

**TOWN AND COUNTRY PLANNING ACT 1990  
TOWN AND COUNTRY PLANNING (GENERAL PERMITTED  
DEVELOPMENT PROCEDURE) ORDER 1995 - TO DATE  
PLANNING AND COMPENSATION ACT 1991  
TOWN AND COUNTRY PLANNING ADVERT REGULATIONS 1994  
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)  
ACT 1990  
APPLICATIONS FOR PERMISSION FOR DEVELOPMENT**

These are reports and recommendations by Officers for consideration and resolution by the County Planning Authority.

All the applications in respect of the proposals specified in this report will be available for inspection by the Members of the Committee prior to and during the meeting at which the said applications will be considered.

The Background Papers relating to each application, including forms, plans, relevant correspondence, Development Plan and guidance documents are available for public inspection during normal office hours

## REPORT BY HEAD OF PLANNING SERVICES

### PROCEDURE TO DETERMINE REQUESTS FOR OUT OF HOURS WORKING AT MINERAL SITES IN DENBIGHSHIRE

#### 1. PURPOSE OF REPORT

- 1.1 To seek Members' approval to the adoption of a procedure by which request for out of hours working may be determined in consultation with the Chairman and Vice Chairman of the Planning Committee and the Local Member.

#### 2. BACKGROUND

- 2.1 Most of the quarries now operating in Denbighshire are prevented from working on Saturday afternoons, Sundays and Public Holidays by virtue of conditions attached to the planning permission relating to the site. This restriction in working hours is imposed to protect the amenity of local residents.
- 2.2 Occasionally, I am approached by quarry operators who wish to operate outside the permitted working hours for a short period of time (weeks rather than months) to service a particular contract. Typically, the contracts are for major repairs or improvements to motorways. Such requests are not applications to delete or change the planning conditions. For example, a request was received recently in respect of Graig Quarry in December 2000.
- 2.3 The timescale for return of tenders is usually very short which means that a decision has to be taken very quickly on whether to allow out of hours working at any particular site for a short period of time. The former Clwyd County Council operated a procedure by which consultation was carried out with the appropriate Community Council and Liaison Committee and a decision was made in consultation with the Chairman and Vice Chairman of the Planning Committee and the Local Member. I feel that this procedure should be adopted by this Council to consider any further requests that may arise in the future.

#### 3. RECOMMENDATION

- 3.1 That Members approve the adoption of the following procedure to determine requests for temporary out of hours working at mineral sites in Denbighshire which do not involve deletions or changes to planning conditions.

#### 4. PROPOSED PROCEDURE

1. Requests for consent to work outside approved hours for temporary periods up to 4 weeks shall be dealt with in consultation with the Chair or Vice Chair of Planning Committee, local member, Community Council and Liaison Committee.
2. All decisions taken shall be reported for information to the Planning Committee.

## REPORT BY HEAD OF PLANNING SERVICES

**WARD NAME:** LLANGOLLEN

**APPLICATION NO.:** (i) 03/740/97/PF  
(ii) 03/846/97/PF

**PROPOSAL:** (i) ERECTION OF 47 DETACHED DWELLINGS,  
CONSTRUCTION OF NEW VEHICULAR  
AND PEDESTRIAN ACCESSES

(ii) ERECTION OF THREE DWELLINGS  
(PLOTS 48, 49, 50)

**LOCATION:** LAND OFF VICARAGE ROAD, LLANGOLLEN

### 1. PURPOSE OF REPORT

- 1.1 To seek Members' resolution on a request by the developers' solicitors to amend a clause included in a draft Section 106 Obligation regarding the movement of contractors'/construction vehicles in connection with the construction of new residential development and associated new vehicular access on land off Vicarage Road, Llangollen.

### 2. BACKGROUND

- 2.1 Members may recall that the above applications were reported to the Council's Planning Committee meeting held on the 19 April 2000. The land, the subject of the applications is shown on Appendix A attached to this report. It was resolved at the above meeting to GRANT planning permission in respect of both applications subject to (inter alia) the developer entering into a Section 106 Obligation which would in addition to other controls, prohibit the movement of contractors' / construction vehicles along Hill street and its junction with Vicarage Road.
- 2.2 In accordance with the resolution of the Planning Committee a draft Section 106 Obligation was subsequently submitted to the applicant/developers solicitors for approval, containing the following clause:
- "6.2 The Developer agrees with the County Council to prohibit movement of contractors' / construction vehicles seeking access to and from the application site along Hill Street and its junction with Vicarage Road".*
- 2.3 The applicant/developer's solicitors have requested that the matter be reported back to the Planning Committee for further consideration. They are of the view that, during the initial period at least of the road construction works, a prohibition in the above terms would render the road construction works impossible.

