

**FLINTSHIRE COUNTY COUNCIL**

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

**DATE:** **2 OCTOBER 2019**

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

**SUBJECT:** **OUTLINE APPLICATION FOR THE DEMOLITION  
OF 81 DRURY LANE AND ERECTION OF 66 NO.  
DWELLINGS AT 81 DRURY LANE, BUCKLEY.**

**APPLICATION  
NUMBER:** **060160**

**APPLICANT:** **MULLER PROPERTY GROUP**

**SITE:** **LAND TO THE REAR OF 81 DRURY LANE,  
DRURY.**

**APPLICATION  
VALID DATE:** **17<sup>TH</sup> JUNE 2019**

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

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

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

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

**1.00 SUMMARY**

- 1.01 This outline planning application has been submitted with all matters reserved apart from access. The application proposes the demolition of an existing property at No. 81 Drury Lane, Drury to facilitate the formation of an access into approximately 1.95 hectares of land at the rear, to enable the construction of up to 66 No. dwellings.
- 1.02 For Members information, the application has been resubmitted following the consideration of planning application 058489 at the Planning Committee on 6<sup>th</sup> March 2019, where it was resolved by members to refuse the application.

1.03 Following this decision the applicant subsequently lodged an appeal to The Planning Inspectorate. The appeal however was not accepted by the Planning Inspectorate on the basis that the scale parameters for the proposed dwellings in their view, were not explicit within the submission.

1.04 The submission of this current application has sought to address this issue to allow any possible subsequent appeal to be progressed. In these circumstances the current application will require reconsideration of the proposed development by the Planning Committee.

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

2.01 1) The site is located partly within the settlement boundary and partly within the Green Barrier/ open countryside. The construction of new dwellings in the latter would be inappropriate development for which no very special circumstances exist and would therefore be contrary to Planning Policy Wales (PPW) Edition 10, and Policies STR1, STR7, GEN1, & GEN4 of the Flintshire Unitary Development Plan.

2) Conversely the construction of up to 66 new dwellings within the part of the site located within the settlement boundary would result in an unacceptably high density of development and would not represent good design or place making, having regard in particular to the character of the settlement and its existing built form as well as the site's location on the edge of the rural area, and would therefore be contrary to Planning Policy Wales Edition 10, Technical Advice Note 12 – Design and Policies STR1, STR7, GEN1, D1, D2 and HSG8 of the Flintshire Unitary Development Plan.

3) The site includes an area of Grade 3a (Best and Most Versatile) agricultural land which should be protected from development unless there is an overriding need for it and there is no other lower grade land available (or such land as is available has an environmental value that outweighs agricultural considerations). The applicant has failed to address and demonstrate compliance with these tests. Accordingly, the proposals are contrary to Planning Policy Wales Edition 10 and Policies GEN1 and RE1 of the Flintshire Unitary Development Plan.

## **3.00 CONSULTATIONS**

3.01 Local Member  
Councillor D. Hutchinson/Councillor M.J. Peers

Preliminary views on the application are:

- To grant permission would predetermine decisions about the scale/location/phasing of development within the community which should be taken through the Local Development Plan (LDP) process.
- Specific reference is made in supporting documentation to outdated/superseded Central Government Policy.
- The weight to be attached to the lack of a 5 year housing land supply has been recently reduced by the Welsh Office in line with Technical Advice Note 1.
- The proposal would result in the loss of a dwelling which contributes to the historic character of the street scene.
- Inadequate infrastructure to facilitate further residential development in Drury.
- Inadequacy of highway network to serve further residential development.
- Proposal represents overdevelopment at this location.
- Unjustified incursion of Public Open Space Area within Green Barrier.

#### Buckley Town Council

Support the observations of the Local Members in respect of this application. In addition the Town Council wishes to make the following comments:-

- Detrimental impact on the local street scene and highways infrastructure.
- The high density of dwellings is not acceptable in visual terms.
- By moving the open space requirement to the green barrier, the developers would affectively the development area.

#### Capital Projects & Planning

Advises that the schools affected by the proposed development are as follows:-

##### School: Drury C.P. School

Currently NOR (@ September 2018) 141 (excluding Nursery)

Capacity (@ September 2018) 124 (excluding Nursery)

No. Surplus Places:- 17

Percentage of Surplus Places:- 13.71%

##### Schools Affected Secondary

##### School: Elfed High School

Current NOR (@ September 2018) is 809

Capacity (@ September 2018) is 983.

