

**PWYLLGOR CYNLLUNIO**  
**CYFARFOD: 25ain Tachwedd 2009**  
**Eitem: 2**

**PLANNING COMMITTEE**  
**MEETING – 25<sup>th</sup> November 2009**  
**Agenda Item: 2**

**DEDDF CYNLLUNIO TREF A GWLAD 1990**  
**CYNLLUNIO TREF A GWLAD (DATBLYGIAD CYFFREDINOL)**  
**GORCHYMYN 1995 - HYD HEDDIW**  
**DEDDF CYNLLUNIO A IAWNDAL 1991**  
**RHEOLIAD HYSBYSEBU CYNLLUNIO TREF A GWLAD 1994**  
**DEDDF CYNLLUNIO (ADEILADAU RHESTREDIG A CHADWRAETH)**  
**1990**  
**CEISIADAU AM GANIATAD DATBLYGU**

Adroddiadau ac argymhellion gan Swyddogion i'w hystyried a'u datrys gan Awdurdod Cynllunio'r Sir.

Bydd pob cais am y cynigion a nodir yn yr adroddiad hwn ar gael i'w archwilio gan Aelodau o'r Pwyllgor cyn ac yn ystod y cyfarfod lle ystyrir y ceisiadau.

Gellir gweld y Papurau Cefndir i bob cais, gan gynnwys ffurflenni, cynlluniau, gohebiaeth, Cynllun Datblygiad a dogfennau arweiniad yn ystod yr oriau swyddfa arferol.

**Nid yw'r atodiad y cyfeiriwyd ato yn yr adroddiad ar gael yn Gymraeg ac mae hynny yn unol â Chynllun Iaith Gymraeg y Cyngor**

**DENBIGHSHIRE COUNTY COUNCIL  
PLANNING COMMITTEE  
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SES

**ITEM NO:** 1

**WARD NO:** Tremeirchion

**APPLICATION NO:** 41/2009/0620/ PO

**PROPOSAL:** Development of 0.19ha of land by the erection of 5 no. dwellings (outline application including means of access, all other matters reserved)

**LOCATION:** Old Forge Garage Mold Road Bodfari Denbigh

**APPLICANT:** Mr Keith Bevan

**CONSTRAINTS:** C2 Flood Zone  
AONB

**PUBLICITY UNDERTAKEN:** Site Notice - No  
Press Notice - No  
Neighbour letters - Yes

**CONSULTATION RESPONSES:**

TREMEIRCHION/CWM/WAEN COMMUNITY COUNCIL

"The Council still has objections to the plans under GEN6 of the UDP. It was felt that the development of larger houses was not in keeping with the surrounding area. These properties would be significantly bigger than the cottages surrounding the development. It was noted that the revised plans did now take into account other concerns that had previously been raised."

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES:

DCC HEAD OF HIGHWAYS & INFRASTRUCTURE

No objection subject to the inclusion of conditions

DCC HEAD OF HOUSING SERVICES

No response received

AONB COMMITTEE

No objection

DWR CYMRU WELSH WATER

No objection subject to the inclusion of conditions

ENVIRONMENT AGENCY

No objection subject to the inclusion of conditions

**RESPONSE TO PUBLICITY:**

None

**EXPIRY DATE OF APPLICATION: 18/10/2009**

**REASONS FOR DELAY IN DECISION:**

- timing of receipt of representations

## **PLANNING ASSESSMENT:**

### **THE PROPOSAL:**

#### Outline of application

This is an outline application for the development of 0.19ha of land by the erection of 5 no. dwellings including means of access to the site. The main elements are:

- The demolition of the redundant garage buildings
- The erection of 5 no detached dwellings
- The formation of a single access point off the A5410 Mold Road with new footpath

All other matters, relating to siting, design, external appearance of the dwellings and landscaping of the site are reserved for further approval.

#### Description of site and surroundings

The site extends to 0.19ha in area and has been in use previously as a garage. There are mature trees on the rear and side boundary nearest the car park of the Downing Arms, located to the south east of the site.

The site is accessed off the A541 Mold Road. Adjoining the site to the north is the access to the Old Forge Fish Farm.

#### Relevant planning constraints/considerations

The application site is located within the development boundary of Bodfari and within the Clwydian Range Area of Outstanding Natural Beauty.

#### Relevant planning history

In July 2008 it was resolved to grant full planning permission for the 'Demolition of existing buildings and the erection of 8 no. dwellings with a new vehicular/pedestrian access subject to the applicant first entering into a Section 106 agreement, providing 2 no. affordable housing units. The agreement was progressed but never signed, hence no permission has been issued.

#### Developments/changes since original submission

The means of access has been included since the original submission of the application.

#### Other relevant background information

None.

### **RELEVANT PLANNING HISTORY:**

41/2008/1230/PF Demolition of existing buildings and erection of 8 no. dwellings and construction of new vehicular/pedestrian access (site area 0.19ha) – Pending (Reported to Planning Committee and resolved for grant of permission).

### **PLANNING POLICIES AND GUIDANCE:**

The main policies and guidance considered to be of relevance to the application are:

#### **Denbighshire Unitary Development Plan**

- Policy GEN1 - Development within development boundaries
- Policy GEN6 - Development control requirements
- Policy ENV2 - Development affecting the AONB
- Policy HSG10 - Affordable housing within the development boundary
- Policy EMP10 - Protection of employment land and buildings
- Policy TRA6 - Impact of new development on traffic flows
- Policy ENP 6 - Flooding

SPG 6 – Trees and development  
SPG 21 – Parking requirements in new developments  
SPG 22 – Affordable housing  
SPG 25 – Residential development design guidance

Planning Policy Wales (March 2002)

TAN 12: Design  
TAN 15: Development and Flood Risk  
TAN 18: Transport

**MAIN PLANNING CONSIDERATIONS:**

The main issues are considered to be:-

- a) Principle of development
- b) Impact on visual amenity and AONB
- c) Impact on residential amenity
- d) Highway considerations
- e) Affordable housing
- f) Flooding & Ground Contamination

In relation to the main issues:-

a) Principle of development

The application site is located within the development boundary of Bodfari where the principle of residential development is considered acceptable subject to compliance with all other relevant planning policies. In this instance, as the former use of the site was a garage consideration has been given to the loss of the site as employment land and buildings. In order to justify the loss of this use, with the application submitted in 2007, details of the sale of the site and the marketing attempt for the resale of the property for business purposes were provided and accepted. The proposal is considered to be in accordance with the principles of policy EMP10.

b) Impact on visual amenity/AONB:

The main policies relevant to considerations of visual amenity and impact on the character of the area and AONB are Policies GEN 6 and ENV 2. The plan submitted with the application has been provided for illustrative purposes only, however whilst this application is in outline form, it does seek approval for 5 no. units. The Community Council have expressed concerns that the number of dwellings are not in keeping with the area, and are larger than nearby properties. The site is on the edge of the village, separated from existing residential development. Residential properties closest to the application site are located sporadically and therefore the number of units proposed is considered acceptable in visual terms this location. Subject to an acceptable layout, design, materials and landscaping it is not considered there would be any adverse impact on visual amenity or character of the AONB.

c) Impact on residential amenity:

The main policy relevant to considerations of residential amenity is Policy GEN 6. There are no residential properties adjacent to the site and therefore residential development of the site is considered acceptable without harming the amenities of local residents. The site is capable of accommodating 5 dwellings with sufficient amenity and parking space.

d) Highway Considerations:

The main policy relevant to highway considerations is Policy TRA 6.

