



Village Green, Bonvilston

There is a strong legal case against development on the Village Green, Maes y Ffynnon, Bonvilston – [2019/01031/RG3](#). The Planning Committee of the Vale of Glamorgan Council voted to against approval of the application (6 votes to 7). The applicants are in the process of appealing under s.78 of the Town and Country Planning Act 1990 ("the 1990 Act") against "non determination" as the Planning Committee deferred the decision of presenting a planning reason for refusal to a further meeting.

It's probable that the Planning Committee will be asked to agree a stance (i.e. should the application have been approved or refused) at the meeting of October 27.

Background

As developer, the Vale of Glamorgan Council argues that additional housing that is affordable is "much needed" in the area, and that there is an over-provision of Public Open Space within the Wenvoe Ward. The Community Ward of Bonvilston currently lies within the Unitary Authority Ward of Wenvoe.

20% of the dwellings on the Local Development Plan (LDP) allocated site known as 'Land to the east of Bonvilston' is "affordable" due to the viability of the site – the target is 40%. This will provide 24 "affordable dwellings", 18 of which will be for "social rent" and be completed in 2022-23. It's expected that a revision of the planning application will be made after slow sales of private dwellings. The Vale Council has around £2.6m in its S106 pot to provide additional "affordable housing" in the area of Bonvilston, but chose not to use this to ensure provision on this development east of Bonvilston.

A new development at 'Land at Bolston House' is expected to deliver further "affordable housing", and a housing association is believed to have a site to the south of the A48 to bring forward for development in the future (next LDP).

The Ecology Officer of the Vale Council continues to object to the proposal.

Vale of Glamorgan Council figures continue to show a shortfall of provision of open space within the Bonvilston Community Ward.

Legal Precedent

England and Wales Court of Appeal (Civil Division) Decisions – Renew Land Developments Ltd v Welsh Ministers (13 February 2020) [2020] EWCA Civ 143

Link: <http://www.bailii.org/ew/cases/EWCA/Civ/2020/143.html>

This was in regards to the proposed development of up to 100 ‘affordable homes’ for social housing provider Cartrefi Conwy.

The applicant appealed refusal to grant planning permission for a development that would result in the loss of some public open space. The Planning Inspector upheld the determination by the Planning Authority on the basis that permission should not be granted for developments resulting in the loss of open space unless acceptable alternative provision was being made.

As with the land at Bonvilston, the land is designated as (public) open space for the purposes of the LDP. Likewise, the Vale of Glamorgan LDP was developed with the Public Open Space around Maes y Ffynnon included in the Planning Authorities figures, with no suggestion that it would be developed.

It was demonstrated that the proposal was contrary to policy which provided, in broad terms, that planning permission would not be granted for development resulting in a loss of open space unless (in a scenario where there was not over-provision of open space in the particular community) it was replaced by acceptable alternative provision within the vicinity of the development or within the same community.

A Planning Inspector stated that “the development would result in the loss of informal open space in a community where there is already an overall deficit in open space provision. This carries significant weight against the appeal.” They referenced Planning Policy Wales and Technical Advice Note (TAN) 16: Sport, Recreation and Open Space TAN 16.

The inspector stated that the loss of informal open space would outweigh development, even if that included a smaller area of equipped play area. The inspector was not persuaded that the provision of an equipped play area would adequately compensate for the loss of a significant area of informal open space in a community where there is an overall deficit in open space provision.



The case went before the Court of Appeal in 2020.

The Court of Appeal held that the Inspector was entitled to proceed on the basis of the parties' common ground that the relevant land was open space.

The Court of Appeal held that the open space policy formed part of the Local Development Plan and that an Inspector can consider a loss of open space to be a breach of the policy. It was rational for the Inspector to conclude that the reasons for development / the fall-back position, did not outweigh breach of the development plan (this was a matter of planning judgment for the Inspector).

Other cases determined by a Planning Inspector include:

Land adjacent to Thorpe House, Colliers Way, Reading RG30 2QS (2020)

This appeal was dismissed. "The proposed development would result in the loss of open space that has not been previously developed and which makes a positive contribution to the character, appearance and environmental quality of the area due to its openness, undeveloped character and green vegetated appearance. As such the proposed development would be contrary to Policies CC7 and EN8 of the Reading Borough Local Plan 2019."

