Pecyn Dogfen Gyhoeddus

Gareth Owens LL.B Barrister/Bargyfreithiwr
Chief Officer (Governance)
Prif Swyddog (Llywodraethu)

CS/NG

Dydd Iau, 7 Rhagfyr 2023

Maureen Potter 01352 702322
maureen.potter@flintshire.gov.uk

At: Cyng Richard Lloyd (Cadeirydd)

Cynghorwyr: Mike Allport, Bernie Attridge, Chris Bithell, Helen Brown, Paul Cunningham, Rob Davies, Adele Davies-Cooke, Carol Ellis, Gladys Healey, Dave Hughes, Paul Johnson, Richard Jones, Hilary McGuill, Ted Palmer, Mike Peers a Dan Rose

Annwyl Syr / Fadam

RHYBUDD O GYFARFOD HYBRID
PWYLLGOR CYNLLUNIO
DYDD MERCHER, 13EG RHAGFYR, 2023 am **2.00 PM**

Sylwch fod amser dechrau'r cyfarfod wedi newid i 2.00 pm

Yn gywir

Steven Goodrum
Rheolwr Gwasanaethau Democrataidd

Sylwch: Gellir mynychu'r cyfarfod hwn naill ai wyneb yn wyneb yn Siambr Cyngor yr Arglwydd Barry Jones, Cyngor Sir y Fflint, Yr Wyddgrug, Sir y Fflint neu ar-lein.

Gofynnwyd i siaradwyr cyhoeddus a hoffent gyfarch y Pwyllgor yn Gymraeg neu Saesneg.

Bydd y cyfarfod yn cael ei ffrydio'n fyw ar wefan y Cyngor. Bydd y ffrydio byw yn dod i ben pan fydd unrhyw eitemau cyfrinachol yn cael eu hystyried. Bydd recordiad o'r cyfarfod ar gael yn fuan ar ôl y cyfarfod ar https://flintshire.publici.tv/core/portal/home

Os oes gennych unrhyw ymholiadau, cysylltwch ag aelod o'r Tîm Gwasanaethau Democrataidd ar 01352 702345.

R H A G L E N

1 **YMDDIHEURIADAU**

2 **DATGAN CYSYLLTIAD**

3 **SYLWADAU HWYR**

4 **COFNODION** (Tudalennau 3 - 8)

I gadarnhau, fel cofnod cywir gofnodion y cyfarfod ar 22 Tachwedd 2023.

5 **EITEMAU I'W GOHIRIO**

6 **ADRODDIAD Y PRIF SWYDDOG (CYNLLUNIO, AMGYLCHEDD AC ECONOMI)**

Mae adroddiad y Prif Swyddog (Cynllunio, Amgylchedd ac Economi) yn amgaeedig.

ADRODDIAD Y PRIF SWYDDOG (CYNLLUNIO, AMGYLCHEDD AC ECONOMI) AR GYFER Y PYLLGOR CYNLLUNIO 13 RHAGFYR 2023

Rhif yr eitem	Cyfeirnod y Ffeil	DISGRIFIAD
Ceisiadau sy'n cael eu hadrodd er penderfyniad (C = Cymeradwyaeth, G = Gwrthod)		
6.1	RES/000628/23	RES/000628/23 - C - Materion a gedwir yn ôl - Cais i gymeradwyo materion a gadwyd yn ôl ar gyfer Caniatâd Amlinellol 060076 (amodau 2, 7 a 9) ar dir i'r de o Rhos Road, Penyffordd. (Tudalennau 9 - 30)
6.2	FUL/000523/23	FUL/000523/23 - C - Cais llawn - Dymchwel rhan o annedd bresennol a datblygiad preswyl o 7 annedd unigol a ffyrdd cysylltiedig, yn ogystal â gwaith draeniau yn Foxfield, Fagl Lane, Yr Hôb (Tudalennau 31 - 56)

Sylwch y gall fod 10 munud o egwyl yn y cyfarfod hwn os yw'n para fwy na dwy awr

PLANNING COMMITTEE
22 NOVEMBER 2023

Minutes of the Planning Committee of Flintshire County Council held as a hybrid meeting on Wednesday, 22 November 2023

PRESENT: Councillor Richard Lloyd (Chair)
Councillors: Mike Allport, Bernie Attridge, Chris Bithell, Helen Brown, Rob Davies, Adele Davies-Cooke, Carol Ellis, Gladys Healey, Dave Hughes. Paul Johnson, Richard Jones, Hilary McGuill, Ted Palmer, Mike Peers and Dan Rose

APOLOGIES: Councillor Paul Cunningham

ALSO PRESENT: The following attended as Local Members:
Councillors Marion Bateman – agenda item 6.2 (063507)
Councillor Mared Eastwood – agenda items 6.1 (062458) and 6.2 (063507)
Councillor Carolyn Preece – agenda item 6.1 (062458)

IN ATTENDANCE: Chief Officer (Planning, Environment & Economy), Service Manager - Strategy, Service Manager - Development, Senior Engineer - Highways Development Control, Senior Planning Officer, Planning Officer, Solicitor and Democratic Services Officers

Prior to the start of the meeting the Chief Officer (Planning, Environment & Economy) set out the procedures for the meeting.

32. DECLARATIONS OF INTEREST

Councillor Richard Jones declared a personal and prejudicial interest on agenda item 6.1 - 062458 - residential development of up to 140 dwellings, means of access, open space, sustainable drainage Infrastructure and all other associated works (outline application Including access, with all other matters reserved) at Well Street, Buckley, as he was a School Governor at Southdown Primary School, Buckley.

Councillor Mike Peers declared a personal interest on agenda item 6.1 as a family member was employed by Clwyd Alyn.

Councillor Hilary McGuill declared a personal declaration of interest as an adjacent Ward Member on item 6.1 and as a joint Ward Member on item 6.2 – 063507 – residential development comprising 90 dwellings including the provision of affordable units, areas of public open space, landscaping and associated works at land to the south of New Brighton Road, New Brighton, Mold

Councillor Bernie Attridge declared a personal interest in agenda item 6.1. He explained he had been contacted several times by an objector to the application and as a previous Cabinet Member for Housing he had agreed to the County Council's purchase of the land for provision of Council housing.

Councillor Carol Ellis declared a personal interest on agenda item 6.1 as she had been contacted on more than one occasion by an objector to the application and had a connection with Southdown Primary School, Buckley.

Councillors Chris Bithell and Dan Rose declared a personal interest on agenda item 6.1 as they had been contacted on more than two occasions regarding the application.

Councillor Gladys Healey declared a personal interest on agenda item 6.3 as she had been contacted two times by the developer and by representatives of residents in her Ward.

33. LATE OBSERVATIONS

The Chairman allowed Members an opportunity to read the late observations which had been circulated prior to the meeting and were appended to the agenda item on the Council's website.

https://committeemeetings.flintshire.gov.uk/ieListDocuments.aspx?CId=490&MId=5497&Ver=4&LLL=0

34. MINUTES

The minutes of the meeting held on 25 October 2023 were confirmed as a correct record, as moved and seconded by Councillors Chris Bithell and Mike Peers.

RESOLVED:

That the minutes be approved as a true and correct record.

35. ITEMS TO BE DEFERRED

There were no items recommended for deferral.

36. REPORTS OF THE CHIEF OFFICER (PLANNING, ENVIRONMENT & ECONOMY)

RESOLVED:

That decisions be recorded as shown on the Planning Application schedule attached as an appendix.

37. MEMBERS OF THE PUBLIC AND PRESS IN ATTENDANCE

There were 4 members of the public present at the start of the meeting.

(the meeting started at 1.00 pm and ended at 3.34 pm)

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Chair

meetings of the Planning Committee are webcast and can be viewed by visiting the webcast library at: http://flintshire.public-i.tv/core/portal/home

PLANNING COMMITTEE ON 22 NOVEMBER 2023

ITEM NO	TOWN/ COMMUNITY COUNCIL	SITE/PROPOSAL	THIRD PARTY / LOCAL MEMBER OBSERVATIONS	RESOLUTION
062458	Buckley Town Council	Outline application - residential development of up to 140 dwellings, means of access, open space, sustainable drainage infrastructure and all other associated works (outline application including access, with all other matters reserved) at Well Street, Buckley	Peter Newby (Resident) spoke against the application. Pete Lloyd (Agent) spoke in support of the application. A statement of objection was read out on behalf of Councillor David Ellis (representing Buckley Town Council). Councillor Hilary McGuill spoke as adjoining Ward Member, and also on behalf of Councillor Mared Eastwood (joint adjoining Ward Member), against the application. Councillor Carolyn Preece (Local Ward Member) spoke against the application.	That the item be deferred, against the officer's recommendation, for the following reasons: to seek further information around • flooding and drainage of the site • highways access to the site • potential contamination on the site
063507	Argoed Community Council	Full application - residential development comprising 90 dwellings Including the provision of affordable units, areas of public open space, landscaping and	Derek Walters (representing the New Brighton Residents Group), spoke against the application. Niall Mellan (Agent) spoke in	That the item be deferred, against the officer's recommendation, for the following reasons: to seek further discussion with the applicant on the following

		associated works at land to the south of New Brighton Road, New Brighton, Mold	support of the application. Councillor Marion Bateman (adjoining Ward Member) spoke against the application. Councillor Mared Eastwood spoke as Local Ward Member, and also on behalf of Councillor Hilary McGuill (joint Local Ward Member), against the application.	• clarity on the safe route for schools • clarification on affordable housing as detailed in S106 Obligation
FUL/000523/23	Hope Community Council	Full application - part demolition of existing dwelling and residential development comprising of 7no detached dwellings and associated roads and drainage works at land at "Foxfield", Fagl Lane, Hope, Wrexham, Flintshire.	Janet Hilton (Resident) spoke against the application. A statement of objection was read out on behalf of Hope Community Council	That the item be deferred, against the officer's recommendation, for the following reason: • a site visit to be arranged

FUL/000813/22	Shotton Town Council	Full application - The removal of 3no. telecommunication masts (22.5m, 20m and 17.5m in height) and the consolidation of equipment onto 1no. 30m lattice tower. The new tower will include the relocation of 8no. antenna to 1no. new ring frames and on to head frame which will be attached to 1no. proposed 30m tower. In addition, to the erection of the perimeter fence and ancillary development thereto at The former Royal British Legion, Bridge Street, Shotton.	A statement of support was read out on behalf of Neil Gates (Agent)	That planning permission be refused for the reason set out in the report, in accordance with the officer's recommendation.

