

Adroddiad

Ymchwiliad a gynhaliwyd ar
16/09/15 – 18/09/15
Ymweliad â safle a wnaed ar 18/09/15

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**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 27/10/2015

Report

Inquiry held on 16 - 18/09/15
Site visit made on 18/09/15

**by Vicki Hirst BA(Hons) PG Dip TP MA
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**an Inspector appointed by the Welsh
Ministers**

Date: 27/10/2015

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

APPEAL BY TAYLOR WIMPEY PLC

LAND SOUTH OF PORT ROAD WEST, WEYCOCK CROSS, BARRY

Cyf ffeil/File ref: APP/Z6950/A/15/3010121

Contents	Page
List of Abbreviations	2
Case Details	3
Procedural and Background Matters	3
The Site and Surroundings	4
Planning Policy	5
Planning History	7
The Proposal	7
Other Agreed Facts	8
The Case for Taylor Wimpey Plc	9
The Case for Vale of Glamorgan Council	20
The Case for Councillor Drysdale	32
The Case for Mrs Cleland	33
The Case for Mrs Vincent	33
The Case for Mr Clarke	34
The Case for Mr Jones	34
Written Representations	34
Conditions and Obligations	35
CONCLUSIONS	37
Recommendation	46
Appearances	47
Documents	48
Annex A	50

Abbreviations

Document	Doc
Environmental Impact Assessment	EIA
Examination in Public	EIP
Highways Statement of Common Ground	HSOCG
Joint Housing Land Availability Study	JHLAS
Landscape Statement of Common Ground	LSOCG
Local Development Plan	LDP
Natural Resources Wales	NRW
Noise Exposure Category	NEC
Paragraph	Para
Planning Policy Wales	PPW
Planning Statement of Common Ground	PSOCG
Supplementary Planning Guidance	SPG
Technical Advice Note	TAN
Unitary Development Plan	UDP

File Ref: APP/Z6950/A/15/3010121

Site address: Land south of Port Road West, Weycock Cross, Barry

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Taylor Wimpey plc against The Vale of Glamorgan Council.
- The application Ref 2014/00863/OUT is dated 18 July 2014.
- The development proposed is residential development of up to 200 no. dwellings and associated works.

Summary of Recommendation: The appeal be dismissed

Procedural and Background Matters

1. The appeal has been recovered for determination by the Welsh Ministers as the proposed development falls within the recovery criteria defined in paragraph 3.11.2 of Planning Policy Wales, Edition 7, July 2014 (PPW) being residential development of more than 150 houses or on more than 6 hectares of land.
2. The application was submitted in outline with all matters reserved. Indicative plans were provided with the application and show an illustrative layout and access point from Port Road West¹. A revised framework plan was provided with the appeal submissions to accurately transpose the illustrative access arrangements². The Council raised no objection to this plan being accepted. As the plan is for indicative purposes only with the access details being a reserved matter no injustice would arise from taking account of this plan.
3. A screening direction was given by the Planning Inspectorate under the authority of the Minister for Natural Resources as to whether the proposal is Environmental Impact Assessment (EIA) development within the meaning of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended). The direction given was that the proposal is not EIA development as the development is not of more than local importance, is not proposed in an environmentally sensitive or vulnerable location and is not likely to give rise to unusually complex and potentially hazardous environmental effects. This direction accords with the screening opinion given by the Vale of Glamorgan Council (the Council)³.
4. It was resolved at the Council's Planning Committee on 4 June 2015 that had the Council determined the application it would have refused planning permission for four reasons⁴. These can be summarised as:
 - a) The proposal is contrary to policies in the Vale of Glamorgan Unitary Development Plan (UDP) and PPW as the site is outside the defined settlement boundary for Barry and there is no overriding justification or material consideration to outweigh the in principle policy presumption against such development.
 - b) The proposal would adversely prejudice the open nature of the landscape and countryside and consequently the Green Wedge between Barry, Rhoose and St

¹ Doc 1

² Doc 2

³ Docs 3 & 4

⁴ VG4, Appendix 24

Athau and cause a detrimental effect on the landscape and amenity value of the land leading to coalescence of the settlements contrary to the UDP, PPW and the Green Wedge background paper to the Vale of Glamorgan Local Development Plan (LDP).

- c) The proposal would be detrimental to the capacity and free flow of traffic on the A4226 which links with Cardiff Airport, as it fails to mitigate the effects of up to 200 dwellings on the highway network and Colcot and Barry Docks roundabouts which are at or over capacity in the peak hours and as such is contrary to the UDP, PPW and Technical Advice Note 18: Transport (TAN 18).
- d) The proposal would be contrary to the aims and objectives of the LDP and as such would predetermine decisions about the location, scale and phasing of such new development which should properly be taken with the context of the LDP. The development is therefore considered to be premature pending the adoption of the LDP and would have a significant detrimental impact on the setting of the strategically important settlement of Barry contrary to advice in PPW.

Reason c) was subsequently withdrawn following the submission of information in relation to highway mitigation measures which is referred to further below.

- 5. An agreed list of conditions was not provided in advance of the Inquiry but a list was provided by the Council at the Inquiry. There was discussion in respect of the conditions with general agreement to all tabled conditions with the exception of the removal of permitted development rights in respect of perimeter boundary treatments. There were also several drafting matters that required amendment and the parties were given a period of 7 days after the close of the Inquiry to submit a revised and, with the exception of the one condition referred to above, agreed list. This was subsequently provided (Document 5).
- 6. A draft Section 106 Agreement was submitted at the Inquiry and provides obligations to provide 30% of the scheme as affordable housing, to make financial contributions towards education, community facilities, public art and sustainable transport, and to provide public open space and undertake off site highway works. The wording of the document reflected a transferred case rather than a recovered one and despite a second draft being provided at the Inquiry this still contained drafting errors in this respect. The parties were given a period of 7 days after the close of the Inquiry to submit an amended agreement correcting these anomalies (Document 6).

The Site and Surroundings

- 7. The site lies some 2.5km to the north west of the town of Barry and approximately 20km from Cardiff city centre. The site is bordered to the north by the A4226 that links Barry with Rhoose and provides access to Cardiff Airport which is situated some 5km to the west. The site lies to the south of the Port Road, Weycock Road and Pontypridd Road roundabout junction and is bordered by residential development to the north east and south east and fields to the west and south west. An area of woodland, Mill Wood lies to the south.
- 8. The site is approximately 8.14 hectares in area including an area of land proposed for highway improvement works. It is divided by hedgerows into three main fields which are currently in agricultural use. The land slopes from the north east to the south with

an existing watercourse at its southern end. There are a group of buildings to the west, comprising a residential dwelling with outbuildings, and a hotel complex.

9. The site is situated outside the residential boundary defined in the UDP and within an area defined as Green Wedge in the UDP. There are no Public Rights of Way within the site with the nearest being situated approximately 120 metres to the west on Cwm Ciddy Lane and one to the south through Mill Wood.

Planning Policy

10. The development plan is the UDP which was adopted in April 2005 and covers the period 1996 to 2011. The relevant policies from this plan are listed in the Planning Statement of Common Ground (PSOCG) with policies ENV 1, ENV 3, HOUS 2 and HOUS 3 being relevant to the putative reasons for refusal that are being contested⁵.
11. Policy ENV 1 is a general policy relating to the restraint of development in countryside areas unless related to the essential purposes of agriculture, forestry, appropriate recreational use or other activities where a rural location is essential. Policy HOUS 2 specified settlement boundaries and HOUS 3 restricts dwellings in the countryside to those justified for agriculture or forestry.
12. Policy ENV 3 identifies green wedges in order to prevent coalescence between and within settlements and restricts development within these areas where it would prejudice the open nature of the land.
13. The Council produced its preferred strategy for its Local Development Plan (LDP) in 2007 with a deposit draft approved for consultation in 2012. Following the receipt of consultation responses, including one from the Welsh Government⁶ the Council resolved that its strategy was sound but that further changes were needed in respect of certain matters including the spatial distribution of housing, deliverability of growth and employment and some site specific issues⁷. The strategy comprises four key elements including the promotion of development opportunities in Barry and the South East Zone and the St Athan area as a key development opportunity and Cardiff Airport as a focus for transport and employment investment. Other sustainable settlements are to accommodate further housing and associated development. Barry is identified as a key settlement in the strategy⁸.
14. A second deposit draft based on this strategy was published for consultation in 2013 and has been submitted for examination with the inclusion of focused changes. The Welsh Government has responded to both the second deposit draft and the focused changes and, as a result of the focused changes, does not object to the level of housing proposed in the plan, but requires further information about the housing allocations⁹. It is anticipated that the examination in public (EIP) will commence in January 2016.

⁵ TW3 & VG4, Appendices 5 & 24

⁶ VG4, Appendix 17

⁷ VG4, Appendix 18

⁸ VG 2 & VG4, Appendix 6

⁹ Doc 7

15. The Council has produced supplementary planning guidance (SPG) documents¹⁰ of relevance to this appeal in relation to sustainable development, affordable housing, planning obligations and public art and which have been adopted by the Council after a formal public consultation process.
16. The parties agree that the main sources of national policies relevant to this appeal are contained in Planning Policy Wales (PPW) and associated Technical Advice Note 1: Joint Housing Land Availability Studies (2015)¹¹ (TAN 1). Technical Advice Note 11: Noise is also relevant as the site lies partially within an area falling under Noise Exposure Category C (NEC C).
17. PPW paragraphs (paras.) 2.7.1 and 2.7.2 relate to outdated or superseded development plan policies and where such policies are found, decreasing weight in favour of other material planning considerations should be given. Where policies are found to be outdated or superseded there is a presumption in favour of sustainable development. Chapter 4 set out sustainability principles and objectives.
18. Paras. 2.6.2 to 2.6.6 relate to the weight to be attached to emerging draft LDPs and whether questions of prematurity will arise where an LDP is in preparation but has not yet been adopted. The stage in which the plan is at will depend on the weight to be given with certainty regarding the plan only being achieved when the Inspector publishes the binding report. In respect of prematurity, refusal may be justifiable where development proposals are so individually substantial or whose cumulative effect would be so significant that to grant permission would predetermine decisions about the scale, location or phasing of new development which ought to properly be taken in the LDP context. Refusal will therefore not usually be justified except in cases where a development proposal goes to the heart of the plan. A refusal might be justifiable where a proposal would have a significant impact on an important settlement, or on a substantial area, with an identifiable character.
19. Section 4.8 of PPW relates to green belts and green wedges and their purposes for preventing coalescence between large towns and cities with other settlements, managing urban form through controlled expansion, safeguarding the countryside from encroachment, protecting the setting of an urban area and to assist in urban regeneration. Green wedge designations differ from green belts in terms of their permanence and should be reviewed as part of the LDP process. Where applications are considered for development within the green wedge a presumption against inappropriate development will apply with substantial weight required to be given to any harmful impact.
20. Paragraph 9.2.3 of PPW requires local planning authorities to ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of housing land. TAN 1 explains that the housing supply figure will be taken from the current Joint Housing Land Availability Study (JHLAS). Paragraph 6.2 of the TAN provides that where such a study shows a supply below 5 years the need to increase supply should be given considerable weight when dealing with development that would otherwise comply with development plan and national planning policies. Where it has not been possible to undertake a study due to not having an adopted LDP or UDP

¹⁰ Document 8

¹¹ TW3

within its plan period authorities will be unable to demonstrate that they have a 5 year supply of housing land and will be considered not to have one (paras. 8.1 and 8.2).

Planning History

21. An outline application for residential development and associated highway and drainage works was refused on 11 December 1990 for three main reasons. The first was that the site was not allocated for residential development in the Barry Local Plan and there was sufficient land allocated, the second was that the proposal represented an intrusion into the rural landscape and would damage the amenity of the countryside and the third was that there was insufficient information submitted as to the proposed means of vehicular access to the site to enable the highway and traffic generation implications to be properly considered¹².
22. Objections were made during the UDP process that part of the site closest to the settlement boundary was not included in the UDP for housing or included within the settlement boundary and these were considered by the Inspector. It was concluded that the inclusion of the site would constitute a significant and unwarranted extension of development into the rural landscape and which would involve the development of a significant part of the open frontage of the A4266 between the roundabout and the hotel complex. It was recognised that the site would represent the final opportunity for any extension of Barry at its western edge if coalescence with settlements of the Eastern Vale was to be avoided but for the purposes of the UDP it was concluded that the residential settlement boundary was correctly drawn and it was recommended that the site be included within a Green Wedge¹³. The UDP was adopted on this basis.
23. The first Deposit Draft of the LDP in 2012 allocated the site for residential development, included it in the settlement boundary and excluded it from the Green Wedge¹⁴.
24. In the second Deposit Draft of the LDP the site allocation has been removed, the site is excluded from the settlement boundary and is included within the Green Wedge¹⁵. Representations have been made in respect of the site as part of the LDP consultation process and will be considered as part of the EIP¹⁶.
25. An outline planning application for the development of the site for up to 200 dwellings and associated works was submitted to the Council on 19 July 2013. An appeal was made against non-determination and the Council's Planning Committee resolved that had it determined the application it would have refused it on five grounds¹⁷. The appeal was withdrawn in April 2014.

The Proposal

26. The proposal would provide up to 200 homes, including 30% as affordable housing, and associated works. The indicative plans show a layout comprising a perimeter block development for the centre of the site and a linear form of development adjacent to

¹² VG4, Appendix 4

¹³ TW1, Appendix 9 & TW1, Appendix 3

¹⁴ TW 1, Appendix 4

¹⁵ VG4, Appendix 6

¹⁶ TW1, Appendix 15 & Doc 9

¹⁷ TW3

the site boundaries with a 15 metre wide landscaping area to the west and a landscaping buffer to the north. Access would be from a single point of entry from Port Road West to the north and would be obtained from a standard priority junction. A separate dedicated pedestrian and cycle access linking to the existing footways would also be provided. The development would also include a number of areas of open space with a large area proposed in the southern end of the site. This area would also incorporate a pond which would have dual purposes for ecology and drainage.

27. The proposal also proposes enhancements to the local pedestrian/cycle infrastructure west bound along the A4266. It is envisaged that this would be through upgrading the footway/cycle link to the bus stop adjacent to the Cardiff Airport travel lodge car park.

