



Penderfyniad ar Apêl

Ymchwiliad a gynhaliwyd ar 09&10/09/08

Ymweliad safle a wnaed ar 11/09/08

Appeal Decision

Inquiry held on 09&10/09/08

Site visit made on 11/09/08

gan/by Emyr Jones BSc(Hons) CEng MICE MCMI

**Arolygydd a benodwyd gan y Gweinidog
dros yr Amgylchedd, Cynaliadwyedd a
Thai, un o Weinidogion Cymru**

**an Inspector appointed by the Minister for
Environment, Sustainability and Housing,
one of the Welsh Ministers**

Dyddiad/Date 30/09/08

Appeal Ref: APP/L6940/A/08/2069580

Site address: Tir Founder Fields, Cwmbach, Aberdare CF44 0AH

**The Minister for Environment, Sustainability and Housing has transferred the
authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of an outline planning permission.
- The appeal is made by Persimmon Homes (Wales) Ltd. against the decision of Rhondda Cynon Taf County Borough Council.
- The application Ref 07/0258/16, dated 9 February 2007, sought approval of details pursuant to condition No 1 of outline planning permission Ref 01/4020/13, granted on 21 December 2005.
- The application was refused by notice dated 06 February 2008.
- The development proposed is residential development: erection of 214 dwellings including roads, means of enclosure, garages, parking, conservatories and all associated engineering works.
- The details for which approval is sought are: the reserved matters comprising the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site.

Decision

1. At the Inquiry an application for costs was made by Persimmon Homes (Wales) Ltd. against Rhondda Cynon Taf County Borough Council. This application is the subject of a separate Decision.
2. I allow the appeal, and approve the reserved matters, namely the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site, submitted in pursuance of condition No 1 attached to planning permission Ref 01/4020/13 dated 21 December 2005 for residential development at Tirfounder Fields, Cwmbach, Aberdare subject to the following conditions:
 - 1) This approval relates only to the details shown on the following plans:
Site layout
Drawing No TP-01 Rev F (Site Layout).

Landscaping and finishes

Drawing Nos. TP-01 Rev E (Site Layout, proposed finishes schedule), L.01 (Landscape Layout), L.02 (Planting Details (sheet 1 of 4)), L.03 (Planting Details (sheet 2 of 4)), L.04 (Planting Details (sheet 3 of 4)), & L.05 (Planting Details (sheet 4 of 4)).

House types

Drawing Nos. Aber/5718/P (Aberavon Flats, plans), Aber/5718/P (Aberavon Flats, elevations), L248/A/P01 (Boston/Manhattan/Vermont Flats, plans), L248/A/P03 (Boston/Manhattan/Vermont Flats, elevations), LEI/5718/1.0 Rev B (Leicester, plans/elevations), KG/5718/1.0 Rev H (Kingston, plans/elevations), BRD/5718/1.0 (Bridle, plans/elevations), BLA/5718/1.0 (Blacksmith, plans/elevations), ANV/5718/1.0 Rev B (Anvil, plans/elevations), PH/5718/1.0 Rev A (Penhurst 2003, plans/elevations), CTN/1.0 Rev I (Castleton 2003, plans/elevations), EAR/5718/1.0 (Earleswood, plans/elevations), & HOR/5718/1.0 (Horseshoe, plans/elevations).

Cycle store, garages and conservatories

Drawing Nos. CY-01 (Cycle store, plans/elevations), G/1 (Detached double garage dual pitch), G/3 Rev A (Detached single garage), G/5 (Detached pair of garages) & E7BW (Conservatory, model Elizabeth).

Walls

Drawing Nos. FE/7 (General details, wall detail) & ENCL-09 Rev X (General details, 1.8m high close boarded fence).

