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## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 07/08/18

Ymweliad â safle a wnaed ar 07/08/18

**gan Paul Selby BEng (Hons) MSc  
MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 25/09/18**

## Appeal Decision

Hearing Held on 07/08/18

Site visit made on 07/08/18

**by Paul Selby BEng (Hons) MSc MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 25/09/18**

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**Appeal Ref: APP/V6945/A/18/3202529**

**Site address: Land Off Brangwyn Avenue, Brangwyn Avenue, Llantarnam,  
Cwmbran NP44 3BX**

**The Welsh Ministers have 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 planning permission.
  - The appeal is made by Bron Afon Community Housing against the decision of Torfaen County Borough Council.
  - The application Ref 17/P/0579/FUL, dated 11 May 2017, was refused by notice dated 21 November 2017.
  - The development proposed is Construction of 14 dwellings, parking, open space and associated works at land off Brangwyn Avenue, Llantarnam.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The original appeal form identified the appellant's name as 'Melin Homes'; later corrected to 'Bron Afon Community Housing'. This differs from the name given in the original planning application ('Bron Afon Community Council'). I am informed that this was also an error. I am satisfied that despite these errors the applicant and appellant are the same and no parties will have been prejudiced by these discrepancies, as the application and appeal were publicly notified and the proposal itself has not altered. I have proceeded to determine the appeal on this basis.
  3. The Appellant has submitted a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act (TCPA) 1990. Three alternative draft forms of this document were submitted at the hearing, with a single final executed version submitted following the hearing on 24 August. The final version of the UU responds to concerns raised by the Council in relation to the draft versions submitted. The final UU offers obligations for the provision of no less than 30% affordable housing and contributions towards public open space, and recreation and adult recreation facilities which are necessary, directly related to the development, and related in scale and kind. The final UU therefore meets the appropriate tests set out in Section 122(2) of
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the Community Infrastructure Levy Regulations 2010 and Circular 13/97 'Planning Obligations' and I have accordingly afforded it weight in my considerations.

4. I am informed that an application to designate the appeal site as a village green has been made. Such applications fall outside the scope of appeals made under section 78 of the TCPA 1990 and I have therefore not had regard to this matter.

### **Main Issues**

5. The main issues are the effect of the proposal on: (a) the loss of open space, with particular regard to local policy; (b) the character and appearance of the area; and (c) biodiversity.

### **Reasons**

6. The appeal relates to an area of gently sloping open space bounded by Brangwyn Avenue, the front and rear gardens of adjacent dwellings and a Community Hall. The site is predominantly grassed over but also accommodates tarmacked footpaths, an area for informal car parking at Plas Cwrt, two mature trees and hedgerows. Railings mark the site's southern boundary with Brangwyn Avenue.

#### *Loss of open space*

7. At the hearing it was established that policy CF5 of the Torfaen Local Development Plan (LDP) is a key policy in the determination of the proposal. This is a criteria-based policy which applies to all areas of open space within the County Borough. Paragraph 8.41.1 of the LDP states that the policy's aim is to protect open space, either in public, private or voluntary ownership, which has significant recreational, conservation, environmental or amenity value. Nonetheless, the policy allows for the development of open space subject to several criteria, against which I have proceeded to assess the proposal.
8. Despite being privately owned by Bron Afon Community Housing following a stock transfer, the Council and appellant agree that the appeal site constitutes 'informal recreation space' as defined in the LDP. The site is accessible to the public, with both informal and marked footpaths crossing it. I also saw evidence of its use for recreation on my site visit. Despite the separate grassed areas in the southwestern part of the site accommodating trees and a 'no ball games' sign, and being of limited size and open to the roadways which bound them, taken as a whole I concur with the view that the appeal site meets the definition of informal recreational space set out in the LDP.
9. Paragraph 2.11 of Technical Advice Note (TAN) 16 'Sport, Recreation and Open Space' endorses the use of the Fields In Trust (FIT) 'Benchmark Standards' for the provision of open space, which it summarises in Annex C. These quantity standards are reflected in LDP policy H5, which are cross-referenced from policy CF5. Newer 'Recommended Benchmark Guidelines' are included in Table 3 of FIT's 'Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard' (January 2017).
10. FIT's 2017 guidance recommends that informal outdoor space should be available within a specified walking distance of dwellings. The guideline walking distance for amenity green space, which the glossary indicates includes informal recreation space, is 480 metres. This is lower than the 710 metre walking distance guideline for informal outdoor space provided within 'parks and gardens'. To my mind this recognises the role of smaller spaces for impromptu play and recreation, particularly for children, versus the more strategic 'leisure' role provided by many larger parks.

