

## LAND AT MODEL FARM, PORT ROAD, RHOOSE

### Submissions on Environmental Statement

- 1.1. It is important to be clear about the procedural history of the planning application and Appeal when approaching the legal arguments.

#### Chronology

- 1.2.
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| 1.04.2019  | - RPS Screening Application to VoG   |
| 15.04.2019 | - Screening Opinion issued: <ul style="list-style-type: none"><li>- EIA development because likely to cause significant Landscape and Visual and Traffic and Transportation impacts but Ecology Officer advised not likely to give rise to significant effects on the environment.</li></ul> |
| 1.08.2019  | - Planning Application submitted, accompanied by ES comprising: Site Description and Development Proposal, Planning Policy Context, Highways and Transportation, Landscape and Visual Character, Built Heritage, Socio-Economics   |
| 22.04.2021 | - Application amended to include County Park within red line as part of a hybrid application   |
| April 2021 | - ES Addendum  |
| 30.07.2021 | - Planning permission issued   |
| 6.10.2021  | - Planning Permission quashed  |
| 12.10.2021 | - Article 18(1) Holding Direction  |

- March 2023 - Application reported to Planning Committee with a recommendation to approve. Members resolved to refuse, though no RfR were formulated
  - Appeal submitted
- 12.06.2023 - ES Completeness Report issued by PEDW, formally requesting further information under Reg.24 Town and Country Planning (Environmental Impact Assessment) (Wales) Regulation 2017 (“the Regs”)
- Sept 2024 - Environmental Statement Update sent to PEDW
- 30.10.2024 - PEDW issued second Completeness Assessment of ES confirming it as ‘containing the level of information identified in Reg 17 and Sched 4 of the 2017 EIA Regs and being complete for the purposes of those Regs.1.4.2025 - Inquiry opened and adjourned to enable public notice and consultation via PEDW website in relation to the ES further information to occur
- 17.iv.-10.vii.2025 - public consultation via PEDW website, producing 21 representations

### Publicity

- 1.3. Because the Update was produced in response to the request for further information after the Appeal was entered, PEDW have had charge of making public the Update, pursuant to Reg. 24 of the Regs. which provides as follows:

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

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

(a) the further information and any other information is provided for the purposes of an inquiry or hearing held under the 1990 Act or the 2024 Act; and

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

(3) The recipient of further information or any other information must publish by local advertisement a notice stating—

- (a) the name of the applicant for planning permission or subsequent consent, or the appellant (as the case may be), and the name and address of the relevant planning authority;
- (b) the date on which the application was made and, if it is the case, that it has been referred to the Welsh Ministers for determination or is the subject of an appeal to the Welsh Ministers;
- (c) in the case of a subsequent application, sufficient information to enable the planning permission or infrastructure consent order for the development to be identified;
- (d) the address or location and the nature of the proposed development;
- (e) that further information or any other information is available in relation to an environmental statement which has already been provided;
- (f) that a copy of the further information or any other information and of any environmental statement which relates to any planning permission or subsequent application may be inspected by members of the public at all reasonable hours;
- (g) an address in the locality in which the land is situated at which the further information or any other information may be inspected and the latest date on which it will be available for inspection (being a date not less than 30 days later than the date on which the notice is published);
- (h) details of a website maintained by or on behalf of the relevant planning authority or the Welsh Ministers on which the further information or any other information may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days later than the date on which the notice is published);

(i) an address in the locality in which the land is situated (whether or not the same as that given pursuant to sub-paragraphs (g) and (h)) at which copies of the further information or any other information may be obtained;

(j) that copies may be obtained there so long as stocks last;

(k) if a charge is to be made for a copy, the amount of the charge;

(l) that any person wishing to make representations about the further information or any other information should make them, before the date stated in accordance with sub-paragraph (g), to the relevant planning authority, the Welsh Ministers, examining authority, specified person or the inspector (as the case may be); and

(m) the address to which representations should be sent.

(4) The recipient of the further information or any other information must send a copy of it to each person to whom, in accordance with these Regulations, the statement to which it relates was sent.

(5) Where the recipient of the further information or any other information is the relevant planning authority they must send to the Welsh Ministers one copy of the further information.