Mae'r dudalen hon yn wag yn bwrpasol

FLINTSHIRE COUNTY COUNCIL

REPORT TO:	**PLANNING COMMITTEE**
DATE:	**13th DECEMBER 2023**
REPORT BY:	**CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**
SUBJECT:	**RESERVED MATTERS APPLICATION FOLLOWING OUTLINE APPROVAL 060076 (CONDITIONS 2, 7, & 9) AT LAND SOUTH OF RHOS ROAD, PENYFFORDD, CH4 0JR**
APPLICATION NUMBER:	**RES/000628/23**
APPLICANT:	**RICHARD HEATON**
SITE:	**LAND SOUTH OF RHOS ROAD, PENYFFORDD, CH4 0JR**
APPLICATION VALID DATE:	**6TH JULY 2023**
LOCAL MEMBERS:	**COUNCILLOR A IBBOTSON** **COUNCILLOR R WAKELAM**
TOWN/COMMUNITY COUNCIL:	**PENYFFORDD COMMUNITY COUNCIL**
REASON FOR COMMITTEE:	**MEMBER REQUEST**
SITE VISIT:	**YES**

1.00 SUMMARY

1.01 This is a Reserved Matters application following outline approval 060076, as well as submissions covering conditions 2,7 and 9 of the outline permission, for over-55s Retirement housing at land south of Rhos Road, Penyffordd,

2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-

2.01 **Conditions**

1. The development shall be carried out in accordance with the following approved plans and documents:
   - Application form

- Drawing No: 7000_1713_OFP-LMA-XX-XX-DR-A-7000-P01 - Location Plan and Site Plan as Existing
- Drawing No: 7001_1713_OFP-LMA-XX-XX-DR-A-7001-P03 - Site Plan as Proposed
- Drawing No: 7002_1713_OFP-LMA-XX-XX-DR-A-7002-P03 - External Works and Landscaping Plan as Proposed
- Drawing No: 7100_1713_OFP-LMA-XX-XX-DR-A-7100-P01 - Block A - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 7101_1713_OFP-LMA-XX-XX-DR-A-7101-P01 - Block B - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 7102_1713_OFP-LMA-XX-XX-DR-A-7102-P01 - Block C - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 7103_1713_OFP-LMA-XX-XX-DR-A-7103-P01 - Block D - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 7104_1713_OFP-LMA-XX-XX-DR-A-7104-P02 - Block E - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 7105_1713_OFP-LMA-XX-XX-DR-A-7105-P02 - Block F - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 7106_1713_OFP-LMA-XX-XX-DR-A-7106-P01 - Block G - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 7107_1713_OFP-LMA-XX-XX-DR-A-7107-P01 - Community Hub - GA Proposed Plans, Elevations and 3D Views
- Drawing No: 2020.023.LP.01 Rev C - Planting Proposals, The Oaks, Penyffordd
- Habitat Regulations Assessment Report RML 20230702
- Arboricultural Method Statement including Tree Survey, Tree Retention and Removal Plan together with Tree Protection Plan [Tree Solutions]
- Construction Method Statement April 2021 Rev0

2. No development shall take place until full details of the existing ground levels and proposed finished floor levels of the buildings hereby approved and ground levels have been submitted to the Local Planning Authority for written approval. The development shall thereafter be carried out in accordance with the approved details

3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings

or the substantial completion of the development, whichever is the sooner and any trees or plants which, within a period of 5 years of the time of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.

4. Prior to the commencement of development a scheme for biodiversity enhancement of the site shall be submitted for approval, and thereafter shall be implemented in accordance with the approved details

5. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

3.00 CONSULTATIONS

3.01 **Cllr R Wakelam (Local Member)** - No response at time of writing

Cllr A Ibbotson (Local Member) Requests that the application be referred to Planning Committee, on account of the following factors:

- The layout and appearance of the site (condition 2) will, on account of the scale of the development, have a lasting and significant impact on the character of the local area;
- The location of the site outside the adopted LDP settlement boundary means that the layout and appearance (condition 2) of this site also defines the layout and appearance of the approach to the settlement, and
- The layout of the site (condition 2) has been an issue of some controversy owing to the impact of previous proposals on neighbouring properties, which led to the rejection of a previous application for discharge of conditions.

It is the Councillors view that the cumulative impact of these factors creates a clear public interest in ensuring democratic accountability for local residents, through elected representatives on the planning committee, for whatever decision is made. .

Penyfford Community Council – Objects on the following grounds:

- the layout and scale of the development
- The location outside of the adopted LDP settlement boundary
- Impact upon neighbouring dwelling

Public Rights of Way- Public Footpath 10 abuts the site but appears unaffected by the development. The path must be protected and free from interference from the construction

Community and Business Protection (Public Protection) - I can confirm that I have no adverse comments to make regarding this proposal.

Natural Resources Wales- Identifies that site lies within .

Dwr Cymru Welsh Water- Confirm that capacity exists at Hope WWTW and that the WWTW has a valid phosphate permit.

No objection to the application for approval of the reserved matters subject to compliance with the requirements of the drainage conditions imposed on the outline planning permission

Airbus- we have no aerodrome safeguarding objection to the proposal based on the information given

4.00 PUBLICITY

4.01 22 Letters of notification were sent to neighbouring/nearby properties and a Site Notice was displayed at the site

2 letters of objection have been received which are summarised as follows:

1. Out of character with locality
2. Impact upon bungalows on Rhos Avenue
3. Lack of Screening
4. Insufficient sewage system/low water pressure/slow internet/poor infrastructure in Penyffordd

5.00 SITE HISTORY

5.01 062874 - Application for approval of reserved matters following outline approval (Planning Ref: 060076)- Refused 15/7/2022

060076- Outline planning permission for 'over-55 retirement housing' with detailed site access and all other matters reserved- Refused 4/9/2019 Appeal Allowed 29/4/2020

6.00 PLANNING POLICIES

6.01 Flintshire Local Development Plan

- Policy STR2: The Location of Development
- Policy STR4: Principles of Sustainable Development, Design and Placemaking
- Policy STR5: Transport and Accessibility

- Policy STR13: Natural and Built Environment, Green Networks and Infrastructure
- Policy PC1: The Relationship of Development to Settlement Boundaries
- Policy PC2: General Requirements for Development
- Policy PC3: Design
- Policy PC4: Sustainability and Resilience of New Development
- Policy PC5: Transport and Accessibility
- Policy EN1: Sports, Recreation and Cultural Facilities
- Policy EN2: Green Infrastructure
- Policy EN15: Water Resources

7.00 PLANNING APPRAISAL

7.01 Site Description

The application site extends to 1 hectare and is located on the edge of the village of Penyffordd. To the west of the site lies the A550 with links to the A55, separated by a parcel of undeveloped land and the un-adopted road, Rhos Avenue. To the east and south is the existing residential development in Penyffordd on Westfield Drive and the existing dwellings situated along Rhos Avenue. The site is bound by an established hedgerow to the north and western boundaries, while the southern and south eastern boundaries have an existing mature hawthorn hedge reinforced with additional tree planting.

7.02 To the north of the site it is bounded by Rhos Road, beyond which lies land which benefits from planning permission for residential development and where development has taken place. It is proposed that the site would be accessed via a new central access off Rhos Road. This will involve the removal of a hedgerow to achieve the required visibility splays. A 2.0m footway will be provided along the frontage of the site to Rhos Road with crossing points at either end.

7.03 Proposed Development

This is a reserved matters application following Outline approval under planning reference 60076. The Outline planning permission was granted on appeal following initial refusal of the application by the Local Planning Authority.

7.04 This submission follows the refusal of a previous application for reserved matters, planning reference 062874, which was refused on the 15th July 2022 for the following reasons:

1. *In the opinion of the Local Planning Authority the proposal,with particular regard to apartment Block F,would unacceptably impact upon the living conditions of neighbouring dwellings and as such would be contrary to policies GEN1 and D1 of the Flintshire*

Unitary Development Plan as well as the advice contained within Supplementary Planning Guidance Note 2- Space Around Dwellings.

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 proposal 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.*

7.05 The application has been resubmitted with amendments to the scheme to overcome the first reason for refusal, and following a material change in circumstances with regards to Phosphates, which overcomes the second reason.

7.06 The submission also addresses a number of the conditions imposed on the outline planning permission, namely conditions 2, 7 and 9. These conditions required the submission of a Construction Traffic Management Plan (condition 7) and the protection of trees and hedges on site (condition 9). Condition 2 is the approved principle of development and access details which this application is in accordance with.

7.07 <u>The Main Issues</u>

The principle of development was considered acceptable by the Planning Inspector when considering the outline planning application. Furthermore the highways and drainage provision was considered to be acceptable at the time of the appeal. As such it is considered the main issues for this application to be the design and layout of the scheme and its impact upon local character, as well as the impact of the development on neighbouring amenity.

7.08 <u>Design and Layout</u>

The site has been designed with 7 residential blocks grouped into 5 collections of buildings and arranged around a central parking area and community hub building. These are Blocks A+B consist of 10 no. total apartments, blocks C+D of 8 no. apartments, block E of 6 no. apartments, block F of 4 no. apartments and block G of 8 no. apartments. This equates to a total of 36 no. apartments across the site.

7.09 The buildings are two storey in height, with a hipped roof at a maximum height of approximately 8.25 metres. External materials are facing brick and render, with a slate roof. These are appropriate materials for the locality and reflect surrounding development.

7.10 Existing residential development close to the site is varied in style and scale. To the rear of the site, on Rhos Avenue, there are a number of detached single storey dwellings. On the Eastern boundary of the site are some large detached two storey dwellings. The new development to the north of the site has a mix of detached and semi detached two storey dwellings but the dwellings located on the site frontage to Rhos road, facing the application site, are larger detached two storey dwellings of a similar scale to the existing dwellings on the side of the application site.

7.11 Whilst the proposal is for apartments blocks these blocks are not excessively large and in terms of height and general scale these blocks are compatible with surrounding development, having a similar height and roof profile both to the new development across Rhos Road from the application site and the existing dwellings that neighbour the site to the east, and are not considered to be out of character with the locality.

7.12 Landscaping comprises of amenity lawn with a mixture of specimen trees and shrubs and ornamental planting which will create an attractive environment for residents of the site with elements of interest amongst the recreation and relaxation space and is considered to be appropriate for the development.

7.13 The Community Council are of the view that the development does not provide enough open space and that contributions to adult play space should be made.

