

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE : 12 MAY, 2016

REPORT OF THE DIRECTOR OF REGENERATION AND PLANNING

**MATTER WHICH THE CHAIRMAN HAS DECIDED IS URGENT
BY VIRTUE OF THE NEED TO MAKE A DECISION BEFORE TO THE NEXT
COMMITTEE**

LAND ADJACENT TO BEECHWOOD COLLEGE, OFF HAYES ROAD, SULLY

Introduction

1. The purposes of this report is to advise Members of the Planning Committee that officers have sought an urgent resolution with regard to the Council's case that will be made in a current Planning Appeal.

Background

2. Members will recall the appeal that has been made against the Council's decision to refuse planning permission in respect of application reference 2015/01116/FUL. The application sought permission for the change of use of the Council owned former civic amenity site at Hayes Road, Sully. The Application was refused at Committee on 23 October on the following grounds
3. *Having regard to the evidence and conclusions contained within the Gypsy and Traveller Accommodation Needs Background Paper (2013) and consequently and Gypsy and Traveller Site Assessment Background Paper (2013) to the Vale of Glamorgan Deposit Local Development Plan 2011-2026 (LDP) and the status of the application site within that plan as the sole allocated Gypsy/Traveller site, it is considered that the proposed change of use would conflict with the evidence base within the background papers (and draft Policy MG 5) of the LDP and would therefore be contrary to the aims and objectives of the LDP. The approval of the development would also pre determine the decision about the location of Gypsy /Traveller sites, which ought properly to be taken within the context of the Local Development Plan process. The development is therefore considered premature pending the adoption of the Deposit Local Development Plan, and would have a significant detrimental impact on the deliverability of the plan and its objectives, contrary to the advice and guidance in Chapter 2 of the Planning Policy Wales (7th Edition 2014).*
4. A copy of the previous report to the planning committee is attached as **Appendix A.**

Issues

5. The appeal site is allocated in the draft Local Development Plan (LDP) as a site to accommodate a Gypsy and Traveller site under policy MG5.

6. At the LDP hearing session on 22 March, 2016, for the Gypsy and Traveller provision the Inspector expressed his concern with regard to the flooding issue on the site (the access to the site is within a C2 flood zone). In the light of this, the Inspector requested as an 'action point' that the Hayes Road site be deleted as the Gypsy and Traveller allocation. The site is, therefore, to be withdrawn as the Gypsy and Traveller allocation within the Plan.
7. In view of the above, the Council can no longer defend the original reason for refusal of the application subject of the current appeal. The grant of planning permission for the use of the site as allotments would no longer pre determine the decision about the location of Gypsy and Traveller site within the LDP and the decision would, therefore, neither be premature nor have a significant detrimental impact on the deliverability of the Plan and its objectives. It should also be noted that there is no other material planning reason for the Council to object to the material change of use of the site as an allotment.
8. Accordingly the Council is required to advise both the Planning Inspectorate and the Appellant that the Council will not be defending its objection to the development subject of the appeal and that the Council will only be participating in the Conditions session of the Hearing to be held in respect of the appeal. It should be noted that, whilst the Appellant may make an application for costs in these circumstances, the Council will be in a good position to defend their case against a costs application if the Appellant and Planning Inspectorate are advised of the Council's revised position in this appeal without delay.

RECOMMENDATION

That the Members of the Planning Committee agree to approve the following recommendation:

- (1) That, in view of the LDP Inspector's direction to the Council with regard to the allocation of the Hayes Road Sully site as the Gypsy and Traveller allocation, the Council does not provide any defence in support of its reason for refusal of the 2015/01116/FUL application for the change of use of the site to allotments.