Land at Beauchamp Road, Malvern (2021)

The development proposed is the erection of 9 new affordable dwellings, new equipped play area and associated infrastructure.

Conclusion

Even though the proposal would deliver affordable housing, for the reasons given, this would generate limited benefits in its favour. It has not been demonstrated that the loss of green space is surplus to community need and this would generate substantial harm, outweighing the limited benefits of affordable housing therein. The appeal is therefore dismissed.

The application site is subject to a policy designation as Green Space within the adopted development plan.



Development of Open Space in Bonvilston

Public Open Space at 'Land to the east of Bonvilston' – [2015/00960/FUL](#)

The developer initially proposed a scheme with 63ha of open space. The Planning Authority calculated the on-site provision requirement for residents of the new dwellings to be 0.8128ha – the excess of open space within the Wenvoe Ward being considered irrelevant to this application. The revised 120 dwelling scheme that was approved provides a total open space provision of 0.84ha – the Planning Authority considered this to meet the requirements of the LDP.

Public Open Space at 'Land to South of A48, Bonvilston' – [2020/00496/FUL](#)

In January 2021, planning permission was granted by the Planning Authority for a new dwelling adjacent to The Reading Rooms. The residential access will replace part of the small car park of the community facility. The open play area/ Provision for Children and Young People ([2010/00618/FUL](#)) being replaced by private garden. The open space and car park are vital to the viability of the Reading Rooms (Charity number: 502415).



Open Space in Bonvilston

Recent figures (2021) from the Vale of Glamorgan Council state that there are 293 dwellings in Bonvilston. The Public Open Space (POS) Standard is 55.68m² resulting in **Bonvilston having a POS Requirement of 1.63 hectares.**

Their figures related to current provision of Open Space in the Bonvilston Ward are in hectares:

- Amenity Greenspace: 0.37
- Cemeteries and Churchyards: 0.11
- Provision for Children and Young People: 0.10

This totals 0.58ha. However, planning permission has already been granted to remove 0.10ha, and the application at Maes y Ffynon would remove a further 0.2ha.

The development of land to the East of Bonvilston (Cottrell Gardens) will provide

- Amenity Greenspace: 0.57
- Outdoor Sports Facilities: 0.20
- Provision for Children and Young People: 0.07

This is a total of 1.42 hectares of provision against a requirement of 1.63 hectares, a shortfall of 0.21 hectares. This under-provision will worsen should the 0.10 of provision south of the A48 be built on, and the development of 0.2 hectares at Maes y Ffynon be approved. Should development at Maes y Ffynon be granted, the short-fall of open space within the Bonvilston Community Ward would be 0.51 hectares.

Provision of POS in neighbouring Community Wards:

- Llancarfan has a deficit of 0.58 hectares
- Llantrithyd has a deficit of 0.24 hectares

Neighbouring Community Ward of St Nicholas has an over-provision when the school field and Duffryn Gardens are included – but a deficit when they are excluded. The school field is no longer open to the public and Duffryn Gardens is 3-miles away from Bonvilston and an entrance fee is a further barrier.

Traveling for daily activities puts a heavy burden on people's available time and constrains their time budget within the household. Having green space/amenity in the vicinity of the homes is increasingly a more important criterion for people's well-being – particularly post-Covid19 and as we seek to reduce travel for environmental (climate) reasons.



Planning Policy Wales 11 (2020)

The most important planning document is Planning Policy Wales 11. The relevant policies are:

Policy 4.5.1 of Planning Policy Wales 11 (2020)

Recreational spaces are vital for our health, well-being and amenity, and can contribute to an area's green infrastructure. They provide a place for play, sport, healthy physical activity and a place to relax often in the presence of nature, and they contribute to our quality of life. Networks of high quality, accessible green spaces and recreation spaces will also promote nature conservation, biodiversity and provide enjoyable opportunities for residents and visitors to participate in a wide range of physical activities. These activities are important for the well-being of children and adults and for the social, environmental, cultural and economic life of Wales.

Policy 4.5.3 of Planning Policy Wales 11 (2020)

“Formal and informal open green spaces should be protected from development”

Policy 4.5.4 of Planning Policy Wales 11 (2020)

All playing fields whether owned by public, private or voluntary organisations, should be protected from development except where:

- alternative provision of equivalent community benefit is made available locally, avoiding any temporary loss of provision; or
- there is an excess of such provision in the area.