No. Surplus Places is 174

Percentage of Surplus Places is: 17.70%

### Primary School Pupils

School Capacity  $124 \times 5\% = 6.20$  (6)

$124 - 6 = 118$ . Trigger point for contributions is 118 pupils.

(No. of units)  $66 \times 0.24$  (primary formula multiplier) = 15.84 (16) No. of pupils.

Actual pupils  $141 + 16$  (from the multiplier) = 157 does meet the trigger.

Contribution Requirement would be £196,112.

### Secondary School Pupils

School capacity of  $983 \times 5\% = 49.15$  (rounded up or down) 49

Capacity  $983 - 49 = 934$  Trigger point for contributions is 934 pupils

(No. of Units  $66 \times 0.174$  (secondary formula multiplier) = 11.48 (11

No. of pupils/generated  $\times$  £18,469 per pupil (Building Cost Multiplier) = £202,159.00.

Actual pupils  $809 + 11 = 820$  does not meet trigger of 934

Contribution requirement would be £0.

### Housing Strategy Manager

Awaiting response at time of preparing report. Previous response in respect of 058489 is as follows:-

“The application is to develop 66 No. dwellings in Buckley which is a semi-urban settlement and the policy requires a 30% provision of affordable housing on site for development of over 1.0 ha or 25 dwellings. The applicant is proposing 30% (32 No.) affordable units, mix and tenure to be agreed.

In terms of evidence of housing need in Buckley:

The Local Housing Market Assessment (LHMA) for Flintshire identifies an annual shortfall of 246 affordable units;

The LHMA identifies a need for primarily 1 bed (14%), 2 bed (31.6%), and 3 bed (28.5%), split relatively evenly between social rented (56.2%) and intermediate (43.8%) tenures;

However, the NEW Homes register is to be integrated with Tai Teg, therefore it can be assumed that this is an under estimate of demand for affordable products in Buckley.

The provision of 30% on site affordable housing provision is supported, tenure mix and unit sizes needs to be agreed”.

### Highways Development Control

In assessing the initially submitted Transport Assessment (TA) and additional trip rate data (TRICS) there is no objection to the development as it is in effect a resubmission of that previously made

in respect of application 058489. Although the site layout submitted would need to be amended to satisfy highway requirements, recommend that any permission be subject to the imposition of conditions in respect of access, visibility, highway construction, and submission of a Construction Traffic Management Plan.

Community and Business Protection

Phase 1 Land Contamination has been submitted which must be reviewed with appropriate remediation where necessary when formal details of the development are submitted. Requires imposition of a condition to address this issue.

Welsh Water/Dwr Cymru

Confirm request that if planning permission is granted that a condition be imposed to secure the implementation of a satisfactory scheme for the disposal of foul water.

Natural Resources Wales

Following the submission of a Habitat Regulation Assessment do not object to the general principle of development subject to adequate mitigation given the proximity of the site to the Buckley Newt Sites Special Area of Conservation (SAC).

Council Ecologist

Following the submission of a Habitat Regulation Assessment and the proposal to provide the submission of an off-site recreational scheme, raise no objection. Recommend that if permission is granted that this be subject of a condition.

The Coal Authority

The application site falls within the defined Development High Risk Area. A Mining & Mineshaft Risk Assessment has been undertaken as part of the application and The Coal Authority agree with its conclusions recommending the imposition of a planning condition for site investigation works/remedial works where necessary prior to commencement of development.

Clwyd-Powys Archaeological Trust

No recorded archaeology will be impacted by the proposed development.

AURA (Plan Design Officer)

Object as the illustrate layout would not be acceptable from a \*\*\* safety perspective as

- a) The open space areas are divorced; and
- b) The fixed equipped area shown to be sited on a water attenuator basis.

Welsh Government ( Agricultural Land Use Planning Unit)

Awaiting response at time of preparing report. Previous response in respect of 058489. Recommended that the Agricultural Land Use Survey submitted as part of the application is accepted as an accurate reflection of the land quality of the site which is classified as subgrade 3a. Assessment will need to be undertaken as to whether the site can be farmed to its full potential in future.