(6) The recipient of the further information may by notice require the applicant or appellant to provide such number of copies of the further information or any other information as is specified in the notice (being the number required for the purposes of paragraph (4) or (5)).

(7) Where information is requested under paragraph (1) or any other information is provided, the relevant planning authority, the Welsh Ministers, examining authority, specified person or the inspector, as the case may be,—

- (a) must suspend determination of the application or appeal; and
- (b) must not determine it before the expiry of 30 days after the latest of—
  - (i) the date on which the further information or any other information was sent to all persons to whom the statement to which it relates was sent;
  - (ii) the date that notice of it was published in a local newspaper; or
  - (iii) the date that notice of it was published on the website.
- (8) The applicant or appellant who provides further information or any other information, in accordance with paragraph (1) must—
  - (a) ensure that a reasonable number of copies of the information are available at the address named in the notice published pursuant to paragraph (3)(i) as the address at which such copies may be obtained; and
  - (b) take any reasonable steps required by the authority to ensure that copies of the further information or other information are made available for access on the website referred to in the notice published pursuant to paragraph (3).
- (9) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of the further information or any other information, made available in accordance with paragraph (8)(a).
- (10) The relevant planning authority or the Welsh Ministers, examining authority, specified person or an inspector may require an applicant or appellant to produce such evidence as they may reasonably call for to verify any information in the environmental statement.

1.4. The September Written Statement (“WS”) Appendices, Figures and Non Technical Summary were produced in composite form, with the WS published in track changes and clean formats, for maximum transparency.

1.5. VCU and Mr Clarke both argued prior to the opening of the Inquiry in 2025 that the Update is, in substance, a new ES rather than further information and/or that the requirements of Reg 24(7) had not been met.<sup>1</sup> This submission is rejected by the Appellant but in view of the Inspector's direction to adjourn the Inquiry after Day 1, it is of no significance; interested persons have had nearly a year to consider the further information and have, clearly, in fact done so.

1.6. Mr Wallis and Mr Clarke both argue that the appeal is invalid for different reasons. Some of their reasoning relates to the ES, some to S.78 TCPA 1990 and/or the Appeal Regulations. For convenience, these points will be dealt with together here.

#### Is the Appeal premature or otherwise invalid?

1.7 The answer to this question is: No. But a number of complex submissions have been made, which, broadly, appear to challenge the jurisdiction of the Welsh Ministers, so it is necessary to deal with jurisdiction in some detail.

1.8 S.78 provides (so far as relevant for the purposes of these submissions) as follows:

“ Where a local planning authority—

(a) refuse an **application for planning permission** or grant it subject to conditions;

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<sup>1</sup> Interim Legal Submissions by 39 Essex Chambers (Gethin Thomas), 20.01.2025 paragraph [2(e)]; Letter, Dennis Clarke to PEDW 27.03.2025

(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions; or

(c) refuse an application for any approval of that authority required under a development order or grant it subject to conditions,

the applicant may by notice appeal to the Secretary of State.

**(2) A person who has made such an application may also appeal to the Secretary of State if the local planning authority have done none of the following—**

(a) given notice to the applicant of their decision on the application;

(aa) given notice to the applicant that they have exercised their power under section 70A to decline to determine the application;

(b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 77,

within such period as may be prescribed by the development order **or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.**

**(3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by a development order.**

(4) The time prescribed for the service of such a notice must not be less than—

(a) 28 days from the date of notification of the decision; or

(b) in the case of an appeal under subsection (2), 28 days from the end of the period prescribed as mentioned in subsection (2) or, as the case may be, the extended period mentioned in that subsection

.....

**(4BA) Once notice of an appeal under this section to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed by a development order.**

(4BB) A development order which makes provision under subsection (4BA) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.

**(5) For the purposes of the application of sections 79(1), 253(2)(c), 266(1)(b) and 288(10)(b) in relation to an appeal under subsection (2), it shall be assumed that the authority decided to refuse the application in question.”** (emphasis added)

1.9 The last request for an extension of time to determine the application was made by the planning officer on 27.2.2023.

1.10 Unlike earlier requests, which had been granted by the Appellant (then applicant), Mr Parker did not reply to this final one. The effect of his not replying was that the determination period expired on 31.1.23. The appeal notice is dated 29.3.23. Therefore the appeal is valid.

