

## **Adroddiad Adendwm**

Ymchwiliad a gynhaliwyd ar 03 & 04/10/19

Ymweliad â safle a wnaed ar 04/10/19

**gan A L McCooey BA MSc MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 30.06.2020**

## **Addendum Report 2**

Inquiry Held on 03 & 04/10/19

Site visit made on 04/10/19

**by A L McCooey BA MSc MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 30.06.2020**

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TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

APPEAL BY PERSIMMON HOMES EAST WALES

LAND AT HEOL Y CEFN, CEFN FFOREST, BEDWELLY, CAERPHILLY

SECOND ADDENDUM REPORT

## ***Additional Glossary***

AAR	Annual Average Requirement
AMR	Annual Monitoring Report
DPM	Development Plans Manual (3 <sup>rd</sup> Edition)
HLS	Housing Land Supply
LDP	Local Development Plan
NCC	Northern Connections Corridor
NDF	National Development Framework
PPW	Planning Policy Wales
TAN	Technical Advice Note

The term “the Minister’s Letter” when used in this addendum report refers to the Letter of the Minister for Housing and Local Government, dated 26 March 2020.

**File Ref: APP/K6920/A/19/3226294**

**Site address: Land at Heol y Cefn, Cefn Fforest, Bedwellty, Caerphilly.**

- The application was recovered for decision by the Welsh Ministers, made under section 77 of the Town and Country Planning Act 1990, on 31 May 2019.
- The application is made by Persimmon Homes East Wales to Caerphilly County Borough Council.
- The application Ref 17/0681/OUT is dated 4 August 2017 and was refused by notice dated 8 November 2018.
- The development proposed is to erect residential development (up to 300 dwellings) together with associated open space, landscaping and parking provision; and seek approval of access and scale.

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

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**Preliminary Matters**

1. I reported on this appeal following a public inquiry held in October 2019. The report dated 26 November 2019 shall be hereafter referred to as the main report.
2. Since the main report was submitted, the Minister for Housing and Local Government issued a letter (the Minister's letter) on 26 March 2020 which stated that:

*High quality new homes in the right locations are essential for our future wellbeing. The Welsh Government is firmly committed to a plan-led planning system and recognises the essential role of Local Development Plans (LDPs) in delivering good quality homes in sustainable places. The planning system, through the LDP process, must therefore identify and monitor the land needed to allow for the building of the new homes which local planning authorities have established as being required.*

*In response to the housing delivery and land supply position across Wales, which included concerns expressed by local planning authorities and communities regarding speculative residential planning applications, the Welsh Government has undertaken a 'Review of the Delivery of Housing through the Planning System'. This review included a 'Call for Evidence' and consultation on proposed changes to Planning Policy Wales (PPW) and supporting advice / guidance.*

3. After due consideration of the findings of the review and the consultation on the Development Plans Manual (DPM), the Minister announced the following changes to Planning Policy Wales (PPW) and the DPM:
  - Revisions to the 'Housing Delivery' section of PPW. The changes remove the five-year housing land supply (HLS) policy and replace it with a policy statement making it explicit that the housing trajectory, as set out in the adopted LDP, will be the basis for monitoring the delivery of development plan housing requirements as part of LDP Annual Monitoring Reports (AMRs).
  - The revocation of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (January 2015) in its entirety as a consequence of the policy change to PPW.
  - Publication of the DPM (Edition 3) which provides additional guidance on the process of monitoring against the housing trajectory.

4. The Local Planning Authority, the appellant and interested parties who made written representations or took part in the inquiry were consulted on the above changes to planning policy. Those consulted were invited to make comments on the Minister's letter in writing. The deadline for comments was extended to assist the Local Planning Authority in undertaking the consultation. The appellant did comment but requested that the Public Inquiry be reopened should the Ministers consider that the policy changes may adversely affect the merits of the appeal, so that the parties' positions on the matter can be tested in cross-examination and be the subject of full submissions. I draw this request to Ministers' attention.
5. This second Addendum report outlines the gist of the comments received from the parties and considers the effect of the changes in national planning policy on the conclusions and recommendation as outlined in the main report. I have also prepared an Addendum report consisting of an Appropriate Assessment<sup>1</sup> of potential impacts on the integrity of the Aberbargoed Grasslands Special Area of Conservation.
6. I have included the PPW policies of most relevance to the issue of the supply of land to meet the housing requirements of the LDP and the most relevant LDP policies in the planning policy section below. For ease of reference, the Planning Policy section of the main report is correct, apart from two sentences in paragraph 14. The two sentences that have been removed from PPW are:

*"Paragraph 4.2.15 states that authorities must ensure that sufficient land is available or will become available to provide a 5-year housing land supply (HLS). The housing trajectory demonstrates how the Local Planning Authority will maintain a 5-year HLS over the Plan period."*

7. The site and the proposal are described in the main report.

### **Planning Policy**

8. Caerphilly Local Development Plan is the development plan for the area. The relevant policies were set out in the main report. For ease of reference the main housing delivery policies are set out here. The Plan was adopted in December 2010 and covers the period up to 2021. Section A of the Plan sets out the Development Strategy and its key components and also contains the Strategy Policies. The site is within the Northern Connections Corridor (NCC) where Policy SP2 favours sustainable development on both greenfield and brownfield sites. Blackwood is a principal town (top tier) under Policy SP4. Under Policy SP14, the Council has made provision for the development of up to 10,269 new dwellings in the County Borough between 2006 and 2021 in order to deliver the 8625 new dwellings required to meet the moderate growth strategy. Policy SP15 seeks to deliver at least 964 affordable dwellings over the same period.
9. PPW paragraph 1.2 states that its primary objective is to ensure that the planning system contributes towards the delivery of sustainable development. Paragraph 1.17 refers to legislation which secures a presumption in favour of sustainable development in accordance with the development plan unless material considerations indicate otherwise. This is to ensure that social, economic, cultural and environmental issues are balanced and integrated. Figure 4 sets out the national sustainable placemaking outcomes.

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<sup>1</sup> Under the Conservation of Habitats and Species Regulations 2017

10. Section 4.2 deals with housing. Paragraph 4.2.1 sets out the basis for evidence-based housing policies in LDPs and informed development management decisions that focus on the creation and enhancement of sustainable places. Paragraph 4.2.2 states that the planning system must identify a supply of land to support the delivery of the housing requirement and focus on the delivery of the identified housing requirement. Paragraph 4.2.5 states that Local Planning Authorities must clearly set out the housing requirement in their development plan. The supply of land must be deliverable and the ability to deliver must be demonstrated through a housing trajectory. The trajectory will illustrate the expected rate of housing delivery for the plan period (paragraph 4.2.10). The housing trajectory will be used to monitor the delivery of the housing requirement. Under-delivery may require a specific early review of the development plan (paragraph 4.2.11) and planning authorities should also identify where interventions may be required to deliver the housing supply, including for specific sites (paragraph 4.2.12).
11. The Minister's letter states that the DPM provides additional guidance on the process of monitoring against the housing trajectory for LDPs adopted prior to its publication. Local Planning Authorities should add more robust information on the timing of allocations and a housing trajectory to Annual Monitoring Reports (AMRs). The trajectory will be actual completions plotted on a graph against a straight line of the Annual Average Requirement (AAR). The guidance also states that the Local Planning Authority must set out clearly what action it intends to take to address any shortfall in housing delivery against the trajectory.

## **Comments of the Parties**

### *The Appellant's Comments*

12. The case for approval of the appeal has not been undermined by the policy changes set out in the Minister's letter. The revoked 5-Year HLS policy in PPW and TAN1 were never essential parts of the appellant's case. The planning analysis submitted by the appellant (largely agreed by the Council<sup>2</sup>) remains unaffected and holds good.
13. No significant harms arise from the development and significant benefits would be generated. These are set out in the main report. The delivery of affordable housing (up to 75 units) is a positive factor. It is argued that the mechanisms to deliver affordable housing will fall away at the end of 2021 when the current LDP and Affordable Housing Supplementary Planning Guidance will expire. The Minister's letter does not in any way suggest that the delivery of housing is now less important (see paragraph 2 above).
14. Reference is made to various parts of PPW that emphasise the importance of housing and the supply of housing land as a basis of planning policy, especially paragraph 4.2.2. The advice in PPW and the DPM regarding monitoring of housing delivery is that the housing trajectory must be used, and under-delivery may require an early review of the Plan. Whilst an early review is referred to, other actions are not ruled out. The DPM requires Local Planning Authorities to specify their proposed remedial actions where there has been under-delivery for 2 consecutive years. Caerphilly CBC has set out its recommended action in successive AMRs. This was to consider applications for housing on their own merits in the light of the need to boost the HLS, as the Council is clear that an early review of the Plan cannot be achieved. What has changed since the

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<sup>2</sup> see paragraph 21 of main report

Minister's letter is the method to be used for monitoring the delivery/supply of housing, not the importance of that delivery/supply.