Conservation Officer

The building is not statutorily listed or classified as a Building of Local Interest. Do not consider that its demolition when linked to wider development proposals would be detrimental to the character of the street scene and refusal is not warranted in this respect.

Rights of Way

Public Footpath 14 abuts the site but appears unaffected by the development. The path must be protected and free from interference from the construction.

**4.00 PUBLICITY**

4.01 Press Notice, Site Notice, Neighbour Notification

60 letters of objection received, the main points of which can be summarised as follows:-

- Demolition of existing property would have a detrimental impact on the character of the site/surroundings.
- Increased traffic generation would be detrimental to amenity/highway safety.
- Overdevelopment in the locality.
- Demolition of existing dwelling would have detrimental impact on character of the street scene at this location.
- Limited services to serve the scale of development.

**5.00 SITE HISTORY**

5.01 056023

Demolition of existing dwelling and provision of access junction and access road – Refused 19<sup>th</sup> January 2017.

058489

Outline application for the demolition of 81 Drury Lane and construction of 66 No. dwellings – Refused 7<sup>th</sup> March 2019. Appeal lodged but not accepted by Planning Inspectorate – due to limitations in scale parameters of proposed development.

## **6.00 PLANNING POLICIES**

### **6.01 Flintshire Unitary Development Plan**

Policy STR1 – New Development.

Policy STR4 – Housing.

Policy STR7 – Natural Environment.

Policy GEN1 – General Requirements for Development.

Policy GEN2 – Development Inside Settlement Boundaries.

Policy GEN3 – Development in the Open Countryside.

Policy GEN4 – Green Barriers.

Policy D1 – Design Quality, Location & Layout.

Policy D2 – Design.

Policy D3 – Landscaping.

Policy TWH1 – Development Affecting Trees & Woodlands.

Policy TWH2 – Protection of Hedgerows.

Policy WB1 – Species Protection.

Policy WB4 – Local Sites of Wildlife & Geological Importance.

Policy AC13 – Access & Traffic Impact.

Policy AC18 – Policy Provision & New Development.

Policy HSG1 – New Housing Development Proposals.

Policy HSG3 – Housing on Unallocated Site Within Settlement Boundaries.

Policy HSG8 – Density of Development.

Policy HSG9 – Housing Mix & Type.

Policy HSG10 – Affordable Housing within Settlement Boundaries

Policy RE1 – Protection of Agricultural Land.

Policy SR1 – Sports Recreation or Cultural Facilities.

Policy SR5 – Outdoor Playing Spaces & New Residential Development.

Policy EWP15 – Development of Unstable Land.

Policy IMP1 – Planning Conditions & Planning Obligations.

#### **Additional Guidance**

Planning Policy Wales (PPW) Edition 10 (December 2018).

Technical Advice Note 1 – Joint Housing Land Availability Studies.

Technical Advice Note 2 – Planning & Affordable Housing.

Technical Advice Note 5 – Nature Conservation & Planning.

Technical Advice Note 6 – Planning for Sustainable Rural Communities.

Technical Advice Note 12 – Design.

Technical Advice Note 18 – Transport.

Technical Advice Note 24 – The Historic Environment.

Local Planning Guidance Note 13 – Open Space Requirements

Supplementary Planning Guidance Note 2 – Space Around Dwellings.

Supplementary Planning Guidance Note 3 – Landscaping.

Supplementary Planning Guidance Note 8 – Nature Conservation & Development.

Supplementary Planning Guidance note 9 – Affordable Housing.

Supplementary Planning Guidance Note 11 – Parking Standards.

Supplementary Planning Guidance Note 13 – Outdoor Playing Space & New \*\*\*\* \*\* (under Review).

Supplementary Planning Guidance Note 23 – Developer Contributions to Education.

## **7.00 PLANNING APPRAISAL**

### **7.01 Introduction**

This outline planning application proposes the demolition of an existing property at 81 Drury Lane, Drury to facilitate the formation of an access into the land at the rear for the construction of up to 66 No. dwellings. All matters apart from access are reserved for subsequent approval.