1.11 In order to deal with challenges to this analysis, it is necessary to refer to the history of the LPA's deliberations, which is set out in their Statement of Case.

1.12 The resolution on 1.3.2023 was that the Committee were minded to refuse, against officer recommendation, therefore, in accordance with Council procedure, the application was deferred to allow further consideration for the reasons for refusal (“RfR”). The LPA did not consider the application again until 18.5.2023, therefore the

additional period which might have been available to them under S.78A, which is 4 weeks from the date of the appeal pursuant to Article 26A of the Town and Country Planning Development Management Procedure (Wales) Order 2012, did not come into effect. Therefore, the substance of the deliberation at the Special Planning Committee on 18.5.2023 was to decide what stance the LPA were to take on the Appeal; they were correctly advised that they now lacked jurisdiction to determine the planning application.<sup>2</sup>

1.13 Two putative RfR were agreed upon, relating to ecology and heritage. Following the provision of the Updated ES in September 2024, Planning Committee on 16.1.2025 decided, having received both a written report from an appointed external consultant<sup>3</sup> and confidential legal advice, to change its stance and not to pursue the putative RfR at the Inquiry.<sup>4</sup>

1.14 There has been no legal challenge to the LPA's decision to change its stance, although objectors, notably Messrs Clarke and Wallis, have criticised it.

1.15 In particular, Mr Wallis suggests that:

(i) the resolution of Planning Committee on 18 May 2023 was 'in effect' a determination of the application and that 'their ground i) on inadequate biodiversity information implied the ES was inadequate';

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<sup>2</sup> CD 5.8, Report of Appointed External Consultant for Planning Committee Meeting 18 May 2023; and Cd 5.9, Minutes.

<sup>3</sup> CD 5.11, Report of the Appointed External Consultant for Planning Committee Meeting 12 December 2024.

<sup>4</sup> CD 5. 12, Minutes of Planning Committee Meeting dated 16 January 2025.

- (ii) PEDW accepted that the ES was valid in November 2024 after the Completeness Report dated 30 October 2024, although PEDW had not accepted the ES as valid in June 2023 (first Completeness Report);
- (iii) S.78 (4BA) provides that, ‘after notice of an appeal has been served, the application to which it relates may not be varied’;
- (iv) ‘the Appellant chose to submit the Ecology Chapter of the 2024 ES’;
- (v) the TCPA (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (“Welsh Appeals Regs”) provide that ‘the appellant may not raise any matter which was not before the LPA at the time’;
- (vi) the Planning Committee in January 2025 was wrongly advised that the new evidence was material to determination of the appeal;
- (vii) the Planning Committee’s resolutions of March and May 2023 ‘implied the EIA’s completion for Reg.4 which took the ES to be an “up to date when the determination is made” (Reg.25(2)); Mr Wallis submits, ‘A new determination based on an updated ES of Oct.2024 has no bearing on determination in March 2023.’<sup>5</sup>

1.16 Mr Wallis went on to make points in relation to PEDW’s procedural handling of the ES publicity, as to which, see submissions below.

1.17 It is sensible, however, before going on to consider PEDW’s actions, to set out the answers to Mr Wallis’ points in relation to the LPA and the Appellant, set out at (i) – (vii) above.

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<sup>5</sup> ‘Skeleton argument for Permission to address the Model Farm Inquiry’ put in by Mr Wallis on 24.3.2026.

1.18 Adopting the numbering at paragraph 1.15, the answers are:

(i) this is a fundamental misconception which infuses a number of Mr Wallis' subsequent points; the resolution in March was to defer the Application, so that it could return to Committee in due course with suggested RfR, because members had resolved contrary to officer recommendation; and by the date of the May Committee, the Appeal had been entered, no notice of determination had been given by the LPA, so that s.78A had not been triggered and the LPA no longer had jurisdiction to determine the Application;

(ii) correct and PEDW lawfully so held; there has been no legal challenge to the determination of November 2024; the taking of this step by PEDW does not advance Mr Wallis' argument, quite the reverse;