Other Agreed Facts

28. The main parties have provided three Statements of Common Ground in relation to planning (PSOCCG), landscape (LSOCCG) and highways (HSOCCG) and agreed on 19 August 2015¹⁸.
29. The PSOCCG sets out agreed matters in relation to the site description, its sustainability credentials in relation to its proximity to services and public transport, the planning history and background, the proposals, matters relating to the consideration of the application by the Council, the planning policy framework, housing land availability and the agreed heads of terms in relation to the Section 106 agreement. It is agreed that a 5 year housing supply cannot be demonstrated. It also lists those matters not agreed in relation to the principle of the development in the context of the interpretation of national policy, the UDP and the LDP, matters relating to the green wedge and the status of the deposit LDP and issues relating to prematurity.
30. The LSOCCG sets out that the methodology and the assessment of the effects found in the appellant's Landscape and Visual Impact Assessment (LVIA) are agreed. The matters not agreed relate to the extent to which the development prejudices the open nature of the landscape and countryside, the degree of the loss of openness, the extent to which coalescence would occur and the effect of proposed mitigation planting.
31. The HSOCCG followed the appellant's submission of a Highway Mitigation Strategy and Supporting Information¹⁹. These propose works to improve the entry width/flare length on the A4050 and A4226 approaches to the A4050/A4321/Port Road East roundabout and to enlarge the diameter of the central island. They also include measures to alter the entry width/flare length on both the Colcot Road and Port Road West approaches to the Port Road West/Port Road East/Colcot Road roundabout and to alter the dimensions of the junction and central island. The Council confirmed that it withdrew its objection to the proposal on highway grounds (reason c of its stance report) on 18 August 2015²⁰.

¹⁸ TW3, TW4 & TW5

¹⁹ Doc 10

²⁰ TW1, Appendix 1

The Case for Taylor Wimpey Plc

The material points are:

The Development Plan

32. The starting point is the statutory test set out in s.38(6) of the Planning and Compulsory Purchase Act 2004 and which requires the application for planning permission the subject of this appeal to be determined in accordance with the development plan, unless material considerations indicate otherwise.
33. The development plan is the Vale of Glamorgan UDP. The only relevant policies advanced by the Council to support its refusal of planning permission are policies ENV 1, ENV 3 and HOUS 2²¹.
34. However PPW which is itself a material consideration in the determination of the appeal advises how weight should be attributed to the policies of a development plan. Firstly at para.3.1.2 it advises that "all applications should be considered in relation to up to date policies" (2.7 and 4.2).
35. Secondly at para. 4.2.4 it advises that "... Legislation secures a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise (3.1.2) and in this case of relevance "where relevant development plan policies are considered outdated or superseded" (2.7). In such cases there is a presumption in favour of proposals in accordance with the key principles (4.3) and key policy objectives (4.4) of sustainable development in the planning system. In doing so, proposals should seek to balance and integrate these objectives to maximise sustainable development outcomes (Figure 4.1 of PPW)".
36. The first issue which arises therefore is whether the UDP policies referred to in the reason for refusal of planning permission are "out of date" or "superseded". The Council seem to suggest that the process of determining whether a policy is out of date or superseded is a role of the local planning authority when reviewing that development plan. It is submitted that is not the case and it is plain from paras 3.1.2, 4.2.4 and 2.7.2 that the determination as to whether policies are out of date or superseded is an essential component of a decision on an application for planning permission.
37. The criteria by which a development plan policy is to be considered out of date is not prescribed within PPW, or elsewhere; it may largely however be a matter of common sense. However, a development plan policy may be "superseded by other material considerations" (para. 2.7.2). National planning policy is of course such a material consideration (3.1.2).
38. The consequences of planning policies being "out of date" are that "...decreasing weight should be given to those policies in favour of other material considerations, such as national planning policy in the determination of individual applications" (2.7.1); and there arises a presumption in favour of proposals in accordance with the key

²¹ VG4, Appendix 5 & Appendix 24

principles and key policy objectives of sustainable development in the planning system (4.2.4).

39. The appellant's case is that the relevant policies of the UDP are out of date and in any event superseded by other material considerations.
40. In this regard, firstly, the UDP plan period ended in 2011, some four years ago. The plan is therefore substantially time expired. Secondly, the strategy and development needs on which the UDP and relevant policies were formulated and adopted are now wholly redundant.
41. Policy HOUS 2 permits housing development within the boundaries of defined settlements and by small scale rounding off of those settlements. ENV 1 is the corollary to HOUS 2, in prohibiting development outside those settlements boundaries (save in limited circumstances). These are plainly policies which operate as a restraint on the supply and delivery of housing as is policy ENV 3, which introduced green wedges, the designation and boundaries of which were set in response to and having regard to identified development needs which the UDP was formulated to address. Those policies of the UDP (as well no doubt as other policies) would have been formulated and adopted as a result of balancing the need for delivery of development to meet housing and other needs against the interests of protection and restraint²². Those policies were formulated and adopted in response to a particular development strategy which itself was formulated to respond to the particular identified development needs which pertained at the time the UDP was prepared. This is all common ground and reflects the normal and familiar process of plan making.
42. The development requirements which led to the strategy within the UDP and therefore the policies contained within it are now significantly out of date. The housing requirement within the UDP was for 6079 dwellings to 2011²³. The strategy and policies therefore were formulated to meet a housing requirement which is now wholly redundant and substantially overtaken; the Council's current housing requirement is said to be 9,500 dwellings to 2026²⁴ and the appellant agrees that the Council's housing requirement is certainly no less than this.
43. The housing requirement within the UDP of 6079 dwellings was itself derived from the 1991 census, the 1996 Registrar General Mid-Year Estimates and net in migration trends derived from 1981 to 1996 (UDP paras. 2.2.3 - 2.2.6). The evidence base for the UDP therefore, and the development requirements which its strategy and policies were formulated to deliver, is now some 20-30 years old. The Council's current housing requirements are derived from the Welsh Government's 2011 based principal population projections²⁵.
44. The context in which the UDP policies were formulated and the housing need which the policies of both delivery and of restraint were formulated to address is now fundamentally out of date and has been overtaken. Since the development needs

²² For example, the identification within the UDP of a particular settlement boundary beyond which, by ENV 1, development is precluded would have been responsive to the need to deliver a particular quantum of development which, it has been determined at the time of the formulation of the UDP, did not require an extension to that settlement. These policies of restraint were and are need sensitive.

²³ VG4, Appendix 4

²⁴ VG4, Appendix 6

²⁵ VG4, Appendix 6 and Mr Raine cross examination

which the UDP was intended to address are out of date, so too must be the strategy and policies devised to address that need.

45. The UDP was prepared and adopted in the national policy context provided by Planning Guidance Wales 1996, and its first revision of 1999²⁶. It is common ground that the national planning policy context now, in the form of PPW and TAN 1, is very different indeed. Regard was required to be had to national planning policy in the preparation of UDPs (Welsh Government's Guidance "Unitary Development Plans Wales" para. 3.3). The national planning policy to which regard was had when preparing the UDP is wholly out of date and has been substantively overtaken by PPW.
46. These factors, individually and collectively, lead inexorably to a conclusion that the UDP as a whole, and certainly policies ENV 1, ENV 3 and HOUS 2 are "out of date". Indeed, if compelling factors such as these do not lead to a conclusion that those policies are "out of date" for the purposes of PPW paras. 4.2.4 and 2.7 it is difficult to see what would render such policies out of date.
47. In addition (or alternatively), it is submitted that the policies of restraint within the UDP which are relied on here by the Council and referred to above have been superseded by other material considerations for the purposes of PPW para. 4.2.4 and para. 2.7, and in particular by PPW and TAN 1. It is agreed that those UDP policies operate to restrain the supply and delivery of housing²⁷. The Council does not have a 5-year housing land supply and which is a requirement of PPW (para.9.2.3). TAN 1 (para. 6.2), requires the need to increase supply of housing land to be given "considerable weight" in the determination of planning applications. This important and recently issued element of the Ministers' guidance cannot operate consistently with the strong restraint on housing land supply which arises from the combined effect of policies ENV 1, ENV 3 and HOUS 2. These policies, individually and collectively, operate to prevent the very increase in housing land supply which the Ministers, through TAN 1, place considerable weight upon. It follows, logically, that those policies must therefore be considered as superseded by "other material considerations" for the purposes of PPW 2.7.2; those other material considerations comprising TAN 1 para. 6.2 and associated Ministerial guidance.
48. If the appellant is correct that policies ENV 1, ENV 3 and HOUS 2 are out of date and/or superseded then it follows that decreasing weight should be attached to the policies relied on by the Council in favour of other material considerations (PPW para.2.7.1) and that a presumption in favour of the proposals arises, if those proposals accord "with the key principles and key policy objectives of sustainable development in the planning system ..." (PPW para.4.2.4).

National Planning Policy

49. The Council does not have either a LDP or a UDP which is within its plan period, and as a result, is deemed not to have a 5-year housing land supply (TAN 1 para. 8.2) nor

²⁶ Mr Raine cross examination
²⁷ Mrs Moss cross examination

indeed does it have a five year housing land supply calculated on a residual basis²⁸. It is common ground that based on the residual method as required by TAN 1 that the housing land supply is currently 3.6 years.

50. As a result the need to increase supply should be given considerable weight to the opportunity the proposed development presents to increase the supply of housing (including and importantly, affordable housing)²⁹. It must be the case that the increase in housing supply which granting planning permission here would generate, which must be given "considerable weight", outweighs the out of date policies of the UDP, in accordance with PPW para. 2.7. This also needs to be considered in the context of the Council needing to rely on greenfield land to meet its housing land supply.
51. In relation to sustainable development the proposal here accords with the key principles and key policy objectives of sustainable development and, as such, a presumption in favour of the proposal arises.
52. Para.4.2.4 of PPW provides that "proposals should seek to balance and integrate the [key policy objectives] to maximise sustainable development outcomes (see Fig 4.1)". It is plain therefore that in the context of any given planning application, the weight to be attached to the individual policy objectives for sustainable development has to be balanced and integrated. A proposal may comply to a greater extent with some objectives than with others and not comply with others and it should be judged on whether it maximises the sustainable development outcome. It is submitted that the appeal proposal does.
53. In terms of the "key principles" of sustainable development (PPW para.4.3.1), the Council has not suggested that the development gives rise to a conflict or that it does other than advance those key principles.
54. In terms of "key policy objectives", which PPW advises should be "taken into account in ... taking decisions on individual planning applications in Wales" (para. 4.4.1), the appeal proposal, the Council accepts, advances the 11th objective - "to ensure that all local communities ... have sufficient good quality housing for their needs, including affordable housing..." - and, located as it is adjacent to the urban area with good access to services, the 2nd and 12th policy objectives are also advanced³⁰. It is the appellant's case that all relevant key policy objectives, and all relevant key principles for sustainable development as set out in PPW 4.4.3 and 4.3.1 respectively, are met³¹.
55. The Council only advances a case in respect of key policy objective one, which, the Council claims, the appeal proposal conflicts with. The Council's position in this respect

28 The housing supply needs to be considered against the requirement set out now in MG2, namely a district wide requirement of 9,500 homes to 2026. As Mr Raine confirmed in cross examination there is no basis for the housing requirement and therefore supply for Barry to be assessed independently of the requirement for the district as a whole, whether for the 5 year housing supply shortfall or in the context of the emerging plan generally.

²⁹ Mr Raine and Mrs Moss cross examination. The reference in TAN 1 to considerable weight "provided that the development complies with development plan... policies" must be taken to be limited to development plan policies which are not out of date. To construe TAN 1 otherwise would be wholly illogical, not least since, in this appeal, it is the absence of an up to date plan that has led to the absence of a 5 year housing land supply, that the considerable weight to be given is then itself set aside by policies of the very development plan which has given rise to the absence of that 5 year supply in the first instance. That would be illogical, tautological and absurd. Indeed the Council has not suggested that it should be construed in that way.

³⁰ Mrs Moss, cross examination

³¹ TW1; Mr Williams was not challenged in cross examination in this respect

does not withstand scrutiny. The objective of “promoting settlement patterns that minimize land take” must be considered in the context of the requirement for the Council to maintain a 5-year housing supply (PPW para. 9.2.3) and that in the absence of such a supply the “need to increase” supply should be given “considerable weight” (TAN 1 para. 6.2). The only means by which housing supply may be increased is by building homes and therefore “taking” and developing land³². If TAN 1 is to have any teeth, land take is unavoidable. With regard to “minimising” land take, there is no suggestion that the delivery of up to 200 homes on the 8.14ha appeal site, as proposed, represents other than efficient use of that land³³.

56. The “preference for the reuse of suitable previously developed land and buildings, wherever possible avoiding development on greenfield sites” must be considered in its current context. The Council it has been confirmed is relying on greenfield land to meet its housing requirements. It is allocating, through draft policy MG2, significant amounts of greenfield land in its emerging LDP³⁴, both in Barry and in other parts of the district. Indeed, it was also doing so in its UDP. Moreover, in meeting its current 5-year supply, it is relying on greenfield sites in respect of which it has granted or resolved to grant planning permission³⁵. The Council is also relying upon greenfield sites outside settlement boundaries defined within the UDP to meet its housing requirements³⁶. For the purposes of key policy objective one, it is “not possible” in this district for development needs for housing to be on previously developed land or for greenfield land to be avoided. As such, that the appeal site is a greenfield site is not a factor which weighs against its sustainability credentials when judged against key policy objective one in PPW para. 4.4.3.
57. It should be added in respect of key policy objective seven that, in terms of effect on the natural environment, the Council itself in its 2012 LDP Deposit Draft was actively promoting the appeal site for development and identified no unacceptable harm to the natural environment arising therefrom. Moreover, the highest the Council puts its case is that there is “negligible or minor adverse harm” to a green wedge designation (which, we submit carries no weight in any event)³⁷. This limited harm must be outweighed by the compliance with other key policy objectives, which have been referred to. It should be noted of course that no landscape or visual harm nor harm to the countryside per se (other than in respect of the function of the green wedge) is alleged by the Council.
58. Taking a step back, and having regard to the requirement to maximise sustainable development outcomes as identified in PPW Fig 4.1 (PPW para. 4.2.4), it is agreed that the proposed development by delivering housing, including and importantly affordable housing, in a sustainable location “enhances the economic and social ... well-being of

³² Mrs Moss, cross examination

³³ Mrs Moss, cross examination

³⁴ Doc 11

³⁵ Docs 12

³⁶ Mrs Moss examination in chief and cross examination. It is difficult to see how it matters whether a greenfield site (or any site) on which the Council is having to rely to meet housing need is inside or outside such settlement boundaries, since such boundaries were set having regard to the development needs which the UDP was seeking to meet. Those development needs are now out of date and redundant. Since the up to date housing need now is very different, in the present context, the UDP settlement boundaries are neither here nor there. What is relevant is the Council needs to rely, and is relying, on greenfield land to meet its housing need.

³⁷ VG3, Doc 13

people and communities” and achieves “a better quality of life for our own generation”³⁸. For the same reason, the proposal promotes equality of opportunity. In terms of impact on the natural environment, and as submitted, the impact relied on by the Council is limited to effect on the Green Wedge which (a) is agreed to be negligible to minor adverse and (b) was an impact which the Council was entirely content with when seeking to allocate the appeal site for residential development in 2012. No other harm to the natural environment is suggested.

59. For these reasons, it is submitted, a presumption in favour of the proposal arises in accordance with national policy.
60. By way of conclusion, there is strong national planning policy support for the proposed development which outweighs here the out of date and/or superseded policies of the development plan which are relied on by the Council.
61. If it is found that the development plan policies are not out of date and/or superseded (a conclusion with which we strongly disagree), TAN 1 para.6.2 and the sustainability credentials of the development remain strong and compelling material considerations which would rebut any conflict with the relevant development plan policies here. If TAN 1, and its requirement to give “considerable weight” to the need to increase housing land supply, is to have any practical effect, it must be applied here to outweigh the “negligible or minor” adverse effect to the green wedge.

