

NEATH AND PORT TALBOT LOCAL DEVELOPMENT PLAN

EXAMINATION

HEARING 11 - ALTERNATIVE SITES

OBJECTORS: LUCY AND PATRICK MURRAY - 0139

Land at Rutherglen Yard, Velindre (Site B)

SUBMISSIONS

Details of the site

1. The freehold title to the land is held by the Objectors under title number WA737984 and comprises disused allotment gardens. The land in site B is currently included within settlement limits in the UDP pursuant to the recommendation of the Inspector at the Inquiry in 2005. The Objectors overcame the Council's reasons for excluding the site in the deposit plan on 'countryside' and highways grounds. The settlement boundary currently lies to the west of the allotment land. The Objectors also own the land abutting the A4107 under the same title. This land is also currently within settlement limits. The Council now proposes to re-draw the settlement boundary to the east of the allotments. A copy of the freehold title to Site B is at Appendix A and a copy of the current settlement limit at Appendix B.
2. It is submitted that the land at Rutherglen Yard, Velindre (Site A), although listed for consideration as a separate site, geographically, in terms of its physical and demographical characteristics, and by reference to the relevant policies should be considered as part of the same site. The Objectors' mother holds the freehold to this land under title number CYM252020. The land at site A was within settlement limits in the 1996 Port Talbot Plan.
3. As is apparent from a glance at the map, the site is abutted by development to the north, east and south. A glance at the map also reveals that it is the largest undeveloped site near the centre of Port Talbot. We submitted architect's plans at the inquiry in 2005 which demonstrated that site B could accommodate 30 houses and is therefore a 'larger site' for the purposes of the LDP. The plans are at Appendix C. It also satisfies the sustainability criteria of 35 dwellings per hectare. There are no highways issues, as a new access was proposed and accepted as overcoming the highways objection at the last inquiry (Appendix D). At the last inquiry the Council produced an 'Ecology' proof of evidence that concluded that there was no constraint to development of the allotment gardens (Appendix E). Two photographs of the land taken from Bay View are at Appendix F.

4. The site performs well by reference to both overarching and site specific policies for the reasons set out more fully below. In brief it is within the coastal corridor and therefore at the top of the settlement hierarchy. It is therefore, by reference to paragraph 3.0.10 of the LDP, to be considered as in the most sustainable location. The site abuts the A4107 which, according to the LPD Transport Policy is part of the Core network identified in the Regional Transport Plan as the Regional Strategic Highway Network. It is a few minutes drive from the M4. It is about 1 km from the town centre and can be accessed by foot or car and is on existing bus routes and can make use of existing infrastructure.

The soundness test

Settlement limits

5. It is our submission that the plan does not meet the coherence and effectiveness tests as set out in CE1 and CE2 of LDP Wales 2005 with regard to the exclusion of the site from settlement limits. The Council has raised exactly the same objections to the inclusion of the site within settlement limits as relied on before the Inspector at the UDP inquiry. The matters relied on by the Council for not including the site under either policy were adjudicated upon by the Inspector in 2008 (countryside issue) and conceded by the Respondent as feasible (highways issue). In the circumstances, the Council's criteria for excluding the site are flawed as they are not evidence based.
6. The reasons given by the Council for excluding the site in the LDP Candidate Assessment in August 2013 were:

Appraisal: Frontage part of the site is included within settlement however the remaining part of the site whilst located adjacent to the existing settlement, if developed, would be considered as urban expansion into the open countryside. The land adjacent to the settlement is also steeply sloping and access to the main road would be problematic.

Decision: exclude western half of site from settlement limit. The eastern section of the site however is to be included as it is considered an appropriate inclusion to the settlement.

7. The Inspector came to the following conclusions in respect of site B which were accepted by the Council:

'The land plays a role in the local landscape and provides a habitat for wildlife. It is, however, reasonably well situated in relation to local facilities and its loss would not disrupt the landscape setting. Whilst its development would pose difficulties as a result of it being a sloping site any proposal would have to satisfactory address the

site planning issues. The Inspector does not recommend that it be included as an allocated housing site rather than it be included within Settlement Limits. Any proposal would have to satisfactorily address site planning issues, including access and the protection of landscape and wildlife features'.

