

Adroddiad

Ymchwiliad a gynhaliwyd ar 12 - 15 & 19 April
April 2016

Ymweliad â safle a wnaed ar 15 April 2016

**gan Vicki Hirst BA(Hons) PG Dip TP
MA MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07.06.2016

Report

Inquiry held on 12 - 15 & 19 April 2016

Site visit made on 15 April 2016

**by Vicki Hirst BA(Hons) PG Dip TP MA
MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 07.06.2016

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

APPEAL BY LAND MATTERS LIMITED

LAND NORTH OF PANDY ROAD, PANDY ROAD, BEDWAS, CAERPHILLY

Cyf ffeil/File ref: APP/K6920/A/15/3136679

File Ref: APP/K6920/A/15/3136679

Site address: Land north of Pandy Road, Pandy Road, Bedwas, Caerphilly

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Land Matters Limited against the decision of Caerphilly County Borough Council.
- The application Ref 15/0038/OUT, dated 19 January 2015, was refused by notice dated 8 October 2015.
- The development proposed is residential development with associated public open space, landscaping and highways infrastructure including a new highways access from Pandy Road and footpaths; and requiring: the installation of new services and infrastructure and other ancillary works and activities.

Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.

Procedural 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 8, January 2016 (PPW) being residential development of more than 150 houses on more than 6 hectares of land.
2. The application was submitted in outline with all matters reserved. An indicative master plan was provided with the application and shows an illustrative layout and access point from Pandy Road¹. Plans were also included in the Transport Assessment² indicating proposed pedestrian improvements and an indicative priority junction access into the site³. I have taken these plans into account in making my recommendations.
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 the then relevant Environmental Impact Assessment (England and Wales) Regulations 1999 (as amended). The direction given was that the proposal is not EIA development as it is not a major development 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 Caerphilly County Borough Council (the Council)⁴.
4. Since the application was determined both PPW and Technical Advice Note 12: "Design" (TAN 12) have been updated. The relevant documents are now PPW, Edition 8, January 2016 and TAN 12, March 2016. The previous versions of these documents have been referred to in the parties' submissions. Both main parties agreed at the Inquiry that neither update makes any material difference to the main issues. I am satisfied that the general content of the updated national policy remains similar to that in the superseded versions and my recommendations have been made on the basis of the updated versions.

¹ Doc 1

² Doc 2

³ Docs 3 & 4

⁴ Doc 5

5. I undertook an accompanied site visit on 15 April 2016 and carried out unaccompanied visits to the surrounding viewpoints and area.

The Site and Surroundings

6. The appeal site lies to the west of the settlement of Bedwas and comprises some 8.3 hectares of agricultural land in three main parcels, divided and bordered in the main by hedgerows and occasional mature trees. At the time of my site visit it was laid to pasture. The land slopes down from north to south and is bordered to the east by Pandy Mawr Road with the residential properties along Dol y Pandy Road and Dan y Deri Road beyond. To the south lies Pandy Road which becomes Pandy Lane further to the west. Beyond Pandy Road to the south lies the Bedwas House Industrial Estate and to the north is further agricultural land above which is an area of common. Agricultural land and the property Orchard House (formerly Glan Rhymney Farm) are situated to the west.
7. A public right of way crosses the northern part of the site and a further public right of way is located to the north west of the site. The former Brecon and Merthyr railway line lies to the immediate north. The railway line is safeguarded in the Caerphilly County Borough Local Development Plan (LDP) for the development of a cycle route. Another public right of way is located to the south of Pandy Road at the south eastern corner of the site and provides a link to the Bedwas House Industrial Estate.

Planning Policy and Guidance

8. The development plan for the area is the LDP which was adopted in November 2010 and covers the period up to 2021.
9. The LDP defines the site as outside and adjacent to the western side of the settlement boundary (SB) of Bedwas. The site falls within an area designated as the North Caerphilly Special Landscape Area (SLA). It is also within the Southern Connections Corridor (SCC). The site lies within an area safeguarded for its sandstone resource and the south eastern portion is also safeguarded for its coal resource.
10. The relevant policies from the plan are set out in the Statement of Common Ground⁵ (SOCG) with policies SP5 and SP10 being relevant to the reasons for refusal⁶. Policies NH1, SP3, CW4 and CW15 also have a particular bearing on the case.
11. Policy SP3 sets out the development strategy for the SCC and seeks to promote sustainable development by using previously developed land within settlement limits, reducing car borne trips by promoting more sustainable modes of travel, making the most efficient use of the existing infrastructure, having regard to the social and economic function of the area and protecting the natural heritage from inappropriate forms of development. Policy SP5 defines settlement boundaries in order to identify the area in which development would normally be allowed, promote the full and effective use of urban land and thus concentrate development in settlements and prevent the coalescence of settlements, ribbon development, fragmented development and inappropriate development in the countryside. Policy SP10 states that the natural heritage of the County Borough will be protected, conserved, enhanced and managed

⁵ Doc LM5

⁶ Doc 6

in the consideration of all development proposals within both the rural and built environment.

12. Policy CW4 seeks to only permit development proposals that affect locally designated natural heritage features where, amongst other things, they conserve and where appropriate enhance the distinctive or characteristic features of the SLA. NH1 states that identified SLAs will be protected. Policy CW15 relates to general locational constraints and states, amongst other things, that development outside settlement boundaries will not be permitted unless for certain specified activities.
13. The Council has produced four Annual Monitoring Reports (AMRs)⁷ since the adoption of its LDP which assessed the extent to which the LDP strategy and strategic policies were being achieved. The 2012 AMR identified that the Council was lacking a five year housing supply and recommended that the development plan be rolled forward to cover the plan period up to 2031 with the evidence base and policies across all topic areas being reviewed. The 2013 AMR found the continued lack of a five year housing supply to be of concern and recommended that limited greenfield land release be considered on sites that are acceptable in planning terms in order to address this shortfall. The 2014 and 2015 AMRs highlighted the continuing need to address the lack of a five year housing supply which in 2015 had fallen to 1.9 years. The 2015 AMR recommended that substantial progress had been made in the plan period in implementing the LDP, that there was a continuing need to address the lack of a five year housing supply and that the Council should endeavour to prepare the replacement LDP in a timely manner.
14. At the time of the Inquiry the Deposit Replacement LDP (DRLDP) was out for consultation. The DRLDP identifies the need for 12,400 new dwellings with 13,640 new dwellings being included in the plan to allow for flexibility. The strategy includes the urban expansion of settlements on greenfield sites within the SCC whilst recognising the intrinsic landscape value of the area. The appeal site was put forward as a Candidate Site and was recommended for inclusion in the DRLDP by Council officers. It was resolved by the Council's Focus Group to not allocate it as a housing site in the DRLDP. However, following the current appeal being lodged the Council subsequently resolved to include it as an allocation in the DRLDP to enable residents to make representations on its inclusion and to avoid any misunderstanding that housing would not be permitted on the site. It was also resolved that if the appeal is dismissed that the site would be withdrawn from the plan and if it is allowed it would remain as an allocation⁸. The delivery agreement for the DRLDP proposes adoption in October 2017.
15. The parties agree that the main sources of national policy relevant to this appeal are contained in PPW and associated Technical Advice Notes (TANs), in particular TAN 1: Joint Housing Land Availability Studies (2015), TAN 2: Planning and Affordable Housing (June 2006), TAN 5: Nature Conservation and Planning (2009), TAN 11: Noise (1997), TAN 12: Design (2016), TAN 15: Development and Flood Risk (2004), TAN 16: Sport, Recreation and Open Space (2009) and TAN 18: Transport (2007).
16. Paragraph 4.2.2 of PPW provides for a presumption in favour of sustainable development with paragraph 4.3 setting out the key principles and paragraph 4.4 the objectives of sustainable development.

⁷ Docs 7, 8, 9 & 10

⁸ Doc LM1, Appendix 7

17. Paragraph 9.2.3 requires local planning authorities to ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of housing. TAN 1 requires the housing land supply figure to be taken from the current Joint Housing Land Availability Study (JHLAS). Paragraph 6.2 of TAN 1 requires the housing land supply figure to be treated as a material consideration in determining planning applications for housing. Where the current study shows a land supply below the 5 year requirement the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies.
18. PPW paragraph 5.3.11 is concerned with non-statutory designations such as SLAs. Local planning authorities should apply these designations to areas of substantive conservation value where there is good reason to believe that normal planning policies cannot provide the necessary protection. Such designations should not unduly restrict acceptable development.

The Proposals

19. The application was made in outline with all matters reserved. The proposal is for a housing development of up to 300 houses and would include associated public open space, landscaping and highways infrastructure including a new highways access from Pandy Road at the southern end of the site.
20. The proposal would provide 25% of the first 270 houses and 30% above this number as affordable homes. A density of some 14.7 units per acre is proposed with housing being two storeys with the potential for rooms in roof spaces⁹. The indicative plan illustrates the potential layout, access, areas of public open space and green infrastructure¹⁰.
21. The application was recommended for approval by officers but was subsequently refused by committee following a site visit and resolution on 7 October 2015. The Council's reasons for refusal are set out in its decision notice dated 8 October 2015¹¹.

Other Agreed Facts

22. The main parties have provided a statement of common ground (SOCG)¹². The SOCG sets out agreed matters in relation to the background to the appeal, the site description and context, the proposed development and planning policy. It is agreed that the site lies outside the defined settlement limits in the LDP and that the LDP is currently undergoing a review process as a result of the findings of the AMRs and the need to address the housing land supply shortage. The appeal site is listed as a candidate site within the DRLDP and is stated to meet the preferred strategy.
23. In relation to technical and environmental issues it is agreed that the application focussed on four main matters; transport, drainage/flood risk, noise and ground conditions. No refusal was given on highways and transport grounds and it is agreed that the site lies in an accessible location close to a number of local facilities with public transport links to larger towns. There is agreement that the proposals are designed to

⁹ Doc 11

¹⁰ Doc 1

¹¹ Doc 6

¹² Doc LM5

encourage pedestrian activity and prioritise walking and cycling followed by use of public transport.

24. There is agreement that the proposed priority junction from Pandy Road is acceptable in principle and that the layout can provide appropriate levels of car parking, accessibility and servicing. The submitted information in relation to highways was reviewed independently on behalf of the Council¹³ and, subject to deliverable improvements to be secured through planning obligations, is considered acceptable on highways grounds.
25. There is no objection to the proposal on grounds relating to flood risk, drainage, ground conditions and contamination, noise, ecology, trees, residential amenity, public open space, loss of agricultural land, or affordable housing, subject to appropriate conditions and planning obligations. An agreed list of conditions and completed Section 106 agreement were provided at the Inquiry¹⁴.
26. There is not agreement on the impact of the development on the SLA.

The Case for Land Matters Ltd

The material points are:

Introduction

27. Seven main issues have been identified:

- (1) Whether the proposals provide an appropriate site for housing in terms of policies seeking to control locations for housing, the issue of housing land supply (HLS) and evidence on supply, both present and predicted.
- (2) The effect on the character and appearance of the area, especially with regard to the SLA designation.
- (3) The respective degrees of weight to accord to the current and Replacement LDP in relation to the main considerations and status of the site in both plans.
- (4) The sustainability credentials of the site in terms of national policy principles.
- (5) The effects of the proposals upon the components making up the SLA.
- (6) The relationship of the proposals to the topics of minerals safeguarding and best and most versatile agricultural land (BMV).
- (7) Highway capacity for the proposals.

All these issues are, to some extent, interlinked, but provide a framework. Tested in the light of these 7 issues, it is the appellant's overall submission that the proposal

¹³ Doc CC4

¹⁴ Docs 12 & 13

would represent sustainable development (SD) which is needed and should be approved as soon as possible.

Issue 1 - Whether the proposals provide an appropriate site for housing in terms of policies seeking to control locations for housing, the issue of housing land supply (HLS) and evidence on supply, both present and predicted.

28. The statutory starting point is the development plan. Its basic locational policies, SP3 and SP5, do not support general purpose housing at the site because it lies outside the adopted settlement boundary (SB). Reason for Refusal 1 (RR1)¹⁵ boldly states conflict with Policy SP5 as the reason for rejection and goes no further. In that regard, RR1 does not reflect the relevant legal tests, which provide for other material considerations to be considered within an overarching framework directed to achieving improvements for Wales via development which is sustainable. As the appellant's planning witness Mr Gent observed in cross examination (XX) this is an objective predicated on the achievement of development in a sustainable fashion rather than the prevention of change.
29. The Council's planning witness Mr Griffiths agreed that a properly balanced approach to the acknowledged non-compliance with these settlement boundary-based policies requires consideration of their degree and significance.
30. In strategic locational terms, the site lies within the SCC, an area identified in the adopted and emerging LDPs as one for growth. In the adopted LDP, such growth was limited to brownfield (pdl) areas¹⁶. This strategic limitation is now recognised to be excessively restrictive because it is seriously inhibiting the necessary supply of housing land. Such a situation is unsustainable and the Council has recognised in successive AMRs that it must not be allowed to continue.
31. From a strategic spatial perspective, therefore, the site is in an area identified by the adopted Plan for growth. As the appellant's highway witness Mr Thomas highlighted, there is a strong sustainable transport rationale for the identification of the SCC as a location for necessary growth which allows for promotion of a sustainable lifestyle. Mr Griffiths accepted that this consideration is a key element of PPW's Sustainability Goals for Wales¹⁷ and a strategic aim of the LDP¹⁸.
32. More specifically, Bedwas is a Local Centre in the second tier of the strategic settlement hierarchy in Policy SP4. Bedwas is on the edge of the Caerphilly conurbation, that town being designated a Principal Town, at the top of the hierarchy. Access from the site to the facilities and services of Bedwas and Caerphilly and the measures proposed in the appeal scheme are agreed by the Council to be in accordance with adopted LDP Policies CW1 and CW3¹⁹.
33. Turning to consider the purposes of Policy SP5 in more detail, examination of its four paragraphs reveals limited substantive conflict. Paragraph A deals with the definition of SBs. Mr Griffiths accepted that such an exercise is, in part, a function of the needs

¹⁵ Doc 6

¹⁶ LDP para 1.60 and Mr Griffiths XX

¹⁷ Mr Griffiths XX; PPW 4.5.1 - 2 bullet (1)

¹⁸ Ditto; LDP Policy SP3/para 1.61 "*resource efficient settlement patterns that reduce the need to travel*".

