

**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

**DENBIGHSHIRE COUNTY COUNCIL  
PLANNING COMMITTEE  
INDEX TO REPORT**

<b>Item No</b>	<b>Application No</b>	<b>Location and Proposal</b>	<b>Page No</b>
1	31/2005/0194/PO	<b>Land in Ffordd Richard Davies St. Asaph Business Park St. Asaph</b> Development of 0.62 hectares of land for creche facility	1
2	31/2005/0391/PF	<b>6 Mairwen Cefn St. Asaph</b> Erection of extension to existing dwelling	5
3	42/2004/0102/PF	<b>Plas Newydd Estate Land off Ffordd Pantycelyn Prestatyn</b> Erection of 44 No. dwellings, construction of new vehicular access, car parking, open space area and landscaping	8
4	44/2005/0107/PF	<b>Abbey House Rhyl Road Rhuddlan Rhyl</b> Demolition of existing nursing home, erection of 24 self-contained apartments and associated works	18
5	45/2005/0317/PF	<b>Millbank Inn Grange Road Rhyl</b> Erection of extension and internal alterations	24
6	45/2005/0501/PO	<b>Tower Garden Centre 81 Rhuddlan Road Rhyl</b> Development of land for residential purposes (outline application)	27
7	45/2005/0506/AD	<b>Land Opposite 81 Ffordd Derwen Rhyl</b> Retention of non-illuminated developers signboard (retrospective application)	31
8	45/2005/0511/PF	<b>Land adjacent to H Bridge between Kwik Save and railway Marsh Road Rhyl</b> Change of use of land for siting of storage containers and construction of new vehicular access	33
9	46/2005/0271/PC	<b>Land To Front Of 53 Ashly Court St. Asaph</b> Change of use of land to create parking area (retrospective application)	37
10	47/2005/0454/PF	<b>Tan Yr Onnen Waen St. Asaph</b> Conversion and extension of existing outbuildings and existing dwelling to form holiday accommodation, erection of 2 log cabins for holiday accommodation and 1 log cabin as swimming pool building for guest use (amendments to previous permission for 3 log cabins granted on 26/01/2005)	41
11	01/2005/0156/PF	<b>Plas Y Green Mold Road Denbigh</b> Conversion of dwelling and coach-house to 5 No. dwellings, installation of new septic tank, alterations to existing vehicular access and change of use of land to form extension to residential curtilage	45
12	03/2004/0668/AD	<b>Kwik Save Group Plc Regent Street Llangollen</b> Display of replacement illuminated advertisement signs (retrospective)	49

**DENBIGHSHIRE COUNTY COUNCIL  
PLANNING COMMITTEE  
INDEX TO REPORT**

<b>Item No</b>	<b>Application No</b>	<b>Location and Proposal</b>	<b>Page No</b>
13	03/2004/1286/PF	<b>Bryn Melyn Motor Services Ltd Abbey Road Llangollen</b> Demolition of petrol filling station and garage/bus depot, erection of 36 no. sheltered apartments for the elderly and 1 no. house manager's apartment and retention of existing chapel as shop	52
14	03/2004/1287/CA	<b>Bryn Melyn Motor Services Ltd Abbey Road Llangollen</b> Demolition of petrol filling station, garage/bus depot and demolition of side/rear chapel extensions (conservation area consent)	65
15	05/2004/1684/PF	<b>Land Adjacent To Bryn Tawel Penybryn Corwen</b> Erection of detached dwelling with integral garage and alterations to existing vehicular access	67
16	05/2005/0377/PF	<b>Allt Y Celyn Barn Glyndyfrdwy Corwen</b> Conversion of redundant barn to dwelling, temporary use of caravan on adjacent land during construction period and installation of new septic tank	71
17	06/2005/0207/PF	<b>Land adjoining Gwylfa Gwyddelwern Corwen</b> Erection of 2 no. dwellings and construction of new vehicular access	75
18	12/2005/0518/PC	<b>22, 24 &amp; 26 Trem Y Coed Clawddnewydd Ruthin</b> Change of use of agricultural land to domestic use (retrospective application)	79
19	14/2005/0057/PF	<b>Land adjoining Derfel Cyffylliog Ruthin</b> Erection of new dwelling (revised scheme to Application Ref. No. 14/2004/0801/PF)	81
20	16/2005/0457/PR	<b>Land Adjoining 41 (Plot 21a) Tan Y Bryn Llanbedr Dyffryn Clwyd Ruthin</b> Details of proposed dwelling and construction of new vehicular access submitted in accordance with outline application code no. 16/2002/0775/PO	84
21	25/2005/0180/PF	<b>Outbuilding at Hendre Farm Nantglyn Denbigh</b> Conversion of existing outbuilding to dwelling and installation of new septic tank	88

**ENFORCEMENT MATTERS**

- (i) **ENF/2005/00051 -**  
10 Marble Church Grove, Bodelwyddan  
change of use of extension to use as a single dwelling

## **PLANNING ENFORCEMENT REPORT**

**REFERENCE:** ENF/2004/00051  
**LOCATION:** 10 Marble Church Grove Bodelwyddan Rhyl  
**INFRINGEMENT:** Change of Use of extension to Use as a single dwelling.

### **CONSTRAINTS:**

## **RELEVANT PLANNING POLICIES AND GUIDANCE**

DENBIGHSHIRE UNITARY DEVELOPMENT PLAN  
Policy GEN6 – Development Control Requirements  
Policy HSG12 – Extensions to Dwellings

SUPPLEMENTARY PLANNING GUIDANCE  
Note 1 - Extensions to Dwellings

GOVERNMENT GUIDANCE  
Planning Policy Wales – March 2002  
Technical Advice Note (Wales) 9 – Enforcement of Planning Control

### **HUMAN RIGHTS CONSIDERATIONS**

The provisions of the Human Rights Act 1998 are taken into account when considering taking action against breaches of planning control and other related matters. In this instance, the matters under consideration relate to the rights of an individual to create a separate dwelling. Their permission was for an extension to be used as a granny annexe, which was conditional on there being no creation of a separate dwelling. These rights are outweighed by policy considerations that seek to ensure that any new dwellings provide an acceptable level of amenity for existing and prospective occupiers.