- 2) Notwithstanding condition 1 above, this approval does not extend to the finished floor levels shown on Site layout drawing No TP-01 Revision F.
- 3) The proposed walling shall be constructed in accordance with details of coursing, jointing, texture relief and colour, to be submitted to and approved in writing by the local planning authority with such details being demonstrated by the prior construction of a sample panel. The panel shall be retained on site until the completion of the walling.
- 4) The proposed render shall be constructed in accordance with details of texture, colour and finish to be submitted to and approved in writing by the local planning authority with such details being demonstrated by the prior construction of a sample panel. The panel shall be retained on site until the completion of the rendering.
- 5) A 23m forward visibility envelope shall be provided on the main site access to the rear of plot 8 prior to the occupation of any dwelling and thereafter retained as such free from obstruction.
- 6) A visibility splay of 4.5m by 23m shall be provided fronting plot 137 for vehicles emerging from the site at the secondary means of access prior to that access being brought into beneficial use and thereafter retained as such free from obstruction.

Background

3. The outline planning application was accompanied by an illustrative master plan which has been stamped 'Permission Granted' by the Council. The reserved matters application covers a somewhat smaller area and excludes the 'Landscape Ecology Buffer' on the appeal site's south western and most of its north western boundaries as well as the 'Landscaped Flood Corridor' on the appeal site's north eastern and part of its north western boundaries.
4. The appeal only relates to reserved matters, as defined by the *Town and Country Planning (General Development Procedure) Order 1995*, but other conditions on the outline permission are of relevance to the arguments raised. Condition 5 requires prior approval of details of ground floor, access road and driveway levels to ensure that the approved scheme would accord with surrounding development. Conditions 6 and 24 between them relate to details of drainage works and a scheme for the disposal of foul and surface waters. Conditions 8, 31 and 32 require prior approval of a landscaping scheme, a habitat and wildlife protection plan, and a landscape and habitat restoration and creation scheme, respectively.
5. Condition 23 requires finished floor levels to be constructed a minimum of 600mm above the theoretical 1 in 100 year flood level and all infrastructure, roads and car parking areas to be a minimum of 300mm above the theoretical 1 in 100 year flood level to provide adequate protection from flooding. A note to this condition states that the theoretical 1 in 100 year flood level for the River Cynon is currently estimated at 116.19 metres above Ordnance Datum. However, it should be noted that although this information is considered the best available at the current time, levels may be subject to change in the future.
6. A Section 106 Agreement, amongst other matters, makes further provision in relation to the 'Flood Corridor Works' and 'Landscape Buffer Works'.

Procedural matters

7. The reserved matters application was refused for three reasons but the first reason was abandoned by the Council on 26 August 2008. At the Inquiry, the Council indicated that the evidence of its highways witness in relation to the third reason for refusal was withdrawn and that its position on this reason was now one of scepticism rather than a positive assertion. As a result, the appellants did not call their highways witness but his evidence stands as a written statement to the Inquiry.
8. At the Inquiry, the appellants suggested that condition 2 above would fully overcome the Council's outstanding objections and that the time and expense of hearing evidence could not be justified in the public interest. Notwithstanding, its agreement that the condition should be imposed if the appeal was to be allowed, and in full knowledge of the appellants intentions to make an application for costs, the Council considered that I should hear its case because it was of the view that there is an inextricable association between drainage details, finished levels and the reserved matters.
9. Had there been agreement between the principle parties on this point, it could well have been in the public interest to proceed as suggested by the appellants. However, to deny the Council the opportunity to present evidence to the Inquiry when it desired to do so would be a fundamental breach of the principles of natural justice and I ruled that I would not do so.

Main issue

10. I consider the main issue in this case to be whether, given that the principle of development was settled by the grant of outline planning permission, the submitted details are acceptable having particular regard to the extent of the proposed land raising and the implications thereof in visual and construction traffic generation terms.

