

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

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

**OPENING SUBMISSIONS ON BEHALF OF
VALE COMMUNITIES UNITE**

A. INTRODUCTION AND OVERVIEW

1. This opening statement provides an overview of Vale Communities Unite (“VCU”)’s case on the matters identified in the pre-inquiry note.
2. The proposed development is of significant public interest. It is an extremely controversial scheme, which has provoked a very high number of objections. Over 500 objections were received in response to the initial public consultation on the application. In general terms, the local community are strongly opposed to the proposed development. This is also reflected in the representative objections of numerous councilors, as well as Barry Town Council.
3. In summary, VCU’s position is that:
 - a. First, when properly interrogated, the proposed development does not actually accord with the Vale of Glamorgan Local Development Plan 2011-2026 (“LDP”).
 - b. Secondly, in any event, there are a series of material considerations that compel the conclusion (individually and cumulatively) that planning permission should be refused. In particular, the environmental (and especially biodiversity) impacts, heritage impacts and transport impacts overwhelmingly weigh against the grant of permission.

4. VCU relies on the ecology evidence of Emma Williams, and will challenge the Appellant's evidence through cross examination of its proffered witnesses.

B. THE SITE

5. Model Farm is presently occupied by a tenant farmer, Gethin Jenkins. The Jenkins family have worked on Model Farm since 1935.
6. VCU draws attention to the following particular features of the farm.
7. First, the farm is exceptionally biodiverse:
 - a. Arboreal practice at the farm does not involve harvesting mature trees, nor removing naturally fallen trees. It therefore allows for natural processes, facilitating remarkable habitats which are, as Emma Williams has explained in her evidence, '*rarely observed.*'¹
 - b. As a result, the farm has a rich biodiversity of invertebrate and fungal species.
 - c. The farm has wildflower meadows, which provide critical support to bees and other pollinators (and therefore, contrary to the Appellant's planning witness' observation in his proof of evidence, presence of the wildflower meadows does not undermine the status of the farm as supporting food security).
 - d. The farm also has a series of undisturbed habitats of protected vertebrate species, including bats, dormice, and badger setts.
 - e. There is ancient woodland on site, including ancient oak, as well as a wealth of mature trees. There is also strong, and VCU contends indelible, evidence that there are native black polars on site – the rarest and most endangered tree in the UK.
 - f. Model Farm is private agricultural land, and is therefore not subject to the same

¹ Emma Williams, Ecological Appraisal Statement for Model Farm, 17 March 2025, para 5.12.

footfall, and resulting impacts, as open recreational space.

8. In other words, this is no ordinary agricultural site. VCU contends that it is highly unusual in terms of the richness of its biodiversity.
9. Secondly, there are two Grade II listed buildings in close proximity to the farm, as well as Porthkerry Conservation Area. The farm therefore has a strong physical and visual relationship with several heritage assets.
10. Thirdly, sight must not be lost of the fact that the farm itself has socioeconomic value. Local agriculture is an important component part of ensuring national food security.
11. In light of the exceptional features of Model Farm, it is critical that the site visit affords sufficient time to properly view the farm, in all its diversity.

C. THE PROPOSED DEVELOPMENT

12. Before the Inspector is a hybrid application for a 44.75 ha ‘business park’ comprising:
 - a. An outline application for a mixture of employment uses B1 (Business), B2 (General industrial) B8 (Storage and distribution), creating some 160,000-162,000 sqm of new internal floor space, as well as car parking, landscaping, drainage infrastructure and other ancillary works (referred to as ‘Area A’).
 - b. 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 Park (referred to as ‘Area B’).
13. There is a significant degree of uncertainty regarding what exactly will end up occupying the proposed business park. There is a stark lack of detail. Even for an outline application, the actual proposed development’s purpose and specific use is threadbare. Notably, there does not appear to be any real basis for suggesting that there would be aviation-related use.

14. Indeed, the Council's most recent officer report ("OR") notes '*there is no tangible evidence of site interest*'. That has several implications. First, it means that, as matters stand, it is not actually known what, if anything, the site is likely to be ultimately used for (within the very broad use classes).

15. More fundamentally, the development is not viable. The OR squarely states: '*it is therefore acknowledged that the development remains unviable and gap funding for primary infrastructure would likely be required*'. The prospects of obtaining such funding are presently unknown. (By way of background, the judicial review challenge to the previous grant of permission turned on the non-disclosure of a viability report.)