Policy 4.5.5 of Planning Policy Wales 11 (2020)

“Planning authorities should protect playing fields and open spaces which have significant amenity or recreational value to local communities from development.”



Planning Policy Wales 11 (2020) states that in relation to the Planning Authorities duty to work towards the Welsh Governments goals under the **Well-being of Future Generations (Wales) Act 2015**:

“A Resilient Wales is supported by protecting existing communities and natural environments while promoting well connected infrastructure and facilities closer to where people live. Good housing, access to services, **create the right conditions for better health and well-being** and community facilities help to create the right **conditions for better health and well-being.**”

“A Healthier Wales can be achieved through the reduction in emissions and air pollution by minimising the need to travel and maximising provision of sustainable forms of transport. It can also be achieved through improving access to services, cultural opportunities, **green spaces** and recreation facilities to support people adopt healthy lifestyles. Together they contribute to **creating the right conditions for better health, well-being and greater physical activity.**”



Local Development Plan

Policy MD2/7 of the Local Development Plan states:

In order to create high quality, healthy, sustainable and locally distinct places development proposals should “conserve and enhance the quality of, and access to, existing open spaces and community facilities.”

Policy MD2/9 of the Local Development Plan states:

In order to create high quality, healthy, sustainable and locally distinct places development proposals should provide public open space in accordance with the council’s standards.

Policy MD3 of the Local Development Plan states:

New residential development with a net gain of 5 or more dwellings will be required to provide public open space in accordance with the following standards:”

1. Outdoor sports provision 1.6 hectares per 1,000 population
2. Children’s equipped play space 0.25 hectares per 1,000 population
3. Informal play space 0.55 hectares per 1,000 population

In order to create sustainable places areas of open space will usually be required to be provided on-site as part of new development proposals.

Policy MD5/5 of the Local Development Plan states that:

New development in defined settlements should not result in the unacceptable loss of public open space



The Local Development Plan also states that:

7.16 – Where local deficiencies of provision have been identified, new residential development in the Vale of Glamorgan will be expected to provide new children’s play space and informal recreation space and both commercial and residential developments will be expected to provide new outdoor sport facilities in accordance with the identified standards. In setting standards, the Council has adopted the widely accepted Fields in Trust (FIT) benchmark open space standards

7.18 – Any alternative off-site provision agreed must be suitably located within easy, safe walking distance of the proposed development.

7.20 – The policy MD3 relates to recreational public open space requirements, and does not override the need for other areas of incidental green space throughout development proposals. In the interest of good design and to improve the urban realm, all new developments will be required to include appropriate levels of green space and landscaping for public amenity.

It’s concluded by the Community Council that there are robust planning reasons for the proposal for new dwellings north of Maes y Ffynnon to be refused.

Cllr Ian Perry
Chair



Appendix 1

Text from the Final Report for the Land East of Bonvilston – Cottrell Gardens

(Page 3) The proposed layout of the site makes use of the existing field hedgerows and trees, which form a key component in the “green infrastructure” led approach to the design of the layout. The proposal will provide for four defined areas of Public Open Space (POS). These include, an area towards the eastern side of the site close to the new access, measuring 0.22 ha and providing a Local Area of Play (LAP); a central area of 0.12 ha; an area to the south close to Sheep Court Cottage and Sheep Court Farm, 0.07ha with a LAP; and the largest area in the south western corner of the site of 0.43 ha, which will include provision of a 37m x 55m playing surface (junior sports pitch), a LAP, and an equipped play area (LEAP).

(Page 4) The proposed housing will provide for 96 No. open market housing and apartments, comprising eleven house types, providing 39 No. five bed houses, 36 No. four bed houses, 9 No. three bed houses, 4 No. two bed house and 8 No. one bed flats; and 24 No. affordable dwellings and apartments over five house types, providing 4 No. one bed flats, 14 No. two bed houses and 6 No. three bed houses.

(Page 34) In relation to the allocated site, it is noted that policy MG25 (8) of the deposit LDP identifies a requirement for 0.55ha of ‘strategic open space’ within the development, to address a shortfall of outdoor sport space in the village. The Open Space background paper provides further detail on how this should be provided, and includes 5,419m² of outdoor sport provision, 847m² of children’s play space, with a further 151m² of children’s play space being provided off-site in a strategic location. The background paper also suggests that it would be preferable to locate the open space on the western part of the site in order to better integrate the facilities with the existing settlement. Essentially, the total public open space requirement is 0.8128ha

MG25 relates to Mineral Working. Policy MG28/8 related to Public Open Space Allocations “Land to the east of Bonvilston (0.55 ha).” “Policy MG28 allocates land for open space to be provided as part of housing allocations in those areas where the scale of demand for such facilities from housing growth cannot be met by existing provision. These allocations have been based on the Council’s most up-to-date evidence of need.” The public open space requirement of the application is greater than that of the LDP due to a higher than normal proportion of family dwellings being built by the developer.

