

Reference: Representor Number 11

Bridgend Replacement Local Development Plan Examination in Public – Submissions on behalf of Merthyr Mawr Estate on Proposed Allocations PLA2(2) and COM1(2)

1. INTRODUCTION – OVERVIEW

- 1.1. These submissions supplement the response of the Merthyr Mawr Estate (“MME”) *MM-BDCDR-01-21* to the deposit consultation. MME continues to object to the allocations at Island Farm and Craig y Parcau on the basis that they are unsound, both as a matter of principle and by reason of the failure of draft policy to provide for mitigation of their impacts upon the sensitive receiving environment which surrounds them to the south.
- 1.2. Reference should be made to *MM-BDCDR-01-21* for information about the nature of the MME and the land comprised in it.
- 1.3. The Local Planning Authority (“LPA”) have failed to comply with the requirements of environmental legislation and the plan is not in conformity with the National Development Framework for Wales, Future Wales (“FW”) and the LPA have had insufficient regard to current national policies contained in Planning Policy Wales (“PPW”) and elsewhere.

2. LEGISLATIVE FRAMEWORK

- 2.1. Planning and Compulsory Purchase Act 2004 (“PACPA 2004”), s.62 contains the following requirements:
 - (3A)(a) plan to be in general conformity with FW;
 - (5) LPA, in preparing plan, to have regard to
 - * ‘current national policies’ and FW;
 - * any area statement published under s.11 of the Environment (Wales) Act 2016 for an area that includes all or part of the area of the authority
 - * any relevant local well-being plan.
- 2.2. S.64 PACPA 2004 provides that the purpose of the EiP is to determine whether the plan satisfies the requirements of s. 62 and whether the plan is sound.
- 2.3. The LPA and Inspector are also bound to act in accordance with a suite of duties under Welsh environmental legislation. In particular, they are obliged to exercise their functions in accordance with the sustainable development

principle set out in the Well Being of Future Generations (Wales) Act 2015 (“FGWA 2015”). S.5 of the Act requires ‘an integrated approach’, considering how each of the body’s well-being objectives may impact upon each of the well-being goals, balancing short term needs with the need to safeguard the ability to meet long term needs, especially where things done to meet short term needs may have detrimental long term effect and involving other persons with an interest in achieving the well-being goals and acting in collaboration with other persons who could assist in meeting the well-being objectives¹. One of the statutory well-being goals is ‘A resilient Wales’,

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

- 2.4. S.2 Planning (Wales) Act 2016 expressly applies the sustainable development duty to the LPA and the Welsh Ministers (on whose behalf the Inspector is examining the Plan) and requires them to take into account guidance issued by the Welsh Ministers under FGWA 2015 when exercising functions under Part 6 PACPA 2004.
- 2.5. The Environment (Wales) Act 2016 (“EWA 2016”) reflects the principles of FGWA 2015, in particular, providing that:

‘ A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. ’²

In discharging this duty, the LPA and Inspector must have regard to the statutory list of habitats and species, the statutory state of natural resources report and any statutory area statement.

- 2.6. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (“Habitats Regs”) requires that a Habitats Regulations Assessment (“HRA”) must be undertaken to demonstrate compliance with statutory duties set out in the Habitats Regs where a plan or project is considered likely to have significant effects on European Sites and is not directly connected with or necessary for the management of the site. Where likely significant effects upon the integrity of international Sites (“LSE”) cannot be excluded, taking account of mitigation, but not compensation measures (at assessment, as opposed to screening stage) then the question of derogation may arise. HRA at plan-making stage does not obviate the need for HRA at project (ie. planning application) stage.

¹ FGWA 2015, s.5.

² Environment (Wales) Act 2016, s.6(1), s.7.

- 2.7. The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 ('the SEA Regulations') require plan making LPAs to assess the likely significant environmental effects of implementing relevant plans and Sustainability Appraisal. The SEA Regulations also require Responsible Authorities to examine the likely significant effects of reasonable alternatives to the plan or programme under consideration. Where required, the assessment is to be prepared following a staged reporting process known as Strategic Environmental Assessment (SEA).
- 2.8. S.28G (2) Wildlife and Countryside Act 1981 ("WCA 1981") imposes a duty on the LPA and the Inspector to 'take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.'