The means of access is included within this outline application. The proposal is the formation of a single access with visibility splays of 2.4m by 120m. A footpath would be constructed along the frontage of the site. The Head of Highways & Infrastructure has raised no objection to the proposal subject to the inclusion of conditions. An appropriate number of parking spaces with turning space are achievable within the site for 5 no. dwellings, a matter which would be assessed further in a reserved matter application.

e) Flooding and Ground Contamination

The main policy relevant to flood risk is ENP 6.

The site is located partly within a Zone B with a very small section of the site, close to the river, within Zone C2 as defined by the development advice maps contained within TAN 15: Development and Flood Risk. The application has been submitted with a site level survey and finished floor levels. The Environment Agency have been consulted, and state that their most up to date information for the site shows that the small area closest to the river could flood during a 1 in 100 year flood event. The illustrative plan shows that no dwelling would be erected within 7m of the watercourse, which would effectively take the proposed development outside this area. The Environment Agency nevertheless recommends that flood resistant and resilient materials are used in construction of any building and the service entry points should be raised above finished floor levels. In addition, due to the nature of the previous use of the site as a working garage, there is the potential for the land to be contaminated, hence the Environment Agency recommend the inclusion of appropriate planning conditions.

e) Affordable Housing:

The main policy and guidance relevant to considerations of Affordable Housing is Policy HSG 10 and SPG 22.

It is proposed to provide 2 no affordable housing units as part of the development. Due to the nature of the application (outline), the units have not been identified, but it has been suggested that the units would be for private rented purposes. Further details can be discussed as part of a detailed application. Whilst this is an outline application, to ensure consistency with national planning guidance and recent case law, a Section 106 agreement is required to ensure the affordable housing provision.

**SUMMARY AND CONCLUSIONS:**

It is considered that the principle of the development is acceptable. It is not considered that there would be an adverse impact on residential amenity or on visual amenity/AONB, subject to appropriate details controlled in a reserved matters application. It is not considered that there would be any adverse impact on highway safety. There are no concerns relating to flooding and ground contamination, subject to the inclusion of conditions. Affordable Housing units would be provided in accordance with adopted policy and guidance.

The recommendation is subject to the completion of an obligation under Section 106 of the 1990 Planning Act to secure:

- i) The provision of 2 no. affordable housing units and the retention of the units for affordable purposes

The Certificate of Decision would only be released on completion of the legal obligation, and on failure to complete within the 12 months of the date of this committee, the application would be represented to the Committee and determined in accordance with the policies of the Council applicable at that time.

**RECOMMENDATION: GRANT - subject to the following conditions:-**

1. Approval of the details of the siting, design and external appearance of the building(s), and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before the commencement of any development.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. The detailed layout, design, drainage, street lighting, signing, and construction of the internal estate road shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority prior to the commencement of any site works.
5. facilities shall be provided and retained within the site for the parking and turning of vehicles in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and shall be completed prior to the development being brought into use.
6. Full details of the access, footway and associated highway works adjacent to the A541 as indicated on approved plan (4963/L1 dated October 07) shall be submitted to and approved in writing by the Local Planning Authority before any works start on site. The details to be approved shall include the detailed design, construction, street lighting and drainage and the works shall be fully constructed in accordance with the approved details before any development commences.
7. The access shall have a visibility splay of 2.4m x 120m in both directions measured along the nearside edge of the adjoining carriageway overland within the control of the applicant and or highway authority and within which there shall be no obstruction in excess of 1.05m in height.
8. Details of the finished floor levels shall be submitted to and approved in writing by the Local Planning Authority and the development shall be proceed strictly in accordance with such approved details.
9. No buildings, structures or raising of ground levels shall be permitted within 7m of the bank of the main river (Afon Wheeler).
10. No work shall be permitted to commence until there has been a phased investigation carried out over the whole of the site to ascertain whether the development involves contaminated land, and whether development may impact on controlled surface waters or groundwater, such investigations should consist of a desk study and if deemed necessary within said study a comprehensive site investigation should be carried out in accordance with CLR11 (Model Procedures for the Management of Land Contamination) and BS:10175:2001 (The Investigation of Potentially Contaminated Sites) and to include water monitoring data, and the contents of each survey and it's conclusions have been submitted to the Local Planning Authority for assessment.
11. In the event that the site survey required by condition no 10 of this permission reveals the presence of a hazard from any contamination, no development shall be permitted to commence until there has been submitted to the Local Planning Authority a detailed site specific risk assessment to identify risks to water resources, surrounding land and property, wildlife, building materials, future users of the site and any other persons, and written approval of the Local Planning Authority has been obtained to detailed proposals for addressing the risks, specific measures for decontaminating the site and dealing with any unsuspected contamination which becomes evident during the development of the site. The development should not be occupied / used until a verification report prepared by an independent and suitably experienced third party to show that works have been satisfactorily carried out and has been submitted to and approved in writing by the Local Planning

Authority.

12. Foul water and surface water discharges shall be drained separately from the site
13. No surface water of land drainage run off shall be permitted to connect either directly or indirectly into the public sewerage system

The reason(s) for the condition(s) is(are):-

1. The application is for outline permission with details of means of access only.
2. To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.
3. To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.
4. To ensure that the estate road is constructed to a standard suitable for adoption and in the interest of traffic safety, is capable of catering for the amount of traffic that is likely to be generated by the proposal.
5. To provide for the loading / unloading, parking and turning of vehicles clear of the highway and to ensure that reversing by vehicles into or from the highway is rendered unnecessary in the interests of traffic safety.
6. In the interest of free and safe movement of all users of the highway and to ensure the formation of a safe and satisfactory access.
7. To ensure that adequate visibility is provided at the point of access to the highway in the interests of traffic safety
8. To minimise the risk of flooding to the buildings
9. To minimise the risk of flooding to any buildings and to ensure continued access to the watercourse to allow for future maintenance, flood flow routes and habitat corridors.
10. To ensure that the extent of the contamination is established and that adequate steps are to be taken to deal with the contamination
11. To ensure that the extent of the contamination is established and that adequate steps are to be taken to deal with the contamination.
12. To protect the integrity of the public sewerage system
13. To prevent hydraulic overloading of the public sewerage system

#### **NOTES TO APPLICANT:**

A suitable legal agreement will be required in relation to the highway works and you are advised to contact the Local Highway Authority to discuss the requirements of the highway improvements at an early stage.

The following notes are brought to your attention:

Highway supplementary notes no's 1, 3, 4, 5, and 10  
New Roads and Street Works Act 1991 - Part N Form  
Denbighshire County Council Specification for Road Construction  
Denbighshire County Council for Highway Lighting Installation  
Denbighshire County Council General Requirement for Traffic signs and Road Markings

Where any species listed under Schedules 2 or 4 of The Conservation (Natural Habitats, etc.) Regulations 1994 is present on the site in respect of which this permission is hereby granted, no works of site clearance, demolition or construction can take place in pursuance of this permission unless a licence to disturb any such species has been granted in accordance with the aforementioned Regulations.