¹⁹ Doc LM5

of society and involves striking a balance. The LDP struck the balance in such a way as to allow for no outward expansion of the urban area onto greenfield land. That strategy was the context for the LDP Inspector's consideration of boundaries. In spite of objections, the strategy was found sound. The Council has now accepted that the strategy has proved unequal to the task of making provision for housing needs and that the Plan must be replaced in order to address the housing problem, as well as making provision for its education strategy²⁰. Therefore, as Mr Griffiths accepted, the LDP Inspector's decisions about how to strike the balance generally or with regard to the SB at this particular location cannot be regarded as determinative of this appeal.

34. Policy SP5B deals with the promotional aspect of the Plan's pdl-only strategy. Mr Griffiths confirmed that it is no part of the Council's case that developing the appeal site would inhibit pdl sites coming forward, nor did anyone else suggest, let alone provide evidence, to demonstrate this would happen.
35. Interestingly, Mr Griffiths added, whilst accepting that the DRLDP recognises that greenfield land will be required to meet its housing requirement, that some 48% of housing in the SCC is proposed for allocation on pdl. Clearly, the soundness of such reliance will eventually be a matter for the Examination and a review of the delivery history of the adopted allocations will have to be undertaken, but the corresponding statistic is significant. Some 52% of the required housing land is – even now – recognised as having to be found on greenfield sites. This gives an idea of the scale of the issue and helps to explain officers' increasing concerns as evidenced in recent reports on planning applications.²¹ It also contrasts sharply with the position in the Weycock Cross case, where the whole of the emerging requirement for the relevant LDP area (Barry) was coming forward on pdl²². Furthermore, the Council's formal position is that greenfield releases will also have to be made through the development management process in the short term, ahead of adopting the Replacement LDP²³.
36. Paragraph C of Policy SP5 deals with the prevention of the coalescence of settlements, ribbon and fragmented development. Both adopted and emerging LDPs use the recognised policy tool of Green Wedge (GW) designation as the means of preventing coalescence. A GW is currently designated between Bedwas and Llanbradach and the DRLDP proposes to carry it forward unchanged. It does not include the appeal site. Examination of the Proposals Maps, longer range photo-viewpoints and visiting the site reveal why the site would not cause Bedwas and Llanbradach to merge. The highest that Mr Crandon was able to put this point in chief (X) was, in relation to his viewpoint 6 (Caerphilly Common), that development would "*go towards visually linking the settlements of Bedwas and Llanbradach and giving the impression of coalescence*". Under XX, he accepted that one would not, in fact, see coalescence from the higher ground and that the site is of no particular significance in wider views.
37. Plainly, development of the site as illustrated in the indicative Masterplan would not lead to ribbon or fragmented development forms. To the north, the established settlement limit of Bedwas along the disused railway corridor is observed and to the

²⁰ AMRs 2013 – 2015 and SoCG 5.20

²¹ Mr Gent in XX referred to the tone of recent reports of Hendredenny and Oakdale, as well as the clear recommendations set out in the appeal application report (Docs 14 & 15)

²² Mr Griffiths XX; PINs Ref: APP/Z6950/A/15/3010121 - Inspector's Report para 212; Mr Griffiths Proof Appx 9.

²³ Most recently in the 2015 AMR p.24, para 8.17.

east and immediate south east, the site is bounded by urban development. The former Glan Rhymney²⁴ farm buildings lie immediately to the west and, as Mr Thomas and the appellant's landscape witness Mr McInerney noted, the character of Pandy Road where it becomes Pandy Lane is markedly different from its form and character fronting the appeal site. In their view, assuming reasonable control by the local planning authority at reserved matters stage, the much vaunted spectre of precedent would not materialise, because of the significantly more intrusive implications of achieving access further west and the ability to design reserved matters to prevent scope for access through the new development. Moreover, land immediately to the north east of the site could not be accessed without overcoming formidable topographical and heritage issues.

38. There was an attempt in evidence to try and make something of a precedent point. Mr Thomas and Mr McInerney explained why the point is misconceived in terms of practical development options. The following general principles should also be borne in mind:

- (1) each application is to be determined on its merits;
- (2) there is (rightly) no reason for refusal based on precedent (because the briefest consideration of its practical implications reveals it to have no evidential foundation);
- (3) the local planning authority would be able to control reserved matters to ensure compliance with any legitimate planning concerns about settlement and development form, including road layout and boundary treatments;
- (4) the adopted development plan does not assign the appeal site an anti-coalescence role;
- (5) the emerging DRLDP shows the appeal site as a housing allocation, yet does not propose to expand the GW around it;
- (6) protection of areas beyond the new SBs will lie in the Council's own hands by making realistic provision for development needs in the new Plan and through responsible development management.

In short, paragraph C of Policy SP5 is not offended by the appeal proposals, which are for a sustainable extension to a well-established urban area.

39. There was a difference of approach between Mr Griffiths and the Council's advocate Mr Green as to the interpretation of paragraph D of policy SP5. Mr Green suggested that "*inappropriate development*" means anything which does not fall within the limited categories set out in paragraph C of Policy CW15. Although it is a fact that general housing does not feature in that list, the policy is not cited in the refusal reasons. "*Inappropriate development*" is not defined in the Plan. Mr Griffiths and Mr Gent adopted a more nuanced interpretation which would allow for a planning judgment to be made on the basis of the nature and quality of the site, the degree of any harm

²⁴ Now called Orchard House

from development to the intrinsic characteristics of the environmental resource, and need for the proposed development. The visual effects of the proposal upon the public were added by Mr Green in re-examination (RX).

40. In view of the Council's concessions about the need for SBs to be reviewed and altered in the Replacement LDP, the difference of approach matters less than might otherwise be the case. Mr Griffiths rightly accepted that the balance between the considerations listed in the last paragraph will change over time in the light of needs and this recognition applies with equal force to both interpretations. What matters here is, essentially the degree of weight to be given to SBs in the light of housing need.
41. Undertaking a similar exercise in relation to policy SP3 reveals conflict with paragraph A because of the current delineation of the SB, but compliance with paragraphs B to D.
42. The locational policy analysis set out above has demonstrated:
- (1) that the site is suitably located in strategic terms;
 - (2) that, in local policy terms, although presently outside the SB, the site's situation conforms to substantive national and LDP sustainability policy principles;
 - (3) that the proposal could be developed in such a way as to form a sustainable extension of Bedwas.
43. HLS in the 2015 Joint Housing Land Availability Study (JHLAS)²⁵ was identified as 1.9 years. This level of shortfall is acute. In this case, however, the 1.9 year figure is also part of a pattern of chronic under-supply. Table 8 of the 2014 AMR²⁶ sets out the position. Officers' latest prediction is that the 1.9 figure will fall yet again in the imminent JHLAS exercise because delivery is at less than 50% of the required annual rate²⁷.
44. The AMRs have also consistently highlighted commensurately poor affordable housing (AH) delivery, prompting recognition that release of greenfield sites for development in areas which might realise higher land values should be explored²⁸. The 2013 AMR recognises that this approach is particularly pertinent to the SCC²⁹. The April 2015 Local Housing Market Assessment documents the Bedwas, Trethomas and Machen ward as having the highest requirement for social housing and in fact the highest requirement for all tenures of affordable housing across the County Borough (pages 58 & 60).
45. The need for short term greenfield release in addition to preparation of a Replacement LDP has been articulated in the 2015 AMR which states:

"The lack of a 5 year HLS is a matter of concern that needs to be addressed if the overall housing requirement is to be met over the plan period. The monitoring evidence indicates that it is unlikely that this position will improve

²⁵ Doc 10

²⁶ Doc 9

²⁷ Doc 15, p.6, para 17.

²⁸ Doc 10 p.16, para 5.53

²⁹ Doc 8, pp.9-10, paras 2.29-30

in the short term and there is a need to release limited greenfield sites in the short term to address the supply issue."³⁰ (Emphasis added).

This statement represents the Council's public stance – namely, that replacement of the LDP alone is not the answer. Mr Green's suggestion in Opening and Mr Griffiths' stance in his evidence³¹ (which had not been approved by members and which contradicts the views of the appeal site case officer and those of officers dealing very recently with the Hendredenny and Oakdale applications) that the LDP alone would solve the problem simply does not reflect the formal position of the Council as submitted to the Welsh Government in the most recent AMR. Moreover, in view of the history, which demonstrates that there has never been a 5 year HLS since the LDP was adopted, there can be no certainty that the situation will be righted upon adoption of the Replacement Plan sometime in the future. Where plans are outdated, national policy provides a presumption in favour of SD.

46. Clearly, some elements of timing for delivery of the appeal proposal are out of the appellant's hands, but it has demonstrated its commitment to progressing matters quickly once permission is issued by accepting shorter delivery times than usual. This reflects the commercial attractiveness of the location to developers described by Mr Gent.³² Preliminary investigative work has already been undertaken and there is extant house builder interest which, as Mr Gent explained, is based on a considerable amount of up-front detailed work, albeit that the application was submitted in outline. Conversely, there must be serious doubt about the realism of the Council's Replacement LDP Delivery Agreement timetable of an October 2017 adoption date given the extent of political interest and pressure displayed even at this early stage of the process.
47. Despite its formal recognition of these uncomfortable truths, there is no indication that steps are being taken by the Authority to carry out the development management actions required. Mr Griffiths stated that the Council has put in place measures to bring sites forward, but Mr Gent's Rebuttal³³ demonstrates that only 4 of the 8 sites mentioned have been subject to any development management activity and all of these 4 are already counted within the 1.9 JHLAS figure. The Oakdale Committee report summary is stark:

"The Council is seeking to remedy its lack of a five-year housing land supply by reviewing the LDP, but it also has to take other steps in the short-term. Some figures may help to clarify the position:

- *In the last year Planning Committee has only consented 11 housing sites capable of accommodating over 10 units.*
- *These 11 consents will only provide 242 units once developed.*
- *The adopted LDP makes provision for 575 units a year to meet the identified housing requirements over the plan period.*

³⁰ Doc 10, p.24, para 8.17

³¹ Doc CC1

³² Both orally and see Doc LM1, Appx 4

³³ Doc LM2, Section 4.

- *This under provision in 2015 will further compound the housing land supply position.*
- *The 2015 Local Housing Market Assessment indicates that there is a need to develop 526 dwellings a year to meet the identified housing needs for the county borough.*
- *The proposed development would make a valuable contribution to rectifying the shortfall.*³⁴

In that instance (an application for up to 175 units), officers' recommendation for approval was also overturned, in spite of the strongly worded advice of officers.

48. To summarise, therefore:

- (1) there is a serious shortfall in housing supply, both for general and affordable housing;
- (2) the shortfall is acute, chronic and predicted to worsen in the 2016 assessment;
- (3) inadequate steps are being taken to address the problem via the Council's development management role, despite a public commitment to do so via greenfield releases;
- (4) the Replacement LDP will not suffice on its own as a remedy;
- (5) timing of the Replacement LDP's adoption is uncertain.

49. In the light of all the foregoing matters set out in this section, the answer to the first issue is yes.

ISSUES (2) and (5) - The effect on the character and appearance of the area, especially with regard to the Special Landscape Area designation (SLA). The effects of the proposals upon the components making up the SLA.

50. Refusal Reason 2³⁵ alleges "*unacceptable*" impact upon the SLA. This formulation rightly recognises that judgment is required and that the mere location of the development in an area designated as SLA does not justify refusal. The Council's landscape witness Mr Crandon regarded this judgment as part of the wider planning balance and, of course, in part it is. But acceptability also falls to be considered within the topic of landscape. This is because both national and local policies recognise that SLA designation should not be treated as a blanket ban and should not "*unduly*" or "*unacceptably*" constrain development³⁶. LDP policies are in place to ensure that, as inevitable change and growth occur, the "*unique and distinctive features or characteristics of the natural heritage of the County Borough*" are respected³⁷. The policy to be deployed is to protect the unique and distinctive features of the SLA not the common ones. Mr Crandon in XX indicated that he had approached matters on the

³⁴ Doc 15

³⁵ Doc 6

³⁶ PPW para 5.3.11, LDP para 3.189.

³⁷ LDP para 1.73. See also para 3.188

basis that housing was harmful to the SLA per se and he did not want to engage with the deeper questions about assessment of impacts raised by the supporting text to LDP policies.

51. A policy-compliant sound assessment of effects upon the SLA requires consideration of what matters and why. In this respect, the following should be noted:
- (1) PPW 5.3.11 also provides that non statutory designations (which sit below national designations such as National Parks and Areas of Outstanding Natural Beauty) "*should be soundly based on a formal scientific assessment of the ... landscape ... value of the site*";
 - (2) PPW 5.3.13 highlights the importance of the LANDMAP information resource upon which decision makers can draw in plan making and decision taking; it takes a Wales-wide and holistic approach to landscape, equally valuing all its 5 aspects, layers or themes;³⁸
 - (3) TACP, an experienced landscape consultancy, undertook the work to justify the LDP's SLA designations, in conjunction with similar work for other South Wales LPAs³⁹;
 - (4) TACP rejected the prevalent "*Moderate*" Visual and Sensory (VS) aspect as a basis for SLA designation, noting instead that clusters of Outstanding and High (O and H) evaluations appeared in the Geological, Cultural and Landscape Habitats aspects⁴⁰;
 - (5) the Appeal Site itself has O and H evaluations in the Cultural, Historic and Geological aspects but is Moderate in the VS layer;
 - (6) Mr Crandon agreed Mr McInerney's delineation of the site's visual envelope;⁴¹
 - (7) the visual envelope includes areas evaluated as Moderate and Low in the VS aspect;⁴²
 - (8) Mr Crandon agreed that the effects of development upon Cultural, Historic and Geological aspects are neutral;⁴³
 - (9) the Council does not suggest that effects upon Landscape Habitats would be unacceptable; there is no ecological objection and Mr McInerney predicts slight net beneficial effects under this aspect in the medium term;
 - (10) notwithstanding rejection of Moderate evaluations as a sound basis for SLA designation, extensive areas of the County Borough, specifically, much of

³⁸ Mr Crandon XX; Mr McInerney in X

³⁹ Docs CC2, CC3 & LM3

⁴⁰ Doc CC3

⁴¹ Doc LM3, Plan 6; Mr Crandon XX

⁴² Doc LM3, Plans 5a and 6; Mr Crandon XX

⁴³ Mr Crandon XX

the area surrounding the Caerphilly conurbation, is designated as SLA, along with other protective GW and Local Landscape designations;⁴⁴

- (11) almost 80% of the County Borough consists of countryside;⁴⁵
- (12) Mr Crandon's assessment of effects upon landscape character (even based, as it is, largely upon visual impacts) only produces an effect of Moderate/Minor significance – i.e. an intermediate/small effect.⁴⁶
52. Mr Crandon had not undertaken any assessment of the effects of the scheme against the unique and distinctive features or characteristics of the SLA⁴⁷. Mr McInerney by contrast, had taken the "*Primary Landscape Qualities and Features*" set out in Appendix 1 to the LDP and appraised the effects of the scheme on them⁴⁸. He agreed in XX that, upon reflection, he would have included the reference to the landscape's having remained "*essentially unchanged*", but said that he did not think that anything turned on it because "*conserving*" – the word used in Policy SP10 - includes recognition of inevitable change, as indeed LDP para 1.73 supporting Policy SP10 expressly recognises. Of these unique and distinctive SLA characteristics, he concluded that at least half would be retained with the proposed development.
53. Of those features which would change, pastoral agricultural improved grassland would go, but this form of landuse is not "*unique or distinctive*" to the site. The public footpath on site is proposed for retention. Clearly, the experience of walking along a rural path would be postponed compared to the existing surroundings but, again, this is not a "*unique or distinctive feature*". Semi improved grassland/bracken would be lost in all but the site's edges but, again, this feature is common across the SLA. Views of valley sides would remain topographically, but in changed form. Mr McInerney rejected the suggestion that cut and fill would remove legibility, citing the neighbouring Dol y Pandy estate. Taken in the context of a very large SLA and a very wide valley, change here would not be significant. The interior field boundaries, which he accepted were likely to be of some age, were not, in his opinion, worth retaining. They were classified by Soltys Brewster as "*defunct*" in ecological terms⁴⁹ and, in places, they have been filled in by fences. Although he had not been involved in master planning, he endorsed the decision not to retain them, having regard to other design criteria in terms of layout.
54. He accepted that there would be some harm to the VS layer, but its significance would be slight because the site sits below the former railway, avoiding the rising ground above that contour. He saw this as the distinctive VS feature of the SLA and this would be unaffected⁵⁰. His judgment contrasted with the results of Mr Crandon's Landscape and Visual Impact Assessment (LVIA) matrix, which afforded regional/district/county significance to views from residential properties, the corner of the Site on Pandy Road and from the public footpath⁵¹. In the context of a County Borough the vast majority

⁴⁴ Adopted and emerging Proposals Maps: Doc LM2 Appx 4 and LM1 Appx 8.