The Emerging LDP

62. It is common ground that no more than limited weight may be attached to the emerging LDP although Mr Williams considers it may even be less than that³⁹. This is unsurprising given the state of advancement of the LDP and the level of objection to its strategy and draft policies (with 42 of the 46 emerging allocations in MG2 being the subject of objection). The Welsh Government also have unresolved concerns in respect of the deposit draft and focused changes. That the LDP will be adopted in 2016 (or at all in its current form), as seems to be suggested by the Council, is wholly hypothetical.
63. The prospect of a 5-year supply if or when the LDP is adopted cannot logically be a response to the obligation, arising from TAN 1 para. 6.2, to give considerable weight to the need to increase housing supply or to reduce that “considerable weight”. To approach that matter as the Council suggests would be illogical and defeat the purposes of TAN 1 para. 6.2; indeed were the position to be as suggested by the Council many, or all, local authorities with an emerging LDP would be in a position to side step the effect of, and intention behind, TAN 1 para. 6.2.
64. In terms of the 2012 LDP deposit draft, which was withdrawn in January 2013, it is accepted that as an instrument of (emerging) planning policy, it carries no weight. However, the evidence base which supported that deposit draft plan, and the Council’s draft policies within it, are relevant, indeed highly relevant, in particular in respect of the Barry - Rhose green wedge and the contribution (or lack of it) which the appeal site was considered by the Council to make to that function and purpose of the green wedge designation at that stage.

³⁸ Mrs Moss, cross examination

³⁹ Mr Raine & Mr Williams cross examination

The Green Wedge Objection

65. In substantial part, the Council's case as to planning harm arising from the proposed development concerns alleged impact on the Barry-Rhose green wedge.
66. The appellant's starting point is that policy ENV 3 of the UDP is out of date and/or superseded, for the reasons which we have already submitted. It is that policy (and that policy only) which designated the green wedge. If policy ENV 3 is out of date, the green wedge and the alleged impact of the development upon it falls away and the appeal is to be determined in accordance with national policy.
67. However, if material weight is attached to ENV 3 and the green wedge designation, the impact of the proposed development arises for consideration.
68. The Council has "no issues with the conclusions of the LVIA in respect of the magnitude of impact and significance of effects of the proposed development"⁴⁰. This concluded that there would be "minimal coalescence with Rhose as none of the site is closer to Rhose than existing parts of Barry. There would be a loss of openness although the adjacent presence of the built edge of Barry diminishes the present qualities of open countryside"⁴¹. The appellant's LVIA found that the development would have an overall *negligible to minor adverse* impact on the current UDP Green Wedge.
69. It is common ground therefore that the impact of the development on the green wedge would be "negligible to minor adverse". It is difficult therefore to see that even if the green wedge designation derived from ENV 3 carries any weight at all, that it is other than a very limited negative factor and is certainly not such as to outweigh the "considerable weight" attributable to the housing supply contribution which would be made by the appeal scheme (TAN 1 para. 6.2). Indeed, that green wedge designations can and should be reviewed and revised to accommodate development needs is recognised in PPW para. 4.8.12. Here the need for further housing is a matter of "considerable weight". As such, and given the Minister's advice that green wedges are not "permanent" and should be reviewed and modified to accommodate need, it is impossible sensibly for the limited extent of green wedge harm that arises here to stand in the way of delivery of housing.
70. The Council's case in terms of harm to the green wedge, were the appeal to be allowed, becomes all the more untenable when its approach to the green wedge, and the contribution of the appeal site to it, is seen in its full and proper context. It is a matter of record that in the 2012 deposit draft LDP the Council proposed to retain the Barry-Rhose green wedge but omitted the appeal site from that designation; the appeal site was of course proposed as a residential allocation in the 2012 deposit draft. The 2012 deposit draft LDP was prepared in the context of the 2011 Green Wedge Background Paper⁴² which involved a thorough review of the green wedge designations in the UDP. It assessed the Barry-Rhose green wedge and concluded that it should be retained and, importantly, that all relevant purposes of that green wedge would be fulfilled by designation of an area of land which *omitted* the appeal site. The Council

⁴⁰ VG3

⁴¹ Doc 13

⁴² VG4, Appendix 16

has accepted that it was satisfied that the purpose and function of the Barry-Rhose green wedge could and would be fulfilled without the need for the appeal site to be included within it. The exercise comprised in the 2011 Green Wedge Background Paper and the formulation of the 2012 deposit draft LDP took place, of course, in the context of the advice in PPW at paragraph 4.8.12 that "it is important that only land that is strictly necessary to fulfill the purposes of the policy" should be designated as a green wedge. It is plain that the Council, and its officers, did not consider that the appeal site was necessary to "fulfill the purposes" of a green wedge policy in 2011 and 2012. This, we submit, is fatal to the Council's case now that the appeal site is critical to the green wedge and development as proposed should be opposed.

71. It is the case that come the 2013 Green Wedge Background Paper⁴³ the appeal site was proposed to be returned to the green wedge. However, no explanation whatsoever is forthcoming in the 2013 Paper to explain why in 2011 and 2012 the appeal site was not considered necessary to the functioning of the Barry-Rhose green wedge, but come 2013 it was. The 2013 Background Paper too was produced in the context of the PPW requirement that only land "strictly necessary to fulfill the purposes" of a green wedge policy should be so designated. The Council has offered no explanation at this inquiry. The appellant suggests that the judgement reached first – the judgement in the 2011 Background Paper and the 2012 deposit draft LDP – should be preferred. The appeal site was not and is not necessary to meet the objectives of the Barry-Rhose green wedge.
72. Indeed, that the appeal proposals will cause no material harm to the green wedge is entirely supported by the evidence given to the inquiry by Mr McQuitty, who explained that the land which is critical to securing separation between Barry and Rhose, and avoiding coalescence, is the plateau land to the west. That accords of course with the judgement in both of the Council's Background Papers where it is the plateau which is identified as making the principal contribution to green wedge objectives. The appeal site is perceived much more in association with the urban edge of Barry. The Council rely on the sustainability appraisal of November 2011⁴⁴ where the appraisal scores negatively on the site's impact on the natural environment. However, properly construed that conclusion is derived from the fact that the appeal site is included in the green wedge in the UDP. As confirmed in re-examination of Mr Williams there was no analysis within the sustainability appraisal of the functioning of the green wedge or the contribution of the appeal site to it. That analysis was contained within the green wedge background paper in 2011⁴⁵ from which it is clear the appeal site is not necessary for the functioning of the green wedge.
73. Two further points are made. First, the reason for the designation of green wedges in the UDP, and the Barry-Rhose green wedge in particular, was expressly and solely to "prevent urban coalescence between and within settlements". That is absolutely plain from policy ENV 3, which provides expressly, that "green wedges have been identified in order to prevent urban coalescence ..." Indeed, the designation of the Barry-Rhose green wedge, at the instigation of the UDP Inspector, was, as that Inspector confirmed, expressly and only to avoid coalescence⁴⁶. The Council has sought to broaden the

⁴³ VG4, Appendix 8

⁴⁴ TW1, Appendix 11

⁴⁵ VG4, Appendix 16

⁴⁶ VG4, Appendix 14

justification and objectives of the Barry-Rhose green wedge to encompass other green wedge purposes as set out in PPW 4.8.3 and 4.8.10. ENV 3 is very clear that the green wedges were designated only to prevent urban coalescence. It is against that objective that impact of development of the appeal site falls to be judged (if indeed there is any material green wedge issue which arises at all).

74. It should be added that Mrs Moss' attempt to use para. 3.4.10 of the reasoned justification to policy ENV 3 to introduce into the policy other green belt purposes is wrong in law. The Court of Appeal in *R (Cherkeley Campaign) v Mole Valley DC* [2014] EWCA Civ 567 held that reasoned justification cannot be used to broaden the terms or reach of a policy (see Richards LJ. at paras. 5-24, with whom Underhill and Floyd agreed)⁴⁷. It is submitted that Mrs Moss has attempted to broaden the terms and reach of policy ENV 3 in terms of the purpose of the green wedge designation.
75. Secondly, the development control test in policy ENV 3 – “within [the green wedges] development which prejudices the open nature of the land will not be permitted” -, it is common ground (a) must be considered in the context of the objective of the policy (i.e. to prevent coalescence), and (b) construed such that “the land” to which any prejudice to openness must be considered is the *whole* of the green wedge. Given the stated objective of the policy, it cannot be correct to construe the development control test as applying to each part of the designation, as opposed to the green wedge as a whole. Mr McQuitty in cross examination explained by reference to the proposed Enterprise Zone on the west side of the Barry-Rhose green wedge is capable of affecting the openness of the *whole* and thereby lead to coalescence. The appeal proposal does not have that effect⁴⁸.
76. Finally, it is necessary to consider PPW and the development control test set out at para. 4.8.14. The Council in its UDP and latterly in both the 2012 and 2013 deposit drafts of its LDP has resolved to include a policy controlling development in designated green wedges which is materially different to the development control test for green belts and green wedges in PPW. It was entitled to do so. A local planning authority is required to have regard to national guidance in formulating its development plan. A local planning authority is not required to slavishly adhere to policy if it considers that local circumstances or other planning considerations require an alternative approach. This Council did so in the UDP and is doing so in the emerging LDP, without objections from the Welsh Government. As such, it is against ENV 3 that any impact on the green wedge falls to be considered (if it is to be considered at all).
77. Given that context it would be wrong to then subject the development to the PPW test (whether brought in as a material consideration or otherwise). It cannot be reasonable to apply the national policy test which this Council (without objection from the Minister) has consciously not sought to apply to this district. It would be wrong in law to apply the national policy test as a material consideration given that the Council has resolved

⁴⁷ Doc 14. The guidance contained in PPG12 (in England), referred to by Richards LJ. at [15], is consistent with the Welsh Government's guidance “Unitary Development Plans Wales” at para.3.15 and in sections 12 and 36 of the Town and Country Planning Act 1900.

⁴⁸ In 2011 and 2012 the Council proposed to release the land for the enterprise zone and the appeal site from the green wedge but were satisfied that green wedge purposes would still be met by the designation of other land. It cannot be claimed now therefore that the proposed release of land for the enterprise zone in some way elevates the contribution of the appeal site to the green wedge and its objectives. That was not a concern in 2011 and 2012 and cannot (and indeed is not claimed by the Council) to be a concern now.

to continue to be of the view that a different test should be applied. The Council uses PPW para 2.1.4 which is misplaced, of course a development plan does not need to repeat government policy, however the development plan is not required to incorporate national planning policy if local circumstances indicate otherwise. The Council has chosen not to incorporate national policy tests for green wedge policy. The Council's stance report⁴⁹ does not reference that the development control test in green wedges fell to be applied here.

78. If however that is wrong, the need for housing and to increase housing land supply, in accordance with TAN 1 para. 6.2, is a "very exceptional circumstance", within the meaning of PPW which, we submit, manifestly (having regard to the language of TAN 1 para. 6.2) outweighs the "negligible or minor adverse" harm which, it is agreed, the appeal proposals would cause to the green wedge. If PPW para. 4.8.14 is to be engaged (which it should not be) the development accords with the test introduced by that paragraph.

The Prematurity Objection

79. The Council claims that to allow this appeal "would undermine the strategy and delivery of the LDP and that the approval of the application would adversely impact upon the LDP process"⁵⁰. The Council's objection in this respect comes nowhere close to crossing the evidential threshold required to sustain a prematurity objection set out in PPW at para. 2.6.3.
80. The Council does not claim that to allow the appeal would "predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context". With regard to the claimed impact of allowing the appeal on the LDP "strategy", in the 2012 deposit draft LDP the Council was promoting the appeal site for development as an allocation in the context of the very same strategy on which the 2013 LDP is now formulated; Mr Raine confirmed that the strategy has not changed between the 2012 and 2013 versions of the LDP. For the Council now to claim that the strategy in the 2013 draft LDP would be "undermined" is wholly without foundation given that the appeal site was deemed suitable for allocation for development in 2012 consistent with exactly the same strategy.
81. With regard to impact on "delivery of the LDP", Mrs Moss confirmed in cross examination that (a) it was not the Council's case that any allocation in the emerging LDP would not come forward were the appeal to be allowed, the Council was not intending to modify the emerging LDP if the appeal was allowed, and no party with an interest in the emerging LDP has objected to the appeal proposals. The Council's prematurity case, in this respect, is hopeless.
82. With regard to the alleged "significant impact on an important settlement" (ie Barry), this must be considered in the context of Barry, in terms of allocations in the emerging LDP, growing by the addition of 2,360 homes (plus windfalls). The appeal proposal is for up to 200 new homes which would not be a "significant impact". Moreover, in terms of impact, the effect of developing the appeal site was an impact which the LPA

⁴⁹ VG4, Appendix 24

⁵⁰ VG1

was content to embrace indeed support as recently as 2012, when it placed on deposit its first draft LDP with the appeal site as an allocation.

83. In the straightforward context of a plan seeking to deliver 9,500 new homes, to grant planning permission for up to 200 houses on a site which the Council itself was until recently supporting for development cannot with any credibility be claimed to “go to the heart” of the emerging LDP. The prematurity objection is entirely without foundation.

Noise

84. It is common ground that a modest section of the appeal site – 32 m depth from the boundary with the A4226 Port Road West – falls within NEC C as defined in Technical Advice Note 11: Noise (TAN 11), as a result of road noise⁵¹. The remainder of the appeal sites lies within NEC B or NEC A. A mitigation strategy comprising acoustic glazing and ventilation for what will be a small number of new dwellings which may be constructed within the NEC C zone has been prepared and agreed, and can be secured by condition. The matter has been considered by the Council’s Environmental Health Officer and no objection on noise exposure grounds has been advanced. Moreover, the appeal proposal is needed to increase the supply of housing land and no other site has been identified or advanced by the Council at this inquiry to meet the five year housing shortfall. TAN 11, we suggest, is therefore met in this respect in that there are, on the evidence provided for this appeal “no alternative sites available” to meet the need and to address the 5-year housing land shortfall.
85. Even if that view is wrong, TAN 11, and any conflict with it, is a material consideration. As such, it falls to be considered alongside other material considerations, including TAN 1 para. 6.2, and its requirement for considerable weight to be attached to the need to increase the supply of housing land. Given that noise mitigation has been agreed, it is suggested that the contribution the appeal proposals would make to housing supply outweighs any concern about technical conflict with TAN 11.
86. Ultimately, should it be considered, notwithstanding the submissions set out above, no development should be permitted within the NEC C zone, that should not be elevated to a reason for withholding planning permission but rather can be addressed by a condition restricting development within that zone. It is not considered that such a condition is necessary or appropriate however if this matter is considered overriding (notwithstanding the absence of any objection in this respect from the Council or, in so far as is apparent from any other party) the imposition of such a condition is the right course.