<b>ITEM NO:</b>	2
<b>WARD NO:</b>	Rhuddlan
<b>APPLICATION NO:</b>	44/2009/0996/ PF
<b>PROPOSAL:</b>	Amendment to development of 38 No. dwellings in detached, terraced and apartment formats, previously approved under Code No. 44/2005/0081/PF, to allow provision of 6 No. affordable housing units to be transferred off-site and 4 No. affordable housing units to remain on-site on Plots 12, 13, 16 & 17
<b>LOCATION:</b>	Former Abbey Nurseries Land at Maes y Castell Estate (Castlefields) Rhuddlan Rhyl
<b>APPLICANT:</b>	K & C White K and C Group Ltd.
<b>CONSTRAINTS:</b>	Scheduled Ancient Monument Article 4 Direction
<b>PUBLICITY UNDERTAKEN:</b>	Site Notice - No Press Notice - No Neighbour letters - Yes

**CONSULTATION RESPONSES:**

**RHUDDLAN TOWN COUNCIL** – “ .....refused because it is contrary to Unitary Development Plan Policy HSG 10 relating to affordable housing”

**DCC CONSULTEES**

**HEAD OF TRANSPORT AND INFRASTRUTURE** – No objection

**HEAD OF HOUSING** - The priority of the Affordable Housing Officer is to secure housing to meet demand in Denbighshire, hence in principle, disagrees with the reduction of affordable provision agreed previously. Comments on a number of detailed points:

- affordable properties were originally agreed at Planning stage on the Castlefields site. The developer has recently submitted a financial statement to demonstrate that to provide the full provision would not be financially viable in the current economic climate.
- Reducing the number of affordable units to 4 and to provide 7 units (houses) on an alternative site would be a good prospect strategically in meeting the housing requirement for the town of Rhuddlan, but conflicts with Planning Policy.
- Rhuddlan town recently benefited from 6 affordable apartments which have proved difficult to sell, although of good quality and sold at a reasonable price. Additionally, the town has also benefited from commuted sum funding, used as Homebuy loans – enabling families to purchase 3 affordable open market houses. This scheme proved very popular.
- There has been a significant loss of council property in Rhuddlan through the Right to Buy since 1996, and of 46 properties sold, 91.3% of these were houses.
- “Need’ waiting lists shows 1059 people registered (507 being for 2/3 bed houses) confirming the need for more houses in preference to apartments.

- A local RSL has shown interest in the scheme and could apply for Social Housing Grant to enable the properties to be both rented and sold using various affordable methods and would meet Welsh Assembly Housing Quality Standards and built to their strict standard requirements.
- Notes that the concern of local residents that the site would not be wholly rented. The Authority and Housing Association would be looking to sell the majority of these properties via flexible purchase options including shared ownership. This would enable people on lower incomes to become Homeowners. Any prospective tenants and purchasers would have to meet strict criteria to access these properties including a five year local connection.
- The current waiting list for Rhuddlan shows a strong need for houses and from experience the need for apartments is not a high priority at present.

**RESPONSE TO PUBLICITY:**

None

**EXPIRY DATE OF APPLICATION: 11/10/2009**

**REASONS FOR DELAY IN DECISION:**

- timing of receipt of representations
- delay in receipt of key consultation response(s)
- additional information from applicant

**PLANNING ASSESSMENT:**

**THE PROPOSAL:**

Outline of application

The application seeks consent for a reduction in the number of affordable housing units to be provided within an approved and partially complete housing development at Castlefields, Rhuddlan. The permission granted in 2006 was for a total of 38 units, of which 10 were proposed as affordable units (as flats). The current application proposes a total of 4 affordables ( identified as plots 12 ,13,16 & 17) on the site and the 'transfer' of 6 affordables to the 'Orchards' site on Rhyl Road, Rhuddlan, which is the subject of the following report on a separate application on the agenda (Code No. 44/2008/0566/PF).

The development of the Castlefields site has commenced on the basis of the 2006 permission, and it is understood that some 17 units have been constructed at the time of preparing this report.

The application documentation includes a Design Statement, and financial data from the applicants( dated 29 July 2009) which forms the basis of the case that the site can not sustain affordable units in accord with policy. Briefly, the Design Statement highlights the following;

- Description of the physical context of the site and locality
- Economic principles – highlighting that;  
'it is not possible in the economic climate to retain the full ten apartments for affordable living on the Castlefields site and K& C Group have provided the figures and facts to the Local Authority.  
Retaining four apartments on the Castlefields will ensure that development is feasible yet non-exclusive, nor will it set a dangerous precedent as the s 106 Agreement was signed early in the Council's adoption of their affordable housing policy.' Additionally, reference is made to data collected by Jones and Redferns Estate Agents and Valuers which illustrates that the transfer of affordable dwellings from one site to another is not for financial gain.

- The policy context – with the 70/30% split on the Orchard site ( see plan accompanying this report), the borough would have a net gain of 11 units – seven being family houses; houses constituting a larger percentage on the Social Housing list for Rhuddlan, with DCC Housing Services establishing the need for dwellings in lieu of flats; if the scheme proceeds with Cymdeithas Tai Clwyd, properties could be purchased as Intermediate housing; type of schemes popular due to lack of 100% mortgage availability; ten apartments could house 20 people – seven dwellings could house as many as 40.
- Environmental sustainability – considers the landscape; habitat; energy; waste/water management; building materials.
- Accessibility /movement to /within the site, including inclusive design

The financial data consists of a single sheet listing costs and selling prices, with reference to The Orchards development.

#### Description of site and surroundings

The site, known as 'Castlefields', extends to approximately 1.4ha, and is located within the development boundary of Rhuddlan, with vehicular access onto Abbey Road. The site is bounded to the north and west by Ysgol y Castell playing field, with a mix of two/two and a half storey dwellings beyond to the north and east, and Pleasant View Camp to the south. Historically, the site has been in use as a commercial nursery.

As stated above, there are some 17 completed detached dwellings and town houses on the site at the time of preparing this report. No development has commenced on any of the flats, or a detached dwelling proposed near the site entrance.

#### Relevant planning constraints/considerations

Part of the site lies within a scheduled ancient monument and conservation area. The approved residential development for the site received the necessary Scheduled Ancient Monument Consent (through CADW), in advance of the planning application submitted for 38 dwellings. In considering the planning application it was acknowledged that the form of proposed development was heavily constrained by the limitations and requirements of the Scheduled Ancient Monument Consent (SAMC).

#### Relevant planning history

Planning permission was granted, with a Section106 agreement in January 2006, for the erection of 38 dwellings and the construction of a new roadway. The permission was subject to a S.106 agreement requiring provision of 10 affordable units and payment of a commuted sum open space contribution. The agreement was signed by the applicants.

The permission to erect 38 dwellings ( see plan) included the following:

- a. 38 dwellings of which 10 were detached 4/5 bedroom dwellings arranged around a cul-de-sac head, with one dwelling fronting onto Abbey Road.
- b. Two blocks of three storey apartments accommodating 10 2 bedroom flats adjoining the school playing field boundary and Hylas Lane. Block (10-19) providing affordable housing.
- c. Two blocks of three storey town houses (2 bedrooms)
- d. Two landscaped areas of open space (landscaped children play area next to the town houses and informal open area adjoining apartment block unit 20-29).
- e. Widening the existing site access, with the front stone boundary wall rebuilt at a height of 1 metre behind the visibility site line.

Plans for the minor repositioning of plots 6-9 were subsequently approved in October 2006.

The original planning application for 38 dwelling units was submitted to the Local Planning Authority in January 2005. Members may recall considering the proposal at the 20<sup>th</sup> April 2005 Planning Committee meeting. The Committee accepted the officer recommendation to approve the proposal, subject to the completion of a Section 106 Obligation and compliance with conditions. The two elements of the Obligation were:-

- Provision of 10 affordable housing units.
- Payment of a commuted sum payment involving £57,200 for the provision and maintenance of off-site open space and maintenance/management agreement of on site open space. The commuted sum figure was calculated using the authority's standard calculation formula and costs in place in April 2005.