## **1. BACKGROUND INFORMATION**

- 1.1 Planning Permission was granted in November 2003 (40/2003/1203/PF) for the erection of a single-storey flat roofed extension, for use as a granny annexe, to the side of the dwelling house known as 10 Marble Church Grove, Bodelwyddan.
- 1.2 Condition 3 on said permission stated that 'the extension hereby permitted shall be used for purposes ancillary to the existing dwelling, 10 Marble Church Grove, and not as a separate dwelling house'.
- 1.3 In August 2004, the planning department received information which alleged that the owners of 10 Marble Church Grove had breached Condition 3 of their permission by having rented out the extension to a non-family member, on a full-time basis; thus creating a separate residential unit.

- 1.4 The allegation was investigated by Officers, who concluded that there was clearly a breach of Condition 3 of said permission. In October 2004, four options were suggested to the owners and they were given 6 months to consider these following options;
- (i) To do nothing; the consequence of which would be the likelihood that the Council would pursue formal action through the serving of an Enforcement Notice.
  - (ii) To submit an application to remove the condition (although it was advised that it would be unlikely that such an application would be successful)
  - (iii) To comply with Condition 3 by asking their tenant to leave and ensuring that the extension was occupied solely for the purposes originally stated i.e. by visiting family and friends.
  - (iv) To undertake structural alterations in order to open up the extension to internally link it with the main dwelling, so that it would form an integral part of the existing dwelling, no longer be self-contained nor occupied as a single dwelling. It was advised that with this option, building regulation approval would be required.
- 1.5 In the same month, the owners advised that they would be considering Option (iv).
- 1.6 In April 2005 the owners were contacted to request confirmation as to which option they had decided upon. They responded to advise that the extension now had direct access into the main dwelling at 10 Marble Church Grove.
- 1.7 In May 2005 an Officer visited the property and observed that this was not in fact the case. An exterior open patio had been created between the rear entrance to the main house and the rear entrance to the extension (see photo numbered 1), but no works had been carried out to internally link the two units of accommodation. In addition to the separate rear entrances, it was noted that there were also distinctly separate front entrances to each unit (see photos numbered 2 and 3).
- 1.8 Following the May 2005 visit, it was considered that the extension was still being used as a single dwelling house, regardless of the minor alterations undertaken by the owners and a legal opinion was sought to confirm this. The Council's Legal Department confirmed that there was still a breach of planning control in that the extension was being used as a separate dwelling. The building is functionally and physically separate from the original dwelling house. It is a single, self-contained premises comprising a unit of occupation, containing all the normal facilities for cooking, eating and sleeping associated with use as a dwelling house. It is occupied by a person who is not a family member, who is paying rent and using it as a single dwelling house with no ancillary link to the existing dwelling; a situation clearly in breach of planning controls and of Condition 3 of said permission.

## **2. REASONS FOR TAKING ENFORCEMENT ACTION**

- 2.1 The use of the extension as a single dwelling commenced within the last 4 years.
- 2.2 The use of the extension as a single dwelling due to its size, siting and proximity to the existing main dwelling at 10 Marble Church Grove, would not provide an acceptable standard of residential amenity for its occupant(s), or the occupant(s) of the main dwelling. The use of the extension as a single dwelling due to its size, design, siting and appearance would be out of character with the existing residential properties in the locality and could create a precedence for future similar proposals at other dwellings. It is therefore considered that the use of the extension as a single dwelling is contrary to Policy GEN 6 (i), (v) of the Denbighshire UDP and the relevant guidance is Planning Policy Wales – March 2002.

- 2.3 The imposition of planning conditions would not overcome the objections on policy grounds to this breach of planning control

### **3. RECOMMENDATION**

- 3.1 That authorisation be given for the following:

- (i) Serve an Enforcement Notice to ensure that use of the extension as a single dwelling ceases.
- (ii) Instigate prosecution proceedings, or other appropriate action under the Planning Act, against any person, or persons, upon whom any Enforcement Notice, or other Notice is served, or against whom legal action is taken should they fail to comply with the requirements of the Enforcement Notice.

**ENFORCEMENT COMMITTEE AUTHORISATIONS**  
**CASE REVIEW REPORT**  
**June 2005**

These cases have previously been reported to Committee, but remain unresolved. The purpose of the Report is to provide a brief quarterly update for Members. Any issues of detail are best raised with Officers before or after Committee.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
ENF/292/97/S P7/521	Voel Las, Eryrys	26/11/97	Unauthorised alteration to levels of land and other unauthorised works.	Notice served, no appeal submitted. Compliance date: 09/04/99. Notice complied with. Hard and soft landscaping works in progress in connection with application ref: 15/76/99PF. Retrospective planning application 15/2004/345/PF granted.	Monitor compliance with remaining landscaping conditions, details of which are being implemented.
ENF/037/95/N P13/11	Rhydorddwy Goch, Dyserth Road, Rhyl	28/10/98 24/03/04	31 unauthorised windows in listed building.	Notice served, appeal dismissed. Compliance date: 19/10/00, therefore now in breach.  4 windows replaced & considered acceptable. 27 windows retained but now painted white. Still in breach of the notice. Application submitted to retain the windows as painted (44/2003/1101/LB) refused according to recommendation. Schedule of works for compliance with the Notice has been agreed.	PPPS to monitor compliance with agreed schedule of works and to continue liaison with owner.



REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
ENF/006/97/S P13/8	Lleweni Coach House & Stables, Lleweni Park, Denbigh	27/10/99	Neglect of listed building	No unauthorised development simply a case of neglect of this Grade II* listed building. Owner has died. Site is being sold.  Planning application by prospective developer for variation of conditions relating to vehicular access granted at planning committee 25 May 2005.	PPPS to monitor situation and liaise with developer.
ENF/001/99/N P13/5	Elwy Bank, High Street, St. Asaph	09/05/00	Neglect of listed building	No unauthorised development simply a case of neglect of a listed building. Owner has completed interim works to improve the stability of the structure in accordance with Building Regulations.  Scaffolding now removed. Owner wants to retain the murals.  All existing openings boarded and painting black.  Planning application and application for listed building consent submitted April 2005 both of which were invalid due insufficient detail.	PPPS now awaiting required details to validate and process application, having met with owner to give advice.
ENF/434/99/N LB1 – P7/552 LB2 – P7/553 LB3 – P7/555 LB4 – P7/554	4 No. Lay-bys on A55 at Rhualt	28/03/01	Stationing and trading of mobile catering units on Crown Land	4 Notices served, appeals dismissed. Compliance date: 02/05/03	Reported to Members at Pl. Committee in December 2003 as an NFA case.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
				<p>WAG have erected signs in each of the 4 lay bys advising "no trading" fences also erected in 2 of the lay bys.</p> <p>All permanent units now removed.</p> <p>1 lay-by still being regularly used during the day by drive on/drive off mobile unit and area of grass adjacent to lay-by used for siting tables and chairs in connection with this use. Fencing not fixed by Highways to prevent use of grassed area. Portaloo removed on 11 July 2004.</p>	PPPS will continue to monitor.
ENF/133/00/S P7/560	Llyn Cyfynwy, Lake Hill Farm, Llandegla	25/07/01	Residential twin unit caravan	<p>Notice served, no appeal submitted. Compliance date: 31/10/02. Caravan not removed as required by the Enf notice and there are allegations that owner has returned to reside in the caravan.</p> <p>Therefore in breach of Notice. Planning permission granted for retention of caravan for office use for period of 18 months. Planning permission granted also for permanent office building.</p>	PPPS to monitor site.
ENF/2003/0016 P7/601	208 High Street, Prestatyn	23/04/03	Unauthorised stall riser to shop front in Conservation Area.	<p>Enforcement Notice re-served 16 December 2004.</p> <p>Owner has already complied with other breach at this property with</p>	Meeting with the owner to be arranged to progress compliance and give advice on alternative details for the stall riser.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
				<p>the removal of unauthorised signage and roller shutters.</p> <p>Owner in breach of Notice relating to the unauthorised stall riser.</p>	
ENF/2001/005 P7/565	'Patina', 204 High Street, Prestatyn	25/07/01	Installation of roller shutter in Conservation Area	<p>Trial held on 13/02/04 and defendant found not guilty on basis of technicality relating to serving of notice. Notice re-served 16 December 2004. Appeal lodged – written representations.</p> <p>Appeal dismissed April 2005. Have agreed with owner of business that the time period for compliance be extended to end of September 2005 (to cover peak season) after which roller shutters will be removed.</p>	PPPS to monitor compliance.
ENF/2002/007 P7/568	Ty Isoe, Maes Maelor, Llandegla	30/01/02 25/05/05	Storage of vehicles and residential use	<p>Notice served, appeal dismissed. Compliance date: 01/04/04 and Owner is in breach of Notice.</p> <p>PPPS and LS have had various meetings with Environment Agency and joint action has been agreed in principle.</p> <p>12 October 2004 site inspection undertaken by PPPS and Environment Agency Officers. Breach is the same and within area of Notice.</p>	PPPS to report the matter back to planning committee in July 2005 following meeting with Environment Agency to progress matters.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
				<p>Update report to planning committee on 25 May 2005.</p> <p>EA successfully prosecuted owner in crown court May 2005. Owner fined £2000 and ordered to pay £7500 in costs. He has 6 months to pay or will face 45 days in prison.</p>	
ENF/2002/005 P7/573	Bryn Eglur, Llanrhaeadr	27/02/02	Extension to dwelling	<p>Notice served, appeal withdrawn. Compliance date: 02/12/03 Subsequent planning permission granted representing compromise solution.</p> <p>Details now submitted and agreed in respect of conditions relating to external finishes. All issues complied to satisfaction of PPPS.</p>	<b>NFA</b>
ENF/2002/025 P7/580	115 Coast Road, Rhyl	26/06/02	Mixed use, residential & car sales	<p>Retro. application refused and notice served. Subsequent appeal dismissed. Compliance date extended until 29/12/03.</p> <p>Owner considered to be in breach of the notice.</p> <p>2 Court appearances adjourned and trial finally held on 22 February 2005. Defendant pleaded not guilty.</p> <p>Despite evidence showing 20 different vehicles</p>	PPPS to monitor.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
				stored/displayed on forecourt over 9 month period, the Court found the defendant not guilty on the basis that there was "insufficient evidence to prove car sales".	
ENF/2002/021 P7/351	Cornel Bach, Lower Denbigh Road, St. Asaph	04/09/02	Siting of mobile home and creation of curtilage	Retro application refused and notice served. Subsequent appeal allowed for temporary period while occupied by sick parents. Condition requiring planting to help screen the caravan. Planting scheme now implemented.	PPPS to monitor and ensure removal of caravan once vacated by sick parents.
ENF/2002/033 P7/588	Chester House, 32 Sussex Street, Rhyl (Chaplins)	04/09/02	Installation of fascia sign in Conservation Area	Sign in Conservation Area displayed with deemed consent but considered unacceptable, not least as it has enclosed highway furniture. THI Project Officer and Planning Officers in discussion with owners to encourage improvements to sign and property.	Negotiations continue and Compliance Officer (THI –Rhyl) now in post to coordinate any action. Matter currently held in abeyance.
ENF/2002/017 P24/194	153 High Street, Prestatyn	04/09/02	uPVC shop front in Conservation area	Notice served. Compliance date: 21/01/04. Owner in breach of Notice. Planning application (43/2004/972/PF submitted for replacement shop front. Initial details of replacement shop front insufficient. Owner has now appointed agent and amended plans have been submitted.	Await for determination of planning application and then ensure implementation in accordance with the approved plans.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
15/877/98/MA P47/3	Maes y Droell Quarry, Graianrhyd	30/10/02	Undetermined ROMP application – extraction continuing	PS have written to the quarry owner's legal representative on basis of advice received from Counsel & Committee resolution.	Welsh Assembly Government will be writing to operators of all quarries where there are undetermined review applications awaiting submission of environmental impact assessment details. Further information from Welsh Assembly Government awaited.
ENF/2002/043 P7/592	Former Railway Land, Ty Draw, Bodfari	18/12/02	Storage of railway carriages and associated paraphernalia	Notice served and appeal heard by way of Public Inquiry. Appeal dismissed. Storage use to cease and all items removed by compliance date: 03/04/04.	PPPS monitoring situation. Prosecution held in abeyance as the owner is progressing with clearance of the site and demonstrating intent to comply with the requirements of the Notice.
ENF/2003/031 P7/592		23/07/03	Boundary fence & gates over 2m high	Notice served requiring removal of fence in 3 months. Compliance date : 26/03/04.  Owner in breach of both Notices and advised of possible prosecution.  Clearance of site is now in progress and owner is providing regular updates.	Prosecution held in abeyance. (see above)
ENF/2003/009	Casgan Fishery, Llandegla	23/07/03	Residential use of caravan and stationing of vehicles	Enf action authorised to secure cessation of use & removal of vehicles. Notice served 30 June 2004 and has taken effect. No appeal submitted. Compliance date 19/02/05.  Residential use of caravan has ceased but there are still vehicles stationed on the site and there is therefore a breach of the Notice.	PPPS to liaise with LS to consider the appropriate further action.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
ENF/2003/028	Land adjacent to Unit 10, HTM Business Park, Abergele Road, Rhuddlan	03/09/03	Siting of Static Caravan for Residential Purposes	Enf. action authorised to secure cessation of residential use & removal of caravan. Notice served, 18 months for compliance given. Appeal lodged by way of written reps. Appeal dismissed June 2004 and Notice upheld. Compliance date 3 December 2005.	PPPS monitoring date for compliance.
ENF/2003/038	60 Gronant Road, Prestatyn	01/10/03	Dev. not in accordance with that granted under pp Code No. 43/2001/1194/PF	Enf. action authorised to secure alterations to dormer to match approved plans. Notice served 6 months for compliance date : 22/06/04. Owner in breach of Notice. Planning application granted by June 2004 Planning Committee for an alternative scheme following pre-application discussions with Officers and the approved scheme is now being implemented.	PPPS to monitor the implementation of the alternative scheme.  Prosecution held in abeyance.
ENF/2003/039	Tan y Graig, Nantglyn	26/11/03	Storage of cars	Enf. Action authorised to have vehicles removed.  Situation has improved by the clearance of vehicles and it is now not considered expedient to take further action	<b>NFA</b>
ENF/2003/040	Penrhydgoch, Nantglyn	26/11/03	Storage of cars	Enf. Action authorised to have vehicles removed. Notice to be drafted.  Recent site inspection has revealed that the breach is being addressed.	PPPS to monitor to consider need for serving Enforcement Notice.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
ENF/2003/041	Coral Spring, Ruthin Road, Llandegla	26/11/03	Use of land to site caravan & storage of cars	Enf. Action authorised to have vehicles and associated items removed. Notice served on 8 February 2005 and takes effect on the 17 March 2005. 6 months for compliance.	PPPS to monitor compliance date.
ENF/2003/0002	Gwasg Gee, 12 -18 Chapel Street, Denbigh	24/03/04	Neglect of listed building.	Enf Action authorised for serving Repairs Notice.  Repairs Notice served on owner 30 June 2004. No specific response or action from owner to address requirements of Notice.  Compulsory Purchase Order action approved by Cabinet.	PPPS to continue to liaise with owner, LS and Project Manager (THI).
ENF/2003/00042	Parc Bach Derwen, Corwen	24/03/04	Conversion of agricultural buildings to residential use.	Enf Action authorised to cease residential use and for demolition works.  Notice served on the 6 August 2004. Appeal lodged and allowed with Notice quashed on basis of insufficient evidence of residential use. This is despite works undertaken to make building habitable, including new chimney stack as well as photos showing TV aerial on building and various white goods. However, the action has had the desired effect of control over the use which will prevent any future claim of lawful use.	PPPS to monitor site.



REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
ENF/2004/00033	5 Ochr y Foel, Eryrys	21/04/04	Erection of fence	Retrospective application 15/2004/166/PF refused and enforcement action authorised for removal of fence/lowering to 1 metre. Retrospective application 15/2004/1167/PF refused Enforcement Notice served 16 November 2004. Appeal lodged (written representations) but held in abeyance following submission of another retrospective application 15/2005/0116/PC has also been refused. Appeal now continuing and statements have been submitted to Planning Inspectorate.	PPPS to wait for appeal decision.
ENF/2004/00035	Well Street Clinic, Ruthin	21/04/04	Display of externally illuminated advert sign	Retrospective application 02/2004/0086/AD refused and prosecution authorised for removal of means of illumination (2 lamps). One lamp now removed and the other to be removed following recovery of owner from recent illness.	Prosecution to be held in abeyance as there is intent to comply.
ENF/2004/00058	4 Aspen Walk, Rhyl	21/04/04	Installation of 2 satellite dishes, one of which is 1m in diameter, to front of a dwelling	Enforcement action authorised for removal of larger dish. Notice served 8 February 2005 with 3 months for compliance. Notice takes effect 17 March 2005.	PPPS to monitor compliance date.
ENF/302/00/N	37 – 39 Pendyffryn Road, Rhyl	21/04/04	Neglect of a listed building	Authorisation to serve Repairs Notice. Property marketed and sold in	PPPS to monitor situation. Awaiting submission of planning application and listed building consent. Hold in abeyance