⁴⁵ LDP para 1.73

⁴⁶ Doc CC2, para 8.20

⁴⁷ Confirmed in XX

⁴⁸ Doc LM3, Table 3.2

⁴⁹ Doc 16

⁵⁰ XX

⁵¹ Doc CC2

of which is countryside and where there are many public footpaths, these attributions of significance to an edge of urban site are skewed. Scale is but one part of an assessment and is not determinative. Moreover, in the context of the area's need for housing, Strategic Environmental Assessment work on the DRLDP demonstrates that many sites with similar characteristics are having to be considered⁵². As Mr McInerney explained in answer to the Inspector, relative rarity is relevant to evaluations of landscape effects and should play a part in judging their significance here.

55. Effects more generally on the character and appearance of the area and upon the enjoyment of the general public are material planning considerations. Refusal Reason 2 is framed in terms of the SLA, but third parties have, understandably raised more general points. Mr McInerney's visual appraisal demonstrates that the visual envelope within which impressions of the site would be significant is geographically limited and Mr Crandon agreed the facts in this regard. Changes in residential views are not, in themselves, material planning considerations. Very short stretches of road or public footpath enjoy clear views of the site and views from Energlyn which concerned Mr Crandon are panoramic in nature; at c.1.25kms' distance, the appeal site makes a modest contribution to the vista.
56. To conclude on Issues (2) and (5) therefore, effects on the character and appearance of the area and on the components making up the SLA are limited. Mr McInerney's conclusion that the purpose of SLA policy is not undermined is fair. Planning officers, looking at the matter in the round, agreed, even allowing for the Landscape Officer's representation. He, like the LDP Appendix,⁵³ recognised that this was a part of the SLA in which it might be reasonable to accept that development requirements have to be met.

ISSUE (3) – The respective degrees of weight to accord to the current and Replacement LDP in relation to the main considerations and status of the site in both plans

57. Normally, the weight to accord to an adopted development plan before its end date would be considerable. Circumstances in Caerphilly, however, are far from normal. PPW 2.8.4 provides that:

"It is for the decision-maker, in the first instance, to determine through monitoring and review of the development plan whether policies in an adopted LDP are outdated for the purposes of determining a planning application. Where this is the case, local planning authorities should give the plan decreasing weight in favour of other material considerations such as national planning policy, including the presumption in favour of sustainable development (see section 4.2)."

Paragraph 2.1.2 stresses that up to date plans are a "*fundamental part of a plan led planning system*" (emphasis added) and 2.5.15 emphasises the importance of the AMR. HLS is a mandatory indicator.⁵⁴ Finally 2.5.20 provides:

"Where a Review Report indicates that the existing plan is substantially out-of-date and/or the scale of alterations necessary are fundamental, the

⁵² Doc LM2, Section 6, especially table pp.8-9

⁵³ LDP Appx 1 p.A1.8 Key Policy Management and Development Control Issues: Long Term, bullets (1) and (3) pre-suppose development.

⁵⁴ TAN 1, para 3.4

replacement of a plan (i.e. a completely new plan) will be justified. The process to be followed is the same as for preparing a new plan.”

It is no part of the appellant’s case that the LDP is ignored or set aside but the weight to be given to it is for the decision maker including consideration of national policy where it says that less weight should be given.

58. As noted in Section 2, annual monitoring has revealed that the LDP has never provided a 5 year HLS and the situation is so bad that the Authority has decided that the LDP must be replaced and its pdl-only strategy in the SCC abandoned with immediate effect in favour of short term greenfield releases. The decision to replace, rather than merely revise, the Plan implies that the Council considers it to be “*substantially out of date*” (PPW 2.5.20). When advising Full Council in February 2016 to place the draft Plan on deposit, the Head of Service stated that the Council has confirmed that it recognised “*a need to change the development strategy that underpins the LDP*” and continued that “*as the current LDP is not up to date it leaves the Council vulnerable when making decisions on planning applications ...*”.⁵⁵ Mr Griffiths sought to distance the view of the Head of Service and the decision to replace the plan. However it is a matter of semantics, the AMR portrays the position and substantially concludes that housing needs need to be re-considered. Such matters are predicated on the mandatory purpose of the HLS figures.
59. In these circumstances, it is clear that the weight to be afforded to the policies of the adopted Plan which inhibit development outside SBs and in the coterminous areas covered by policy designations of environmental constraint, including SLA, must be given reduced weight in the balancing exercise required by legislation. Both the LDP itself and PPW recognise that SLA designations should not preclude development⁵⁶. Moreover, PPW 4.2.4 provides that “*where relevant development plan policies are considered outdated*” there is a presumption in favour of proposals in accordance with the key planning principles and objectives of PPW.
60. It is clear that the main driver for replacing the Plan has been the need to address the failure to provide housing, but the adopted Plan is, evidently, also regarded as incapable of facilitating the Authority’s education strategy, another vital part of well-being and sustainability. It is, therefore failing to achieve the purpose of the plan led system and the goal of sustainability in terms of providing a continuous supply of land for society’s needs⁵⁷.
61. TAN 1 is also relevant to the question of weight. The proviso in paragraph 6.2, if applied without regard to national policy principles set out in PPW about the importance of housing provision,⁵⁸ could lead to an unsatisfactorily circular result. It is, however, simple to reconcile the two sources of national policy in this case because relevant policies of the adopted Plan are so clearly outdated that the national policy presumption in favour of sustainable development is triggered.
62. Moreover, although lying outside the SB and SLA as designated, these lines were drawn in the context of a specific housing requirement and a pdl-only approach to meeting it which are now discredited. That very strategy has contributed to the

⁵⁵ Doc LM2, Appx 1

⁵⁶ LDP paras 1.73 and 3.198; PPW para 5.3.11

⁵⁷ PPW 2.1.1, 4.1.1

⁵⁸ PPW 9.1.1, 9.2.14

serious shortfall which now exists and it would clearly undermine the purpose of the national policy principle that LPAs must ensure 5 year HLS⁵⁹ and the whole point of compulsory annual monitoring if, in such circumstances, significant weight could not be given to the shortfall. On any view, it is a material consideration and where the policy presumption has been triggered because the Plan is out of date, it would be perverse not to attach significance to the reasons for that trigger.

63. The Welsh Government's recent Acknowledgement of Service in the Weycock Cross litigation⁶⁰ acknowledges the potential difficulty of applying TAN 1 6.2, but advocates the approach set out above (whilst defending the Inspector's/Minister's judgment as to datedness on the very different facts of that case). Moreover, the recent decision at Churchlands demonstrates the Minister doing just this⁶¹.
64. Certain elements of the adopted Plan are not proposed for replacement. The draft Plan continues the general strategic promotion of the SCC as a sustainable and necessary location for growth. GW remains in use as the policy tool to prevent coalescence between settlements and the appeal site continues not to be designated for such a role. The policy commitment to affordable housing remains. These elements of the adopted LDP are, therefore, not discredited and can continue to carry full weight.
65. While the concepts of SBs and SLAs remain in the emerging plan and are endorsed in national policy, making local judgments about specific geographical designations is not a matter of national policy. It also follows from what has been said above about the rationale for changing the Plan's pdl strategy that both SBs and, given its extent, SLA boundaries in the SCC will need to change. Therefore these parts of the adopted Plan must be given much less weight than they would normally be given. Moreover, the draft Plan removes the appeal site from SLA, places it inside the Bedwas SB and allocates it for housing. Plainly, this move is controversial locally and with members, nevertheless, the DRLDP has been issued for consultation in this form. The stated rationale – that this has been done to give local people the chance to object and reflects the fact that there is a planning appeal outstanding – cannot mask the fact that officers consider this the right approach. Mr Gent made it clear in his Proof and orally that the appellant's case does not depend on the DRLDP, because he recognises that, at this early stage, it can only be given slight weight. Its greatest significance lies in its genesis and rationale which have an important bearing on the weight to accord to relevant policies of the adopted Plan.

ISSUE (4) – The sustainability credentials of the site in terms of national policy principles.

66. The proposals accord with all relevant sustainability principles and policy objectives set out in PPW 4.3 and 4.4. In particular, the Council agrees that the site is located such as to enable residents to gain access to local facilities and services by non-car modes of transport⁶². In this respect, its location next to the proposal of the adopted and emerging LDP for a long distance cycle route to the north and the condition requiring a linkage to be facilitated is particularly helpful. Well-conceived Travel Plan proposals would capitalise upon the site's location in proximity to bus routes and there is the

⁵⁹ PPW 9.2.3

⁶⁰ Doc 17

⁶¹ PINs ref: APP/Z6815/A/14/2224216 - Minister accepted Inspector's reasoning in its entirety. See, on this point, IR 153.

⁶² Doc LM5

opportunity to enhance services at peak hours which currently run empty to and from the depot in the nearby Greenlands Industrial Estate. Surrounding roads are flat and the proposed addition of a pedestrian crossing to the bus stop on Pandy Road would improve conditions for existing and proposed residents. The proximity of the Industrial estate opposite the site brings the advantages of co-location.

67. Apart from its location within the SLA, which PPW 5.3.11 states should not be applied unduly restrictively, no environmental objections are raised against the site. Conditions can deal properly with such ecological interests as the site holds and Mr McInerney explained that better quality hedges and trees would mostly be retained in situ, with translocation of part of the southern boundary hedge as necessary. There would be a significant net increase in tree planting. No flooding objection is raised. Localised pooling referred to by residents was caused by poor maintenance of a highway drain which would not be relied upon by the development. The proposal meets economic and social requirements which are fundamental to the consideration of SD.
68. The site's potential to provide housing has been assessed by officers and members as part of the Replacement LDP process. Whilst members have made clear their opposition, officers clearly consider that it performs well in terms of the criteria set out at PPW 9.2.9. Mr Griffiths agreed that all were met, save for a quibble over number one – availability of pdl sites. He had to accept, however, that the Authority has recognised that there is an inadequate supply of pdl sites to meet requirements.
69. Therefore the evidence establishes that the site's sustainability credentials in terms of national policy principles are good.

ISSUE (6) – The relationship of the proposals to the topics of minerals safeguarding and best and most versatile agricultural land (BMV)

70. The site lies within a designated Minerals Safeguarding Zone⁶³. The Council takes no point against the proposal on this ground and, indeed, the site could not be exploited consistently with Minerals Technical Advice Notes 1 and 2 (MTANs 1 and 2) policies for residential buffer zones.
71. Evidence of the land's value as an agricultural resource is not entirely consistent. Although no issue was raised by the Council with respect to agricultural land, the appellant commissioned its own assessment and Mr Gent produced this in his evidence, in the interests of openness⁶⁴. The assessment found part of the site to be of Grade 3a quality, although its functional isolation was recognised as restricting its practical utility and hence its quality.
72. As part of Replacement LDP preparation, the Welsh Government informed the Council that its desk based assessment indicated that an area of land including the appeal site is not best and most versatile (BMV) and is Grade 3b at best⁶⁵. In that context, no BMV issue has been raised, either by Welsh Government, who consider it not to be BMV, or by the Council.

⁶³ LDP Policy MN2.9

⁶⁴ Doc LM1, Appx 5

⁶⁵ Doc 18

ISSUE 7 – Highway capacity for the proposals

73. Highways capacity for the proposals was exhaustively considered by Mr Thomas, the Highways Authority Officers and Parsons Brinckerhoff, a major international highway engineering consultancy. All have concluded that capacity at junctions and on road links would be adequate, subject to an improvement to the Greenway/A468 junction (Junction 2)⁶⁶.
74. The improvement would consist of installing, after the 150th occupation, MOVA technology in the existing traffic lights to improve capacity by means of an intelligent, traffic-responsive system to replace the fixed phases currently operating. Mr Thomas explained that, in his view, a very conservative approach has been taken to traffic forecasting:
- 1) because the traffic generation was worked out by Vectos on a census/workplace basis which has yielded higher figures than the more conventional TRICS approach;
 - 2) because the 21% growth assumption required by PB for testing purposes is higher than observed growth over the period 2011-2014; and
 - 3) because no account has been taken for assessment purposes of the package of sustainable transport/behavioural change measures proposed in the s.106 Agreement.

Width of Pandy Road

75. Mr Thomas illustrates measured widths ranging between 5.67 and 7.90 metres⁶⁷. It averages c.7m, excluding parking bays. Claims that the road, when used for parking, is too narrow to accommodate buses were rejected by Mr Thomas, who has spoken to the bus company⁶⁸ to agree in principle the desirability and feasibility of using the currently empty trips to and from the depot for commuting customers. There was no complaint from the company about the ability of buses to traverse Pandy Road.