The affordable housing units were offered in one 10 unit housing block. The Head of Housing Services recommended provision of 11 affordable units. It was considered impractical to split the provision between the different housing blocks in this case and the provision of 10 units was therefore considered acceptable in terms of provision of affordable housing units. In relation to the affordable housing element of the Obligation, the terms included a requirement to erect and complete these no later than the completion of 70% of the Open Market Units.

The legal agreement was not completed immediately and the applicants subsequently requested the Local Planning Authority to consider a reduction in the total amount of the open space commuted sum payment in late 2005. This obliged officers to re-present the application to the December 2005 Planning Committee. The request for a reduction in the total commuted sum payment was based on the following arguments:-

- Subsequent to the Planning Committee resolution, there were lengthy discussions to resolve and ultimately reach agreement on the sale price for affordable residential units.
- Exceptionally high costs associated with the requirement for on-site archaeology works and supervision, special foundations, additional drainage and additional fill to adoptable roads. A detailed cost break down was submitted .
- Aside from the legal obligation requirements, a condition of the draft permission (No. 14) required the provision of an on-site equipped children's play area.

The request for reconsideration of the commuted sum payment was assessed by the Council's Valuation and Estates Department. The conclusions were that the submission contained insufficient justification to agree to a reduction in the commuted sum payment. The applicants subsequently signed the original S. 106 obligation and the planning permission was issued in January 2006.

A further planning application in 2008 sought the relocation of the previously approved 10 affordable units off site, to 'The Orchards' site; and secondly, design alterations to the Plot 1 dwelling (previously approved as a detached two storey dwellinghouse, with integral garage). The relocation of the affordable units was refused permission and the alterations to Plot 1 were approved in November 2008.

#### Development/changes since original submission

The agent for the application has confirmed that the application should be dealt with as 'linked' to the concurrent application submitted for the 'Orchards' site.

#### Other relevant background information

The Orchards site is the subject of a separate planning application by the same applicant for the erection of 10 dwellings, which follows on the agenda for this Committee.

**RELEVANT PLANNING HISTORY:**  
**At the Castlefields Site**

44/2003/1111/PO Development of 1.4 ha. of land for residential purposes and alterations to existing vehicular access ( outline application ) WITHDRAWN

This application (submitted by a different developer) was resolved to be granted by the Planning Committee meeting on the 25 February 2004, subject to the signing of a 106 obligation. The legal obligation covered an off-site open space commuted sum payment. The application was to develop the land for the erection of 23 dwellings (six were to be provided for affordable housing). The layout plan showed a simple linear form of development served by an access off Abbey Road. An area of open space (to provide a children's play area) was also shown in the north-east corner of the site. The application was withdrawn before determination.

44/2005/0081/PF Erection of 38 dwellings, provision of open space and construction of new roadway from existing amended access GRANTED 27/01/2006

44/2006/0330 Amended positioning of plots 6-9 previously approved GRANTED 31/10/2006

44/2008/0569/PF A):- Amendment to development of 38 dwellings in detached, terraced and apartment formats, previously approved application under code no. 42/2005/0081/PF, to allow provision of 10 no. affordable housing units to be transferred off- site  
B):- Amendment to development of 38 dwellings in detached, terraced and apartment formats, previously approved application under code no. 42/2005/0081/PF, involving substitution of house type on plot 1

Split decision issued, on the 6 November 2008, under officer delegation scheme, as follows.

PROPOSAL A):- Amendment to development of 38 dwellings in detached, terraced and apartment formats, previously approved application under code no. 42/2005/0081/PF, to allow provision of 10 no. affordable housing units to be transferred off- site

REFUSE for the following Reason:-

"The Local Planning Authority considers that, based on the information and details submitted, the proposal is contrary to the aims of national guidance in TAN 2. Affordable Housing; Ministerial Interim Planning Policy Statement 01/2006 Housing ; together with the adopted Denbighshire Unitary Development Plan Policy HSG 10 and accompanying Supplementary Planning Guidance 22 - Affordable Housing in New Developments (adopted 26 July 2005) - in that, where affordable housing needs exist within development boundaries, individual developments of the scale proposed should provide an appropriate and well- integrated mix of housing types and tenures on site, to achieve a mixed and sustainable community. With regard to current housing need for the Rhuddlan Community, it is not considered there is justification for the provision 'off-site ' affordable housing units, as an acceptable alternative to on-site provision. The proposal is considered likely to encourage other similar proposals for off-site provision establishing an unacceptable precedent".

PROPOSAL B):- Amendment to development of 38 dwellings in detached, terraced and apartment formats, previously approved application under code no. 42/2005/0081/PF, involving substitution of house type on plot 1

GRANT

**At The 'Orchards' Site**

44/ 2006/0078/PF Erection of 2 apartment blocks comprising 16 apartments and alterations to existing vehicular access

Approved in principle at the September 2006 Planning Committee subject to the signing of a 106 obligation, within 12 months of the Committee recommendation, requiring

- 5 affordable housing units ( on site)
- payment of £ 47,385.60 commuted sum for open space off site.

The 106 remains unsigned and no permission has been issued.

44/2008/0566/PF Erection of 10no.dwellings and construction of new vehicular/pedestrian access. PENDING – **see following item on Committee agenda**

**PLANNING POLICIES AND GUIDANCE:**

DENBIGHSHIRE UNITARY DEVELOPMENT PLAN (Adopted 3<sup>rd</sup> July 2002).

Policy HSG3 - Housing development in main villages

Policy HSG10 - Affordable housing within development boundaries

**SUPPLEMENTARY PLANNING GUIDANCE**

Note 22 – Affordable Housing in New Developments (adopted 26 July 2005)

**GOVERNMENT GUIDANCE:**

Planning Policy Wales March 2002

Ministerial Interim Planning Policy Statement 01/2006 Housing (MIPPS)

**TANS:**

2 Affordable Housing June 2006

**CIRCULARS:**

Circular 13/97 Planning Obligations

**MAIN PLANNING CONSIDERATIONS:**

- i) Principle of development
- ii) Affordable housing proposals

In relation to the main considerations;

(i) Principle of development

The principle of the housing development at the Castlefields site has been established by the grant of recent permissions. The sole issue here is whether the Council should consent to the reduction in the number of affordable units from 10 to 4 on the site, and to the 'transfer' of 6 affordable units to the Orchards site.

(ii) Affordable housing proposals

Basis of the 'transfer' proposal

For clarity, the proposals to link the developments at the Castlefields and Orchards sites would mean:

	Total no. of dwellings	No. of affordables
Castlefields	38	4
Orchards	10	7 (of which 6 are from Castlefields)

The proposals as submitted are therefore for a total of 11 affordable units split between the two sites. The applicant's agent has confirmed that a 70/30 split on The Orchards site (affordables :open market units) would be acceptable, so long as the 30% can be sold to a Housing Association as the applicants feel fit to do so.

Current national and local policy context

MIPPS 1/2006 'Housing ' outlines the Assembly Government's approach for new housing, which is that developments should include a mix of affordable and market housing, in character and integrated with the locality. It points out that if a proposal does not contribute sufficiently towards the objective of creating mixed communities, the local planning authority should re-negotiate or may refuse an application. Additionally, it mentions that where development plan policies require an element of affordable housing, or other developer contributions, this will be a material consideration.