Reasons

11. The second reason for refusal states that 'The development of the site for residential purposes would necessitate the raising of ground levels to an unacceptable degree as it would lead to the creation of an elevated plateau on the valley floor which in itself would prove visually incongruous and which would be emphasised by the creation of housing on top of it'. In referring to 'the development of the site for residential purposes', rather than the particular form of residential development shown on the submitted details, this clearly goes to the principle of development which is something that cannot be considered at the reserved matters stage.
12. Insofar as finished levels are concerned, condition 23 of the outline planning permission imposes minima to provide adequate protection from flood protection. Condition 5 of the same permission retains control over how much levels are raised above these minima to ensure that the approved scheme accords with surrounding development. Although finished floor levels are shown on Site layout drawing No TP-01 Revision F, there is no suggestion that this is intended to satisfy the requirements of condition 5. For the avoidance of any doubt in this respect the appellants suggested the imposition of what is now condition 2 of this decision.
13. The Council considers that the visual impact of the siting, design and external appearance of the buildings and the landscaping of the site is not a matter that can be properly considered without reference to the proposed ground levels since these will dictate the eventual height of the buildings and the landscaping above existing ground levels. As a result, it is of the view that it would not be safe to impose a condition on a reserved matters approval which allows a factor which could have a significant bearing on the proper consideration of these matters to be determined separately at a later date.
14. The outline permission requires reserved matters details to be submitted within 3 years of the date of the permission. However, the only constraint on the submission of proposed levels is that this is done in sufficient time to allow approval thereof and commencement of development within 5 years of the date of the permission or 2 years from the approval of the last of the reserved matters to be approved whichever is the later.
15. Notwithstanding any relationship between the visual impact of the reserved matters and the proposed ground levels, the outline planning permission, therefore, allows the details required by condition 5 to be submitted after approval of reserved matters. The Council could have required the finished levels to be submitted for approval at the same time as, or even before, the reserved matters but it did not do so.

16. The drainage design to be submitted for approval pursuant to conditions 6 and 24 of the outline permission will have a strong influence on the levels to be submitted for approval pursuant to condition 5, as will the latest 1 in 100 year flood level (Q 100). Insofar as the Q100 level is concerned the most up to date value (2007) for the relevant section of the Afon Cynon is 116.29m AOD, which is slightly higher than that referred to in the note to Condition 23 of the outline planning permission.
17. *Technical Advice Note 15: Development and Flood Risk* (TAN 15) cites a need to include allowances for increased flows resulting from climate change when assessing flooding consequences. However, there is no reference to a climate change allowance in Condition 23 or the note thereto. The Council's planning witness accepted that it could be unreasonable to retrospectively impose such a requirement. This is a matter to be resolved when the proposed levels are submitted for approval. If a 20% allowance for climate change is taken into account the Q100 level increases further to 116.45m AOD.
18. Amongst the factors to be considered in designing the drainage scheme is the 1 in 2 year flood level (Q2) which determines the outfall level. The Statement of Common Ground (SOCG) states that the outfall level to the Afon Cynon can be set at the Q2 level of 115.062m AOD. This is based on 2001 figures, but the Council's drainage witness did not anticipate that it would change materially to take account of more recent data. The appellants' drainage witness indicated that a minimal increase would be likely. The finished floor levels shown on Site layout drawing No TP-01 Revision F appear to be based on an initial drainage design with an outfall level of 112.375m AOD, which is considerably lower than the above.
19. The SOCG notes that preliminary design work indicates that it is possible to design a gravity surface water drainage scheme for the site with a maximum road/ground level of 117.85m AOD, subject to satisfactory discharge arrangements to the flood relief channel. The Council's drainage witness was of the view that this could stand as a maximum although the appellants' witness was of the opinion that it would need to increase by the minimal amount that Q2 was increased by.
20. The above compares with a maximum finished floor level of 118.75m AOD on Site layout drawing No TP-01 Revision F. Allowing for the 300mm difference between minimum finished floor levels and minimum infrastructure, road and car parking area levels in Condition 23, it would appear that a lower maximum level than shown on drawing No TP-01 Revision F can be achieved, despite the need to considerably increase outfall levels.
21. Preliminary design work also indicates that the finished floor levels on the site perimeter would need to be raised by up to 400mm from the 116.80m AOD shown on drawing No TP-01 Revision F. Although neither witness specifically addressed the matter, it would be reasonable to assume that this would also be subject to slight revision to take account of more recent data.
22. The SOCG indicates that alternative drainage arrangements are available that would meet the relevant standards and codes of practice and have the potential to reduce maximum levels further. However, the Council's drainage witness

accepted that the introduction of additional outfalls would not result in a net reduction in overall levels, that connection to the retail park drainage system would not make a large difference in that respect, that pumping was not realistic, and that it was questionable as to whether reduced cover would make a material difference to overall levels.