2015/01116/FUL

Received on 22 September 2015

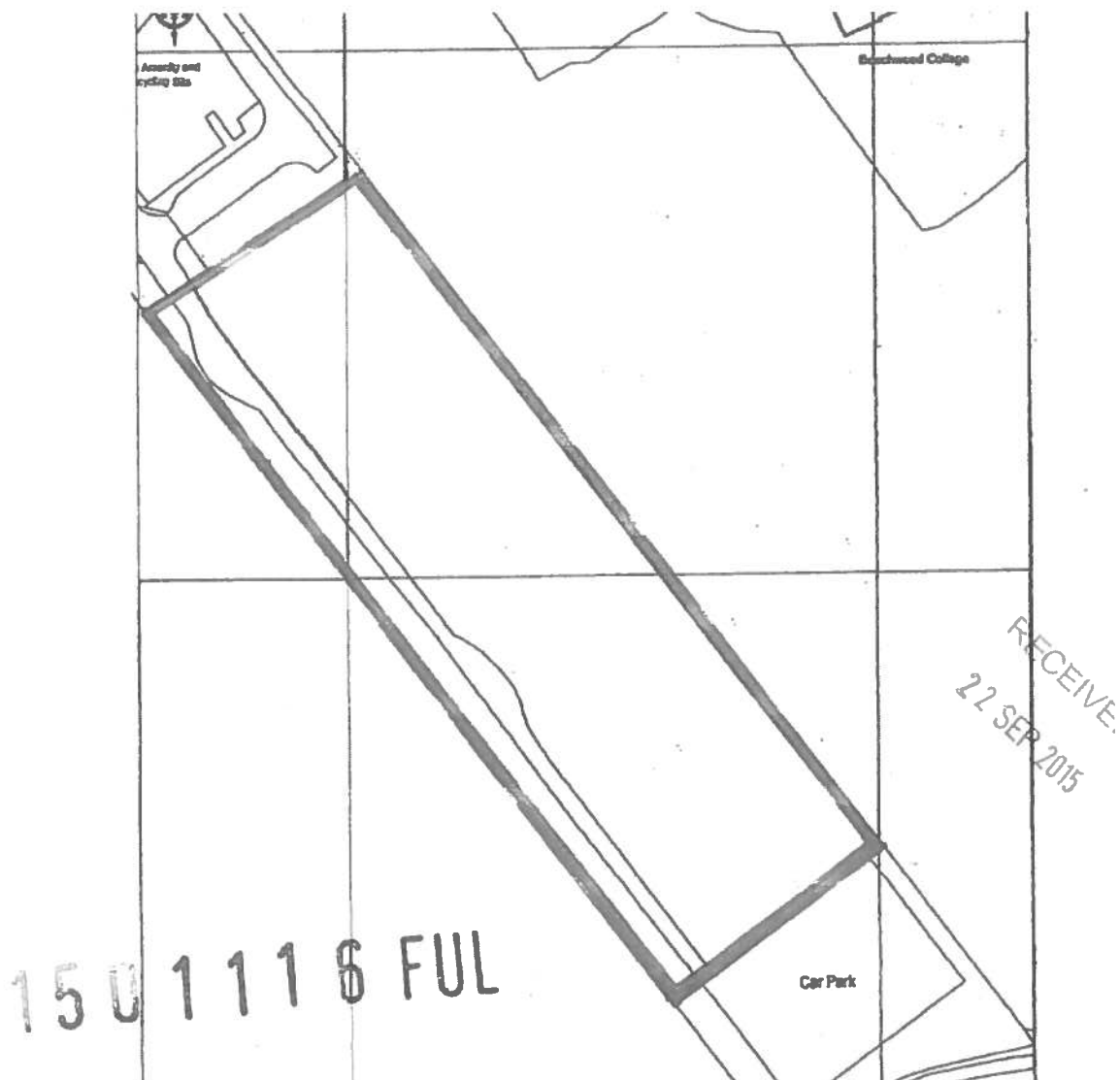
Sully and Lavernock Community Council, Clerk David Roberts, Jubilee Hall, Sully,
Vale of Glamorgan, CF64 5SS
Sully and Lavernock Community Council, Clerk David Roberts, Jubilee Hall, Sully,
Vale of Glamorgan, CF64 5SS

Land adjacent to Beechwood College, Off Hayes Road, Sully

Change of use to community allotments

SITE AND CONTEXT

The application site is land at Hayes Road, Sully, adjacent to Beechwood College, as shown on the plan below:

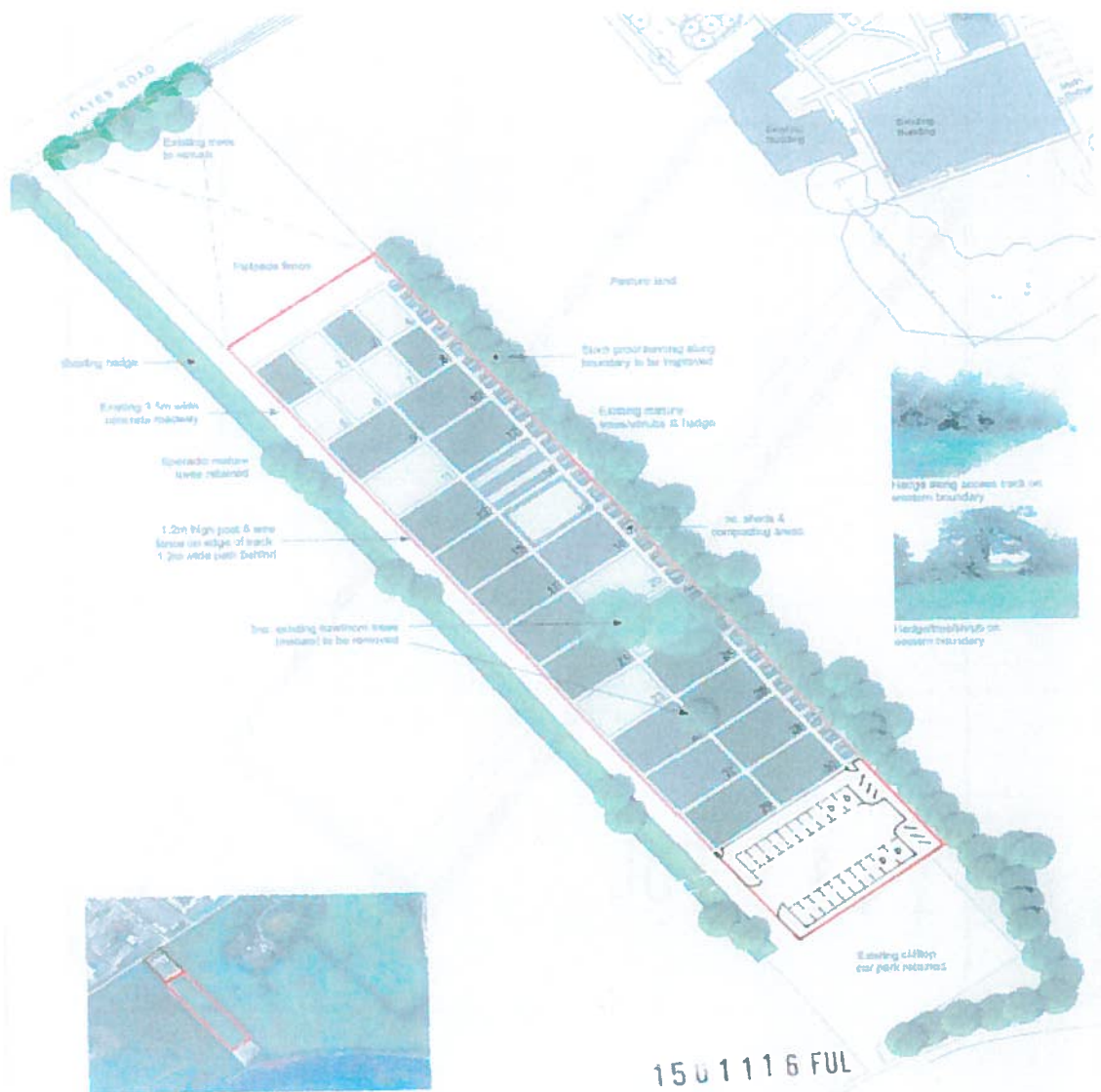


The linear site measures approximately 35m wide x 165m deep and lies adjacent to Hayes Road. The front boundary of the site is relatively well screened by trees and vegetation. The front boundary lies at the rear of the former civic amenity site, and is currently occupied by travellers. A vehicular track runs alongside the site on the western side.

The site lies within the East Vale Coast, as defined by Policy ENV6 of the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011 (see below). The land is owned by this Council.

DESCRIPTION OF DEVELOPMENT

The application is for the change use of the site to community allotments. The plan below shows the proposed layout, however in summary, it involves using an area 35m wide x 25m deep at the rear as a car park, with 30 allotment plots between the car park and the site currently occupied by travellers. The site would be enclosed with a 1.2m high post and wire fence, with a palisade fence to the car park.



The planning history below refers to the previous application, however, for clarification, this application differs insofar as the application site has been reduced in size. Application 2015/00141/FUL also included the former civic amenity site, which is currently occupied by travellers.

PLANNING HISTORY

2015/00141/FUL : Land adjacent to Beechwood College, off Hayes Road, Sully - Change of use to Community Allotments - Refused 5 June 2015

1988/00745/REG4 : Land adjacent to Hayes Road, Sully. - Access road with two passing spaces and concrete slipway. (Minute No. 349 25/7/88 refers) - Approved 26 September 1988.

CONSULTATIONS

Sully Community Council- No representations received, however, it should be noted that this is the applicant.

Highway Development- No representations received to date.

Public Rights of Way Officer- No representations received to date.

Environmental Health (Pollution Control)- No objection in principle and subject to a condition relating to contaminated land investigation.

Glamorgan Gwent Archaeological Trust- No representations received to date.

Dwr Cymru Welsh Water- No representations received to date.

Parks and Grounds Maintenance- No representations received to date.

Natural Resources Wales- No representations received to date.

Local Ward Members- Councillor Penrose has called the application in to Planning Committee.

REPRESENTATIONS

The neighbouring properties were consulted and the development has been advertised on site. Two letters of support have been received, noting that it would be an excellent use of land and that it would be a positive facility for children.

REPORT

Planning Policies and Guidance

Unitary Development Plan:

Section 38 of The Planning and Compulsory Purchase Act 2004 requires that in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011, which was formally adopted by the Council on 18th April 2005, and within which the following policies are of relevance:

Strategic Policies:

- POLICIES 1 & 2 - THE ENVIRONMENT
- POLICY 3 - HOUSING
- POLICY 4 – ADDITIONAL EMPLOYMENT LAND
- POLICY 8 – TRANSPORTATION
- POLICY 11 - SPORT & RECREATION
- POLICY 14 COMMUNITY AND UTILITY FACILITIES

Policy:

- ENV1 – DEVELOPMENT IN THE COUNTRYSIDE
- ENV6 – EAST VALE COAST
- ENV10 – CONSERVATION OF THE COUNTRYSIDE
- ENV26 – CONTAMINATED LAND AND UNSTABLE LAND
- ENV27 – DESIGN OF NEW DEVELOPMENTS
- ENV28 – ACCESS FOR DISABLED PEOPLE
- ENV29 – PROTECTION OF ENVIRONMENTAL QUALITY
- HOUS14 – GYPSY CARAVANS
- REC1 – PROTECTION OF EXISTING RECREATIONAL FACILITIES
- REC2 – JOINT PROVISION AND DUAL USE OF FACILITIES
- REC5 – NEW PLAYING FIELD PROVISION
- REC10 – DEVELOPMENT OF ALLOTMENT LAND
- TRAN10 – PARKING

Whilst the UDP is the statutory development plan for the purposes of section 38 of the 2004 Act, some elements of the adopted Vale of Glamorgan Unitary Development Plan 1996-2011 are time expired, however its general policies remain extant and it remains the statutory adopted development plan. As such, chapter 2 of Planning Policy Wales (Edition 7, 2014) provides the following advice on the weight that should be given to policies contained with the adopted development plan:

*‘2.7.1 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 (see 1.1.4 and section 4.2).*

2.7.2 It is for the decision-maker, in the first instance, to determine through review of the development plan (see 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 (see section 4.2).’