TAN 2 'Planning and Affordable Housing' provides further detailed guidance, and advises that developers should provide evidence in support of a reduced affordable housing component (for example a local over –supply of affordable housing) and justify a reduction in the amount of affordable housing to be provided on site. However, it also highlights that a review of the Local Market Housing Assessment could also justify an increase in the proportion of affordable housing on site. In relation to securing affordable housing, TAN 2 contains a strong presumption for this to be provided on site – to contribute to socially mixed communities.- and only in exceptional circumstances, through Development Plan or SPG's should provision not be on an application site.

Policy HSG 10 of the Denbighshire Unitary Plan sets out the Council's approach to the delivery of affordable housing within housing schemes. The justification to the policy advises that the exact/precise AH details will vary from case to case and will be dependent on market and site conditions which will be the subject of negotiation with the applicants. The extent of affordable housing will be based on evidence of local housing needs.

SPG 22 , which supplements HSG 10 suggests that the assessment of AH may be reviewed on the basis of new evidence/ information and more detailed local negotiation on proven local circumstances. It requires the Council to consider a minimum of 30% of affordable housing.

The SPG states on site provision is a priority and off- site provision should only be considered on the basis of satisfying specific criteria;. as follows:

- When it can be shown that on site provision is unfeasible, unsuitable or otherwise inappropriate.
- When off site provision would better meet the overall local housing needs.
- When planning, housing and / or regeneration objectives would be better served by having off site provision. This could include the

regeneration of derelict, empty or problem properties within development boundaries in the settlement in the immediate locality.

The SPG stresses that justification for off site provision will need to be *carefully made ' as the presumption will remain for on site provision unless circumstances indicate otherwise'*, and confirms that it is as a matter for the developer to demonstrate and for the planning authority in conjunction with the housing agencies to consider.

The SPG makes reference to circumstances where off site provision may be acceptable, and lists additional factors which apply where the principle of residential development has already been agreed on both the application site and the alternative site(s). In brief, these factors are;

- Complementary social housing grant funds are not available and there is no defined need for low cost housing in the immediate locality - but there is an alternative site.
- It has been demonstrated that the application site has serious problems regarding its economic viability and that with Affordable Housing the development is clearly economically unviable based on the excessive and abnormal development costs (contamination, infrastructure or services).
- Where a sequentially better alternative site (accessibility to transport and essential facilities) has come forward - which would not otherwise have done so- has been secured and itself possesses no Affordable Housing planning obligation. However, in this instance at least the same - if not enhanced- level of AH will be provided on the alternative site as would have occurred on the two sites combined.
- The proposal overall will lead to better integration across a community.
- The site is unsuitable based on adverse geography, hostile site characteristics, isolated location for Affordable Housing and a satisfactory alternative site has been secured.
- Wider benefits to the community can be demonstrated by providing the AH off site, without prejudicing the need for AH in the community.

### **Conclusions on the main points**

Having regard to the basic contents of the applicant's case and the policies and guidance relevant to the provision of affordable housing, officers do not consider the circumstances justify the reduction in the provision of affordable units at the Castlefields site, and the transfer of 6 units to the Orchards site.

The grounds for this conclusion are:-

- There is clear conflict with the Council and WAG planning policies and guidance, which seeks to secure on site provision of affordable units. The Council's Housing Officer considers the case is not made to justify the reduction in affordable provision on one site and to transfer part of that provision to another site. Additionally, it has to be questioned whether the 'overprovision' of affordable units on the Orchards site is necessarily in accord with the aims and objectives of the policy and guidance, seeking to secure integrated and mixed communities.
- It is not demonstrated in the submission that on site affordable provision is unfeasible, unsuitable or otherwise inappropriate. The financial information in support of the claim that the site can not sustain affordable units in accord with policy has been scrutinised by the Council's Valuation and Property



Manager. The conclusion is that in the absence of information on the level of profit made on the completed units (which would normally be used to subsidise the affordable provision on site), it is difficult to obtain a rounded view on the overall viability of the development. The Valuation and Property Manager notes however that market conditions and sales values were materially higher at the time the development took place, and suggests an element of cross subsidy for affordable units should be capable of being sustained by the developer either on or off site. In officers' opinion, these are important conclusions which suggest the arguments over viability are being put forward following the completion/sale of up to 17 open market units on the site, which will have generated a reasonable return for the developer. It does not seem unreasonable for the Council to take a view that the economics and feasibility of affordable provision should be assessed over the whole life of the development, and not on the basis of the 'remainder' of the development being unviable, i.e. discounting the return on the first phase of market housing now that market conditions have deteriorated.

- It is not considered that off site provision would better meet overall housing needs. There is clear evidence of affordable housing need in Rhuddlan from the Council's waiting list (primarily 2 bed flats and houses). The affordable provision at Castlefields as a standalone development would be 10 units. The proposals represent an under provision of 6 units based on simple application of the guidance.
- It is not considered the planning/housing/or regeneration objectives would be better served by having off site affordable provision. The provision of the appropriate number of affordables on both the Castlefields and Orchards sites would mean a mix of dwellings and a mixed community in different locations within the town, accessible to a range of services and facilities.

#### **SUMMARY AND CONCLUSIONS:**

On the basis of the information and details submitted, it is not considered there is justification to support the reduced provision of affordables at Castlefields or the principle of off site provision of affordable units at the Orchards site.

#### **RECOMMENDATION: - REFUSE** for the following reason:-

1. The Local Planning Authority considers that, based on the information and details submitted, the proposal is contrary to the aims of national guidance in TAN 2. Affordable Housing; Ministerial Interim Planning Policy Statement 01/2006 Housing ; together with the adopted Denbighshire Unitary Development Plan Policy HSG 10 and accompanying Supplementary Planning Guidance 22 - Affordable Housing in New Developments (adopted 26 July 2005) - in that, where affordable housing needs exist within development boundaries, individual developments of the scale proposed should provide an appropriate and well- integrated mix of housing types and tenures on site, to achieve a mixed and sustainable community. It is not considered there is justification for the alternative provision proposed, involving the reduction from 10 to 4 affordable housing units on the site and to provide an 'off site provision' of six affordable housing units ( at the site known as the Orchards, Rhuddlan), as an acceptable alternative to on-site provision. The proposal is considered likely to encourage other similar proposals for off-site provision establishing an unacceptable precedent for similar proposals in the future.

#### **NOTES TO APPLICANT:**

None

<b>ITEM NO:</b>	3
<b>WARD NO:</b>	Rhuddlan
<b>APPLICATION NO:</b>	44/2008/0566/ PF
<b>PROPOSAL:</b>	Erection of 10 no. dwellings and construction of new vehicular/pedestrian access
<b>LOCATION:</b>	Land Accessed Off Rhyl Road Adjoining Rhuddlan Cemetery New Road Rhuddlan Rhyl
<b>APPLICANT:</b>	Mr. Chris White K and C Group Ltd.
<b>CONSTRAINTS:</b>	
<b>PUBLICITY UNDERTAKEN:</b>	Site Notice - Yes Press Notice - Yes Neighbour letters - Yes

#### **CONSULTATION RESPONSES:**

**RHUDDLAN TOWN COUNCIL** – ‘Recommended for refusal because it is contrary to Policy HSG 10 of the UDP.’

#### **DENBIGHSHIRE COUNTY COUNCIL CONSULTEES:**

##### **DCC DRAINAGE ENGINEER**

Is unaware of any problems with this site. and suggests conditions to satisfy relevant legislation with e.g. attenuation flows ; keeping separate systems.