15. The appellant has made every effort to engage with the plan-led system and succeeded in gaining a draft allocation for the site in the replacement LDP that was withdrawn by the Council in 2016. This is not a speculative strategy or application of the kind feared by the Minister in the consultations leading to the revocation of TAN1. It should also be noted that there are no remaining development plan allocated sites in greater Blackwood.
16. This combination of circumstances, together with the absence of any alleged significant 'on the ground' harm from the appeal scheme, means that allowing the appeal would not in any way undermine the plan-led system generally or create any form of undesirable precedent. The courts have held that there is no requirement to slavishly adhere to the development plan or refuse planning permission in every case of conflict.<sup>3</sup>
17. The appellant's analysis of the shortfall in housing delivery in Caerphilly CBC area against the housing trajectory echoes that of the Council's Strategic and Development Plans Team. The appellant has applied the approach in Section 8 of the Manual for Local Planning Authorities where their LDP was adopted prior to publication of the latest edition of the Manual. This states that the AAR method (requirement divided by the period of the Plan) should be used. The AAR has only been met twice in the early years of the Plan and since then a large deficit has accrued so that 35 – 40% of the requirement remains to be delivered by the end of 2021. This lends greater weight to the contribution that the appeal scheme will make to the supply of market and affordable housing. The under-delivery of affordable housing is a matter of particular concern for the Council. The 2019 AMR highlights that only 25% of the LDP affordable housing target has been provided. 75 dwellings would make a contribution equivalent to 7% increase in all the affordable units provided over the plan period to date.
18. The draft National Development Framework (NDF) identifies the South Wales Valleys (including Blackwood) as a "National Growth Area", with Policies 29 and 31 offering support for new development within this general location.
19. The policy changes in the Minister's letter do not indicate that the Welsh Government has changed its commitment to ensuring that the planning system delivers the housing Wales needs. Under-delivery remains a material consideration, however that shortfall is measured. Applying the new approach of monitoring housing delivery against the housing trajectory set out in the adopted development plan, there remains a significant shortfall in housing supply in the Council's administrative area which will not be addressed until a new LDP is adopted, which is currently at least 4 years away. The extent of the shortfall, the length of time that it has existed and the likely length of time until there is an adopted development plan in place are significant factors that weigh heavily in favour of the proposed development.

#### Caerphilly County Borough Council

Inspector's Note: The Council forwarded the comments of the Strategic and Development Plans Team as well as the comments from the Council's representative at the Planning Inquiry (Vice-chair Cllr Andrew Whitcombe).

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<sup>3</sup> see City of Edinburgh Council v. Secretary of State for Scotland [1997] 1 W.L.R. 1447

Comments of Cllr Andrew Whitcombe

20. The Minister's decision to revoke TAN1 and remove the references to a 5-year HLS from PPW strengthens the Council's position as set out in evidence. The fact that the Council cannot demonstrate a 5-year HLS can no longer undermine the decision to refuse planning permission. The revocation of TAN1 and the reliance on the 5-year HLS demonstrates that this was a flawed methodology. The fact that 19 of 24 Local Planning Authorities in Wales could not demonstrate a 5-year HLS supports this conclusion. The appellant's argument that there is a very poor housing land supply in Caerphilly Borough should carry no weight now that TAN1 has been revoked.
21. The Minister's letter of July 2018 stated that it is a matter for decision makers to decide the weight to be attributed to the need to increase housing land supply. The Planning Committee determined that the harm caused by the proposal outweighed its contribution to housing land supply. The recent Ministerial announcement strengthens the decision. The reasons for refusing planning permission stand and the Welsh Ministers are urged to dismiss this appeal.

Comments of the Strategic and Development Plans Team

22. The revised text in PPW states that the ability to deliver the housing requirement in a development plan must be demonstrated through a housing trajectory. The trajectory will be used as the basis for monitoring the delivery of the plan's housing requirement. Monitoring by AMRs must be undertaken in accordance with the DPM. Thus, the AMR is the key mechanism for assessing how the policies of the plan are working (including the delivery of the housing requirement).
23. The LDP covers the period 2006-2021. Policy SP14 requires 8,625 dwellings to be delivered over this 15-year period, that is an AAR of 575 dwellings. The Council has prepared 8 AMRs up to the 2019 AMR, which was agreed by the Council in October 2019. The AMRs show consistent under-delivery in all years apart from 2006-2008. 4,835 dwellings had been delivered by March 2019. This leaves a requirement for 3,790 dwellings by the end of 2021. Recent annual housebuilding rates in the Council area have been very low and last year saw the lowest number of housing completions since 1996. In order to address this very large shortfall the AMR recommends a review of the LDP and in the period up to the adoption of the revised LDP, the Council will need to take proactive action. The Council's<sup>4</sup> AMRs since 2016 have contained a recommendation that applications for new housing proposals should be considered on their individual merits having regard to the need to increase the supply of housing land.
24. Preparation of the replacement LDP has begun. Progress on the necessary consultations has been delayed by the Covid-19 restrictions. It is estimated that the replacement plan will be adopted in approximately 4 years from when the Covid-19 restrictions are lifted. The delivery of additional housing during the time until the replacement LDP is adopted is very important, given the length of time that the under-delivery of housing is likely to persist.