With the above advice in mind, the policies relevant to the consideration of the application subject of this report are not considered to be outdated or superseded. The following policy, guidance and documentation support the relevant UDP policies.

Planning Policy Wales:

National planning guidance in the form of Planning Policy Wales (Edition 7, July 2014) (PPW) is of relevance to the determination of this application.

2.6.3 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.

2.6.4 The stage which a plan has reached will also be an important factor in judging whether a refusal on prematurity grounds is justifiable. A refusal on prematurity grounds will seldom be justified where a plan is at the pre-deposit plan preparation stage, with no early prospect of reaching deposit, because of the lengthy delay which this would impose in determining the future use of the land in question.

2.6.5 Where there is a phasing policy in the plan that is critical to the plan structure there may be circumstances in which it is necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.

2.6.6 Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the LDP process.

Technical Advice Notes:

The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:

- Technical Advice Note 1 – Joint Housing Land Availability Study (2006)
- Technical Advice Note 12 – Design (2014)
- Technical Advice Note 16 - Sport, Recreation and Open Space (2009)

3.27 Allotments are important green spaces in urban and rural areas, and their cultivation can contribute to sustainability, provide opportunities for leisure, exercise and healthy food, improve biodiversity and encourage interaction between different groups in the community. In accordance with the provisions of the Smallholdings and Allotments Act 1908, local authorities and town and community councils are under an obligation to provide sufficient plots for residents where they believe there is a demand for allotments. Authorities should ensure that statutory allotments within their areas are properly protected, promoted and managed and are sufficient to meet the demands of local residents wishing to cultivate them. In particular, all such sites should include a suitable element of wildlife habitat. The importance of combined allotment/compost/wildlife sites is likely to increase, particularly where the density of residential development rises. Policies in the LDP should address the need to provide and protect allotment/compost/wildlife sites where a shortfall has been identified, and to improve the accessibility of such sites for all users. It may be appropriate to use Section 106 Agreements to provide allotments in combination with composting and natural green spaces.

Supplementary Planning Guidance:

In addition to the adopted Unitary Development Plan, the Council has approved Supplementary Planning Guidance (SPG). The following SPG are of relevance:

- Vale of Glamorgan Housing Delivery Statement 2009 (which partly supersedes the Affordable Housing SPG above)
- Sustainable Development
- Amenity Standards

The Local Development Plan:

The Vale of Glamorgan Deposit Local Development Plan (LDP) was published November 2013. The Council is currently at Deposit Plan Stage having undertaken the public consultation from 8th November – 20th December 2013 on the Deposit Local Development Plan and the 'Alternative Sites' public consultation on the Site Allocation Representations from 20th March – 1st May 2014. The Council has considered all representations received and on 24 July 2015 submitted the Local Development Plan to the Welsh Government for Examination. Examination in Public is expected to commence in late Autumn 2015.

With regard to the weight that should be given to the deposit plan and its policies, the guidance provided in Paragraph 2.6.2 of Planning Policy Wales (edition 7 July, 2014) is noted. It states as follows:

'2.6.2 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 (see section 4.2).'

The guidance provided in Paragraph 4.2 of PPW is noted above. In addition to this, the background evidence to the Deposit Local Development Plan that is relevant to the consideration of this application is as follows:

- Gypsy and Traveller Accommodation Needs (2013)
- Gypsy and Traveller Site Assessment (2013)
- Open Space Background Paper (2013)

Issues

It is considered that the main issues involved in the assessment of the application are:

- The principle of the use, having regard to the status of the land as public open space and the proposed allocation of the site as a travellers site in the Draft LDP (and having regard to the reduced site area from the previous application).
- The visual impact of the proposed development.
- Impact on highway safety.
- Environmental health issues relating to contamination.
- Impact on residential amenity.

The principle of the use

As noted above, this application is made upon a similar area of land as application 2015/00141/FUL, however, it has been reduced in size to omit the piece of land closest to Hayes Road, which is currently occupied by travellers. The principle of the development was considered in detail when application 2015/00141/FUL was reported to Planning Committee in June 2015 and the proposal was considered to be unacceptable for the following reason:

Having regard to the evidence and conclusions contained within the Gypsy and Traveller Accommodation Needs Background Paper (2013) and consequently and Gypsy and Traveller Site Assessment Background Paper (2013) to the Vale of Glamorgan Deposit Local Development Plan 2011-2026 (LDP) and the status of the application site within that plan as the sole allocated Gypsy/Traveller site, it is considered that the proposed change of use would conflict with the evidence base within the background papers (and draft Policy MG 5) of the LDP and would therefore be contrary to the aims and objectives of the LDP. The approval of the development would also pre determine the decision about the location of Gypsy /Traveller sites, which ought properly to be taken within the context of the Local Development Plan process. The development is therefore considered premature pending the adoption of the Deposit Local Development Plan, and would have a significant detrimental impact on the deliverability of the plan and its objectives, contrary to the advice and guidance in Chapter 2 of the Planning Policy Wales (7th Edition 2014).