7.14 Contrary to this view, it is considered that the layout allows for a good amount of recreational communal open space for residents of the development and will allow for a spacious and attractive campus type feel to the development, and that the open space provided is entirely suitable for this form of development. The open space provision of this proposal is in accordance with the advice contained within SPGN2: Space Around Dwellings which allows for developments where outdoor amenity space is provided on a communal basis, and notes how these forms of development will be considered on their individual merits.

7.15 It is considered that the proposal accords with policies PC2 and PC3 in the Flintshire Local development Plan in that it not only does the development harmonise with the character, local distinctiveness and appearance of the site, and surrounding landscape, but that it creates distinctive development which enables a sense of place, quality of life and well-being.

7.16 <u>Impact upon neighbouring living conditions</u>

Block F, which houses 4 apartments, is designed in a similar style to its neighbouring blocks. It is located, however, close to the south

easterly boundary of the site. The dwellings located to the south of the application site are, unlike those to the east of the site, single storey dwellings although like those others they face onto the green area that is central to this proposal.

7.17 On the previously submitted scheme it was considered that there was the potential for direct overlooking arising from the application site, and in particular Block F. A number of concerns have been raised, both by the Local Member and the Community Council as well as third party objectors regarding Block F and whether or not the amendment is sufficient to overcome the previous reason for refusal.

7.18 It has also been noted that the existing screening has been coppiced this year which has reduced the thickness of the tree line on the boundary between the site and dwellings to the south. It should be noted that coppicing can extend the lifespan of a natural hedgerow as well as encourage new species that may otherwise be stifled by existing growth, and therefore has benefits to the biodiversity of the hedgeline as well as stimulate further growth which will ultimately improve the screening effect of the hedge. The existence of appropriate and sufficient screening on this boundary is important as it provides a measure of mitigation against potential overlooking and potential impact upon amenity and privacy of neighbouring dwellings.

7.19 In order to overcome this issue the current submission amends block F to remove the part of the block that had a direct relationship with a dwelling to the rear, with this block now presenting at an oblique angle to the site boundary. The reduction of the size of the block and the removal of the element which directly faced the neighbour to the south will reduce the impact of the proposal on this property. This amendment to the scheme removes the offending element and it is considered that due to the re-design of the proposal, its new relationship to existing neighbouring properties and the existing screening on the site boundary at this location, the proposal is now acceptable.

7.20 <u>Drainage</u>

An existing condition, Condition number 8 on the Outline permission, requires full details of the foul drainage system to be submitted and approved prior to development commencing. As such there is no need to replicate this provision. Dwr Cymru Welsh Water have previously accepted the principle of the foul water drainage connection. They have raised no objection to the proposal.

7.21 The application site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). On the 21st January 2021, NRW published an evidence package outlining phosphate levels for all river SACs across Wales. As part of this package, they issued a Planning Position Statement, in which they advised that any proposed

development that might increase the amount of phosphate 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. NRW have also issued Planning Advice (August 2023) which gives specific advice in respect of foul drainage arrangements for new developments

7.22 Welsh Water have confirmed that there are no capacity issues and that the waste water treatment works has a valid phosphate permit. The foulwater flows deriving from this development would be capable of being treated within the phosphate permit conditions. In accordance with the NRW advice a Test of Likely Significance has been undertaken on this site.

7.23 It is considered that No Likely Significant Effects on the SAC are anticipated as a result of these development proposals as there is unlikely to be a source of additional phosphorus or pathway for impacts. The development is therefore screened out as not likely to have a significant effect on a river SAC in relation to phosphorus inputs as it falls within the following criterion in the NRW advice: (points 1 and 3 apply) :

- there is capacity to treat additional wastewater from the proposed development within revised environmental permit limits, or
- the necessary treatment capacity to remain within revised environmental permit limits will be delivered within the agreed Asset Management Plan (AMP) and that when implemented the treatment capacity will ensure that additional wastewater generated in consequence of the proposed development will remain within the revised permit limits and
- that the sewer network and associated WwTW has the hydraulic capacity to accommodate additional wastewater without contributing to an increase in frequency or duration of storm overflows.

7.24 As such, it is considered that the proposal is in accordance with policy EN15 in the Flintshire Local Development Plan, and the previously stated reason for refusal has been overcome and no longer applies.

7.25 <u>Other matters</u>
The Community Council have queried the affordable housing provision of the development. It should be noted that Condition 10 of the Outline consent required that:

"No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme

and shall meet the definition of affordable housing in Annex B of TAN 2 or any future guidance that replaces it."

The condition went on to clarify the requirements further.

7.26 The Section 106 agreement dated 8th March 22 has a clause, para 3.4 to ensure that any resident will be 55 or over. This legal agreement was submitted and agreed following the appeal decision. It is considered that in concert with the requirements of the condition that this element of the proposal is acceptable, and is not part of the consideration of the current application.

7.27 As part of the Outline consent a Section 106 agreement was signed which requires occupancy of the dwellings to be restricted to Over 55s as well as their spouses, civil partners or dependants. Furthermore the legal agreement provided for a payment for Active Travel requirements, namely the provision of a sum of £70,000 towards the cost of controlled crossing facilities of the A550 trunk road between the site and Penyffordd Train Station, as well as commuted sums towards the development of teenage play provision at Millstone Play Area at the standard payment as set out in the relevant SPGN. The active travel contribution is to be paid prior to the commencement of development, and the recreation contribution is to be paid on or before 50% of the residential units are occupied.

7.28 Penyffordd Community Council has opined that a financial contribution towards a doctors surgery to serve the wider community should be required of the developers. Matters of principle should be considered at the time of the Outline planning submission and not at the reserved matters stage. In any case it is considered that this would not be a proportional request, and would fail to meet the requirements of the CIL regulations.

7.29 The submitted details to discharge conditions 7 and 9, namely the Construction Traffic Management Plan and Tree protection measures, are considered to be acceptable.

8.00 CONCLUSION

The principle of development, and its access, has previously been considered to be acceptable. The current proposal overcomes the issues of the previous reserved matters application, with regard to impact upon neighbouring development and the impact of the development upon the SAC as a result of phosphates, and represents an appropriate development that accords with the relevant development plan policies in the Flintshire Local Development Plan. As such it is considered to be acceptable and recommended accordingly.

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: **James Beattie**
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Mae'r dudalen hon yn wag yn bwrpasol

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 02/03/20

gan Mr A Thickett BA(Hons) BTP Dip RSA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27.04.2020

Appeal Decision

Site visit made on 02/03/20

by Mr A Thickett BA(Hons) BTP Dip RSA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 27.04.2020

Appeal Ref: APP/A6835/A/3243303
Land south of Rhos Road, Penyffordd, Flintshire, CH4 0JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr R Heaton against the decision of Flintshire County Council.
- The application Ref 060076, dated 5 June 2019, was refused by notice dated 4 September 2019.
- The development proposed is over-55 retirement housing with detailed site access and all other matters reserved for subsequent approval.

Decision

1. The appeal is allowed and outline planning permission granted subject to the conditions set out in the schedule at the end of this decision.

Procedural matter

2. On 26 March 2020 the Minister for Housing and Local Government announced that with immediate effect, the five-year housing land supply policy in Planning Policy Wales had been replaced by a policy statement making it explicit that the housing trajectory, as set out in adopted Local Development Plans, (LDP) would be the basis for monitoring the delivery of development plan housing requirements as part of LDP Annual Monitoring Reports. The Minister also revoked Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies.

3. The Council and appellant were invited to make submissions regarding the implications for their cases in this appeal. The appellant did so, the Council did not.

Main Issue

4. The main issue is whether the proposed development is premature and would prejudice the strategy set out in the emerging local development plan.

Reasons

5. The site lies outside but immediately adjacent to the settlement boundary of Penyffordd as defined in the Flintshire Unitary Development Plan 2001 – 2015, adopted 2011 (UDP). Outside settlement boundaries, UDP Policy GEN3 restricts new housing to, amongst other things, that necessary to support rural enterprises, infill or rural exceptions schemes. None of the exceptions in Policy GEN3 apply here and the proposed development, therefore, conflicts with the UDP in that regard.

6. The housing requirement, strategy and settlement boundaries set out in the UDP are based on evidence of housing need which is long out of date. Indeed, the UDP is 5 years past its end date. The Council's emerging Local Development Plan (LDP) has been placed on deposit and is expected to be submitted for examination later this year.

7. The Council argues that; *'housing completions during the first three years of the plan period are slightly ahead of the LDP's annualised planned provision, and the plan is therefore 'on track' as far as housing delivery is concerned'*. The weight to be attached to an emerging LDP does not necessarily increase as it progresses to adoption. The housing requirement, housing trajectory and LDP strategy are yet to be tested at examination. Consequently, I cannot be certain that they are sound and I afford the Council's assertion little weight.

8. The changes to PPW and revocation of TAN1 have not reduced the importance of delivering new housing, just the way delivery is planned, measured and monitored. PPW, as revised, states that: *'Under-delivery against the trajectory may require a specific early review of the development plan'*. In my view that is a clear indication that the government is committed to ensuring that the planning system delivers the housing Wales needs and that under delivery is a material consideration. I consider the matters to be considered in determining the weight to be attributed to under delivery are: the extent of the shortfall, the length of time there has been a shortfall and how soon the Council will be able to demonstrate through an adopted LDP, how the housing needs of the area are to be met.

9. The Development Plans Manual (DPM) sets out how delivery should be measured for development plans adopted prior to DPM Edition 3 in March 2020. For those plans published prior to the publication of the DPM, completions will be measured against the Average Annual Requirement set out in the plan. Flintshire does not have a LDP. Its UDP was adopted in 2011 and as stated above its housing requirement based on evidence of that is long out of date. Notwithstanding revocation of TAN 1 and changes to PPW, the only available objective and tested evidence relating to the delivery of housing in Flintshire is the 2014 Joint Housing Land Availability Study. That recorded a housing land supply of 3.7 years and for a number of years since the figure has been zero.

10. The extent of the shortfall is, therefore, significant both in terms of the amount and length of time Flintshire has suffered from an inadequate housing land supply. The Council will not be able to demonstrate that it can provide a supply of land to meet Flintshire's housing requirement as required by PPW until the emerging LDP is adopted. The Council does not dispute the appellant's assertion that this would be July 2021 at the earliest. In my experience LDP submission and adoption dates more often than not slip beyond those set out in the Delivery Agreement.

