

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING COMMITTEE**

DATE: **15TH JUNE 2022**

REPORT BY: **CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**

SUBJECT: **OUTLINE- RESIDENTIAL DEVELOPMENT OF UP TO 94 DWELLINGS WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS**

APPLICATION NUMBER: **061507**

APPLICANT: **FG WHITLEY & SON**

SITE: **FORMER DIMPLEX SITE, DRURY NEW ROAD, BUCKLEY**

APPLICATION VALID DATE: **15th JULY 2020**

LOCAL MEMBERS: **COUNCILLOR D HUTCHINSON**
COUNCILLOR M PEERS

TOWN/COMMUNITY COUNCIL: **BUCKLEY TOWN COUNCIL**

REASON FOR COMMITTEE: **SCALE OF DEVELOPMENT RELATIVE TO SCHEME OF DELEGATION**

SITE VISIT: **YES**

1.00 SUMMARY

1.01 Outline application for approval in principle for residential development of up to 94 dwellings with all matters reserved except for access at the former Dimplex site, Drury New Road, Buckley.

2.00 RECOMMENDATION: TO REFUSE PLANNING PERMISSION, FOR THE FOLLOWING REASONS:-

2.01 1. The proposal would result in the loss of a general employment land allocation as well as land identified as being within a Principle Employment Area which would be of detriment to the future provision of employment land. As such

it is considered that the proposal would be contrary to policies EM1 and EM3 of the Flintshire Unitary Development Plan.

2. Insufficient information has been submitted with regard to the level of phosphates arising from the development and affecting protected sites. It is therefore not possible for the LPA to conclude that phosphate levels attributable to the appeal scheme would not have a likely significant effect on the River Dee and Bala Lake SAC. As such the proposal is contrary to Policies GEN1 and WB2 of the Flintshire Unitary Development Plan.

3.00 CONSULTATIONS

3.01 Local Member: Councillor M Peers

The site subject to this proposal is land designated under the Flintshire UDP, and the deposit Local Development Plan (LDP) as Employment land (Policy PE1 ref 3) part of the Principal Employment Area PE2.7.

The site is not situated wholly within the settlement boundary and is in close proximity to a designated and protected wildlife area.

Under the call for candidate sites in the Flintshire LDP, this site was put forward for Housing and under candidate site **BUC021** the response from the planning authority was:

“This site is not appropriate for a housing allocation nor is the northern part (of the site) appropriate to be included in the settlement boundary”.

Following the council’s response, rejecting the proposal, the site was **NOT put forward as a resubmitted** site under Policy HN.1 (New or re-submitted site).

During the LDP consultation process a summary of the changes being sought / proposed under I.D. 879 stated “Remove the site of the former Dimplex factory, Drury New Road from the Principal Employment area PE2.7 and from the future employment expansion area under policy PE1.3”

The planning authority responded to I.D 879 under “Council response” (Deposit Local Development Plan Consultation 30th September 2019) that (the proposal is):

“Not Accepted. The site was originally allocated in the UDPM for employment purposes and has been re-allocated under policy PE1 (PE1.3) of the LDP as part of the Principal Employment area PE2.7. It is also allocated for future employment expansion”.

The final response by the planning authority was:

“There is no intention to de-allocate the employment allocation from this site”.

It is clear that the planning authority’s intention is to retain the land as Employment land.

Big name companies have occupied this site, Optec, Airbus and Glen Dimplex, attracted by the location and the semi-rural surroundings with excellent road access close to the A549, and only a short distance from the A550 and the A55 junction 35 at Dobshill. It is a unique employment site in an attractive setting and should be retained.

The applicant claims that the eaves height of the building on the employment site is restrictive at 3.75 metres, but 3 major companies have previously occupied the site successfully. The buildings are suitable for a number of employments uses and could be sub divided into smaller enterprises.

A recent request to the Estates Division Housing and Assets at Flintshire County Council was asked about the number of industrial units available locally that could be used by a small enterprise. This resulted in the following response from the County Council;

“Unfortunately, at this point in time, there are no vacant Units at any of the (Industrial) Estates”

The existing building on the site and the employment area could also be redeveloped and opened up to smaller enterprises and provide job opportunities in the local area.