11. The updated Open Space Assessment submitted in support of the appeal scheme estimates the quantum of informal recreation space within Llantarnam ward. Further to this the appellant has also sought to quantify the amount of such space within the 'Llantarnam 1' Local Super Output Area (LSOA), within which the appeal site falls. Whilst there is disagreement between the Council and appellant about the extent of informal recreation space provided within parks and gardens such as Oakfield Pleasure Gardens and the Boating Lake, these assessments provide an adequate starting point for identifying the location, extent, type and quality of open spaces in the wider area.
12. At the hearing the Council submitted a more focused analysis of open space within 480 metres of the appeal site, which reflects FIT's walking guideline for amenity green space. In my view this represents an appropriate catchment for the type of open space provided by the appeal site. This assessment indicates that the 'Adopted Standard' of 0.55 hectares of informal open space per 1,000 population set out under LDP policy H5 would be met even with the appeal scheme taking place. As a consequence, at the hearing the Council conceded that it no longer considered that the proposal would exacerbate a deficiency of open space locally, and would thus accord with criterion (a) of policy CF5. It therefore did not wish to pursue its reason for refusal on this ground.
13. On the basis of this more focused analysis I concur with the Council that the appeal scheme would not lead to or exacerbate a local deficiency in informal recreation space within the walking catchment. As such I find no conflict with criterion (a) of policy CF5.
14. Criterion (b) of policy CF5 seeks to protect open spaces which have significant amenity value or quality. In terms of visual amenity, whilst the absence of substantial foliage provides limited visual interest, the predominantly open character of the appeal site contributes positively to the immediate area. Being of some size and centrally located adjacent to the Court Farm/Oakfield Community Hall, it appears as a planned element of the estate and relates in function and form to the buildings around it. It is readily visible from adjoining areas of public realm and is a notable local feature. Due to its prominence, form and location, I consider that it has significant visual amenity value.
15. In terms of its contribution to the amenity of the neighbourhood in a wider sense, the well-sized, relatively flat grassed area within the appeal site provides opportunities for a range of impromptu, informal and unsupervised play and recreation by children of all ages. It is well overlooked by the houses around it and conveniently and safely located at the heart of the estate. Its location adjacent to the Community Hall provides further opportunities for non-active recreational use. Given its potential value for recreation and communal activities I consider that it makes a significant contribution to the area's local amenity.
16. It is the case that there are other alternative open spaces within the 480 metre walking catchment which also contribute to the area's visual and recreational amenity. However, in my view these are not directly comparable to the appeal site in amenity terms. The three alternative grassed areas nearby lack passive surveillance or are of a size or shape which would limit their use for certain types of recreation such as ball games. Whilst Oakfield Pleasure Gardens is of considerable size, suitable for a range of uses and in close proximity to the estate, passive surveillance within the park is poor. Moreover, whilst Oakfield Road is calmed and does not appear to be subject to significant volumes of traffic, there is no demarcated zebra or pelican crossing on the walking route between the estate and Pleasure Gardens. Its use for unsupervised play by younger children is thus likely to be limited.

