

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:** **PLANNING COMMITTEE**

**DATE:** **WEDNESDAY, 2 OCTOBER 2019**

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

**SUBJECT:** **OUTLINE APPLICATION FOR RESIDENTIAL  
DEVELOPMENT AT LAND EAST OF VOUNOG  
HILL, PENYFFORDD.**

**APPLICATION  
NUMBER:** **060319**

**APPLICANT:** **TEVIR GROUP LIMITED**

**SITE:** **LAND EAST OF VOUNOG HILL, PENYFFORDD,  
CHESTER CH4 0EX**

**APPLICATION  
VALID DATE:** **2<sup>ND</sup> AUGUST 2019**

**LOCAL MEMBERS:** **COUNCILLOR DTM WILLIAMS  
COUNCILLOR C HINDS**

**TOWN/COMMUNITY  
COUNCIL:** **PENYFFORDD COMMUNITY COUNCIL**

**REASON FOR  
COMMITTEE:** **DEPARTURE FROM DEVELOPMENT PLAN  
SCALE OF DEVELOPMENT**

**SITE VISIT:** **NO**

**1.00 SUMMARY**

- 1.01 This is an Outline application with all matters other than access reserved for future consideration for residential development at land to the east of Vounog Hill, Penyffordd, Chester. As the site is outside the settlement boundary for Penyffordd the application has been advertised as a departure.

Members will be aware that this scheme was previously considered at the September 2018 planning committee.

**2.00 RECOMMENDATION: TO REFUSE PLANNING PERMISSION FOR  
THE FOLLOWING REASONS**

2.01 1. It is considered that it would be premature to grant planning permission given the cumulative amount of speculative development already allowed on appeal and as yet undeveloped in this settlement, and also given that the Deposit LDP has been approved by the Council for public consultation beginning on 30<sup>th</sup> September 2019. Given that the Deposit LDP has allocated the largest of these speculative appeal sites, whereby this settlement makes a significant contribution to the plan's overall housing requirement, any further grant of planning permission would not be in line with the strategy of the plan and would therefore prejudice it, and the consideration of its soundness as part of the deposit consultation and subsequent examination.

2. It is considered that there is insufficient evidence to identify the need to bring forward this speculative site outside the settlement boundary of Penyffordd/Penymyndd in advance of the deposit of the Local Development Plan. In the absence of the evidence of need, and in light of the satisfactory levels of residential housing completions, commitments and allocations in accordance with planned housing trajectory in the Deposit LDP, the Council does not attach considerable weight to the need to increase housing supply. The proposal therefore conflicts with paragraph 6.2 of TAN 1 and principles set out in section 4.2 of PPW 10 as it would prejudice the most appropriate housing sites from being brought forward as set out in the Deposit LDP.

3. It is considered the proposal, in outline form, does not demonstrate that the proposed site is genuinely available and free from physical and economic constraint, or that it could be delivered in advance of the adoption timetable for the LDP. In this regard the proposal conflicts with the aims of section 4.2 of PPW10 which seeks to ensure a plan-led approach to deliverable housing without delay. A further reserved matters application would be required to examine a range of fundamental issues which may demonstrate the site is undeliverable.

4. The proposal would result in a development which does not relate well to the existing pattern of development in the area, and would result in a fragmented form of development which does not integrate well with the existing built form. As such the proposal represents an illogical extension to the settlement which would be contrary to Policies STR1, STR7, GEN1, GEN3 and HSG4 of the Adopted Flintshire Unitary Development Plan

### **3.00 CONSULTATIONS**

#### **3.01 Local Member**

Councillor D Williams

No response at time of writing

Councillor C Hinds

No response at time of writing

Penyffordd Community Council

No response at time of writing

Highways Development Control

SAB approval required for this submission- not satisfied that an acceptable highways drainage solution can be provided.

Whilst I consider the formation of access to serve the development to be acceptable in principle, I advise that subsequent reserved matters application shall consider:

- Providing vehicular and pedestrian access from an adoptable road to the Community Open Space to ensure that maintenance can be ensured.
- Provide swept path analysis on the full technical submission.

Recommends conditions and advisory notes.

Public Rights of Way

Public footpath no. 7 crosses the site. The applicant must contact the RoW section before proceeding with any works. The legally defined public right of way must be marked out in strict accordance with the definitive map and with the prior approval of the surveying authority before design implementation.

Community and Business Protection

No response at time of writing

Welsh Water/Dwr Cymru

Dwr Cymru Welsh Water (DCWW) initially raised concerns surrounding the capacity of the local public sewerage network to accompany the foul flows from the proposed development.

However, Waterco consultants have since identified a total of 310m<sup>2</sup> surface water contributing area from the roof and concrete yard areas of the adjacent Emmanuel Church currently discharging into the 225mm diameter combined public sewer situated alongside Vounog Hill. In light of the above, DCWW can confirm that should the surface

water flows from the connected area (310m<sup>2</sup>) be redirected from the combined line into an existing ditch, we would be satisfied this would offset anticipated foul flows associated with the new development.

