



Ein cyf/Our ref: qA1408568

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5 March 2020

Dear Mr John

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
OUTLINE APPLICATION BY LLANMOOR DEVELOPMENT CO LTD. FOR RESIDENTIAL  
DEVELOPMENT AND ASSOCIATED HIGHWAY ACCESS, PROVISION OF AN ON-SITE  
SCHOOL AND ANCILLARY USES AND WORKS ON LAND AT YSTRAD BARWIG ISAF  
FARM, CROWN HILL, LLANTWIT FARDRE. APPLICATION REF: 18/0872/13.**

1. Consideration has been given to the report of the Inspector, Hywel Wyn Jones BA (Hons) BTP MRTPI, who held a hearing in respect of your client's planning application, local planning authority reference 18/0872/13.
2. On 11 March 2019, in accordance with Section 77 of the Town and Country Planning Act 1990 ("the 1990 Act"), the planning application was called in for decision by the Welsh Ministers. Under the provisions of the Government of Wales Act 2006, the power to determine applications under Section 77 of the 1990 Act has been transferred to the Welsh Ministers, these functions have been exercised by me as Minister for Housing and Local Government.
3. In exercising their functions, as part of carrying out Sustainable Development in accordance with the Well-being of Future Generations Act ("the FG Act 2015"), section 2 of the Planning (Wales) Act 2015 requires the Welsh Ministers, as a public body, to ensure the development and use of land contributes towards improving the economic, social, environmental and cultural well-being of Wales. In order to act in this manner, the Welsh Ministers have taken into account the ways of working set out in section 4 of "SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance on the Future Generations Act 2015" through examination by way of a hearing.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

4. The Inspector held a hearing on 12 November 2019 and made site visits on 11 and 13 November 2019. The Inspector recommends planning permission be granted for the scheme, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, relate to the IR.

### **Inspector's conclusions**

5. The Inspector considers the main considerations to be (IR 75) :
  - (i) whether the proposed development is justified in a C2 flood zone with particular reference to TAN 15 and policies AW 2 and AW 10 of the Rhondda Cynon Taff County Borough Local Development Plan (LDP);
  - (ii) whether the proposal would provide an appropriate site for housing having regard to planning policies that seek to strictly control new development outside of settlement boundaries; and
  - (iii) whether there are other material planning considerations that would justify granting planning permission with particular regard to housing supply and the sustainable credentials of the development.

### Flooding

6. The IR refers to policies AW2 and AW 10 of the LDP. Policy AW2 "Sustainable Locations" states development proposals will only be supported in sustainable locations and criterion 5 of the policy defines sustainable locations as sites that do not permit highly vulnerable development and Emergency Services within the C2 floodplain; only permitting development in zone C2 if it meets justification tests and the potential consequences of a flooding event have been considered and found acceptable. Policy AW 10 relates to environmental protection and public health, it states proposals will not be permitted where they cause or result in a risk of unacceptable harm to health and/or local amenity because of, amongst other matters, flooding, unless measures can be taken to overcome any such significant adverse risk.
7. The Inspector notes Planning Policy Wales Technical Advice Note 15: Development and Flood Risk (TAN 15) seeks to avoid development in areas at risk of flooding. Whilst the scheme has been designed to ensure there would be no highly vulnerable development within the C2 zone, there would be other development within this zone. The proposed main estate road and bridge linking the two housing areas, sections of internal roads and combined footway/cycleways would all be within the C2 zone. TAN 15 expects development in zone C to only be permitted if it is justified in terms of the criteria in paragraph 6.2 of the TAN (IR 76).
8. Paragraph 6.2 of TAN 15 states that development, including transport infrastructure will only be justified in zones C1 or C2 if it can be demonstrated that :
  - (i) its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; **or**,
  - (ii) its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;