3. RELEVANT DESIGNATIONS OF LAND LIKELY TO BE AFFECTED BY THE PROPOSED ALLOCATIONS

- 3.1 The MME land to the south of the proposed allocations is covered by multiple environmental designations reflecting its importance as a natural and built environment.
- 3.2 These multiple overlapping designations are represented in Appendix B, Figure 1 'Merthyr Mawr Landscape Designations Plan'
- 3.3 Many of these designations enjoy their own statutory protections under: the Habitats Regs, the Wildlife and Countryside Act 1981, s.28G and Planning (Listed Buildings and Conservation Areas) Act 1990, s.72.
- All of these designations enjoy protection in FW and national planning policy (PPW).
- 3.5 Many of the features for which the areas have been designated as SAC, SSSI, NNR and SINC are on the statutory list of habitats and species under s.7 EWA 2016.
- 3.6 The Replacement LDP acknowledges the 'nationally important' Merthyr Mawr, Kenfig and Margam Burrows Landscape of Outstanding Historic Importance ("LOHI")³.

4. FAILURE TO DISCHARGE RELEVANT STATUTORY DUTIES AND UNSOUNDNESS

- 4.1. The LPA's evidence base for allocation SP2 fails to demonstrate that the relevant statutory duties have been discharged. The Ecology Appraisal

³ P. 12, Para 2.1.4

(SD123) does not consider offsite impacts on the SAC, SSSI, NNR or SINC, presumably because it is stated that ‘the site does not contain, or lie immediately adjacent to, any statutory sites of nature conservation interest...’⁴. It therefore apparently scopes out of consideration indirect offsite impacts on the statutorily listed habitats and species which are present in the MME area, as explained in the appended correspondence from Dr Peter Sturgess. The most obvious offsite impact is the likely increase in recreational pressure from a new population of many thousands of people (and their pets) on a fragile, multi-designated environment. The public rights of way network (“PROW”) in this area is extensive, as illustrated in Appendix C, Figure 1 ‘Merthyr Mawr Public Rights of Way Plan’

Moreover, MME’s representations included evidence of the existing difficulties posed for environmental management as a result of irresponsible use of PROWs. There has been no consideration by the LPA of the potential increase of such problems that would be caused by the allocations. Similarly there has been no consideration of the effect of the increased light and noise which would also exert indirect pressure upon the species present in the designated areas.

- 4.2. SD123 is based on a consideration of previous, out of date, surveys dating from 2009 and an ‘Ecological Walkover’ conducted in March 2020. As such, there is no up to date ecological evidence base before the EiP upon which to base a finding of soundness, notwithstanding that the presence of species designated under the Habitats Regs (hazel dormouse, otter, bats and great crested newt) is likely. However, no surveys were conducted for these species⁵, notwithstanding that dormouse and bats were reported to have been foraging, nesting and roosting on the site/s in 2009⁶. Some mitigation associated with previous planning proposals is reported as having been implemented, but there is no assessment of its efficacy⁷. The report fails to consider the national state of the environment report or any local authority statutory biodiversity plans and the extent to which / how they have been taken into account in the decision to promote these allocations).
- 4.3. Whilst the report helpfully lists recommended surveys and timings for both allocated sites, it is insufficient to leave all of the matters until planning application stage, for several reasons:
 - (i) because the lists demonstrate that a great deal of material essential to making judgments about environmental impacts (on and off-site) is lacking; eg, the question of whether or not it is possible to exclude the possibility of negative impacts on the SAC such that derogation on the basis of IROPI would need to be sought from the Welsh Ministers;

⁴ P.1

⁵ P.4

⁶ P.6 [3.1.2]; pp.10 - 11 [3.3].

⁷ P.6, [3.1.3]

- (ii) the degree of ignorance about both sites must call into question deliverability of the allocations, if not in principle, then certainly in terms of quantum of development, which goes to the overall soundness of the Plan and discharging of the sustainability duty to pursue social, environmental and economic ends simultaneously;
- (iii) because the LPA and the Inspector are under a duty to seek to maintain and enhance biodiversity in the exercise of their functions, taking account of the connections, condition and adaptability of ecosystems, having regard to the statutory biodiversity list ⁸.