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<sup>4</sup> Approved by the Full Council

25. The adopted LDP does not contain a housing trajectory, as this was not a requirement at the time the plan was prepared. A trajectory will be submitted to Welsh Government in the 2020 AMR, which will be in line with revised national policy. This will mean a higher level of under-provision for the Council than the former 5-Year HLS method. This is because the shortfall over the whole plan period will be taken into account rather than the shortfall over a 5-year period.
26. The requirement to deliver housing remains an integral part of the planning process, and the recommendations of the 2019 AMR, which highlight the need to deliver more housing to address the shortfall against LDP total housing requirements, remains a key consideration. The magnitude of the shortfall in housing delivery in the adopted LDP is significant and is a matter that will not be comprehensively addressed until such time as additional land for housing is released upon adoption of the second Replacement LDP in around 4 years' time. However, the granting of permission for residential development on appropriate sites will help address the shortfall in the short term, particularly where the contribution a site would make is significant. The proposal should be considered in this context.

### Third Parties

#### Comments of Cllr Dix, Cllr Etheridge & Cllr Mills

27. Evidence already submitted refers to the number of sites with planning permission in the Northern Corridor area where no houses have been built. There are sites available throughout the Council area that are within settlement limits. The Council was forced to grant planning permission on greenfield sites outside the LDP settlement limits because of TAN1 and the need for a 5-year HLS. This loophole has now been closed and there is no requirement to maintain a 5-year HLS.
28. This enables the LPA to produce a development plan based on its knowledge of its communities and land available. The arguments put forward by the developer in this case focus heavily on the HLS shortfall in an attempt to pressure both the Council and Welsh ministers to find in their favour. With these changes that pressure is removed and it enables the Council to make decisions in the best interests of its communities and not be forced to allow developments on land that is outside the boundary of its development plan.
29. Local residents have raised a number of concerns about this proposal and have related the proposal to a similar development in Rossett, Wrexham, which was recently approved by the Minister. The Minister should consider this appeal on its merits and the Wrexham decision should not be seen as a precedent. There is considerable concern in Blackwood regarding the Wrexham decision. The strength of local opposition to the proposal is second to none. The importance of green spaces to the local community has been particularly highlighted in the current Covid-19 lockdown period. The proposal would add nothing to the environment and will effectively steal a valued green space from the community. There has been flooding in the area on several occasions over recent years. The previous objections on behalf of local residents such as highway problems, lack of capacity of local infrastructure, etc. are repeated. Reference is made to the emphasis in PPW on the protection of green spaces, on updated development plans that refer to people's health and happiness, and on the well-being of future generations.



### Comments of other third parties

30. Most respondents refer to and repeat earlier objections made. These points have been summarised in the main report. Residents acknowledge the policy changes and that the 5-year HLS requirement has been removed. This enables the Local Planning Authority to produce a development plan based on its knowledge of its communities and land available. The removal of the focus on any shortfall in housing land supply enables the Council to make decisions in the best interests of its communities and not be forced to allow developments on greenfield land outside the settlement limit such as the appeal site. The importance of such highly valued green spaces to the local community has been highlighted by increased public activity during the recent Covid-19 lockdown period. The declaration of a climate emergency also increases the importance of green spaces. There will be adverse impacts on the natural heritage of the area including the Aberbargoed Grasslands, and on public rights of way by the proposed re-routing arrangements. This development would be contrary to the Well-being of Future Generations Act. There are plenty of brownfield sites, which should be developed first.
31. One resident refers to over-supply of housing land in the LDP as a result of incorrect population projections. The proposed replacement LDP was withdrawn in 2015 for this reason following criticism from the Welsh Government regarding over-supply and potential infrastructure problems. Another objector suggested building the 300 houses on the car park at the Council's headquarters, which would be a very sustainable location with easy access to employment opportunities.
32. Local residents again emphasise the inadequacy of the local road network, the sewerage and drainage systems, local school capacity and health facilities. Flooding as a result of stormwater and inadequate sewers has occurred twice a year. There has been over-development in the Blackwood area in recent years as a result of appeal decisions. Consideration should be given to the strength of local opposition to this proposal, and the Welsh Government should support local democratic decisions.