##### **DCC HOUSING SERVICES**

Highlights that the priority of the Affordable Housing Officer is to secure housing to meet the demand in Denbighshire. The current waiting list for Rhuddlan shows a strong need for houses.

Comments on a number of points:

- Advises that the application for 10 properties is a good prospect strategically in meeting the housing requirement for the town of Rhuddlan.
- The town has recently benefited from 6 affordable apartments which have proved difficult to sell, although they have been of very good quality and sold at a reasonable price. The town has also benefited from commuted sum funding which has been used as Homebuy loans to enable 3 families to purchase 3 affordable open market houses.
- Rhuddlan has lost a significant number of council houses in Rhuddlan through the Right to Buy since 1996 and of 46 properties sold, 91.3% of these were houses.
- The need on the waiting lists shows 1059 people registered (507 being for 2/3 bed houses).
- Should planning permission be granted for this scheme, a local RSL would be applying for Social Housing Grant to enable the properties to be both rented and sold by various affordable methods. The site would not be wholly rented which has been a concern of the local residents. The Authority and Housing Association would be looking to sell most of these properties via flexible purchase options including shared ownership.

- This will enable people on lower incomes to become Homeowners. Any prospective tenants and purchasers would have to meet strict criteria to access these properties including a five year local connection.
- If grant funded, the properties would have to meet the Welsh Assembly's Housing Quality Standards and the properties would be built to their strict standard requirements.
- The properties would be managed by a local RSL and would be a mixture of 2/3 bed houses to supply the demand for families, adding to a sustainable community, rather than apartments which are not a priority and do not add to a social mix.

**DCC HEAD OF HIGHWAYS AND INFRASTRUCTURE** – Further to discussions with the agent for the planning application, no objections subject to standard conditions.

**DCC ECOLOGIST** - No objection, subject to further details of the great crested newt mitigation measures ( listed in the species report), including how the measures will be overseen and monitored by a licensed ecologist and actual timing of measures. Suggests the applicant seeks CCW's advice regarding protected species licence, and landscaping/hedging to utilise native species.

**DCC PRINCIPAL PARKS, PLAY GROUNDS AND PLAYING FIELDS OFFICER** – Comments on the need for future maintenance of boundary features. Notes that Rhuddlan has a deficit in open space provision and the site neighbours Admiral's Field. In the circumstances, with the 10 properties proposed, and in the absence of a reduction in house numbers, and no on site open space, a commuted sum approach may be an alternative. Details of site planting need to be conditioned.

**COUNTRYSIDE COUNCIL FOR WALES** – No objection, subject to conditions to ensure implementation of species report conclusion and recommendations, including the submission of a detailed Reasonable Avoidance Measures Scheme and SUDS scheme.

#### **RESPONSE TO PUBLICITY:**

Letters of representation received from:  
 G & J P Davies, Haulfre, Rhyl Road, Rhuddlan  
 T A Merchant and A J Whitehouse, Berthen, Rhyl Road, Rhuddlan  
 M Gibson, Wayside, Rhyl Road, Rhuddlan  
 P D & J Bradford, Hillary, Rhyl Road, Rhuddlan  
 Mr & Mrs Fisher-Jones, Ardwyn, Rhyl Road, Rhuddlan  
 J Williams, Marl, Rhyl Road, Rhuddlan  
 J Weston, Coed Y Brain, Rhyl Road, Rhuddlan  
 Mrs. L. N. Rowlands, Springfield, Ffordd Rhyl, Rhuddlan

Summary of planning based representations – in objection:-

Affordable housing – clustering together; against grouping of affordable housing; greater social benefits for affordable housing on all developments, than grouping on one site; moving affordable housing from one site to another; affordable housing should be spread out to avoid a 'ghetto'; various questions concerning affordability – by whom and how much; will they be exclusively for locals?; need to keep youngsters in the locality: contrary to policy HSG 10.

Highways – vehicular entrance narrow; increase in traffic detrimental to road safety' existing access already difficult.

Drainage – queries regarding capacity; site conditions indicate a possible drainage problem.

**EXPIRY DATE OF APPLICATION: 10/12/2008**

**REASONS FOR DELAY IN DECISION:**

- Previous deferral from Planning Committee for further assessment
- additional information required from applicant
- negotiations resulting in amended plans
- re-consultations / further publicity necessary on amended plans and / or additional information

**PLANNING ASSESSMENT:**

**THE PROPOSAL:**

Outline of application

The proposal is for full planning permission to erect 10 no. two storey houses, which includes two pairs of semi detached houses and the remaining 6 units in two staggered rows of three dwellings. 5 dwellings include 2 bedrooms ( Plots 1 – 5) 5 dwellings include 3 bedrooms ( plots 6-10). The site area is approximately 0.54 hectare.

The proposal also includes alterations to the junction of the existing access on to Rhyl Road and widening the width of the existing road (from the main Rhyl Road entrance) which serves the site and adjacent areas. This involves utilising part of the existing garden area of an end of terrace property fronting onto Rhyl Road, known as Rhydwen. The proposal also involves the removal of trees within the site.

The report should be read in conjunction with the preceding item on the agenda relating to the development at The Castlefields (Maes y Castell) site in Rhuddlan, Code No. 44/2009/0996/PF. It is submitted by the same applicants, who have requested that the two proposals be considered concurrently as the application relating to the Castlefields site proposes the 'transfer' of 6 affordable units to the Orchards site as part of this development.

The Orchards application includes a Supporting Statement; Design Statement; Affordable Housing Questionnaire and Protected Species Report. Briefly, these documents include;

- The statement ( prepared by Jones & Redfearn, Chartered Surveyors ) in support of the Transfer of affordable housing from the applicants K & C development site – Castlefields – to this site, which outlines 8 reasons, including costs; social and site specific considerations.
- A Design statement, which describes the site context, noting its proximity to residential and commercial buildings; key objectives for the scheme; adopting the existing building line of Rhyl Road. Reference is also made to inclusive design; highways; landscaping and design features. External materials to include brick walls and concrete tiled roofs.
- The Affordable Housing questionnaire, confirming initially that all 10 houses were to be affordable units (transferred from Castlefields) with details of the tenure to be confirmed by Cymdeithas Tai Clwyd. The agents have subsequently confirmed the proposal is for 7 out of the 10 houses to be for affordable housing, and could be increased to 100%.
- A Protected Species report, which highlights the presence of great crested newts within land that appears to be within the Rhuddlan Golf Course ( further east). The report, although concluding the low potential for newts to leave this

area and negotiate their way to the application site is low, reports reasonable Avoidance Measures should be used, more so as a precautionary measure. Measures could for example include temporary amphibian fencing. Additionally, guidelines concerning licensing requirements may also need further work with CCW. The report also suggests consideration of a Sustainable Urban Drainage Scheme.

#### Description of site and surroundings

The application site comprises overgrown scrub and is relatively level area. It is located to the north west of Rhuddlan Cemetery and to the rear of properties fronting Rhyl Road. An existing vehicular access serves the site – from Rhyl Road, which serves the rear of the residential properties, the Multi Use Games Area (MUGA) which is located to the south east of the application site, and the remainder of the playing fields.