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
				July 2004 to property developer. Awaiting submission of planning application and application for listed building consent.	any action.
ENF/2004/00039	Pen Y Mynydd Bach, Rhualt	19/05/04	Erection of grain silo.	Retrospective planning application refused and authorisation given to take enforcement action for removal of the grain silo. No appeal lodged against planning refusal. Enforcement Notice served 16 December 2004. Compliance date 24 July 2005.	PPPS to monitor compliance date.
ENF/2004/00048	Workshop rear of 3 Gamlin Street, Rhyl.	01/09/04	Change of use from workshop to single dwelling and associated works.	Authorisation granted to serve Enforcement Notice to cease works, cease residential use and undertake any works required to cease the use.  Internal inspection undertaken. Internal alterations to provide accommodation undertaken but residential use not commenced. The property is being marketed as an office with Estate Agents.	PPPS to monitor.
ENF/2004/00052	The Best, 16 High Street, Prestatyn	27/10/04	Internally illuminated sign.	Authorisation given to prosecute but case held in abeyance to allow negotiation with applicant.	PPPS to meet with applicant. Prosecution held in abeyance.
ENF/2004/00053	Ruthin Kebab and Burger House, 54 Well	27/10/04	Introduction of ceramic tile cladding to shop	Authorisation to serve enforcement notice.	Meeting arranged with owner.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
	Street, Ruthin		front.	PPPS have instructed LS to draft Notice but still awaiting details of ownership.	
ENF/2004/00012	Oak Frame Company, Part OS Field Nos. 5000 and 6300, Pen y Bryn Road, Glascoed Road, St Asaph	15/12/04	Erection of timber building for use as dwelling.	Retrospective application refused and authorisation to serve Enforcement Notice but allow 2 years for compliance.  Enforcement Notice served 6 May 2005 and takes effect 20 June 2005.	PPPS to monitor compliance date.
ENF/2005/00003	Tan yr Allt Cottage, Ffordd Tanrallt, Meliden	26/01/05	Erection of timber sun house, decking and associated timber support.	Retrospective planning application refused and authorisation given to take enforcement action.  Enforcement Notice served 29 March 2005 with 2 month compliance period. Appeal lodged (informal hearing).	PPPS to draft statement of case and await outcome of appeal.
ENF/2005/26&27 &28	22,24,26 Trem y Coed, Clawddnewydd.	24/03/05	Change of use of agricultural land for domestic use.	Planning Committee resolved to invite planning applications (or a single planning application) and then to consider imposition of conditions relating to provision of hedge and removal of PD rights. Single planning application relating to the three properties now submitted.	PPPS to await determination of planning application.
ENF/2005/00029	9 Castle Street, Rhuddlan	24/03/05	Fence over 1 metre in height adjacent to highway.	Authorisation given to serve notice to remove or lower the fence to 1 metre in height or less.	Awaiting confirmation of ownership prior to service of Notice and meeting with occupier to be arranged.
ENF/2004/00042	Outbuildings at Bryn Eglur,	24/03/05	Change of use of existing agricultural	Retrospective planning application refused and	Awaiting confirmation of ownership prior to service of Notice.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
	Llanrhaeadr, Denbigh (old Chicken farm sheds)		building to storage and distribution.	enforcement action authorised to cease use and remove all items associated with the use.	
ENF/2005/00045	Land at Hen Ardd adjoining Ash Grove, Mynydd Du, Eryrys	24/03/05	Extension of domestic curtilage.	Retrospective planning application refused contrary to recommendation and enforcement action authorised	Awaiting confirmation of ownership and liaising with LS prior to service of Notice.
ENF/2005/00045	Land at Hen Ardd adjoining Brackenwood, Village Road, Eryrys	24/03/05	Extension of domestic curtilage	Retrospective planning application refused contrary to recommendation and enforcement action authorised	Awaiting confirmation of ownership and liaising with LS prior to service of Notice.
ENF/2005/00050	Rhoslydan, Bryneglwys, Corwen	25/05/05	Change of use of agricultural land for storage of containers to be used in connection with road surfacing activity.	Retrospective application submitted but withdrawn. Enforcement action authorised to cease use and remove associated items.  Applicant has advised that site will be cleared within the next 2 months.	PPPS to monitor and service of notice to be held in abeyance.
ENF/2004/00055	Plots 1-20 Tir Morfa Site, Meliden Road, Rhuddlan.	25/05/05	Erection of fence exceeding 1 metre in height adjacent to highway.	Retrospective application for approval of planning condition relating to screen fencing refused and authorisation given to take enforcement action to remove the fence or lower the height to 1 metre or less. Alternative scheme now submitted by developer.	Awaiting determination of alternative application and monitor implementation if approved.
ENF/2005/00014	22 Cae'r Odyn, Eryrys.	25/05/05	Erection of fence exceeding 1 metre in height adjacent to highway and change of use of	Enforcement action authorised for removal of fence or lowering in height to 1 metre or less and to cease use of land.	Meeting to be arranged with owners who have indicated that they will remove fence etc and action therefore will be held in abeyance.

REF. NO.	ADDRESS	COM'TTE	BREACH	NOTES	ACTION
			land to form extension to cartilage area.		

PPPS – Planning and Public Protection Services

LS – Legal Services

DS – Development Services

SV – Site Visit

NFA – No Further Action

**REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION**  
**PROTOCOL FOR MEMBER INVOLVEMENT IN APPEALS**

**1. PURPOSE OF REPORT**

- 1.1 To seek the approval of the Planning Committee for an updated protocol for Member involvement in planning appeals.

**2. BACKGROUND**

- 2.1 A protocol for Member involvement in appeals was first produced in 1998 and approved by the Planning Committee at that time.
- 2.2 A number of issues have emerged since 1998 in relation to the processing of appeals that require the protocol to be revisited. This includes recent experiences of involvement in appeals e.g. Tweedmill
- 2.3 The revised protocol needs to also take into account the up to date Code of Best Practice for Councillors and Officers Dealing with Planning Matters, as recently approved by the County Council.
- 2.4 An up to date protocol for Member consideration is attached as **Appendix A**

**3. RECOMMENDATION**

- 3.1 That the attached appeal protocol be approved by Members for implementation forthwith.

## A PROTOCOL

## PLANNING APPEALS AND MEMBER INVOLVEMENT

## 1. BACKGROUND

- 1.1 In considering Members involvement in the appeal process, regard must be had to procedures, codes of practice, and rules set out by the Welsh Assembly Government (WAG) in various statutory instruments and in particular in WAG Circular 07/2003 - Planning Appeals and Call In Procedures.
- 1.2 Officers will work with Members to use best endeavours to defend the Council's decision at appeal. However, appeals, particularly public inquiries, can be resource intensive. The resource implications in any appeal need to be taken into account in deciding on how best to defend the appeal.

