade the assessment of climate change impacts from operational GHG emissions from a finding of '*significant moderate adverse'* to '*minor adverse effect'* is unspecified, uncertain and not secured within the proposed conditions (or otherwise).

206. Accordingly, applying the precautionary principle, the Inspector must approach the planning balance on the basis that the proposed development is likely to have significant moderate adverse effects on climate change, arising from its operational GHG emissions.

207. For completeness, the national planning policy context is common ground, and summarized in Chapter 8 of the ES at paras 8.2.19 to 8.2.22. In particular, Policy MD2(12) of the LDP requires that development proposals '*[m]itigate the causes of climate change by minimising carbon and other greenhouse gas emissions associated with their design, construction, use and eventual demolition, and include features that provide effective adaptation to, and resilience against, the current and predicted future effects of climate change.'*

Limitations of the assessment of climate change impacts

208. The GHG assessment is expressly subject to a series of critical limitations.

209. First, the lack of information as to what precisely will end up operating within the Site, once the proposed development is implemented, is an extremely important caveat to the entire operational GHG assessment. The lack of information is repeatedly referenced within the ES, and its supporting documents. For example:

   a. Within Chapter 9 of the ES:

      i. At para 8.4.13, '*[t]his assessment has sought to include emissions from all three scopes, <u>where this is material and reasonably possible from the information and emissions factors available</u>, to capture the impacts attributable most completely to the Proposed Development*.'

      ii. At para 8.4.27, '*The application for the Proposed Development is in outline only. As such, there is limited site-specific detail available for assessment of impacts. The assessment has therefore used broad and conservative assumptions to estimate the magnitude of GHG emission impacts for the Proposed Development*.'

      iii. At para 8.4.30, '*At the current design-stage of the Proposed Development, only the total Gross External Area (GEA) is known for each use class of the proposed business park and an estimated area for the proposed car park. As no detailed drawings are available at this stage, the use class types and areas are approximate and are subject to change during the design of the Proposed Development*.'

   b. Within Appendix 8.1 to the ES, at para 1.2.3, the same important point is made as follows: '*[a]t this early stage, the exact material requirements for the Proposed Development, which consists of the proposed class B1/B2/B8 business park and associated infrastructure, including car parking, landscaping, drainage infrastructure, biodiversity provision, footway and cycleway and ancillary works, are not defined in detail*.'

210. As agreed by Mr Tasker in cross examination, the operational activities on the Site could vary enormously, within broad use classes. A logistics warehouse will have different impacts to a data centre, as compared to an administrative office, and so on.

211. Mr Tasker further agreed, in cross examination, that the lack of detailed information was a very

important limitation in the context of the quantification of GHG emissions.

212. Secondly, in light of the lack of information, the ES must rely on benchmarks (see ES Chapter 9, para 8.4.15). However, the available benchmarks do not account for regulated electricity consumption by industrial buildings, but rather, for office use only. This is explained in the ES in the following terms (Chapter 9, para 8.4.35):

> *As CIBSE Guide F does not provide benchmarks for electricity consumption for industrial buildings, which applies to use class B2 from the proposed business park, CIBSE Guide F benchmarks for offices is used instead as this is considered to closely represent associated energy consumption and is a more conservative intensity compared to that of the warehouses benchmark electricity intensity.*

213. The inability to model general industrial use, such as high-end manufacturing, is a further limitation on the robustness of the assessment. The operational GHG emissions therefore do not account for the possibility of, for example, night shifts occurring within high end manufacturing operations on the Site.

214. Thirdly, and in any event, there are also simply express gaps in the assessment. In particular, there is assessment of no unregulated energy at all (ES Chapter 9, para 8.4.33). This means that the assessment does not account for the energy consumption of industrial machinery on the Site.

215. Moreover, the ES relies upon the transport assessment within the ES, which is also necessarily incomplete. There is no information on the number of car parking spaces on the Site, for example, and equally, without knowing what the operational activities on the Site will be, it is also not possible to know the frequency of HGV trips.