Overview and Conclusion

87. The UDP is out of date and as such carries little weight. The appeal should be determined on the basis of national planning policy and on that basis the development should be supported and the appeal allowed. Even if the UDP policies are not out of date and are deemed to carry weight in the decision making process, the balance is between the delivery of houses including affordable houses to address a substantial

⁵¹ Shown on Doc 15

shortfall in this district against a “negligible or minor adverse” effect on the green wedge, an effect the Council was quite happy to accept in its 2012 deposit draft LDP. No landscape or visual harm is raised. No other harm to the countryside or the natural environment is suggested. The objection on prematurity grounds is hopeless. The considerable weight which is required to be attached to housing supply through the appeal proposals outweighs, and outweighs heavily, any limited harm which arises.

88. It is perhaps instructive to move away at this stage from the technicalities of planning policy and consider the real world. The Vale of Glamorgan Council has a substantial housing shortfall. It has just 3.6 years of housing land supply. The appeal site will deliver up to 200 new homes, 30% of which would be affordable homes in a district and a town where there is a chronic need for such homes⁵². It will do so on a site which is well located in term of accessibility to services and public transport, as well as on a site which the Council was fully behind in its 2012 deposit draft LDP. There are no “technical” objections to delivery of the site and it is under the control of a large and well-resourced national house builder. It can be expected to yield new homes and to do so without delay. The Minister requires considerable weight to be attached to these factors. As such, it is difficult – indeed impossible – to see how, reasonably, it could be claimed that a “negligible or minor adverse” effect on the Barry-Rhose green wedge could displace the very substantial range of factors which support allowing development on the appeal site to proceed.

The Case for the Vale of Glamorgan Council

The material points are:

89. This is an outline application for up to 200 houses. The proposed site (to the southwest corner of the Weycock Cross Roundabout) is outside the UDP settlement boundary of Barry and within a UDP designated green wedge. In the normal course of events an application on the site would be hopeless, but the appeal has focussed on three main issues as countering that position: that the Council does not have a five year housing land supply, that the Council in a withdrawn deposit LDP proposed to allocate the site for housing, and that the Council’s UDP is time expired. These submissions will focus on whether those matters, properly analysed, now mean the appeal should succeed. They do so against the background that the Council is in an advanced stage of preparing its LDP, which is currently with the Inspectorate for examination and in relation to which the EIP is anticipated to commence in January with a pre-inquiry meeting anticipated in November. An Inspector has now been appointed for the examination.
90. Therefore the main issues for consideration are:
- a. The relative weight that can be placed on the Council’s UDP, forthcoming LDP and national policy.
 - b. The compliance of the scheme in terms of location with the UDP, LDP and national policy.
 - c. The impacts of the scheme on the green wedge.
 - d. Prematurity.

⁵² TW1

- e. The relevance of the absence of a five year housing land supply and the contribution of the scheme to the provision of affordable housing.

Relative Weight UDP/LDP and National Policy

UDP

91. Planning remains a plan led system. The statutory starting point for the Minister is section 38(6) of the Planning and Compulsory Purchase Act 2004 as set out above.
92. There is no dispute that the development plan for the purposes of section 38(6) is the extant Vale of Glamorgan UDP. As considered further below, there is little doubt that the proposal fails to comply with ENV 1 and HOUS 2 of the UDP (which provide that the site is outside the settlement boundary and that permission outside the settlement boundary will only be given in limited circumstances), and the Council maintains it clearly also breaches ENV 3 (the green wedge policy). The real question is whether material considerations indicate a determination otherwise than in accordance with the development plan.
93. The Council considers significant weight should be given to the UDP policies. The basis for the appellant's argument to the contrary is PPW para. 4.2.4 which materially provides that where the relevant development plan policies are considered outdated or superseded (para. 2.7) or where there are no relevant policies (para. 2.7) there is a presumption in favour of proposals in accordance with the key principles (para. 4.3) and key policy objectives (para. 4.4) of sustainable development in the planning system. In doing so, proposals should seek to balance and integrate these objectives to maximise sustainable development outcomes (PPW Figure 4.1).
94. Of crucial importance to understanding whether those provisions apply is PPW paras. 2.7.1 and 2.7.2 which state that where development plan policies are outdated or superseded local planning authorities should give them decreasing weight in favour of other material considerations, such as national planning policy, in the determination of individual applications. This will ensure that decisions are based on policies which have been written with the objective of contributing to the achievement of sustainable development (paras. 1.1.4 and section 4.2).
95. Para. 2.7.2 requires the decision-maker, in the first instance, to determine through review of the development plan (para. 2.1.6) whether policies in an adopted development plan are out of date or have been superseded by other material considerations for the purposes of making a decision on an individual planning application. This should be done in light of the presumption in favour of sustainable development (para. 4.2.4).
96. PPW does not define 'outdated or superseded'. Turning first to the term 'outdated', it does not simply mean time expired. PPW could of course have simply provided that any time expired plan is considered outdated and the fact it did not do so is significant. Instead what it invites the decision maker to do to do is review the policies in light of the presumption in favour of sustainable development.
97. The appellant argues the settlement boundaries (ENV 1 and HOUS 2) are 'outdated' because they accommodate a level of housing up to 2011. While it is correct that the settlement boundaries relate to the level of housing identified as needed through the

UDP, through the LDP process the Council has reviewed the settlement boundaries. It has identified that the housing need for the Vale of Glamorgan from 2011-2026 as 10,450 dwellings (a figure now supported by the Welsh Government)⁵³. It has identified where it is appropriate to place that development, in light of sustainability principles, through the LDP process. Where allocations have been made in the LDP outside of UDP settlement boundaries the Council has in a number of cases granted planning permission. This is exactly the process envisaged by PPW para. 2.7.2. Settlement boundaries in the UDP that are unaffected by the LDP proposals therefore, in the Council's view, encompass sufficient land to meet the requirements of the Vale to 2026. The forthcoming LDP and particularly its evidence base allows the Welsh Ministers to be satisfied this particular settlement boundary is not outdated.

98. In relation to ENV 3 (green wedge policy), this plainly is not outdated. PPW continues to provide for a mechanism to apply a policy of constraint to manage urban form by way of green wedges⁵⁴. The importance of exercising that restraint in the Barry-Rhoose green wedge remains, given that there has been no significant change in the landscape context since the UDP Inspector made his report, clearly favouring green wedge protection. The appellant is entirely right that it is important to review green wedge designations to ensure that they allow for sufficient development land to be made available. However PPW is abundantly clear that the correct place to make that review is through the local plan process. PPW para. 4.8.1. provides "Land within a Green Belt should be protected for a longer period than the current development plan period, whereas green wedge policies should be reviewed as part of the development plan review process" and para. 4.8.12 states that "green wedge policies should be reviewed as part of the development plan review process". The review is most appropriate for the LDP process because the Inspector will have an overview of both the development needs and the landscape constraints of the whole area and is best placed to identify in what areas the development need might outweigh factors which would otherwise suggest green wedge protection would be appropriate.
99. The appellant put to the Council that reliance on the LDP was putting the cart before the horse because limited weight can be put on the forthcoming LDP. That misses the point that the examination of what is needed for sustainable development that occurs through developing an evidence base for an LDP is exactly the sort of review process anticipated by PPW.
100. The appellant also argues that the settlement boundary and presumably ENV 3 should be considered superseded because of the effects of TAN 1. Again, the difficulty with this argument is that it is simply not what TAN 1 says. It could have provided that if the Council is unable to demonstrate a five year housing land supply or their UDP is time expired they cannot place weight on their UDP policies (not dissimilar to the position in England). The Welsh Government chose not to take that approach through TAN 1. Instead TAN 1 provides that a Council with a time expired UDP cannot calculate a 5 year housing land supply and as such the need to increase supply should be given considerable weight. Therefore the view of the Welsh Ministers as expressed in TAN 1 is that rather than automatically overriding the provisions of a development

⁵³ Doc 7. (NB the figure deviates above the 2011 Population and Household Projections by 3700 so can be considered a robust figure)

⁵⁴ Chapter 4.8 of PPW, Mr McQuitty cross examination

plan, the development plan being time expired should lead to considerable weight being placed on the need to increase housing land supply.

101. Even if it is found that the plan is time expired/superseded, it is important to note that PPW does not provide that the UDP policy simply 'disappears' if it is considered outdated or superseded. It states that diminishing weight should be placed on it (para. 2.7.2). In those circumstances PPW provides a presumption in favour of proposals but in accordance with key principles and key policy objectives (para. 4.2.4). As discussed below the Council does not accept that those key principles are met by this development.

National policy

102. The Council accepts that PPW and the TANs are material considerations and as such carry weight. However, when properly analysed as above, the effect of PPW and TAN 1 is not to deprive the UDP of its normal significant weight.

Forthcoming LDP

103. In relation to the Council's deposit LDP, currently submitted to the Ministers and awaiting examination, the Council consider limited weight should be placed on the forthcoming LDP⁵⁵. The weight that can be given to an emerging LDP is governed by PPW para. 2.6.2 where it states "In development management decisions the weight to be attached to an emerging draft LDP will in general depend on the stage it has reached, but does not simply increase as the plan progresses towards adoption. When conducting the examination, the appointed Inspector is required to consider the soundness of the whole plan in the context of national policy and all other matters which are material to it. Consequently, policies could ultimately be amended or deleted from the plan even though they may not have been the subject of a representation at deposit stage (or be retained despite generating substantial objection). Certainty regarding the content of the plan will only be achieved when the Inspector publishes the binding report. Thus in considering what weight to give to the specific policies in an emerging LDP that apply to a particular proposal, local planning authorities will need to consider carefully the underlying evidence and background to the policies. National planning policy can also be a material consideration in these circumstances" (section 4.2).

104. Taking 2.6.2 in stages, the LDP is plainly at a very advanced stage, as its EIP is anticipated to start in January. Whilst it is accepted that certainty regarding the plan will only be achieved once the Inspector publishes the binding report, 2.6.2. does not suggest that weight can only be placed on the plan at this stage. Neither does PPW suggest that whether weight can be placed on a policy depends on the number of objections to it. Mr Raine's proof explains in some detail the careful stages the Council has gone through to produce the LDP (in particular the housing allocations). The Welsh Government does not object to the level of housing proposed in the plan, and while it requires further information about the housing allocations⁵⁶ there is nothing to suggest this information cannot be provided. In the circumstances weight, albeit limited, can be accorded to the plan.

⁵⁵ Mrs Moss & Mr Raine cross examination

⁵⁶ Doc 7

The withdrawn 2012 deposit LDP

105. It is correct as a matter of fact that in 2012 the Council placed on deposit an LDP which proposed to allocate the appeal site for housing. The appellant accepts that as a planning instrument weight cannot be placed on a withdrawn deposit LDP. However the appellant seeks to place weight on that document's evidence base. When considering that approach it is important to bear in mind that it must be right that even if a Council puts a plan on deposit, it then keeps an open mind to the response of consultees and the public. If the position is effectively that as soon as the Council propose an allocation the developer is able to obtain permission on that allocation, that undermines the full scrutiny of the plan process, and in particular its ability to compare the merits of various proposed sites.
106. The merits of relying on the evidence base are considered further below both in terms of location and in terms of the consideration given by the Council to the green wedge issues leading up to the withdrawn 2012 deposit plan.

The compliance of the scheme in terms of location with the UDP, LDP and National Policy

UDP

107. There can be no serious dispute that in locational terms the scheme fails to comply with the UDP and forthcoming LDP, and the appellant has not seriously suggested to the contrary.
108. In UDP terms, the development site is not allocated within HOUS 2. The development site lies outside the settlement boundary. It is therefore within the delineated countryside and ENV 1 provides that permission will only be provided for a limited number of types of development. The development proposed does not fall within ENV 1.

2013 deposit LDP

109. In LDP terms, the site does not benefit from an allocation. As discussed below it falls within a green wedge.

National policy

110. If it is considered that ENV 1 and HOUS 2 are out of date or superseded, there is a presumption in favour of sustainable development in accordance with the key principles and objectives. PPW para. 4.4.3 sets out the objectives for these purposes and provides that 'planning...decisions and proposals should' and then identifies a series of objectives. On any sensible reading this site does not meet the first of those objectives which is to "promote resource-efficient and climate change resilient settlement patterns that minimise land-take (and especially extensions to the area of impermeable surfaces) and urban sprawl, especially through preference for the re-use of suitable previously developed land and buildings, wherever possible avoiding development on greenfield sites (sections 4.7, 4.8 and 4.9)."
111. The site does not constitute previously developed land which is part of the aim of this objective. Furthermore as a development outside identified settlement boundaries and in a green wedge it contributes to urban sprawl. This fundamental principle is not complied with.

112. The appellant argues that despite being greenfield this site complies with the principle because “there are limited brownfield sites remaining undeveloped within Barry and the wider Vale of Glamorgan area as evidenced by the significant number of greenfield sites being proposed by the LPA via the emerging LDP process”⁵⁷. That point is not sound. Of the 2360 units proposed in Barry through the LDP process⁵⁸ 2021 units will be on brownfield land⁵⁹. Therefore the Council can accommodate a very substantial amount of development in Barry on brownfield land and there is simply no need to resort to any further greenfield land. While it is right that in order to spread housing throughout the Vale it has been necessary to rely in other areas on greenfield land⁶⁰ that does not detract from the position in Barry. Furthermore in Barry the Council has been able to identify land for the substantial amount of housing that is proposed for Barry within the existing settlement boundary⁶¹.
113. The second way the appellant seeks to avoid the difficulty with this fundamental first objective is to argue that all matters have to be balanced and that it is not necessary that any development meets each of the objectives⁶². That cannot be right. PPW para. 4.4.3 provides “development should”, and then identifies a series of objectives. It is plain that development must meet each of those objectives and Mr Williams confirmed this in cross examination.
114. In the circumstances, in respect of the implications of PPW, para. 4.2.4 the location of the site is not supported.

Withdrawn 2012 deposit LDP

115. It is right that in the withdrawn 2012 deposit LDP the Council proposed the site for housing. This decision was informed by a sustainability analysis⁶³. While this analysis identified a number of positive impacts on sustainability (including from matters such as providing the opportunity to meet housing needs which would be true of any housing scheme), it also identifies some negative and very negative effects on sustainability in particular because of the site’s “detrimental effect on the open nature of the country on the outskirts of Barry⁶⁴” due to its green wedge location. Therefore the evidence base for the 2012 withdrawn deposit LDP provides limited support for development and the proposed location, and such support has to be seen in light of the points earlier about the ability of the Council to reconsider its allocations in response to consultee and public responses.

The Impacts of the Scheme on the Green Wedge

116. The question of whether the site’s extant designation as green wedge through ENV 3 should be considered outdated or superseded is considered above. There is a need to consider (1) the correct development control test to apply in the case of a green wedge in light of the wording of ENV 3 and national policy; (2) whether there is any basis for

⁵⁷ TW1

⁵⁸ VG1, Appendix 6 & RW cross examination

⁵⁹ Barry Waterfront (1700), Barry Island Pleasure Park (124), Ysgol Maes Dyfan (45), Barry Magistrates Court (52), Court Road Depot Barry (50) Bendricks (55). VG1, Appendix 6 & Doc 11. Figures not disputed by Mr Williams in cross examination.