**and,**

- (iii) it concurs with the aims of PPW and meets the definition of previously developed land; and,
  - (iv) the potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 7 and appendix 1 found to be acceptable.
- 9. Having considered the tests in paragraph 6.2 of TAN 15, the Inspector concludes the site does not constitute previously developed land for the purposes of criterion (iii) and, therefore, cannot satisfy the justification required by paragraph 6.2. However, the Inspector then considers the other elements of the test to establish the degree of non-compliance (IR 77).
- 10. The Inspector considers the site concurs with the aims of Planning Policy Wales (PPW) and meets the first part of criterion (iii) (IR 78).
- 11. Regarding criteria (i) and (ii), the Inspector considers the scheme fails to satisfy the relevant tests as both limbs require the location of development in zone C to be “necessary” to assist/be part of/contribute to the initiative/strategy/objective. The Inspector notes the main parties take a different view of the scheme’s compliance with criteria (i) and (ii) (IR 79-80).
- 12. Whilst the development does not meet the justification tests in (i), (ii) and (iii) of paragraph 6.2, the Inspector considers it relevant to assess the scheme’s compliance with criterion (iv), the flooding event consequences test (IR 81).
- 13. The Inspector notes the applicant has submitted a Flood Consequences Assessment (FCA) and a draft Strategic Flood Resilience Plan (SFRP). The FCA describes the hydraulic modelling for the 1% (1 in 100 year) AEP plus climate change and 0.1% (1 in 1000 year) AEP flood events. It outlines the proposed flood mitigation measures including reprofiling of the Nant Myddlyn river corridor. After reprofiling works the FCA identifies the only areas susceptible to flood risk would be the Myddlyn corridor and south eastern boundary of the site. On Crown Hill, a point a few metres to the north of the proposed main access, ponding would be at a sufficient depth in a 0.1% event to prevent cars passing and in a 1% event would be close to the limit of acceptability. The Inspector notes, whilst emergency vehicles such as fire engines would be able to travel through the anticipated water depths during a 0.1% flood event, 2 alternative emergency access routes would be provided to the south and west of the site. The draft SFRP describes measures that would be put in place to respond to a flooding event. The Inspector considers provision for emergency services access to the site accords with TAN 15 (IR 82).
- 14. The FCA identifies that the surface of the proposed road to be constructed over the Nant Myddlyn river would be above extreme flood events and the bridge has been designed to ensure it would not obstruct flows in such circumstances. The FCA shows other elements of the scheme that fall within the C2 zone are sections of the proposed circulation routes that are generally not predicted to flood to depths over 0.3m even in a 0.1% extreme event based on existing topography. However, the Inspector considers, in reality, these roads would not be at risk of flooding due to engineering works to reprofile land around the Myddlyn, works which would take place before these sections of the circulation routes are used (IR 83).
- 15. The Inspector has considered Natural Resources Wales’ (NRW) consultation response to the Council, which recommended planning permission should only be granted subject to conditions to address “significant concerns” with the scheme. Taking account of NRW’s advice, the applicant’s specialist technical reports and all other

available evidence, the Inspector considers the flooding consequences would not pose any unacceptable risks and would result in some benefits, provided the proposed avoidance and mitigation measures are secured through planning conditions (IR 84).

16. The Inspector notes the draft SFRP identifies a suite of measures to avoid risk during flood events. These measures would only be necessary in an extreme flooding event, when Crown Hill becomes flooded which, due to the catchment area characteristics, would be short lived, 2 or 3 hours (IR 85).
17. The Inspector considers the scheme would have positive flood consequences including the downstream benefits of improving on-site flood storage (IR 86).
18. For the reasons highlighted, the Inspector considers the flooding consequences of the scheme would be acceptable in accordance with policy AW 10 of the LDP. Despite this policy compliance, the Inspector recognises there remains an in-principle policy objection given national and local policy seek to avoid development in floodplains unless there is compliance with the justification tests. However, the Inspector considers the details of the flood risk effects and policy alignment, when assessed against the scale of the scheme's timely contribution to meeting an urgent need for housing represent exceptional circumstances that justify departing from TAN 15 and LDP policy AW 2 criterion 5. The Inspector considers the main aspects of the scheme that inform this view are: that the extent of development in zone C2 is limited to works to improve the floodplain adjacent to the watercourse and the infrastructure connecting 2 areas of proposed housing and internal circulation; that the circulation routes including the connection over the Myddlyn would be outside the identified flood risk; and that the scheme would remove 4 dwellings and a farm complex presently at flood risk (IR 87).