It has been recorded that because of commitments and allocations as set out in the planned housing trajectory in the deposit LDP *“the Council does not attach considerable weight to the need to increase housing delivery”*. Section 4.2.5 of Planning Policy Wales states:

“Planning authorities must clearly set out the housing requirement in their development plan. These requirements must be based on evidence and clearly express the number of market and affordable homes the planning authority considers will be required in their area over the plan period”.

This has been done and the LDP submitted for examination. This plan led system has brought forward the most appropriate housing sites.

The LDP will deliver the amount of housing it is required to meet.

In addition to the LDP allocations work has commenced on housing developments not far from this site at:

- Hillcrest, Drury Lane.
- The former Glynne Arms public house site.
- Woodside cottages Pen-y-coed Road Burntwood.

Also, an appeal has been lodged to allow housing development to the rear of 81 Drury Lane Drury.

2020 has seen large areas of the country impacted by coronavirus and employment has been impacted in the short term, but it is essential that we retain this employment site for the future, and for future expansion.

There is no justification to remove the designated employment land at this prime employment location (evidence by previous large companies attracted to this site) and it should be retained for employment purposes.

There is no evidenced need for housing on this site given that the allocations in the LDP will meet the housing requirements along with the additional sites outlined above.

Requests site visit for the following reason: To allow the committee to see the setting and surroundings that make this employment location unique.

Councillor D Hutchinson: No response at time of writing

Buckley Town Council: No response received

Head of Assets and Transportation: I refer to your consultation in respect of the above proposal. Although submitted as an outline application with all matters reserved apart from access, the application is supported by a significant amount of detail; there is no highway objection to the proposal.

Highways (ROW): Public Footpaths 28 and 31 abuts the site but appears unaffected by the development. The path must be protected and free from interference from the construction.

Housing Strategy: The demand for affordable housing in Flintshire is demonstrated by the Local Housing Market Assessment and Flintshire Council's housing waiting lists.

Local Housing Market Assessment (LHMA) Update 2018 (Final report (addendum) Feb 2020)

The LHMA for Flintshire identifies an annual shortfall of 238 affordable units.

The assessment recommends a need for the following property types:

- 1/ 2 bedroom (45.6%)
- 3 bedroom (28.3%)
- 4+ bedroom (12%)
- Older persons stock (14.1%)

And this should be split between the following tenures:

- Social rented (30%),
- Intermediate rent (30%)
- Affordable ownership (40%)

General Needs Housing – Buckley area (as at 1/8/20 SARTH waiting list)
Social Rent

1 & 2 bed bungalow	1 bed flat	2 bed flat	2 bed house	3 bed house	4+ bed house
1 bed –43 2bed – 20	272	81	128	27	40

Affordable Housing Register – Tai Teg:

Affordable Rent

Buckley area

Tai Teg (Demand by Area- Rental)

2 bed flat	2 bed house	3 bed house	4+ bed house
5	43	49	3

Low Cost Home Ownership

Buckley area

Tai Teg (Demand by Area- Purchase)

2 bed flat	2 bed house	3 bed house	4+ bed house
1	37	48	1

*Information as at 29/7/20 taken from Tai Teg waiting list

Housing Strategy Comments:

This planning application is for up to 94 dwellings of which 30% is being proposed for affordable housing, equating to 28 dwellings. This is acceptable to housing strategy.

Affordable Housing Partner: To be determined. It is suggested that early discussions are held between housing strategy and either NEW Homes/ or another partner housing association to progress the affordable housing units.

Preferred Mix of units: To be determined, but suggested tenure mix similar to the following:

Social Rented 12
Intermediate rent 8
LCHO 8
Total 28

The Buckley area has significant levels of housing need for all tenures/ property types and particularly for social rented housing. Therefore affordable housing in this location would be supported by housing strategy.

Head of Public Protection: No response at time of writing

CPAT: There are currently no recorded archaeological sites within the main development area with the nearest site (PRN 103684 Little Mountain Colliery) located in the retained woodland to the north of the site and the former railway line retained as a footpath corridor to the west. The overall archaeological potential is low with no other recorded archaeological sites in the immediate vicinity, or present within the development boundary on readily available historic mapping.

We would therefore have no objection to the proposed development from the archaeological point of view.