Congestion in Pandy Road

76. Independent surveys have revealed two way flows of c.180-200 in AM and 100 in the PM peaks⁶⁹. Such results do not indicate that road function is impaired by congestion. As Mr Thomas explained, it is not Government policy to relieve or eradicate congestion for the convenience of the motorist. Rather, the objective, through the Active Travel (Wales) Act 2013 and national planning policy is to encourage behavioural change in order to address sustainability issues of climate change, global responsibility and resilience. This is what the financial contributions to sustainable transport measures and to implement the Travel Plan seek to achieve. Because of the site's good location relative to employment, schools, bus routes and within cycling distance of Caerphilly, there is a sound basis upon which to work. Such measures have been shown to work,

⁶⁶ Doc LM5

⁶⁷ Doc LM4, Figure POE 2

⁶⁸ Stagecoach

⁶⁹ Doc 2

both in Caerphilly and in other towns, and the Minister took account of such an approach in deciding to approve the much larger Churchlands development⁷⁰.

Parking in Pandy Road

77. Parking occurs in the layby to the south of the road near the corner with Pandy Mawr Road as well as some residential parking on the north side. In response to objections from local residents based on parking, Mr Thomas commissioned independent surveys to assess that issue (and that issue alone)⁷¹. He patiently researched and fully responded to allegations that survey evidence had been fabricated. There is no reason to suppose that Mr Thomas' approach to this matter, or that of the parking (and traffic flow) surveyors has been anything other than professional and honest. There is no basis for rejecting the proposals on grounds of parking. The housing development will provide its own parking spaces. There is no reason to suppose that parking on Pandy Road would inhibit highway capacity but the Highways Officer has sought funding to promote a Traffic Regulation Order (TRO) for yellow lining. Some residents were not entirely happy with this proposal but they would, of course, be consulted before any such Order was confirmed.

Accidents/Pandy Lane West of Site

78. There was a fatal accident some years ago west of the site on Pandy Lane. It was caused by reckless, drunken driving. Mr Thomas and the Council's experts considered its implications and concluded that it is not evidence of an endemic problem.
79. Professor Harmer noted that a fatal accident occurred more recently at Bedwas Bridge. Again, this happened in the early hours and intoxication was instrumental. Mr Thomas saw no connection between this very unfortunate incident and development at the site.
80. An accident occurred on 30th January on Pandy Road. Its details are not yet reported and residents did not supply them. Their main reason for mentioning it was as part of the attack on the honesty of the parking survey. Mr Thomas demonstrated that the accident occurred out of range of the survey and that it was therefore beyond its scope.
81. Pandy Road west of the site turns into a tortuous lane. Residents predicted greater use of the lane as a rat run to avoid congestion on the network, but Mr Thomas' own timed drives revealed minimal differences⁷². Once again, the Highways Authority has raised no objection on this ground.
82. There is no suggestion that these accidents are linked or that they represent a cluster of accidents that trigger a reason to refuse the application on highway grounds.

CONCLUSION

83. The proposals have been thoroughly examined by independent, professional officers, consultees and other experts, both in the development management and plan making contexts.

⁷⁰ PINs Ref: APP/Z6815/A/14/2224216

⁷¹ Doc LM4, Appx A

⁷² Doc LM4, Table 4.3 (Doc 19 – updated version provided at the Inquiry)

84. Officers have concluded that, faced with the level of housing need resulting from failure of the pdl-only strategy in the SCC, this is an appropriate site to be released now to contribute towards meeting that need. Greenfield release is required in advance of the new Plan and this site is available and suitable.
85. The scheme is in outline, but, if permitted, can be brought forward speedily, with the opportunity for appropriate local planning authority involvement in the working up and approval of reserved matters.
86. The balance required by relevant legislation and policy should be struck on the basis of permitting the proposal notwithstanding some conflict with an outdated development plan. Substantively, it meets PPW policy objectives and is SD. It should be permitted without delay.

The Case for Caerphilly County Borough Council

The material points are:

87. At the outset of this inquiry two main issues were identified. In summary, they are whether the appeal site is an appropriate site for housing, and the effect of the appeal proposals on the character and appearance of the area. A number of subsidiary issues are also in play and it is necessary to consider these first before addressing the main issues.

Weight to be given to the current and emerging LDPs

88. The LDP up to 2021 was adopted by the Council on 23 November 2010. The appeal must be determined in accordance with the LDP unless material considerations indicate otherwise⁷³.
89. The appellant, whose appeal proposals are clearly in breach of development plan policies, argues that the LDP is outdated for the purposes of para 2.8.4 of PPW (8th edition), which states: "It is for the decision-maker, in the first instance, to determine through monitoring and review of the development plan whether policies in an adopted LDP are outdated for the purposes of determining a planning application. Where this is the case, local planning authorities should give the plan decreasing weight in favour of other material considerations such as national planning policy, including the presumption in favour of sustainable development ...".
90. The Council accepts that the LDP is not delivering the supply of housing land required by national policy. The decline in supply has been noted in each of the AMRs produced by the Council⁷⁴ and this (together with the need to identify sites to facilitate the Council's school rationalisation programme) has prompted the early review and proposed replacement of the LDP. It does not follow, however, that the adopted LDP is deemed to be "outdated" (or superseded) for the purpose of the above guidance in PPW.
91. It is inevitable that the evidence base and assumptions on which an LDP is formulated will cease to be current following adoption of the LDP. Indeed, given the time lag between submission, examination in public, report and adoption, no development plan

⁷³ Section 70(2) and 79(4) of the Town and Country Planning Act 1990; section 38(4), (6) of the Planning and Compulsory Purchase Act 2004

⁷⁴ Docs 7, 8, 9 & 10

can be said to be wholly up to date. Recognising that circumstances change, PPW at para 2.5.4 requires local authorities to “maintain and continually develop an up-to-date relevant and proportionate information base concerning the economic, environmental and social characteristics of its area that will inform the preparation, monitoring and review of the LDP”. But the fact that the Council has decided to replace its LDP does not mean that it is now outdated for the purposes of development management decisions, and there is nothing in PPW to suggest that it does.

92. PPW para 2.5.20⁷⁵ draws a distinction between a plan that is out of date and a plan that requires fundamental alteration. Either may warrant replacement. If it had been the Welsh Government’s intention to categorise all LDPs undergoing replacement as outdated, it could easily have said so. Instead, it has left it to the judgment of the decision-maker.
93. Turning to the substance of the LDP, it is submitted that it still accords with current national policy. In particular, in identifying settlements and seeking to direct development to previously developed land within them the LDP reflects the sustainable settlement strategy in PPW⁷⁶. Its policies on special landscape areas also echo national policy⁷⁷. Although existing plan allocations do not currently provide sufficient land for housing in the next five years, that does not indicate that the plan is outdated, only that additional specific allocations are required. In his proof⁷⁸ at paras 4.57, 5.22 and 5.56, Mr Griffiths examined the corresponding policies in the DRLDP, noting that they maintain both the settlement boundary and SLA strategy established in the adopted LDP. The only significant change to the Bedwas settlement boundary shown on the DRLDP proposals map (pp 34, 35⁷⁹) in the vicinity of the appeal site is the inclusion of the appeal site itself within the settlement, reflecting the provisional housing allocation H1.49. Thus, far from being outdated, the strategy in the current LDP is to be carried forward into the future LDP, with some limited greenfield allocations in the SCC.
94. None of the AMRs⁸⁰ state that the LDP is out of date. Neither did the committee report on the application⁸¹. While the then Head of Regeneration and Planning expressed the view at the 3 February 2016 meeting of the Council that the adopted LDP was not up to date⁸², that does not represent the view of the Council.
95. PPW does not explain what is meant by “outdated”, either in relation to an LDP or in relation to an individual policy within a plan. A decision-maker is not obliged to treat a shortfall in the requisite housing land supply as proof that a plan or policy is outdated. Instead, a judgment is called for. In the present case it is submitted that the adopted LDP, and the settlement and SLA policies within it, are in line with national policy and in substance are to be carried over into the replacement LDP. In these circumstances,

⁷⁵ The first sentence states: “Where a Review Report indicates that the existing plan is substantially out-of-date and/or the scale of alterations necessary are fundamental, the **replacement** of a plan (i.e. a completely new plan) will be justified.”

⁷⁶ See, for example, paras 4.4.3 (first bullet); 4.7.2 (first bullet); 4.9.1; 9.1.1; 9.2.5; 9.2.8-9.2.10 and 9.2.24.

⁷⁷ See PPW paras 5.1.1, 5.1.2, 5.3.11, 5.4.1, 5.4.4, 5.4.5.

⁷⁸ Doc CC1

⁷⁹ Doc LM1, Appx 8, pp 8.13, 8.14.

⁸⁰ Docs 7, 8, 9 & 10

⁸¹ Doc LM5, Appx 1

⁸² Doc LM2 Appx 1

the Minister is invited to conclude that the LDP and its policies are not outdated. It and they should therefore be given full weight.

96. In the event, however, that a different conclusion is reached, paras 2.8.4 and 4.2.4 of PPW would apply. Neither paragraph permits the development plan to be ignored or set aside⁸³ and neither dictates the outcome of this appeal. Even if reduced weight is to be given to the LDP, it is submitted that its policies reflect the key sustainable development principles and key sustainability objectives in sections 4.3 and 4.4 of PPW, as well as more specific policies on settlement strategies⁸⁴, and conserving natural heritage and special landscape areas⁸⁵. Approaching the matter by reference to national policy leads, the Council contends, to the same conclusion.
97. As to the DRLDP, para 2.8.1 of PPW indicates a broad correlation between the stage an emerging LDP has reached and the weight to be attached to it. Much will depend, however, on the particular circumstances of the case, include the nature and strength of any objections to relevant draft policies. In this case it is submitted that individual strategic and development management policies⁸⁶ in the DRLDP should be given modest weight. Perhaps more significant is the fact that the DRLDP allocates sufficient land to meet the Council's housing needs until 2031 and in the view of officers provides a five-year supply of housing land in accordance with PPW and TAN 1.

The status of the appeal site in the adopted and emerging LDP

98. In the adopted LDP the appeal site is an undeveloped parcel of land adjacent to but outside the settlement boundary of Bedwas as shown on the Proposals Map. It is in the North Caerphilly SLA.
99. In the DRLDP the appeal site is housing allocation H1.49 within draft policy H1⁸⁷. The settlement boundary is drawn around the appeal site and it is excluded from the SLA. Appendix 7 to the DRLDP contains a description of the site, the last two paragraphs of which refer to the outline planning application and the present appeal. In the event the appeal is dismissed, the site would be removed from draft policy H1 and the settlement and SLA boundaries returned to their current position.

The sustainability⁸⁸ credentials of the site

100. The site's accessibility by various modes of transport and its proximity to services are dealt with in sections 2 and 4 of the SOCG. The contribution it could make towards meeting the market and affordable housing needs of the area is also recognised, as is

⁸³ See the decision of the Court of Appeal in *Suffolk Coastal District Council v Hopkins Homes Limited v Secretary of State for Communities and Local Government* [2016] EWCA Civ 168 at paras 46 and 47, which although concerning the position in England are equally applicable to the position in Wales

⁸⁴ See footnote 74 above

⁸⁵ See footnote 75 above

⁸⁶ For the reasons given in Mr Griffiths's proof (Doc CC1) at paras 4.12-4.19, the position statement at his appendix 7 and the BR15a Housing and Land Supply Background Paper dated March 2016, no weight should be given to the provisional allocation of the appeal site in the draft LDP

⁸⁷ Doc LM1, Appx 8

⁸⁸ In Fig 4.2 of PPW, "Sustainable development" is defined as the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals

the boost to employment and the local economy that the development could bring. In these respects the proposed development contributes towards the economic and social dimensions of sustainability.

101. However, the permanent loss of over eight hectares of greenfield land within an SLA is detrimental to the environmental well-being of the area. As agricultural land is also a cultural feature of the landscape⁸⁹ the development of that land and the impact that will have on the footpaths through and to the north of the site will also harm the cultural dimension of sustainability.

The landscape components that make up the SLA

102. The supporting text to LDP policy NH1⁹⁰ (which identifies and protects SLAs) states at para 3.17: "... A detailed description of the SLA designations can be found in Appendix 1, which provides a breakdown of the distinctive landscape features and characteristics within each SLA". In Appendix 1 at NH1.4 the primary landscape qualities and features are recorded for the North Caerphilly SLA.
103. In his proof⁹¹ (Table 3.2) Mr McInerney divided up the listed 13 bullets into 20 characteristics, going on to say "... of the SLA's 20 main characteristics, only half are represented to some degree within the appeal site itself. Of those features present, all are invariably common throughout the SLA" (proof para 3.11). As the qualities and features recorded in NH1.4 are drawn from across the SLA, an extensive and diverse landscape, there will be few if any discrete parcels of land that possess many more (let alone all) of the features that Mr McInerney has drawn out. As for the commonness of the features, there is nothing in policy NH1, SP10 or CW4 that suggests lesser protection is given to characteristic features if they are common. On the contrary, they are the primary features identified in policy and it would be perverse to say that their presence on the appeal site can be ignored or trivialised because they are found elsewhere.
104. In addition to the particular landscape qualities and features noted above, NH1.4 also refers to the strategic criteria that were applied to the designation of the SLA, noting the following aspects:⁹²

"Need

- The area represents a substantial area of the middle Rhymney valley landscape, almost totally surrounded by developed valley floors.
- It is important for public access and recreation, and links into the wider recreational network.
- Although more lowland in character, it provides an important visual context and setting to the settlement along the valley floor.

Coherence

- The boundaries reflect an almost entirely intact landscape unit...."

105. Insofar as the appeal site contributes towards public access and recreation (which it does), provides visual context and setting to Bedwas (which it does) and can be said to

⁸⁹ See NH1.4 in the appendix to the LDP, reproduced in Doc LM3, Appex DM3

⁹⁰ At pp 101-102 of the LDP and in Doc LM3, Appx DM3

⁹¹ Doc LM3

⁹² Taken from the 2008 report produced by TACP and extracted in Doc LM3, Appx DM4.

form part of an intact landscape unit (which it does), it supports the rationale of the SLA, as well as sharing its characteristic qualities and features.

Minerals safeguarding and best and most versatile land

106. As the Council has raised no objection to development within coal and sandstone safeguarding areas⁹³ or to the loss of grade 3a agricultural land⁹⁴ it does not intend to make further submissions on these points.

The main issues

107. Having now dealt with the subsidiary issues these submissions can turn to the two main issues.

Is the appeal site an appropriate site for housing?