#### Greenfield site outside the settlement boundary

19. The Inspector notes the site is in part of the County which the LDP has earmarked for growth. The site is well placed to access existing and envisaged employment opportunities to the east and west of Llantwit Fardre. There is a good cycle route which provides Active Travel connection to these areas (IR 88).
20. The Inspector considers the site is well related to local services and facilities within Llantwit Fardre and neighbouring settlements. Public transport connections are available to facilities in Llantrisant, Talbot Green and Pontypridd. A travel plan is proposed that would encourage reliance on modes of transport other than the car (IR 89).
21. Little evidence was presented to the Inspector which would indicate the scale of development could affect social cohesion (IR 90).
22. Based on the evidence submitted, the Inspector agrees with the main parties that the local shortage of suitable sites for housing within settlement limits justifies development on a mainly greenfield site outside the development boundary (IR 91-92).
23. Around 1.1ha of the site is classed as grade 3a in the Agricultural Land Classification (ALC) system, this means it constitutes best and most versatile (BMV) agricultural land. PPW seeks to protect BMV, advising it should only be developed if there is an overriding need for the development and either brownfield land or land in lower agricultural grades is unavailable. Although it is a consideration that weights against the scheme, the Inspector agrees the loss of BMV should not be decisive when considered against the totality of the scheme (IR 93).

24. The Inspector notes the site is located in a Sandstone Resource Area which LDP policy AW 14 seeks to safeguard from development that would unnecessarily sterilise or hinder its extraction. However, the Inspector notes proximity of the site to existing housing means it lies within a buffer area where extraction of the mineral would not be permitted (IR 94).
25. The Inspector states the available evidence suggests there are planning constraints and deliverability issues that limit the options for providing housing within the southern part of the County. The Inspector notes a replacement plan would provide the robust, transparent and inclusive process which local residents rightly argue is the means to respond to the housing land supply shortage. The breach of settlement limits is in clear conflict with LDP policy AW2. However, the development plan does not provide an effective framework for the supply of adequate land to meet local need for housing. On this matter, the Inspector concludes the alignment of the scheme with the ambition of local and national policies for the provision of adequate housing in sustainable locations provide justification for breaching the development boundary in conflict with LDP policy AW 2 (IR 95-96).

#### Housing supply and sustainability

26. The Inspector notes there is a severe shortage in supply of housing in the County. The Inspector considers, when measuring housing supply against the LDP target, the extent of under performance is very considerable (IR 97).
27. There is no likelihood that the supply deficit will be meaningfully reduced through the development plan process in the short term. The Inspector considers, as housing need will continue to grow, it will be necessary to develop sites outside the present allocated sites and settlement boundaries (IR 98).
28. The Inspector considers the shortfall in housing supply means prospective employees will need to commute from homes outside the area, which conflicts with the aim of the sustainable transport hierarchy in PPW (IR 99).
29. The Inspector is satisfied the site is deliverable in the short term and the scheme would assist entry into home ownership for the local community (IR 100-101).
30. Noting the disapplication of paragraph 6.2 of TAN 1, but mindful that PPW requires local planning authorities to provide a 5 year housing land supply and the emphasis in PPW on ensuring an adequate supply of deliverable housing sites, the Inspector attaches considerable weight to the scheme's contribution to reducing housing under-supply. The Inspector attaches significant weight to the delivery of affordable housing from the proposed development (IR 102-103).

#### Other considerations

31. The Inspector has considered all other matters raised in objection to the scheme by local residents and their elected representatives. Taking into account the scope to mitigate some concerns through suggested conditions, the Inspector considers none of the other matters raised any impact that would need to be taken into account in the overall balance (IR 104-105).

## Conditions and Obligations

32. The Inspector considers the conditions recommended in the Schedule of Conditions, appended to the IR, satisfy the relevant tests in Welsh Government Circular 016/2014, “The Use of Planning Conditions for Development Management”.
33. The parties submitted a section 106 agreement, which would provide obligations relating to:
  - Affordable housing provision at a rate of 20% of the total number of units;
  - A land transfer of part of the site to the Council to enable it to construct a primary school;
  - The provision on site of a Locally Equipped Area of Play (LEAP) and future management arrangements;
  - The approval and implementation of a public open space and habitat management plan; and
  - The implementation of an employment skills training plan.
34. The Inspector considers the obligation relating to the employment skills training plan should not be afforded weight as it fails to meet the relevant statutory tests in the Community Infrastructure Levy Regulations 2010 (IR 106-109).