17. At the hearing I was informed that the Oakfield Primary School redevelopment will include informal recreation space, but there is little to indicate that this would be equivalent in value or quality to the site in question. Other open spaces are available within the ward, including at the Boating Lake, but none are sufficiently accessible on foot from the vicinity of the appeal site and most make little contribution to the visual amenity of the Court Farm/Oakfield estate. For the above reasons I find that the site has significant amenity value or quality and that its loss would cause substantial harm, thereby conflicting with criterion (b) of policy CF5.
18. Turning to criteria (c) and (d), the appeal proposal would retain limited open space on the site. That shown as 'public open space' on the submitted plans would measure no more than 9 metres at its widest point. It would be clearly incidental to the main residential use of the site as a whole, as would the retained space in the southwestern corner of the site. The design and proposed residential use of the appeal proposal would severely limit opportunities for recreation or communal activities on the site. As I have found that the existing area of open space performs a valuable function, the proposal would substantially harm its integrity and function, conflicting with criteria (c) and (d) of policy CF5.
19. Criterion (e) of the policy states that development will be permitted where the need for development outweighs the need to protect the open space affected. The appeal scheme would provide six 1 bedroom flats and eight 2 or 3 bedroom houses. The submitted UU provides an obligation that at least 30% of these units would be within an affordable tenure, albeit I was told at the hearing that, as the appellant is a Registered Social Landlord (RSL) and the scheme would be grant-funded, all 14 units would be likely to be affordable.
20. The most recent Joint Housing Land Availability Study indicates that the County Borough has a 3.6 year land supply. A 5 year housing land supply has not been achieved for 4 years. Specifically in terms of affordable housing, whilst it appears that the LDP target has been met for the period to 2021, it is not clear whether that target relates purely to affordable homes secured via private sector-led schemes rather than those implemented by RSLs. In any case the Council has not disputed that there are over 2,500 residents on its 'Homeseeker Register'. The Council's Local Housing Strategy 2018-2021 indicates that over 60% of people on this register would prefer to be housed in the south of the County Borough. In providing between 5 and 14 social rented units the proposal would contribute to meeting an evidenced need. This is a benefit to which I attach significant weight.
21. Following the dis-application of paragraph 6.2 of Technical Advice Note 1 'Joint Housing Land Availability Studies' from 18 July 2018 onwards, it is now a matter for decision makers to determine the weight to be attributed to the need to increase housing land supply where a shortfall exists. In this case I afford significant weight to the benefit of the proposal in contributing 14 units to the County Borough's housing land supply. Nonetheless, even were all 14 units to constitute affordable housing, this would not outweigh the substantial harm caused by the loss of an area of open space of local significance. I have found above that there are few other areas within the locality that offer the same quality or amenity value as the appeal site. Consequently I find that the proposal would conflict with criterion (e) of policy CF5.
22. Criterion (f) of the policy states that proposals involving the loss of open space may be permitted where the developer makes satisfactory compensatory provision which is of equal community benefit, value and quality. In line with the Council's Planning Obligations Supplementary Planning Guidance, the UU submitted by the appellant provides for a financial contribution of over £86,500 towards enhancing informal

recreation space at Oakfield Pleasure Gardens. An outline scheme of landscaping appended to the UU indicates what could be achieved with this contribution. The UU also includes separate financial contributions towards children's recreation and adult recreation, to support the provision of a play area on the site or within Oakfield Pleasure Gardens, as well as enhanced facilities at the nearby playing fields or at Cwmbran Recreation Area.

23. Paragraph 3.9 of TAN 16 indicates that replacement open space should be equivalent to, or better than, that taken in terms of its capacity to provide for the area's needs, and will usually, but not necessarily, relate to its size, characteristics, location and accessibility. I have already concluded that Oakfield Pleasure Gardens is not comparable to the open space that would be lost, particularly in terms of its accessibility and characteristics. Provision of enhanced informal recreation space within the Pleasure Gardens would not address the provision of locally significant informal recreation space of the same quality and amenity value of the appeal site. Nor would the provision of a children's play area or enhanced recreation space within the local area offer acceptable mitigation in this regard. Consequently, whilst I afford moderate weight to the UU's open space, children's recreation and adult recreation obligations, the enhancement of space elsewhere or equivalent financial contributions would not sufficiently compensate for that lost. The proposal would thus conflict with criterion (f) of policy CF5.
24. I accept that, as the appeal site is within private ownership, it could be fenced off under permitted development rights, preventing public use of the land. As a fall-back position this is a material consideration in the determination of the appeal. Nonetheless, were it to be fenced the land would remain largely devoid of built development and would thus continue to make a contribution to visual amenity.
25. The appellant contends that as the appeal site has not been designated as an Important Urban Open Space under LDP policy CF4 it should not be afforded the same strict level of protection against development. Nonetheless there is no dispute that policy CF5 is the pertinent policy in this case. For the reasons given above I find that whilst the proposal would not cause or exacerbate a deficiency in informal recreation space within the immediate area, it would nonetheless conflict with the open space objectives of criteria (b) to (f) of LDP policy CF5, and with the general aims of TAN 16 and the FIT guidance.

