



CHAIRMANS URGENT ITEM

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE : 25th MAY 2023

REPORT OF THE APPOINTED EXTERNAL CONSULTANT

MATTER WHICH THE CHAIRMAN HAS DECIDED IS URGENT BY REASON OF THE NEED TO SET OUT THE COUNCILS PUTATIVE REASONS FOR REFUSAL OF THE APPLICATION

LPA Reference No: 2019/00871/OUT

Appeal Method: To be confirmed by Planning and Environment Decisions Wales (PEDW)

Appellant: Legal & General (Strategic Land) Ltd

Location: Land at Model Farm, Port Road, Rhoose

Proposal: Hybrid application comprising an outline application for the demolition of existing buildings and erection of 44.75ha Class B1/B2/B8 Business Park, car parking, landscaping, drainage infrastructure, ecological mitigation and ancillary works (all matters reserved aside from access) within Area A and a full application for change of use from agricultural land to country park (Use Class D2) within Area B.

Start Date: Awaiting confirmation from PEDW

SUMMARY

On the 18th May 2023, a special planning committee was held to provide members with an update on the above mentioned planning application.

Members were informed that the Applicants had submitted an appeal to Planning and Environment Decisions Wales (PEDW), citing the reason for the Appeal (Under section F of the Appeal forms) as: *'Failure of the LPA to give its decision within the appropriate period (Usually 8 weeks) on an application for planning permission'*.

The submission of the Appeal against non-determination meant that any formal decision on the application has now been taken out of the Members' control, and is now within the jurisdiction of PEDW.

In line with the advice provided by external consultants at the meeting, members discussed the specific reasons for refusal they would have provided had they had the opportunity to determine the application and subsequently voted on whether they wished to defend the Authority's position at Appeal.

The motion in support of defending the Authority's was passed and in consultation with the external professional advisors, the following putative reasons for refusal were agreed:



1. In the absence of an up to date preliminary ecological appraisal, the proposed development fails to appraise the biodiversity interests at this site. Therefore, the proposed development fails to incorporate, conserve or enhance biodiversity interests, as those biodiversity interests have not been quantified in the first instance. As a result, the development is contrary to the requirements of Policies SP1 (Delivering the Strategy), MD2 (Design of new development) Criterion 10, MD9 (Promoting Biodiversity) and MG19 (Sites and Species of European importance) of the Vale of Glamorgan Local Development Plan 2011 – 2026, guidance within the Biodiversity and Development SPG; and National guidance contained within Planning Policy Wales (Edition 11, 2021).
2. The proposed development by virtue of its layout, scale and massing would have a harmful impact on the setting of historic assets. The benefits of the scheme are not considered to outweigh the identified harm to the designated heritage assets. The proposed development is therefore contrary to Policies SP10 (Built and Natural Environment) and MD8 (Historic Environment) of the Vale of Glamorgan Local Development Plan 2011 – 2026, guidance within the Porthkerry Conservation Area Appraisal and Management Plan SPG, National guidance contained within Planning Policy Wales (Edition 11, 2021) and Technical advice note (TAN) 24 (the historic environment).

Notwithstanding the above, Members raised an additional objection to the proposed development on climate emergency grounds, citing the Authority's declaration to adhere to the Climate Emergency Charter with the Vale Public Services Board and Project Zero Challenge Plan.

On review of the published document, the external professional advisor does not consider the Project Zero Challenge Plan would constitute adopted Planning Policy or Guidance, as such an objection based on these grounds would be extremely hard to defend at Appeal.

The Project Zero Challenge Plan is however based on and references the Well-being of Future Generations Act, Future Wales National Plan 2040 and adopted Local Development Plan.

The Well-being of Future Generations (Wales) Act 2015 imposes a duty on the Council not only to carry out sustainable development, but also to take reasonable steps in exercising its functions to meet its sustainable development (or well-being) objectives.

When considering the requirements of Section 3 'Well-being duties on public bodies' and Section 5 'The Sustainable Development Principles' of the Well-being of Future Generations (Wales) Act 2015, it could be reasonably argued that the development fails to support sustainable principle No.2, which states:

2. A resilient Wales. A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

Future Wales – The National Plan 2040 states *that it is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities.*



On review of the overriding key national priorities and policies of the Nation Plan, it could be reasonably argued that the development fails *develop strong ecosystems*.

Considering the above, it is the external professional advisors recommendation that the first reason of refusal is amended to state;

1. In the absence of an up to date preliminary ecological appraisal, the proposed development fails to appraise the biodiversity interests at this site. Therefore, the proposed development fails to incorporate, conserve or enhance biodiversity interests, as those biodiversity interests have not been quantified in the first instance. As a result, the development is contrary to the requirements of Policies SP1 (Delivering the Strategy), MD2 (Design of new development) Criterion 10, MD9 (Promoting Biodiversity) and MG19 (Sites and Species of European importance) of the Vale of Glamorgan Local Development Plan 2011 – 2026, guidance within the Biodiversity and Development SPG; National guidance contained within Planning Policy Wales (Edition 11, 2021), [Policy 9 of the Future Wales National Plan 2040 and the Sustainable Development Principle No.2 of the Well-being of Future Generations \(Wales\) Act 2015.](#)

RECOMMENDATION:

1. THAT further to the discussion of this matter at the Planning Committee meetings on 1st March 2023 and 18th May 2023 and the content of this Report the Council agrees the following putative reasons for refusal:
 - (i) In the absence of an up to date preliminary ecological appraisal, the proposed development fails to appraise the biodiversity interests at this site. Therefore, the proposed development fails to incorporate, conserve or enhance biodiversity interests, as those biodiversity interests have not been quantified in the first instance. As a result, the development is contrary to the requirements of Policies SP1 (Delivering the Strategy), MD2 (Design of new development) Criterion 10, MD9 (Promoting Biodiversity) and MG19 (Sites and Species of European importance) of the Vale of Glamorgan Local Development Plan 2011 – 2026, guidance within the Biodiversity and Development SPG; National guidance contained within Planning Policy Wales (Edition 11, 2021), [Policy 9 of the Future Wales National Plan 2040 and the Sustainable Development Principle No.2 of the Well-being of Future Generations \(Wales\) Act 2015; AND](#)
 - (ii) The proposed development by virtue of its layout, scale and massing would have a harmful impact on the setting of historic assets. The benefits of the scheme are not considered to outweigh the identified harm to the designated heritage assets. The proposed development is therefore contrary to Policies SP10 (Built and Natural Environment) and MD8 (Historic Environment) of the Vale of Glamorgan Local Development Plan 2011 – 2026, guidance within the Porthkerry Conservation Area Appraisal and Management Plan SPG, National guidance contained within Planning Policy Wales (Edition 11, 2021) and Technical advice note (TAN) 24 (the historic environment).
2. THAT the Head of Legal and Democratic Services/Operational Manager Legal Services be authorised to appoint External Consultants to conduct the Appeal on behalf of the Council.



REASONS FOR RECOMMENDATIONS:

1. To establish the basis of the Council's case in the Non-determination Appeal
2. To provide for the appointment of External Consultants to prepare the Council's defence to the Non-Determination Appeal