## Planning Balance and Overall Conclusion

35. The Inspector gives considerable weight to the need to address the housing land supply shortfall and significant additional weight to the provision of affordable housing (IR 110).
36. The scheme would generate economic benefits, particularly during construction, and the proposed new primary school would benefit existing and future pupils. The Inspector considers the timely realisation of social and well-being benefits that would arise from meeting the present needs of prospective residents for new homes aligns well with an aspect of sustainable development. The Inspector affords significant weight to these benefits (IR 111).
37. The Inspector considers the site is well located in terms of delivering the LDP’s growth strategy, close to local services and facilities and areas of significant growth in employment. The Inspector states these attributes align well with the principles of sustainable development (IR 112).
38. The Inspector states that, although the scheme’s conflict with the LDP does not align well with the focus on developing plans as part of an inclusive process, as it proposes housing growth in a location well related to employment opportunities, it demonstrates the holistic approach sought by PPW, which seeks the right development in the right place to achieve sustainable placemaking outcomes (IR 113).
39. The Inspector attaches significant weight to the conflict with the LDP, in terms of proposing housing development outside defined settlement boundaries, particularly as the site is mainly greenfield and includes land of high agricultural quality, which national policy seeks to protect (IR 114).
40. Whilst mindful of the primacy of the development plan in decision making, the Inspector considers this must be balanced against the pressing need to increase housing supply in the area. The housing contribution from the scheme, including affordable housing, justifies breaching the settlement boundary and departing from the

development plan. In reaching this conclusion, the Inspector is mindful of the failure of the development plan to deliver the scale of housing intended and the absence of any alternative, reasonably short-term solution to the under-supply (IR 115).

41. Regarding flooding, the Inspector considers the conflict with LDP policy AW2 and TAN 15, in circumstances where the overall effect of the scheme on flood risk would be positive, to be outweighed by the scale of housing which would be delivered. The Inspector considers the proposal acceptable in terms of flood risk (IR 116).
42. Overall, the Inspector finds the breach of local and national policies, when taken together, are outweighed by the scheme's benefits. In reaching this recommendation, the Inspector has taken account of the requirements in sections 3 and 5 of the FG Act 2015 (IR 117).
43. The Inspector recommends planning permission be granted, subject to conditions.

### **Conclusion and Decision**

44. I disagree with the Inspector's conclusions on the issue of flooding. Paragraph 6.6.22 of PPW clearly states that planning authorities should adopt a precautionary approach of positive avoidance of development in areas of flooding from the sea or rivers. This general approach in PPW is supported by TAN 15. Paragraph 3.1 of TAN 15 states the overarching aim of the precautionary framework is, in order of preference, to:
  - Direct new development away from those areas which are at high risk of flooding.
  - Where development has to be considered in high risk areas (zone C) only those developments which can be justified on the basis of the tests outlined in section 6 and section 7 are located within such areas.
45. As the Inspector notes, the proposal fails to meet the justification tests in section 6 of TAN 15. The Stage 1 Masterplan with the Development Advice Map overlay, drawing GA 90 002 dated 05.06.18, shows the road and bridge which would link the 2 proposed housing areas, sections of internal roads, and combined footways and cycleways would be located within zone C2.
46. Figure 2 in TAN 15 defines transport infrastructure as less vulnerable development. Paragraph 6.2 of TAN 15 states that development, including transport infrastructure, should only be permitted within zones C1 and C2 if it can be justified in that location.
47. Regarding the justification tests, I agree with the Inspector, for the reasons given in IR 80, that the scheme fails to satisfy criterion (i) and (ii) in paragraph 6.2. I also agree the application site does not comprise previously developed land. However, for reasons explained below, I am not satisfied the proposed development concurs with the aims of PPW. Nonetheless, the scheme clearly fails to satisfy criterion (iii) of paragraph 6.2. As the proposal fails to satisfy the justification tests in paragraph 6.2, in accordance with TAN 15, planning permission should not be granted.
48. I note the Inspector states "exceptional circumstances" apply to this scheme which justify departing from TAN 15 and LDP policy AW2. There is no policy requirement in PPW or TAN 15 to assess whether "exceptional circumstances" apply in cases when development fails to meet the justification tests in paragraph 6.2 of TAN 15, however, I have taken account of the Inspector's consideration of this matter.