108. Residential development of the appeal site would be contrary to LDP policies SP3(A) and (E), SP5(A) and (D), SP10, CW4(A) and CW15(C). The appellant's witnesses sought to argue that in referring to "inappropriate forms of development" or "inappropriate development in the countryside" policies SP3(E) and SP(5) in fact permitted residential development in the countryside in the circumstances of this case, but that is to ignore:

- the supporting text to CW4 at para 2.11, which states: "The natural heritage of the County Borough is diverse and contains specific biodiversity protection areas from European to local designations, together with local landscape designations. It is important that these are protected from inappropriate development. This policy test applies to any development proposal that would, or would be likely to, have a detrimental effect upon the distinctive biodiversity, geological or landscape features and characteristics of the County Borough. The level of potential harm will be assessed, taking into account, mitigation, compensatory and restoration measures."
- Policy CW15(C), which lists types of development that may be permitted outside settlement boundaries. That list does not include residential development of the appeal site.

109. Read objectively and in context, none of the above policies permits the proposed development. Although elements of the development could be said to meet sustainability objectives, the simple fact is that this appeal would not be taking place at all were there not a shortfall in housing land supply, which provides the only possible justification for a departure from the adopted LDP.

110. It was suggested by Mr Gent, in reliance on an observation in the officer's report, that the proposed development "forms a logical and proportionate extension to (or rounding off of) and established and well served key settlement". In fact, the case officer had said in the report to committee⁹⁵ (at page 12) that "the southern portion of the application site is relatively flat and would constitute a logical rounding off of the existing settlement at this location ...". One has only to look at the site location plan

⁹³ Policies SP8 and CW22 of the LDP.

⁹⁴ PPW para 4.10.1.

⁹⁵ Doc 20

and the photographs and plans at Mr McInerney's appendices DM1a, DM2 and DM3⁹⁶ to see how "illogical" the extension (or rounding off) would be. The site boundary simply follows the landowner's irregular title boundary rather than creating a strong and defensible settlement limit (in contrast to the current boundary created by a combination of Pandy Mawr Lane and the trees and stream on its eastern side). As Mr McInerney accepted in cross-examination, if the appeal site were developed the triangle of land immediately to the north-east of field 2 would be an obvious area for further development, and although not conceded⁹⁷ it is submitted that the same would be true of the parcel of land to the south of field 1, sandwiched as it is between the appeal site and the GW. The Council's Landscape Architect was therefore right to warn of increased development pressure in this area.

111. Having regard to development plan policy and the way the proposed development would extend into and fragment the SLA, the only sensible conclusion is that the appeal site is not an appropriate location for housing.

What would be the effect of the proposals on the character and appearance of the area?

112. It is common ground that the appeal proposals will harm the character and appearance of the appeal site⁹⁸. The parties are divided, however, over the extent to which that harm will be perceived. Both Mr McInerney and Mr Crandon have identified viewpoints from which the site can be seen⁹⁹. The assessment of harm is quintessentially a matter of planning judgment.
113. The Council does, however, wish to make the following points. First, as was accepted by Mr McInerney, residential occupiers and recreational walkers are sensitive receptors. The appeal site is visible over a wide area from a number of properties and footpaths. While little weight might attach to the views of one person¹⁰⁰, the effect of the appeal proposals would be experienced by many.
114. Secondly, in focusing (as Mr McInerney does repeatedly in his evidence) on the scale of the site when set against the whole SLA, he overlooks the real issue which is the significance of the appeal proposals on those affected by it. Policy seeks to protect the SLA because it is a natural resource of value to residents of and visitors to the area. To deny protection to one parcel of land¹⁰¹ because it is only a small fraction of the area of the SLA is in effect to deny protection to all of it.
115. Thirdly, the way Mr McInerney framed his main matter 3 – will any specific views, valued highly by the general public, or essential to the appreciation of the area, be unacceptably harmed by the appeal proposals – is not advocated by development plan or national policy. It is a far too narrow inquiry, which fails to capture the full effect of the proposals.

⁹⁶ Doc LM3

⁹⁷ Mr McInerney did accept that, on his approach, the parcel of land to the south of field 1 made no material contribution to the SLA.

⁹⁸ See Doc LM3 at paras 3.19(ii), 3.22.

⁹⁹ Doc LM3, Plan DM6 & Doc CC2 Drawing TDA/2195/01

¹⁰⁰ PPW para 3.1.7.

¹⁰¹ It is not irrelevant that the appeal proposals were sufficiently substantial to trigger recovery of this appeal by the Minister.

116. In summary, then, the Council contends that the erosion of the SLA through development of the appeal site will cause significant harm to the visual and sensory elements of the SLA – in essence to the character and appearance of the area – over a wide range.

The overall planning balance

117. Where there is a shortfall in an authority's five-year housing land supply both PPW and TAN 1¹⁰² advocate a review of the LDP. That is what the Council is doing. The current Delivery Agreement indicates that adoption will take place in October 2017. When the replacement LDP is adopted the Council will have a five-year housing land supply. This can be contrasted with the appeal proposals, which are purely in outline, are not those of the ultimate developer (whoever that may be) and need not lead to a reserved matters application for another two years (with development required to commence within another two years).

118. There is nothing in national policy that promotes the ad hoc release of greenfield sites as an answer to a shortfall in the housing land supply. The former version of TAN 1 referred to the release of greenfield, but the current version does not. Instead, the plan-led approach requires that the problem is tackled by plan review.

119. The appellant seeks to rely on para 6.2 of TAN 1, which states: "The housing land supply figure should also be treated as a material consideration in determining planning applications for housing. Where the current study shows a land supply below the 5-year requirement or where the local planning authority has been unable to undertake a study the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies." The Council accepts that the land supply position is a material consideration, but in light of the terms of the proviso and the breach of SLA policy this is not a case where the decision maker is prompted to give "considerable weight" to the need to increase supply.

120. It is for the Council to decide what goes into its LDP¹⁰³. It will make its choices following widespread public consultation. This is the essential democratic element in the way places are shaped by the planning system. The Council has decided that it does not wish to see the appeal site developed and has allocated sufficient sites in the draft LDP to ensure that it does not need to be. The current shortfall in the housing land supply will be rectified on adoption of the replacement LDP and there is therefore no need or justification for the grant of permission in this case.

121. For these reasons the Council invites dismissal of the appeal.

The Cases for Interested Persons that Appeared at the Inquiry

The Case for Professor Harmer (speaking on behalf of several residents)

The material points are:

122. It should be noted that the number of residents at the Inquiry does not reflect the interest in the appeal but many had work and other commitments. The reserved

¹⁰² Paras 3.4 and 6.1.

¹⁰³ PPW para 2.2.1.

matters nature of the case means it is difficult to understand the details of the proposal, and the arguments are very technical and difficult to follow. The concerns of the residents were not reflected in the reasons for refusal but it has to be asked why an appeal has been lodged. The decision was made in the knowledge of the need for housing and yet it was unanimous to refuse permission. There is strong public opposition and this democratic decision should not be overturned.

123. The LDP is still an active document and many proposals are rejected on its basis. The DRLDP allows for comments to be made on the site's allocation within a defined process. To grant permission for this site would pre-empt the new LDP and indicate that its strategic approach can be overturned. The critical issue is whether the proposal is in the development limits and this should surely be decided through the new plan. The Focus Group did not wish to include the site in the DRLDP but it has been included to be fair to the residents. The current boundary is a sensible limit with the highway turning into a single track width at this point. The proposed site has no defensible boundary to the west.
124. It is difficult to swallow the assertions made; the land is used for agriculture and is comparable to all land in the area, there is a stream separated by Pandy Mawr Road and which floods¹⁰⁴. There has also been a lack of public contact with no public meetings which should be taken into account. The traffic is a nightmare on Pandy Road with 250 – 270 movements in a southerly direction, Pandy Mawr Road is an old drovers track and is not a proper structure. There have been two deaths in the last couple of years which have been ignored. There is little information on car traffic with a poll at the school suggesting that 80% come by car not walk as contended.
125. The car has to be used to get to the station and the bus service is not good. The Stagecoach bus only operates at nights and weekends due to the width of Pandy Road. Bedwas Bridge is a pinch point and there are huge traffic problems in Machen.
126. There will be increased pressure on schools and services and it is difficult to see how 300 jobs would be created.

The Case for Councillor Havard (speaking as a local resident)

The material points are:

127. Councillor Havard endorsed the points made by other protestors with regard to the unsuitability of the site for housing.
128. He queried the appellant's traffic survey and contended that it had been carried out selectively as far as traffic and timing was concerned. He contended that the area is far busier than the survey photographs indicate and which is illustrated by photographs taken by residents.
129. Pandy Road is often described as a nightmare by users and bus drivers have been known to call the police to get vehicles moved and enable them to carry out their duties even though the offending vehicles are parked legally. Cycling along the road means placing your life in the hands of fate and children going to school along the road are already in danger without any added problems. The extra traffic that will be

¹⁰⁴ Doc 21

generated in this tight area is expected to enter and exit through the industrial estate which is very busy with lorries and other machinery.

130. Councillor Havard was part of the LDP Focus Group that voted against its inclusion in the DRLDP and he questioned the legality of it being included.

The Case for Mrs Wendy Lewis (speaking on behalf of Councillor Davies - deceased)

The material points are:

131. This is the residents' square mile with a strong sense of community. The countryside should be held in trust for children. It was Mrs Lewis's husband's last action to call a meeting and get a site visit. Allowing the appeal would open the floodgates to other developments and would impact on road safety with no plans to improve the road. There has been an inappropriate consultation on safety and the results do not reflect the experience of users.
132. It is topsy turvy to develop land that is not part of the LDP and it is not pessimistic to say that landscaping will not happen. The Council cannot help due to budget cuts, there has been 20% reduction in the resurfacing budget and photographs show that drainage does not work and that there are potholes¹⁰⁵.
133. The countryside is the residents' lungs and a breathing space for all including children, walkers, horse riders and dog owners. There are other sites available and the proposal would blight the countryside to profit a few.

The Case for Mrs Janet Davies

The material points are:

134. Mrs Davies has lived in the area for 42 years and agricultural land should be protected with brownfield land being built on first. Pandy Mawr Road is the settlement boundary with the countryside beyond and has always been that way and should remain so. The Public Right of Way through the site would be changed as walking through an estate is not the same as exists. The site is located next to the historic railway bridge and many visitors come to see this monument.
135. Council officers provide advice; the Council's members make the decision. Mrs Davies attended the site visit and was told at the meeting that objections were not a reason to refuse. The meeting was attended by many and there was a unanimous decision to refuse with one abstention. This was democracy in practice and the appeal should not be allowed.

The Case for Mr Lyndon Jones

The material points are:

136. Mr Jones has been a resident for 52 years and existing problems will be exacerbated by the development. There have been crashes and deaths on Pandy Road, congestion with a pinch point at Bedwas Bridge and pressure on existing routes, bus shelters used for parking, and rat runs created. Major developers put pressure on the Council and all

¹⁰⁵ Doc 22

proposals should be treated the same. An increase in business in Bedwas is not realistic with parking on yellow lines and car parks at full capacity. Businesses will not get more trade and it will go elsewhere.

137. The area has had more than its share of development and it is spreading Cardiff's problems into the valleys. Caerphilly is in a basin and development brings air pollution and more health issues.
138. The site is not poor agricultural land; it is used for silage and agricultural production.

The Case for Mr Phillips

The material points are:

139. The area is heavily congested with traffic despite road improvements over the years. Pandy Mawr Road is used by horses, walkers, bikers and children and is the only route to the top of the Cwm. Pandy Road to the east is a horrendous track and buses cannot pass legally parked cars. The industrial estate workers use Pandy Road for parking which obstructs other vehicles.
140. The transport survey is not accurate and would appear to have been carried out on different days to that recorded as an accident and hunt meet occurred during the survey period as demonstrated in another resident's photographs¹⁰⁶. It has to be questioned whether other data is accurate. (Local resident Mr Richards confirmed that he had taken the photographs referred to and provided copies for the Inquiry).

The Case for Mrs Phillips

The material points are:

141. It has been a long journey for the residents to try and save this beautiful piece of countryside. The residents could not afford expensive lawyers or commission reports on traffic flows but notified all the residents and organised a petition and spoke out with local knowledge. Local residents, local councillors, the MP and Assembly member supported the campaign and the planning application was refused. A previous LDP document has said that a development on this site would be an encroachment into the countryside and Pandy Mawr Road was a natural boundary to the settlement of Bedwas. The site is in a SLA and it is important to prevent beautiful countryside being covered in concrete, and local schools, health centres and roads becoming overcrowded.
142. The development would impact on the living standards of residents of Bedwas and should be refused.

Written Representations

143. Prior to the opening of the Inquiry, the Planning Inspectorate received responses to the Council's notification letter dated 10 March 2016. These were from Natural Resources Wales (NRW) and nine local residents. These letters are on the case file.
144. NRW reiterates its position at application stage and raises no objection subject to the imposition of a condition requiring tree retention in the interests of protected

¹⁰⁶ Doc 22

species. The local residents raise concerns in respect of the site being situated outside the settlement boundary on greenfield land and query why other brownfield land cannot be used. The proposal would result in increased traffic and parking and would lead to congestion and use of an inadequate road network. There would be increased pressure on local services such as schools and health care facilities. The proposal would set a precedent for further greenfield development and the democratic decision taken should be respected.

145. Responses received from consultees and other organisations at the application stage have also been taken into account and are on the case file. Summaries are included in the Council officer's report to committee¹⁰⁷. Dwr Cymru Welsh Water confirms that subject to conditions requiring the details of the foul water, surface water and land drainage to be agreed it has no objections. The Coal Authority requests that a condition be imposed requiring intrusive site investigation work to be undertaken prior to development as the coal mining legacy on the site potentially poses a risk to the development. Wales and West Utilities draw attention to the presence of gas main across the site. Gwent Police Designing out Crime Unit has no objection; however its Traffic Management Advisor comments on the need to restrict vehicle parking to one side of the highway to ensure the safe movement of vehicles along the highway. Bedwas, Trethomas and Machen Community Council objects on the grounds of increased traffic, congestion and the development of green belt land and Gwent Wildlife Trust issued a holding objection prior to further ecological information being provided and which was subsequently found to be acceptable by NRW.
146. The Council's Landscape Architect objects to the proposal on the basis of its visual impact and effect on the SLA unless there is an overwhelming need for residential development in this part of the borough. The Housing Officer draws attention to the need for affordable housing and the Council's policy Team Leader finds that on balance the need to deliver new housing overrides the site's location outside the settlement boundary and subject to conditions and Section 106 obligations concludes that the development of the site would be acceptable. The Council's Ecologist, Head of Public Protection, Head of Public Services, Countryside and Rights of Way Officer, Arboricultural Officer, Assistant Engineer and Highways Officer raise no objections subject to conditions and Section 106 requirements. Its Outdoor Leisure Development Officer requires the provision of play equipment and open space to be provided in the detailed layout.
147. Written representations received at the application stage have also been taken into account and are on the case file and include letters from Wayne David MP and the Welsh Labour Party. They are also summarised in the Council's committee report which records that there approximately 80 individual letters of representation and a further 3 petitions objecting to the proposal and comprising some 600 signatures. In addition to concerns raised at appeal stage and summarised above and those raised by interested persons at the Inquiry, the other main grounds of objection relate to the impact on biodiversity and wildlife; drainage and flooding issues; effects on the privacy of existing residents; noise and fume pollution; the inadequacy of the public transport system; and the lack of community facilities proposed in the development. One letter of support was also received.