4.4. As a result of this lack of evidence based assessment for the site allocations, there are fundamental failures to comply with environmental legislation, FW, the statutory sustainable development duty and the statutory duty to have regard to national policy. This is because the potential (and, on MME's evidence, inevitable) negative impacts caused by the introduction of major urban development as proposed have not been considered or assessed, adequately or at all and the assessment of direct on - site impacts of the proposed development has been cursory. The Plan cannot lawfully proceed to adoption unless and until these deficiencies are remedied; important statutory requirements have not been met and the Plan is unsound.

4.5. The HRA (SD75) identifies the Kenfig/Cynfig SAC, noting its Qualifying Features:

'An assemblage of coastal habitats including sand dune systems, shallow lakes, and salt marsh along with two species of plant, the fen orchid and petalwort ';

and threats and pressures: 'Changes in abiotic conditions • Other ecosystem modifications • Abiotic (slow) natural processes • Fishing and harvesting aquatic resources • Human induced changes in hydraulic conditions • Grazing • Pollution to surface waters • Hunting • Problematic native species • Mowing / cutting of grassland • Soil pollution and solid waste • Use of biocides, hormones and chemicals • Outdoor sports and leisure activities, recreational activities • Air pollution, air-borne pollutants • Succession • Invasive non-native species';

and condition: 'Unfavourable. Largely due to land management'.

This material reflects MME's evidence of the difficulty of managing lawful and trespassory public access at the moment, even without the major urban development proposed.

4.6. The HRA concludes:

'In light of the mitigation measures set out within the wording of policies, no Likely Significant Effects to Kenfig SAC are anticipated

⁸ S.6 EWA 2016

from the LDP Deposit Plan through air pollution, habitat loss, changes to hydrology, recreation, or pollution’.

- 4.7. In addition, a number of policies in the Plan may result in improvements to air quality in the County Borough, in particular through enhancement to green infrastructure, and sustainable transport⁹.
- 4.8. Without prejudice to the submission of statutory non compliance and unsoundness, the allocations fail to make any or adequate provision for mitigation of offsite impacts upon the statutorily and policy protected areas to the south. This is, in part, due to the LPA’s failure to engage with MME, despite invitations to do so, itself a breach of the statutory sustainable development duty. Adopting the Plan as drafted would not reflect this duty or conduce to the achievement of sustainable development. Again, this is a manifestation of unsoundness. The allocation includes generalised requirements (eg. Masterplan Principle (c) and Development Requirements 10 and 11) but there is no mention of the SAC or SSSI and/or what steps of prevention / mitigation might be required to negative impacts and / or to minimise them as required in the event that derogation procedure is triggered under the Habitats Regs. The Plans’ generalised provisions are no substitute for assessing, recognising and weighing the impacts of the development upon these interests at allocation stage and, if feasible and appropriate, including policy requirements for appropriate avoidance / mitigation measures.
- 4.9. The LPA may point to draft Policy SP17, but the policy and its supporting text make clear that, albeit in exceptional circumstances, development with negative impacts upon SACs and SSSIs may be permitted after project level appraisal. Two aspects of this policy cause the objector particular concern:
- (i) the phrase ‘Proposals likely to have direct or indirect adverse effects on Special Areas of Conservation (SACs), Special Protection Areas (SPAs) or Ramsar sites, must be subject to Habitats Regulations Assessment (HRA). This includes development proposals on allocated sites **where this plan indicates a project level HRA is required** and any other development proposals likely to have adverse effects on SACs/SPAs/Ramsar sites.’ ; and
 - (ii) the accurate reference at (b) on p.187 to the Habitats Regs process proving that there are ‘no alternatives’, something which is likely to be easy to demonstrate in the context of an allocation of the development plan. (emphasis added)
- 4.10. The site allocation policy makes no mention of HRA appraisal at development management (ie. ‘project’) stage, reinforcing the impression that the LPA have failed to consider the offsite impacts of this allocation. The development management policy does not remedy the underlying unsoundness caused by failure to grapple at allocation stage with the offsite impacts on internationally

⁹ P.32 , [7.4.6]

and nationally protected Sites. None of the other general policies relied on in the HRA to support the conclusion of no LSE specifically addresses the likely impacts of recreational pressure upon the SAC. The nearest one is Policy DNP9: Natural Resource Protection and Public Health, which is a general policy for proposals to demonstrate that 'they would not cause a new, or exacerbate an existing, unacceptable risk of harm to ... biodiversity'.