Therefore, it is considered that the main issue in considering the principle of the change of use in this case is whether the reduction in the size of the site overcomes the above reason for refusal

Loss of open space in its current form.

As noted above, the site is owned by the Council. The portion to the front was formerly a civic amenity site and is currently occupied by travellers without the benefit of planning consent. The remainder of the site to the rear is informal public open space.

The land to the rear of the travellers' site is public open space and forms part of the land allocated under Policy REC 5 of the UDP for new playing fields. However, a substantial portion of that land has been disposed of to Sully Centurions Cricket Club and another element now forms part of Beechwood College. It is, therefore, considered that the aspirations of Policy REC 5 in respect of this allocation have been eroded and the retention of the current site for this purpose would not achieve the aims of the policy. It is, therefore, considered that the proposed change of use would not in itself materially affect the deliverability of new playing fields in Sully, since the previous disposals of land have already significantly affected this.

Policy REC 1 of the UDP seeks to protect existing recreational facilities and states that the loss of recreational facilities will only be permitted if alternative provision of equivalent community benefit is made or there is an excess of such provision in the area (and provided the facilities are not important to the character of a conservation area or the setting of a town or village).

Equivalent community benefit is a subjective judgement and, while the allotments would potentially not benefit as many people as are entitled to use the informal open space at present, given the local demand for allotments and the fact that there is no allotments presently serving the village (whereas there are other areas of informal green space) it is considered that allotments would amount to equivalent community benefit. It would in any case also represent a form of public open space, therefore, while the nature of the use of the land would change, it would not essentially constitute the loss of open space.

Notwithstanding this the Local Development Plan Open Space Background Paper identifies that there is currently a surplus of outdoor sport space and amenity green space in sully, albeit the amenity green space surplus is not significant. Assuming the site as 'amenity green space', the proposal would leave a marginal deficit, however, it is considered that criterion (i) of Policy REC 1 would be satisfied, therefore the development would not conflict with this policy.

It is, therefore, considered that the change of use of the land away from its current status as informal open space would not conflict with policy and would be acceptable in principle, dependent on the nature of the proposed use. This conclusion is not altered by the reduction in the site area.

The case for allotments

It is considered that the case/need for allotments is not altered by the reduction in site area. It is considered that the assessment of this issue from the previous application remains wholly relevant and for completeness, this is contained below:

The legal framework governing Allotments has developed over an extended period of time in a piecemeal fashion and is encapsulated within a number of Acts of Parliament dating from the early 1900s, namely the Smallholdings and Allotments Act 1908, the Allotments Act 1922, the Allotments Act 1925 and the Allotments Act 1950.

Each of these Acts expanded upon the basic principle set out in the 1908 Act that placed a duty on local authorities to provide sufficient allotments according to demand. Subsequent Acts set the minimum size of allotments, established statutory allotments which a local authority could not sell or convert to an alternative use without Ministerial consent and made improved provisions for compensation and tenants rights.

Planning Policy Wales states that allotments should be retained, particularly where they have an important open space function and contribute to sustainable development. Similarly, TAN 16 recognises the importance of allotments in the provision of green spaces and the contribution that they can make to sustainability, opportunities for leisure, exercise and healthy food, the improvement of biodiversity and social interaction.

The applicant's submissions centralise on the need for allotments to satisfy local need. Whereas the supporting text to Policy REC 10 of the UDP states that waiting lists for allotments had fallen in recent years (the years preceding the UDP being written) the LDP Open Space Background Paper notes that:

"there is a significant and increasing demand for allotment ownership within the Vale of Glamorgan. This is evidenced by the 954 people that currently appear on waiting lists across the various allotment sites identified."

The background paper notes that there are 23 allotment sites within the Vale of Glamorgan providing some 843 individual allotment plots and accounting for some 18.76 hectares of land. Of these 8 sites are located within Barry, 5 are in Penarth and the remaining 10 sites are in towns within the rural vale, however, there are none directly serving Sully.

In terms of 'requirements for provision', critically there are currently no existing standards set either nationally or locally for the provision of allotments. However a range of guidance and recommendations has been prepared by numerous organisations. For example, The National Society of Allotment and Leisure Gardeners (NSALG) suggest there should be 20 allotment plots per 1000 households (i.e. 20 allotments per 2,400 people). It should be noted that in the wards that have allotments, the current provision would be extremely close to this recommendation, however, clearly Sully would not meet this recommendation.

The 1969 Thorpe Report recommended a minimum standard of allotment provision of 0.2 hectares per 1000 population. In the context of the Vale of Glamorgan this would equate to a provision of 25.26 hectares made over to allotments as opposed to the existing provision of 18.76 hectares (i.e. a deficiency of 6.5 hectares).

Although not a standard, the National Allotment Survey of 1997 identified an average provision in England of 15 plots per 1000 households. The Open Space Background Paper notes that this level has been adopted by many organisations and is included in "Growing in the Community, Good Practice Guide" prepared by the Local Government Association and is seen as a more useful measure than some of the other standards that have been suggested. In the Vale of Glamorgan, application of this standard would equate to a total provision of 817 allotments as opposed to the actual figure of 843 allotments (i.e. an over provision of 26 plots).