11. Nevertheless, with a fair wind Flintshire could have an adopted LDP in place in 2021. That is not that long from now in LDP production terms. I consider that the likelihood of a plan led solution to the shortfall in housing land supply in the next 12 to 18 months means that the weight to be given to under delivery is significant but does not of itself justify the grant of planning permission in this case.

12. I now turn to prematurity. It is a long established principle that withholding planning permission on grounds of prematurity will not usually be justified

except where a proposal goes to the heart of a plan and is individually or cumulatively so significant that to grant planning permission would be to predetermine decisions about the scale, location or phasing of new development which ought to be properly to be determined through the LDP process.

13. The DPM states that; *'Whether planning permission should be refused on grounds of prematurity requires careful judgement and the LPA will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the LDP process'*. The illustrative plan submitted with the appeal application shows 36 units and the Council accepts that, on its own, the proposed development is too small to affect decisions about the scale or location of development in the emerging LDP.

14. The Council's objection to this development is based on the alleged cumulative impact of the appeal proposal and permission granted on appeal for 261 units on three other sites in Penyffordd. Penyffordd and Penymynydd together are defined as a tier 3 settlement in the emerging LDP. The emerging LDP apportions 14% of housing growth to tier 3 settlements. The Council uses that apportionment, the overall housing requirement in the emerging LDP and commitments to arrive at a residual need in tier 3 settlements of 122 units.

15. However, as stated above the LDP's housing requirement and strategy have yet to be tested at examination. I cannot be certain that the overall requirement figure or strategy are sound or the apportionment for any of the tiers is based on robust evidence. Even if it is, I am not persuaded that to permit 36 units out of the alleged residual 122 would go to the heart of the plan or prejudice the LDP process.

16. Despite citing concerns regarding the ability of Penyffordd to accommodate the developments allowed on appeal and arguing that *'it cannot be a sustainable proposition to keep on approving incremental speculative applications, such as this proposal, without regard to the cumulative effect on this settlement'*, the Council accepts that Penyffordd is a *'sustainable settlement capable of accommodating a reasonable level of growth'*. It also accepts that the *site 'is not necessarily in an unsustainable location, or that the site's development would not be a sustainable proposition'*.

17. I have considered the concerns of local residents with regard to the ability of local services and infrastructure to accommodate the development recently permitted in Penyffordd. The Council is satisfied that the highway network and drainage systems are capable of accommodating the development. The impact of the proposed development on other services is not cited as a reason for refusal and I am entitled to assume, therefore, that the Council does not consider that residents' concerns warrant the withholding of planning permission. I have seen no empirical evidence to lead me to a different conclusion.

18. The Council's third reason for refusal includes the following statement; *'A further reserved matters application would be required to examine a range of fundamental issues which may demonstrate the site is undeliverable'*. Fundamental issues should not be left to reserved matters. The approval of reserved matters follows the grant of planning permission and should local planning authorities consider that they need additional information before determining an application for outline planning permission they have the power

to ask for it. I have seen nothing to indicate that the Council did so or considered it was necessary to do so in this case.

19. The Council does not dispute the appellant's assertion that Penyffordd's Place Plan identifies a need to provide housing to enable the elderly to move to and remain in the village. Nor do the Council dispute that the appellant has already carried out a significant amount of preparatory work, that the site is free from constraints, a developer is lined up and a reserved matters application could be submitted within 6 to 9 months of outline planning permission being granted. In light of this I do not share the Council's pessimism and am persuaded by the appellant's evidence that work could start on site by or around the projected adoption date for the LDP. I will amend the standard time limit conditions to reflect this and the need to secure delivery.

Unilateral undertaking and conditions

20. The appellant submits a unilateral undertaking which restricts occupancy to over 55s, commits to making contributions to active travel and improving open space elsewhere in Penyffordd. In light of the identified need, I am satisfied that the age restriction is necessary. I also consider that, in the interests of sustainable development, the contribution towards improving pedestrian links to Penyffordd Railway Station is necessary. However, given the age of prospective residents, I am not persuaded that a financial contribution to improving off site teenage play provision is necessary and I afford that part of the unilateral undertaking little weight.

21. The undertaking also has a clause relating to the provision of affordable housing but through an application for reserved matters. It is only possible to impose conditions on a reserved matters approval which relates to the reserved matter. The provision of affordable housing is matter that goes to the principle of whether planning permission should be granted and so must be secured when planning permission is granted, not at a later stage. I am satisfied that an affordable housing contribution is necessary and shall impose a condition.

22. I have considered the Council's suggested conditions in light of the advice in Circular 16/14. I have seen nothing to suggest that the siting, design and layout of the access as shown on the submitted drawing is unacceptable and see no need, therefore, to require further details. Nor have I been given any reason why it is necessary to duplicate requirements relating to the construction of the access or highway drainage. Details of parking and internal layout will be subject to approval of reserved matters.

23. I have seen no technical evidence or submission from a suitably qualified person to support the proposition that the noise generated by traffic on the A550 is such that mitigation is necessary to ensure that prospective occupiers enjoy satisfactory living conditions. Nor, given the contribution to active travel contained in the unilateral undertaking and the location of the site, am I persuaded that a condition requiring a travel and transport plan is necessary.

Conclusions

24. The appeal site lies outside the settlement boundary of Penyffordd and the development conflicts with Policy GEN3 of the UDP. But, the policies for housing provision and restraint in the UDP are based on evidence long out of date and the UDP time expired 5 years ago. The latest, tested evidence

relating to housing delivery demonstrated an under delivery of housing in Flintshire.

25. I consider the extent of the shortfall both in amount and the number of years it has existed means that increasing housing provision is a significant factor which weighs in favour of the proposed development. The prospect of a plan led solution to the shortfall is more than a year away and, at this time, there is no certainty that the housing requirement and strategy set out in the emerging LDP is sound. The Council accepts that, on its own, the proposed development would not prejudice the LDP process. Nor do I consider that when added to the units permitted at appeal at Penyffordd, around 300 dwellings out of a requirement in the emerging LDP of almost 8,000, can be said to go to the heart of the emerging plan.

26. The Council accepts that Penyffordd is a sustainable location for new growth and does not argue that Penyffordd is not capable of accommodating the proposed and permitted developments. The Place Plan identifies a need for accommodation for the elderly, the scheme would provide affordable housing and I have no doubt that the development could be implemented around the time the LDP is programmed for adoption if not before.

27. I consider that taken together these matters outweigh the conflict with UDP Policy GEN3 and for the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed.

28. 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 Welsh Ministers' well-being objective of building healthier communities and better environments.

Anthony Thickett

Inspector

Schedule

APP/A6835/A/3243303

The appeal is allowed and outline planning permission is granted for over-55 retirement housing with detailed site access at land south of Rhos Road, Penyffordd, Flintshire, CH4 0HY in accordance with the terms of the application, Ref 060076, dated 5 June 2019, subject to the following conditions:

1) The development shall begin either before the expiration of two years from the date of this permission or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.

   Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

   Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area in accordance with UDP Policy GEN1(a).

3) Any application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.

   Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

4) The development shall be carried out in accordance with the following approved plan: Proposed Site Access and Road Layout Dwg No. 5138/02.

   Reason: To ensure that the development is carried out in accordance with the approved plans and drawings submitted with the application.

5) The access shown on Dwg No. 5138/02 shall be completed before the first dwelling is occupied. The 2.4m by 43m visibility splays shown on Dwg No. 5138/02 shall be maintained free of any obstruction exceeding 0.6m in height for as long as the development hereby permitted remains in existence.

   Reason: In the interests of highway safety and to accord with Policy UDP Policy GEN1(e).

6) The footway along Rhos Road shown on Dwg No. 5138/02 shall be completed in accordance with details to be submitted to and approved in writing by the local planning authority before the first dwelling is occupied.

   Reason: In the interests of highway safety and to accord with Policy UDP Policy GEN1(e).

7) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

i) the parking of vehicles of site operatives and visitors;
ii) loading and unloading of plant and materials;
iii) storage of plant and materials used in constructing the development;
iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
v) wheel washing facilities;
vi) measures to control the emission of dust and dirt during demolition and construction; and
vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In the interests of highway safety and to safeguard the living conditions of nearby residents in accordance with UDP Policy GEN1(d).

8) No development shall commence until details of a scheme for the disposal of foul water has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling and retained in perpetuity.

Reason: To ensure that the foul sewage system can satisfactorily accommodate the proposed development in accordance with UDP Policy GEN1(i)

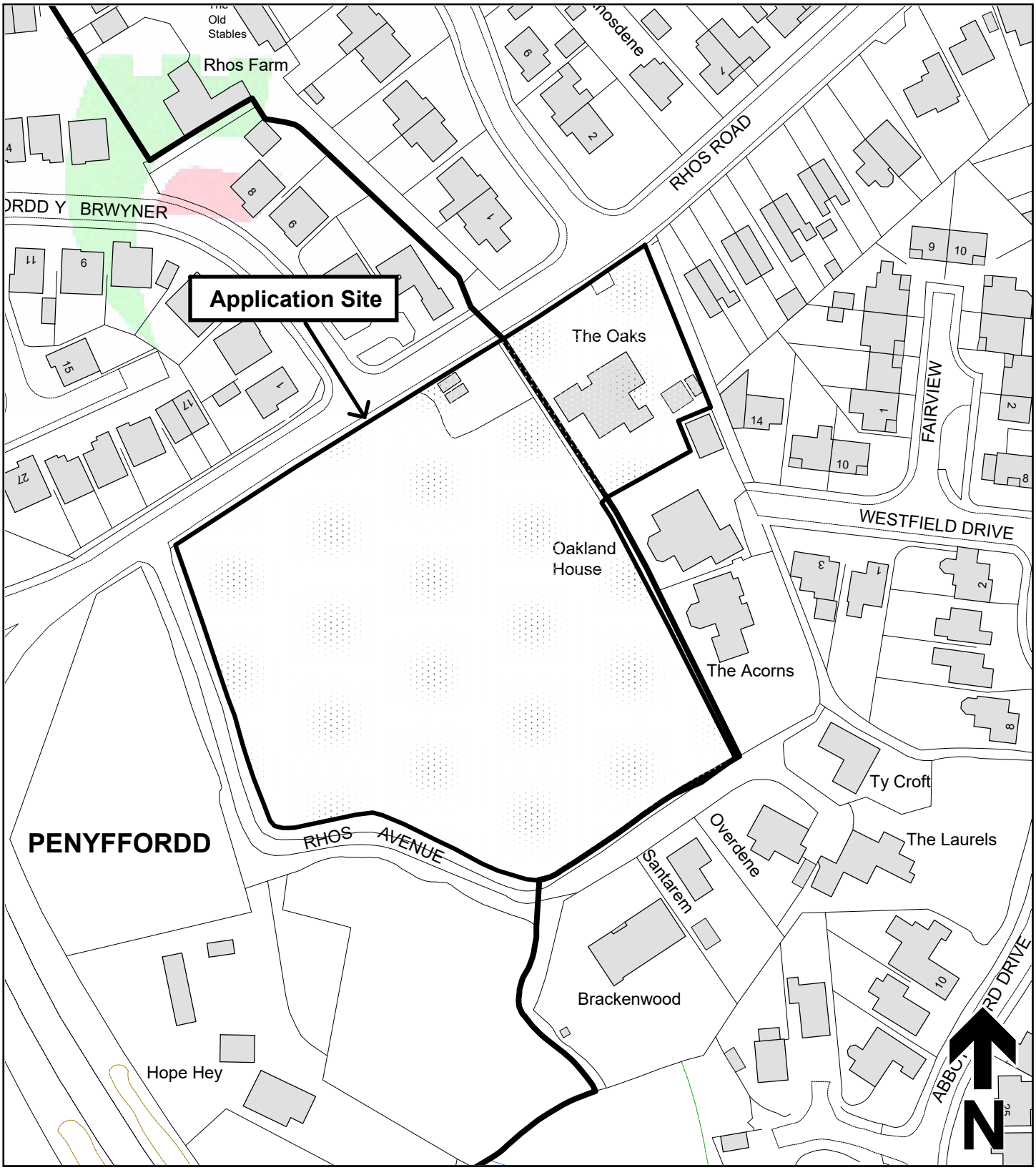
9) No development shall take place, nor any site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of the hedges on the site boundaries (excluding Rhos Road) throughout the construction of the development hereby permitted.