23. TAN 15 notes that Sustainable Drainage Systems (SUDS) offer a variety of engineering solutions, both soft and hard, that mimic natural drainage processes and can be employed to manage surface water run-off. Local planning authorities and developers are advised to seek advice from the Environment Agency, highways authorities and sewerage undertakers on the techniques available for sustainable drainage and their suitability for proposed development in specific locations.
24. In this case the Environment Agency acknowledges that its previous recommendations have not required attenuated surface water runoff but does not object to a system that would regulate to a greenfield rate and/or the implementation of SUDS. No specific approaches have been made to either the highway authority or Dŵr Cymru/Welsh Water. However, insofar as the former is concerned its *Residential Road & Footpath Standards* focuses on conventional drainage systems. The Council's drainage witness recognised the existence of legislative hurdles relating to SUDS and had no knowledge of instances where Dŵr Cymru/Welsh Water had adopted SUDS on comparable sites.
25. Of the different types of SUDS listed in Appendix 4 to TAN 15 filter drains and permeable and porous pavements or infiltration devices do not appear to be appropriate for this site because of the potential for the generation of leachate and contamination of watercourses. Filter strips and swales would still require culverts to cross access drives and junctions with an associated need for minimum cover such that they would not assist greatly in reducing overall levels. Preventative measures or basins and ponds would not be of much assistance in reducing overall levels either. Whilst SUDS might bring other benefits, insofar as this site is concerned it would appear that any reduction in finished levels would not be significant.
26. There remains a degree of uncertainty in respect of finished levels, but maximum road/ground level are not anticipated to be significantly greater than 117.85m AOD and finished floor levels on the site perimeter are not likely to be much higher than 117.20m AOD (116.80+0.40). As a result, I am satisfied that this uncertainty is not sufficient to prevent the visual impact of the reserved matters details from being properly assessed.
27. Notwithstanding the generality of the second reason for refusal, the evidence of the Council's landscape witness focused on the absence of a landscape buffer on the part of the site's north western boundary which lies adjacent to the flood relief channel. It was suggested that the outline application was approved on the basis of a plan which showed or implied a comprehensive landscape treatment of that edge.
28. Although the Illustrative Master Plan shows a 'landscape ecology buffer' along most of the north western boundary it shows a 'landscaped flood corridor' on the part which encompasses the flood relief channel. These are collectively described as 'Green Corridors' although it is clear that they are intended to perform

different functions. The flood corridor being intended primarily to provide a flood relief channel, and to function as a wildlife corridor to facilitate the movement of species, but not to provide screening.

29. The Council's planning witness accepted that the masterplan effectively fixed these areas, which are referred to in the Section 106 Obligation. This does not prevent landscaping within the appeal site but he accepted that extending the 'Green Corridors' into the appeal site would entail renegotiation of the Section 106 Obligation. What is meant by the term 'landscaped' in relation to the 'flood corridor' may be open to interpretation. Nonetheless, examination of the masterplan shows the channel taking up most of the corridor, leaving little or no room for any screen planting such that none can be implied in this area.
30. The Design Statement submitted with the reserved matters application states that a planted buffer is proposed along the northern boundary of the site between it and the existing footpath. However, this appears to be a general statement that does not distinguish between the 'landscape ecology buffer' and the 'landscaped flood corridor'.
31. The Council's Urban Design Officer expressed disappointment that details of what is proposed in the planted buffer had not been submitted. However, the Design Statement indicates that it is intended that the required details would be provided as part of the application to discharge condition 32 of the outline permission. The Urban Design Officer welcomed the units looking outwards onto the planted buffers, footpaths and landscape beyond as this would supervise the new areas of public realm, create a quality backdrop onto these areas and give these edge units excellent views out of the site. In my opinion, continuous screen planting would obviate these benefits.
32. The Environment Agency indicate that, other than grass and low level vegetation, no planting must occur within the flood relief channel and that a 7m buffer zone free of large trees/shrubs is required adjacent to the channel. This is likely to restrict the ability to plant the willow species and hawthorn referred to in the details submitted to discharge conditions 31 and 32 of the outline planning permission.
33. The Council's landscape witness is of the opinion that the absence of robust and considered structure planting along this edge would result in pedestrians on the public footpath having a largely uninterrupted view of the housing development which would be compounded by the presence of cars, lighting and other paraphernalia typically found in gardens and driveways. He suggests that this would provide an abrupt and unsympathetic urban to rural edge that would be harmful to the character and appearance of the surrounding area.
34. However, the flood corridor occupies a substantial width that would provide a degree of visual separation to the dwellings and the views would be of their fronts rather than their rears. As a result, I do not consider that the housing would appear incongruous. In addition, the housing would represent a very short visual experience in relation to the range of views available from the footpath.
35. I acknowledge that the channel currently has a somewhat 'engineered' appearance, but its planting is still subject to the Council's approval through conditions 8 and 32 of the outline permission. Once grass and low level vegetation, including the reeds and rushes which have already started to grow in