Finally, in terms of informal recommendations/standards, the forecast in the House of Commons Select Committee report 'The Future of Allotments' (1998), recommended a spatial standard of 0.25 hectares per 1000 population which would suggest an allotment provision within the Vale of Glamorgan of 31.58 hectares, i.e. a deficiency of 12.82 hectares.

Current provision in the Vale would meet one of the above recommendations and would fail others. The Vale would meet the National Allotment Survey indicator as a whole, however, it is recognised spatially the spread of existing allotments does not meet universal need in the Vale and does not meet demand in Sully. The background paper does not go into specific detail on Sully, however, it is considered that the numerous letters of support received in respect of the application demonstrate a demand in the village. The background paper goes on to note that there is no reason to believe that demand will decrease in the near future.

Consequently, the Draft LDP seeks to make provision for enhanced community facilities (Policy MG 7) and the background paper recommends that the plan should *“consider future proposals for new allotment provision, with regard to the existing levels of facilities and the demand for such facilities.”*

There is, therefore, no prescriptive standard that can be applied to allotment provision. There are informal recommendations and it is clear that there is demand in the Sully area, however, the background paper and LDP do make specific requirements in respect of Sully. The Council's Draft Allotment Strategy also does not make specific recommendations (spatially) in terms of Sully.

Consequently each case should be treated on its merits when weighing up all other material considerations. The draft allotment strategy suggests that Town and Community Councils and the private sector can have role in addressing allotment need, therefore, allotments need not be sited on land owned by the Vale of Glamorgan Council. It is however recognised that this application demonstrates the willingness of the Community Council to be involved in meeting allotment demand in their area.

In weighing up the proposals it is considered that the proposed site has benefits in terms of allotment provision. It is located within reasonably close distance to the village and would, in principle, meet or go some way to meeting local demand. However, as noted above, this must be weighed up against all other materials considerations and primarily in this case, the implications in terms of the travellers' site.

Those issues are considered below, however, it is considered firstly that the above assessment demonstrates the Council is not currently failing to meet any formalised standard/requirement, since none exists in policy, and there is no evidence to demonstrate that the site proposed is the only (or even the most appropriate) site for allotments in Sully. TAN 16 states that policies in the LDP should address the need to provide and protect allotment/compost/wildlife sites where a shortfall has been identified, and to improve the accessibility of such sites for all users. However, it is therefore considered that the refusal of this application would not undermine in principle the ability of the Council and its LDP to address allotment need.

It is, therefore, considered that should other material considerations indicate that the proposed use is unacceptable, this would not in turn represent a breach in policy or national planning advice relating to allotments. It is also considered that this would not in any way undermine the delivery of the LDP (or its aims) and would not go to the heart of the plan.

The use of the land for Travellers

The principal competing material consideration in this case is that part of the site is currently occupied by travellers and the whole of the site is allocated in the deposit draft LDP for travellers. As noted above, the previous application was considered unacceptable, in summary, due to the allocation of the site in the Draft LDP and the impact of the proposed change of use on the deliverability of LDP objectives. The key issue here is therefore whether the reduction in site area changes that stance.

The site now measures approximately 35m x 165m, compared to the previous application where the site measured 35m x 225m. This means that the current site is over 70% of the previous application and, therefore, over 70% of the draft LDP site. While this proposal does not relate to the whole of the LDP allocation, it relates to a very significant proportion of it and it is considered that the proposed use would still fundamentally prejudice the deliverability of the LDP in respect of this key issue. The background evidence to the LDP identifies a need for a certain number of pitches through the plan period and the proposed change of use would conflict with the deliverability of a significant proportion of the identified need.

*As noted in the policy section above, 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 (see section 4.2).***

Therefore, while the UDP remains the adopted plan, the LDP has advanced further to the point where an Inspector has been appointed to examine the plan and dates set for those examinations (11 January – 24 March 2016), and it is considered that weight must be afforded to the background papers that have informed the policies. The key policy in this respect is MG 5, which states as follows:

POLICY MG 5 - GYPSY AND TRAVELLER SITE

LAND IS ALLOCATED AT HAYES ROAD, SULLY FOR THE PROVISION OF A GYPSY AND TRAVELLER SITE.

Sections 224 and 225 of the Housing Act 2004 require local authorities to assess the accommodation needs of Gypsy and Travellers within their area and that where there is an identified need sufficient site(s) should be allocated within the Council's LDP to address that need.

In 2007 in partnership with Cardiff Council the Vale of Glamorgan Council commissioned Fordham Research to undertake a Local Housing Market Assessment to include a Gypsy and Traveller Accommodation Assessment (G&TAA) with the aim of quantifying the accommodation and housing related support needs of Gypsies and Travellers in terms of residential and transit sites as well as 'bricks and mortar' accommodation.

The Study, which included direct consultation with the Gypsy and Traveller community, identified a need for the Council to provide 6 authorised pitches and 15 transit pitches for the Plan period. To inform the preparation of the LDP, a further study was commissioned in 2013 which has concluded that 18 pitches are required to satisfy the identified and future need for Gypsies and Travellers during the Plan period.