Having reviewed the FCA and Drainage strategy prepared by Waterco dated February 2018, DCWW consider the proposed drainage arrangements to be acceptable in principle and as such have no objection to the proposed development providing the following conditions and advisory notes are included in any planning consent.

### Education

Penyffordd C.P School

School capacity 259 x 5% = 12.95 (13)

259 – 13 = 246 Trigger point for contribution is 246 pupils

(No. of Units) 37 x 0.24 (primary formula multiplier) = 8.88 (9) No Of pupils generated) x £12,257 per pupil (Building Cost multiplier) = £110,313.00.

Actual pupils 244 + 9 (from the multiplier) = 253 meets trigger

253 – 246 = 7 x £12,257 = £85,799 (cannot ask for more contributions that development generates)

**Contribution required would be £85,799.**

Castell Alun Secondary School

School capacity 1240 x 5% = 62

Capacity 1240 – 62 = 1178 Trigger point for contribution is 1178 pupils.

(No of Units) 37 x 0.174 (secondary formula multiplier) = 6.43 (6) no of pupils generated x £18,469 per pupil (Building Control multiplier) = £110,814.

**Contribution required would be £110,814**

### Welsh Government- Land, Nature and Forestry

Recommends that the ALC survey is accepted

### Natural Resources Wales

NRW would not object to the proposed development.

### Airbus

Hawarden Aerodrome safeguarding has assessed against the safeguarding criteria and has identified that the proposed

development has an impact on operations and safeguarding criteria and conditions are required for mitigation.

Issues of: Bird strike

Construction Management Plan

Protection of Obstacle Limitation surfaces

Control of lighting

#### **4.00 PUBLICITY**

##### 4.01 Press Notice, Site, Notice, Neighbour Notification

26 Letters of Objection received

- Unchanged from previous application
- Traffic issues
- Loss of community use of 'sledging field'
- Local drainage issues
- Village losing its character following previous development
- Schools at capacity
- Lack of services- Doctors surgeries, local public transport
- Site outside village boundary
- Dangerous position of access
- Community cohesion
- Loss of agricultural land

#### **5.00 SITE HISTORY**

##### 5.01 058164- Outline application for residential development- Refused 11/09/2018

#### **6.00 PLANNING POLICIES**

##### 6.01 Flintshire Unitary Development Plan

STR1 - New Development

STR4 – Housing

STR7 – Natural Environment

STR8 - Built Environment

STR10 - Resources

GEN1 - General Requirements for New Development

GEN3 - Development Outside Settlement Boundaries

D1 - Design Quality, Location and Layout

D2 - Design

D3 - Landscaping

TWH1 - Development Affecting Trees and Woodlands

WB1 - Species Protection

AC13 - Access and Traffic Impact

AC18 - Parking Provision and New Development

HSG4 – New Dwellings Outside Settlement Boundaries

HSG8 - Density of Development  
HSG9 - Housing Mix and Type  
HSG10 - Affordable Housing within Settlement Boundaries  
RE1 – Protection of Agricultural Land  
SR5 - Outdoor Play Space and New Residential Development  
EWP3 - Renewable Energy in New Development  
EWP14 – Derelict and Contaminated Land  
EWP16 – Water Resources  
Local/Supplementary Planning Guidance Notes  
LPGN 2 - Space around dwellings  
LPGN 4 - Trees and Development  
LPGN 9 - Affordable Housing  
LPGN 11 - Parking Standards  
LPGN 13 - Open Space Requirements  
Planning Policy Wales Edition 10 December 2018  
Technical Advice Note 1 : Joint Housing Availability Studies  
Technical Advice Note 11: Noise  
Technical Advice Note 12 : Design  
Technical Advice Note 18 : Transport

## **7.00 PLANNING APPRAISAL**

### **7.01 Introduction**

This is an outline planning application for up to 37 dwellings with details of the access provided, on land east of Vounog Hill, Penyffordd. All other matters are reserved for future consideration.

Members will be aware that an identical earlier scheme was refused by the Planning committee at the September 2018 committee for the following reason:

1. The proposal amounts to unjustified residential development within an area of open countryside. The proposal would result in a development which does not relate well to the existing pattern of development in the area, and would result in a fragmented form of development which does not integrate well with the existing built form. As such the proposal represents an illogical extension to the settlement which would be contrary to the provisions of Paragraphs 2.1.3, 4.6.4, 4.7.8 and 9.3.1 of Planning Policy Wales (9th Edition - Nov 2016) and Policies STR1, STR7, GEN1, GEN3 and HSG4 of the Adopted Flintshire Unitary Development Plan

Following this refusal an appeal was lodged with the Planning Inspectorate, however it was considered that the submission failed to consider part 2 Article 3 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 as it did

not provide details of upper and lower limits of the dimensions of the buildings proposed.