⁶⁰ Mrs Moss cross examination

⁶¹ Mr Raine, re-examination

⁶² As presented to Mrs Moss in cross examination

⁶³ TW1, Appendix 11

⁶⁴ TW1, Appendix 11

attributing a reduced weight to the green wedge designation; and (3) the harm caused to the green wedge and therefore the application of the development control test.

Development control test to be applied

117. There are essentially two issues between the parties in this respect, firstly whether paras. 4.8.14 to 4.8.16 of PPW apply and provide a relevant development control test, and secondly the correct interpretation of ENV 3.
118. In relation to the first point, Mr Williams did not pursue in cross examination that national policy tests do not apply. However, again for the sake of completeness, the Council's response on the point is as follows. PPW paras. 4.8.14 and 4.8.16 are plainly applicable. On the clear wording of 4.8.14 it applies to this case because it provides at the outset "when considering applications for planning permission in...green wedges.....". The application seeks planning permission in a green wedge. As such on the clear and unequivocal wording of PPW the consequences set out in 4.8.14 - 16 apply namely that: there is a presumption against inappropriate development⁶⁵ in the green wedge, except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the green wedge⁶⁶, and substantial weight should be attached to any harmful impact which a development would have on a green wedge⁶⁷.
119. The reason the appellant says that there is no presumption against inappropriate development in the green wedge in this case is that there is no specific mention of such a test in ENV 3. That is right, but PPW is quite clear that in determining the content of development plans "national planning policies in Planning Policy Wales... should not be repeated"⁶⁸. Therefore it would not be expected that a specific reference be made to national policy tests in ENV 3. Whilst it may be right in theory that a Local Planning Authority could choose to disapply the full rigour of national planning tests through their local development plan, one would expect to see that done in the clearest possible terms and with very full explanation as to why it was appropriate. It simply cannot be done by not specifically mentioning the national test in their local policy and particularly in the case of such a well-established test as the presumption against inappropriate development in a green wedge.
120. The other interpretation issue relates to the wording of ENV 3. The policy wording identifies that "green wedges have been identified in order to prevent urban coalescence...within these areas development which prejudices the open nature of the land will not be permitted." Given that the concerns the Council has relied on in relation to the green wedge is predominantly impact on openness and prevention of coalescence⁶⁹, both of those matters are covered by the wording of the policy.
121. In her examination in chief Mrs Moss stated that the main body of the text sets out the main purpose of the text but that the supporting text provided a more detailed explanation and a guide to the decision maker as to how to apply the policy. She

⁶⁵ It is common ground that this is inappropriate development in the green wedge in accordance with 4.8.16 – Mrs Moss's response to the Inspector's question, Mr Williams's examination in chief.

⁶⁶ PPW para 4.8.15

⁶⁷ PPW para 4.8.15

⁶⁸ PPW para 2.1.4.

⁶⁹ VG3

stated as a decision maker she would have regard to it as an explanation of the purpose of the policy. The detailed explanation she was referring to stated:

“3.4.9 Land on the urban fringe, which for the purposes of this policy is defined as the area of countryside immediately adjoining urban areas, is vulnerable to speculative development. The spread of development into the countryside, which can result in urban sprawl, incremental loss of open land and lead ultimately to the coalescence of settlements, can have a detrimental effect upon agriculture, the landscape and amenity value of the land and can unacceptably erode community identity. Although there are other policies within the Plan aimed at restricting development in the countryside, it is considered necessary to afford additional protection to areas of important and vulnerable open land by restricting development on the urban fringe and between settlements”.

122. The appellant argued that Mrs Moss’s approach was unlawful in light of the case of R (Cherkley Campaign Limited) v Mole Valley District Council [2014] EWCA 567⁷⁰. Strictly the analysis of the Court of Appeal in that case turned on the wording of the legislation under which the Mole Valley Local Plan was made. The Vale of Glamorgan UDP would have been made under different provisions of the legislation and guidance⁷¹. The wording of the provisions under which the UDP was made was not identical to the wording of the provisions of that considered in the Cherkley case so it is questionable to what extent the Cherkley case is authoritative in this instance. However the Council does not need to give the Minister a legal conundrum in that respect because even assuming the Cherkley case is fully applicable to the Vale of Glamorgan UDP, it does not make Mrs Moss’s approach unlawful.
123. It is plain from Cherkley that supporting text cannot be used to add a new requirement into a policy. Mrs Moss was not seeking to use the supporting text in such a way. At paragraph 16 of Cherkley Richards LJ said:
- “when determining the conformity of a proposed development with a local plan the correct focus is on the plan’s detailed policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of policies and/or a reasoned justification of the policies. The text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy”.
124. That is of a piece with how Mrs Moss stated that she would use the supporting text in this case. Mrs Moss was not suggesting, and to be clear the Council does not suggest, that the supporting text is able to impose any additional requirements beyond those set out in the text of the policy. In the circumstances the approach set out by Mrs Moss was lawful.
125. Finally in relation to ENV 3, is the question of whether a development would have to impact on the whole of the green wedge in order to breach ENV 3. Curiously the Council’s witnesses agreed this point in cross examination but Mr Williams agreed the

⁷⁰ Doc 14. Section 36(2) of the Town and Country Planning Act 1990, and associated regulations and guidance-see paragraphs [8] to [13] and [16] to [17] of the case.

⁷¹ Section 12 of the Town and Country Planning Act 1990 and Planning Guidance (Wales), *Unitary Development Plans* (1996).

contrary interpretation in his cross examination. The meaning of policy is a matter of law for the Minister, and it is submitted on that basis that ENV 3 does not require an impact on the whole of the land in order to breach ENV 3. Policy is not to be interpreted rigidly. The relevant wording of ENV 3 is "green wedges have been identified in order to prevent urban coalescence between and within settlements at the following locations...within these areas development which prejudices the open nature of the land will not be permitted". The Council submit that the reference to "development which prejudices the open nature of the land" must mean any part of the land contained within the green wedges. The wording does not require the development to affect the whole of the land within the green wedge. It is hard to think of any development which could impact on the open nature of the whole of the green wedge, nor why in light of the aims of green wedges the drafter of the policy would be seeking to so limit the applicable harms.

126. In the circumstances the development control test to be applied from ENV 3 is whether the development would prejudice the open nature of some of the land within the green wedge in light of the aim to prevent urban coalescence. If so it will not be permitted. The development control test in PPW, which will also have to be applied, is that substantial weight must be given to any harm to the green wedge, and as inappropriate development in the green wedge permission should be granted for the development only in exceptional circumstances.

Whether there is any basis for attributing a reduced weight to the green wedge

127. There is no basis for attributing a reduced weight to the green wedge designation at the appeal site. As already set out, if there is no longer a justification in landscape and visual terms for retaining the site within the green wedge, or if it is now to be considered that the requirement for other development outweighs the green wedge designation, PPW is quite clear that is a matter which ought to be reviewed through the development plan process. Nevertheless, the reasons why the appellant's landscape witness suggested less weight should be attributed need to be considered.
128. Central to the argument was that the appeal site did not form part of the plateau landscape which he argued was central to the role of the green wedge⁷². While the Council agrees that the site is not the best example of plateau landscape⁷³ it does not agree that makes it inappropriate to be part of the green wedge and consider that the criteria identified by PPW for green wedges⁷⁴ are met by the appeal site. Given that Mr McQuitty accepted that the purposes of a green wedge could be fulfilled by a more enclosed site⁷⁵ there is plainly no need for the site to be part of the plateau landscape in order to function as green wedge. It was no part of the UDP Inspector's reasoning for imposing the green wedge⁷⁶. Although the Council referred to the plateau landscape in their 2011 and 2013 green wedge papers neither of those suggested only plateau landscape could fulfil the functions of the green wedge⁷⁷.

⁷² Mr McQuitty, examination in chief.

⁷³ Mrs Hancock, examination in chief

⁷⁴ Paragraph 4.8.3, PPW

⁷⁵ In response to the Inspector's question

⁷⁶ VG 4, Appendices 14 & 15

⁷⁷ VG4, Appendices 8 and 16

129. In a similar vein, Mr McQuitty's evidence spent some time analysing the relationship between the LANDMAP visual and sensory area and the site, but ultimately he was not suggesting that the site needed to be typical of the aspect area in order to fulfil the function of a green wedge.
130. The other main point relied on by Mr McQuitty was the Council's alleged inconsistent approach to the green wedge and an allegation that the Council had previously in effect accepted that the appeal site was not necessary to the green wedge. In order to understand why neither of those points hold water it is important to recall the green wedge context of PPW (touched on above). A green wedge fulfils the same purposes as a green belt, the main difference between the two designations being lack of permanence⁷⁸. A green wedge is to be reviewed as part of the development plan process. It must inevitably follow that there can be an area of land which was properly considered by a local planning authority to fulfil the function of a green wedge, but where on the next review of its LDP considered the development need outweighed the green wedge function of that piece of land. In so far as it has been suggested by the appellant that if at any stage land is proposed to be removed from the green wedge that must show the land is not strictly necessary to fulfil the functions of the green wedge, and such a suggestion fails to properly consider the context of green wedge policy set out above.
131. Mr McQuitty made great play of the fact that the Council is in the 2013 deposit LDP seeking to remove land from the northwest of the green wedge for an enterprise zone⁷⁹, and the fact that in 2012 in a now withdrawn deposit version of the LDP the Council was proposing to allocate the appeal site and as such remove it from the green wedge. In truth both examples are just instances of the Council thinking in certain circumstances and on certain facts the need for development outweighed the need to maintain the green wedge function. Mr McQuitty accepts that removal of the enterprise zone area will not prevent the rest of the green wedge functioning⁸⁰. Given the enterprise zone is a Welsh Government scheme of very significant economic importance⁸¹ the removal of that area from the green wedge is a wholly understandable conclusion.
132. Much consideration has been given to the 2011 green wedge paper which led up to the withdrawn 2012 LDP. However nowhere in that paper do the Council suggest the appeal site does not properly fulfil a green wedge function. The only reasoning given as to why the site was proposed to be removed from the green wedge at that stage was "the boundary of the proposed green wedge has been rationalised to take account of the proposed residential and employment allocations that form part of the LDP"⁸². As is fully set out in Mr Raine's proof, following the withdrawal of the 2012 deposit plan the Council changed the distribution of housing. It was able to redistribute some of the housing proposed for Barry into brownfield sites in Barry and some greenfield sites within the settlement boundary. Other housing was distributed elsewhere in the Vale. As such it was no longer necessary to include the appeal site in order to meet the

⁷⁸ PPW paragraph 4.8.10.

⁷⁹ TW2, Appendix 2, map DMQ/01& Appendix 3g

⁸⁰ Mr McQuitty cross examination

⁸¹ Although the area was previously a Council proposal

⁸² VG4, Appendix 16

housing target and therefore the need for housing on this particular site was no longer considered to outweigh the green wedge function of the site.

133. In the circumstances, it is submitted that attempts to reduce the weight to be given to the green wedge function of the appeal site should be rejected.

The harm caused to the green wedge and the application of the development control test.

134. The Council has shown that there will be harm to the green wedge in terms of loss of openness and coalescence. Viewpoints 1, 2, 3, 4, 7 and 8 in the Appellant's LVIA show the nature of the land and there will evidently be a loss of openness in those viewpoints if the development is permitted.
135. In so far as Mr McQuitty sought to argue the presence of houses at the urban edge of Barry in some of those viewpoints reduced the openness of those views he is right, but that cannot be a good reason for building on the site at the edge of a green wedge otherwise it will almost always be an argument for building on the site at the edge of a green wedge, and such creeping development would prevent the wedge fulfilling its function of preventing urban coalescence.
136. There would be coalescence in the sense both that the urban form of Barry would move closer to Rhoose/Cardiff airport, and in the sense that the experience of drivers driving along Port Road West is that Barry would be extended further towards Rhoose. The Council entirely commend the view that when driving both east and west along Port Road West, the appeal site is important in differentiating between urban Barry and the countryside beyond. It is wrong to suggest that the pub and hotel to the West of Barry along Port Road West are the start of Barry⁸³. Similarly the argument that because no part of Barry would be geographically closer to Rhoose than there would not be coalescence cannot be right. Coalescence is the moving of two urban areas towards each other and in the UK urban areas rarely have straight edges. Even if it would not be the closest part of Barry to Rhoose, this development would take Barry closer to Rhoose and as such would be coalescence.
137. It is not suggested by the Council that harm in terms of loss of openness and coalescence is more than minor, but in terms of the development control tests this harm to the green wedge weighs heavily. ENV 3 provides that within green wedges "development which prejudices the open nature of the land will not be permitted". The conclusion of ENV 3 is therefore that this development should not be permitted. PPW advises that substantial weight should be accorded to any harm a development would have on the green belt. Substantial weight should therefore be accorded to this harm. Finally, in accordance with PPW advice, this development is considered inappropriate development in the green wedge⁸⁴, and will not be granted permission save in very exceptional circumstances. The Council not having a five year housing land supply does not constitute very exceptional circumstances. If that was what was in the mind of the framers of TAN 1 they would simply have provided that the absence of a five year housing land supply meant that no weight could be placed on the policies of the development plan.

⁸³ Mr McQuitty cross examination

⁸⁴ Mr Williams, examination in chief

Prematurity

138. The Council maintain that granting this development at this stage would be premature in the sense that term is used in PPW. PPW advises at para. 2.6.3 that questions of prematurity may arise where an LDP is in preparation but the plan has not yet been adopted. In these circumstances refusing planning permission on grounds of prematurity may be justifiable in respect of development proposals which are individually so substantial, or whose cumulative effect would be so significant, that to grant permission would predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context. Refusal will therefore not usually be justified except in cases where a development proposal goes to the heart of a plan. This requires careful judgement. A refusal might be justifiable where a proposal would have a significant impact on an important settlement, or on a substantial area, with an identifiable character, but is rarely justifiable if a development proposal is likely to impact upon only a small area.
139. In this case the Council rely on the impact on an important settlement, that being the settlement of Barry (defined in the Council's settlement hierarchy as the "key settlement"⁸⁵) so there can be no serious suggestion it is not an important settlement). If permitted the development would be the second largest housing site in Barry after the crucial Barry Waterfront development⁸⁶.
140. Asbri Planning itself (although not Mr Williams) suggested that the removal of the site and a neighbouring site (total 700 houses) was of great significance, saying in its response to the 2013 deposit plan "we consider, however, that the Plan Strategy is now severely compromised by the deletion of sites in the Key Settlement of Barry, particularly the 710 dwellings previously proposed in the area surrounding the Weycock Cross Roundabout, including the 200 dwellings associated with the objection site. This magnitude of release, which has been removed without sufficient justification, surely goes to the heart of the plan process". If removal of this site and its neighbour goes to the heart of the plan process, then the Council must be right that the granting of permission for this site is premature in the sense identified in PPW.