### **7.03 Background**

As members will be aware there is a recent background of planning history at this location which is material to determination of this application and is referred to in paragraph 5.00 of this report. In summary an application for the demolition of 81 Drury Lane and subsequent development of 66 No. dwellings on land to the rear was refused at the Planning Committee on 6<sup>th</sup> March 2019. A subsequent appeal was lodged but not accepted by The Planning Inspectorate given concerns that the scale parameters were not explicit within the accompanying documentation.

### **7.04 Proposed Development**

The application has been resubmitted in outline with all matters apart from access being reserved for subsequent approval. The application site (edged red) comprises 2 No. areas of land namely:-

a) 1.75 hectares of land to the rear of 81 Drury Lane, east of properties on Meadow View and west of Bank Lane. This part of the application site is within the settlement boundary of Drury as defined in the Flintshire Unitary Development Plan; and

b) Approximately 0.2 hectares of land to the east of Bank Lane. For Members information this element of the development is located outside the settlement boundary of Drury and is within a Green Barrier as defined in the Flintshire Unitary Development Plan.

7.05 A site plan has been submitted for the erection of 66 No. dwellings but this is for illustrative purposes only, as matters of appearance, landscaping, layout and scale of development are reserved for subsequent approval. The site plan and the layout appended to the application documents however, shows a different layout to that previously submitted as part of application 058489. For Members information the changes primarily relate to the relocation of the open space with the main body of the site and changes to the configuration



of the house types proposed, the proposed open space within the larger parcel of 1.75 hectares.

7.06 In response to the concerns expressed by The Planning Inspectorate, the scale parameters contained within the current submission include:-

House Type A – 8 No. 3 bed 2 storey units.

Minimum

7.5 m x 6.5 m x 6.5 m (high).

Maximum

8.5 m x 7.5 m x 7.5 m (high).

House Type B – 37 No. 3 bed 2 storey units.

Minimum

5.5 m x 8.5 m x 6.5 m (high).

Maximum

6.5 m x 9.5 m x 7.5 m (high).

House Type C – 17 No. 3 bed 2 storey units.

Minimum

5.5 m x 7.5 m x 6.5 m (high).

Maximum

6.5 m x 7.5 m x 7.5 m (high).

House Type D – 4 No. 2 storey Cottage Flats

Minimum

6.5 m x 9.5 m x 6.5 m (high).

Maximum

7.5 m x 10.5 m x 7.5 m (high).

7.07 For Members information in addition to the standard forms/plans the application comprises:-

- A Visual Appraisal.
- Phase 1 Contaminated Land Desk Study.
- A Coal Mining Report.
- A Mining and Mineshaft Risk Assessment Report.
- A Protected Species Building Survey Statement.
- An Extended Phase 1 Habitats Survey.
- An Agricultural Land Classification Report.
- An Arboriculture Impact Assessment.
- A Transport Assessment.
- A Planning Supporting Statement.

- Flood Consequences Assessment (Technical Review).
- A Design & Access Statement.

#### 7.08 Main Planning Considerations

It is considered that the main planning considerations to be taken into account in relation to this application area:-

- a) The principle of development
- b) Place making and Design
- c) Provision of housing and the disapplication of paragraph 6.2 of TAN 1
- d) Agricultural Land Classification
- e) Adequacy of Access.
- f) Visual impact and loss of trees and hedgerows
- g) Impact on ecological habitats.
- h) Provision of affordable housing
- i) Open space provision.
- j) Provision of Education Contributions.
- k) Loss of existing dwelling on the character of the street scene.

#### 7.09 Principle of Development

It is acknowledged that in progression of the Unitary Development Plan, the Inspector at that time recommended retention of the allocation at Clydesdale Road (now developed) for residential development. It was also concluded that the land on the western side of Bank Lane also be retained within the settlement boundary and if it was in accordance with Policy HSG3 treated as any other windfall site.

7.10 The general principle of housing development is considered acceptable within a settlement boundary (subject to acceptability of detailed matters). However, in this application it is also proposed that an area of additional land adjacent to but outside of the settlement boundary is also included within the application site, with this land being within the open countryside and a Green Barrier. The impact of this aspect of the development is considered in detail both in terms of acceptability from a co-ordinated development management perspective, and its impact on the landscape particularly the Green Barrier on the eastern edge of Drury.