Properties fronting Rhyl Road, to the west of the site, are 2 storey, predominantly brick built properties, many of which have detached garages located at the end of the rear gardens, and accessed via the lane off Rhyl Road. To the eastern boundary of the site are modestly sized, single storey dwellings, with vehicular access onto New Road, positioned on relatively higher ground.

The site includes, predominantly on the boundary, a mix of mature, semi mature and small trees.

#### Relevant planning constraints/considerations

The site lies within the defined development boundary for Rhuddlan.

#### Relevant planning history

Planning permission has previously been granted for the use of the land as a private cemetery.

Members may recall consideration of an application for two apartment blocks comprising 16 apartments, and alterations to the existing vehicular access, at the September 2006 Planning Committee. The Committee resolved to grant the permission subject to the completion of an obligation under Section 106 of the Planning Act to secure the provision of 5 affordable units, and payment of a commuted sum in lieu of open space provision within the site. The S.106 agreement has never been signed so no permission has been issued.

It is understood that the applicant involved with that application is no longer involved with the site ownership and the planning application.

There are only limited differences in the extent of land involved with the current application and the 2006 proposal. The current application site now includes Rhydwen, the end terrace house, adjoining the vehicular access point to the site.

#### Development/changes since original submission

The layout has been revised to include limited changes to dwelling positions and plot sizes (plots 1, 2, 9 & 10).

Further clarification has been sought on the extent /details of landownership involved with the Orchards site and has resulted in additional legal and planning notices being served, specifically with the Rhuddlan Town Council (as owner of part of the lane/highway to/from the site.)

Initially, the application was submitted on the basis of all 10 dwellings as affordable housing units. The proposal for affordable housing units is linked to the development at

Castlefields, as it included units here as 'off site' provision of affordable housing for that development.

During the progression of this application, the agent for the application has confirmed that the application should not be dealt with as a 'stand alone' application i.e. it is still linked with the proposals at the Castlefields site. A separate committee report on the Castlefields development precedes this report on the Committee agenda ( code 44/2009/0996/PF).

Additional revisions to the Orchards plans (including highway detailing and plot relationship and layout) have resulted in further re-consultations. The number of affordable units proposed is now 7 units and not 10 as originally submitted, although the agents have recently advised that "a 70/30 split on the .....site would be acceptable, so long as the 30% can therefore be sold to a housing association as K and C feel fit to do so".

The applicants' planning agent has also raised the possibility of offering a unilateral undertaking under S. 106 of the Planning Act to cover the affordable provision, or any other matter prior to determination of the application.

#### Other relevant background information

The Orchards application was deferred at the 30 September Planning Committee, in particular to seek further clarification concerning drainage and open space issues.

In brief, in respect of the separate Castlefields site, planning permission has previously been granted in 2006 for 38 units ( comprising 18 dwellings and 20 flats). Some 17 units have been completed on this site. The permission was subject to a S106 obligation obliging payment of open space commuted sums and the provision of 10 affordable units.

Amendments were sought to the 2006 permission at Castlefields including a proposal to allow the 10 affordable units be built on an alternative site, i.e. the 'Orchards' site. This part of the application was refused in November 2008 for the following reason :

*"The Local Planning Authority considers that, based on the information and details submitted, the proposal is contrary to the aims of national guidance in TAN 2. Affordable Housing; Ministerial Interim Planning Policy Statement 01/2006 Housing ; together with the adopted Denbighshire Unitary Development Plan Policy HSG 10 and accompanying Supplementary Planning Guidance 22 - Affordable Housing in New Developments (adopted 26 July 2005) - in that, where affordable housing needs exist within development boundaries, individual developments of the scale proposed should provide an appropriate and well- integrated mix of housing types and tenures on site, to achieve a mixed and sustainable community. With regard to current housing need for the Rhuddlan Community, it is not considered there is justification for the provision 'off-site ' affordable housing units, as an acceptable alternative to on-site provision. The proposal is considered likely to encourage other similar proposals for off-site provision establishing an unacceptable precedent "*

The second part of the planning application included a substitution of house type on plot 1, which was approved.

The current undetermined planning application for the development at Castlefields (Code 44/2009/0996/PF) is for the following:-

*Amendment to development of 38 dwellings previously approved under code no. 44/2005/0081/PF to allow provision of 6 no. affordable housing units to be transferred*

*off site and 4 no affordable housing units to remain on site on plots 12,13,16, 17 on former Abbey Nurseries.*

The proposals are therefore to provide a total of 4 affordables on the Castlefields site, and to 'transfer' 6 affordables from that site to the Orchards. If the two proposals can be considered 'concurrently', the Orchards development would therefore comprise a total of 10 units, 7 of which would be affordables; comprising 6 units from the Castlefields scheme and 1 from the Orchards development. Members are referred to the Castlefields report for full details of that development.

**RELEVANT PLANNING HISTORY:**

44/198/99/PF Change of use of land for private cemetery GRANTED 03/06/1999

Approved at Planning Committee 2 June 1999.

44/200/0293/AC Details of condition No. 5 ( groundwater features ) on planning permission ref. 22/198/99/PF APPROVED 05/04/200

44/2003/0589/AC Details of condition no. 2 ( landscaping) on planning permission ref 44/198/99/PF APPROVED 22/05/2003

Code 44/2006/0078/PF – Erection of 2 apartment blocks comprising 16 apartments and alterations to existing vehicular access. PENDING 106 completion.

Planning Committee 6 September 2006 resolved to grant in accord with Officer recommendation, subject to completion of a legal agreement.

**PLANNING POLICIES AND GUIDANCE:**

1. DENBIGHSHIRE UNITARY DEVELOPMENT PLAN (adopted 3<sup>rd</sup> July 2002)  
Strategic Policies  
1,5,7,8,11,12,13,15,16

General Policies

Policy GEN 1 - Development within development boundaries

Policy GEN 2 - Development of unannotated Land

Policy GEN 6 - Development Control Requirements

Policy GEN 8 – Planning Obligations

Policy GEN 10 – Supplementary Planning Guidance

Policy ENV 6 - Species Protection

Policy ENV 7 - Landscape/Townscape Features

Policy ENP 1 - Pollution

Policy ENP 4 - Foul and Surface Water Drainage

Policy HSG 3 - Housing Development in main villages.

Policy HSG 10 - Affordable Housing in Development Boundaries

Policy REC 2 - Amenity & Recreational open space requirements in new developments

Policy TRA 6 - Impact of new development on traffic flows

Additional Policy – Local Connections Affordable Housing Policy adopted Summer 2007.

Supplementary Planning Guidance

SPG 2 Landscaping

SPG 4 Recreational Open Space

SPG 6 Trees and Development

SPG 8 Access for All  
SPG 18 Nature Conservation and Species Protection  
SPG 21 Parking Requirements In New Developments  
SPG 22 Affordable Housing in New Developments  
SPG 25 Residential Development Design Guide

Other Relevant Council publications/documents

Local Biodiversity Action Plan  
Denbighshire Landscape Strategy  
Access for All  
Access Statements

GOVERNMENT GUIDANCE

Planning Policy Wales (March 2002) as amended via MIPPS and circular letters  
TAN 1 Joint Housing Land Availability Studies  
TAN 2 Planning & Affordable Housing  
TAN 5 Nature Conservation and Planning  
TAN 12 Design ( as supplemented)  
TAN 18 Transport

Circular 35/05 – The Use of conditions in planning permissions  
Circular 13/97 – Planning Obligations

**MAIN PLANNING CONSIDERATIONS:**

The main issues in this case are considered to be:

- i) Principle of development
- ii) Impact on amenity and privacy.
- iii) Design
- iv) Drainage
- v) Highways, including parking and sustainability
- vi) Protected species
- vii) Affordable housing.
- viii) Open Space
- ix) Landscaping
- x) Inclusive design

In relation to the main considerations noted above:

Principle of development

- i) The site lies within the current development boundary for Rhuddlan, and is 'Un-Annotated' land in the proposals map in the Unitary Plan. The principle of use (as a private cemetery and residential development ) have previously been accepted by the Council.