## 2. THE APPEAL TIMETABLE

- 2.1 The following are the key stages
- (i) **Receipt of appeal** - The Planning Inspectorate (PI) advise the Council that the appeal has been lodged. A letter is immediately sent to the Local Member(s) advising them of the receipt of the appeal and an indication of the appeal procedures to be adopted in their particular case. Members are requested to give an immediate response as to the appeal procedure they consider appropriate, and in due course, possibly after discussion, a mutually acceptable approach to the choice of appeal procedure is determined. The Local Member(s) will then be provided with a provisional timetable of the appeal process.
- (ii) For **written representation** cases the Council must submit its statement within 6 weeks of the start date (the receipt of a valid appeal by the PI) . In cases where decisions have been made contrary to Officer's recommendation a copy of the draft statement is sent to the Local Member(s) within this 6 week period and to allow 7 days for comments/discussion.
- (iii) For appeals to be dealt with by **hearings**, the Council must send the PI their Statement of the Case to be presented at the hearing within 6 weeks of the start date. In cases where Members have refused contrary to Officer's recommendation a copy of the Draft Statement of Case is sent to the Local Member(s). Officers will offer a pre-hearing meeting with the Local Member(s) prior to all hearings arising from decisions contrary to recommendations. In addition in practice Officers and Members may well meet prior to other hearings to discuss the case (sometimes with local residents). At the hearing there will be opportunities for the Local Member(s) to contribute.
- (iv) **Public inquiries** normally involve the larger scale and more complex proposals and thus warrant greater input by all parties involved in the Council's case. This

applies not only to those cases where Members have refused contrary to Officer's recommendation.

The various stages are as follows:

**Pre-inquiry Statement** - This must be submitted within 6 weeks of the start date. In cases where the refusal is contrary to Officer recommendation a meeting will be offered to the Local Member(s) prior to the drafting and/or finalising of the Statement of Case to ensure that all matters have been covered and the information and evidence that Members feel will help the Council's case is highlighted.

**Proof of Evidence** - In cases where professional Officers are to be the main witnesses, notwithstanding their recommendation, copies of the Proofs of Evidence are sent to local Members for discussion/comment. In those cases where Members are to present the Council's case following a Committee approval a pre-Proof of Evidence Meeting will be required with professional Officers, including the legal representative. This will be to advise Members on the format and content of their Proofs. Draft Proofs produced by Members will be checked by Planning and Legal Officers.

**Pre-Inquiry Meeting** - In all public inquiries, the Local Member(s) will be offered a Pre-Inquiry Meeting with Officers and a legal representative to finalise the Council's case and consider the appellant's case.

**The Inquiry** - Members will have the opportunity to contribute, speaking as the Local Member(s), or where resolved by the Planning Committee, appearing as a witness for the Council.

- (v) **The decision** - The appeal decision is notified to all parties at the same time. Copies of appeal decisions are sent to Members at regular intervals. A quarterly report is produced for Planning Committee summarising appeal decisions. On significant appeal decisions a more detailed report will be produced. Local Members may contact Officers to discuss the content of appeal decisions. The implications of appeal decisions may be considered from time to time by the Environment Scrutiny Committee and will be incorporated in Member training events.
- (vi) **Code of Conduct** – Members will need to have regard to the Code of Best Practice for Members and Officers Dealing with Planning Matters (relevant extract below).

## 9. APPEALS

- 9.1 Officers will organise and generally appear as witnesses at public inquiry or informal hearing on behalf of the Council.
- 9.2 Officers giving evidence as witness will present the best possible case on behalf of the Council while complying with the RTPI Code of Professional Conduct.
- 9.3 Members of the Planning Committee will be required to give evidence at inquiry or appear at an informal hearing in appeals where an officer recommendation has been



reversed. The Planning Committee shall appoint representatives to give evidence at the hearing/inquiry (normally the proposer and the seconder of the proposal).

- 9.4 In exceptional cases it may be necessary to use Planning Consultants, rather than officers, to present the Council's case. Local Member(s) approval will be sought in such cases.
- 9.5 Members should not appear as witness for the appellant or give evidence at appeals on behalf of the appellant. However, there may be occasions where they wish to support an appellant in their capacity as local ward members and in doing so, they should declare that they are expressing their own personal opinion and acting in this capacity alone and not as a member representing the County Council or the Planning Committee.
- 9.6 Local members will receive, for comment, a copy of the Council's proposed Rule 6 statement in Inquiry cases.

***COMMENT***

The professional responsibility of a Chartered Town Planner as a witness at a local inquiry or informal hearing are governed by The RTPI Code of Professional Conduct which requires member officers to conduct themselves in such a manner as to uphold the reputation of the RTPI and of the planning profession. In particular, it requires that officers do not undertake any duties or carry out any instructions of a public employee or other employee, or a client or supervisor which involves making statements purporting to be their own, but which are contrary to their bona fide professional opinion. Conflicts of interests are likely to occur at an inquiry arising from a decision taken by the Council contrary to a professional recommendation. The advice of the RTPI (PAN4 "*Chartered Town Planners at Inquiries*" and PAN9 "*Development Control - Handling Appeals*") is that officers as witness at an inquiry or hearing are there to give evidence and opinion. This must be true evidence, true to the best of his or her understanding and knowledge. The evidence can be the authority's stated opinion and local opinion. While officers should not volunteer giving information that the case made is at variance with his/her own professional opinion if challenged the officer must give an opinion based on the report to Committee. The RTPI considers that where there are clear differences of opinion which would be detrimental to the Council's case, the planning case officer is unlikely to be the best witness and the Council must accept the consequences of such a revelation. The better alternative according to the RTPI is to call someone else, who is in a position to speak with conviction, e.g. member of the Planning Committee or consultant(s) employed by the Council. Members of the Planning Committee will, therefore, be required to appear/present case on behalf of the Council.

**REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION**

**INFORMATION ITEM FOR PLANNING COMMITTEE**

**DEVELOPMENT AND FLOOD RISK ADVICE**  
**Welsh Assembly Government Technical Advice Note 15:**  
**Development and Flood Risk**

**1. PURPOSE OF REPORT**

- 1.1 The purpose of the report is to provide a brief outline of the advice to local planning authorities in a significant Technical Advice Note issued by Welsh Assembly Government in July 2004.
- 1.2 The contents of Technical Advice Note 15: Development and Flood Risk (referred to as TAN 15) have to be taken into account by Local Planning Authorities in Wales in the preparation of development plans, and they may be material to decisions on individual planning applications. TAN 15 is taken into account by the National Assembly for Wales and Inspectors in the determination of appeals and called in planning applications. The report is intended to inform members on the basis of advice which applies to the consideration of planning applications.

**2. BACKGROUND**

- 2.1 TAN 15 is intended to supplement the Assembly's main strategic planning policy guidance in Planning Policy Wales, March 2002. It is a weighty document with 44 pages of detailed advice, and sets out specific steps each local authority should follow when considering planning applications.

The publication of TAN 15 follows the serious flooding events of October and November 2000, and an anticipated increase in the incidence of problems due to flooding, both in frequency and scale. The reasons for the increase are complex, and arise from a number of factors such as changes in river hydrology, human activity, changes in land management, and an increase in development in areas susceptible to flooding.

**3. THE RELEVANCE OF TAN 15 TO THE CONSIDERATION OF PLANNING APPLICATIONS**

- 3.1 In conjunction with TAN 15, Welsh Assembly Government has published Development Advice Maps. The maps are geared at raising awareness of flood risk to the public, to organisations with an interest in development, and emergency services. They combine information on the extent of

flooding occurrences and detailed local data on flood defenses, and are used to identify relevant planning 'Zones' where the risk of flooding ranges from limited to significant.

- 3.2 The implication of the planning 'Zone' within which a site is located is that this triggers specific planning tests set out in TAN 15 which the local planning authority has to apply when it considers an application for planning permission. Attached as an appendix to this report is a brief information sheet prepared to assist enquiries which outlines the basis of TAN 15 and the procedures which have to be followed, dependent on the Zone a site lies within. The advice sheet outlines the zones identified in the Development Advice maps, and the significance of each zone.
- 3.3 Members' attention is drawn to the specific information requirements and the tests which have to be applied to development proposals in particular Zones, and the sequence through which these tests have to follow. These are of some significance in respect to developments in Zone C1 and C2.
- 3.4 In Zone C1 it is necessary for the authority to conclude whether development is 'justified' in terms of specific guidance in paragraph 6 of TAN 15, before determining whether a developer has to undertake a detailed Flood Consequences Assessment for consideration by the Environment Agency Wales.
- 3.5 In Zone C2, the authority has first to determine which of three development categories a proposal falls within, (Emergency Services, Highly Vulnerable or Less Vulnerable), with reference to paragraph 5 of TAN 15. If the development is in the Less Vulnerable category, the Authority has to then apply the 'justification' test outlined in paragraph 3.4.

#### **4. CONCLUSIONS**

- 4.1 The implications of TAN 15 are wide ranging and the authority is obliged to have regard to the guidance it contains when considering individual planning applications.
- 4.2 Where the Zone in which a development site lies is of significance to the type of development proposed, officers will include reference to the relevant tests of TAN 15 in reports to the Committee.

## DEVELOPMENT AND FLOOD RISK

Welsh Assembly Government Technical Advice Noted 15 (TAN 15) July 2004

### WHAT IS TAN 15?

- It is a significant planning advice document produced by Welsh Assembly Government in July 2004.
- It sets out a process through which the County Council and the Environment Agency Wales have to deal with planning applications.
- It identifies the level of risk of flooding for every part of the County, which has to be taken into account in making decisions on application. TAN 15 is accompanied by a series of 'Development Advice Maps' which show in plan form which of four 'Zones' every part of the County is located (A, B, C1 or C2); each of the Zones having a different risk of flooding.

### HOW DOES IT AFFECT YOU?

- Hopefully it won't but.....
- If your site is located in an area considered at high risk of flooding, permission for certain types of development and changes of use will not be granted.
- You may need to submit detailed technical information with any planning application so the Environment Agency Wales and the County Council can fully assess the risk of flooding and whether permission should be granted.

### WHAT SHOULD YOU DO?

- Before you submit a planning application, find out which Zone your site lies within on the Development Advice Maps.
- Refer to the useful flow chart on the back of this sheet. It explains in a simple form the process you, the Council and the Environment Agency Wales have to follow if you are submitting a planning application.
- Do not be put off by any technical words or phrases – these cross reference to the advice in TAN 15 which Environment Agency Wales or County Council officers would be pleased to explain.

### WHAT DO THE FLOOD ZONES MEAN?

- ZONE A - There is little or no risk of flooding.
- ZONE B - These are areas which have been known to flood in the past. You'll need to provide basic site levels information with any application.
- ZONE C - These are areas where flooding has taken place and flood issues have to be taken into account.  
Zone C is split into 2 for the purpose of TAN 15.
- ZONE C1 - Here, development can take place subject to the planning authority applying what is referred to as a 'Justification Test', set out in TAN 15. Where development meets the text, you will have to provide a detailed Flood Consequences Assessment as part of the application, for the Environment Agency Wales to assess, and recommend to the planning authority whether permission should be granted.
- ZONE C2 - Here, only limited types of development are likely to be acceptable. These are referred to as 'Less Vulnerable' development (such as industrial, retail and commercial development, and car parks) and would only be granted where the particular development meets the justification test and you provide a Flood Consequences Assessment, and the Environment Agency Wales are satisfied that the impacts of flooding can be satisfactorily managed. Development classed as Emergency Services and 'highly vulnerable' such as housing development and public buildings would not be considered acceptable.

### ASK FOR ADVICE

Like all new planning advice documents, it may take time for everyone to get used to what is involved, and how best to proceed. We have prepared this note simply to increase awareness of the issues, and we may revise and update it in the light of experience. It cannot cover things in great detail, so please do not hesitate to ask for advice. There are a number of useful contacts at that the bottom of the page.