The Gypsy and Traveller Accommodation Needs background Paper defines the need and the Gypsy and Traveller Site Assessment Background Paper concludes as follows in respect of the most appropriate site:

"The assessment has shown that several of the 36 sites investigated could physically accommodate the need of 18 Gypsy and Traveller pitches as identified in the Vale of Glamorgan Gypsy and Traveller Accommodation Needs Assessment (ORS September 2013). However, with the exception of the site at Llangan which currently houses one Gypsy and Traveller family and is considered to have some limited additional capacity, these sites are constrained by ownership or management issues, have alternative or preferable uses or had been developed to provide community facilities. Other sites were affected by environmental or ecological designations or were integral to or formed a part of a larger development proposal or regeneration aspiration.

The Council has therefore concluded that the civic amenity site and additional Council owned land at Hayes Road in Sully, offers the most realistic opportunity to provide for the identified need of 18 pitches within the Vale of Glamorgan."

This application site is therefore the only allocated traveller site in the LDP and without it the Council would have no other allocation to meet the need identified above and to comply with the requirements of Sections 224 and 225 of the Housing Act. It is, therefore, necessary to consider the weight to be afforded to policy MG 5 of the Draft LDP, in accordance with the advice from paragraph 2.62 of PPW above. It is considered that the evidence contained within the background papers (which is relatively up to date) should be afforded significant weight notwithstanding the status of the LDP and the weight that can be afforded to Policy MG 5.

The proposed use would clearly conflict with draft Policy MG 5 of the LDP and more importantly the findings of the Council's LDP evidence base, leaving the Council with insufficient land, in the context of the Draft LDP as it stands, to meet the need for Traveller sites.

It may be asserted that there are other potential Gypsy and Traveller sites available elsewhere in the Vale, however, it is for the Local Development Plan process to consider the extent of need and where that should be best met.

Having regard to the evidence in the background papers, the Local Planning Authority, through the Draft LDP, has determined that the most appropriate site is that at Hayes Road, however, it is acknowledged that this is yet to be found sound by an Inspector, and cannot be found sound until the Plan is examined.

PPW (at para 2.6.3) advises that there may be instances where a development could be considered unacceptable on the grounds of 'prematurity', if a decision to grant permission would predetermine a decision that ought to be properly taken through the LDP process. PPW goes on to state that refusal will not usually be justified except in cases where a development proposal 'goes to the heart of a plan'. It further advises that the stage which a plan has reached will also be an important factor in judging whether a refusal on prematurity grounds is justifiable. A refusal on prematurity grounds will seldom be justified where a plan is at the pre-deposit plan preparation stage, with no early prospect of reaching deposit, because of the lengthy delay which this would impose in determining the future use of the land in question.

Issues of prematurity have previously been considered by this Council in respect of large residential developments, particularly where those developments were proposed on sites that are not identified for housing in the LDP. Members may recall that this was one of the principal issues considered in the application and appeal at Primrose Hill (application 2013/00745/OUT), where the Inspector ultimately determined that the proposal was not 'premature' because it represented such a small proportion of overall housing allocations and therefore did not go to the heart of the plan.

However, while this site is smaller in size than the Primrose Hill site for example (or many other proposed major residential sites) critically it is the only allocated gypsy and traveller site in the Draft LDP. When considering the issue of prematurity in the Primrose Hill case, the Inspector assessed this in terms of proportions and what percentage of overall allocations the development amounted to. It is considered that the same approach should be adopted when considering prematurity in this case.

Therefore while the site is less than one hectare in size and while the gypsy and traveller allocation only relates to 18 pitches, critically these are the only 18 pitches allocated within the plan. This site has been identified to meet short-medium term need and consequently there remains a requirement to monitor need in the latter plan period. However, the consideration of this matter is an on-going process and no alternative sites have been formally identified to meet any additional need that may arise or be evidence in the latter part of the plan period. It is considered that the loss of such a large proportion of the only identified site could not be justified by the on-going process to consider the latter plan period gypsy and traveller need, since that remains under consideration and would undermine the deliverability of a site to meet short-medium term need.

Given that the proposed change of use would conflict with the background papers the support draft LDP and consequently Policy MG 5 and would, if implemented, result in the loss of a significant proportion of the only identified gypsy and traveller site in the plan, it is considered that the proposal would continue to amount to an individually substantial proposal in the LDP context. It is therefore also considered that the use of that site for allotments as opposed to gypsy/traveller pitches would go to the heart of the plan, since it would fundamentally undermine the Council's ability to meet its duty in terms of providing such accommodation.

Given that the development relates to such a large proportion of the gypsy/traveller allocation, it is considered that the grant of permission for the development concerned would prejudice the outcome of the LDP process and that this is a decision which is individually so substantial (since it involves over 70% of gypsy/traveller allocations in the plan) that it ought to be properly to be taken in the LDP context. This is because the loss of the site would fundamentally prejudice the deliverability of the LDP in respect of this key issue.

The plan is about to be examined and inspector has been appointed and therefore having regard to the advice in paragraph 2.6.4 of PPW, it is considered that prematurity could not be discounted by the stage at which the plan has reached, and indeed is strengthened by virtue of the immanent examination.