Five year housing land supply and the provision of affordable housing

141. The Council accepts that it cannot demonstrate a five year supply of housing, because the UDP is time expired and because if it was allowed to calculate a supply then it would be 3.6 years⁸⁷. It accepts the consequence of that is that substantial weight should be placed on the need to increase the supply of housing.
142. Furthermore the Council accepts that there is a significant need for affordable housing in the Vale, including in Barry, and that the contribution this site would represent towards meeting the need would be welcome.
143. In relation to housing supply, a Council in the Vale of Glamorgan's position can only seek to increase the supply of housing by granting permissions on appropriate sites and moving swiftly to put their LDP in position. The Vale of Glamorgan is doing both. Of 46 proposed LDP allocations, planning permission has already been granted on 21 of

⁸⁵ VG4, Appendix 6

⁸⁶ VG1

⁸⁷ Subject to agreement by all members and developers as part of the joint study group.

the sites⁸⁸. Further, the LDP has now been submitted for examination and examination is anticipated to commence shortly. While neither of these factors allow the Council to demonstrate a five year supply of housing, they are relevant matters in the planning balance in considering the weight to be applied to the absence of a five year housing land supply.

Conclusion

144. At the outset the Council said this case was about balance. A balance has to be struck between the need to give substantial weight to the need to increase the supply of housing in accordance with TAN 1, and the substantial weight to be put on the green wedge harm along with the harm in terms of the site being located outside the settlement boundary and through prematurity. When those harms are balanced the Council has reached the clear conclusion that a grant of permission is not justified in this case.

The Cases for Interested Persons that Appeared at the Inquiry

The Case for County Councillor Drysdale (Ward member)

The material points are:

145. Weycock Cross is a sensitive location between urban and rural land with a defensible clear cut boundary which is the justification for the green wedge.
146. There is a lot of emphasis on the LDP's background papers. However it is common sense that a transition is undoubtedly made between the urban and rural area. Even with the proposed screening there would be views of the development from the west and views of Porthkerry Park would be lost. Barry would have moved closer to Rhoose and there would be a degree of coalescence.
147. Councillor Drysdale questioned the 2011 Green Wedge background paper as an evidence base suggesting it was about interpretation. There was a change in context with a re-distribution of housing across the Vale and into smaller areas in recognition of people wanting to live in other areas. These matters are always a balance and there is no justification for changing the green wedge.
148. He contends that there is a debate to be had on the artificial assessment advocated in TAN 1 which is based on quantity rather than location and distribution. The supply of housing in Barry is healthy and is providing housing for the target in the LDP strategy. The need to use greenfield sites to meet the overall targets should not justify this site in Barry when there are other brownfield sites that can be developed. The proposal seeks to breach the rules as policies are considered out dated but there is no need to extend Barry and result in creeping coalescence.

⁸⁸ Doc 11 - sites permitted shown blue.

The Case for Mrs Cleland (Local resident)

The material points are⁸⁹:

149. Agricultural land should be preserved for future generations and agriculture provides sustainable jobs. The appellant states that the site is sustainable but bus services are 2 hours apart and the nearest train station is outside the permitted walking distance. There are good schools in the area but there are only odd spaces available in different year groups.
150. The green wedge was taken out of the 2012 LDP which was then scrapped. There is no reason why the green wedge should not be reinstated as other factors come into play.
151. Prior to the changes to TAN 1 the Council had reached its 5 year housing supply allocation and is only now 3.6 years due to the change in policy. The LDP will provide a 5 year supply without the inclusion of this site. There has been a recession during the period of 1998-2011 referred to in relation to housing allocation figures.
152. It is understood that there is likely to be a decrease in housing population figures. The appellant refers to the need to build much needed high quality housing, both affordable and private. When there is a shortage of housing, house prices increase, as indeed is seen in the South East of England, although prices have remained stable in this part of the world. The proposal breaks a number of PPW policies as set out in her correspondence.

The Case for Mrs Vincent⁹⁰ (Local Resident)

The material points are:

153. The Council, despite inconsistencies, has always had the best interests of the local community at heart. The appellant refers to the change of heart and mind in respect of the green wedge but inconsistency is part of our human condition, both within individuals and institutions. If we cannot change our minds how can we ever learn and move on.
154. It needs to be considered whose interests are being served in this development. The appellant states that the site would offer the Council the opportunity to meet a significant number of its affordable housing targets. However, the developer's interests are to make money for shareholders and it is naïve to believe otherwise.
155. Mrs Vincent is a long term resident of Barry and she cares about the place she lives in. The green wedge meets Mill Wood and joins the beautiful country park Porthkerry Park which leads to the sea. This open piece of land links the outer edge of the town to a wildlife corridor. The linking of wildlife corridors from city centres to the suburbs is an essential ingredient for ecology and residents. The green wedge acts as a wildlife corridor embedding residents with the natural environment. These lungs are essential in rapidly expanding towns such as Barry. Porthkerry Park should link with other green spaces and not be hemmed in by housing developments.

⁸⁹ Doc 16

⁹⁰ Doc 17

The Case for Mr Clarke (Local Resident)

The material points are:

156. The proposal would result in the loss of an area of Grade 3b agricultural land. The highway network cannot cope with the extra traffic from the 1500 houses already being built and the expansion of the junctions will not improve the situation.
157. The forecasted need for housing does not take into account the fact that the housing market has remained static.
158. On issues of prematurity PPW says that a refusal could be justifiable where the proposal impacts on the settlement. In this case the impact is not on a small area but on a big one. Public opinion is an important factor, the LDP coincided with the election and the three Councillors representing the ward changed the position on Barry in the LDP on the basis of public opinion.

The Case for Mr Jones (Local Resident)

The material points are:

159. Since the Vale of Glamorgan was split from Cardiff there has been no funding to increase road capacity and yet there is more traffic being added to it. The proposal does not offer the provision of new facilities or improvements and public transport timetables change. He queried why other parts of the Vale had not been looked at for housing by the appellant. Barry has low water and gas pressures and cannot cope with more development.
160. Barry is at a pinch point where it cannot be built out due to coalescence with other areas and with more development will become an extension of Cardiff with no basic infrastructure or sustainable futures for residents.

Written Representations

161. Prior to the opening of the Inquiry, the Planning Inspectorate received responses to the Council's notification letter of 5 August 2015. These were from Natural Resources Wales (NRW), Glamorgan Gwent Archaeological Trust Ltd, Mr Alun Cairns MP and from eleven local residents. A further letter was submitted at the Inquiry by the Council from a local resident, Mrs Davis⁹¹. With the exception of the letter from Mrs Davis which is included as a document, these letters are on the case file.
162. Both NRW and Glamorgan Gwent Archaeological Trust Ltd raise no objections subject to the imposition of conditions.
163. Mr Cairns MP and the local residents raise concerns in respect of the site being good agricultural land located outside the settlement boundary and within a green wedge. The site is not allocated for development and would lead to pressure on local amenities and services such as schools and doctors, result in impacts on highway infrastructure, and would give rise to additional traffic which would be compounded by the Welsh Government's aspirations for the development of Cardiff airport. There has been no change in circumstances since the previous refusal in 1990 and the proposal would

⁹¹ Doc 18

result in urban sprawl without any justification, particularly as the Council could show a 7 year housing supply prior to TAN 1 changing the way housing supply is calculated. The proposal would be contrary to the aims and objectives of the LDP and it would also impact on European protected species and cause flooding.

164. Responses received from consultees and other organisations at the application stage have been taken into account and summaries are included in the Council's stance report⁹² with updates in respect of Natural Resources Wales (NRW) and Dŵr Cymru Welsh Water being provided at the Inquiry⁹³. NRW confirms that the site lies within Zone A as defined by the Flood Advice Maps referred to in Technical Advice Note 15: Development and Flood Risk and as such raises no objections on flood risk grounds. It raises no objections on drainage, contamination, or ecological grounds subject to the imposition of conditions. Dŵr Cymru Welsh Water confirm that subject to a condition requiring the details of the foul water drainage scheme to be submitted and approved it has no objections. The Council's Highways officer has confirmed in the HSOCG that there is no objection to the proposal on the basis of the Highway Mitigation Strategy and Supporting Information⁹⁴.
165. South Wales Police has raised concerns in respect of policing further developments in the area and in respect of access and has identified the need for the detailed design to meet Secured by Design standards. Barry Town Council objects to the proposal on the grounds raised by third parties and listed above and below.
166. Written representations received at the application stage have also been taken into account and are on the case file and include letters from the Friends of Weycock Cross and two county councillors. These are also summarised in the Council's stance report and which records that there were approximately 110 letters of representation. In addition to concerns raised at appeal stage and identified above, the other main grounds of objection relate to the capacity of the sewage infrastructure; impacts on historic assets such as archaeology and hedgerows; impacts on biodiversity and wildlife; availability of other land within Barry including empty homes; devaluation of property prices; construction impacts; inaccurate housing forecasts for housing; the site not being in close proximity to the station or easily accessible by foot and housing should be provided within the town or closer to forms of employment; and the real reason for the development is to gain funds from topsoil and importation of fill.

Conditions and Obligations

167. A list of conditions were discussed in the light of Circular 16/14 and following agreement at the Inquiry a revised list was submitted after the Inquiry with corrected drafting errors, changes to conditions to align them with the model conditions set out in Circular 16/14, the amalgamation of some conditions and the deletion of those that duplicated requirements under other legislation. The conditions have been grouped and listed with their respective implementation clause for clarity and are at Annex A.
168. Conditions 1 -3 relate to the standard time periods and requirements for the submission of reserved matters applications. Following discussion at the Inquiry and following further consideration condition 4 requires subsequent reserved matters

⁹² VG4, Appendix 24

⁹³ Docs 19 & 20

⁹⁴ Doc 10

applications to be in broad compliance with the indicative approved plans. Condition 5 relates to the need to ensure that levels are agreed to respect the visual amenities of the area and amenities of adjacent residents. Conditions 6 and 7 are in response to the need to protect and record archaeological interests. Condition 8 deals with the management of construction work and condition 9 responds to the need to protect residents in the northern part of the site from road noise. Conditions 10, 11, 12, 13 and 14 respond to the ecological and landscape interests and the need to ensure that protected species are mitigated for and that appropriate landscape and ecological monitoring and management measures are put in place. These works will also ensure that historic hedgerows are protected as part of the development. Conditions 15, 16 and 17 require details of drainage and foul water to be agreed and implemented to ensure that the public sewerage system and local watercourses are not overloaded or polluted. Condition 18 relates to the need to agree boundary treatments to protect the visual appearance of the area.

169. In response to highway matters, conditions 19 and 20 require a travel plan to ensure that the development promotes sustainable transport and that a scheme for the improvement of Weycock Cross Roundabout is agreed and implemented in the interests of highway safety.
170. Condition 21 was recommended by the Council but was not agreed. The condition seeks to remove permitted development rights for gates, fences and walls along the boundary of the site. The reason given by the Council for including the condition is to safeguard the hedgerow and tree line boundary and protect the local visual amenities of the area including the green wedge. The appellant considered it unnecessary as other conditions required details of boundary treatments to be agreed.
171. A Section 106 agreement has also been submitted⁹⁵. This provides obligations for contributions of £1,955,432.02 towards education facilities, the provision of open space on site or contributions towards off site provision in the event that less than 55.4 sq m per dwelling is provided, a community facilities contribution of £988.50 per dwelling, a public art contribution equivalent to 1% of the build cost, a contribution towards off site highway works, and the provision of not less than 30% of the housing as affordable homes of which at least 80% should be social rented housing and the remainder intermediate housing.
172. In response to my request copies of the relevant supplementary planning guidance were provided in relation to the individual elements and are provided at Document 8. It was also confirmed at the Inquiry that the contributions would not exceed the number of pooled contributions specified in the Community Infrastructure Levy Regulations 2010.

⁹⁵ Doc 6

CONCLUSIONS

173. These conclusions are based on the evidence submitted and given at the Inquiry and the written representations summarised above, and my findings at the accompanied and unaccompanied inspections of the site and surroundings. In my conclusions, numbers in [] refer to paragraphs earlier in this report. As the Council's concerns in relation to highways matters have now been addressed [31] I consider the main considerations upon which the decision should be based are:

- *whether the current development plan policies are out dated or have been superseded;*
- *whether the proposal provide an appropriate site for housing having regard to the current development plan and its effect on the green wedge;*
- *whether there are other material considerations that would justify granting permission in particular with regard to housing supply and the sustainable credentials of the development; and*
- *if allowing the appeal would predetermine decisions about the scale, location or phasing of new development which ought properly to be taken into account in the LDP context.*

Whether the current development plan policies are out dated or have been superseded

174. The Council's adopted development plan is the UDP and is the relevant plan against which this application should be determined unless material considerations indicate otherwise as required by statute. Policies ENV 1, ENV 3 and HOUS 2 are the most relevant policies following the withdrawal of the highway reason for refusal [29, 33]. Policy HOUS 3 is also relevant, being a similar policy to ENV 1 although expressly referring to dwellings in the countryside and cross referencing to policy HOUS 2.

175. The site lies outside any settlement limit as defined within the UDP in policy HOUS 2 where policies ENV 1 and HOUS 3 resist development unless it relates to specified purposes. Policy ENV 3 designates areas as green wedge and the appeal site lies within the Barry, Rhoose and St Athan designation [11, 12].

176. It is common ground that the UDP sets out the level of housing identified as needed up to 2011 [97]. It is also agreed that the Council cannot currently demonstrate a 5 year housing supply as required by TAN 1 [29]. The appellant contends that these matters result in the UDP policies being time expired and out dated and superseded by other material considerations, and in particular the requirements of TAN 1 to give considerable weight to the lack of a five year housing supply and on the basis that PPW provides for a presumption in favour of sustainable development where policies are outdated or superseded [40 - 47].

177. Although it is evident that the UDP set a level of housing for a period up to 2011 and the Council cannot currently demonstrate a five year housing supply, I do not find that this results in the current development plan policies being outdated or

superseded. The policies are not time sensitive in the sense that a certain number of houses must be built within the plan period, but rather set a target for housing based on the best available information such as housing projection figures and census data at that time [43].