the channel, have become fully established this would provide a softer edge to the development. This edge would provide a transition between the housing and the wetland area to the north.

36. The site is located within an area assessed on the Countryside Council for Wales' LANDMAP information system as having a low overall evaluation insofar as the Visual and Sensory Aspect is concerned. Existing levels in the vicinity of the site vary by up to 3m and are barely perceptible. Based on accepted methodology, the appellants' landscape witness has assessed the potential impact of the proposals on the landscape character of the site and its context as being negligible. On the basis of the evidence submitted and what I saw at the site visit, I am satisfied that the raising of the site necessary to satisfy condition 23 of the outline planning permission and to allow it to be drained effectively would be on a minor scale when set within the scale of the relatively broad valley floor.
37. Subject to the approval of levels required by condition 5, I conclude that the necessary land raising to facilitate the construction of the submitted reserved matters details would not be harmful to the character and appearance of the surrounding area.
38. The third reason for refusal states that 'The means of access to the proposed development is, in the light of increases in the volume of traffic from the haulage resulting from the land raising on the adjacent A4059, incapable of accommodating the additional traffic that would be generated by the proposed development'. This is poorly worded, implying that the land raising would take place on the A4059. Furthermore, the reference to the A4059 being incapable of accommodating additional traffic strongly suggests that the concern relates to a capacity issue, which was fully addressed at the outline stage. This view is supported by paragraphs 4.4 and 5.5 of the Council's Statement of Case.
39. The written statement of the appellants' highways witness, which was unchallenged, demonstrates that the existing road network is capable of accommodating the additional traffic that would be likely to be generated by importing fill material without creating problems for other road users. The Council's planning witness was of the view that the third reason for refusal and the references in the Statement of Case referred to environmental effects, rather than capacity issues. I do not interpret them in that way, particularly as the resolution of the Cynon Area Development Control Committee dated 17 January 2008 refers to 'the negative impact on traffic movements'.
40. Be that as it may, he produced no substantive evidence to support the third reason for refusal. Under cross-examination he accepted that no attempt had been made to quantify environmental impacts through, for example, an assessment of noise impact following the advice of *Technical Advice Note 11: Noise*. On the basis of the evidence before me and subject to the approval of levels required by condition 5, I conclude that the traffic likely to arise from the importation of fill material to facilitate necessary land raising would have no unacceptable impacts on other road users or in environmental terms.
41. An interested person is concerned that the additional traffic likely to be generated by the proposed dwellings would exacerbate problems currently encountered in crossing the A4059 opposite Lower Station Street. However, as noted in the report presented to the Cynon Area Development Control Committee on 17 January 2008, matters pursuant to road capacity are issues of principle which

cannot be revisited at the reserved matters stage. The report goes on to state that this particular issue was dealt with at length at the outline stage and was found to be acceptable subject to relatively minor off site works being undertaken.