As such this submission has been made, with the necessary dimension details.

### **Site Description**

The application site extends to 1.91 hectares and is located on the edge of the village of Penyffordd. The site is bound to the east by the former Meadowslea hospital site, Min y Ddol, to the south by properties along Wrexham Road within the settlement boundary and scattered properties and open countryside to the opposite side, properties along Vounog Hill to the west, and to the north lies open countryside. The site is fronted by Vounog Hill.

The site is undeveloped greenfield land bound by established hedgerows and scattered mature trees along its east, south and western boundaries.

The site topography slopes steadily towards the north, across the site towards higher ground where the Min y Ddol access road and associated houses are situated. There is an existing public right of way across the site, this is proposed to be retained, improved and incorporated within the proposed scheme for residential development.

### **Proposed Development**

This is an outline planning application for up to 37 residential units with associated access. It is proposed that the site will be accessed via a new central access off Vounog Hill, taking the form of a simple T-Junction with internal roads for the development. This would involve the removal of part of the hedgerow in order to achieve the required visibility splays.

A new footpath is proposed across the site frontage along Vounog Hill. A pedestrian refuge is also proposed. All other matters are reserved for future consideration.

There is no known planning history to the site prior to the previous submission. However, the land to the east has a planning history in that it is a residential development on the site of the former Meadowslea Hospital. The deposit UDP had a policy which provided advice on the re-use of redundant hospital sites, although this was later removed from the plan. Planning permission was granted on the site for residential development, now known as Min y Ddol.

## **The Current Planning Context**

Prior to the 18<sup>th</sup> July 2018 paragraph 6.2 of TAN 1 required “considerable weight” to be given to the lack of housing land supply provided that the proposal was otherwise policy compliant and sustainable. The disapplication of paragraph 6.2 has significantly altered this test.

A lack of a five year land supply still remains a material planning consideration however the Local Planning Authority now considers what weight should be attached to this matter in the overall planning balance rather than the assumption set out in paragraph 6.2 that considerable weight is always attached to this matter. It is also the case that albeit informally, and by the completions method, Flintshire can demonstrate a five year supply.

It is also considered a matter of material significance that within the last two years, decisions have been taken relating to applications and appeals for residential development elsewhere in this settlement. Three significant appeal decisions (the largest of which was ultimately made by the Cabinet Secretary) have, along with existing commitments, imposed a very significant amount of as yet undeveloped growth on this settlement amounting to a total of 261 units. Whilst each appeal case has been dealt with separately and on their individual merits, there has been a failure to note the cumulative effect of the amount of growth each decision has imposed on the settlement of Penyffordd/Penymynydd. It is the view of the LPA that the level of cumulative growth imposed on this settlement is a material factor, in terms of the questionable sustainability of adding to it, and the wider implications for the distribution of growth around the County via the emerging LDP which has now reached deposit stage and where more preferable and suitable sites have been allocated elsewhere in accordance with the spatial strategy of the plan. This was the approach ultimately taken with the last application for this site and I do not consider the situation to be materially different in favour of this application, especially as the larger of the appeal sites has been allocated in the Deposit LDP and is currently under construction and therefore clearly capable of the early delivery of housing.

Also relevant is the fact that the Deposit LDP has been approved by the Council to go out for consultation beginning on 30<sup>th</sup> September 2019, with the approved plan already in the public domain. The position reached with the LDP is therefore also material to the consideration of this application and in relation to the above context.

## **Prematurity**

There are a number of related factors to consider in relation to the prematurity of this application:

- The position reached with the LDP;
- Penyffordd's position/role within the LDP Preferred Strategy settlement hierarchy;
- The amount of cumulative housing growth already committed to this settlement.

Welsh Government guidance states that where an LDP is in preparation, questions of prematurity may arise. The refusal of planning permission on grounds of prematurity will not usually be justified except in cases where a development proposal goes to the heart of the plan. Where this cannot be demonstrated, applications should continue to be considered in light of policies within the UDP, and in accordance with national policy and guidance. In order to determine whether prematurity is an issue, Welsh Government advises that in order for a proposal for residential development, which is a departure from the development plan, to be considered premature in relation to the emerging LDP, it must be individually or cumulatively so significant that it would go to the heart of the emerging plan. That is, the proposal itself and in addition to other proposals, would together prejudice the LDP by predetermining decisions about the scale, location or phasing of new development which ought properly to be taken as part of developing the LDP.

Whilst on its own this application at 37 units would not meet this requirement, it is the view of the LPA that given the amount of growth recently imposed on this settlement by appeal decisions, the cumulative impact of adding to that with this application would be significant. This is quantified further later in this report.