7.11 As the application has been submitted in outline with all matters save access being reserved for subsequent approval, the illustrative plan can only be attributed very limited weight in the overall planning balance as only access is a detailed matter for consideration as part of this application. The grant of permission for this outline planning application would in effect give permission for the principle of dwellings to be constructed within the application site as a whole (outlined red) although this is subject to approval of the Reserved Matters including layout. As a result, it would be possible at Reserved

Matters Stage to restrict inappropriate development which would harm the Green Barrier having regard to:-

a) Planning Policy Wales (Para. 3.70) which states that “inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Barrier and

b) Policy GEN4 of the Unitary Development Plan which is generally in conformity with this advice.

7.12 The supporting planning statement/Design & Access Statement makes no reference to the impact of development on the Green Barrier and does not explain why it is necessary to extend the site outside the settlement boundary into the Green Barrier. Whilst a lack of a 5 year housing land supply has been advanced by the applicants as a reason to support the development, and with the principle of residential development being acceptable within the settlement, the need for incursion within the Green Barrier is unexplained in terms of its contribution to land supply. In accordance with paragraph 3.71 of PPW the proposal would need to represent one of the very exceptional forms of development in a Green Barrier as set out below:-

- Justified rural exception needs.
- Essential facilities for outdoor sport/recreation, cemeteries and other uses of land which maintain the openness of the Green Barrier.
- Limited extension alteration or replacement of existing dwellings. Small scale diversification within farm complexes.

7.13 In accordance with paragraph 3.70 of PPW, inappropriate development should not be granted except in “very exceptional circumstances” where other considerations clearly outweigh the harm which such development would do the Green Barrier. The recent appeal decision at Bryn y Baal assessed the role of a small site within a Green Barrier. In paragraph 7 of that appeal decision (3175048 ) the Inspector comments “PPW further advises that “inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to a Green Barrier or Green Wedge. This is a stringent and demanding test and housing development is clearly “inappropriate” development within a Green Barrier that is contrary to both local and national planning policies.

7.14 Place making and Design

Planning Policy Wales states that good design is fundamental to creating sustainable places and is not simply about the architecture of a building or development, but the relationship between all

elements of the natural and built environment and between people and places. It is important therefore that this proposal, even at the outline stage, makes a positive and sensitive response to the character, context, accessibility, and environmental sustainability of the site and its surroundings. These are some of the main objectives of good design referred to in PPW, yet the proposal because of its unexplained encroachment into open countryside and Green Barrier, and (at the maximum scale applied for) represents an unacceptably high density of development in this location is in conflict with these objectives from the outset, as it fails to create a positive and legible relationship between the site and its surroundings.

7.15 The design and access statement fails to make reference to relevant context and guidance found in Planning Policy Wales (Edition 10) and Technical Advice Note 12 Design. There are other omissions from the supporting statements that have a direct relationship to the principle of place making and good design even at this outline stage, which include for example the lack of an explanation as to how a development of the form its potential scale and density indicatively suggested within these proposals, would be appropriate in relation both to the prevailing vernacular in this area, as well as on a site that sits on the transition from an urban to a rural context. As the application specifically asks the Local Planning Authority to approve up to 66 dwellings, if approved a development of as many as 66 on that part of the site within the settlement boundary ( 1.75 hectares ) would result in a density of development of approximately 38 dwellings per hectare (dph). This is clearly in excess of the existing built form and context of approximately 29 dph that exists, and it has not been shown that such a density could be acceptably accommodated or achieved on this land particularly when despite the Local Planning Authority cannot be sure at this stage how matters including the provision of integrated public open space or Sustainable Urban Drainage can be accommodated.

7.16 It is not sufficient to simply leave the detail to the reserved matters stage as key considerations at an early stage should include thinking about how a site will be laid out and developed, how it integrates with an existing community, and how it does not encroach on areas that should be protected. This is particularly relevant to this application as whilst the application is submitted in outline, the applicant has nevertheless made a deliberate and unexplained decision to extend the site into open countryside and green barrier.

7.17 Housing Land Supply

It is accepted that the Council, within the terms of Technical Advice Note 1, cannot demonstrate a 5 year housing land supply. This does not necessarily mean that the Council has a zero supply given that it has a supply of commitments (permissions). This is demonstrated by the first three years of the Local Development Plan period where

completions have averaged 548 units per annum compared to the plans requirement of 509 per annum.