(iii) correct, but irrelevant; there has been no 'variation' to the Appeal scheme as a result of submission of further information in the form of the Updated ES;

(iv) correct, but irrelevant, in view of the answer to point (iii); submitting the Ecology Chapter did not vary the Appeal Scheme and therefore does not contravene S.78(4BA);

(v) correct, but irrelevant; ecology was a matter which had been before the LPA at application stage: see (inter alia) Preliminary Ecological Appraisals, May 2019, October 2019, February 2023; Officer's Report ("OR"), pp.54, 65, 67 (LDP Policies SP10, MG 20 – 21, MD 9), 69 (FW Policy 9), 72 (PPW Chapter 6), 73 (TAN 5), 76 'other key environmental considerations....Ecology and biodiversity', 101 – 108, 112, d. conditions 5, 6, 7; and the putative RfR 1 of May 2023;

(vi) plainly, the updated ES material was going to be material to the determination of the Appeal: see responses under (iii) and (iv) above, dealing with admissibility; also putative RfR 1; and Inspector's Pre Inquiry Note, 21.2.2025, enumerating amongst

matters for consideration at the Inquiry ‘the effect of the proposed development on nature conservation interests’;

(vii) the OR, making its concluded recommendation to approve the Application, in accordance with Reg 25 of the EIA Regs, had regard to ‘all the submitted environmental information in accordance with Section 25 (1) (*sic*) of the 2017 EIA Regulations...’; this was a matter of professional judgment; and, of course, the conclusion of the Committee in March 2023 stands as part of the planning history; naturally, subsequent events ( specifically, the entering of the Appeal and the First and Second Completeness Reports of PEDW) cannot rewrite history, in the sense of retrospectively altering the resolutions of March and May 2023; but the resolutions of March and May 2023 did not freeze the stance of the LPA for all time, nor do they invalidate the materiality of those subsequent events which are of legal relevance to the determination of the Appeal; the Council’s position is now one of neutrality and it has never argued that the resolutions of March and/or May 2023 amounted to determinations of the Planning Application, nor that the Appeal is invalid, nor that material contained in the September 2024 ES is inadmissible or irrelevant to the determination of the Appeal.

1.19 Mr Clarke takes a different line from Mr Wallis. Rather than seeking to argue that the ES was complete in 2023, he suggests in his written representation, that it is not, and never has been complete. He therefore suggests that the Appeal was premature because the ES was not and is not complete. We have responded to this point in writing.<sup>6</sup> It is worth noting here, however, that the arguments of Messrs Clarke and

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<sup>6</sup> See CD 6.29, [2.10] – [2.14] and attached authorities.

Wallis about the ES, although mutually inconsistent, are, with respect both misconceived.

Are there outstanding material procedural errors which mean that planning permission cannot, as a matter of law, be granted under S.79(1) TCPA?

1.20 As noted above, a response to Mr Clarke's submissions on this issue has been set out in writing. In a nutshell, adequacy of the ES is a question of judgment for the decision maker. PEDW's November 2024 Completeness Report has not been challenged in court and stands. Ultimately, it will be for the Minister, assisted by the Inspector's Report, to decide whether Reg 3 of the Welsh EIA Regs is met at the point of determining the Appeal. The Appellant submits that there are no uncorrected procedural errors which would prevent such a decision being reached and also that the substance of the ES is adequate. In particular, the EIA consultation is not 'incomplete' (Mr Wallis' points 9 – 11);<sup>7</sup>

(a) because the S.78 appeal against non-determination is valid

(b) because the 2024 'further information', in addition to the earlier ES documentation, forms the ES, which has been correctly found by PEDW to be complete for the purposes of progressing the Appeal. Therefore it was correct for the matter to be treated as an appeal from the time when PEDW formally accepted it as such (November 2024) and it was correct of the LPA to direct members of the public to consult the PEDW website (Mr Wallis' point 12).<sup>8</sup>

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<sup>7</sup> Skeleton Argument, 24th March 2026.

<sup>8</sup> Ditto.

