

LAND AT MODEL FARM, PORT ROAD, RHOOSE

OPENING STATEMENT on behalf of the APPELLANT

1. INTRODUCTION

- 1.1. This is an inquiry under s.78 Town and Country Planning Act 1990 ("TCPA 1990") into an appeal against the failure of the Vale of Glamorgan Council ("VoG") as Local Planning Authority ("LPA") to determine a hybrid planning application (as amended) for:

"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 change of use from agricultural land to country park" (Use Class D2) within Area B".

The Business Park element seeks full planning permission in respect of Area A.

2. THE PROPOSALS

- 2.1. The Appeal scheme aims to realise and provide the means of implementing a strategic allocation of the Local Development Plan ("LDP") for major

employment and public open space development to assist in delivering the aims of the St Athan – Cardiff Enterprise Zone. The two elements of the proposal go hand in hand and delivery of the Country Park Extension is to be secured by means of conditions and s.106 obligations.

- 2.2. The underlying LDP allocation is integral to the realisation of one of the Plan's four "*Key elements*" –

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

(emphasis added)

- 2.3. The National Development Framework, Future Wales ("FW"), which forms the other, and most recent element of the development plan, identifies Cardiff Airport as one of only four Strategic Gateways in Wales and provides that LDPs should support the Strategic Gateways "*by maximising the benefits they provide to their respective regions in Wales*". The Site lies within the St Athan – Cardiff Airport Enterprise Zone and the South East Wales Growth Area.

- 2.4. Pursuant to the LDP allocation and development management policies MG9 and MG13, VoG produced, consulted upon and, in December 2019, adopted the Cardiff Airport and Gateway Development Zone Supplementary Planning Guidance ("SPG") and Masterplan. Unsurprisingly, given the terms of FW, the Preferred Strategy for the Replacement LDP proposes to carry forward the allocation, supported by the conclusions of the VoG Employment Land Study.

- 2.5. The Appeal Scheme closely follows the principles set out in the LDP Proposals Map and the SPG.
- 2.6. As with any major development of this kind and scale, there are environmental impacts to consider. But in this policy context, the Appeal Scheme clearly attracts the statutory presumption in favour of the development in principle. This is not the occasion to revisit the principle of the allocation. The Appeal should only be refused if material considerations arising as a result of the design and future functioning of this scheme in its specifics are sufficiently weighty to displace the presumption in favour of the development plan.
- 2.7. The Scheme has had a lengthy procedural history. The LPA having granted planning permission in July 2021, that permission was quashed for reasons which were entirely procedural.¹ Since then, the Welsh Ministers have considered and rejected requests to call the application in and VoG's members indicated that they were minded to refuse it, citing adequacy of ecological information and heritage impacts. but were then unable to formulate reasons for refusal ("RfR"). That inconclusive local result necessitated the appeal against non-determination in March 2023. Putative RfR followed in May 2023. Most recently the members decided to accept the advice of their professional officers and withdrew their putative RfR. Despite members' change of stance, it is the case that there have never been technical objections to the Scheme and officers have always supported it.

¹ Non-availability to the public of a viability appraisal: see Environmental Statement Update Guide [1.9]

There is nothing surprising about those professional assessments, given the policy context and the sustainability appraisal work and independent scrutiny which underpin the development plan.²

3. SCOPE OF THE INQUIRY

3.1. The Inspector's note of 24th February 2025 sets out that the following matters are to be considered at this inquiry:

- (i) the adequacy of the environmental statement
- (ii) the effect of the proposed development on the character and appearance of the area
- (iii) the effect of the proposed development on traffic movement
- (iv) the effect of the proposal and development on nature conservation interests
- (v) the effect of the proposal on heritage assets
- (vi) the effect of the considerations on the overall planning balance
- (vii) whether planning obligations are necessary for the development to proceed
- (viii) whether any planning permission should be the subject of conditions.