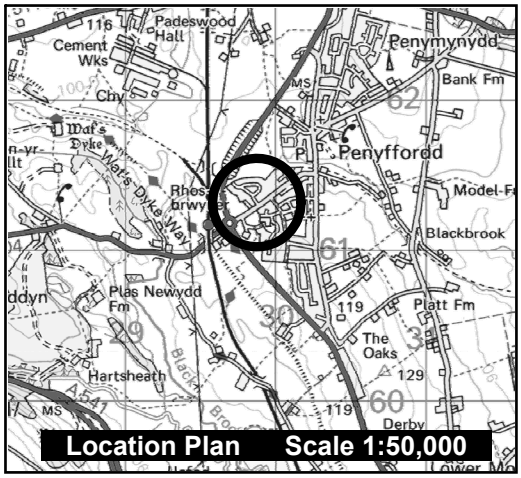
Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area in accordance with UDP Policy GEN1(a).

10) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of TAN 2 or any future guidance that replaces it. The scheme shall include:
i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no affordable housing provider is involved);
iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason: In order that the development contributes to the need for affordable housing and complies with UDP Policy HSG10





CYNGOR Sir y Fflint Flintshire COUNTY COUNCIL

Planning, Environment & Economy,
Flintshire County Council, County Hall,
Mold, Flintshire, CH7 6NF.

Chief Officer: Mr Andrew Farrow

Legend

Planning Application Site

Adopted Flintshire Unitary Development Plan Settlement Boundary

Map Scale:	1:1250
OS Map:	SJ 2961
Application:	RES/000628/23

Mae'r dudalen hon yn wag yn bwrpasol

FLINTSHIRE COUNTY COUNCIL

REPORT TO:	**PLANNING COMMITTEE**
DATE:	**13TH DECEMBER 2023**
REPORT BY:	**CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**
SUBJECT:	**FULL APPLICATION- PART DEMOLITION OF EXISTING DWELLING AND RESIDENTIAL DEVELOPMENT COMPRISING OF 7 DETACHED DWELLINGS AND ASSOCIATED ROADS AND DRAINAGE WORKS**
APPLICATION NUMBER:	**FUL/000523/23**
APPLICANT:	**GOWER HOMES LTD**
SITE:	**LAND AT "FOXFIELD", FAGL LANE, HOPE, WREXHAM, FLINTSHIRE**
APPLICATION VALID DATE:	**1st JUNE 2023**
LOCAL MEMBERS:	**COUNCILLOR G HEALEY**
TOWN/COMMUNITY COUNCIL:	**HOPE COMMUNITY COUNCIL**
REASON FOR COMMITTEE:	**MEMBER REQUEST**

SITE VISIT: **YES**

1.00 SUMMARY

1.01 Members are asked to note that this application was deferred at the November Planning Committee to allow for a site visit to take place at the request of the local Member. Notwithstanding this, Members are also reminded that the same application has also been considered on two previous occasions, once by the Planning Committee on 26th October 2022, and then by an appeal Inspector, who determined it on 1st August 2023. Both of these decisions refused permission on the sole issue of a lack of certainty that the development could sufficiently mitigate the impact of the additional phosphates from the development, on the River Dee and Bala Lake Special Area of Conservation. All other matters that were raised at the November meeting have previously been considered, and none were sufficient to form a separate reason for refusal, either by this committee or by the appeal Inspector. This application should therefore be re-considered solely on the basis of the evidence that now exists to overcome the previous single reason for refusal.

1.02 This is a full application for the part demolition of existing dwelling and residential development comprising of 7 detached dwellings and associated roads and drainage works at "Foxfield", Fagl Lane, Hope, Wrexham, Flintshire

2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-

2.01 Section 106

The conditional planning permission be granted subject to the applicant entering into a Section 106 Obligation to provide the following:

- Primary School Contributions- Contribution required would be £12,257.00 towards improvements to Ysgol Estyn
- Secondary School Contributions- Contribution required would be £18,469 towards improvements to Castell Allun High School
- Public Open Space Contributions- £1,100 per unit towards the Willow Play Area

Conditions

1. The development hereby approved shall be commenced before the expiration of five years from the date of this permission.

2. The development shall be carried out in accordance with the following approved plans and documents:

- Application forms
- Location plan
- Topographical Survey
- Arboricultural Impact Assessment
- Ecology report
- Ecology Update Letter
- Demolition risk Assessment
- Proposed Highways Layout and Setting Out
- Swept Path Analysis Turning Head
- Highways Construction Details
- Drainage Statement
- Drainage Strategy plan
- Drainage Strategy detail 1 of 4
- Drainage Strategy detail 2 of 4
- Drainage Strategy detail 3 of 4
- Drainage Strategy detail 4 of 4
- Site plan (incorporating FFLs)
- House Type Harlech
- House Type Pulford
- House Type Powis
- House Type Montgomery
- House Type Whittington
- Garages
- Design and Access Statement
- Materials Detail

3. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the substantial completion of the development, whichever is the sooner and any trees or plants which, within a period of 5 years of the time of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.

5. The siting, layout and design of the means of site access shall be in accordance with details to be submitted to and approved by the County Council prior to the commencement of any site works.

6. The forming and construction of the means of site access shall not

commence unless and until the detailed design thereof has been submitted to and approved by the County Council.

7. The proposed access shall have a visibility splay of 2.4m x 43m in both directions measured along the nearside edge of the adjoining carriageway over land within the control of the Applicant and/or Highway Authority and within which there shall be no significant obstruction to visibility.

8. The stated visibility splays at the proposed point of access shall be made available and kept free from all obstructions for the duration of site construction works.

9. Facilities shall be provided and retained within the site for the parking and turning of vehicles in accordance with the submitted scheme, such facilities being completed prior to the proposed development being brought into use.

10. The detailed layout, design, means of traffic calming and signing, surface water drainage, street lighting and construction of the internal estate roads shall be submitted to and approved by the County Council prior to the commencement of any site works.

11. The gradient of the access from the edge of the existing carriageway and for a minimum distance of 10m shall be 1 in 24 and a maximum of 1 in 15 thereafter.

12. Positive means to prevent the run-off of surface water from any part of the site onto the highway shall be provided in accordance with details to be submitted to and approved by the County Council prior to the commencement of any site works.

13. No development shall take place, including site clearance works, until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the Local Planning Authority (see attached note)

14. Notwithstanding the details hereby approved, prior to commencement of development a scheme of bird and bat boxes to be installed within the site shall be submitted and approved in writing by the LPA. The approved details shall be incorporated into the development in accordance with these details.

15. Prior to the commencement of development, including any demolition work, a scheme of Reasonable Avoidance Measures for Bats and nesting birds shall be submitted to and approved by the LPA. Henceforth all development shall be carried out in accordance with these approved details.

16. Prior to the commencement of development a scheme for biodiversity enhancement of the site shall be submitted for approval, and thereafter shall be implemented in accordance

with the approved details.

3.00 CONSULTATIONS

3.01 **(Local Member) Councillor G Healey**: There is a fair level of public interest in this development and I would like to call it into committee

Hope Community Council: Objections summarised as follows:

1. Backland Development
2. Overdevelopment of site
3. Out of keeping with locality and pattern of development
4. Loss of privacy and noise disturbance
5. Flood risk
6. Ecology
7. Highways and Pedestrian safety
8. Impact upon schools and medical practices
9. Impact upon wastewater and sewerage systems.

Highways Development Control: Highways conditions suggested

Community and Business Protection: No adverse comments to make

Welsh Water/Dwr Cymru: Request that if you are minded to grant Planning Consent for the above development that the Conditions and Advisory Notes provided below are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets. Dwr Cymru have confirmed that the site is served by a Wastewater treatment works which has sufficient capacity to cater for the development and has a valid Phosphate stripping license.

Natural Resources Wales: Identifies that site lies within the within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). NRW also request that the Protected Species Survey is included within the list of approved documents. Without the inclusion of this document, they would object to this planning application.

4.00 PUBLICITY

4.01 14 Neighbour Notifications were sent to adjoining/nearby properties and a Site Notice was displayed at the site.