- 7.18 Welsh Government Technical Advice Note 1 states that “The housing land supply figure should also be treated as a material planning consideration in determining planning applications for housing. Where the current land supply shows a land supply below the 5 year requirement or where the local planning authority has been unable to undertake a study....The need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with the development plan and national planning policies.”
- 7.19 The disapplication of Paragraph 6.2 of TAN1 in July 2018 however specifically refers to the notion of affording “considerable” weight to the lack of a 5 year housing land supply as a material consideration in determining planning applications for housing. The disapplication took effect on the 18th July 2018.
- 7.20 Whilst this does not mean that a lack of land supply is no longer a material planning consideration to be weighed in the planning balance, it does redress the previous bias emphasised by the use of the term “considerable weight”, and also leaves the weight to be applied to this issue, for the Local Planning Authority (LPA) to determine. Therefore, the weight that should now be attributed to the need to increase supply is dependent on the planning balance providing that the development would otherwise comply with the development plan and national planning policies.
- 7.21 Agricultural Land Classification  
An Agricultural Land Classification Survey has been re-submitted as part of the application which refers to the whole site being classified as Subgrade 3a (Best and Most Versatile Agricultural Land – BMV). Welsh Government’s Land Use Planning Unit have accepted 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 on the site.
- 7.22 In accordance with Planning Policy Wales (paragraphs 3.54 & 3.55) and Technical Advice Note 6 Annex B, BMV “should be conserved as a finite resource for the future”. Therefore “considerable weight should be given to protecting such land from development, because of its special importance” and it should “only be developed if there is an overriding need for the development, and either previously development land or land in lower agricultural grades is unavailable, or available lower grade land has an environmental value recognised by a landscape, wildlife, historic or archaeological designation which outweighs the agricultural considerations. If land in grades 1, 2 or 3a does need to be developed and there is a choice between sites of different grades, development should be directed to land of the lowest

grade". Essentially the same tests are reflected in Policy RE1 of the UDP.

7.23 The applicant's agent has sought to justify the loss of BMV in this case as follows;

"The overall application site included in the red line area extends to 1.94 hectares but only 1.75 hectares is included in the parcel of land to the west of Bank Lane where physical development will take place. It is noted that the site falls under the Agricultural Land Specification 3A. It should be noted that such classifications are of a general nature and tend to extend over large plots of land. We have spoken to the landowner regarding the status of this land and he describes it as 'poor grade agricultural land'; it was used a part of a small holding and was used by the landowner and his family to run a few steers, then for pony grazing and grazing sheep. He explains that it took a lot of 'hard work' to get a hay crop from the land and involved use of much fertilizer to produce enough grass for the sheep. In this context it is noted that the land in questions is divorced from a main farm unit and is not part of a large agricultural holding. It is physically divorced by the virtue of Bank Lane and is subject to overlooking by residential properties on three sides. Clearly in this context it is not suitable for intensive forms of agriculture associated with the high grades of agricultural land classification".

7.24 The agent has also drawn attention to an appeal decision on a site in Penyffordd (APP/A6835/A/17/3182034) where the Inspector at the time concluded that the loss of BMV would not affect the structure or viability of the farm unit and that similar circumstances exist here.

7.25 Whilst the conclusion of the above appeal in Penyffordd is noted, the land in question is contained by existing highway network in that location and segregated from and not adjacent to existing parcels of agricultural land. A further appeal however in Northop (APP/A6835/A/17/3171383) which considered the same issue, concluded differently as the land there could be absorbed into the wider agricultural landscape at this location.

7.26 An even more fundamental issue, however it that the applicants submission on these matters do not adequately address the key policy tests/considerations in PPW and the UDP. In particular :-

(1) They do not explain why there is an "overriding need" for the development. Although it could be argued that there is a need for new housing in Flintshire given the 5 year supply position described above, it is difficult to see how that could be regarded as "overriding" bearing in mind that : firstly, whereas PPW requires "considerable weight" to be given to the protection of BMV whereas – explained above – there is no longer a requirement to give the same weight to the benefits of new housing (even where a 5-year supply cannot be

demonstrated); secondly, the need for the new housing relates to the Council's area as a whole and does not necessarily have to be met in this location: thirdly, in the absence of any other explanation from the applicant, it appears likely that the reason for including the area of BMV/Green Barrier on the eastern side of Bank Lane is to maximise residential development on the western side of Bank Lane by allowing for necessary ancillary elements such as open space to be provided on the former, whereas a more modest scale of development would have allowed it to remain protected.