42. The same person is also worried about flooding of the footpath between Aberaman and Cwmbach, on the north western boundary of the site which benefits from outline planning permission. At the site visit, I noted that the flooding at the south western end appears to result from the River Cynon breaching its banks, immediately upstream of the bridge that carries the footpath. This is clearly nothing to do with the proposals before me.
43. The flooding at the north eastern end appears to relate to the low level of the path and the ability of the 'as constructed' flood relief channel to convey input flows. However, I note that the Environment Agency considers that the 'as constructed' channel does not comply with the consent granted. In any event, these matters are outside my jurisdiction and I have no reason to believe that the reserved matters details before me would exacerbate this problem.
44. Another interested person submitted photographs showing gas being released from the site. That is not surprising in view of its previous use as a landfill site. The matter of landfill gas was addressed in the report presented to the Planning & Highways Committee on the outline application and condition 26 of the outline planning permission requires further gas monitoring to enable the design of gas control measures to be finalised as well as the Council's prior approval of monitoring results, final design, maintenance requirements and timescales.
45. The case of *R. v. Newbury District Council, Ex p. Stevens and Partridge* establishes that it is possible to impose conditions on reserved matters approvals provided that such conditions do not derogate from or seek to go beyond the outline planning permission. A list of suggested conditions was agreed between the principle parties. Subject to minor modifications in the interests of clarity and precision, and to be in line with the guidance of Circular 35/95, particularly the incorporation of implementation clauses in respect of those relating to visibility envelopes/splays, I agree that these should be imposed in the event of the appeal being allowed.
46. Condition 1 is required to clarify exactly what plans have been approved and for the avoidance of any doubt. Condition 2 is necessary so as not to fetter the Council's consideration of details to be submitted pursuant to condition 5 of the outline permission. Conditions 3 and 4 are required to ensure an acceptable visual impact to the development. Conditions 5 and 6 are necessary in the interests of highway safety.
47. For the above reasons, the submitted details are acceptable and do not conflict with *Mid Glamorgan (Rhondda Cynon Taff County Borough) Replacement Structure Plan* policy T11 or *Rhondda Cynon Taff (Cynon Valley) Local Plan* policy ENV1. I conclude that the appeal should succeed.

E Jones

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Crean QC	instructed by the Solicitor to the Council
He called	
Mr T J Roberts MRTPI	DLP Planning Ltd., 2A High Street, Thornbury, Bristol BS35 2AQ
Mr J Jones BEng(Hons) CEng CEnv MICE MCIWEM	JRJ Consulting, 10 Radyr Court Rise, Llandaff, Cardiff CF5 2QH
Mr P J Richards BA(Hons) DipLA MLI	The Richards Partnership, 1 Agincourt Square, Monmouth NP25 3BT

FOR THE APPELLANTS:

Miss M Ellis QC	instructed by Mr Vining
She called	
Miss M O'Connor DipLA MSc MLI	White Young Green, 21 Park Place, Cardiff CF10 3DQ
Mr K Ayoubkhani BSc MSc CEng MICE MCIWEM	Arup, 4 Pierhead Street, Capital Waterside, Cardiff CF10 4QP
Mr P Vining BSc(Hons) DipTP(Dist) MRTPI	White Young Green, 21 Park Place, Cardiff CF10 3DQ

INTERESTED PERSONS:

Mr A Evans	7 Glancynon Terrace, Aberaman, Aberdare CF44 6RL
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's notification of Inquiry and list of persons notified
- 2 R. v. Newbury District Council, Ex p. Stevens and Partridge
- 3 Council's response to the appellants' suggested condition in respect of levels
- 4 Agreed Conditions
- 5 Resolution dated 28 July 2008
- 6 Errata Sheet to Mr Richards' Statement of Evidence
- 7 E-mails dated 19 August 2008 between Mr Richards and Environment Agency Wales
- 8 E-mail dated 6 September 2008 from Mr Vining to Mr Roberts
- 9 Extract from Ateb Consultants 2007 Report
- 10 4 photographs showing gas being released from the site
- 11 Exchanges of correspondence between principal parties
- 12 Extract from Ateb Consultants 2001 Report
- 13 Extract from Council's Residential Road & Footpath Standards
- 14 Consultation response from Council's Urban Designer
- 15 E-mails dated 1 September between Mr Roberts and Mr Vining

Document 10 was submitted by Mrs M Williams, 90 Pine Croft Avenue, Cwmbach, Aberdare CF44 0NB