Whilst account can be taken of policies in emerging LDPs, it is for the decision maker to decide the weight to attach to such policies, depending upon the stage of preparation or review. The Flintshire LDP is at the Deposit Consultation Stage defined by LDP Regulations 17-19. and has been approved by the Council to go out for consultation beginning on 30<sup>th</sup> September 2019. Whilst not adopted, given that the deposit plan has been approved by the Council and is already in the public domain, the Council considers that weight can be attributed to the LDP at this stage, in considering the conflict between it and this speculative proposal which contributes to the predetermination of the scale, location and distribution of development in this settlement and across the County at this crucial time in developing the Deposit LDP. This must particularly be the case where recent appeal decisions have cumulatively already affected the LPA's ability to not only determine the level of growth appropriate for the settlement, but elsewhere in the County via the LDP preparation process.

Accordingly, the refusal of this application in the above context on the grounds of prematurity is justified. Penyffordd and Penymynydd together are defined as a tier 3 settlement in the approved LDP Preferred Strategy sustainable settlement hierarchy. It is therefore

considered to be a sustainable settlement capable of accommodating a reasonable level of growth.

It is one of 22 settlements defined in tier 3 of the Deposit LDP sustainable settlement hierarchy. Whilst the LDP deliberately does not set settlement specific growth bands or targets for settlements, the Deposit Plan does set out a broad apportionment of growth by settlement tier, as follows:

Tier 1 47%

Tier 2 36%

Tier 3 14%

Tier 4 2%

Tier 5 1%

Whilst there is no absolute requirement for each settlement in each tier to accommodate some growth, the premise behind the LDP Strategy is that the most sustainable sites will be allocated in line with the sustainable settlement hierarchy. What also has to be factored in is that the need to identify new sites in the LDP (the residual requirement) will be net of housing already completed in the plan period, sites already with permission (commitments), and allowances for small site and windfall site development. The main effect of this is that the LDP has a significant range of site and settlement options from which to select and allocate the most sustainable.

To illustrate the contribution expected from tier 3 settlements overall towards meeting the LDP housing requirement, given the LDP housing requirement is 6,950 (7,995 with 14% flexibility) and the residual requirement is 874, at the percentage contribution from tier 3 settlements (14%), the expected contribution would be 973 and 122 units respectively.

In this context, the level of undeveloped housing commitments imposed by appeal on Penyffordd/Penymynydd is significant comprising 261 units from appeals at Rhos Road (north) 40, Hawarden Road (35), and Chester Road (186).

In opposing each of these appeals, the community has consistently raised concerns about the impact that the proposed development would have on the ability of the community and settlement to successfully integrate such growth, without negatively impacting on the cohesion of the existing community. The community has also consistently felt that consideration of growth for the settlement should properly happen via the LDP process. These concerns are reiterated in the comments section of this report.

Each of the above appeal decisions has been made incrementally and without regard to the cumulative effects of granting one appeal after another. Given where this leaves this settlement, consideration needs to be given as to how the growth of this settlement should be considered holistically, and against the approved Strategy of the LDP

and Deposit Plan. Otherwise, it simply cannot be a sustainable proposition to continue to incrementally consider speculative applications in this settlement, submitted on the basis of a lack of housing land supply and previous appeal 'successes', in compliance with the requirements of TAN1, notwithstanding disapplication of para 6.2.

Equally, the knock on effects and negative impacts of continuing to commit growth in just one LDP tier 3 settlement on the ability of the LPA to implement the agreed LPD Strategy, is potentially also very significant.

To illustrate just how much growth has been committed to Penyffordd/Penymynydd by recent appeal decisions, when the total growth committed (261) is related to the expected contribution to overall growth from tier 3 settlements set out above, the growth committed in this settlement represents 27% of the contribution from all tier 3 settlements to the overall LDP growth.

There are a number of clear implications from this:

- The commitments already imposed on Penyffordd/Penymynydd are significant and potentially already in conflict with the LDP Spatial Strategy;
- Penyffordd/Penymynydd already provides one quarter of the overall tier 3 contribution to the LDP housing requirement, without considering further proposals;
- The decisions taken incrementally in relation to appeals for Penyffordd/Penymynydd have cumulatively impacted on the Council's agreed Preferred Strategy and have directly influenced the Council's considerations in producing the Deposit Plan. The larger of the three appeal sites (186 units) has been allocated in the Deposit LDP to reflect the appeal decision and also to clarify that more than sufficient sustainable provision has been made for housing.

As a consequence, any further incremental grant of planning permission in this settlement will not only impact on the settlement directly and cumulatively, but elsewhere as the Council has agreed the Deposit plan and made more sustainable provision elsewhere.

Further incremental decisions about growth in Penyffordd/Penymynydd would therefore individually and in combination with existing undeveloped commitments, be so significant as to predetermine decisions about the scale, location, distribution and phasing of housing growth which ought properly to be taken in an LDP context and would prejudice the outcome of the LDP now at Deposit.