4. THE APPELLANT'S CASE – PRESENTATION

4.1. As there is no objection to the proposal from the LPA or any statutory consultee, nor any persons who have become statutory parties at the Inquiry,

² Parker proof [2.6]

the Appellant has sought to cover topics (i) to (iii) in a proportionate fashion so as to make the most efficient use of inquiry time. It is proposed to call witnesses to give oral evidence on topics (iii) and (iv), (vi) and (vii). These will be:

- David Archibald on traffic management
- Ian Thompson on nature conservation interests
- Darren Parker on consistency with development plan and other policy and planning balance. Inevitably, he will draw on the evidence of his fellow specialist team and he will also deal with aspects of (vii) and take the lead at a round table session on (viii).

4.2. This live evidence is supplemented by written expert statements, appended to Parker's evidence, on topics (ii) (Mark Wilson – Landscape and visual) and (v) (Seth Price, Built Heritage) as well as the statement of Chris Sutton on economic development. The authors of these statements can be made available to the Inquiry to answer any questions which the Inspector might have. A representative of Gowlings, Solicitors will also attend the round table session on the agreed s.106 Agreement and the Reg.122 Statement. Both have been submitted to PEDW.

5. ENVIRONMENTAL STATEMENT

5.1. The adequacy of the environmental statement ("ES") is dealt with initially in an appendix to this Opening Statement which responds to the "*Interim Legal Submissions*" of Gethin Thomas on behalf of Vale Communities Unite ("VCU"). The Appellant reserves the right to supplement those submissions

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

Chronology

- 5.2.
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| 1. 04.2019 | - RPS Screening Application to VoG |
| 15.04.2019 | - Screening Opinion issued: <ul style="list-style-type: none">- 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. |
| 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 Pak 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 <ul style="list-style-type: none">- 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 produced.

Publicity

- 5.3. 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.
- 5.4. 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.
- 5.5. VCU and Mr Clarke have both argued that the Update is, in substance, a new ES rather than further information.³ In view of the Inspector’s procedural direction to adjourn the Inquiry after Day 1, the apparent concern about adequacy of publicity/time to study and make comments on the update appears to be met, in that the Inspector has indicated that it will not be possible to reconvene until 22nd July at the earliest. This will give the public ample further time to study and comment on the documentation.
- 5.6. For the sake of completeness, however, the following submissions are made on behalf of the Appellant:

³ Interim Legal Submissions by 39 Essex Chambers (Gethin Thomas), 20.01.2025 paragraph [2(e)]; Letter, Dennis Clarke to PEDW 27.03.2025

- (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 Report⁴
- (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*”⁵
- (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 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

⁴ Updated ES, Appx 1.1
⁵ Completeness Report [6]

evaluative procedure: see *R (Blewett) v Derbyshire CC* [2004] Env LR 289 at [38-39]; *R (Bedford and Clare) v Islington LBC* [2003] Env LR22 [199]

- (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 *Bedford and Clare*, *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]):

[48] “... 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 so that the LPA has the full picture ...”

- (xi) the references in (ix) 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; potential procedural points on public notice and the period for reading and commenting on the ES (i.e. contributing to the process of EIA) will have been disposed of as a result of the revised arrangements which the Inspector has put in place
- (xiii) in short, there is and will be no impediment to a grant of planning permission on EIA grounds.

6. CONDITIONS AND S.106 OBLIGATIONS

- 6.1. Contrary to the suggestions of objectors, the principles of avoidance, mitigation and compensation of environmental harm have helped to shape the proposals, influencing the form in which the Scheme comes to be considered. These matters can be secured by appropriate conditions and s.106 obligations.

7. CONCLUSION

7.1. This is a well-considered set of proposals which seek to realise a key economic development and open space policy of the development plan (at both levels). Taking account of mitigation, no serious harm has been identified and the scheme has attracted no objections from statutory consultees. In accordance with s.38(6) of the 2004 Act, permission should be granted.

MORAG ELLIS KC