¹⁰⁷ Doc 20

Conditions and Obligations

148. The main parties provided a list of draft suggested conditions during the Inquiry. Following discussion of these conditions at the Inquiry in the light of Circular 16/14 a revised list was submitted¹⁰⁸. That list comprises the basis of the schedule set out in Annex A of my report with amendments and refinements to align the conditions with the advice and model conditions in Circular 16/14 as discussed at the Inquiry.
149. Conditions 1 – 3 relate to the time periods for the submission of reserved matters applications and following discussion at the Inquiry the time periods have been reduced to address concerns regarding housing supply in the short term. The parties agreed that the reserved matters should be based on the indicative masterplan submitted with the application.
150. Condition 4 deals with the management of the construction work and conditions 5, 6 and 7 respond to the need to protect trees and to ensure that areas of public space are provided and managed. Conditions 8 and 9 ensure that improvements to Pandy Road are carried out in the interests of highway safety and that sustainable travel measures are implemented.
151. Conditions 10, 11, 12 and 13 respond to the ecological interests and the need to ensure that protected species and other species are mitigated for. Conditions 14, 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 and to ensure that any contamination and land stability risks are addressed. Conditions 18 and 19 are required to mitigate for noise impacts as required by TAN 11: Noise.
152. A duly signed Section 106 Agreement¹⁰⁹, dated 19 April 2016, was submitted at the Inquiry and provides obligations to provide 25% of the first 270 dwellings and 30% of over 270 and up to 300 dwellings as affordable housing. 70% of the provision would be social rented units and 30% would be low cost home ownership units. It also includes obligations to contribute £30,000 to traffic signal improvements at the A468/B4600 road junction, £50,000 towards travel plan initiatives, £5,000 for the travel plan reserve fund, £75,000 towards sustainable travel vouchers for new residents and £15,000 to fund a travel plan co-ordinator payable over 3 years.

¹⁰⁸ Doc 12

¹⁰⁹ Doc 13

CONCLUSIONS

153. 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. I consider that the main considerations upon which this decision should be based are:

- i) *whether the proposal would provide an appropriate site for housing having regard to planning policies that seek to control the location of new development;*
- ii) *the effect of the development on the character and appearance of the area with particular regard to its designation as a Special Landscape Area; and*
- iii) *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.*

Whether the proposal would provide an appropriate site for housing having regard to planning policies that seek to control the location of new development

154. The development plan comprises the LDP adopted in 2010 and plans for the period up to 2021. It is the relevant plan against which this application should be determined unless material considerations indicate otherwise [28, 88]. The appellant considers that the adopted LDP is outdated and superseded by virtue of the resolution of the Council to embark on a Replacement LDP [58, 59, 60, 61]. This resolution was made following the recognition in several AMRs that the LDP is failing to deliver a five year housing supply [13, 22, 43, 45, 90]. It is common ground that this is the case with the current housing land supply standing at 1.9 years [22, 43].

155. Nonetheless, and noting the view of the Council's Head of Regeneration and Planning [58, 94] it does not follow that the current LDP policies are automatically out of date or superseded. PPW is clear that a replacement plan will be justified where the existing plan is substantially out of date and/or (my emphasis) the scale of alterations necessary are fundamental [57, 92]. The provision of a five year housing supply is a fundamental component of an LDP and the alterations required to the LDP to address the identified shortfall are of a significant scale such as to be fundamental to the strategy and relevant policies of the plan and sufficient to justify a replacement plan.

156. The Plan was prepared in accordance with national planning policy set out in PPW. Whilst the Plan was prepared with regard to an earlier version of PPW, the general principles of the identification of settlement boundaries to manage new development remain [93, 94, 95]. PPW seeks to direct new development to the most sustainable locations and Paragraph 5.3.11 also provides for local non-statutory designations such as Special Landscape Areas (SLAs) to protect areas of landscape value. The LDP is consistent with these principles [93, 95]. It is neither out of date in its approach to the management of new development or superseded by changes to national policy.

157. This position is recognised in the AMRs [94]. Whilst they recognise the need to release appropriate greenfield sites in the short term and through the first review of the Plan, and which includes the need for the current Development Strategy to be reconsidered, they conclude that the LDP's basic strategy has been effective [13, 14,

22, 44, 45, 58, 64, 90, 93, 94]¹¹⁰. The latest AMR in 2015 (and those prior to this) have not identified any significant changes to national policy or legislation that directly affect the LDP's implementation and have concluded that substantial progress has been made over the Plan period. The AMRs recognise that the lack of a five year housing supply can be attributed to a downturn in the economy rather than a failing of the LDP itself¹¹¹. The Replacement Plan is being prepared on the same strategy as the adopted LDP in so far as the identification of settlement boundaries and landscape designations are concerned. The change relates to the number of allocations within the Plan and the need to release additional sites within the SCC area, some of which will be provided on greenfield land.

158. The Replacement LDP is yet to go through its Examination in Public. The parties agree that due to the stage of its preparation it should be given slight/modest weight and I concur with that view [65, 97]. The outcome of any suggested boundary changes or housing allocations should be properly considered through the examination process.
159. I conclude that the LDP remains the adopted development plan for the purposes of determining this appeal and I do not find that its policies are either outdated or superseded. The Council has referred to the decision of the Court of Appeal in *Suffolk Coastal District Council v Hopkins Homes Limited v Secretary of State for Communities and Local Government [2016] EWCA Civ 168* [99] in relation to the weight to be given to out of date policies. Given that I have found the LDP policies to be neither outdated or superseded the Court's judgement in this case is not of relevance to my consideration of this aspect of this particular appeal. It is a matter of fact that the appeal site lies outside the LDP's defined settlement boundaries [22] and there is no dispute between the parties that the appeal site fails to conform with the adopted development plan in this respect [28, 98, 108, 109, 111].
160. Notwithstanding this the appellant contends that examination of relevant policy SP5 reveals limited substantive conflict [33]. However I find that the proposal would conflict with criteria A and B as the proposal would fall outside the defined settlement boundary, the purpose of which is to define the area in which development would normally be allowed and to promote the full and effective use of urban land and concentrate development within settlements. This proposal would clearly do neither.
161. In respect of criterion C I do not consider that the proposal in itself would comprise ribbon and fragmented development nor would it result in the coalescence of settlements as it would be situated immediately adjacent to the settlement boundary and would retain a substantial gap. There was some difference of opinion at the Inquiry in respect of the definition of inappropriate development referenced in criterion D [39, 108]. Nonetheless, the LDP clearly identifies those types of development that are permitted within the countryside under its policy CW15 and which accords with national policy in allowing certain exceptional forms of development outside settlement boundaries. Residential development is not such a form of development. I find, therefore, that being a large scale housing development outside the defined settlement boundary, the express purpose of which is to direct development to within existing settlements, the proposal would comprise inappropriate development in the countryside.

¹¹⁰ Docs 7, 8, 9 & 10

¹¹¹ Recommendations, p 7, Doc 8

162. On this basis I conclude that the proposal would not provide an appropriate site for housing having regard to planning policies that seek to control the location of new development and would fail to accord with the adopted LDP and in particular policy SP5.

The effect of the development on the character and appearance of the area with particular regard to its designation as a Special Landscape Area

163. The appellant did not provide a Landscape and Visual Impact Assessment with the application. In response to the Council's second reason for refusal an assessment of the appeal site against the baseline LANDMAP evaluation, specific qualities of the SLA and a visual assessment were provided in the appellant's landscape witness's proof of evidence¹¹². The Council's landscape witness provided a Landscape and Visual Impact Assessment with his proof of evidence¹¹³. There was agreement at the Inquiry that the main viewpoints identified in both proofs of evidence were the key locations where the visual impacts of the proposal could be assessed but disagreement on the extent of the impacts [26, 51, 112].

164. I am satisfied that the information provided is sufficient to enable the potential landscape and visual impacts to be understood. Nonetheless it is accepted that the conclusions reached are to a certain extent open to individual opinion. My findings have been informed by the evidence before me, my visit to the site and viewpoints and from my own observations from other public vantage points.

165. The area in which the site lies comprises a sloping valley side on the northern/eastern side of the Rhymney Valley. LANDMAP summarises the landform as a mix of pastoral farmland in field enclosures and woodland blocks. Much of the area looks down on Caerphilly and across the valley giving it an open feel. The area is classified through the LANDMAP methodology as having an overall evaluation of high for its historic and cultural layers, moderate for its visual and sensory and landscape habitats layers, and outstanding and moderate for its geological layer¹¹⁴.

166. The site lies within an area that is designated as the North Caerphilly SLA within the LDP. The Council's statement of case suggests that the SLA was designated primarily on the basis of the clustering of outstanding and high evaluations within the geological, landscape habitat and cultural landscape aspect areas [51 and Doc CC3]. Nonetheless the adopted LDP identifies that the primary landscape qualities and features of the SLA relate to all aspect areas namely its cultural, landscape habitat, geological, visual and sensory and historic aspects [52, 102].

167. Policy SP10 of the LDP states that the Council will protect, conserve, enhance and manage the natural heritage of the Borough in the consideration of all development proposals within both the rural and built environment. Policy NH1 states that SLAs will be protected [10, 12]. The supporting text explains that SLAs are local non-statutory designations that seek to protect areas that exhibit distinctive features and characteristics and will be protected from development that harms these features and characteristics. The policy is not designed to preclude development but applicants will need to demonstrate that any development proposal will not have an unacceptable

¹¹² Doc LM3

¹¹³ Doc CC2

¹¹⁴ Docs LM3 & CC2

impact on the specific distinctive features or characteristics associated with the SLA. The policy approach is in general conformity with national policy¹¹⁵.

168. The appellant's landscape witness identifies those qualities and features of the SLA identified in the LDP¹¹⁶ that are present within the appeal site¹¹⁷ [52, 53]. The Council's evidence focusses on the visual aspects of the landscape. It was agreed at the Inquiry that the effects of the proposal on the cultural, historic and geological aspects were neutral and no objection has been raised on the effects on landscape habitats [51].
169. On the evidence before me I have no reason to disagree with the appellant's conclusions on which elements are present or not present on the appeal site. However I do not concur with the appellant's view that the commonality of features within the SLA should merit lesser weight being given to their importance [53, 54, 103, 114]. The SLA is an overall designation and the adopted policy requires consideration to be given to whether there would be an unacceptable impact on its primary features and qualities irrespective of their prevalence in the area.
170. In respect of the SLA's features and qualities [52, 53], the proposal would result in the loss of an area of improved grassland used for agricultural purposes and which has associated cultural influences. The public right of way through the site would be retained. Whilst the development would involve the loss of some areas of semi-improved grassland, marshy grassland, bracken and beech trees these areas are predominantly within the field margins and hedgerows. The master plan indicates that the perimeter field boundaries would be retained as part of the detailed layout and would also provide foraging for protected bats as identified in the appellant's Bat and Reptile Survey¹¹⁸. Whilst the master plan shows the internal field boundaries to be lost, an assessment of these hedgerows found them to be defunct [53] and of little value. The proposal would result in the loss of a small reptile population in the northern part of the site¹¹⁹ but mitigation is proposed through the relocation of such reptiles under a condition.
171. The historic landscape features and characteristics of the SLA are not evident on the site. I concur, therefore, with the appellant's view that the proposal would not have a material impact on the U shaped valley that forms the main geological feature due to the relatively small contribution that the appeal site makes to the geological form of the overall SLA.
172. I am satisfied that whilst the proposal would result in the loss of an area of improved grassland used for agricultural purposes and some field edge habitat this loss would not fundamentally impact on the SLA's overall specific distinctive cultural, landscape habitat, geological or historic features and characteristics.
173. Turning to the visual and sensory elements of the SLA, it is evident from the evidence before me and from my own observations on site and from the surroundings that the proposal would be visible from a number of locations within the area [54, 55, 56, 105, 112-116, 131, 133, 134, 141, 145, 146]. The views from the wider

¹¹⁵ Paragraph 5.3.11, PPW, Edition 8, January 2016

¹¹⁶ Appx DM3, Doc LM3

¹¹⁷ Table 3.2, Doc LM3

¹¹⁸ Doc 23

¹¹⁹ Doc 23

viewpoints illustrated through the appellant's Viewpoints 1 - 7 and the Council's viewpoints 1, 2, 3, 5, 6 and 7 provide, in the main, wide and panoramic views of the valley sides and floor. It is accepted that some of these viewpoints are taken from publicly accessible rights of way and common land and those likely to be pursuing outdoor pursuits in such a location would be highly sensitive receptors. Furthermore the Council's Viewpoint 2 is illustrative of the Energlyn Park housing estate and residents would be sensitive to changes in the outlook from their homes. The Council's landscape witness concludes that the significance of the effects to residents in Energlyn Park would be substantial/moderate which represents an importance at a regional or district level [54, 55]. He found the overall change to the landscape character to be moderate/minor adverse [51].

174. From my observations, the wider views are not of open, undeveloped countryside. They comprise a mixture of high density urban development on the valley floor and sides surrounded by a predominant patchwork of agricultural fields interspersed with trees and hedgerows, rising to the more open, wooded and less cultivated slopes of the upper valley sides and tops.
175. The appeal site comprises a part of the pastoral farmland in field enclosures that feature in the SLA and it makes a contribution to the overall form of the open rolling valley. Nonetheless it is a very small element in the wider valley landscape and is situated to the immediate west of the developed settlement of Bedwas. Its development would have a visual relationship with the housing development to the east and the industrial development to the south. Whilst part of the development would project further to the west than the Bedwas House Industrial Estate, development south of the A468 and the designated GW, including the Gallagher Retail Park, extends further west and beyond the proposed western boundary of the appeal proposal.
176. In this context the proposal would not visually project out into the open countryside when viewed from the wider surrounds and would be visually related to the existing development in the valley. Those using the public rights of way and common land for recreation and those in residential properties, particularly some distance from the site, would not perceive the proposal as a completely alien feature in the landscape due to its already heavily developed nature.
177. Representation has been made that the proposed development would not have a defensible boundary to the west [110, 123, 141]. However it is evident that there are existing hedgerows to the west, albeit somewhat weak in places. Given the visual relationship with the surrounding development I do not find this to be a compelling reason to resist development. Nonetheless the existing hedgerows could be strengthened and consolidated through the landscaping requirements of a reserved matters application. Any future additional development in the vicinity of the appeal site would be the subject of further applications that would be considered on their own merits and do not affect consideration of this particular proposal.
178. In my assessment the effects of the development on the character and appearance of the wider landscape would not be substantial or of regional or district significance. In view of the scale of the landscape and distances to sensitive receptors the effect would be at worst minor adverse.
179. The intrinsic character of the site itself and its immediate surrounds would inevitably be completely and irreversibly changed by the proposed development. The appellant's

Viewpoint 8 and Council's Viewpoint 4 are representative of such views. The appearance and visual amenities of the area when viewed from the section of public right of way that crosses the site, from the disused railway line to the north, from Pandy Mawr Road and Pandy Lane and properties backing onto Pandy Mawr Road would be significantly changed. In the Council's landscape witness's view the effects to views represented by Viewpoint 4 would be of substantial significance [54].