Given the stage reached, the Council has completed the plan making phase of plan production, and are now in the phase of testing and defending the plan's soundness via both the Deposit consultation and subsequent examination. Having set out its position clearly in terms

of meeting its housing requirement via sustainable allocations maintaining a five year supply, given the outline nature of the application and lack of evidence for the specific need applied for, it would not be appropriate or necessary to attach weight to the need to increase housing supply.

### **Principle of Development**

The site lies outside and adjacent to the settlement boundary of Penyffordd in the adopted UDP. In terms of adopted UDP policies, policy STR1 refers to the requirements of new development, while policy GEN3 sets out those instances where housing development may take place outside of settlement boundaries. The range of housing development includes new rural enterprise dwellings, replacement dwellings, residential conversions, infill development and rural exceptions schemes which are on the edge of settlements where the development is wholly for affordable housing. Policy GEN3 is then supplemented by detailed policies in the Housing Chapter on each type. In this case, policy HSG4 is of most relevance, referring to new dwellings outside settlement boundaries. The policy aims to strictly control new dwellings outside settlement boundaries unless it is essential to house a farm or forestry worker at or very close to their place of work.

Given that the proposal is for up to 37 units and does not fall within the scope of the above policy framework, the proposal is contrary to these policies in the adopted UDP and is a departure from the development plan, and has therefore been advertised as such. The applicant justifies the proposal on the basis of a lack of a 5 year housing land supply, the fact that the UDP is out of date, that the proposal represents sustainable development and that it would reconnect the former Meadowslea hospital development at Min y Ddol, resolving the current sense of distance from the village.

#### **a) The need for the Development**

This application has been submitted in the context of the lack of a 5 year land supply, the fact that the UDP is out of date, that the proposal represents sustainable development and that it would reconnect the former Meadowslea hospital development at Min y Ddol, resolving the current sense of distance from the village.

The applicant has undertaken an analysis of the LDP candidate sites on the register for the settlement of Penyffordd & Penymynydd, this is introduced at para.4.5 in the accompanying planning statement. This is presented in a tabular form whereby each site is assessed against the following:

- Appropriate scale
- Technical deliverability

- Balanced development of the village
- Does not compromise open space

The results of that assessment at that time demonstrates that the application site is the best scoring site. However, when compared to, for instance, the methodology for assessing candidate sites, the assessment presented is rather superficial. As the LDP process has now moved forward to deposit stage as outlined in paragraphs above the weight which can be attached to this assessment reduces significantly in the overall planning balance.

The table is presented in terms of the following conclusions:

- *‘The above has provided an overview of the sites reviewed by the Local Planning Authority within the Preferred Strategy Consultation Document and has justified why the Vounog Hill Site should be allocated as strategic housing land within the Preferred Strategy in advance of the other proposed sites.’*
- *‘The above demonstrates that the Vounog Hill Site is both deliverable and sustainable and will contribute towards the Local Authority’s Housing land supply, specifically in Penyffordd.’*

It was not possible for the application site to be allocated in the Preferred Strategy for the LDP, as it does not identify housing allocations (other than strategic sites). The Local Planning Authority considered that the site is not of a scale that would warrant consideration as a strategic housing site. It is also not understood how the assessment has established how the site is deliverable. The proposed deposit plan does not propose the site is allocated for housing and therefore the view of the Local Planning Authority is consistent.

Furthermore, paragraph 3.2 of the planning statement states that *‘this part of the Penyffordd is currently characterised by the separation of the hospital redevelopment housing from the main core of the village along Vounog Hill, which has created an anomaly to the visual layout to Penyffordd. This site presents the opportunity to reconnect the outlying residents of the hospital redevelopment housing, with the core of the village community, resolving the current sense of distance from the village.’* It is not considered that there is any anomaly with the visual layout of the settlement. Penyffordd is almost wholly on the western side of Vounog Hill whilst Penymynydd is predominantly on the eastern side of Hawarden Road.

The circumstances which led to the residential development at the former Meadowslea Hospital has been set out. It is not understood how the Min y Ddol development and its residents are either physically or socially separated from the village, given that the access road is only some 130m. Furthermore, it is not understood why it is necessary to seek to rectify this by building housing on the intervening

land. Given that the present pattern of development on this side of Vounog Hill, beyond the settlement boundary is sporadic and isolated in parts by open countryside, it is considered that the site relates poorly with the existing built form and pattern of Penyffordd, and will result in a block of development which could be seen as tantamount to an inappropriate urban sprawl, harmful to the character and appearance of the countryside and locality.

#### **b) Full Application**

In accordance with the Developer Guidance Note, the Council would prefer the submission of a full application to allow the Council to properly assess the proposal in terms of the need to be met, the housing to be provided, and the deliverability of the scheme. Outline applications are not considered appropriate or acceptable to consider proposals for speculative development on the basis of a lack of housing land supply, as without full information it may prove difficult for the Council to be satisfied that the proposal represents a sustainable and deliverable form of development.