216. These limitations underscore the inappropriateness of the outline application procedure for a development of this nature, complexity and scale.

No mitigation secured

217. In order to downgrade the magnitude of the climate change impacts arising from operational GHG emissions, from significant (moderate adverse) to insignificant (minor adverse), the Appellant relies upon unspecified future mitigation. The ES itself states that operational mitigation will be (future tense) *'investigated and then implemented'*.

218. In the ES, at para 8.9.3, Mr Tasker proffered an idealized set of generalized mitigation measures. These measures are, in and of themselves, uncertain and imprecise. For example, the measures

are premised on the possibility only of the Futures Buildings Standard applying in Wales at the material time, and moreover, further suggestions included to '*be clean (supply the energy required in an efficient manner)*', with no explanation as to how that might be achieved.

219. Notwithstanding the inherent vagueness in the idealized list of outline measures, during re-examination, Mr Tasker was taken to the then worded Condition 5. It required that the proposed development be carried out in accordance with the ES (Volumes 1-3). Condition 5 was thereby, in essence, a tacit acknowledgment of the problem.

220. However, Condition 5 no longer requires compliance with 'ES', because it appears to be accepted that it was imprecise and unenforceable. Accordingly, and in any event, even if the measures were precise and enforceable, there is therefore no mechanism to even attempt to secure them.

221. Moreover, none of the outline measures are costed, and so it is also unclear whether any measures would actually be affordable (in the context of the non-viability of the proposed development).

222. Finally, insofar as the other conditions are concerned:

   a. Condition 19 requires a 'Construction Environment Management Plan' ("CEMP") to be prepared. However: (i) the CEMP is directed at construction processes, and does not address detailed design, which would encompass matters such as energy efficiency post-operation, and (ii) the CEMP also incorporates further imprecise and unenforceable requirements, such as (for example) the *'use of lower carbon materials and construction practices*.'

   b. Condition 34 requires an 'Energy Masterplan & Implementation Plan', but again, there is no commitment to what precisely will be in it, save for a '*study of sustainable energy centre to service the Cardiff Airport and gateway development zone Enterprise Zone, and if not feasible, a District Heat Network to service the application site.'* Again, beyond the carrying out of a study there is no guarantee that the proposed development will end up being 'clean', 'lean' or 'green'.

223. The position is therefore that it is simply insufficient, especially given that the difference between fully mitigated scenario and unmitigated scenario is the difference between the proposed development having a significant effect in EIA terms or not.

Conclusion: The proposed development will have significant adverse climate change effects

224. Ultimately, the mitigation relied upon is simply too contingent, and uncertain. There is nothing

before the Inspector that secures the mitigation necessary to robustly downgrade the assessment of impact. Applying the precautionary principle, the overall decision must be taken on the basis of a significant adverse effect.

225. As a result, the proposed development cannot be shown to comply with the local development plan. At most, the Appellant's position amounts (in reality) to a generalized commitment to comply in future. That is not good enough.

226. Overall, the climate change impacts weigh heavily against the grant of development consent in the planning balance.

L. HERITAGE

Overview and background: Heritage

227. As with all aspects of the ES, the lack of details of the scale, nature and form of the proposed development is a significant overarching limiting factor in respect of the assessment of the heritage harms. Nonetheless, it is common ground that the Site: (a) presently positively contributes to the setting of nine heritage assets,[36] and (b) in principle, the proposed development will result in heritage harm to those heritage assets (although the degree of harm may be in dispute). Overall, the impact on heritage assets renders the development unacceptable.

228. By way of essential background:

    a. In June 2019, RPS updated its built heritage statement ("BHS") (originally prepared in April 2019), which accompanied the original hybrid planning application. The BHS concluded that:

        i. There would be a moderate degree of harm to the setting of Lower Porthkerry Farm House (Grade II listed); Upper Porthkerry Farm House (Grade II listed) and the Porthkerry Conservation Area.

        ii. There would be a minor degree of harm to the setting of Church Farmhouse (Grade II*); the Outbuilding to Church Farmhouse (Grade II*); the former stables block associated with Upper Porthkerry Farm House (locally listed County Treasure); and Egerton Grey (locally listed County Treasure).