Dwr Cymru/Welsh Water: If you wish to progress this development then it will be necessary for a Development Impact Assessment to be undertaken on the Wastewater Treatment Works at the developer's expense. The conclusion of this study will determine any improvement works required.

Having assessed the proposal, we note the developer proposes to dispose of foul flows via the public sewerage system and discharge surface water run-off into a sustainable drainage system. However, no detailed drainage plans have been provided.

As of the 7th January 2019 this proposed development is subject to Schedule 3 of the Flood and Water Management Act 2010. The development therefore requires approval of Sustainable Drainage Systems (SuDS) features, in accordance with national standards, and is strongly recommended that the developer engage in pre-application consultation with the Flintshire County Council, as the relevant SuDS Approval Body (SAB). Please note, DCWW is a statutory consultee to this application process and would provide comments on any SAB proposals.

In light of the above and given the omission of a detailed drainage plan/ layout, we would kindly request that if you are minded to grant Planning Consent for the above development that the following **Conditions and Advisory Notes** are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

We can advise that Buckley Ty Gwyn WwTW has a phosphate permit. This matter will need to be considered further by the local planning authority.

Natural Resources Wales:

We continue to have concerns with the application as submitted because inadequate information has been provided in support of the proposal. To overcome these concerns, you should seek further information from the applicant regarding foul drainage, protected sites, protected species (Great Crested Newt) and land contamination. If this information is not provided, we would object to this planning application. Further details are provided below.

We also advise that based on the information submitted to date, conditions regarding biosecurity, ecological compliance audit and land contamination should be attached to any planning permission granted. Without the inclusion of these conditions we would object to this planning application.

The Waste Water Treatment Works (WWTW) for the proposal is Ty Gwyn, Buckley. We note the WWTW is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC), although the application site is not. As you are aware, on the 21st January 2021, we published an evidence package outlining

phosphorus levels for all river SACs across Wales. As part of this package, we issued a Planning Position Statement, in which we advised that any proposed development that might increase the amount of phosphate (or phosphorus) within a river SAC catchment could lead to damaging effects to the SAC. Therefore, such proposals should be screened through a Habitats Regulations Assessment (HRA), to determine whether they are likely to have a significant effect on the SAC. We have also issued Planning Advice (May 2021) which gives specific advice in respect of foul drainage arrangements for new developments.

This application proposes connection of foul water to the mains sewer. As such, we refer you to our Planning Advice, in particular the bullet point list given in the section titled 'What does this mean for development proposals involving connection to public wastewater treatment works', which specifies the information that should be provided to support applications which propose connections to public wastewater treatment works.

With regards to the third bullet point, we note that Welsh Water have confirmed that Ty Gwyn, Buckley Wastewater Treatment Works does not have capacity to treat additional phosphorus.

Airbus: No response at time of writing

4.00 PUBLICITY

4.01 Press Notice, Site, Notice, Neighbour Notification

2 Letter of Support received

16 Letters of Objection received:

- Buckley already overdeveloped
- Lack of local infrastructure/services
- Traffic/highways safety concerns
- Loss of trees
- Impact of development on local commercial activity

5.00 SITE HISTORY

5.01 017536- Extension to factory (Phase 2)- Approved 8/11/1988

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan

- STR1 - New Development
- STR 4 – Housing

- STR 8 – Built Environment
- STR 10 - Resources
- GEN1 - General Requirements for Development
- GEN2 - Development Inside Settlement Boundaries
- D1 - Design Quality, Location and Layout
- D2 - Design
- D3 - Landscaping
- WB1 - Species Protection
- AC13 - Access and Traffic Impact
- AC18 - Parking Provision and New Development
- HSG3 - Housing on Unallocated Sites within Settlement Boundaries
- HSG8 - Density of Development
- HSG 9 – Housing Mix and Type
- HSG 10 – Affordable Housing within settlement boundaries
- EM1- General Employment Land Allocations
- EM3- Development Zones and Principal Employment Areas
- EM6- Protection of Existing Concerns
- SR5 - Outdoor Playing Space and New Residential Development

Local/Supplementary Planning Guidance Notes

- SPGN 2 - Space around dwellings
- SPGN 4 - Trees and Development
- SPGN 9 - Affordable Housing
- SPGN 11 - Parking Standards
- SPGN 13 - Open Space Requirements
- SPGN23- Developer Contributions to Education