The application is in outline and has been submitted by Strutt & Parker Land Agents on behalf of the applicant Tevir Group Limited, the background of which is not known.

The applicant does not provide comment in respect of their decision to submit an outline application. No explanation has been provided as to why the submission of a full planning application would not be prudent or necessary in this case, despite the recommendations made by the Council in respect of speculative applications.

#### **c) Sustainability Appraisal**

The application is supported by a 'Sustainability Appraisal' which provides commentary on how the proposal is considered to be sustainable in the context of the guidance in PPW. The applicant has undertaken an analysis of the site, and considers that it has been demonstrated that the application site scores highly against the respective criteria.

The conclusions of the appraisal are that the site has no constraints to development, and is directly adjacent to existing housing development and infrastructure, with the ability to walk to local services and amenities by foot. It is on this basis that the applicant considers the site to be a sensible site to be considered for housing development as a sustainable solution to providing housing needs at a well located site.

Further arguments in relation to sustainability of the site are advanced in the planning statement in terms of its proximity to a range of local amenities and services, by both bicycle and regular bus services. It continues to state that one of the key features of the site is its location, immediately adjacent to the settlement boundary of Penyffordd.

#### **d) Viability Appraisal**

On the previous submission a viability assessment was provided in the simplistic form of a paragraph within the Sustainability and Viability Assessment document submitted with that application. The paragraph referred to supporting documents that had been provided in relation to utilities, highways and drainage, and which confirm that there is adequate infrastructure capacity at the site with delivery of these services being achievable. In addition, the applicant acknowledges the need to comply with site specific contributions, such as public open space, highways improvements, education and affordable housing. There was no dispute to the contribution requirements that would be generated in respect of the proposed scale of development. The applicant continues, in this submission, to state a commitment to complying with the specific planning policy provisions, offering to provide the full 30% provision of affordable dwelling units on site. With reference to the outline form of the application and in the absence of a robust financial viability assessment, it is difficult to dispute the reality of the commitments being made by the applicant.

#### **e) Housing Delivery Statement**

The Council requires the submission of this essential evidence by the developer in order to demonstrate how the development can deliver housing to help to reduce whatever is considered to be the identified shortfall in housing supply, within 5 years from the application date. This should clearly identify a timeline for the development including the expected start date, the annual completion rate, as well as the expected completion date for the whole development. This should also clearly identify which developer(s) will be building the homes, as well as a statement that the land owner (where relevant) has agreed to the sale of the land on the basis of the scheme proposed, and will complete this agreement on the grant of planning permission thereby making the land immediately available for development.

Threaded throughout the planning statement, the applicant reiterates that the development is deliverable. However, in respect of the above Development Guidance Note commentary, it is not considered that the applicant has adequately demonstrated how the site can come forward within a 5 year period to meet the identified shortfall in housing supply. It is therefore considered that this application is wholly speculative in nature, and that the intention to deliver housing on this site has not been genuinely investigated.

It is considered unlikely that this site, if granted permission, could deliver housing in advance of than the expected adoption date of the LDP.

#### **Agricultural Land Classification**

An Agricultural Land Classification Survey was submitted as part of the submission. This was undertaken by Reading Agricultural Consultants Ltd in November 2017. This confirms that the main limitations to the agricultural land quality at the site is the soil wetness and workability which therefore limits most of the site to subgrade 3b with a smaller area of subgrade 3a (best and most versatile agricultural land) to the north of the site.

Welsh Government's Land Use Planning Unit have clarified that the submitted Agricultural Land Classification Study has been completed to a high standard, and is considered to provide an accurate indication of the agricultural land quality.

## **Highways**

The proposed vehicular access into the site is from a proposed new central access off Vounog Hill, allowing access to both the local and wider network. The application is accompanied by a Transport Statement which demonstrates that safe vehicular access to the proposed development can be made from Vounog Hill. It also highlights that the site is sustainably located and has good links to the public transport network; promoting the use of sustainable transport means.

Further representations have been made that the proposal will give rise to a level of traffic generation which would adversely affect the safety of existing highway users and is unsustainably excessive. The Local Highway Authority have considered the proposal and raise no objections on highway safety grounds. Accordingly, there is no objection to the proposals, subject to the imposition of conditions.

## **Landscape and Visual Impacts**

The application is accompanied by a Landscape Visual Impact Assessment (LVIA) undertaken by Ryder Landscapes Consultants in November 2017. The LVIA has considered the baseline landscape and visual environment through a desk top review of published documents and reports, supplemented and verified by fieldwork. This included the identification of a range of landscape receptors and visual receptors at fixed locations within the study area to create a series of viewpoints.