[36] As set out at paragraph 28 above.

iii. There would be a negligible degree of harm to the setting of the Church of St Curig (Grade II*) and Porthkerry Viaduct (Grade II).

iv. Mitigation measures may potentially be devised to reduce the impact, but would not remove the harm entirely.

b. On 2 October 2019, the LPA's Conservation Officer provided his internal consultation response on the planning application. The Conservation Officer objected to the proposed development, and recommended refusal. He observed that the BHS assessment was '*robust'* and '*generally accurate'*. He did, however, consider that a locally listed county treasure, Welford Farm Barns, should also have been assessed. He therefore carried out his own assessment of the impact, and concluded that there would be a minor degree of harm. Overall, the Conservation Officer concluded that the proposed harm to the heritage assets was '*contrary to policies SP10 and MD8 of the LDP'*. The Conservation Officer also noted that '*where harm has been identified in the Built Heritage Statement the only mitigation proposed relates to lighting, which it is acknowledged, will unlikely remove that harm completely. It is unclear if any other mitigation has been considered*.'

c. On 15 November 2019, in response to the planning officer, Mr Rowlands, invitation to provide further comments on the application, the LPA's Conservation Officer stated '*I'm not aware of any significant changes in either the nature or extent of historic assets which would effect this application. Neither has there been any significant changes in legislation or policy relating to the historic environment.'* Accordingly, the Conservation Officer maintained his position.

d. In June 2019, in or around the same time as the preparation of the updated BHS, Chapter 6 'Built Heritage' of the ES was completed by Jonathan Smith of RPS.[37] The ES was updated in September 2024. It was informed by the BHS (see para 6.2.4). The ES effectively endorsed the assessment of harm set out within the BHS, save that it concluded that Porthkerry Viaduct would not be '*materially impacted'* (despite the identification of negligible impact in the BHS).

229. Accordingly, the assessment of the degree of harm to heritage assets was broadly consistent between the BHS and original ES carried out in 2019 as well as the updated ES in 2024 (as prepared by Mr Smith, in his five or so years involved within the project). The assessment of

[37] ES Volume 3, Appendix 1.4, paras 1.7-1.8.

harm was also endorsed by the LPA's Conservation Officer.

230. However, a new assessment of the heritage harms was introduced by the Appellant by Appendix 2 to Mr Parker's Planning Proof of Evidence (submitted on 13 March 2025), the 'Built Heritage Statement of Evidence' ("the BHSoE") prepared by Seth Price. Mr Price was brought in for the purposes of providing evidence to the inquiry, in order to cover Mr Smith, who was unavailable due to sickness (as explained in paragraph 1.10 of the BHSoE). As explained further below, Mr Price's assessment is a marked outlier – he downgraded the degree of harms across all heritage assets, and moreover, contended that the proposed development would result in heritage benefits.

231. Against that background, and by way of overview, VCU submits that:

   a. First, Mr Price's evidence should be disregarded in its entirety, and the assessment of harm agreed between Mr Smith of RPS and the LPA's Conservation Officer be relied upon by the Inspector instead.

   b. Secondly, the LPA's Conservation Officer was right to conclude that the proposed development was in conflict with policies SP10 and MD8 of the LDP, and that conflict weighs heavily against the grant of permission in the planning balance.

Heritage: Legal and policy framework

232. Under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act"), in considering whether to grant planning permission, or permission in principle, for development which affects a listed building or its setting, the decision-maker must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

233. Moreover, under section 72, the decision-maker must also pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

234. PPW further provides (in brief):

   a. On listed buildings, *'[t]here should be a general presumption in favour of the preservation or enhancement of a listed building and its setting, which might extend beyond its curtilage. For any development proposal affecting a listed building or its setting, the primary material consideration is the building, its setting or any features of special architectural or historic interest which it possesses*.' (at 6.1.10)

b. On conservation areas, '*[t]here should be a general presumption in favour of the preservation or enhancement of the character or appearance of conservation areas or their settings. Positive management of conservation areas is necessary if their character or appearance are to be preserved or enhanced and their heritage value is to be fully realised*.' (at 6.1.14)

235. The LDP also states (in summary):

a. First, under SP10, that development proposals must conserve, and where possible, enhance the architectural and/or historic qualities of individual listed buildings and conservation areas.

b. Secondly, under MD8, there is a broader requirement that proposals must preserve or enhance (i) the character or appearance of conservation areas, and (ii) listed buildings, their setting and significant features.