180. It is evident that the views experienced would no longer be of a tranquil countryside scene. However, these routes are relatively short sections of a much wider network of paths and lanes along which users would have an experience of contrasts, ranging from undeveloped open countryside to developed industrial and housing areas. The negative impact on those sections of the routes that currently experience a countryside outlook would be negligible considering the appearance and visual amenities of the overall footpath network within the area. Whilst there would be considerable impacts to those sections of the routes that traverse through or immediately around the perimeter of the site I find these to be of local significance rather than of a regional or district level; in my assessment such impacts would be at worst moderate in significance.
181. I noted on my site visit that there is a substantial belt of mature trees fronting Pandy Mawr Road. This would provide a natural screen between the elevations of properties backing onto or facing Pandy Mawr Road and the development. The hedgerow on the western side of Pandy Mawr Road is also shown for retention on the master plan. Whilst residents' outlook would inevitably be changed this natural screen would soften such an impact to a degree that I find satisfactory. I am also satisfied that any potential for overlooking could be controlled through any subsequent reserved matters application [54, 55, 114, 115, 131, 133, 134, 142, 147]. Again, I consider such effects to be very localised and moderate in significance.
182. I acknowledge that the proposal would clearly be an additional built element in the landscape. However, I do not find that it would fundamentally alter its overall character given the mix of developed and undeveloped land and the relationship of the site with the existing built form. I find that the proposal would have a moderate impact on the immediate appearance and visual amenities of the area but would have a minor impact on the overall landscape character.
183. I do not find that this moderate/minor impact would represent an unacceptable impact. As such the proposal would conserve the unique and distinctive features and characteristics of the natural heritage of the County Borough which policies CW4 and SP10 recognise as being essential to protecting, conserving, enhancing and managing the valuable features of the natural and built environment.
184. I conclude that the proposal would not be in conflict with the LDP and in particular the relevant policies SP10, NH1 and CW4 of the LDP.

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.

185. I have found above that the proposal would not be in accord with policy SP5 due to its location outside the defined settlement boundary [162]. All decisions are required

to be made in accordance with the development plan unless other material considerations indicate otherwise¹²⁰. It is to those matters that I now turn.

186. The Council cannot currently demonstrate a 5 year housing supply and has been unable to do so since the LDP was adopted [13, 22, 43, 45, 90]. The latest Joint Housing Land Supply Study (JHLAS) concluded that there is a current housing land supply of 1.9 years [22, 43]. TAN 1 states that the housing land supply figure should be treated as a material consideration in determining planning applications for housing and where the current study shows a land supply below the 5 year requirement the need to increase supply should be given considerable weight provided the development would otherwise comply with development plan and national planning policies.
187. Whilst the proposal does not accord with the development plan in so far as it relates to development outside defined settlement boundaries [28, 98, 108, 109, 111] the considerable shortfall in housing supply should be given substantial weight and weighs heavily in favour of the proposal.
188. Furthermore, the Council has made a decision to replace the LDP with a new one which will include the allocation of greenfield sites, particularly in the SCC, to meet its acute housing needs. The appeal site has been included as a housing allocation in the DRLDP and the plan was out for consultation at the time of the Inquiry on this basis [14, 22]. Whilst it is agreed with the main parties that the DRLDP can be given little weight until it has been through its Examination [65, 97] it clearly identifies the Council's need to release greenfield land, the location of the SCC as an area for growth and the role the appeal site would have in that strategy. I acknowledge the Council's position that the allocation has only been included in the light of this appeal and for transparency reasons [14, 65, 99, 120]. Nevertheless, it remains the case that the professional officers of the Council recommended the inclusion of the site as it meets the preferred strategy and is considered to be an acceptable site for development [14, 65, 93].
189. Notwithstanding this, the delivery agreement for the Replacement LDP indicates that adoption will not take place until, at the earliest, October 2017 [14, 46, 117]. Even if adopted at that time, allocations within the plan would need to gain consent and would not be able to be delivered until somewhat later than that date. The AMRs have identified that greenfield sites should be released at an earlier stage than the adoption of the Replacement LDP to address an existing and likely to be continuing significant shortfall in housing supply [45]. The appeal proposal has the potential to be delivered at an early stage and the appellant explained at the Inquiry that preliminary investigative work was progressing and a considerable amount of up front detailed work had already taken place in anticipation of a successful appeal outcome. Agreement was given that a condition could be imposed to require reserved matters applications and implementation earlier than the standard time frames.
190. I note the Council's and residents' representations that consideration of whether this site should be developed should be through the LDP process and that to grant permission now would be premature [120, 122, 123, 130, 132, 144]. National policy is clear that refusal on the grounds of prematurity will not usually be justified except in cases where a development proposal goes to the heart of the plan and is individually or cumulatively so significant that to grant permission would predetermine decisions

¹²⁰ Section 38(6) Planning and Compulsory Purchase Act 2004

about the scale, location or phasing of new development which ought properly to be taken in the LDP context¹²¹. I do not consider that the provision of 300 houses in the context of a need for 12,400 homes is of a scale that goes to the heart of the emerging LDP. The use of this greenfield site in the SCC would be consistent with the overall approach to housing provision set out in the DRLDP and I do not find that the proposal would be prejudicial to the emerging LDP.

191. The proposal would also provide a significant proportion of the development as affordable housing with 25% of the first 270 houses and 30% above this being offered as affordable homes. The 2015 Local Housing Market Assessment identifies the Bedwas, Trethomas and Machen ward as having the highest requirement for affordable housing [44] and the proposal would make an important contribution to the identified need for affordable housing provision in the locality. The Council has not objected to the proportion of houses to be provided as affordable homes and I have no reason to disagree with the proportion and split between low cost home ownership and rental units offered [20, 152].
192. The site lies in a sustainable location situated adjacent to the western boundary of Bedwas and in close proximity to public transport, services and facilities. The main parties are in agreement that the proposal would contribute towards the economic and social dimensions of sustainability [23]. I concur with this view. Whilst I acknowledge residents' concerns that public transport is poor [125, 147], on the evidence before me I am satisfied that the proposal would be served by a regular bus service in close proximity to the site, with additional services being planned. It is located adjacent to a proposed cycle route, provision would be made for a Travel Plan and measures for sustainable travel through a voucher scheme would be provided with further contributions to be made towards travel plan initiatives [66, 76, 152]. These measures would encourage non car use and contribute towards more sustainable travel means. I have had regard to the decision relating to the Churchlands development in this respect and my findings are consistent with that decision [76]. The site is also located in close proximity to local services and facilities in Bedwas and Caerphilly reducing the need to travel.
193. The proposal would clearly result in the loss of an area of agricultural land. It was clarified at the Inquiry that whilst the Agricultural Land Classification identifies part of the site as grade 3a land (best and most versatile land) the Welsh Government has since confirmed that the climate data limits the site to grade 3b at best¹²² [71, 72, 106]. I have no reason to disagree with this assessment and I am satisfied that the proposal would not result in the loss of the best and most versatile land.
194. The site does contain sandstone and coal minerals resources that are safeguarded in the LDP [9, 70, 106]. However, due to the proximity to the settlement area I am satisfied that any excavation of these resources would be likely to be unacceptable taking into account the buffer zones for such extraction defined in Minerals Technical Advice Notes 1 and 2.
195. I have found that the proposal would be acceptable in landscape terms and would be well related to the existing settlement area. With regard to the sustainability

¹²¹ Paragraph 2.8.2, Planning Policy Wales, Edition 8, January 2016

¹²² Welsh Government Email 24 July 2015

objectives set out in paragraph 4.4.3 of PPW I am satisfied that the proposal would substantially meet these objectives and would achieve sustainable development.

196. I conclude that the proposal would provide much needed housing and affordable housing and would meet the short term need to address the considerable shortfall in housing supply in advance of the adoption of the Replacement LDP. The site lies in a sustainable location, would not utilise the best or most versatile agricultural land and would not prejudice future mineral supply. In my assessment the proposal would not cause unacceptable effects to the character and appearance of the SLA or area. There is an overriding need for the development and I find that this outweighs the conflict with the development plan described above.

Other Matters

197. A considerable amount of representation was received on highway grounds [124, 125, 128, 129, 131, 136, 139, 140, 141, 144, 145, 147]. The application was accompanied by a Transport Assessment which was reviewed by the Council's professional advisors Parsons Brinckerhoff. The Council did not raise a highway objection to the proposal [23, 24] and did not submit evidence on highway grounds to the Inquiry.

198. I have concluded above that the appeal site lies within a sustainable location in respect of its proximity to non-car modes of travel and accessibility to local services and a suite of measures to encourage sustainable travel are included in the proposals [192].

199. In respect of highway safety, the Transport Assessment was carried out using recognised data and methodology and was agreed between the parties as an acceptable basis for carrying out the assessment [73]. A further survey was carried out in respect of parking in Pandy Road and the appellant's highways witness undertook a survey in respect of the respective journey times between Ystrad Mynach and Bedwas using both Pandy Road and via the A468/A469 [77, 81]. It was confirmed at the Inquiry that this was carried out in both a southerly and northerly direction [81]. I note residents' concerns that surveys were not robust and were carried out selectively in respect of traffic and timing [77, 80, 124, 128, 131, 140]. However, I am satisfied that the assessments and surveys were carried out using recognised and accepted methodology and provide sufficient information to understand the potential highway impacts of the development.

200. In respect of the impacts of the proposal on the immediate highway network, the details of the proposed access onto Pandy Road would be the subject of a reserved matters application. Nonetheless from the master plan and indicative access plans in the Transport Assessment and from my own observations on site, I am satisfied that an appropriate means of access with acceptable forward visibility in both directions would be achieved from/onto Pandy Road. Pandy Road has pavements to both sides and on the evidence before me would be of sufficient width to provide an acceptable pedestrian link to local public transport, services and facilities in the area for all users.

201. Pandy Road averages approximately 7 metres in width with additional parking bays provided [75]. The evidence before me and my observations on site show that on street parking occurs on Pandy Road some of which takes place close to the site and near the Bedwas House Industrial Estate [77, 129, 136, 139, 144]. Whilst I note concerns that the width is restricted by this parking I have little conclusive evidence

before me that this results in any significant obstruction. I note the occasions where the hunt parking and an accident referred to in the residents' submissions caused some difficulties [140]; however on the evidence before me these are not regular occurrences. Such obstructions would be matters for the highways authority and parking would be provided within the new development for residents negating the need for further on street parking on Pandy Road. I note the comment from Gwent Police that there is a need to restrict vehicle parking on one side of the highway and that this would be secured through a Traffic Regulation Order [77, 145]. Nonetheless this appears to relate primarily to the existing situation and on the evidence before me I do not find that the proposed development would make any material difference to any parking and obstruction difficulties experienced in Pandy Road.

202. The Transport Assessment confirms that whilst inevitably there would be additional traffic using the local highway network there is adequate capacity both on the roads and at junctions to absorb the additional trips generated [73]. It was confirmed at the Inquiry that even if the assumptions in the Transport Assessment were incorrect in relation to trip generation and routes that the highway network and junctions would have the capacity to accommodate the additional traffic¹²³. Two junctions were identified as likely to be at capacity in the future scenario of 2030; the Bedwas/Greenway junction and two arms of the Bedwas roundabout. Improvements would be carried out at the Bedwas/Greenway (A468/B4600) junction through the installation of the MOVA traffic light system that optimises traffic signals in response to the balance of traffic flow at each arm of the junction. This would be secured through a planning obligation [24, 74, 152]. Further improvements would be secured to the Bedwas roundabout under the Council's agreed Community Infrastructure Levy¹²⁴.
203. I acknowledge concerns relating to the use of Pandy Road/Lane as a cut through to Ystrad Mynach [81, 124, 136, 144]. However, the survey carried out by the appellant's highway witness suggests that the route is not significantly quicker than using the A468/A469 and would therefore not necessarily encourage more users. Whilst I accept from my own observations that a certain amount of traffic uses this route during peak hours, I have no convincing evidence before me that the relatively small increase in additional traffic from the proposed development along this road would result in any increase in risk to highway safety.
204. Reference has been made to accidents in the vicinity [79, 124, 136, 140, 144]. On the evidence before me these were not directly related to the highway conditions [78, 79, 80, 82]. I have no reason to believe that the proposed development would give rise to any additional highway safety concerns.
205. I concur with the appellant's highway witness that it is not the role of the planning system to protect the convenience of the car user, but to rather seek to encourage non – car use through sustainable travel measures [76]. The appellant has included a number of examples in his proof of evidence¹²⁵. As I have found above the proposal includes a number of such measures and I note the Churchlands decision that supported such an approach¹²⁶. Overall I am satisfied that the proposal would not give rise to any significant increase in risk to highway safety.