In summary, the LVIA concludes that through the aid of mitigation measures such as boundary treatments and planting, the landscape effects would generally reduce over time. It is accepted that with the exception of the built portion of the site itself, the landscape character will change permanently as a consequence of the development. In terms of visual effects, it is recognised that there will be change for the users on or close to the site, with the visual effects predominately limited to receptors local to the site; confirming that there are limited

mid or long range views affected by the proposals. The LVIA notes that users of local roads adjacent to the site will experience an ongoing change in their visual amenity. However, it is considered that the change will diminish as people become familiar with seeing houses in this particular location, and that the effects would reduce over time as the development becomes established. The proposed site forms part of a wider local and regional character area. No landscape receptors were assessed as experiencing significant effects post mitigation. In most part all trees and hedgerows of merit will be retained and enhanced as part of the landscape planting proposals; which are said to soften the built form and assimilate the development into the wider landscape context.

The submitted LVIA has not been reviewed by an independent Landscape Architect on behalf of the Council. Such reviews are only considered necessary should the Council resort to refuse the application on Landscape and Visual Impact grounds. As it is considered that the proposal fails in principle policy terms, and therefore does not comply with the development plan and national planning policies, an independent review of the submitted LVIA was not considered necessary.

However, the proposed site lies within open countryside as defined by the Adopted Flintshire Unitary Development Plan. I concur with the opinion of the previous case officer that the site is a constituent of its enveloping rural landscape character by virtue of its topography, openness, pasture use, vegetation and presence of settlement. It is not on the fringes of the rural character, but very much part of it. Historically, the settlement of Penyffordd/Penymynydd has an east-west layout with two historic cluster areas. This east-west form will be further accentuated through the recent appeal of 187 dwellings at Chester Road. In relation to the application site, the present pattern of development is concentrated to the west, while on east side of Vounog Hill, development is sporadic and isolated in parts by open countryside. It is considered that the location is counter to the pattern of the settlement, and will result in a block of development which will be harmful to the character and appearance of the open countryside.

### **Trees**

The application site consists of improved agricultural grassland with species poor hedges and occasional mature trees including a Black Poplar and Horse Chestnut.

The application is accompanied by a Tree Survey Report undertaken by 'acs consulting' tree consultants in November 2017. The report concludes that the site's principle constraints on development are T43 Poplar and off site tree T2. Tree T43 is a significant specimen in the landscape with veteran potential. The remaining trees within the site are unremarkable specimens of very limited merit or in such impaired

condition that they do not qualify in higher categories. They are trees offering low or only temporary/transient landscape benefits.

The proposal seeks to retain all hedgerows and trees including the trees as identified of significant merit within the scheme of development, employing tree protection measures where appropriate.

### **Ecology**

An ecological appraisal was submitted with the application undertaken by ETIVE Ecology Ltd. dated February 2018. The report concludes that the site has the potential to support roosting, foraging and commuting bats, nesting birds and other notable species of fauna. However, the proposal layout has been designed to retain all ecological features of potential value to include the existing hedgerow network and all mature trees, thereby avoiding and minimising ecological impacts to a minor level. Provided the habitat creation measures are implemented in full, and managed appropriately postconstruction, there should be no residual ecological impacts posed as a result of the scheme.

### **Drainage**

On the previous submission Welsh Water initially raised concerns surrounding the capacity of the local public sewerage network to accommodate the foul flows from the proposed development. However, Waterco Consultants have since identified a total of 310m<sup>2</sup> surface water contributing area from the roof and concrete yard areas of the adjacent Emmanuel Church is currently discharging into the 225mm diameter combined public sewer situated along Vounog Hill. In light of the above, DCWW confirmed that should the surface water flows from the connected area (310m<sup>2</sup>) be re-directed from the combined line into an existing ditch, we would be satisfied that this would offset the anticipated foul flows associated with the proposed new development.

I am advised in response to consultation by DCWW that there is no objection to the proposed development subject to the imposition of a condition that requires the removal of 310m<sup>2</sup> of surface water contributing area from the combined foul network as identified in the Flood Consequence Assessment & Drainage Strategy, to be completed in full and maintained thereafter to prevent surface water run-off from the application site and Emmanuel Church entering the combined public sewerage network.

In the absence of a more recent consultation response I consider that the current drainage position is as previously agreed.

### **Planning Obligations**

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 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.

### **Education**

The Capital Projects and Planning Manager has calculated the impact of the proposed development upon the local Primary and Secondary Schools. The capacity of Penyffordd Primary School is 259, excluding the Nursery, with 6 surplus places, the capacity of Castell Alun High School is already exceeded. In accordance with Supplementary Planning Guidance Note 23-Developer Contributions to Education contributions it was concluded that both primary and secondary schools would hit the triggers identified in that guidance.