Mr Price's evidence should be disregarded in its entirety

236. Mr Price's position on the degree of harm is a marked outlier from the assessments that had been carried out by the LPA and on behalf of the Appellant prior to his belated involvement in the application.

237. In brief, his downgrading of harm, and promotion of heritage benefits of the proposed development, are inadequately explained. In any event, his conclusions are unjustified. His evidence should be rejected in its entirety, and instead, the Inquiry should rely solely on Mr Smith's ES Chapter 6 and RPS' Built Heritage Statement, as endorsed by the LPA's Conservation Officer.

238. Mr Price's evidence is rendered unreliable by the following flaws and limitations.

239. First, Mr Price's assessment of harms was plainly undertaken at rapid speed. Mr Price was formally confirmed as the Appellant's witness on 4 March 2025, some 8 working days before the evidence was actually submitted on 13 March 2025 (pursuant to a short extension to the deadline). Mr Price was not even aware of the project until 26 February 2025. The circumscribed time available to Mr Price is an inherently limiting factor to his BHSoE.

240. Secondly, Mr Price's assessment (or at least, his initial assessment) was undertaken without having actually seen the Site and the heritage assets by way of a comprehensive site visit. Indeed,

there was some confusion during Mr Price's oral evidence as to when precisely he did attend the Site, and the relative sequencing of the preparation of his evidence. It is notable that Mr Price did not mention any site visit in his BHSoE.

241. As such, in his addendum statement provided to attempt to explain his involvement and the timing of the site visit, Mr Olive stated that he began to familiarize himself with the background documents on 26 February 2025, and then began to prepare his statement immediately thereafter. It appears to be the case that Mr Price prepared his statement prior to his site visit on the 13 March 2025, as he states he '*updated'* his statement following the Site visit before it was submitted on the same date of 13 March 2025 (as per para 1.2.2).

242. The upshot is that Mr Price's assessment of the harms was reached before he actually visited the Site (and his assessment was only 'updated' following the site visit). The site visit itself was limited to half a day, and included (it seems) attendance at landscape viewpoints for the purposes of Mr Wilson's landscape evidence. Mr Price did not visit inside any of the heritage assets.

243. In those circumstances, Mr Price's contention that he is '*familiar with the Site'* (BHSoE, para 1.10) lacks any credibility. Mr Price's assessment was not properly informed by a comprehensive site visit.

244. Thirdly, in examination in chief, Mr Price was required to correct serious errors on the face of his BHSoE (at paras 1.14 to 1.17):

   a. Mr Price had thought that the updated Built Heritage Statement had erroneously failed to update the identified level of harm to take account of mitigation.

   b. Mr Price had also thought the Built Heritage Statement had identified a higher level of harm than the Environmental Statement.

245. However, both errors were, in fact, Mr Price's: (i) the Built Heritage Statement and Environmental Statement reached the same conclusions on the level of harm, and (ii) both took account of the potential mitigation measures.

246. It is therefore clear that Mr Price did not adequately understand basic elements of the critical documents that he relied upon in order to reach his assessment of the heritage harms: the Built Heritage Statement and the ES chapter.

247. Fourthly, in Mr Price's BHSoE, he failed to explain the reasons underlying his conclusion that

the harm should be downgraded. For example, at paragraph 2.3, there is no real explanation of why he disagreed with Mr Smith and the LPA's Conservation Officer, in order to reach a finding of 'minor' rather than 'moderate' harm in respect of the Porthkerry farmhouse grouping. His overall approach lacked any precision.