National Planning Policies:

- Planning Policy Wales – Edition 11 (Feb.2021)
- Future Wales: The National Plan 2040 (FWP 2040)

It is noted and acknowledged that the national planning framework as set out within Planning Policy Wales Edition 11 and Future Wales: The National Plan 2040 sets out the most up to date planning principles against which to consider development proposals. The Development Plan and associated supplementary planning guidance remain broadly consistent with these changes to legislation

7.00 PLANNING APPRAISAL

7.01 Proposal

7.02 This is an Outline application, with all matters reserved except for access, for residential development of up to 94 dwellings at the former Dimplex site, Drury New Road, Buckley.

7.03 Site

7.04 The site, known as the Former Dimplex site, is a commercial site located on the Junction of Chester Road, and Drury New Road, close to Buckley Train Station.

7.05 In the adopted UDP the bulk of the site lies within the settlement boundary of Buckley which is a category A settlement. Looking at the portion of the site within the settlement boundary the northern part is shown as an employment allocation. Both the existing unit and the employment allocation fall within the Little Mountain Principal Employment Area. The northern part of the site lies outside the settlement boundary and Principal Employment Area and is within open countryside. It also forms part of the Deeside and Buckley Newts SAC, as does the line of the former railway which runs along the western edge of the site.

7.06 Principle

7.07 In the UDP policy EM1 allocates part of the site, amounting to 1.4ha, for B1, B2 or B8 uses. Policy EM6 seeks to protect employment land. The policy is set out below along with a commentary alongside each criteria:

7.08 The establishment of non-employment or retail uses on existing or allocated employment land and buildings will be permitted only where:

- no other suitable site is available for the development proposed;
- the site or building is no longer considered to be suitable for employment purposes;
- it would not result in an unacceptable reduction in the supply and range of employment sites in the area; or
- the proposal would bring about the removal or satisfactory relocation of a non - conforming or potentially polluting use from the site or building.

7.09 Policy EM3- Development Zones and Principal Employment Areas identifies those areas within Flintshire that are strategic in nature in terms of their economic importance. As the UDP policy explains: By identifying key areas where new employment development will generally be acceptable, the Plan aims to provide a greater degree of certainty and consistency and avoid the need to identify numerous small allocations or commitments. The policy is applicable to the use of land, new build, conversion, redevelopment and extension or expansion. Within these areas, employment development will generally be acceptable, unless it is allocated for a specific use by virtue of another policy. As such the loss of this land for other uses

could create issues for the medium to long term provision of suitable sites for employment generating development.

- 7.10 In the Emerging LDP the settlement boundary, Principal Employment Area and employment allocation remain the same as in the UDP. The Plan has set out a housing requirement of 6,950 plus a 13.2 % flexibility allowance and identified how it is to be met in terms of housing supply which includes completions, commitments, allowances for small sites and windfalls, strategic sites and 11 housing allocations.
- 7.11 The LDP is on track to deliver its housing in the early part of the Plan period as completions in the first 5 years of the Plan period has a cumulative completion of 2609 units, which is above the Plans annual requirement for this period Whilst a large brownfield windfall site could help ensure completions remain on track until allocated sites start delivering, and it is accepted that a proportion of the Plans housing land supply will come from the allowance for small sites (60 units per annum) and large windfall sites (50 units per annum), this has to be weighed against the consequences of losing land allocated for employment generating uses over the lifetime of the plan. Consideration also needs to be had to the advanced stage that the Examination of the LDP has reached, with the Matters Arising Changes due to be consulted upon in June. Two recent appeal decisions in Higher Kinnerton and Penyffordd have confirmed the stage reached by the LDP, the deliverable housing land supply and the benefits of a Plan led system.
- 7.12 In both cases the respective Inspectors gave significant weight to the stage reached with the LDP and the certainty of likely adoption based on the Plan's ability to deliver its housing requirement with the supply it contains. There was therefore no need to consider speculative housing sites and the two appeals were dismissed. It is also the case that the employment provision is confirmed in the Plan including the continued designation of the application site for employment use. As there are no Matters Arising Changes that relate to this site there is every likelihood that its employment designation will be found sound as part of adopting the LDP.
- 7.13 The site was submitted as a candidate site (BUC021) for housing development. As part of the LDP consultation documents, Background Paper 8 published a summary assessment of each candidate site. For this site the assessment stated '*The site is partially within the settlement boundary and as such that part could be developed for housing although the proximity to the wildlife designation would restrict this. The site is still in employment use and it is not considered suitable for a housing allocation. On the basis that the northern part of the site abuts the SSSI / SAC it would be*