However, with regard to the primary school, a new school has been constructed to replace the existing primary school and it is considered there will be sufficient places within the school and the approved two additional classrooms. As such no contributions are to be sought. Regarding the secondary school the authority has previously secured 5 obligations for this school. Therefore, in order to be in accordance with Regulation 123 of the CIL Regulations, further obligations can only be considered where they relate to a separate project to the existing obligations. As there is no current lawful infrastructure project identified an obligation cannot be required. Members this matter was rigorously tested in the consideration of application 059352 for 32 dwellings at Hawarden Road, where similarly it was concluded no obligation could not be required. Therefore if members were minded to approve the proposal no contribution to mitigate the impact on the secondary school could be required.

### **Open Space**

In accordance with the guidance within SPGN13 Public Open Space, it is proposed that a contribution of £1,100 per dwelling in lieu of on site provision (£733.00 for any affordable housing) is secured through

the proposed legal agreement. The payment were previously identified be used to improve teenage provision at Millstone Play area, Penyffordd.

### **Affordable Housing**

The applicant proposes to provide affordable housing in line with UDP policy HSG10. The application is to develop 37 no. dwellings, in accordance with the provisions of policy HSG10 at 30%, 11 units have been committed as affordable housing. Housing Strategy have previously supported the provision of 11 affordable properties on site, and recommended that the provision is delivered in the following format:

- 6 of the units should be a mix of 1 and 2 bed social rented properties, which should be delivered by one of the Council's partner Housing Associations, who would acquire the units direct from the developer; and

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5 of the units should be a mix of 2 and 3 bed units for affordable rent either delivered by a partner Housing Association or North East Wales Homes.

### **Other Matters**

· Third party objections have included concerns regarding the loss of the land as a recreational facility and open space for the community. The land is in private ownership and is not designated recreational or open space for the use of the community. Concerns have also been raised regarding lack of doctors, dentist and public transport. The sustainable nature of Penyffordd and associated infrastructure has been examined by several Inspectors in recent times. The Inspectors have consistently concluded that Penyffordd is a sustainable location and no evidence has been submitted by third party objectors to demonstrate that there is a lack of provision of these services. There has also been no evidence submitted to demonstrate how the development proposed would create a noise issue. As the proposal is in outline form it is not possible to consider issues relating to privacy and overlooking as if the application were approved these would be examined in a later reserved matters application.

## **8.00 CONCLUSION**

The basis for making decisions on planning applications should be in accordance with the development plan unless other material considerations deem otherwise.

In this instance, it is considered that the proposal amounts to unjustified residential development within an area of open countryside, whereby the proposed development would be detrimental to its setting. It would result in the loss of what is currently

an open, agricultural field and its replacement with built development and associated human activity. This is considered to have an adverse impact on the rural quality of the landscape, increasing the built form of development outside the settlement boundary, at the expense of the surrounding open countryside. In these terms, the proposed development would conflict with UDP policy STR7 requirement to protect and enhance the character, appearance and features of the open countryside.

Furthermore, the proposal would result in a development which does not relate well to the existing pattern of development in the area, and would result in a fragmented form of development which does not integrate well with the existing built form. As such the proposal represents an illogical extension to the settlement contrary to the relevant development plan policies.

In addition to the above, of material significance to the determination of this application are the large amount of commitments imposed on this settlement by appeal decisions, the disapplication of paragraph 6.2 of TAN1, and the position reached with the LDP.

In relation to the commitments imposed on the settlement by recent appeal decisions, these amount to 261 as yet undeveloped housing units. This is a large scale of growth for an LDP tier 3 settlement which represents 90% of the expected contribution of all tier 3 settlements to the LDP residual housing requirements for new sites.

This is already disproportionate and results from incremental appeal decisions taken with no regard for cumulative impacts on this settlement or the knock-on effects for the implementation of the LDP spatial strategy.

This is a key point and a failing of the way in which appeals have been dealt with incrementally in this settlement. These decisions have failed to recognise the point at which it becomes potentially unsustainable to keep on incrementally permitted growth in a balanced sense, or the effects on the wider plan making process.

Given the above, 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, and wider strategic impact on the emerging LDP. This wider consideration cannot be made on the basis of determining an individual application, and notwithstanding the apparent potential sustainability of this proposal in its own right, this is outweighed by the need to properly consider the growth of this settlement and elsewhere in Flintshire, holistically, via the LDP process.

To determine the proposal now is therefore not a sustainable proposition. As such this guides the LPA is determining the weight to

attach to a lack of housing land supply, following disapplication of para. 6.2. Given the LPA is currently not required to apply “considerable weight” to this factor, a minimum requirement of the proposal to give weight to a lack of supply, must be that the proposed is sustainable at this time. From the above the LPA has demonstrated that this is not the case and as such the lack of a housing land supply is not sufficient to outweigh the harm that further incremental speculative growth would cause both to this settlement, and to the wider emerging LDP.

Given the above summary of the main issues I recommend that the application be refused for the reasons given 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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