1.21 For the sake of completeness, however, the following submissions are made on behalf of the Appellant:

- (i) the LPA issued a screening opinion, which has not been the subject challenge, deciding that the proposals constitute EIA development
- (ii) there was no scoping opinion, but there was no legal requirement for scoping
- (iii) the LPA lawfully registered the planning application and undertook a consultation on the basis that it was for EIA development
- (iv) the LPA never determined the application
- (v) after the Appeal was made, PEDW made an assessment of the ES and, on 12.06.2023, issued a Completeness Report<sup>9</sup>
- (vi) as a result of the Completeness Report PEDW made a Reg.24 request for further information
- (vii) PEDW correctly recognised, in the Completeness Report, that “*a judgment as to the overall adequacy of the ES can only be made by the Welsh Ministers after considering all the evidence presented for consideration of the application including any other environmental information*”<sup>10</sup>
- (viii) VCU have put in submissions and evidence to the Inquiry challenging the adequacy of the ES; they have also put in numerous objections made on behalf of Mr and Mrs Stevens by various professionals

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<sup>9</sup> Updated ES, Appx 1.1

<sup>10</sup> Completeness Report [6]

acting on their behalf, but the adequacy of the ES was never raised until 20.01.2025

- (ix) the Courts have stressed that the information submitted by an applicant in an ES is not itself an EIA, but it is, rather, a step in an evaluative procedure: see *R (Blewett) v Derbyshire CC* [2004] Env LR 289 at [38-39]
- (x) whilst the Appellant does not accept that there are deficiencies in the ES, the objections in this regard must be considered in the light of caselaw; the courts have established that the adequacy of the ES is primarily a matter of judgment for the decision maker: see *R v Rochdale MBC ex p. Milne (No. 1)* [2000] LA.1; *R v Rochdale MBC ex p Milne (No.2)* [2001] Env LR.22. In *Blewett*, Sullivan J said (at [41], [68]):

[41] “... *the Regulations ... recognise that an ES may well be deficient, and make provision through the publicity and consultation process for any deficiencies to be identified so that the resulting ‘environmental information’ provides the LPA with as full a picture as possible. There will be cases where the document purporting to be an ES is so deficient that it could not reasonably be described as an ES as defined by the Regulations ... but they are likely to be few and far between ...*

[68] “... *I have dealt with it in some detail because it does illustrate a tendency on the part of claimants opposed to the grant of planning permission to focus upon deficiencies in ES, as revealed by the consultation process prescribed by the Regulations, and to contend that because the document did not contain all the information required ... it was therefore not an ES and the LPA has no power to grant planning permission. Unless it can be said that the document cannot be described as, in substance, an ES for the purposes of the Regulations, such an approach is in my judgment misconceived. It is important that decisions on EIA applications are made on the basis of*

*‘full information’, but the Regulations are not based on the premise that the ES will necessarily contain the full information. The process is designed to identify any deficiencies in the ES to that the LPA has the full picture ...”*

- (xi) the references in (x) to “LPA” apply equally to the Welsh Ministers and the cases cited, although English, are equally applicable to the Welsh Regulations
- (xii) by the time that the Minister decides the Appeal, she will have the benefit, not only of the updated ES, but also comments on it arising from public consultation and the evidence of witnesses, together with all the written representations on the Appeal and the Inspector’s Report;
- (xiii) the procedural points on public notice and the period for reading and commenting on the ES (i.e. contributing to the process of EIA), which were considered in the run-up to the opening day of the Inquiry in 2025 have been disposed of as a result of the revised arrangements which were put in place; there were 21 responses to the publication of the information on the PEDW website;<sup>11</sup>
- (xiv) Mr Wallis’ suggestion, raised with the LPA on the afternoon of 17<sup>th</sup> March and raised for the first time in the Inquiry on 24<sup>th</sup> March, that PEDW were required, by Reg 24(4) to send the further information to consultees is misconceived because that paragraph does not apply on an appeal, by virtue of para (2);

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<sup>11</sup> See ‘ES Further information Responses’ on VoG Model Farm Appeal website.

(xv) in short, there is and will be no impediment to a grant of planning permission on EIA grounds.

1.22 The suggestions, flagged by Counsel for VCU in his Opening Submissions, that he would cross examine to reveal the alleged 'holes' in the ES, will be considered in the course of overarching legal submissions and the review of the evidence in the main Submissions on behalf of the Appellant.

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8 April 2026