178. Whilst the plan specifies settlement boundaries and green wedge areas to accord with those housing requirements at the time the UDP was prepared and in line with the guidance relevant to UDP preparation [45], the general principles of identifying settlement boundaries and green wedges are consistent with current national policy advice in respect of managing the location of new housing. PPW seeks to direct development to the most sustainable locations (para 4.4.3) and to manage urban form by means of green wedges (para 4.8) and the general principles and specific policies on these matters within the UDP accord with these objectives.
179. The Council is now reviewing its housing requirements for its LDP and the second Deposit Draft has been submitted for examination [24, 104]. I agree that the LDP has limited weight at this time as it has not been through its examination and its outcome is unknown [62, 103] but nonetheless it continues to restrict development in the countryside in line with national policy. Any boundary changes to settlement boundaries or green wedge designations should be properly considered through the LDP examination process in the light of the Council's overall housing requirements and strategy and are not decisions that should be made through individual applications in advance of that examination. Whilst I give little weight to the emerging LDP it does indicate a direction of travel in respect of the strategy and the role of the appeal site in that strategy. The appeal site remains within the countryside and in the green wedge following review and it will be on that basis that the LDP is examined.
180. Notwithstanding the LDP process, it is a matter of fact that the current UDP identifies the appeal site as being within the countryside and within a green wedge. The identification of settlement boundaries and green wedges are consistent with national planning policy and on this basis I do not find policies ENV 1, ENV 3, HOUS 2 or HOUS 3 to be either outdated or superseded.
181. It is agreed that the proposal should be considered with regard to both the development plan and other material considerations as required by Section 38 (6) of the Planning and Compulsory Purchase Act 2004 [32, 91]. Applications that are not in accordance with the relevant policies of the development plan should not be allowed unless material considerations justify the grant of planning permission. It is to these matters to which I now turn.

The appropriateness of the site for housing – Development Plan and Green Wedge

Principles

182. As set out above the site lies outside any settlement limit under policy HOUS 2 and within the countryside where policies ENV 1 and HOUS 3 resist development unless it relates to specified purposes which do not apply in this case. The appellant does not suggest that the proposal conforms with these policies and in my view the proposal would clearly fail to accord with policies ENV 1, HOUS 2 and HOUS 3 in relation to the

location of new housing development being outside any settlement boundary and within the countryside.

183. The site lies within a green wedge, designated under policy ENV 3 where in addition to general policies controlling development in the countryside there is an additional general presumption against development which is inappropriate in relation to the purposes of the designation [19]. Both parties agree that the development comprises inappropriate development in this context [118] although the appellant contends that this national policy test should not be applied in this case [76, 77]. I consider this further below.

184. I find that the proposal fails to accord with the principles of the current development plan in respect of directing housing away from the countryside and green wedges and to within settlement boundaries and would not provide an appropriate site for housing in that regard.

Character and appearance of the area and the purpose of the green wedge

185. I have taken into account the findings of the LVIA. I also observed the viewpoints in the LVIA and the general surroundings on my site visit prior to the Inquiry and viewed the site during my accompanied site visit. Both parties agree that the conclusions of the appellant's LVIA are correct in that any visual impact would be at worst minor adverse once mitigation planting is established [30, 68, 137]. I concur with this view. The site lies to the immediate west of the defined settlement boundary for Barry and is visually connected to the existing built form. It is inevitable that the introduction of a housing development of the scale proposed with its associated infrastructure would irreversibly and fundamentally alter the character of the area. However, the site is viewed in the context of the urban edge of Barry and the proposed planting would assist in softening the built edge and assist in incorporating it into the landscape.

186. The Council's main concern relates to the impact on the green wedge [65, 134, 137]. Policy ENV 3 of the UDP designates a green wedge for Barry, Rhoose and St. Athan in order to prevent urban coalescence between and within settlements and states that development will not be permitted within these areas where it would prejudice the open nature of the land.

187. The appellant submits that the policy requires consideration to be given to the impact on the open nature of the whole land (the whole green wedge) rather than any proportion of it [75]. I do not concur with this view and agree with the Council's position that the policy intent is to mean any part of land contained within the green wedges [125]. The purpose of the policy is to prevent urban coalescence between and within settlements with the relevant test within policy ENV 3 being whether the development prejudices the open nature of the land. If the appellant's argument was accepted, developments in the green wedge that by themselves do not result in a loss of openness could incrementally undermine the overall purpose of the designation. That is clearly not the intention of the policy. I do not find that the reference to "the land" in the policy infers that the whole green wedge should be considered but rather could relate to either a part or the whole.

188. Both parties agree that the proposal would result in the loss of some openness [68, 134]. Whilst there is development to the west comprising a farm and hotel buildings I find the site clearly demarcates the transition into a wider countryside area that defines the difference between the urban edge of Barry and its rural surroundings to the west. The site is an integral part of the wider pastoral landscape that comprises the green wedge. Whilst I acknowledge that the plateau area within this landscape makes a principal contribution to the green wedge objectives [72, 128] and which formed a component of the landscape assessed in the Council's green wedge background papers, I do not find the plateau nature of the landscape is definitive in characterising the green wedge [72]; rather it comprises a part of the wider landscape character area. The function of the green wedge is not necessarily met through an open landscape character and could equally be achieved through a more intimate or enclosed landscape [128].
189. In my view it is the undeveloped nature of the landscape between Barry and Rhoose that creates the openness rather than any particular landscape character or type. The development of this land would be an incursion into this open and undeveloped landscape and would be harmful to its open nature.
190. The development would, by virtue of its incursion into previously undeveloped land to the west of Barry and towards the settlement of Rhoose, represent a step towards coalescence of the two settlements and undermine the purpose of the green wedge identified in policy ENV 3. I note the contention that there are existing parts of Barry that extend as far towards Rhoose as this proposal. However it was apparent on my site visit that the proposal would extend further out to the west than Nant Talwg Way by utilising the two smaller fields in the western portion of the site. Notwithstanding this finding, the proposal would result in an additional developed area on the urban fringe of Barry extending towards Rhoose and which would be highly apparent from the main arterial route along the A4226.
191. I consider that the proposal would cause harm to the open nature of the green wedge as set out above and would not be in accord with the relevant UDP policy ENV 3.
192. The appellant submits that policy ENV 3 does not reflect the tests for considering harm in the green wedge in the same way as PPW and as a result the tests in PPW are not applicable to this development [73-77]. Reference is made to case law where the reasoned justification for a policy cannot be used to broaden the terms and reach of the policy [74]. The Council does not argue that this has occurred [121-123] but relies on the policy text in assessing the proposal. I am satisfied that the Council has assessed the proposal with regard to the tests within the policy rather than relying on any substantive part of the reasoned justification.
193. In terms of applying the test within PPW to this proposal, current national policy advice requires that national planning policies should not be repeated in LDPs⁹⁶. Instead LDPs should explain how they apply to their local area.

⁹⁶ Para. 2.1.4, PPW

194. Although it is accepted that the UDP was prepared under earlier national policy advice, the Council has adopted a policy that specifies the purpose of its green wedges are to prevent urban coalescence between and within settlements. This accords with the first purpose of green wedges in para 4.8.3 of PPW. Policy ENV 3 requires development in such areas to not prejudice the open nature of the land which is consistent with para 4.8.12 of PPW which specifies openness as one factor to consider in defining green wedges and to fulfil the purposes of the policy. I consider that policy ENV 3 is consistent with PPW and whilst it has adopted a specific purpose for those designations and a test relating to openness this conforms with national policy advice. I do not consider that the overall considerations within PPW that provide for a presumption against inappropriate development and to give substantial weight to any harmful impact fall away as a result of policy ENV 3. As such they should be applied to this development.
195. I have found that the proposal would not be in accord with policy ENV 3 due to the harmful impact that it would have on openness and coalescence. The parties agree that the proposal would represent inappropriate development [118]. PPW provides a presumption against development which is inappropriate in relation to the purposes of the designation with *any* (my emphasis) harmful impact to the green wedge to be given substantial weight.
196. In such instances planning permission should only be granted in very exceptional circumstances. The appellant considers that the lack of housing supply in the area outweighs the negligible to minor harm that would arise to the green wedge and represents such exceptional circumstances [78]. I consider this matter further below.
197. The appellant has also referenced the inclusion of an enterprise zone into the green wedge to the east of Cardiff airport and the fact that the site was previously allocated for development and excluded from the green wedge in the first deposit draft of the LDP [75, 76]. In considering all types of development within a green wedge a balancing of the particular circumstances relating to each development needs to be weighed against any harm to the openness of the green wedge. I do not have evidence as to the full circumstances relating to the enterprise zone, although it is apparent that it serves an economic purpose that would have been a factor in considering its allocation. I do not find its allocation to be persuasive in justifying further development into the green wedge that would be harmful to the open nature of the land.
198. It is also evident that the reasons for the exclusion of the site from the green wedge and its allocation for development in 2011 were on the basis of the Council's particular strategy and approach to housing at the time [130-133]. The Council has resolved to take a different approach to its housing allocations in the second deposit draft and as a result does not require this site to meet its housing needs. The background papers and evidence base for the plan show a direction of travel at different stages of plan preparation and whilst I acknowledge that the Council does not expressly explain its reasons for the change in direction in relation to the green wedge I am satisfied that the balance of factors was considered differently in each deposit draft LDP and as the first deposit draft was not pursued it can be afforded no weight in considering this appeal.

199. I acknowledge that the Council is having to rely on other greenfield sites to meet its housing land supply needs. Nonetheless on the evidence before me these sites are not situated within the green wedge and even if they were I do not consider this to be a compelling reason to justify the development of this particular site which I find would be harmful to the green wedge.
200. I find the proposal would be harmful to the openness of the green wedge and its purpose in preventing urban coalescence between Barry and Rhoose. It would therefore conflict with UDP policy ENV 3 and would not accord with the objectives of PPW in this regard.

Housing supply

201. As the Council does not currently have an adopted LDP or an adopted UDP within its plan period the Council cannot demonstrate a 5 year housing supply [29]. An objective assessment of housing land supply has been carried out and shows a 3.6 year land supply [88, 141]. As such the need to increase supply should be given considerable weight when dealing with this proposal provided that the development would otherwise comply with development plan and national planning policies [20].
202. The Council contends that its plan is at a very advanced stage with its EIP anticipated for January and that the Welsh Government does not object to the level of housing with no reason why its concerns regarding the housing allocations cannot be provided [104].
203. It also states that a substantial amount of the proposed housing allocated in the Deposit Draft of the LDP can be accommodated in Barry on brownfield land and within its settlement limits. There would be no need to rely on greenfield land although it is acknowledged that this will be necessary elsewhere throughout the Vale of Glamorgan [112].
204. An objection has been lodged in respect of the appeal site not being allocated for development in the LDP [24]. Whilst the plan is at an advanced stage of preparation and has been submitted for examination, the examination has not yet commenced and I give the LDP limited weight as a result. The proper process for consideration of the overall housing strategy, numbers, and location of that housing and associated settlement boundaries and green wedge designations should be through the EIP. There is no certainty at this stage that the LDP will be adopted in its current deposit stage form or when that adoption may occur.
205. The development would clearly provide up to 200 houses, 30% of which would be affordable homes. This provision of much needed housing in an area where a 5 year housing supply cannot be demonstrated holds considerable weight. However, that considerable weight should only be applied where the development would otherwise comply with other development plan and national policies [20].
206. In this case I have found that the proposal would not conform with the policies of the development plan and the objectives of PPW in relation to the harm to the green wedge. As such I do not consider that the lack of a 5 year housing supply in this instance outweighs this policy objection and would not represent the very exceptional

circumstances required by PPW to allow inappropriate development within the green wedge.

Sustainability

207. The Planning SOCG [29] contains a sustainability assessment of the site and which sets out the public transport, facilities and services within the area.
208. PPW highlights the importance of the planning system for sustainable development and the need to provide for an adequate and continuous supply of land, available and suitable for development to meet society's needs by paying regard to overall sustainability principles, outcomes and objectives (paragraphs 1.2.1 and 1.2.2).
209. With regard to the objectives set out in para. 4.4.3 I am satisfied that the appeal site lies within a sustainable location in so far as it is within close proximity to a range of transport options and services that would reduce the reliance on the private car. I have no technical evidence before me that the site would be liable to flooding, is contaminated or unstable and could provide for appropriate infrastructure and would not use the best and most versatile agricultural land given its assessment as grade 3b land⁹⁷. I also have no reason to believe that the details of the proposal would not provide for a safe and good quality neighbourhood for a mixed community and would maximise the use of renewable resources and promote good environmental management. On this basis the appeal site meets a number of the objectives for sustainable development set out in PPW.
210. Notwithstanding these credentials, the appeal site is not previously developed land and the proposal would comprise development of a greenfield site albeit on the urban edge of Barry. Para. 4.4.3 requires any land take and urban sprawl to be minimised. The use of this site on the edge of Barry would constitute an incursion into the open countryside and would result in the irreversible and permanent loss of a greenfield site outside any defined settlement boundary. Whilst I concur with the appellant's view that PPW seeks to balance and integrate the key policy objectives to maximise sustainable development options [52], land is a finite resource and I consider that the development of this greenfield site weighs heavily against its other commendable sustainable credentials. As such I do not find the sustainable credentials of the development to be of sufficient weight to outweigh the harm that I have identified.

Prematurity

211. The proposed development of 200 houses would represent only some 2% of the overall 9,500 homes proposed in the LDP. However, in the context of individual allocations it represents one of the larger housing allocations and in the case of Barry the second largest after the Waterfront allocation⁹⁸.
212. The LDP strategy focuses on Barry as the key settlement with 2360 houses being allocated [82, 112]. The proposal would comprise approximately 8.5% of Barry's total

⁹⁷ Doc 21

⁹⁸ Doc 11

allocations⁹⁹. The Council has demonstrated that although greenfield land will need to be released for development in the Vale as a whole, in the case of Barry its allocations can be secured through the use of brownfield sites or those within the existing settlement boundary [112]. The release of the appeal site for development would therefore not be in accord with the overall approach to housing provision set out in the LDP for the settlement of Barry.

213. I consider that permitting this development would have an impact on this important settlement and would have implications for a wider area in the way that the scale, location and phasing of new development should be provided and which ought to be considered through the LDP process. Nonetheless the Council confirmed that its strategy and allocations would not alter should the appeal be allowed [81] and on this basis I do not find that the proposal would be so prejudicial to the LDP to justify the dismissal of the appeal on this ground alone. It does nonetheless add weight to my view that the development of this site should be considered as part of the overall LDP review.

Other matters

214. The site lies partially within an area falling under Noise Exposure Category C [84]. TAN 11 advises that in such areas planning permission should not normally be granted. Where it is considered that permission should be given, for example because there are no alternative quieter sites available, conditions should be imposed to ensure a commensurate level of protection against noise.

215. The appellant acknowledges that consideration of TAN 11 is a material consideration but suggests that the contribution the proposal makes to housing supply outweighs any technical conflict with TAN 11 arising from the 32 metres of the site that fall within the NEC C zone. Conditions can be imposed to require noise mitigation measures to be provided [84 – 86, 168]. Whilst I have found that considerations relating to housing supply do not outweigh other objections in this case, I note that the Council's Environmental Health Officer raises no objection on noise grounds. I am satisfied on the evidence before me that the measures proposed to provide acoustic glazing, screening and ventilation would overcome any noise concerns and can be imposed through an appropriate condition. This is included in the suggested list of conditions [5, Annex A].

216. Most of the concerns raised by elected representatives, local residents and other organisations [161-166] have been addressed under the main considerations or through recommended conditions. Whilst I acknowledge the considerable objection to the scheme on highway grounds on the evidence before me and subject to the highway mitigation measures required under condition [169] and through the Section 106 agreement [171] I believe that the capacity issues that have been identified¹⁰⁰ have been addressed and I have no reason to believe that the proposal would give rise to any significant highway safety concerns.