8. Prior to the hearing in 2005 the Highways authorities conceded that the plans at Appendix C and D overcame the highways issues in relation to the access at Bay View. The Objectors had previously submitted plans for the improvement of the junction at Bay View. As the Highways Authority did not consider these plans overcame the issues, a new junction was proposed and accepted as feasible. If this were not so, the Inspector would not have recommended the site's inclusion in settlement limits.
9. According to paragraph 3.1 of Local Development Plans Wales 2005, the requirement on each authority to prepare a local development plan (LDP) for its area also requires it to build upon the substantive work that many authorities have undertaken in developing their unitary development plans (UDPs) since 1996, including *consultative processes, gathered evidence* and policy development (my italics). There is therefore a duty on the Council to have reference and regard to the evidence that was before it for the UDP.
10. It is our submission that the Plan fails the test of soundness in CE1 because, although the plan may set out a coherent strategy, the inclusion of site B within settlement limits should have logically flowed from the strategy. The Plan fails the test of soundness in CE2 because the strategy, policies and allocations are not realistic and appropriate as this site is a relevant alternative and was not considered for reasons which are irrational and unreasonable. In light of the above, the failure to consider the site was not based on a robust evidence base because the grounds for not considering the site raised by the Council had already been considered and overcome. This evidence was before the Council when the decision to exclude was made.
11. Absent a material change of policy or definition in relation to 'countryside' or fresh, material evidence either in relation to the ecology, biodiversity and highways issues relating to the site there is no rational reason for its exclusion. No such grounds have been relied on and no further evidence produced by the Council.
12. According to the Settlement Topic Paper, in preparing the LDP, a full and comprehensive 'Settlement Review / Urban Capacity Study' was undertaken which resulted in clear, defensible boundaries around settlements being identified. It is submitted that this re-drawn boundary is not defensible in the light of the fact that the objections raised are effectively *res judicata*. Further, it is

a cornerstone of public administration that decisions should be consistent, fair and rational. It is irrational in a public law sense to make a positive decision on a set of facts and then without any change of circumstances make a negative decision on the same facts.

Alternative sites

13. In the Consultation Report Volume 4 Alternative Sites Consultation September 2014 the site was rejected for the following reasons at page 194:

' Whilst the greenfield site is located adjacent to the settlement, the land forms part of a prominent hillside which is covered by woodland. In light of this issue, coupled with the constraints and limitations to development highlighted by the consultee responses above, to specifically allocate this site for residential development within the LDP would be inappropriate and unjustified.
14. The internal consultee responses in the Consultation Report were from Highways and in relation to biodiversity. The Highways objection to the allocation of this site was that Bay View was not suitable as a junction. It is clear that the UDP evidence was not taken into account as this issue had been addressed. The Highways conclusion was 'it is not possible to overcome this objection.' In the light of the evidence provided at the UDP this conclusion is unsustainable and not evidence based.
15. In relation to biodiversity the objection in the Consultation Report was that the site contained areas of native woodland / parkland which is LBAP habitat and a constraint to development and that it also contained restraint in the form of good quality scrub and standard trees which are good for connectivity. Clearly in coming to these conclusions no regard was had to the Council's own ecology report in relation to this site from 2005 which concluded that there was no constraint to development.
16. The objectors adopt and repeat the same arguments in relation to 'soundness' made in relation to the settlement limits argument at paragraphs 8 to 11 above. The grounds for rejecting the site were evidentially without foundation and the site should therefore have been considered at the further stages.
17. It is our contention that the site should by reference to the relevant criteria have been included both within settlement limits (SC1) and housing allocation (H1). It is submitted that in rejecting the site at Stage 2 in the Candidate Sites Assessment Report ('the Report'), the Council acted on the basis of a material misapprehension of fact and evidence.

18. The LDP can only meet the test of soundness if the application of its policies to individual sites is sound. For the reasons given above the Council's assessment of this site has not been robust and based on credible evidence. Hence the Plan itself is not sound.

Grounds for inclusion within settlement limits and within housing allocation

19. Once the highways and biodiversity or 'countryside' objections fall away, as it is submitted they must, there are no grounds to exclude the site from settlement limits and there are good grounds for its inclusion as housing allocation by reference to the relevant policies.

20. Policy SP 1 - Climate Change. The land is about 1 km from the town centre and can be accessed easily on foot and by bicycle, thus reducing the need for a car. It is on existing bus routes. The new development would improve the pedestrian access to the city centre and the existing footpath to the east of the site will be improved in the new development. The site is close to the community and shopping facilities and employment opportunities offered by the town centre. It is also only a few minutes drive from the M4. In the circumstances, the site scores highly in relation to the overarching policy of climate change. It is situated within an existing settlement on three sides. It satisfies the requirements of developing more cohesive and efficient settlements and settlement patterns, and consequently more sustainable travel patterns and its development would have the effect of reducing greenhouse gas emissions from transport by reducing dependence on the private car. Further, due to the elevated position, the land is not at risk from flooding. The land to the east supports a wildlife corridor as highlighted in the ecological report and opportunities will be made for habitat and species in any development. In terms of climate change policy this site should be included as it accords with sustainable development principles to be in locations that minimise as far as possible dependence on the private car and which can benefit from local services and facilities.