In terms of recent context, an appeal against the refusal of permission for a gypsy caravan pitch at Twyn Yr Odyn (application 2013/00857/FUL) considered whether there had been a failure of policy in terms of how the Council had sought to make provision for gypsy and traveller need. The Inspector noted:

"The Council have acknowledged that they have to be proactive in searching out suitable sites for the accommodation of gypsies and travellers in their area. In October 2007 they commissioned Fordham Research to, amongst other things, carry out a gypsy and traveller accommodation needs assessment. Then ORS were commissioned to undertake a further study to update the assessment made by Fordham Research and, as explained above, the LDP specifies that the Hayes Road Site is to accommodate the short to medium term need of gypsies and travellers and the Council are to closely monitor the requirements of gypsies and travellers during the latter part of the period to be covered by the LDP.

Further, at the present time there is only one unauthorised encampment within the Council's area where the Council have taken enforcement action. The Hayes Road Site is currently tolerated by the Council pending the outcome of the LDP procedure. The Council accept that the site at Llangan (whilst not benefiting from planning permission) is probably lawful. Again the Council are the owners of the Llangan site and, as far as I am aware, they are not taking any action as landowners to recover that land.

Having regard to all of these matters I do not consider that there is a significant failure of policy in this case – I consider the situation to be work in progress by the Council."

Therefore, while it was acknowledged that the Council need to monitor the requirements of gypsies and travellers during the latter part of the plan, there was not considered to be a failure in policy in such an approach which has sought to allocate land to meet short to medium term need (although clearly the Inspector did not go into detail in the appropriateness of the Hayes Road site to meet that need, since that is a matter for the LDP examination).

Summary of issues relating to allotment need and gypsy/traveller need.

As noted above, there appears to be a demand for allotment plots in Sully, however, the need in Sully is not quantified within the LDP or its background documents and these documents do not seek to make specific provision in that respect. In addition there is no formalised standard for allotment provision.

Notwithstanding this, it is considered that the evidence does demonstrate a demand and this site could meet some or all of that demand, however, it has not been demonstrated that the need could not be met elsewhere

Whereas the UDP and LDP documents aren't specific on allotment provision in Sully, the LDP documents are specific in terms of gypsy/traveller provision on this site. Therefore, the use of the site as a gypsy/traveller site would not represent a breach in policy for allotment provision (since there is no formalised requirement for provision) and it has not been demonstrated in any case that allotments couldn't be provided elsewhere in the plan period to meet that need. However, the loss of the site for its allocated purpose would directly conflict with the LDP background papers and draft Policy MG 5, and would prejudice the outcome of the LDP process.

Accordingly, it is considered that the proposed use is unacceptable in this context and grant of permission would be premature, contrary to the advice within paragraph 2.63 of PPW. To summarise, it is considered that the reduction in site area does not overcome the reason for the refusal of application 2015/00441/FUL and that the fundamental policy objections remain.

Visual impact

The site lies within the East Vale Coast and Policy ENV 6 of the UDP seeks to limit development there to that for which a coastal location is necessary. However, while a coastal location is not fundamentally required for allotments, the site is very well screened from Hayes Road and the nature of development associated with allotments would typically be low lying and relatively low impact. It is, therefore, considered that the visual impact associated with allotments would not be unacceptable and that the impact would no greater than that associated with gypsy/traveller pitches. Consequently, notwithstanding the location within the East Vale Coast, it is considered that the visual impact would not be demonstrably harmful to the character of the wider area.

Highway safety

No formal comments have been received from the Highways Engineer in respect of this application, however, the site is served by an access with good visibility along Hayes Road and it is considered that the amount of parking, both within the site and within the car park to the rear, is sufficient to serve the development without adversely impacting upon highway safety or the free flow of traffic outside the site.

The car park would now be sited to the rear of the allotments as opposed to at the front of the site, however, it is considered that the proposal remains acceptable in highway safety and parking terms, for the reasons above.

Environmental issues

The Council's Environmental Health Officer has raised no objection subject to a contaminated land condition. Furthermore, in the case of application 2015/00141/FUL, no objection was raised in principle. Consequently, a condition was then also recommended regarding comprehensive investigation of potential contamination and Natural Resources Wales similarly recommended such a condition. However, clearly this does not overcome the clear policy objection as identified above.

Residential amenity

The site is located a significant distance from the nearest residential properties and it is considered, therefore, that allotments would not adversely impact on residential amenity in this location.

CONCLUSION

The decision to refuse planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011.

RECOMMENDATION

REFUSE (W.R.)

1. Having regard to the evidence and conclusions contained within the Gypsy and Traveller Accommodation Needs Background Paper (2013) and consequently and Gypsy and Traveller Site Assessment Background Paper (2013) to the Vale of Glamorgan Deposit Local Development Plan 2011-2026 (LDP) and the status of the application site within that plan as the sole allocated Gypsy/Traveller site, it is considered that the proposed change of use would conflict with the evidence base within the background papers (and draft Policy MG 5) of the LDP and would therefore be contrary to the aims and objectives of the LDP. The approval of the development would also pre determine the decision about the location of Gypsy /Traveller sites, which ought properly to be taken within the context of the Local Development Plan process. The development is therefore considered premature pending the adoption of the Deposit Local Development Plan, and would have a significant detrimental impact on the deliverability of the plan and its objectives, contrary to the advice and guidance in Chapter 2 of the Planning Policy Wales (7th Edition 2014).