248. In examination in chief, Mr Price advanced (for the first time) a number of new factors, but accepted, in cross examination, that those factors were very important information that should have been within his proof of evidence. His lack of written explanation for his critical conclusion is a severe limiting factor in respect of his evidence.

249. In cross examination, Mr Smith accepted as '*fair*' the proposition that a reader looking at his proof of evidence would find it very difficult to understand why he downgraded the harm.

250. Fifthly, Mr Price departed from the CADW Guidance on the Setting of Historic Assets in Wales ("the CADW Guidance") in material ways, despite asserting compliance. In corss examination, Mr Price effectively acknowledged he did not follow the guidance:

  a. Mr Price did not evaluate the potential heritage impacts first, and then, once that assessment has been undertaken, consider options for mitigation. Mr Price assessed only on basis of unspecified mitigation. This is contrary to the sequencing prescribed within Stages 3 and 4 of the CADW Guidance (see p 5). The BHS and ES appear to have both carried out the sequencing correctly, by assessing impacts first, then considering the mitigation.

  b. At Stage 3, the evaluation of the potential impact of the development, the CADW Guidance lists of a series of factors to be taken account (at pp 8-9). However, there is no evidence of their consideration in Mr Price's BHSoE. Mr Price agreed, in cross examination, that he had made '*minimal reference*' to them.

251. Finally, Mr Smith's identification of heritage benefits again is supported by threadbare reasons, and in any event, lacks credibility. There is no realistic prospect that, in the shadow of a new industrial park, the rural setting of the heritage assets will be enhanced, even with the Porthkerry Country Park extension (itself a change from the current farmland surrounding the Porthkerry farm houses, for example).

252. Equally, it will have been clear from the site visit that the industrial park will capable of being seen from the Porthkerry Viaduct, and again, will harm, rather than enhance the asset. Indeed, the Built Heritage Statement concluded that there would be negligible harm to Porthkerry Viaduct,

but that was still a conclusion of harm – not benefit. Mr Price's analysis is therefore, again, not supplementary but contradictory of the Built Heritage Statement and ES (see BHSoE, paras 3.3 to 3.7).

253. Indeed, neither Mr Smith of RPS, nor the LPA's Conservation Officer nor CADW made any suggestion that there would be any heritage benefit – only net harms were identified. It is highly unlikely that heritage benefits would have been overlooked or in any event, outweigh the harms identified (and Mr Price confirmed in cross examination he had not spoken with them). Otherwise, that would have been identified.

Heritage: Conclusion

254. Accordingly, VCU invites the Inspector to disregard Mr Price's evidence in its entirety, and instead rely on Mr Smith's assessment of harms (as set out in the Built Heritage Statement and the ES), which was endorsed by the LPA's Conservation Officer. Both Mr Smith and the LPA's Conservation Officer plainly had more familiarity with the Site than Mr Smith.

255. The LPA Conservation Officer-endorsed Built Heritage Statement and ES levels of harm (which account for mitigation[38]) was described by Mr Price as being *'reliable and robust'*. In cross examination, Mr Price agreed that the Inspector is perfectly entitled to rely on the Built Heritage Statement and Environmental Statement assessment. There is therefore no reason to depart from that assessment.

256. In any event, the identification of any heritage harms results in the proposed development being in conflict with the LDP policies SP10 and MD8, as it neither conserves nor enhances the settings of the heritage assets. It also conflicts with PPW (at paras 6.1.10 and 6.1.14).

257. Moreover, special regard must be had to the harm to listed buildings, and special attention paid to the harm to the conservation area.

258. There is no tenable justification for the heritage harms. The heritage harms weigh significantly against the grant of permission.

[38] For completeness, no actual mitigation would be secured by the grant of outline permission – as set out above, all screening (for example) is indicative only and subject to change. It therefore is subject to the same overarching caveat.