21. Health - Strategic Policy SP2 Health. The land is located within an existing settlement and is close to other communities and the town centre, promoting walking and cycling rather than the use of a car.

22. Sustainable Communities SP3 Sustainable Communities. Due to its location close to the centre and proximity to the travel network, the site is sustainable and within the top tier of the settlement hierarchy for Port Talbot as it is within the coastal corridor.

23. Policy SC1 Settlement Limits. For the reasons given above the land should be included within settlement limits. The only possible constraints to the development of site B, which includes the land abutting the highway to the east

in the ecological report of 2005, are speculative. One resident reported seeing badgers and that the trees 'may' support bats. Either of these matters are in any event a matter of mitigation and investigation prior to development and badgers and bats can be accommodated within development. Loss of scrub can be mitigated by the planting of native trees and landscape design of any development.

24. Settlement limits for development are intended to contribute towards the creation and maintenance of sustainable communities in accordance with the LDP strategy and any development in this location would do this. There is a natural buffer at the top and bottom, which would prevent the coalescence of settlements. The land at site A which is subject to a tree preservation order would be used to enhance the community facilities by provision of an open space.
25. **Policy SC2 Protection of Existing Community Facilities.** Any development would not result in the loss of an important existing community facility.
26. **Infrastructure - Policy SP 4.** Due to its location a development would make use of existing infrastructure and where required make adequate provision for new infrastructure, for example a children's playground. The development would incorporate affordable housing and open space. The improved footpath would improve access to facilities and services including the provision of walking and cycling routes.
27. **Area Based Policies - The Coastal Corridor Strategy Area - Policy SP 5.** The site is within the Coastal Corridor Strategy Area, and is therefore implicitly a sustainable site.
28. **Housing - Strategic Policy SP7 Housing Requirement - Site Specific** - the site can deliver more than 10 units.
29. **Transport and Access - Transport Strategic Policy SP20 Transport Network.** The location of the land allows transport and access to be promoted within an efficient and sustainable manner. It is within minutes of the M4 motorway, the primary network. It is on the core network of the A4107 which is a route identified in the Regional Transport Plan as the Regional Strategic Highway Network. Improvement to the existing footpath would promote connectivity and enhance the walking and cycling network. The architect's plans show the required appropriate parking provision.

Conclusions from the above to be drawn in relation to the List of Matters and Issues

30. These submissions have attempted to address the key issues as highlighted in the List of Matters and Issues. In summary therefore, in relation to Matter 3: Housing Provision, in view of the above, a balance has not been struck in taking decisions between competing alternatives as the application of the criteria has been flawed. In relation to Matter 4 – Housing Provision – allocated sites, relevant alternatives have not been considered and the identification of housing sites has not been based on a robust and rational selection process. The architect’s plan shows that 30 houses are realistic and achievable. With regard to constraints, as can be seen from the plan in the ecology report where the land is shaded green, there are no constraints to the proposed development as a whole, save for the retention of parts of a wild life corridor which can be incorporated within the development. The only remaining constraint raised as an objection in the Consultation Report by the statutory consultee Natural Resources Wales is a land drains/issues present on site. A development free buffer area is said to be required along these features to protect wildlife and habitats that may be present and afford some protection from pollution. This step would be taken. The site is viable as it can rely on existing infrastructure in terms of transport routes. It is also excellently situated for the provision of affordable housing and for older people due to its proximity to the town centre.
31. In all the circumstances therefore, in view of the fact that development has been demonstrated to be feasible by reference to architect’s housing plans and an acceptable highways proposal, and in view of the clear ability of the site to satisfy the relevant policies, the site should be included within housing allocation. Within the currency of the UDP, the land was advertised for sale and there was considerable interest and an offer made. However, due to the economic downturn and the site being excluded from settlement limits in the proposals map, the site has not been developed. As the Council’s Population and Housing Paper points out at 4.2.49 ‘the UDP did not, however, foresee the economic problems of 2007 onwards nor could it have been expected to. The general recession that followed and the associated collapse of the housing market have undoubtedly impacted on the number of new housing units provided in recent years.’ In view of the fact that there was interest in the site before the economic downturn, the Objectors are confident that there would be interest once it is included again within settlement limits. The land to the south was developed by Persimmon and sold quickly.

Lucy Murray
Barrister