inappropriate for the settlement boundary to be extended to include the site'. The assessment was written on the basis that the site was still in employment use but that there was potential for housing on that part of the site within the settlement boundary'. However, it was not considered that there may be sufficient certainty about availability and deliverability, given the existing employment use, to allocate the site for housing or to remove / amend the employment allocation / Principal Employment Area.

7.14 Whilst the development plan policies makes allowances for changes in circumstances for commercial allocations which could support windfall residential development this has to be considered against the merits of retaining the allocation and the overall provision within the LDP for the delivery of housing.

7.15 Main Issues

7.16 The main issues considered of relevance in considering this outline residential application are the principle of residential development in this location, the loss of the commercial allocation, the impact of the proposal on the adjacent ecological sites, and the acceptability of the access to the site.

7.17 UDP Allocation

7.18 The site is currently an allocation for commercial development under Policy EM1(5) in the Flintshire Unitary Development Plan, and within a Principal Employment Area (Policy EM3). In general the loss of employment land for other uses reduces the scale and variety of sites available for future business investment.

7.19 The application has been supported by a commercial viability assessment from Legat Owen which concludes that this site has seen little business investment interest for some considerable time despite active marketing. In addition it states that alternative employment sites are available in reasonable proximity. The Council's records indicate that the site has been vacant since 2018 which is not considered to be 'considerable'. This is particularly true when the global situation following Covid-19 and other factors is considered.

7.20 The development appraisals provided by the applicant provide negative land values for employment development and it is acknowledged that there is some uncertainty and risk in the development of this land for employment use. When an increased level of risk is reflected it is understandable that land values will reduce.

7.21 An independent assessment of the commercial viability report, carried out by the Valuation Office, concluded that there is currently little

demand in this location for land for employment use. A significant contributing factor, they state, is the availability of alternatives land in neighbouring areas which benefit from better communications and road networks as well as attractive re-location and development grants. This assessment appears at odds with the LDP, the Strategy of which has been considered sound at the LDP examination, where the Employment allocation has been retained, given that it does not appear within the agreed Matters Arising Changes, having been discussed at a specific Examination Hearing Session. The site is well located close to a main service centre, close to a junction with the trunk road and other transportation nodes and in an attractive landscaped location.

7.22 A significant portion of the period of time in which the site has been marketed coincides with the economic downturn associated with the Covid pandemic. The site and buildings are different in character and appearance from other employment land and buildings and it is important that the LDP retains a range of employment land and buildings by location, type and size. The Examination of the LDP has also resulted in a number of employment allocations being deleted from the Plan and this emphasises the importance of retaining the remaining employment allocations. With an upturn in economic activity post – Covid and a move away from working from home, there is no inherent reason why the existing unit could not be reoccupied, extended or redeveloped, given the flexibility the site offers.

7.23 It is considered that the loss of this large area of land and existing employment premises represents an undesirable loss of land allocated for commercial development, which clearly does not accord with the current policy situation on the land, which crucially has been retained in the emerging LDP. Whilst the assessments may point to a lack of interest in the site presently this does not preclude future commercial developments. The site is considered to offer a high quality option for employment development in a suitable location the loss of which would undermine the ability of the plan to provide suitable locations for this form of development. Furthermore, despite the LDP providing the scope for windfall sites to come forward, there is no overriding need in this case given that the LDP can meet its housing requirement and the proposal would result in the loss of employment land and buildings, contrary to policy.

7.24 Drainage

7.25 Under the Habitats Regulations, where a plan or project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, and where it is not directly connected with or necessary to the management of the site previously

(designated pursuant to EU retained law) the competent authority must carry out an appropriate assessment of the implication of the plan or project in view of the site's conservation objectives. Natural Resources Wales has set new phosphate standards for the river SACs in Wales. Any proposed development within the SAC catchments that might increase the amount of phosphate within the catchment could lead to additional damaging effects to the SAC features and therefore such proposals must be screened through a HRA to determine whether they are likely to have a significant effect on the SAC condition.