### Conclusions

33. As outlined in the main report [paragraph 64], the starting point for consideration of the proposal is the LDP. The appeal site is outside the settlement limits for Blackwood or Cefn Fforest, as defined in the LDP. There is no dispute that the appeal proposal is therefore contrary to the aims of parts B and D of Policy SP5 and criterion C of Policy CW15. This being the case, the main issue was identified in the main report as whether there are other material considerations that would justify granting planning permission with particular relevance to the supply of housing and sustainable development. Several material considerations were identified in the main report. The relevant material consideration for this addendum report is the weight to be given to the shortfall in the supply of housing land in Caerphilly. My approach to deciding the matter of weight is set out in paragraph 68 of the main report.
34. PPW is clear that the planning system must identify a supply of housing land to meet the housing requirements for market and affordable housing that have been identified in the development plan. The Minister's letter and the revisions to PPW and the DPM set out how housing delivery will be monitored against the housing trajectory in the development plan. The Strategic and Development Plans Team has set out the monitoring process for older LDPs. A housing trajectory based on the AAR will be prepared as part of the AMR and actual completions will be plotted against the trajectory. Much of the information required to undertake this exercise has been

provided both at the Inquiry and in the latest comments from the Strategic and Development Plans Team and the appellant.

35. The Plan requires 8,625 dwellings to be delivered over its 15-year period to 2021, that is an AAR of 575 dwellings. The latest AMR shows that 4,835 dwellings had been delivered by March 2019. This leaves a requirement for 3,790 further dwellings (around 44% of the total requirement) to be provided by the end of 2021. The Council has confirmed that build rates have been very low in recent years. Progress on meeting the affordable homes requirement is even worse. The AMR confirms that only 25% of the LDP affordable housing target has been provided.
36. This is a case where monitoring reveals that the Plan is not delivering the required housing land and, in such cases, PPW indicates that interventions may be required. The intervention specifically referred to in PPW and the DPM is an early plan review. The Council recognised the problems with HLS and commenced an early review. However, that replacement LDP was abandoned in 2016. This review identified a need for additional undeveloped sites, of which the appeal site was one. The appellant has demonstrated a willingness to follow the plan-led system by advancing the site in the LDP review process. The LDP review process has now re-started but both the Council and the appellant indicate that an adopted revised LDP is at least 4 years away.
37. In summary, as I outlined in the main report there is a significant shortfall in meeting the housing requirement of the LDP for market and affordable housing. That situation has continued for more than 9 years. The AAR (to be used to assess progress against the housing trajectory) has not been met since 2008. The replacement LDP will not be in place for at least 4 years.
38. This proposal would provide up to 300 dwellings (25% of which would be affordable). This would make a considerable contribution to addressing the shortfall in the HLS and provide much needed affordable housing. The Council's AMR recommends consideration of such sites on their merits. The Strategic and Development Plans Team of the Council has endorsed this approach. In all these circumstances, the Minister's letter and accompanying policy changes do not alter my opinion that significant weight should be attached to the need to increase housing land supply as a material planning consideration.
39. Many of the other matters raised by the Councillors and third parties have been addressed in the main report. Paragraph 71 deals with the deliverability of brownfield sites and notes that the new Local Development Plan and the Council's response to the NDF recognise that both greenfield and brownfield sites will be required to meet housing needs. The content of paragraph 71 remains valid with the deletion of "and TAN1" in the fifth line.
40. Several objectors refer to flooding problems in the area. I note that the Council's drainage engineer raised no issues when consulted. The issue of sewer capacity has been considered in the main report. In relation to surface water drainage, Dwr Cymru has confirmed that discharge of surface water from the development to the sewerage system will not be permitted. I note that all new developments are required to provide sustainable drainage systems for surface water (approved by the Council). This will ensure that surface water runoff from the site would not increase from greenfield rates. I conclude that refusal of planning permission on these grounds could not be justified.

41. An objection challenges the basis for the housing allocations in the adopted LDP. The status of these housing allocations cannot be queried at this stage. The value of green spaces is noted. They are important to local communities. However, the site is in private ownership and there are other publicly accessible green spaces nearby. The public rights of way traversing the site would be maintained and improved as part of the proposal. The release of the Council car park for development is not before me.

**Recommendation**

42. The overall conclusions and planning balance remain as set out in paragraphs 87 to 90 of the main report and my recommendation is that the appeal be allowed for the reasons set out therein, subject to the conditions and obligations detailed in the main report.

*A L McCooey*

**Inspector**