M. TRANSPORT

Overview: Transport

259. As to transport, by way of an overview, VCU submits that:

   a. First, the lack of public transport is an overarching, and insurmountable, difficulty faced by the Site, rendering it unsustainable.

   b. Secondly, the transport impacts of the proposed development may be understated by the ES, and Mr Archibald's proof of evidence, due to a series of limiting factors inherent in the assessment.

   c. Thirdly, the lived experience of locals has not been taken into account in the Appellant's evidence, and is an important facet of the evidence that the inquiry has heard, that must be taken into account and weighted separately.

   d. Finally, mitigation is uncertain and insufficient.

Lack of public transport

260. There is presently extremely limited access to the Site by public transport, There is one bus and one train an hour (to the closest station, Rhoose). An important baseline condition therefore is that the Site is realistically only conveniently accessible by private road users.

261. There will be no change to the public transport provision as a result of the proposed development. Conditions 13 and 41 require provision to be made at the reserved matters stage for upgrades to bus stop facilities on Port Road, and internal bus stop facilities respectively. However, there will be no increase in the number of buses. In other words, there may be an improvement to the bus stops, but no improvement to the bus services.

262. Notably, the future rapid transit corridor that had been initially considered, and safeguarded within the original masterplan, has since been abandoned.

263. The Site is therefore not in a sustainable transport location. The proposed development does not promote sustainable transport, in contravention of Policy SP1(4) of the LDP.

Limitations of the transport assessment

264. There are a series of important limitations to the transport assessment undertaken for the purposes

of the ES:

a. First, Mr Archibald relied upon Mr Sutton's estimates of uses of the land, and vehicle movements connected with the proposed development (see ES Volume 3, Appendix 4.1, paras 1.30-1.36). However, neither Mr Sutton, nor anyone else, is able to specifically identified what is likely to be on the business park, and therefore the extent of vehicle movements from and onto the Site.

b. Secondly, there is no reliable updated assessment. As explained in Mr Archibald's rebuttal statement, the most recent assessment was undertaken in 2022 (see paras 1.9-1.12).

c. Thirdly, the TRICS trip generation methodology comparators may not be accurate because of the comparators' public transport access and frequency. The TRICS comparators only manually deselected sites with 10 or more public transport links an hour.[39] Here, there are only two transport links an hour – one train, and one bus.

d. Fourthly, only one manual classified count was undertaken at the A4226 Port Road roundabout (i.e. the dragon's tail roundabout) on Thursday 24 May 2018. The assessment is therefore essentially based a desk-based survey, rather than real world monitoring.

e. Fifthly, the proposed development has been cumulatively assessed with (amongst other things) the CaVC Agreed Technology Centre, and the Abarthaw Power Station developments. However, during Mr Archibald's oral evidence both applications were noted to have relied upon abnormally low traffic assessments in 2023 and 2025 respectively.

f. Sixthly, the decision not to cumulatively assess with allocations within the RLDP is problematic. Pursuant to condition 3, development could begin in 5 years. The consequence of the decision not to include is that there is a real possibility that the traffic modelling and impact assessment may be out of date by the time that the development is being built,

Relatively small shift in baseline data can result in disproportionate impact

265. As agreed by Mr Archibald in cross examination, in general terms, a relatively small shift in the

[39] ES Volume 3, Appendix 4.1, Appendix E, p 98.

baseline data can result in a disproportionate impact on the modelling and likely effects.

266. On junction capacity, for example, some junctions are already operating close to capacity, and small increases in baseline traffic can lead to driver delays. In particular, the ES has already identified a moderate significant effect on driver delay on Link 9, and the Waycock Cross roundabout pinch point.[40]

267. As summarized in the LPA's Strategic Transport Assessment – Stage 2 (Technical Notes 5-8) dated December 2025 ("the STA"), at para 4.2.1:

> *Junction 16 (Waycock Cross Roundabout) forms the intersection between the A4226, B4266, and Waycock Road, providing a key connection between Barry, the A48, and the wider Vale of Glamorgan strategic highway network*

268. It appears to be recognized, by both the LPA and the Appellant, that an increase of capacity at Waycock Cross Roundabout is likely to be necessary. The ES notes (at para 4.5.69):

> *An improvement scheme at Waycock Cross roundabout to reduce delay and its delivery will be discussed with the Vale of Glamorgan Council and 3rd party landowners.*

269. However, any improvement scheme is not likely to be delivered for a significant period of time. The STA identifies two improvement scheme options (A and B), but only provides an costs estimate for Option A. Option A (described as 'potential mitigation option A') is costed at £2,902,568, with £1,390,000 estimated funding through section 106 contributions, and a further £1,5,12,568 required (at p 486). There is no guarantee that Option A will be fully funded.