16. Quite aside from the obvious inherent importance of viability, it has several practical impacts on the matters before you:

- a. First, when one turns to consider the detail of the relevant provisions of the local plan, not all of the proposed uses are necessarily supported by the LDP.
- b. Secondly, and in any event, because it is not known what actually will end up at the site, we do not know what exactly the environmental impact is likely to be of the operation of the site. Not all industrial uses are the same, and have the same effects, for example.
- c. Finally, and most significantly, it is not known whether there will be any tangible economic benefits realised from the site. Plainly, there will be no economic benefits if the units sit empty. So, when considering (for example) whether harm to heritage or the environment is convincingly outweighed by purported economic benefits, one must first make an assessment of the likely realisation of those benefits, on the basis of the evidence. In other words, if there are no, or no likely, economic benefits, then that necessarily reduces the weight that can be given to economic benefits in the planning balance.

17. Accordingly, although viability is not identified as a specific matter under consideration in the inquiry, it is unavoidably relevant to consider, and take account of, the lack of viability. Will a substantial part of Model Farm be concreted over for an empty

industrial park?

9 December 2024 – squarely raised viability, VCU's approach has been targeted to the matters identified in the pre-inquiry note, but viability is not an irrelevant consideration:

The proposed development is undeliverable without substantial public funds.

- *There has been substantial construction cost inflation since the Financial Viability calculations were produced, without there being a corresponding increase in rental or sale proceeds in the same period.*
- *The financial viability reports show the development to be financial unviable.*
- *The transfer of land to the Council in this hybrid application, leaves the VOG Council with a substantial financial management liability that is unfunded and unquantified in the Statement of Case.*

D. PRINCIPLE OF DEVELOPMENT

18. Under the LDP, the site is allocated for specific uses under policies MG 9 and MG 10.

In particular, the LDP provides the site is allocated:

6.51...for the needs of the aerospace industry and high tech manufacturing, encouraging investment from the regional and sub-regional market place

19. However, the LDP makes clear that the site's allocation is highly specific:

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)

20. This allocation arose due to the site's proximity to the airport. There is no clear evidence that the site will in fact be employed for aviation use. Rather, what we do have, on the face of the outline application, is general B1, B2 and B8 industrial development which

is deemed unacceptable on the site by the LDP itself.

E. ENVIRONMENTAL IMPACTS AND NET BENEFIT FOR BIODIVERSITY

Net Benefit for Biodiversity: legal and policy framework

Environment (Wales) Act 2016

21. 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.*'
22. 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.
23. 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

24. Planning Policy Wales (12th Ed) ("PPW") makes important provision for protecting the environment, and securing biodiversity. In summary (and amongst other things):
 - a. Development proposals must:
 - 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).

25. Importantly, PPW also makes provision for the application of the section 6 biodiversity and resilience of ecosystems duty:

Biodiversity and Resilience of Ecosystems Duty (Section 6 Duty)

6.4.5 Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species (not including non native invasive species), locally or nationally and must work alongside nature and it must provide a net benefit for biodiversity and improve, or enable the improvement, of the resilience of ecosystems. A net benefit for biodiversity is the concept that development should leave biodiversity and the resilience of ecosystems in a significantly better state than before, through securing immediate and long-term, measurable and demonstrable benefit, primarily on or immediately adjacent to the site. The step-wise approach outlined below is the means of demonstrating the steps which have been taken towards securing a net benefit for biodiversity. In doing so, planning authorities must also take account of and promote the resilience of ecosystems, in particular the following attributes, known as the DECCA Framework:

- diversity between and within ecosystems;*
- the extent or scale of ecosystems;*

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

...

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

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

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

6.4.14 Planning authorities can ensure biodiversity enhancement is undertaken at each stage of the step-wise approach below through attaching planning conditions and/or other obligations to a planning permission. Planning authorities should take care to ensure that any conditions necessary to

implement this policy are relevant to planning and the development to be permitted, and are enforceable, precise, and reasonable in all other respects.

26. 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.

Vale of Glamorgan Council’s LDP

27. 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.’

28. 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.

29. 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.

30. 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.

VCU’s position on Net Benefit for Biodiversity

31. VCU will explore, through cross examination, the Appellant’s case on biodiversity. In

short, the Appellant's contention that the expected biodiversity value of all habitats retained, created and enhanced would be higher than the existing value of the application is wholly untenable. It is unsupported by the evidence – it is a bare assertion without any, let alone a cogent, foundation.