A letter in support of that view from a Chartered Civil Engineer instructed on behalf of the applicant is appended to this report as Appendix B.

- 2.4 The applicant/developer's solicitors therefore contended that the Council should not object if the prohibition on the use of Hill Street/Vicarage Road only applied after the new roads had been constructed and requested that clause 6.2 be amended to read as follows:

*"6.2 The Developer agrees with the County Council that following substantial completion of the Highway Works it will prohibit movement of contractors / construction vehicles seeking access to and from the application site along Hill street and its junction with Vicarage Road."*

- 2.5 The Highway works are defined in the Section 106 Obligation as the construction of a new access road along a line to be agreed from Hall Street to Vicarage Road, together with improvement works to existing highways. The effect of the above amendment would therefore have been to allow the developer to use Hill Street and its junction with Vicarage Road during the course of and for the purpose of the "Highway Works" with the prohibition in Clause 6.2 only taking effect on the substantial completion of those works.

- 2.6 Having regard to the current request, further consultation on this matter has been undertaken with the Council's Head of Highways and Transportation. The following response has been received:

*"At a previous meeting, both members and Highway staff expressed concern at the proposed use of Hill Street for construction traffic, on the grounds of local disruption and traffic safety."*

*However, examination of the proposals shows that, from a purely practical point of view, it is virtually impossible to construct the new access from Willow Street without invoking a long term closure of Hall Street and rendering the area at the junction of Willow Street and Hall Street a virtual building site. Even then the construction process would be protracted and more complicated. For this reason, I consider that the inclusion of a clause prohibiting the use of Hill Street would render the proposal effectively unbuildable."*

- 2.7 In a previous report to the planning committee meeting in September 1999, members may recall that I recommended that following consultation with the Head of Highways and Transportation having regard to the road width / vertical alignment of Willow Street and site gradients that for practical reasons road improvement works should be undertaken in a direction from Vicarage Road to Hall Street. This was, however, subject to the inclusion in the Section 106 Obligation of provisions relating to (amongst other things) the time scale for completion of the highway improvement works to wearing course level and the size of construction vehicles used in connection with the undertaking of the highway works.

It is now intended that issues relating to the timing and methodology of undertaking the highway works (including appropriate safeguards) will be incorporated into (i) an Agreement under Section 278 of the Highways Act 1980 to be entered into by the developer and the Council acting in its capacity as a local highway authority and (ii) a planning condition (Condition 12 - 03/740/97/PF & Condition 10 - 03/846/97/PF) to ensure that the new access road is constructed to base course level prior to the erection of any new dwellings as previously recommended in my report on the 19th April, 2000.

- 2.8 It remains my view having regard to the background history / practicalities of construction works that the principle of the use of Hill Street / Vicarage Road to facilitate the movement of construction vehicles seeking access to the application site to enable construction of the new road would be acceptable. I consider that the **fundamental issue** however is the stage in the proposed development at which the prohibition on the use of the Hill Street / Vicarage Road becomes effective, i.e. at which stage all construction vehicles would be expected to gain access to the application site via the new access road.

- 2.9 In this context and following discussions / negotiations with the developers agent and Head of Highways & Transportation it is considered that the above prohibition should become effective on the construction of the new roads to **base course level** (to include drainage and street lighting) to the satisfaction of the Head of Highways and Transportation rather than on the substantial completion of these highway works which would involve the application of the final wearing course. It is intended that the Head of Highways would signify that the new roads have been constructed to base course to his satisfaction by the issue of an Interim Certificate of Completion under the proposed Section 278 Highways Agreement.

It is understood that the applicant/developer's solicitors and engineer are in broad agreement with the above proposal.

### 3. RECOMMENDATION

- 3.1 That authorisation be given to amending clause 6.2 of the draft Section 106 Obligation to read as follows:

*"The Developer agrees with the County Council that, following completion of the Highway Works to base course level (to include drainage and street lighting) and the issue by the Head of Highways of an Interim Certificate of Completion pursuant to an Agreement under Section 278 of the Highways Act 1980 in respect of those works, the Developer will prohibit the movement of contractors/construction vehicles seeking access to and egress from the application sites along Hill Street and its junction with Vicarage Road".*

- 3.2 Otherwise than as varied in paragraph 3.1 above, the Council enter into an Agreement under Section 106 of the Town and Country Planning Act 1990 with the applicant upon the terms authorised by Minute 1084 of the meeting of this Committee held on the 19th April 2000.