¹²³ Inspector's question to Mr Thomas

¹²⁴ Doc 24

¹²⁵ Doc LM4

¹²⁶ PINs ref: APP/ Z6815/A/14/2224216

206. Most other concerns raised by local residents, local groups and organisations have already been addressed under the main considerations or through recommended conditions [122 - 147]. The relevant statutory advisors in relation to sewage, drainage and biodiversity have raised no objections subject to appropriate conditions [144, 145]. Issues relating to flooding are noted [124, 147]; however the site lies largely within a Flood Zone A where flood risk is low and the reference to a flooding event by a resident was confirmed to be the result of a poorly maintained drain [67]. Concerns relating to air quality are noted [137, 147] but I have no conclusive evidence before me that the proposal would give rise to any additional air quality concerns.
207. An assessment of the effect of the proposal on heritage assets, namely the Grade II* listed building and scheduled ancient monument Bryngwyn Colliery Engine House and Grade II listed Pandy Mawr railway bridge was provided in the appellant's landscape witness's proof¹²⁷. I have taken into account the need to have special regard to the desirability of preserving the buildings or their settings as required by Section 66(1) of the (Listed Buildings and Conservation Areas) Act 1990.
208. The Bryngwyn Colliery Engine House is situated within the residential estate some 150 metres to the east of the appeal site. The surrounding residential estate and the distance from the appeal site result in there being very little intervisibility between the appeal site and the listed building. The setting of the listed building is already heavily influenced by its proximity to a housing development. I concur with the findings of the heritage assessment that the building and its setting would be preserved by the appeal proposals.
209. The Pandy Mawr Railway Arch is located approximately 140 metres to the north east of the appeal site. Pandy Mawr Road passes under the arch with the former railway line that it originally supported being elevated above the surroundings. The embankment and area surrounding the arch is heavily wooded and there is no intervisibility with the arch from within the appeal site, the arch being divorced from the site by a paddock, stables and manege. I am satisfied that the proposal would not harm the building or its setting and note that the Heritage Assessment reaches a similar conclusion.
210. Concerns regarding health and education facilities already being at capacity are noted [126, 141, 144, 147]; however I have no evidence before me to substantiate these concerns. Nonetheless, I note that the Council would seek contributions under its Community Infrastructure Levy towards social infrastructure including education, community facilities and leisure facilities and which would be beneficial in providing additional facilities in the locality to serve the development.¹²⁸
211. I have had regard to three cited appeal decisions [35, 63, 76, and Appx 10, Doc CC1]¹²⁹. I note that all three relate to different development plans, at differing stages and the cases relate to proposals with their own particular and contrasting sets of circumstances, two of which relate to GW and green barrier issues. I do not find that the considerations in relation to the particular circumstances of the appeal LDP and the designations relating to the appeal site are directly comparable. Matters relating to GW

¹²⁷ Doc LM3, Appx DM2

¹²⁸ Docs 20 & 24

¹²⁹ PINs ref: APP/Z6815/A/14/2224216; PINs ref: APP/H6955/A/15/3138885 & Ack of Service of litigation PINs ref: APP/Z6950/A/15/3010121

and green barriers are afforded different considerations in national policy to those applicable to local designations such as SLAs. As such these decisions do not alter the balancing of issues and conclusions that I have reached in the particular context of this appeal.

Conditions and Obligations

212. In the event that Welsh Ministers decide to allow the appeal, I agree that the conditions set out in Annex A would be necessary and reasonable for the reasons set out above and would satisfy all the tests set out in Circular 016/2014 [148 -151].
213. The Council suggested further conditions setting out the required visibility splay for the new access into the site and requiring off street parking to be provided in accordance with the Council's adopted supplementary planning guidance relating to car parking standards. The appellant did not consider the latter condition to be necessary given that the details of parking provision would be the subject of a reserved matters application. I concur with this view and find such a condition to be neither reasonable or necessary. I similarly find that a condition defining the required visibility splay to be unreasonable and unnecessary given that this would be required under a subsequent reserved matters application relating to the means of access.
214. I consider that the obligations are necessary, are related to the proposed development and 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. Further contributions including one to secure improvements to the Bedwas roundabout would be sought under the Council's agreed Community Infrastructure Levy. Accordingly the Section 106 Agreement should be afforded weight in the determination of the appeal.

Overall Conclusions

215. A decision on the appeal is required to be made in accordance with the development plan unless material considerations indicate otherwise. The LDP is the development plan.
216. Whilst the failure of the current plan to provide a five year housing supply is acknowledged and the Council is embarking on Replacement LDP to address this failure, I find that the relevant policies to this appeal within the adopted LDP remain in accordance with national policy in respect of defining settlement boundaries and providing local non-statutory designations such as SLAs. As such I consider that the policies are neither outdated nor superseded. The Replacement LDP provides the proper process for considering changes to settlement boundaries or local natural heritage designations and can be given little weight given its current position.
217. The Council cannot demonstrate a five year housing supply. The need to increase supply should be given considerable weight where the proposal would otherwise comply with development plan and national planning policies.
218. The proposal fails to accord with the adopted development plan as the proposal would constitute a housing development outside the defined settlement boundaries (LDP policy SP5). Nonetheless I have found that the proposal would not have an unacceptable impact on the specific distinctive features and qualities of the SLA or on its overall integrity and would not conflict with development plan policies that seek to

protect, conserve, enhance and manage the valuable features of the natural and built environment (LDP policies SP10, NH1 and CW4).

219. The proposal would also constitute sustainable development being located in close proximity to the settlement boundary with its range of services and facilities and would be in close proximity to public transport. The proposal also includes a number of sustainable travel measures. In the particular circumstances of this case I find the contribution to the supply of housing, including affordable housing, in a sustainable location to be material considerations that outweigh the conflict with the development plan.
220. I have taken into account all information submitted to the Inquiry. I have also taken into account the Section 106 Agreement and accord it significant weight [152]. I have considered the conditions that should be applied to a grant of planning permission and have set out a list of recommended conditions at Annex A.
221. I have taken into account all other matters raised, but find none that would lead me to a different conclusion. I conclude that the appeal should be allowed and planning permission be granted subject to conditions.

Recommendation

222. For the reasons above I recommend that the appeal be allowed, and planning permission granted subject to the conditions set out in Annex A.

Vicki Hirst

INSPECTOR

List of Documents Referenced in Report

Reference	Description
LM1	Mr T Gent – Summary, Proof of Evidence & Appendices – March 2016
LM2	Mr T Gent – Rebuttal Notes – March 2016
LM3	Mr D McInerney – Summary, Proof of Evidence & Appendices – March 2016
LM4	Mr M Thomas – Summary & Proof of Evidence – March 2016
LM5	Statement of Common Ground - March 2016
CC1	Mr O Griffiths – Proof of Evidence - March 2016
CC2	Mr Crandon – Proof of Evidence – March 2016
CC3	Caerphilly County Borough Council Statement of Case
CC4	Parsons Brinckerhoff Technical Note – Transport Assessment Review Issued 23rd April 2015
1	Illustrative Master Plan submitted with application
2	Transport Assessment, January 2015
3	Indicative Priority Junction Access into site
4	Proposed Pedestrian Improvements to Pandy Road
5	Caerphilly County Borough Council EIA Screening Opinion
6	Caerphilly County Borough Council Decision Notice. Dated 8 th October 2015
7	Caerphilly County Borough Local Development Plan up to 2021. Annual Monitoring Report – 2012. Monitoring Period 1 st April 2011 to 31 March 2012
8	Caerphilly County Borough Local Development Plan up to 2021. Annual Monitoring Report – 2013. Monitoring Period 1 st April 2012 to 31 st March 2013. Approved 8 th October 2013.
9	Caerphilly County Borough Local Development Plan up to 2021. Annual Monitoring Report – 2014. Monitoring Period 1 st April 2013 to 31 st March 2014. 7 th October, 2014
10	Caerphilly County Borough Local Development Plan up to 2021. (Adopted 23 November 2010) 4 th Annual Monitoring Report 2015. Covering the period 1 st April 2014 to 31 st March 2015. October 2015

11	Design and Access Statement submitted with application. January 2015
12	Agreed Draft List of Conditions
13	Completed Section 106 Agreement. Dated 19 th April 2016
14	Application Number 15/0412/OUT – Officer Report. Dated 22.06.2015
15	Application Number 15/0567/OUT – Officer Report
16	Extended Phase 1 Habitat Survey, 24 October 2014
17	Acknowledgement of Service, Taylor Wimpey v Welsh Ministers and Vale of Glamorgan Council, 4 April 2016
18	Welsh Government E-mail, Agricultural Land Classification, 24 July 2015
19	Mr Thomas’s Revised Table 4.3 – Pandy Road Journey Time Summary, 13 April 2016
20	Officer’s Report to Committee 19.01.2015
21	Residents’ Photos of Flooding
22	Residents’ Photos of Traffic/Parking in Pandy Road
23	Bat and Reptile Survey Report, 16 June 2015
24	Community Infrastructure Levy – Replacement Regulation 123 List of Infrastructure, November 2015 & Charging Schedule, July 2014

List of Documents Received at the Inquiry

Reference	Description
I1	Appeal Notification and Press Advert
I2	List of Attendance on behalf of Appellant
I3	Opening Statement on behalf of Appellant
I4	Opening Statement on behalf of Caerphilly County Borough Council (dated 12 th April 2016)
I5	Emails relating to highways response June 2015
I6	Housing Land Supply Background Paper, March 2016
I7	Parsons Brinckerhoff Technical Note – Transport Assessment

	Review Issued 23rd April 2015. (Doc CC4 above)
I8	Policy NH1
I9	Details of Parking Survey
I10	Plan of Location Junction Counts
I11	Table 10 – Vectos Response to Parsons Brinckerhoff Note (previous version unreadable)
I12	Residents’ Photos of Flooding (Doc 21 above)
I13	Residents’ Photos of Traffic/Parking in Pandy Road (Doc 22 above)
I14	Written Statement of Mrs D Phillips
I15	Written Statement of Councillor Havard
I16	First List of Draft Conditions
I17	Mr Thomas’s Revised Table 4.3 – Pandy Road Journey Time Summary, 13 April 2016 (Doc 19 above)
I18	Parking Survey Scoping Emails
I19	Vectos Further Response to Parsons Brinckerhoff Note in respect of junctions
I20	Draft Section 106 Agreement
I21	Community Infrastructure Levy – Replacement Regulation 123 List of Infrastructure, Approved 17 November 2015 takes Effect From 18 November 2015 & Charging Schedule, Takes effect From 1 st July 2014 (Doc 24 above)
I22	Welsh Government E-mail, Agricultural Land Classification, 24 July 2015 (Doc 18 above)
I23	Acknowledgement of Service, Taylor Wimpey v Welsh Ministers and Vale of Glamorgan Council, 4 April 2016 (Doc 17 above)
I24	Completed Section 106 Agreement (Doc 13 above) Dated 19 th April 2016
I25	Claim Form Submitted to the Court in case of Taylor Wimpey PLC and Welsh Ministers and the Vale of Glamorgan Council dated 11 th March 2016
I26	Agreed Draft List of Conditions (Doc 2 above)
I27	Closing Submissions on behalf of Caerphilly County Borough Council dated 19 th April 2016
I28	Court of Appeal Judgement – Suffolk Coastal DC v Hopkins

	Homes Ltd v SoS [2016] EWCA Civ 168. Dated 17 March 2016
I29	Closing Submission on behalf of Appellant

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. The reserved matters shall follow the principles, parameters and objectives of the indicative masterplan (plan reference G1334, Rev E).
2. Any application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
3. The development shall begin either before the expiration of three 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.

Construction Method Statement

4. No development shall commence 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:

- a) the parking of vehicles of site and operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) construction traffic routes;
- e) temporary facilities for staff and welfare;
- f) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
- g) wheel washing facilities;
- h) measures to control the emission of dust and dirt during construction;
- i) a scheme for recycling/disposing of waste resulting from the construction works; and
- j) hours of working and deliveries

Tree Protection

5. The details required under Condition 1 shall include an Arboricultural Method Statement and Tree Protection Plan which shall include:

- a) all site instructions and prohibitions necessary to the success of the Tree Protection Plan;
 - b) a programme for arboricultural supervision and monitoring;
 - c) a programme for any pre-development access facilitation works; and
 - d) the requirements for any contractors engaged to provide such services.
- This plan shall be agreed in writing with the local planning authority and thereafter all works shall be undertaken in accordance with the agreed details.

Landscaping and Open Space

6. The details required under Condition 1 shall include the provision of formal play equipment within the site area. The details shall be submitted to and approved in writing by the local planning authority and thereafter implemented and retained in accordance with the approved details.
7. A landscape management plan, including management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any of the dwellings on the site. The landscape management plan shall be carried out as approved.

Access

8. Prior to the occupation of the first dwelling, a travel plan shall be submitted to and approved in writing by the local planning authority and shall thereafter be implemented in accordance with any timescales contained therein.

9. Prior to the commencement of development a detailed scheme to improve Pandy Road through the provision of features set out within Figure 5.2 of the submitted Transport Assessment (January 2015) shall be submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved and no dwellings shall be occupied until the scheme has been completed.

Ecological Mitigation

10. Prior to the commencement of development, including site/vegetation clearance a detailed methodology for the capture and relocation of reptiles on site including details of the receptor site, shall be submitted to and approved in writing by the local planning authority. The works shall be carried out as approved.
11. Prior to the commencement of development a light mitigation strategy, including measures to ensure that street lighting and security lighting reduces light spillage into foraging habitats for bats, shall be submitted to and approved in writing by the local planning authority. The lighting shall be carried out as approved.
12. Prior to the commencement of development, a plan showing details of the provision of roosts and a means of access for bats in the development shall be submitted and approved in writing by the local planning authority. The works shall be carried out and retained as approved.
13. Prior to the commencement of development, details of the provision of nesting sites for bird species (house sparrow, house martin, starling, swallow and swift) in the development shall be submitted to and approved in writing by the local planning authority. The works shall be carried out and retained as approved.

Drainage, Contamination and Ground works

14. The details required under Condition 1 shall include a scheme for the drainage of foul, land and surface water at the site. The details shall be submitted to and approved in writing by the local planning authority. The works shall be carried out and retained as approved.
15. The details submitted under Condition 1 shall incorporate the recommendations contained in the Flood Consequences Assessment prepared by Marsden Associates, December 2014 to provide finished ground floor levels above adjacent ground levels.
16. Prior to any soils or hardcore that do not fall within the green category set out in Table 2 of the Welsh Local Government Association's document "Requirements for the Chemical Testing of Imported Materials for Various End Uses and Validation of Cover Systems 2013" are brought onto site, a scheme for their

importation and testing for contamination shall be submitted to and agreed in writing with the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.

17. Prior to the commencement of development, the intrusive site investigation works shall be undertaken in accordance with the recommendations of the Desk Study and Geotechnical Report submitted with the application. In the event of the site investigation works confirming the need for remedial works to treat areas of shallow mine workings to ensure the safety and stability of the proposed development these works shall be undertaken prior to the commencement of the residential elements of the scheme hereby approved.

Noise Mitigation

18. All properties located below (to the south of) the blue line shown on the annotated masterplan in Appendix C of the Environmental Noise Survey submitted with the application shall be fitted with double glazed windows and acoustic trickle vents on windows facing Pandy Road prior to the occupation of any of those properties.
19. The details required under Condition 1 shall include the means of enclosure of all gardens backing onto Pandy Road. They shall be submitted to and approved in writing by the local planning authority and thereafter implemented concurrently with the development.