Two objections have been received which can be summarised as follows:

1. Traffic Impact
2. Lack of local facilities
3. Beyond established building line
4. Impact upon cemetery
5. Phosphates issue
6. Surface water problems
7. Overdevelopment/out of character of locality
8. Impact upon neighbouring property

5.00 SITE HISTORY

5.01 063335- Full application- Part demolition of existing dwelling and residential development comprising of 7 detached dwellings and associated roads and drainage works- Refused 26/20/22

018029- Outline application for residential development- Refused 24/8/89 Appeal Dismissed 27/2/90

6.00 PLANNING POLICIES

6.01 Flintshire Local Development Plan
Policy STR2: The Location of Development
Policy STR13: Natural and Built Environment, Green Networks and Infrastructure
Policy PC1: The Relationship of Development to Settlement Boundaries
Policy PC2: General Requirements for Development

Policy PC3: Design
Policy PC5: Transport and Accessibility
Policy HN2: Density and Mix of Development
Policy EN2: Green Infrastructure
Policy EN4: Landscape Character
Policy EN15: Water Resources
Policy EN17: Development of Unstable Land

7.00 PLANNING APPRAISAL

7.01 Proposed Development

This is a Full application for the Part demolition of existing dwelling and residential development comprising of 7 detached dwellings and associated roads and drainage works at "Foxfield", Fagl Lane, Hope, Wrexham, Flintshire

7.02 This application follows a previous refusal , reference 063335, on October 26th 2022. That application was refused on the single issue that it was considered it had not been demonstrated that the proposed development would not lead to an increase in phosphate levels in the River Dee and Bala Lake Special Area of Conservation ('the SAC'), a European protected site. Whilst all aspects of the proposal were otherwise acceptable, the position at the time with a lack of identifiable mitigation for phosphates caused an Inspector from PEDW to refuse the subsequent appeal for the same single reason. Since the Committee and an Inspector came to their respective decisions relating solely to a lack of identifiable phosphate mitigation, there has been a significant material change in circumstances on this issue since the refusal and subsequent appeal, which is explained below.

7.03 Site Description

The application site is Foxfield, Fagl Lane, Hope. This site is within the settlement boundary for Hope in the Flintshire Local Development Plan. The site is currently the garden area for the property known as ;Foxfield' which is located centrally on the site. To the east of the site is a Cemetery.

7.04 The Main Issues

Notwithstanding that when this application was previously considered all matters apart from phosphates were found to be acceptable, the main issues are considered to be:

- The principle of development
- Impact of the development on the character and appearance of the area
- Drainage and phosphates

- Access and highways issues
- Ecological issues

7.05 Principle of Development

The application site lies within the settlement boundary of Hope in the Flintshire Local Development Plan. Hope is a Tier 2 Local Service Centre in LDP policy STR2 and there is a presumption in favour of residential development in these settlements. In principle this is considered to be an acceptable windfall development on a previously developed site, in an appropriate and sustainable location for this form of development.

7.06 The proposal is considered to accord with policies STR2 and PC1 in the Flintshire Local Development Plan, and as such it is considered that the principle of development is acceptable.

7.07 Impact upon the character and appearance of the area

The development is arranged in fairly linear patterns, with 7 additional dwellings, and the existing dwelling 'Foxfield' arranged around a central access road which culminates in a hammer head at its south western end. Two dwellings are located facing the access road at this south western end of the site, one dwelling is located to the north of the access road, and the remaining 5 (Including the existing dwelling) are located to the south of the access road. Due to this orientation the majority of the new dwellings are located away from existing housing.

7.08 Further to discussions held with the Case Officer following the initial submission of the scheme the proposal has been redesigned with the deletion of one of the proposed dwellings and a site redesign to ensure that the new dwellings have sufficient garden depths and are sensitive to perceived overlooking of the adjacent cemetery site. The dwellings that back onto this facility are located at a slightly lower level to the cemetery, however, as a result of the required 11 metre garden depths being met and retention of the existing boundary screening I do not consider that they will unacceptably impact users of the cemetery by being overly intrusive. The Appeal Inspector noted that the site's relationship with the cemetery would be similar to that seen in other residential settings and there is no evidence that future residents would be likely to create unacceptable noise or disturbance to cemetery visitors.

7.09 It is noted that the local Council have objected to the proposal partly on the basis of a potential loss of privacy, however there is no direct overlooking from any of the proposed dwellings onto existing

neighbouring properties and it is not considered that the proposal would result in a loss of privacy for neighbouring properties.

7.10 The proposed house types are detached, and of brick and tile construction. The existing housing in the locality is mixed although whilst there are some other house types including single storey dwellings the types of housing that is typically found in close proximity to the application site tends to be detached and either of a brick or rendered finish. The proposed dwellings are similar in style to those constructed on Tudor Close, across Fagl Lane from the application site. I consider them to be appropriate for use in this location.

7.11 Submitted floor levels for the proposed dwellings, the garages and the garden areas are appropriate for the locality and follow the existing landform and the relative floor levels for neighbouring development. This will ensure that the development integrates into the street scene and prevailing pattern of development.

7.12 <u>Phosphates and drainage</u>

Following a wastewater pre-development enquiry with Welsh Water, the applicant is proposing to discharge into the public foul sewer network in Fagl Lane approximately 200m west of the site boundary. The levels do not allow for a gravity connection from the site so a foul pumping station will be required within the development proposals. This pumping station is located to the front of the site.

7.13 The application site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). On the 21st January 2021, NRW published an evidence package outlining phosphate levels for all river SACs across Wales. As part of this package, they issued a Planning Position Statement, in which they advised that any proposed development that might increase the amount of phosphate 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. NRW have also issued Planning Advice (August 2023) which gives specific advice in respect of foul drainage arrangements for new developments

7.14 There are no designated sites in proximity to the application site, but the application site is close to the River Alyn a tributary of the River Dee designated as an SSSI and SAC, designated primarily for migratory fish but also otter. While it is not directly affected, all developments now need to consider phosphate pathways and a potential increase in levels within the River Dee Special Areas of Conservation (SAC) to ensure there are no impacts.

7.15 The previous application was refused solely on the basis of uncertainty over the phosphates issues, and this sole reason was

upheld on appeal. Since that time a significant change has occurred where the phosphate permits for affected waste water treatment works in Flintshire that include Hope, have been updated and re-issued by Natural Resources Wales, and can now be relied upon in making an assessment of the site's impact on the SAC.

7.16 Following the review of the Hope WWTW permit, Welsh Water have confirmed that there are no capacity issues at the waste water treatment works as it has a valid phosphate permit and as a result there is headroom at the treatment works to treat the additional phosphate that would be derived from the proposed development. In accordance with the NRW advice referred to earlier, a Test of Likely Significance has been undertaken on this site.

7.17 It is considered that no likely significant effects on the SAC are anticipated as a result of these development proposals as there is unlikely to be a source of additional phosphorus or pathway for impacts (given that the treatment works can process the phosphates). The development is therefore screened out as not likely to have a significant effect on a river SAC in relation to phosphorus inputs as it falls within the following criterion in the NRW advice (both points 1 and 3 apply):

- there is capacity to treat additional wastewater from the proposed development within revised environmental permit limits, or
- the necessary treatment capacity to remain within revised environmental permit limits will be delivered within the agreed Asset Management Plan (AMP) and that when implemented the treatment capacity will ensure that additional wastewater generated in consequence of the proposed development will remain within the revised permit limits and
- that the sewer network and associated WwTW has the hydraulic capacity to accommodate additional wastewater without contributing to an increase in frequency or duration of storm overflows.

7.18 As such, it is considered that the proposal is in accordance with policy EN15 in the Flintshire Local Development Plan.

7.19 <u>Access and Highways</u>

The site is located on Fagl Lane, a classified highway. As such it is a road designed to carry significant volumes of traffic. It is not considered that a development of this scale will unacceptably impact upon highways safety. Highways Development Control have raised no objection to the proposal, and requested conditions should planning permission be agreed to ensure that the internal road and

access point are constructed to appropriate standards. This has been their consistent position since the previous application.

7.20 Ecology

The site consists of modern, well-maintained buildings and garden, predominantly mown grass with shrubs and occasional trees and a mature hedgerow next to the cemetery. There are no designated sites adjacent to the site but it is within 300m of the River Alyn with farmland with trees and tall hedgerows in between and just over 300m to GCN ponds in the north.

7.21 The presence of trees and open water within the locality increases the chance of a bats roost being present but the buildings to be demolished are single storey, well maintained with low potential for roosting bats. Bat emergence surveys were undertaken in Aug & Sept 2021 and show that 1 Common Pipistrelle emerged from small gap in SW facing gable of garage on both visits. Mitigation proposed is acceptable, namely reasonable avoidance measures and bat boxes to be built into new houses. The proposed bat boxes should be incorporated into the design plans to guarantee installation.

7.22 The shrubs and trees and particularly the boundary hedge also have potential for nesting birds and the proximity to known GCN sites means there is potential for GCN to be present on site so appropriate reasonable avoidance measures for GCN during site clearance would be required.

7.23 Biodiversity enhancements in line with WG policy would need to be incorporated into the new buildings, for example bat and bird boxes, and a condition requiring this detail is suggested. Other details such as species proposed for hedges and ornamental shrubs can be included on the landscape plan and can also be conditioned.

7.24 It is considered that from an ecological point of view the proposal is acceptable and in accordance with the relevant Local Development Plan policies.

Green Infrastructure

7.25 In advance of an updated Planning Policy Wales (PPW) Chapter 6 of PPW11 has been amended with regards to green infrastructure, net benefit for biodiversity, the protection afforded to Sites of Special Scientific Interest and trees and woodlands. The Welsh Ministers have made this guidance operational with immediate effect.

7.26 It will be essential that the development appropriately engages with these matters and meets the policy requirements of the amended Chapter 6 of PPW11.

The application is well supported with regard to the approach to sensitively addressing ecological issues, including arboricultural
7.27 concerns. The landscaping of the site will be controlled by condition but will ensure that the non-designated green infrastructure of the locality is appropriately treated.

It is considered that the proposal complies with the advice within PPW11 as well as policy EN2 in the LDP.

7.28

Planning Obligations

7.29 The infrastructure and monetary contributions that can be required from a planning application through a S106 agreement have to be assessed under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and Welsh Office Circular 13/97 'Planning Obligations'.

It is unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of
7.30 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.

Leisure services have advised that in accordance with Planning Guidance Note No.13 POS provision, the Council should be seeking
7.31 an off-site contribution of £1,100.00 per dwelling in lieu of onsite Public Open Space.

The payment would be used to enhance toddler play facilities at The Willow Play Area, which is the closest play area to the site. Working
7.32 with Planning Policy, they have confirm that the pooled contributions thresholds have not been exceeded with regards to The Willow Play Area. As such and in accordance with the CIL regulations the LPA can request these contributions through a legal agreement.

Education and Youth Services have confirmed that should planning permission be granted then they would be requesting developer
7.33 contributions of £12,257 for Primary School contributions to Ysgol Estyn and £18,469 for Secondary school contributions to Castell Alun. It is similarly considered that these are valid requests in accordance with the CIL regulations.