270. In any event, in cross examination Mr Archibald agreed that the improvements that could be secured by Option A, in terms of the 2 lanes from the west, addressed '*peripheral issues'*, albeit that such traffic issues were all linked.

271. Accordingly, in light of the above, and applying the precautionary principle, impacts on traffic may, and are likely, to be worse than estimated. There is a lack of a reasonable worst case scenario.

Importance of lived local experience

272. In any event, during the course of the inquiry hearings, there have been significant concerns expressed by local residents regarding the current traffic conditions, and the likely conditions in

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[40] ES Chapter 4, paras 4.5.35 and 4.5.55.

future if the development goes ahead.

273. Their concerns have, of course, not been factored into the transport assessment. Where there is lived experienced of drivers using these roads in the evidence, as is the case here, Mr Archibald agreed, in cross examination, that has to sit separately and alongside the desk-based surveys undertaken.

Insufficient mitigation

274. Mitigation is again critical to the assessment, but wholly contingent on future decisions. There are no concrete mitigations built into the development consent proposal under consideration.

275. In particular:

   a. There is no car parking management plan. We do not know how many people are likely to be using the Site, and needing to park (whether on the Site, or on the local highway network). We don't know how many spaces will be provided.

   b. There is no travel plan.

   c. An active travel route is being progressed by the LPA, but it has not yet competed its own planning consent process. It is unclear what the likely cost implications will be of its delay. Under condition 38, the Appellant can beneficially occupy up to 20,000sq.m gross floor area before the completion of an active travel route. In any event, it is unclear whether it would be likely to result in any material reduction in traffic in respect of the likely users of the Site. At most, Mr Archibald stated that *'it would enable those who want to walk or cycle'*.

   d. There is no provision for an increase in public transport services. There is no mechanism proposed for securing an upgrade in the actual frequency of services.

276. If mode shift to public transport and active does not occur, and more traffic is generated, then Mr Archibald explained (in response to questions from the Inspector) that scenario was not modelled.

Transport: Conclusion

277. Accordingly, again, the transport impacts of the proposed development is a further material consideration that should be afforded significant weight, against the grant of planning permission,

in the planning balance.

N. LANDSCAPE/CHARACTER AND APPEARANCE

Overview: Landscape/character and appearance

278. As will have been identifiable from the site visit, and as is understood to be common ground that (at least locally) the construction of a new industrial park over the current farmland will, in and of itself, result in the immediate landscape pattern and complexity changing extensively (as agreed by Mr Wilson in cross examination).[41] The nature and scale of the change to the landscape and appearance of the Site is obvious and significant.

Assessment limitations

279. As summarized in Appendix 5.1 to the ES, landscape and visual effects are '*Landscape and visual effects are assessed through professional judgements on the sensitivity of landscape elements, landscape character, visual receptors and representative viewpoints combined with the predicted magnitude of change arising from the proposals.*'

280. In particular, in cross examination, Mr Wilson agreed that a desk-based view of photographs only did not convey the full picture, and it was important to visit the viewpoints.

281. The ES' overarching conclusion was as follows (at 5.9.30):

> *Of the sixteen representative viewpoints, 1 to 6 are local views which would undergo Substantial or Major effects on visual amenity as a result of the Proposed Development Year 1 reducing in impact at Year 10 to Moderate or Minor when the mitigation planting has matured. It should be noted that all of these impacts are localised which is a predicted result of any type of development. Viewpoints 9 to 15 are medium and long range and would undergo Minor or Negligible effects on visual amenity, demonstrating there would be limited impacts on the wider landscape visual context including Nant Llancarfan SLA.*

282. However, the assessment of the landscape impacts, and in turn, Mr Wilson's evidence before the inquiry, has three fundamental limitations which, again, render its identification of their magnitude as unreliable.