#### *Character and appearance*

26. The estate's various verges and incidental green spaces, in addition to the front and rear gardens of dwellings, afford it an open, spacious character. Hedges, garden trees and street trees, some of which appear to pre-date the estate itself, contribute to the area's leafy appearance.
27. The proposed residential buildings would accommodate modest rear garden areas and would reflect the built form of the immediate area. Retained open spaces would mirror the size and layout of amenity areas found elsewhere in the vicinity. Spatially, the dwellings would relate adequately to others nearby. The design of the proposal would thus draw positively on the innate characteristics of the prevailing townscape.
28. There is little evidence that the Court Farm/Oakfield estate, which falls within a designated settlement boundary, is of any particular significance in townscape terms. I also consider that the proposed dwellings would not in themselves cause visual harm. Nonetheless, I have already found that the open space within the appeal site, due to its prominence, form and location, has significant visual amenity value. In my

view it is consequently a fundamental characteristic of the estate's urban fabric. The substantial reduction in open space caused by the appeal proposal would not respect the local pattern of development and would significantly harm the area's character and appearance. I therefore conclude that the proposal would not accord with the visual amenity, design and built environment objectives of the relevant parts of LDP policies BW1 and S7.

### *Biodiversity*

29. The submitted Ecological Assessment recognises that the amenity grassland, trees and hedgerow areas contained within the site have local value for common mammal and bird species. But whilst indicating that it would be desirable to incorporate new semi-natural habitats within the design of the proposal such as native hedgerows, woodland planting, semi-natural neutral grassland, ponds and bird boxes, it concludes that, subject to appropriate mitigation measures with respect to protected species such as nesting birds, the proposed clearance and development of the site would not have unacceptable impacts on wildlife.
30. The Council contends that the proposal would lead to the loss of a 'stepping stone' between more ecologically rich spaces, and has submitted an ecological connectivity map which confirms the appeal site's location between the Dowlais Brook valley and Oakfield Pleasure Gardens.
31. Planning Policy Wales (PPW) indicates that 'stepping stones' and 'wildlife corridors' are essential for migration, dispersal or genetic exchange and can make an important contribution to the conservation and enhancement of biodiversity. However, it advocates that such features are identified and managed via development plans, which is not the case here. Whilst I recognise that the value of green corridors may be greater than the sum of their individual parts, little compelling evidence has been provided of the appeal site's strategic importance in this regard. The fact that it is physically separated from other green spaces by roads and tarmacked footways and lacks any notable innate ecological value lends weight to this view.
32. The Council has suggested conditions to secure landscaping which the appellant accepts are necessary. Although I acknowledge that the proposal would introduce built form onto the site, with substantial areas given over to a vehicular access and car parking, it has not been demonstrated that the proposed conditions could not secure landscaping of similar or greater value to wildlife than currently offered within the appeal site. Further, the financial open space contribution of over £86,500 included in the submitted UU may facilitate wildflower or native tree planting. I afford moderate weight to this potential benefit to the area's biodiversity.
33. For the above reasons I conclude that the proposal would not unacceptably harm local ecology. It would thus accord with the green infrastructure, biodiversity and habitat policies of the relevant criteria of LDP policies S3, S7 and BW1, and with the general aims of PPW.

### **Other Matters**

34. I have had regard to other matters raised, including in relation to flooding and car parking, but as I am dismissing the proposal against two of the main issues I do not discuss these here.
35. In reaching my decision I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its

contribution towards the well-being objective of supporting safe, cohesive and resilient communities; and with the 'a healthier Wales' well-being goal, which seeks to achieve a society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.

## **Conclusion**

36. I have found that the proposal would not harm local biodiversity. Nonetheless, this and the scheme's benefits do not outweigh the harmful effect of the appeal proposal on the quality and value of this locally significant open space, its integrity and function and the character and appearance of the local area.

37. I have considered the other matters raised but none outweigh my conclusions. I conclude that the appeal should be dismissed.

*Paul Selby*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Pete Sulley	Associate Director, Asbri Planning
Llŷr Morris	Planner, Asbri Planning
Keith Richardson	Development Associate, Bron Afon

### FOR THE LOCAL PLANNING AUTHORITY:

Claire Hall	Senior Planner
Robert Murray	Principal Planning Officer (Policy)
Henrietta Lucas	Senior Environmental Projects Officer

### INTERESTED PARTIES:

Linda Joseph	Local resident
Cllr Alan Slade	County Borough Councillor
Cllr Dave Thomas	County Borough Councillor
Cllr Mike Villars	Community Councillor

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Email from the Council dated 6 August 2018 regarding the draft Unilateral Undertaking and revised quantitative assessment of open space
2. Draft Unilateral Undertakings, versions 1, 2 and 3

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

3. Email from the Council dated 10 August setting out comments on the Draft UU
4. Email from the appellant dated 14 August rebutting the Council's comments and including information related to the agreed Unilateral Undertaking
5. Completed/executed Unilateral Undertaking dated 24 August 2018