The developer has submitted a Unilateral Undertaking to address these requests in support of the application. The requests have

previously been identified and agreed upon at the time of the previous
7.34 application and planning appeal.

Other Matters

The Community Council have raised concerns over issues of flood
7.35 risk. The site is not in a flood risk area, and the applicant will be required to obtain SAB approval with regards to the surface water drainage solutions on site. There are no flood concerns and the proposal is considered to be in accordance with LDP policy EN14: Flood Risk.

8.00 CONCLUSION

The proposal represents an acceptable windfall development within the settlement boundary of a sustainable settlement. There are no unacceptable impacts upon local amenity, ecology, or as a result of highways or drainage issues, as in the previous consideration of this application. The phosphates issue, which was the only previous impediment to issuing a positive decision in relation to this scheme has now been overcome. Accordingly, I recommend that the proposal is acceptable subject to the suggested conditions and legal agreement as outline 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

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Mae'r dudalen hon yn wag yn bwrpasol

Appeal Decision

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by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 01/08/2023

Appeal reference: CAS-02376-P1W3W4

Site address: Land at Foxfield, Fagl Lane, Hope, Flintshire LL12 9RB

- 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 Mr Michael Forgrave for Gower Homes Ltd against the decision of Flintshire County Council.
- The application Ref 063335, dated 14 April 2022, was refused by notice dated 26 October 2022.
- The development proposed is part demolition of existing dwelling and residential development comprising of 7 detached dwellings and associated roads and drainage works.
- A site visit was made on 27 June 2023.

Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The appellant states that the Council's decision notice was not issued until 25 November 2022, yet was back-dated as 26 October 2022, which he contends makes it legally defective. I am satisfied however that the Council's decision notice meets the requirements set out in article 24 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012.
3. The application was amended during its determination by the Council to reduce the number of new dwellings proposed from 8 to 7 and I have considered the appeal on this basis.
4. The Flintshire Local Development Plan 2015-2030 (LDP) was adopted on 24 January 2023 as the development plan and supersedes the Flintshire Unitary Development Plan on which the Council's decision was based. The appeal must be determined in accordance with the current development plan unless material considerations indicate otherwise. I am satisfied that both parties have been provided with an opportunity to make representations on the up-to-date LDP policies relevant to the proposed development.
5. The Council's sole reason for refusal was that it considered it had not been demonstrated that the proposed development would not lead to an increase in phosphate levels in the

River Dee and Bala Lake Special Area of Conservation ('the SAC'), a European protected site. There was no other matter at dispute between the main parties.

6. Natural Resources Wales (NRW) published an update to its phosphorus targets for water bodies in Special Areas of Conservation (SAC) rivers in Wales in July 2023 during consideration of the appeal. Having regard to the facts of the case, I am satisfied that the updated advice does not raise any new matters of significance, and I have taken it into account in my decision.
7. During the appeal process, the appellant provided a signed Statement of Common Ground (SoCG) in which the appellant and Council confirm their agreement that a proposed mitigation scheme set out within it would address the Council's reason for refusal and confirming that there are consequently no matters in dispute.
8. The appellant has also provided a unilateral undertaking (UU) under Section 106 of the Town and Country Planning Act (TCPA) 1990 in relation to delivery of the mitigation scheme and a financial contribution towards education.

Main Issue

9. The main issue is the effect of the proposal on the integrity of the SAC.

Reasons

10. The appeal site lies within the Local Service Centre of Hope which is a Tier 2 settlement identified under LDP Policy STR2 as a location for modest levels of new housing development. Occupied by a dwelling, it is a large enclosure on the rural edge of the village adjoining a cemetery.
11. The appeal site is within the catchment of the SAC. NRW sets conservation objectives for the SAC, including phosphorus targets. In 2021, it published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets. Although the SAC is meeting those targets, NRW confirms that very limited capacity remains for additional flows without leading to detrimental effects. The proposal would connect foul drainage to the public sewerage system which would discharge into the Hope Wastewater Treatment Works (WwTW). The WwTW includes phosphorus removal capability and operates under a permit to discharge treated wastewater into the SAC catchment. The permit is subject to review against revised phosphorus targets for the SAC. The appeal proposal has the potential to be a source of additional phosphorus and there is a pathway for impact on the SAC from the scheme. Consequently, it cannot be screened out of the requirement for a Habitats Regulations Assessment (HRA) under the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Regulations'). The HRA is attached as an Annex.
12. For the reasons set out in the HRA, I am unable to conclude beyond reasonable scientific doubt that the development would not have a significant adverse effect on the integrity of the SAC. The proposal would therefore conflict with advice on the protection of European sites in Planning Policy Wales (Edition 11) and LDP Policy EN15.

Other Matters

13. I have had regard to concerns regarding the effects of the proposal on highway safety, the tranquillity of the adjoining cemetery; the character and appearance of the area, flooding and biodiversity, and the strain it would place on local services and facilities. I saw however that the design and layout of the proposed dwellings would reflect other developments locally. The site's relationship with the cemetery would be similar to that

seen in other residential settings and there is no evidence that future residents would be likely to create unacceptable noise or disturbance to cemetery visitors. Consultees have raised no concerns in relation to flooding or capacity issues in relation to drainage, or in relation to biodiversity. The proposal would make appropriate contributions to support local services and facilities. The Highway Authority has not objected to the scheme, and I saw no reason during my site visit to reach a different conclusion.

Conclusion

14. Notwithstanding my findings under Other Matters, the harm likely to arise to the SAC provides compelling grounds to dismiss the appeal. For the above reasons and having regard to all matters raised, the appeal is dismissed.

15. 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 this decision is in accordance with the Act's sustainable principle through contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

Inspector

Annex: Habitats Regulations Assessment

Preliminary Matters

1. In accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Regulations'), the purpose of this Appropriate Assessment (AA) is to report on the impacts of the scheme on a site that forms part of the National Sites Network (the River Dee and Bala Lake Special Area of Conservation - the SAC). As required by Regulation 63(3) of the Regulations I have had regard to the comments of Natural Resources Wales (NRW) provided to the Council and to Planning and Environment Decisions Wales.
2. The appellant initially asserted that the proposal should be screened out of the requirement for a Habitats Regulations Assessment (HRA) under the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Regulations') due to the small volume of phosphorus that would be generated; the likely occupiers of the proposal; because discharges would be directed to Hope Waste Water Treatment Works (WwTW) which provides phosphates treatment, and because other uses of land contribute to phosphate discharges but are not required to provide mitigation or curtail their activities. However, such matters do not negate the need for an HRA to be undertaken.
3. The appellant has proposed mitigation which has also been the subject of a Statement of Common Ground (SoCG) with the Council and which it is contended means the proposal can be screened out of needing an HRA. However, as set out in the Welsh Government HRA guidelines provided by the appellant, and in advice on NRW's website as a result of the 'People over Wind' ruling (case C-323/17), competent authorities cannot take into account any mitigation measures when making screening decisions for the purposes of deciding whether an AA is required. I have therefore considered the mitigation in my AA.

Background

4. The entry in the register of European sites for Wales identifies the habitat and species that are the primary reason for the SAC's designation as water courses of plain to montane levels within the Ranunculion fluitantis and Callitricho-Batrachion vegetation, Atlantic salmon, and floating water-plantain. Present as qualifying features of the SAC are Sea lamprey, Brook lamprey, River lamprey, Bullhead and otter. The SAC Core Management Plan (CMP) sets out the vision and conservation objectives for the SAC. The effect of a project is considered significant if it would undermine the conservation objectives of the SAC and is assessed against the prevailing environmental conditions of the SAC.
5. The SAC CMP sets out the vision for the site that it is maintained at, or where necessary restored to, high ecological status with all its features at favourable conservation status (FCS). The CMP also sets out the conservation objectives for the SAC to ensure the vision is achieved. For the watercourse to achieve FCS, ten listed objectives must be met, including no deterioration in water quality and levels of nutrients, including phosphates, will be kept below agreed levels. Conservation objectives for many of the qualifying features to achieve FCS in their own right require that the parameters defined in the vision for the watercourse are met.

Likely Significant Effect

6. Irrespective of the anticipated volume, the proposal has the potential to be a source of additional phosphorus and there is a pathway for impact on the SAC from the scheme.

NRW advice is that the SAC is currently passing phosphorus targets. Nevertheless, the proposal would connect foul drainage to the public sewerage system which would discharge into the Hope WwTW. The Hope WwTW permit is subject to a review against increased phosphate targets. Although Dŵr Cymru-Welsh Water's (DCWW) water quality modelling indicates that alteration to its existing phosphorus limit is unlikely, NRW confirms that final data and further quality assurance is required. There is no confirmed timetable for finalisation of the review and therefore no confirmation that the WwTW can accommodate additional flows without harming the integrity of the SAC. Notwithstanding any other sources of phosphates, the appeal proposal would involve the construction of new dwellings, discharges from which would be released into the River Alyn, a tributary of the SAC. NRW advise that there is very limited capacity downstream of the confluence of the Alyn with the Dee SAC to receive additional phosphorus inputs without leading to an exceedance of the current water quality targets.

7. Likely significant effects from the project on the River Dee and Bala Lake SAC cannot therefore be ruled out as the proposal is a source of additional wastewater and phosphorus with a pathway for impacts on the SAC. Accordingly, an AA is necessary.

Appropriate Assessment

8. The appeal site is occupied by a single dwelling, Foxfield, which is served by a septic tank. A neighbouring dwelling at Bryn y Grog is also served by a septic tank on the appeal site. The proposal is to retain and remodel Foxfield and to erect 7 new dwellings. All 9 dwellings would be connected to the public sewerage network, discharging to the Hope WwTW, resulting in increased phosphate discharge into the River Alyn.

9. Albeit that DCWW has indicated that headroom exists at Hope WwTW to accommodate flows from the proposal within existing permit limits and that no change to the permit limit is likely to be necessary as a result of the permit review against revised phosphorus targets, NRW indicates that this review has not been completed. Furthermore, given that that there is limited headroom downstream of the confluence of the Alyn with the Dee SAC to receive additional phosphorus inputs without leading to an exceedance of the current water quality targets, there is no certainty that the WwTW can accommodate the discharges from the proposed development within its permit limit, taking into account revised phosphate targets for the SAC. NRW advises that an analysis should be undertaken which quantifies how phosphorus loading from the proposal entering the WwTW would affect the phosphorus concentration in the WwTW outflow, and how that in turn would affect the phosphorus concentration in the River Alyn. The results of such an analysis have not been provided.