**CYNGOR**  
**Sir Ddinbych**  
**Denbighshire**  
**COUNTY COUNCIL**

Title: **NO. 03/846/97/PF**  
**APPLICATION NO. 03/740/97/PF**  
**LAND OFF VICARAGE ROAD,**  
**LLANGOLLEN, DENBIGHSHIRE**

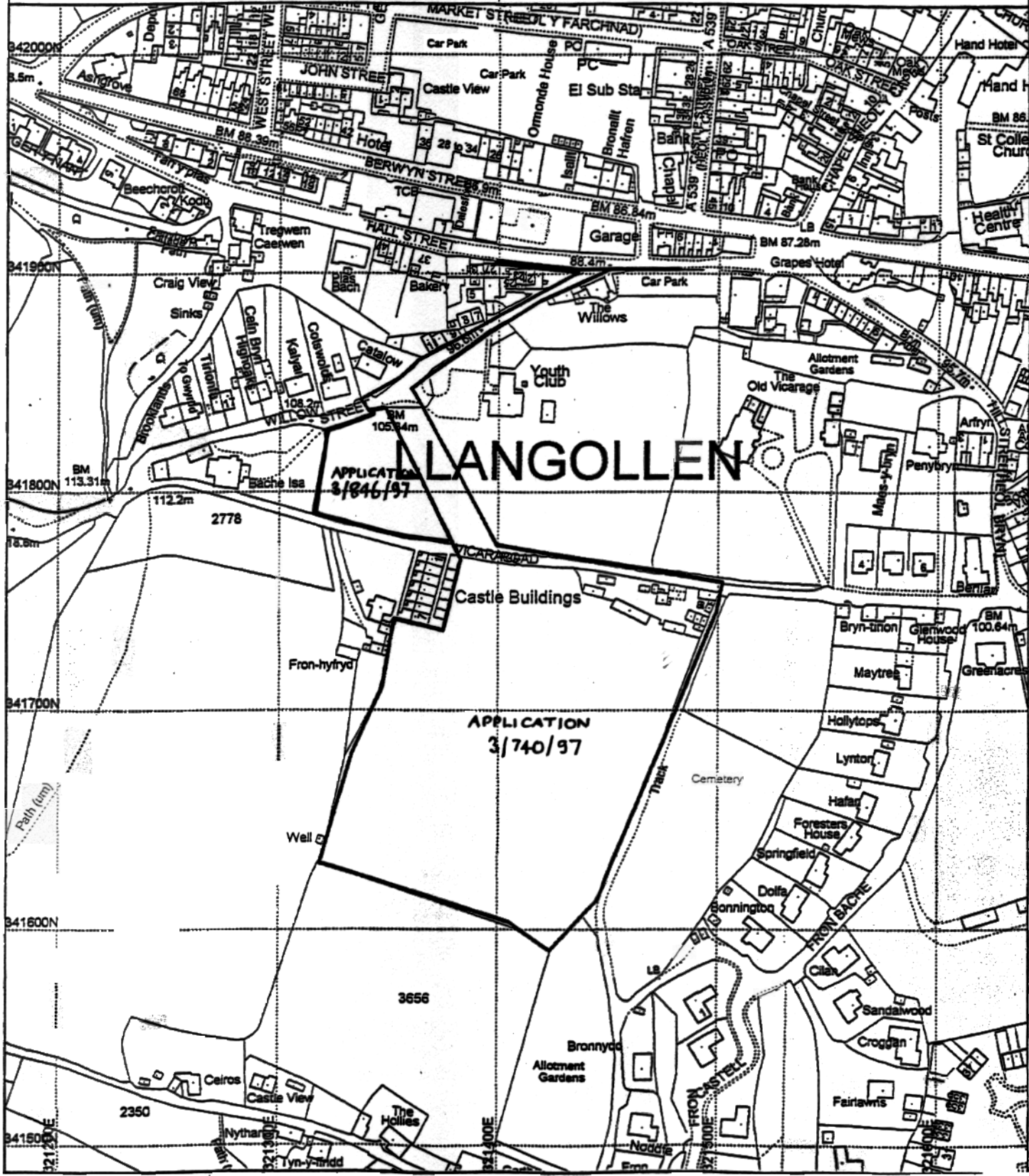
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Application Sites

Date: **JANUARY 2001** Scale: **1 : 2500**



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MEng FICE Chartered Civil Engineer gproudlove@aol.com

Mr Peter Collins  
Walker, Smith & Way, Solicitors  
26 Nicholas Street  
Chester CH1 2PQ

14 January 2001

Dear Mr Collins

**Land at Vicarage Road, Llangollen — Taymove Ltd**

I have been asked to review and comment on the terms of the Section 106 Agreement sought by Denbighshire County Council in connexion with the outstanding planning application on this land, in particular the proposed clause 6.2 *"to prohibit movement of contractors/construction vehicles ..... along Hill Street and its junction with Vicarage Road"* .