(2) The applicant has also failed to provide any evidence regarding the availability of lower grade land. Accordingly, even if there were an "overriding need" for the development it would still not be policy compliant because it has not been shown that there are no sequentially preferable sites available in this particular area or elsewhere in Flintshire (if the need is not specific to this area).

7.27 Adequacy of Access

Consultation on the application has been undertaken with the Highway Development Control Manager who has assessed the proposal having regard to the submitted Transport Assessment and additional trip rate data (TRICS). The views of the Highway Strategy Department have also been sought in this respect given concerns raised as part of the consultation exercise undertaken that there are capacity issues along Drury Lane. In the absence of any objection from Highway Strategy to this particular aspect of the highway network and having regard to the submitted data forming part of this application there is no objection to the principle of proposed development from a highway perspective subject to the imposition of conditions.

7.28 Visual Impact & Loss of Trees / Hedgerows

The application site comprises 3 parcels of agricultural land bisected by Bank Lane. The boundaries of the site are defined by existing residential development /hedgerows. As part of the application a Visual Appraisal has been submitted which proposes additional tree /hedgerow planting along the south-west and south east boundaries of the site in order to mitigate the impact of development whilst integrating new development into the wider surroundings.

7.29 As the illustrative site layout does not form part of this application and as previously indicated carries limited weight in the assessment process, it is not possible to conclude at this stage the precise impact that development would have on existing landscape features or wider landscape at this location.

7.30 Impact of Ecological Habitats

For Members information the application site is located within approximately 0.5 km of the Deeside and Buckley Newt Sites Special Area of Conservation (SAC). This supports a nationally important population of Great Crested Newt.

- 7.31 Consultation on the application has been undertaken with both Natural Resources Wales (NRW) and the Council's Ecologist in order to address the potential direct/indirect impact on the SAC including those associated with potential in combination increases in recreational pressures and disturbance/predation of wildlife.
- 7.32 Following the submission of a Habitat Regulation Assessment, (which has been revised since consideration of 058489) NRW have advised that in order to minimise the impact of development on the GCN habitat that the options include:-
- a) Submission and implementation of an on/off site recreation scheme and/or
  - b) Submission of a commuted sum per household.
- 7.33 In consideration of the above the applicant has proposed that an area of land within the Green Barrier be set aside in accord with point a (above). The general principle of the use of this land for ecological mitigation is considered to be acceptable to the Council's Ecologist subject to the imposition of a prior to commencement condition to appropriate mitigation.
- 7.34 Impact of Ex-Mining Works  
Given the previous mining history at this location a Mining & Mineshaft Risk Assessment has been submitted as part of the application on which consultation has been undertaken with the Coal Authority. In progression of this application however the basis for the assessment/data used has been questioned and as a result further clarification has been sought in the respect from The Coal Authority in order to ensure that they have access to the relevant mining records.
- 7.35 For Members information it has been confirmed that whilst acknowledging this additional source data, none of the recorded mine entries are in the site boundary and their respective zones of influence do not encroach into the site. Whilst it is however appreciated that the mine entries are on land within the control of the application it is considered unreasonable for further investigation be undertaken, given that the mine entries do not implicate on the development proposed.
- 7.36 Provision of Affordable Housing  
Consultation on the application has previously been undertaken with the Housing Strategy Manager who acknowledges the proposed provision of 30% affordable housing within the development, although further agreement on the tenure, mix and unit sizes would need to be agreed.
- 7.37 As this is an outline application however with all matters save access



being reserved for subsequent approval it is not possible at this stage in the absence of a detailed site layout/accompanying legal obligation (terms of agreement) to control the particular aspect of the development. This is a fundamental requirement in considering the acceptability of residential development on sites where the thresholds for affordable housing provision are exceeded.

7.38 Provision of Open Space

Consultation on the application has been undertaken with the Council's Play Design Officer (AURA). Although the submitted site layout plan is only illustrative, it has been considered and shows 2 No. separate areas of open space to serve the development namely:-

- a) An equipped area of land on the part of the site within the settlement boundary. This has been re-positioned from that previously shown in respect of 058489.
- b) An area of informal open space within the Green Barrier on the eastern side of Bank Lane.