- 4.11. Stress is placed on the planning history of the Island Farm site in the supporting text to Policy SP2 but the existence of a planning permission does not override duties under the Habitats Regs. In any event, no evidence has been produced to support the inference that there is a meaningful fallback which is sensibly capable of being completed; rather, the decision of the site owner to apply for a fresh permission, which has not yet been implemented, suggests the opposite. However, doubtless arguments would be made under the qualified wording of Policy DNP9 that the planning history presents any risk of harm to biodiversity is 'existing' and/or that it is rendered 'acceptable' by allocation. MME has not objected to these general development management policies, because they are perfectly reasonable; the problem is that they are being made to bear too much weight by the HRA which, accordingly, does not enable the Inspector to find that the allocations are sound in terms of the Habitats Regs.
- 4.12. For the same reasons, the LPA has failed to comply with its duty under S.28G WCA 1981 and, for this reason, the Plan is unsound.
- 4.13. The Sustainability Appraisal Report ("SAR") relies on mitigation to support its conclusions¹⁰ but the 'multi-functional green infrastructure network' and 'landscaping treatment of the southern boundary' do not specifically address LSE on the SAC or the SSSI, let alone the Landscape of Outstanding Historic Interest or the designated heritage assets lying within it. The mitigation provisions are generalised. The conclusion in Table 5.2: SA of Proposed Strategic Sites¹¹ that there would be no likely significant adverse effects is unsupported by evidence and therefore does not fall within the range of reasonable conclusions for the SA exercise. The SA in relation to the allocation is unsound and renders the allocation itself unsound.
- 4.14. The treatment of landscape impacts is, similarly, deficient. The supporting evidence comprises a 'Supplementary Note' dating from September 2020 prepared by the planning consultants (not landscape architects) instructed by the site promoters, officers having agreed that a full LVIA was not required. It is deficient. There is no mention at all of the national Landscape of Outstanding Historic Importance designation affecting the receiving MME landscape, nor are the LANDMAP assessments for this receiving landscape considered. Although dating from March 2010, the LPA's Designation of

¹⁰ P.37, Table 6.4

¹¹ P.573

Special Landscape Areas Report prepared by landscape architects experts TACP remains relevant; this identifies Outstanding evaluations against Geological, Historic and Cultural Aspects. The up to date GGAT assessment of the Merthyr Mawr Historic Landscape Characterisation Area describes the area as being 'of some importance'. (Relevant extracts from these documents are appended).

- 4.15. Fig. 3 above illustrates a plethora of designated historic assets and the presence of the Grade 2* Historic Park and Garden surrounding the Grade 2* Merthyr Mawr House, both being national designations.
- 4.16. The allocation, including its suggested mitigation measures fails to acknowledge this mosaic of landscape and heritage features, doubtless because they have not been taken into account properly or at all during the preparation of the RLDP.
- 4.17. Best and Most Versatile Agricultural Land ("BMVAL"): the RLDP states that, because there is an implemented planning permission at Island Farm, the allocation would not result in any further loss of BMVL. This is an over-simplification, firstly for the reason set out above, that the evidence does not indicate that the implemented permission is likely to be built out and, secondly, because the WG withdrew its objection to the development on the basis of reversibility of c.50% of the developable area. The allocation does not include any requirement for the same quantity of BMVL to be retained unbuilt for potential future reversion. Therefore the true impact on BMVL, an important material consideration, is unknown.

APPENDICES

Appendix A: Letters from Dr Peter Sturgess, Peter Sturgess Ecology

- (i) 27th January 2023
- (ii) 13th February 2023

Appendix B: Figure 1 - Merthyr Mawr Landscape Designations Plan

Appendix C: Figure 2 - Merthyr Mawr Public Rights of Way Plan

Appendix D: Listed Buildings & Scheduled Ancient Monuments within the Merthyr
Mawr Landscape of Outstanding Historic Importance (L.O.H.I.)