49. I acknowledge there is a shortfall in housing supply within the County Borough. I also accept the site benefits from features which are characteristic of a sustainable housing development, for example: proximity to local services and facilities, the opportunity to access public transport and cycle routes, provision for open space and play area on-site, land made available to the Council for the construction of a school and provision of affordable housing. However, I note the emphasis in both PPW and TAN 15 to adopt a precautionary approach of positive avoidance of development in areas of flooding. Also, PPW edition 10 is clear that the planning system must adopt a placemaking approach to decision making in order to promote sustainable development and I am not satisfied the proposed scheme accords with key planning principles set out in PPW. Specifically, PPW emphasises the need to ensure that planning facilitates the right development in the right place. In terms of sustainable management of natural resources, PPW states a key feature is ensuring resilient locational choices for built development taking into account a range of factors, including environmental risk posed by flood risk.
50. The general planning principle in PPW of securing the right development in the right place is also reflected in Prosperity for All: A Climate Conscious Wales, dated 2019, the Welsh Government's climate change adaptation plan for Wales, which was issued after the Welsh Government's climate emergency declaration in April, 2019.
51. I note the Inspector considers the scheme would have positive flood consequences, including downstream benefits of improving on-site flood storage (IR 86). However, the applicant's FCA confirms that flooding from the Nant Dowlais is predicted to impact the main site access off Crown Hill. The applicant's FCA states, during both a 1% AEP plus climate change and 0.1% AEP event, flooding at the junction of the site access and Crown Road can occur. The draft SFRP, submitted by the applicant, provides further detail on the extent of flooding. During a 1% AEP plus climate change event, the draft SFRP states shallow flooding occurs at the junction of the site's primary access with Crown Hill road due to a localised depression. The maximum flood depths predicted in this event is 300mm at the junction, which should be suitable for vehicular access. The draft SFRP notes due to health and safety risks, it is not recommended that the public walk through floodwater.
52. During a 0.1% AEP event, the draft SFRP states the flooding predicted is more significant at the junction, reaching depths of up to 800mm. The SFRP states this would prevent access for all but suitable emergency service vehicles (e.g. fire engines).
53. I note the modelled duration of flood events in both the 1% AEP plus climate change and 0.1% AEP events and the severity of weather required to create such flood events. However, I am not satisfied that development which cannot be justified against the relevant tests in section 6 of TAN 15 and does not accord with the LDP, and where the main access is at risk of flooding, accords with the placemaking principles in PPW.
54. I am not convinced that the scheme accords with the WFG Act's sustainable development principle. Specifically, I consider the scheme fails to accord with the Welsh Ministers' well-being objectives in terms of driving sustainable growth and combatting climate change, and building resilient communities.
55. In terms of my consideration of flooding, the scheme does not meet the justification tests in paragraph 6.2 of TAN 15 and, therefore, it should not be permitted. I am not convinced the reasons given by the Inspector in his conclusions are sufficient to override this policy conflict.

56. I conclude that planning permission should be refused as the scheme is contrary to Policy AW 2 criterion 5 of the LDP and TAN 15 and does not accord with the principle of sustainable development in terms of flood risk.

### **Formal Decision**

57. For the reasons given, in exercise of the power referred to in paragraph 2 of this decision letter, I hereby refuse planning permission for outline planning application 18/0872/13.
58. In reaching this decision I note the duty to carry out sustainable development under section 2 of the Planning (Wales) Act 2015 and I consider the decision accords with the sustainable development principle set out in the FG Act 2015. In accordance with section 3(2) of the FG Act 2015 and the well-being objectives of the Welsh Ministers, I consider the scheme fails to accord with the Welsh Ministers' well-being objectives in terms of driving sustainable growth and combatting climate change, and building resilient communities.
59. A copy of this letter has been sent to Rhondda Cynon Taff County Borough Council and to those attending the Hearing who asked to be informed of the decision.

Yours sincerely



**Julie James AC/AM**  
Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government