7.26 Dwr Cymru Welsh Water have confirmed that there is currently capacity issues at the wastewater treatment works, which would require a Development Impact Assessment to be undertaken to assess what reinforcement works would be required to address this lack of capacity.

7.27 In addition, whilst Dwr Cymru Welsh Water have confirmed that the relevant treatment plant has a phosphate license there is concern over the age of the relevant license, in the light of more stringent NRW controls, and the resultant acceptability of the proposal with regard to the likely increase in phosphate levels arising from the development. In order to be able to accept the proposal the Local Planning Authority would need to undertake an appropriate Habitats Regulation Assessment (HRA) and be able to conclude that the development is unlikely to increase phosphate inputs i.e. be nutrient neutral.. It is not considered that there sufficient information to be able to undertake this assessment, although in the absence of any suggested mitigation, and with the current capacity issues in the local system it is likely that this conclusion could not be reached in any case. It should be noted that if an HRA is unable to reach a conclusion then the site would also fail the assessment given the uncertainty over its impacts. It can therefore not be shown that the proposal would not unduly affect the protected site, and the proposal would therefore be contrary to policy WB2 of the Flintshire unitary Development Plan. This stance is in line with a recent appeal decision in Penyffordd where the Inspector concluded 'In this instance, I have not sought the further views of NRW to inform a screening under the Conservation and Habitats and Species Regulations 2017 (as amended) as it is evident that there is insufficient information before me with which to do so in respect of the levels of phosphate produced from the appeal scheme and its effects on the River Dee and Bala Lake SAC.'

7.28 Access

7.29 There was a significant traffic generation associated with the former use of the site indicating that appropriate vehicular access arrangements are in place. The submitted Transport Assessment provides a comparison between previous and proposed traffic

generation rates and whilst assumed pm peak hour generation rates may be slightly lower than anticipated, the impact of additional traffic is not considered significant.

- 7.30 The TA considers pedestrian and cycle isochromes based upon the centre of the site but fails to undertake an assessment of walking and cycling infrastructure in accord with the Active Travel Guidelines. The submitted Travel Plan commits the developer to implementing appropriate measures and it is presumed that improvements to offsite linkages will be required. Existing pedestrian footways along Chester Road, the A549, are potentially adequate to provide pedestrian access to Buckley Town Centre but further consideration, particularly of school access routes is required. Of prime concern is the discontinuous footway alongside Drury New Road and access to Drury Primary School. There is no cycling provision in the vicinity of the site except for local road. The site is adequately served by public transport but increase use of the bus service is likely to require improvements to bus stops and may require construction of an east bound bus layby.
- 7.31 Further consideration and any resultant improvement or financial contribution can be addressed by a suitably worded condition requiring the submission and approval of a Transport Implementation Strategy (TIS). The submitted indicative site layout appears appropriate but all adoptable roads should be bounded by a 2m wide footway, service strip or 600mm grassed/hard paved margin.
- 7.32 As this is an Outline application this further detail can be considered at reserved matters stage to deal with these identified issues, were the development to be approved. Fundamentally the site access is considered to be acceptable in principle and Highways Development Control have raised no objection to the proposal.
- 7.33 Ecology
- 7.34 Deeside and Buckley Newt Sites Special Area of Conservation (SAC) overlays Buckley Claypits and Commons Special Site of Scientific Interest, SSSI (red/green hatching); Deeside and Buckley Newt Site SAC are designated for Great Crested Newts; Buckley Claypits and Commons is designated for Great crested newts and other amphibian species.
- 7.35 The Dimplex site is immediately adjacent to the SAC/SSSI with numerous GCN records within the locality. One pond is 100m to the north and the Lane End Nature Reserve ponds are some 400m to the north west. The latter ponds are monitored annually and represent a very large GCN breeding site, and while the northern pond has not been surveyed recently, GCN have been recorded here in the past. Land adjacent to the designated site is considered to be potential terrestrial habitat.