The final report continues:



(Page 34) The original scheme identified only 0.63ha of open space, and a mini soccer pitch for under 11s measuring 18.75m x 30m. This was not considered acceptable as it fell far short of the allocation requirements, and the size of the pitch related more to a facility for under 8s. Following negotiations with the developer and amended layout has been submitted. This now provides for a sports pitch measuring 37m x 55m, and a total open space provision of 0.84ha. This is now considered to meet the requirements of the Deposit LDP, and will be secured via the S106 legal agreement. This is further detailed under the Planning Obligations section of the report.

Appendix 2

Land at Beauchamp Road, Malvern (2021)

The development proposed is the erection of 9 new affordable dwellings, new equipped play area and associated infrastructure.

4. It is a large area of undeveloped green space contained within an otherwise immediately urban environment, and these characteristics are indicative of the site's green space designation pursuant to Policy SWDP38A of the South Worcestershire Development Plan 2016 (SWDP). In broad terms, under Policy SWDP38B of the SWDP, development on green space is only permitted where the proposal is for community or recreational use, the green space is surplus to requirements or alternative green space is secured to offset any loss. Similarly, Policy MG2 of the Malvern Town Neighbourhood Plan 2019 (MTNP) designates the site as neighbourhood open space."

5. The site forms part of the amenity green space typology, which among other things would include characteristics of an informal nature. On my visit, it was apparent that the site's characteristics were broadly consistent with this typology, whilst also providing an important break and visual relief from the urban environment. Furthermore, it appeared generally unmanaged, which was reflective of its biodiversity potential. It is important to note that green space is designated both for recreation and its broader character, among other things. This is reinforced under Policy MG2 of the MTNP, which states that all open space of public value, offer opportunities for sport and recreation and can act as visual amenity. Overall, from my site visit and considering other policy details, it is clear that such green spaces perform a multifaceted role in meeting community needs.

6. The proposal would comprise affordable housing on the site and whilst it does include elements of open space and an equipped area of play, it does not include replacement green space of equivalent value elsewhere.



Consequently, it is self-evident that the proposal would not meet the first or third exception criteria under Policy SWDP38B of the SWDP. Therefore, the acceptability of the proposal would hinge on whether there is a surplus of green space under the second exception criteria. In this context, the local needs assessment demonstrates that there is a minimum basis of provision for this particular typology of green space in the wider area, including other areas of green space in addition to the site which are easily accessible. It does not necessarily demonstrate that there is a surplus or that the full spectrum of qualitative aspects of the green space on the site in this case are adequately replicated elsewhere, an important consideration established under another appeal 1 determined in accordance with the same SWDP.

7. Notwithstanding any technical or quantitative assessment in accordance with the three tests set out in the updated open space assessment, how the green space may be qualitatively valued by the local community has not been sufficiently proven, whether through robust engagement with those concerned or otherwise. Policy SWDP38 of the SWDP reinforces the importance of understanding community need stating that assessment of both community and technical need should be undertaken, presumably in equal measure. There has been limited consultation with 30 people in July 2018, but it is not clear whether this was directly related to a formal qualitative assessment of the existing green space and community need therein, or in relation to an informal drop in event for the proposal generally. In any event, it is not clear whether 30 people represents a comprehensive sample of local stakeholders at large given the population of the area is magnitudes greater than this number.

8. Furthermore, it is also not clear whether such a sample would still be representative given Policy MG2 of the MTNP, which more recently designates the site as neighbourhood open space relative to the older consultation exercise. This reinforces the position of Policy SWDP38 of the SWDP. Consequently, in the absence of competing evidence to the contrary the logical conclusion would be that there is still a community need for the green space subject to the proposal, even considering the existence of other green space in the area. Consequently, there is not a sufficiently robust evidence base in front of me to demonstrate that a surplus does exist, and the loss of green space at the site would generate substantial harm in this context.