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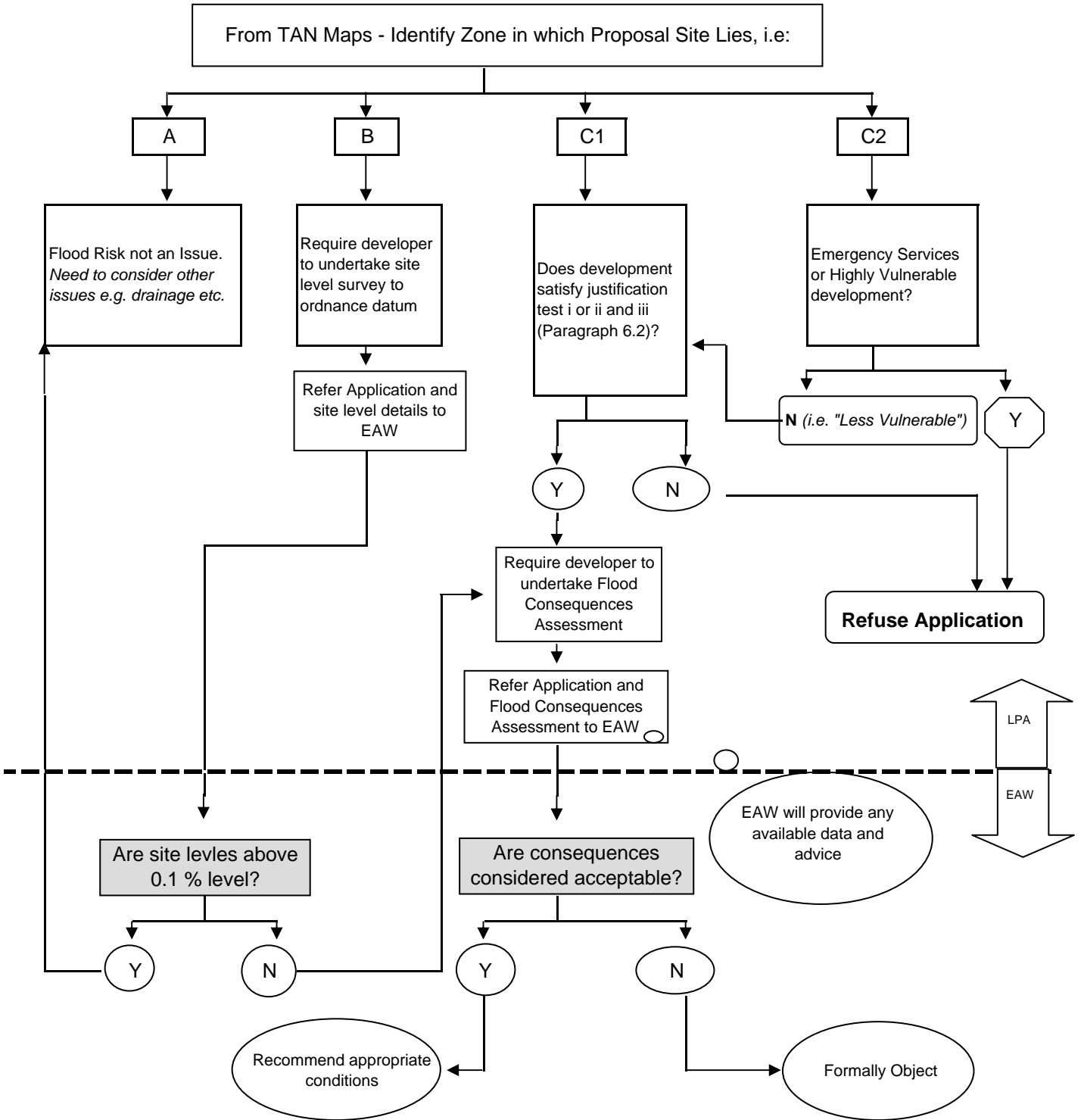
### CONTACTS

Environment Agency Wales  
Llwyn Brain, Ffordd Penlan, Parc Menai, Bangor, Gwynedd LL57 4DE  
Tel : 01248 670770

Development Control Section, Planning and Public Protection, Denbighshire County Council  
Caledfryn, Smithfield Road, Denbigh, LL16 3RJ  
Tel : 01824 706727

Web Site: [www.denbighshire.gov.uk](http://www.denbighshire.gov.uk)  
Email: [planning@denbighshire.gov.uk](mailto:planning@denbighshire.gov.uk)

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**A REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION**

**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 County Clerk's Department, it has been decided that the afternoon of Tuesday 28th June 2005 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 **Tuesday 28th June 2005, in the afternoon.**

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

- 3.1** The membership of the Site Panel will be:  
The Chair and Vice Chair, the Local Member(s) and a representative of the relevant Town or Community Council

**4. RECOMMENDATION**

- 4.1** That Members agree to the Site Visits being held on Tuesday 28th June 2005

**Decisions Made by the Head of Planning and Public Protection  
under  
Delegated Powers  
1st - 31st May 2005**

**Item For Information**

This is a list of applications where the decision has already been made under delegated powers. If you wish to discuss the application/decision please contact the Case Officer.

**DECISION TYPES**

<b>GRANT</b>	- grant planning permission
<b>REFUSE</b>	- refuse all types of application
<b>APPROVE</b>	- approve reserved matters or condition
<b>CONSENT</b>	- grant listed building, conservation area, or advert consent
<b>DEEMED</b>	- does not require advert consent
<b>NO OBJ</b>	- no objection to works to tree(s) in conservation area
<b>NOT REQ</b>	- proposal does not require permission/consent
<b>DETERMIN</b>	- determine that prior approval is not required or is granted on determination application (certain telecom or agricultural works)
<b>P DEV</b>	- proposal found to be permitted development after receipt
<b>WDN</b>	- application withdrawn by applicant
<b>INVALID</b>	- application found to be invalid
<b>CERTIFY</b>	- Certificate of lawful use issued
<b>RCERTIFY</b>	- refuse to issue certificate of lawful use