- 7.36 New residential developments in close proximity to the Deeside and Buckley Newt Sites SAC need to consider both direct and indirect impacts on the SAC features.
- 7.37 Regulation 61 of the Conservation of Habitats and Species Regulations 2017 (as amended) requires that any application likely to significantly affect a European Site is subject to an Appropriate Assessment (AA) of the implications of the proposal on the site's conservation objectives. The planning authority must ascertain that the plan or project does not have a likely significant effect, both alone and in combination with other plans or projects.
- 7.38 The conclusion of the planning authority is that the proposals, if implemented correctly, have the potential to enhance the GCN population through the creation of aquatic and terrestrial habitats, their enhanced management and the management of recreational pressures. However, the creation of the proposed access routes across the SAC would need to be considered in more detail, to ensure that the SAC features are not compromised in the long term. The development needs to demonstrate that there are no direct or indirect (negative) impacts on the SAC and its features, namely GCN.
- 7.39 The detailed strategies/reports as proposed would need to be conditioned and long term security of the mitigation land incorporated within the s106 agreement proposed. The key issue to resolve will be securing the long term management of the mitigation land.
- 7.40 Natural Resources Wales have raised a number of concerns over a perceived lack of information regarding protected sites and protected species (Great Crested Newt). Whilst I acknowledge their concerns I am satisfied that the information submitted with this Outline consent is sufficient to establish the principle of development and any further detail can be conditioned to be submitted prior to development or as part of a legal obligation which will secure the necessary mitigation and site management that they seek.
- 7.41 Planning Obligations
- 7.42 The infrastructure and monetary contributions that can be required from a planning application through a S.106 agreement have to be assessed under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and Welsh Office Circular 13/97 'Planning Obligations'.
- 7.43 It is unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, if the obligation does not meet all of the following regulation 122 tests;

1. be necessary to make the development acceptable in planning terms;
2. be directly related to the development; and
3. be fairly and reasonably related in scale and kind to the development

7.44 This planning application is for up to 94 dwellings of which 30% is being proposed for affordable housing, equating to 28 dwellings. This is compliant with the relevant policy. The legal agreement would need to secure this affordable housing provision in perpetuity on site, as well as specify the necessary tenures and types of dwellings to be provided to the satisfaction of the Housing Strategy team.

7.45 At the time of writing the report I have not received consultation responses from Leisure or from Education in order to be able to give the relevant commuted sums that would be requested. As the recommendation before you is one of refusal, for the reasons given above, I do not consider that this would be relevant at this stage, although should the Committee be mindful to approve the application contrary to the recommendation then these matters would need to be identified and agreed in order for the Section 106 Agreement to be entered into.

7.46 As mentioned above the long term security of the mitigation land incorporated in the scheme as part of the Ecological enhancement of the site would need to be secured within the s106 agreement proposed. In particular this will cover the long term management of the site. The agreement would need to specify the means to fund that management whether it is a lump sum or via ground rents collected by a management company in conjunction with open space payments. I consider that these required obligations meet the Regulation 122 tests.

7.47 Other Matters

7.48 The site lies within relatively close proximity to commercial and Industrial sites, which are established businesses that should not be disrupted by this development, as well as a railway line. If the proposal was to be approved, and in order to ensure that the amenity of the residents of the proposed development is protected I recommend that a condition is imposed with any permission to require a Noise Impact Assessment as part of the reserved matters submission, to identify noise receptors and if necessary put forward mitigation to ensure no detriment to amenity is caused.

7.49 Given the legacy of historic coal mining within the vicinity Land Contamination reports would be required to be submitted with any reserved matters applications to ensure that this matter has been robustly investigated and any mitigation, or remediation work is

considered fully and appropriately. It is not considered that this matter is one that would be likely to preclude development and therefore the absence of this information is not considered to be a matter material enough to warrant a reason for refusal.

8.00 CONCLUSION

It is considered that there is insufficient reason to lose the commercial allocations of the site as identified in both the UDP and LDP. As such there is a presumption in principle against this proposal.

In addition it has not been demonstrated that the proposal would not have a significant effect on the River Dee and Bala Lake SAC through phosphates arising from this site.

As such I recommend that the application is refused for the reasons shown in paragraph 2.01.

8.01 Other Considerations

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents
National & Local Planning Policy
Responses to Consultation
Responses to Publicity

Contact Officer:

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