It is not disputed that the first item of construction work to be undertaken as part of this planning application is the widening of Vicarage Road and the construction of the length of new link road, to at least base course level.

At issue is the route to be used by the contractors/construction vehicles to achieve these highway improvements.

Having examined the situation on site, and drawings of the development proposal, I strongly support the view of the Head of Denbighshire County Council's Highways & Transportation department that *"due to the vertical alignment [of Willow Street] it would be unrealistic to construct the highway improvements from the junction of Willow Street and Hall Street to Vicarage Road"*.

These views of the Council's engineering officers appear to summarise the extreme practical difficulties that would be involved in carrying out the works under the terms of the proposed clause 6.2, but these views can be extended to cover other serious disadvantages that would follow from a requirement for contractors' and construction vehicles to use Willow Street for access, rather than Hill Street.

In practical terms, the works to construct a sewer and widen and realign Willow Street will necessitate closure of the street to all through vehicles for a period of a few weeks. Throughout the works, construction materials such as pipes and kerbing will have to be stored nearby, on the open land towards the east end of Vicarage Road, and from there taken to the work site by small dumper truck. Work could not proceed if, for example during the period of closure, contractors' vehicles and materials could not reach the site through prohibition of use of Hill Street. Moreover, in practice, such a prohibition would be unenforceable.

I believe that it is agreed by all parties to the first work on the site should be the widening of Vicarage Road and the construction of the length of new road, both to at least basecourse level, in order that there should be a reasonable means of access to upper Willow Street during the closure. Whilst the street is closed, residents of the upper part of Willow Street and Vicarage Road will have vehicular access only by way of Hill Street and Vicarage Road. In addition, the centre of operations for the construction activities, on Vicarage Road, could not be reached other than by the same route

To require all the construction materials to be delivered up an unimproved Willow Street, in order to carry out the works starting from the Hill Street end, would be perverse and doubly disruptive for the residents of Willow Street, who seem to have been overlooked in introducing this new clause [6.2].

To require heavily laden wagons to travel up Willow Street's extremely steep 1 in 7 gradient rather than the 1 in 14 of Hill Street, and negotiate the acute, narrow, blind corner into Vicarage Road, is to introduce an unnecessarily-high risk factor, as would be their use of the unimproved and unsatisfactory Willow Street/Hill Street junction rather than the more open Hill Street/Hill Street junction.

The risk arising from additional traffic and in particular, heavy vehicles using Willow Street rather than Hill Street is further increased when pedestrian vulnerability on this shared-surface lane is included, considering the location of the Youth Club on Willow Street, the residential properties on and served by Willow Street, and also the absence of a footway along the 3-3.5m wide Vicarage Road that must be traversed between Willow Street and the goods drop-off point at the eastern end of Vicarage Road. Heavy vehicles climbing the 1 in 7 gradient — twice as steep as Hill Street — would create a considerably greater environmental disturbance in noise and gaseous emissions than when climbing a 1 in 14 gradient.

### **The following Facts are material when considering the alternatives**

Hill Street, from Hill Street and their common junction with the A5 to the end of Vicarage Road, has a length of about 200m and a carriageway generally of 4.5 to 5m width, though only 3.6m wide at one point. There is a footway on one side of the carriageway for over half of this length. The gradient of the first 160m from the A5 is about 1 in 14 [7%]. The remaining 40m to the Vicarage Road turn off is at a gradient of 1 in 20 [5%].

The average gradient of Vicarage Road, from Hill Street to the new length of road, is 1 in 25 [4%]. The new road is to be built at a gradient of 1 in 30 [3.3%]. The western part of Vicarage Road, that would have to be used by heavy goods delivery vehicles if they were to be prevented from using Hill Street, is only some 3-3.5m wide between hedgerows. There are no footways along this length, and Vicarage Road joins Willow Street at a narrow and blind acute bend.