7.39 This approach is considered unacceptable to AURA as the Public Open Space Provision should from a functionality and safety perspective be (a) located in one area within the layout proposed and not divorced/separated in this case by Bank Lane and (b) the public open space area on the western side of Bank Lane is still shown to be provided on a water attenuation basin given the topography and as such would not be suitable for the installation of fixed play equipment.

7.40 Whilst it is acknowledged that the site layout is not fixed and is reserved for subsequent approval, the provision of an acceptable level/appropriate siting of open space is of fundamental importance to the Local Planning Authority. It is therefore of concern that it appears likely that the only way the sufficient open space can be provided whilst at the same time allowing up to 66 dwellings to be constructed outside the Green Barrier, is for a significant part of it to be provided on the western side of Bank Lane, where there is a potential for conflict between its usage and ecological mitigation.

7.41 Provision of Education Contributions

Primary and Secondary formula multipliers have been applied to assess the potential impact of the proposal on the capacity of both Drury CP School and Elfed High School. Due to capacity having been reached at Drury CP School a section 106 contribution would be sought for £196,112. This is based on a calculation of 66 units. The trigger points for Elfed High School have not been met and a contribution will not be sought.

7.42 The infrastructure and monetary contributions that can be required from a planning application through a S.106 agreement have to be assessed under Regulation 122 of the Community Infrastructure levy

(CIL) Regulations 2010 and Welsh Office Circular 13/97 'Planning Obligations'.

- 7.43 It is unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, if the obligation does not meet all of the following regulation 122 tests;
1. be necessary to make the development acceptable in planning terms;
  2. be directly related to the development; and
  3. be fairly and reasonably related in scale and kind to the development.
- 7.44 It is considered that the education contributions would meet the regulation 122 tests. Drury CP School is oversubscribed and due to the added pressure on the school the development would require contributions to mitigate against this impact.
- 7.45 Impact of Loss of Existing Dwelling  
As previously indicated, the proposed development would involve the demolition of an existing dwelling at 81 Drury Lane in order to facilitate the formation of an access to serve the erection of up to 66 No. dwellings at this location.
- 7.46 The property is physically attached to an adjacent dwelling (No. 79 Drury Lane) and although it is not statutorily listed or classified a Building of Local Interest (BLI) it has formed part of the inherent character of the street scene at this location for a considerable period of time.
- 7.47 In determination of application 056023 in January 2017 particular concern/objection was raised to the demolition of the building for the sole purpose of forming a new access which if it remained in situ for some time would have a detrimental appearance on the street scene at this location.
- 7.48 The concerns of residents and Local Members to the loss of this building is respectfully noted and acknowledged. The fundamental difference in my opinion however between that previous application for the sole demolition of 81 Drury Lane and that currently submitted is that this proposal is now linked to a wider application site that it is intended to serve. As it is not considered to be worthy of listing and whilst its demolition would change the street scene at this location this would not be detrimental within this urban environment to warrant a reason for refusal on this basis.

## **8.00 CONCLUSION**

8.01 It is of significance that this application has been resubmitted in outline with all matters save access reserved for subsequent approval. The application boundary (edged red) incorporates land outside the settlement boundary of Drury within the open countryside and the Green Barrier as defined in the Flintshire Unitary Development Plan. To grant permission would give permission for residential development in this sensitive edge of settlement location which impacts on the Green Barrier. Whilst new build residential development outside the settlement boundary and within the Green Barrier would clearly be contrary to national /local planning policy, it would be possible to restrict built development on that part of the site within the Green Barrier, at Reserved Matters Stage. The consequence of this however, is that the density of development proposed ie. 66 dwellings on that part of the site within the settlement boundary would represent overdevelopment have regard to the character form of existing development at this location. Notwithstanding the case regarding the Council's lack of a 5 year housing land supply, the proposed development would be unacceptable on the scale proposed and does not meet the objectives of good design / place making as required in accordance with Planning Policy Wales Edition 10. Development would also lead to the loss of an area of Grade 3a, Best and Most Versatile Agricultural Land which should be resisted.

### 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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