283. First, Mr Wilson's baseline assessment of the Site materially underplays its value and

[41] See also ES, Chapter 5, para 5.9.34.

susceptibility. In particular:

a. Mr Wilson wrongly characterizes the Site as being comprised of heavily improved agricultural land divided by managed hedgerows, which ignores the species rich hedgerows, designated species rich grasslands (such as field 9-2), and the ancient woodlands.

b. Model Farm is part of the Vale of Glamorgan Rural Landscape, which Mr Wilson allocated a high value, and the Porthkerry Rural Landscape, which has a medium value.

284. When categorizations of value and susceptibility are applied (pursuant to Tables 3 and 4, within Appendix 5.1 to the ES), Model Farm should have been identified as high susceptibility and high value. It is extremely difficult to understand why Mr Wilson determined the Site was of low value and low susceptibility.

285. Secondly, the viewpoints selected on behalf of the Appellant are missing critical perspectives.[42] In particular:

a. There is no viewpoint from within the current Porthkerry Country Park. This is the case despite the LPA having specifically asked for viewpoints from within the park,[43] and Porthkerry Country Park having a 'high' sensitivity as a receptor.[44] It is certainly not possible to conclude that there is 'limited inter-visibility' without having viewpoints from Porthkerry Country Park (ES Chapter 5, para 5.7.6).

b. There are also no viewpoints from within the Site itself (despite permission having been sought and granted for ecological surveys on the Site). This is of particular concern with regard to Area B, which would form the Porthkerry Country Park extension.

286. It would have plainly been proportionate to record a viewpoint from within Area B, and from within the current Porthkerry Country Park. The Appellant has therefore totally missed certain receptors. This is a severe limitation. It would inevitably result in an underplaying of the magnitude of the effects. Mr Wilson's conclusions may be materially different.

287. Thirdly, there are no details as to the visual appearance of what precisely will end up on the site.

[42] The list of viewpoints used is set out in Table 5.2 of the ES Chapter 5 (on p 7).
[43] ES Chapter 5, para 5.2.17.
[44] ES Chapter 5, para 5.7.5-5.7.7.

There are only indicative drawings, and therefore, they are subject to change.

288. In cross examination, Mr Wilson agreed that it is necessary to know what the proposed landscape and visuals of the development will be, in order to reach a judgment on what changes they make to the baseline. That has not been possible here.

289. Fourthly, and in any event, proof of evidence completely ignores specific aspect areas of landscape character and appearance. This was identified in questions from the inspector. In particular, there is no analysis of habitat, geology, historic and cultural aspect areas within the ES. The assessment is simply incomplete.

Mitigation

290. The ES' overarching assessment on significance relies on proposed planting of green infrastructure as mitigation. However, the mitigation planting must mature (and do so successfully) for any mitigation to be actually realized. Again, mitigation has not been secured through detailed, enforceable mechanisms. The assessment therefore only addresses a best case scenario.

Conclusion: Landscape/Character and appearance

291. Ultimately, the site visit will have afforded a sense of the scale of the likely landscape impacts, and the Inspector is able to exercise his expert judgment on the scale and magnitude of the impacts.

292. It is plain that, contrary to Policy SP10, the proposed development does not preserve or enhance the natural environment of the Vale of Glamorgan.

293. Overall, therefore, the landscape impacts are an additional material consideration which weighs significantly against the proposed development.

O. CONCLUSION: NOT SUSTAINABLE DEVELOPMENT AND OVERALL PLANNING BALANCE STRONGLY FAVOURS REFUSAL

294. Accordingly, VCU contend that the proposed development should be refused planning permission.

295. When the LDP is interpreted correctly, the proposed development is plainly not in compliance with the development plan. But in any event, even if the Appellant can establish compliance,

there remain an irremediable suite of material considerations (including the development's non-viability) which overwhelmingly weigh against the grant of permission.