10. I am unable to conclude therefore that the phosphorus discharges from the proposal would not lead to significant adverse effects on the integrity of the SAC. I therefore turn to consider whether those effects can be suitably mitigated as part of the proposal.

Mitigation

11. As set out in his 'Septic Tank Replacement Phosphorus Mitigation Scheme – Technical Note' (TN) dated 6 April 2023 and signed SoCG dated 25 April 2023, the appellant proposes mitigation in the form of an off-site package treatment plant with phosphate stripping capability which would be installed to serve two properties, one of which is owned by the appellant. The SoCG confirms the parties' agreement that such a scheme would improve existing water quality discharges into the SAC by reducing the phosphorus concentration of wastewater discharging from the septic tank into the River Dee.

12. NRW has advised that the principle of replacing existing poorly performing private drainage systems with alternatives that have a higher standard of environmental performance is supported, and that any nutrient credit can be used against other planned developments. The TN scheme is based on the replacement of an existing septic tank, located about 40m from the River Dee, with a package treatment plant which would contain phosphorus stripping capabilities. The SoCG scheme would also provide a similar package treatment plant, but in addition to the existing septic tank, which would be retained. Calculations under both mitigation schemes conclude that nutrient neutrality would be achieved, cancelling out the effects of the appeal proposal, as well as resulting in a betterment which could be used as a credit, albeit at different rates, against other future development.

13. Neither the TN nor SoCG provides detailed scaled drawings of the existing or proposed systems, or a copy of the existing waste discharge exemption certificate, and no cogent evidence that the existing septic tank system is failing is provided. The TN applies a default discharge concentration to the existing system in the absence of water quality testing, but assumes the discharge is entirely into the SAC without accounting for discharges to ground. The SoCG'c calculations are based on a higher total output figure, and it also provides a lesser figure for the output accounting for discharge to ground, but it provides no monitoring data, or any other evidence, to show how those figures were obtained. Calculations in the SoCG are based on precautionary average occupancy rates. However, whilst occupancy levels applied in the TN to the two existing dwellings are described as precautionary as they are less than would be derived from NRW's methodology in relation to permit regulations, I have seen no evidence that dwellings served by septic tanks would be likely to have a higher occupancy rate than the precautionary average rate the TN applies to the proposed new dwellings.

14. It has also been suggested that restrictions could be placed on the occupants of the future dwellings. However, restricting first purchasers of the proposed dwellings to local residents would not guarantee that those dwellings, or existing dwellings released as a consequence, would not be occupied by others from outside the catchment.

15. Given the uncertainties over the condition of the existing septic tank system and how calculations of outputs from it have been derived and applied, as well as the variations in applying precautionary principles to calculating outputs, I am not satisfied that the mitigation schemes are supported by sufficiently robust best available scientific evidence to demonstrate that nutrient neutrality could be achieved.

Delivery

16. Significant adverse effects on the integrity of the SAC would occur unless mitigation measures are in place when the proposed development starts to discharge phosphorus into the SAC and those measures continue to operate effectively for the lifetime of the development. In terms of the delivery of mitigation measures, a unilateral undertaking (UU) has been submitted.

17. I note that it is not dated and therefore has no legal effect. Nevertheless, even if it was properly executed, the UU does not prevent prior connection of the two existing properties at Foxfield and Bryn y Grog to the public sewerage system at any stage in advance of implementation of the mitigation scheme, which could result in additional phosphorus discharges to the SAC. Moreover, it provides no methodology for approval by the Council of any phosphate-stripping sewage treatment plant (STP) or any certainty that the standard of phosphate-stripping capability would match that set out in the mitigation schemes. It provides no mechanism for reporting on the efficacy of the mitigation scheme, nor a methodology for addressing and rectifying any reduced performance. Although the UU states that a mitigation scheme would not be required

should sufficient phosphates headroom exist, it is vague in terms of what form DCWW's 'announcement' would take and provides no definition of related terminology. Whilst I am mindful of NRW's updated advice and the appellant's reference to the use of Grampian conditions in other cases brought to my attention, there is no certainty in this case when the permit review of the Hope WwTW will be completed or of its results. I am not satisfied that these matters should be left to conditions or a legal agreement, particularly in view of the requirement to adopt a precautionary approach to my assessment.

18. Given the above, I am unable to conclude that there would be no adverse effects on the site's integrity as a consequence of the project alone. Consequently, it is not necessary for me to consider in-combination effects.

Derogation

19. I have taken into account the benefits of the scheme including the financial contributions that would be made to education and open space provision, economic benefits including construction jobs and spending, householder expenditure in the local economy and tax revenue, its social benefits including sustaining the local community and services and facilities, as well as the environmental credentials of the scheme. Nevertheless, those benefits would be common to many similar proposals and given the relatively small scale of the scheme, they fall far short of constituting imperative reasons of overriding public interest. Whilst I have also had regard to other developments, including appeal decisions, brought to my attention by the appellant, I have insufficient details of the specific effects of those proposals on the relevant protected sites to enable direct comparisons to be drawn with the appeal proposal which I have considered on its own merits.

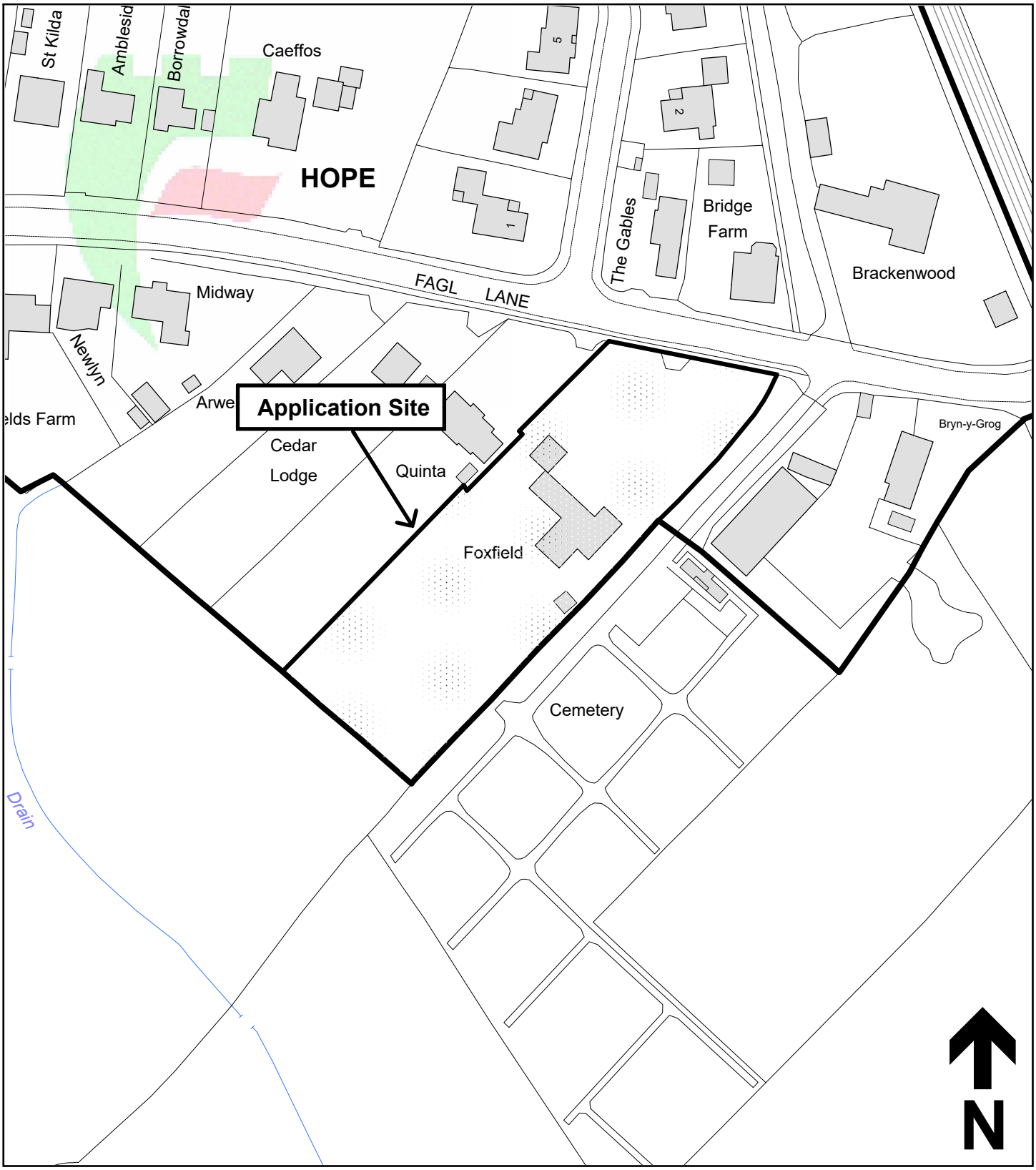
Conclusion

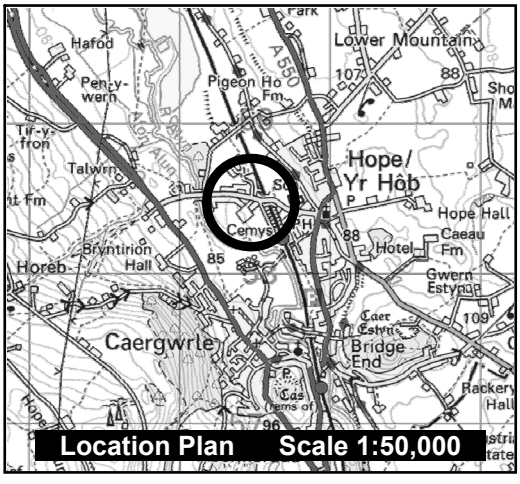
20. For the reasons given, I conclude that I am unable to rule out all reasonable scientific doubt of an adverse effect on the integrity of the SAC.

N Jones

Inspector

Mae'r dudalen hon yn wag yn bwrpasol





CYNGOR Sir y Fflint Flintshire COUNTY COUNCIL

Planning, Environment & Economy,
Flintshire County Council, County Hall,
Mold, Flintshire, CH7 6NF.

Chief Officer: Mr Andrew Farrow

Legend

Planning Application Site

Adopted Flintshire Unitary Development Plan Settlement Boundary

Map Scale:	1:1250
OS Map:	SJ 3058
Application:	FUL/000523/22

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