⁹⁹ VG1

¹⁰⁰ Docs 10 & 22

217. The Section 106 agreement provides for contributions to services such as education, community facilities and open space [6, 171]. I am satisfied that these would be beneficial in providing additional services and facilities in the locality to serve the development. The relevant statutory advisors in relation to sewage, drainage, historical assets and biodiversity have raised no objections subject to appropriate conditions [161, 164].
218. I note the concerns of South Wales Police regarding policing a further development [165]. There is no empirical evidence before me to suggest that the proposal would lead to a significant increase in crime or anti-social behaviour. Issues relating to the potential devaluation of property and developer gains from landfill and topsoil [166] are not material to a planning decision which is concerned with public rather than private matters.

Conditions and Obligations

219. In the event that Welsh Ministers decide to allow the appeal, I agree that conditions 1 – 20 would be necessary for the reasons set out in paragraph 168 and 169 and they also satisfy the other 5 tests set out in Circular 16/14.
220. Given the importance of the proposed perimeter planting in softening the edge of the development and to provide a landscaped transition from the urban form into the green wedge I consider that condition 21 would also be reasonable and necessary to protect the visual appearance of the area and green wedge in the long term.
221. I consider that the obligations are necessary, are related to the proposed development scheme and are related in scale and kind, and therefore meet the appropriate tests set out in Section 122 (2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97. Accordingly the Section 106 agreement should be afforded weight in the determination of this appeal.

Overall Conclusions

222. A decision on the appeal is required to be made in accordance with the development plan unless other material considerations indicate otherwise [32, 91]. The UDP is the development plan and whilst the relevant policies to this appeal are of some age I find they remain in accordance with national policy in respect of defining settlement boundaries and green wedges to manage the location of new housing development. As such they are neither outdated or superseded.
223. The Council is progressing its LDP which will review settlement boundaries, green wedge designations and housing allocations in light of the overall strategy for housing in the Vale of Glamorgan and with regard to all representations received [13, 14]. The LDP review is the proper process for considering changes to the boundaries of settlements and green wedges, not through the consideration of individual applications.
224. The proposal fails to accord with the principles of the adopted development plan and national policy as it proposes development outside any defined settlement boundaries,

within the countryside on greenfield land and within a green wedge. The development of this land would be harmful to the open nature of the green wedge and be prejudicial to the purpose of the designation. PPW provides a presumption against inappropriate development in green wedges and only allows such development in very exceptional circumstances and requires substantial weight to be given to any harmful impact [19]. The harm I have identified weighs heavily against the development.

225. The failure of the Council to be able to demonstrate a five year housing supply weighs in favour of the development [29]. However, this consideration only holds considerable weight where the proposal would otherwise comply with development plan and national planning policies.
226. The proposal fails to comply with development plan and national planning policies in relation to the harm caused to a green wedge and in respect of its location on a greenfield site which conflicts with the objective of PPW to minimise land take. The Council's strategy for Barry in its emerging LDP, whilst of limited weight, indicates a direction of travel that will not require the release of green field land outside the settlement and within the green wedge to meet its housing targets for this key settlement. Whilst these matters are for the LDP Inspector, in the context of the proposal's failure to accord with other development plan and national policies I do not find the lack of a 5 year housing supply to be such an exceptional circumstance to allow inappropriate and harmful development within the green wedge.
227. The Council is in an advanced stage of its LDP preparation. Whilst the LDP has little weight as its EIP has yet to commence, decisions on individual applications should not prejudice the overall strategy and housing allocations within the deposit draft. The proposal represents a significant scale of development in relation to the overall housing strategy for Barry but I do not find that the proposal would be so prejudicial to the LDP to justify the dismissal of the appeal on this ground alone.
228. It does however add further weight to my view that in the absence of any material considerations that outweigh the conflict with development plan and national policies that the development of this site should be properly considered through the LDP process and with regard to the overall strategy and allocation of housing land and associated settlement and green wedge boundaries.
229. I have taken into account all other matters raised including the obligations offered in the Section 106 agreement, but none outweigh the considerations that have led to my main conclusion that the appeal should be dismissed.

Recommendation

230. I recommend that the appeal be dismissed.

Vicki Hirst

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Miss C Parry, of Counsel

Instructed by the Vale of Glamorgan Council's legal department

She called

Mr J Raine BSc (Hons) MSc

Principal Planning Officer, Vale of Glamorgan Council

Miss E Hancock BA (Hons) MLA

Landscape Architect, Vale of Glamorgan Council

Mrs J Moss, BSc (Hons) Dip TP MRTPI

Principal Planning Officer, Vale of Glamorgan Council

FOR THE APPELLANT:

Mr D Edwards QC

Instructed by Asbri Planning

He called

Mr D McQuitty BA (Hons) Dip LD CMLI

Anthony Jellard Associates

Mr R Williams BA (Hons) BTP Dip Surv MRTPI MRICS

Asbri Planning

INTERESTED PARTIES:

Councillor Drysdale

Ward member, Vale of Glamorgan Council

Mrs D Cleland

Local Resident

Mrs M Vincent

Local Resident

Mr P Clarke

Local Resident

Mr Jones

Local Resident

List of Documents Referenced in Report

Reference	Description
VG1	Mrs J Moss - Proof of Evidence
VG2	Mr J Raine – Proof of Evidence
VG3	Miss E Hancock – Proof of Evidence
VG4	Council’s Appendices to Proofs of Evidence
TW1	Mr R William’s Proof of Evidence and Appendices
TW2	Mr D McQuitty’s Proof of Evidence and Appendices
TW3	Planning Statement of Common Ground, 19 August 2015
TW4	Landscape Statement of Common Ground, 19 August 2015
TW5	Highways Statement of Common Ground, 19 August 2015
1	Indicative Plans submitted with application
2	Revised Plans
3	Planning Inspectorate EIA Screening Opinion
4	Vale of Glamorgan Council Screening Opinion
5	List of Agreed and Not Agreed Conditions dated 25/09/2015
6	Completed Section 106 Agreement
7	Welsh Government Focused Changes Response, 2 September 2015
8	Copies of Supplementary Planning Guidance and Strategic Policies
9	Appellant’s Representations to Focused Changes
10	Highway Mitigation Measures dated July 2015
11	Vale of Glamorgan Housing Allocations
12	Vale of Glamorgan Objective 5 Year Housing Land Supply inc Appellant’s Annotations
13	Landscape and Visual Impact Assessment
14	Court of Appeal [2014] EWCA Civ567
15	Dwg 13123/3202 Framework Plan with Noise Overlay
16	Mrs Cleland’s Written Submission
17	Mrs Vincent’s Written Submission
18	Mrs Davis Letter of Objection,
19	Natural Resources Wales letter, 12 November 2013
20	Dŵr Cymru Welsh Water letter, 19 March 2015
21	Agricultural Land Classification and Soil Resources, October 2013
22	Transport Assessment dated July 2014

List of Documents Received at the Inquiry from the Appellant

Reference	Description
A1	List of Appearances
A2	Opening Statement
A3	Planning Application Drawing List
A4	UDP Extracts
A5	First Deposit Draft LDP Extracts
A6	Dwr Cymru Welsh Water Letter (as amended) – Doc 20 above
A7	Vale of Glamorgan LDP Housing Land Allocations – Doc 11 above
A8	Vale of Glamorgan Objective 5 Year Housing Land Supply Assessment -

	Doc 12 above
A9	Asbri Representations to Focused Changes LDP – Doc 9 above
A10	Dwg 13123/3202 Framework Plan with Noise Overlay – Doc 15 above
A11	Transport Dwg – Figure 3: Port Road/Barry Docks Link Road Roundabout Design
A12	Transport Drawing – Figure 5: Colcot Roundabout Design
A13	Court of Appeal [2014] EWCA Civ567 – Doc 14 above
A14	Closing Submissions
A15	Two draft Section 106 Agreements

List of Documents Received at the Inquiry from the Council

Reference	Description
C1	Appeal Notification Letter
C2	Letter from Mrs Davis – Doc 18 above
C3	Draft List of Proposed Conditions
C4	Welsh Government's Focused Changes Response – Doc 7 above
C5	UDP Plan to accompany Council's Appendix 12
C6	Plan of the photographs at Council's Appendix 2
C7	Natural Resources Wales Correspondence – Doc 19 above
C8	Dwr Cymru Welsh Water correspondence – Doc 20 above
C9	Opening Submissions
C10	Closing Submissions
C11	Copies of SPG and Policies relating to Section 106 Agreement – Doc 8 Above

Other Documents Received at the Inquiry

Reference	Description
G1	Written Statement of Mrs Vincent Doc 17 Above
G2	Written Statement of Mrs Cleland Doc 16 Above

Documents Received after the Inquiry

Reference	Description
P1	Final List of Conditions – Doc 5 above
P2	Completed Section 106 Agreement – Doc 6 above

ANNEX A – RECOMMENDED CONDITIONS

Reserved Matters

1. Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Any application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Plans

4. The details submitted pursuant to condition 1 above shall be broadly in line with the parameters and master planning principles set out in the following approved plans:
 - 13123/3010/G Concept Masterplan
 - 13123/3200/B Framework Plan
 - 13123/1000/C Red Line Plan

Levels

5. No development shall commence until details of existing ground levels and proposed finished ground and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Archaeology

6. No development shall commence until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority and the programme and scheme shall be fully implemented as defined in the approved details.
7. No development shall commence until a programme of structure recording and analysis of the Cast Iron Post and Rail Fence (WC038) has been completed on site in accordance with details that shall first have been agreed in writing by the Local Planning Authority. The programme of structure recording and analysis shall be undertaken by a specialist agreed by the Local Planning Authority.

Construction Method Statement

8. No development shall commence, including site clearance works, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust, dirt and other airborne pollutants during construction;
 - vii) a scheme for recycling/disposing of waste resulting from construction works;
 - viii) construction hours;
 - ix) times of construction traffic and deliveries, types of construction vehicles to be used and a route plan for construction vehicles travelling to and from the site.
 - x) compliance with the Considerate Constructors Scheme www.considerateconstructorsscheme.org.uk; and
 - xi) a system for the management of complaints from local residents which will incorporate a reporting system.

Noise Mitigation

9. No development shall take place until a scheme for protecting the residential units to be constructed within 32 metres of the boundary of the site with the A4226 from noise generated from traffic along the A4226 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the provision of mechanical ventilation and shall ensure that the development complies with the 'good' standard specified in BS 8233:1999. None of the dwellings within 32 metres of the boundary of the site with the A4226 shall be occupied until all works that form the approved scheme have been completed.

Ecological Mitigation

10. The development shall be carried out and completed in accordance with the conservation and biodiversity enhancement measures detailed in Sections 3, 4, 5 and 6 of the Land South of Port Road West at Weycock Cross, Barry; Method Statements, Mitigation Strategies & Compensation Measures March 2014.
11. No development shall take place until a detailed Dormouse mitigation and monitoring scheme (which builds upon the principles of the "Land South of Port Road West at Weycock Cross, Barry; Method Statements, Mitigation Strategies & Compensation Measures March 2014") is submitted to and approved in writing by the Local Planning Authority. The Dormice mitigation scheme shall include, inter alia:

- i) Details of the 'landscape buffer' illustrated along the western boundary. This should include details of translocation hedgerow and new planting suitable for use by dormice for the full 15 metre width of this feature.
- ii) Details of the nature and distribution of habitats suitable for use by dormice within the public open space area at the southern end of the site.
- iii) Details of the planting scheme for all areas proposed to provide suitable dormouse habitat mitigation areas.

12. No development shall take place until a landscape and ecological management plan (LEMP) has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:

- i) Description and evaluation of features to be managed.
- ii) Ecological trends and constraints on site that might influence management.
- iii) Aims and objectives of management.
- iv) Appropriate management options for achieving aims and objectives.
- v) Prescriptions for management actions.
- vi) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- vii) Details of the body or organisation responsible for implementation of the plan.
- viii) On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The development shall be carried out in accordance with the approved LEMP.

Landscaping

13. The landscaping details submitted pursuant to condition 1 above shall include the following:

- i) an assessment of all hedgerows on the site in accordance with the criteria set out in schedule 1 of the Hedgerow Regulations 1997 and identification of any hedgerows that are determined to be 'important' as defined by the Regulations;
- ii) details of the retention of the identified 'important' hedgerows and measures for their protection throughout the course of the development or the justification for their removal; and
- iii) indications of all existing trees (including spread and species) and the remaining hedgerows on the land, identification of those to be retained and measures for their protection throughout the course of development.

14. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation

of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Drainage

15. No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall ensure that all foul and surface water discharges separately from the site and that land drainage and surface water does not discharge, either directly or indirectly, into the public sewerage system. The scheme shall be implemented in accordance with the approved details prior to the occupation of any of the dwellings hereby approved and retained in perpetuity.
16. No building shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results submitted to and approved in writing by the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and measures to prevent pollution of the receiving groundwater, underlying aquifer and/or surface waters;
 - ii) Include a timetable for its implementation; and
 - iii) Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by a public authority or statutory undertaker, or other arrangements to secure the operation of the scheme throughout its lifetime.
17. No building shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with the submitted details required by condition 16 above. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

Boundary Treatments

18. Prior to the occupation of any of the dwellings hereby approved a plan indicating the positions, height, design, materials and type of boundary treatment to be erected for each dwelling shall be submitted to and approved by the local planning authority. The boundary treatment for each dwelling shall be completed in accordance with the approved details.

Highways

19. Prior to the occupation of any of the dwellings hereby approved hereby approved, a Travel Plan shall have been submitted to and approved in writing by the Local

Planning Authority. Such plan shall include a package of measures tailored to the needs of the site and its future users and which measures shall aim to widen travel choices by all modes of transport encourage sustainable transport and cut unnecessary car use and details of the timescales for implementation of the Travel plan. The Travel Plan shall be implemented in accordance with the approved details and timescales of that Plan.

20. Full engineering details of the access to serve the site, including improvements to the Weycock Cross Roundabout, details of the visibility splays at the entrance to the site, details of street lighting, drainage and white lining shall be submitted to the Local Planning Authority for their approval in writing. The details of all lighting shall be designed with regard to biodiversity for bats and shall demonstrate that light sensitive species of bat may continue to use the locality after development, by movement through and around the site, through the provision of dark flight corridors by showing how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. No building shall be occupied until the access, associated traffic signals and improvements to the Weycock Cross Roundabout have been completed in accordance with the approved details. The street lighting, white lining and street lighting shall be completed in accordance with the approved details.

Removal of Permitted Development Rights

21. Notwithstanding the terms of the Town and Country Planning (General Permitted Development) Order 1995 or any Order amending, revoking or re-enacting that Order with or without modification) no gates, fences, walls (including any retaining walls) shall be constructed along the boundary of the site unless otherwise agreed in writing by the Local Planning Authority.