The normal maximum gradient for roads in residential areas is 1 in 12 [8.3%], and 1 in 10 for industrial roads. Main roads are built with a normal maximum gradient of only 6% [1 in 17].



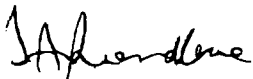
Willow Street is a winding "shared-surface" lane, its narrow width shared by both pedestrians and motor vehicles as there are no footways. Its width is generally about 4m, but as little as 3m close to its junction with Hall Street and above the Youth Club entrance, with a retaining wall along the roadway edge further reducing its effective width over much of its length.

In both its existing and reconstructed form, it has a gradient of 1 in 7 [14.3%] between its junction with Hall Street and the start of the new road across the corner of the playing field.

The existing highly unsatisfactory junction of Willow Street with Hall Street is at an extreme obtuse angle, where the roadway width is only 3m when a minimum of 5.5 or 6m carriageway width plus a footway is necessary for safety and to allow vehicles to pass one another. Visibility-to-the-left for vehicles leaving Willow Street is also very poor because of the obtuse angle and an obstructing building

**The foregoing considerations lead me to recommend strongly that the proposed clause 6.2 would be an unacceptable Condition under which to carry out this development.**

Yours sincerely



J Alan Proudlove

**A REPORT BY THE HEAD OF PLANNING SERVICES**

**APPEAL COSTS : HOWELL'S SCHOOL, DENBIGH**

**1. PURPOSE OF REPORT**

- 1.1 To advise Members of appeal costs awarded against the Council following an appeal decision in relation to the proposal for the change of use of agricultural land to school use for the grazing of horses. The report has been prepared for information only in accordance with normal procedures following the outcome of a decision which has financial implications for the Council.

**2. BACKGROUND**

- 2.1 Costs at appeals (dealt with by inquiry or informal hearing) can be awarded against either main party for unreasonable behaviour. This unreasonable behaviour may be the result of a failure to follow proper procedures, but in most cases, where costs are awarded against Councils, the award is made because the Council has failed to provide planning evidence to support the reasons for refusal.
- 2.2 In May 2000 the Planning Committee refused a full application by Howell's School to change the use of agricultural land to school use for the grazing of horses. The application was refused for four reasons relating to effect on the viability of Goblin Farm, dangers to the public using the footpaths which cross the site, impact of the activities and paraphernalia on the landscape, impact on the highway network.
- 2.3 In November 2000 a Hearing was held into the decision of the Council. At the Hearing the appellants made an application for an award of costs on the grounds that the Council failed to substantiate their reasons for the refusal at the Hearing and acted unreasonably in that the Council did not have proper planning grounds for not accepting the advice of their professional planning officer. That the appeal was unnecessary, and the appellant had to incur the expense of bringing the appeal.
- 2.4 In the decision letter, the Inspector considered that costs should be awarded against the County Council. The claim for costs has not yet been made by the appellant and therefore I am unable to advise Members on the likely cost to the Council. I will advise Members of the costs when this information becomes available.

**3. COMMENT**

- 3.1 Three key messages come out of this decision

- (i) the Council is not entitled to rely on third party evidence, or anecdotal evidence to defend its reasons for refusal even though it is a material consideration in the appeal
- (ii) the Council should not expect the same planning officer who had recommended permission to defend their refusal on appeal to avoid placing him/her in an untenable position
- (iii) the Council should consider very carefully the available evidence to support reasons for refusal and whether any planning conditions could be used which would overcome or sufficiently mitigate any objections.

#### **4. RECOMMENDATION**

##### **4.1 That Members note the contents of this report.**

## A REPORT BY THE HEAD OF PLANNING SERVICES

### DATE OF SITE VISITS

#### 1. PURPOSE OF REPORT

- 1.1 To advise Members of the likely date of any Site Visits requested by the Planning Committee.

#### 2. DATE OF THE SITE VISITS

- 2.1 In consultation with Legal and Administration, it has been decided that the **morning of Monday 5th February 2001** is most suitable. This date has been provisionally booked.
- 2.2 You are advised, therefore that any site visits arranged today will take place **On Monday 5th February 2001 ( morning - times to be advised).**

#### 3. MEMBERSHIP OF THE SITE VISIT PANEL

- 3.1 This will depend on Political Balance and will include the Chair and Vice Chair of the Committee and the relevant Local Member(s)

#### 4. RECOMMENDATION

- 4.1 **That Members agree to the Site Visits being held on the morning of Monday 5th February 2001**