32. The Appellant proposed to rely on a detailed biodiversity management strategy at a future stage, but it must be determined now, before the grant of outline permission, whether the biodiversity impacts are acceptable, or not.
33. The rich, unique and irreplaceable biodiversity of Model Farm, which is outlined in summary terms above, would be lost.
34. The proposed development is inconsistent with the section 6 duty, national planning policy and local planning policy.

Adequacy of the environmental statement

35. The Environmental Statement (“ES”) as originally submitted was uncontroversially inadequate. The ‘further information’ request led to essentially a brand new ES. VCU’s interim legal submissions, made in January 2025, addressed the implications of the flaws in the process which had been undertaken, and VCU acknowledges and is grateful for the steps taken to address its concerns.
36. However, serious fundamental flaws remain. There are gaping holes in the ES, which will be explored fully in cross examination. In very general terms, the nature and scope of the surveys undertaken are wholly inadequate. The inadequate surveying is reflected in the ES’ consequential analysis.

Climate change

37. On 29 April 2019, the Welsh Government declared a climate emergency.
38. Shortly thereafter, on 29 July 2019, the Council declared a climate emergency.
39. VCU does not accept that climate change has been adequately addressed by the ES, in particular, in respect of the operation of the site. As the site will be put to unknown,

non-specific uses, it is not possible to adequately assess the likely significant environmental effects of the future operations at the site. Equally, VCU does not accept that the transport emissions of the operation of the site has been adequately dealt with. The adequacy of the ES will be fully explored in cross examination.

The effect of proposed development on nature conservation interests

40. Overall, the proposed development offends the principle that reliance on compensation should be a last resort.
41. In any event, the proposed extension of Porthkerry Country Park does not provide anything approaching equivalent, let alone enhanced, biodiversity. Porthkerry Country Park, as open recreational space, is a park open to the public, with high footfall, human impacts, and dog fouling. It is not managed in the same way. Fallen trees are cleared for public safety, for example. There is no real sense in which biodiversity will be compensated for, let alone, gained.

F. HERITAGE

Legal and policy framework

42. 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.
43. 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)

44. 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.

The proposed development's harm to heritage assets

45. There are nine Grade II listed buildings within a 1km proximity to the site, including close by, Lower Porthkerry Farm House, and Upper Porthkerry Farm House. In addition, the site is also in close proximity to the Porthkerry Conservation Area.

46. The Council's own internal Conservation Officer objected to the proposed development on the basis of heritage impacts. In particular, the Conservation Officer generally accepted the Appellant's built heritage statement, prepared by CGMS, which concluded:

- a. There will 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.
- b. There will 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).

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

47. The Conservation Officer therefore concluded that the proposed development was in conflict with LDP policies SP10 and MD8.

48. Special regard must be had, in particular, to the moderate harm inflicted on two Grade II listed buildings and the conservation area. The impact on heritage assets renders the development unacceptable.

G. TRAFFIC

49. The flaws in the Appellant's traffic assessment will be explored in cross examination, centring on three main issues:

- a. First, the impact of the development on road transport has been inadequately assessed, and under stated.
- b. Secondly, inadequately address the lack of public transport links.
- c. Thirdly, there is a failure to sufficiently account for active travel.

50. VCU contends that transport impacts is a further material consideration which weighs heavily against the grant of planning permission.

H. CHARACTER AND APPEARANCE

51. The construction of a business park over Model Farm will inevitably lead to a marked and irrevocable change in the character and appearance of the area.

52. Under Policy MD2 of the LDP, all development proposals will be required to fully consider the context and character within which the development proposal is located so as to ensure that it contributes positively to the local setting including important views

and vistas.

53. On the Appellant's own visual and landscape assessment, upon completion of the development, there will be a major or substantial visual impact on six of the sixteen viewpoints considered.
54. Accordingly, VCU's position is that the proposed development would not contribute positively to the local setting, and would harm the local area's character and appearance.

I. PLANNING BALANCE AND CONCLUSION

55. Overall, VCU's position is that is development which is: (a) in conflict with the Council's LDP, and (b) would have significant harmful impacts on the environment, heritage, traffic, as well as character and appearance of the area.
56. VCU will therefore urge the Inspector to recommend that the application is refused.