Most recently, at the September 2006 Planning Committee, members resolved to grant permission for 16 flats subject to the completion of a 106 legal obligation.

There has been no change in planning policy which would suggest a different approach to the principle of residential development. Any proposal would have to be subject to site specific considerations, set out in a range of policies in the Unitary Plan. The affordable housing issues are reviewed in subsection vii following.

- ii) Impact on amenity and privacy.  
Planning policy GEN 6 seeks to safeguard sufficient privacy and amenity



levels for occupiers of existing and new properties.

Having regard to the revised details, the layout and design would achieve acceptable distances and relationships between existing and proposed dwellings, with dwellings orientated to maximise daylight penetration and sufficient garden areas for all units. There also remains sufficient garden area for the property directly fronting onto Rhyl Road – Rhydwen – which would have a reduced garden to enable road widening works.

In the event of the approval of the details, adequate safeguards could also be included for arrangements during construction stage, minimising disruption to local residents. A construction method statement can be conditioned to control impacts on nearby property.

The proposal is considered to achieve the aims of GEN 6.

iii) Design

GEN 6, SPG 14 and 25 highlight relevant design considerations with development proposals, together with TAN 12.

The submitted Design Statement makes reference to key design and vision objectives. In the context of the previous planning application for 16 flats on the site, the size, scale and design now proposed is considered to represent a more acceptable design approach for the site. With the use of appropriate external materials and sympathetic landscaping, there would be limited visual impact on the locality and the proposal is considered to comply with the aims of the planning policy and related design guidance.

iv) Drainage

Policies GEN 6 criteria x) ; ENP 1 Pollution, criteria i) ; ENP 4 – Foul and Surface Water Drainage, together with policy ENP 6 – Flooding, seek to control and avoid unacceptable harm to the environment /locality in terms of water and drainage implications. ENP 4 highlights that development will not be permitted unless satisfactory arrangements can be made for the disposal of foul sewage and surface water.

The application forms submitted in respect of the 2006 planning application (for 16 flats) indicated use of the public sewer for foul waste disposal; and a surface water drain for rainwater disposal. No detailed drainage plans were submitted with that application but Welsh Water raised no objection to the proposal subject to securing separate drainage systems for foul and surface water. Welsh Water also advised that a public sewer crosses the access road leading to the site, and provided a map with their response to show the line/position of the foul sewer, and also the line of the surface water system – which runs along the easterly side of Rhyl Road. The September 2006 officer report recommended inclusion of a condition on any permission to require approval of the details of drainage system.

On the current planning application for 10 houses, the application forms indicate foul and surface water would be dealt with by means of an existing combined surface/foul system. No combined foul and surface water system exists within or directly adjoining the site. Welsh Water have no objections to the application, subject to the inclusion of conditions, similar to those suggested previously, requiring construction

of separate foul and surface water systems, an approach supported by the Council's Drainage Engineers.

The Countryside Council for Wales have suggested inclusion of a condition to secure a sustainable urban drainage system ( SUDS). This approach could include the potential for on site storage and disposal of surface water.

It is understood that there is a possibility that separate, private drainage systems may exist on the land, serving adjacent residential properties. This is a private matter which would be more appropriately resolved between the respective parties.

In light of this background, it is not considered the proposal is in conflict with policies ENP 1 – Pollution and Policy ENP 4 - Foul and Surface Water Drainage, given that specific conditions could be included to ensure assessment, approval and control of drainage arrangements.

v) Highways, including parking and sustainability

GEN 6 and TRA 6 require consideration of highway and parking safety. SPG 21 sets out maximum parking requirements in new developments. It advises for 2 bedrooed dwellings 2 car spaces per unit and, for 3 & 4 bedrooed units 3 car spaces per unit.

The proposed layout indicates 20 no car parking spaces within the site, with two car parking spaces identified for each property; representing five less than the maximum standards.

The site is considered to be 'sustainable' with regard to proximity to local services, public transport, and density, and the development would be in line with the government's approach to maximising the sustainable use of land. Given this context reduced parking standards could be justified, with an emphasis on non car modes of travelling, including cycling and walking.

Highways and car parking considerations were reviewed in detail in the previous planning application for 16 flats for the site, and were considered acceptable by the Highways Officer. The current planning application includes the same highway works and improvements as the previous application – essentially to increase the width of the access road to 4.5m to accommodate two-way flow traffic. Revised plans have been submitted to address Highways issues.

It is considered as with the previous planning application, that the proposal would have limited highway implications, providing an opportunity to increase/improve visibility onto Rhyl Road.

vi) Nature conservation and protected species

The current legislative and planning policy framework sets a strict requirement on the local planning authority to take into account the potential impact on wildlife and in particular protected species. (Policies ENV 1, ENV 6, ENV 8 and GEN 6); Planning Policy Wales : Habitat Regulations; Unitary Plan Policy and Supplementary Guidance). Significantly, where there are grounds for suspecting the presence of European Protected Species, their presence should be established before the grant of permission.

In this case, both the Countryside Council for Wales and County Ecologist have highlighted the potential for Great Crested Newts, given existing habitats and recorded presence in the locality. The species report provides sufficient information to confirm that suitable Reasonable Avoidance Measures can be conditioned in this case. The proposal therefore complies with the policies and guidance relating to protected species.

A note to applicant can be included, in the event of planning permission being granted, to highlight the need to liaise with the Countryside Council for Wales, WAG, and the County Ecologist in respect of complying with any potential WAG protected species licence requirements.

- vii) Affordable Housing – National and local policy  
Members will be aware of the requirement to consider the provision of affordable housing in connection with a scheme of this nature. The context is set by Welsh Assembly Government in the Ministerial Planning Policy Statement in 2006 and TAN 2; refined in Unitary Development Plan Policy HSG 10 and the Council's related Supplementary Planning Guidance 22 Local Connections Policy; and underpinned by Housing Need Surveys. The stress is on provision of Affordable Housing within development sites. The key elements of these background documents are outlined in the Castlefields report which precedes this on the agenda.

The scheme before Planning Committee in 2006 involved 16 flats and included 5 affordable units. The number of affordables was based on application of the relevant criteria in SPG 22. The current proposal for 10 units in total on the site would mean an affordable requirement of 3 units as a standalone development.

The proposal here is for 10 houses and a total of 7 affordables, (on plots 1, 2, 6, 7, 8, 9 and 10) – as part of a 'transfer of affordable housing provision from the Castlefields site – with the relocation of 6 units to reduce the level of provision at Castlefields to a total of 4 units. The agents have advised that this 70/30 split would be acceptable so long as the 30% can be sold to a Housing Association as the applicants feel fit to do so.

The applicants' case for the 'transfer' arrangement is based on a review of development costs at Castlefields and the effect of the economic climate making that scheme unviable with insistence on 10 affordables on the site.

Members will know from the contents of the report on the Castlefields application that officers do not consider the proposals to reduce the number of affordables on that site justify support in principle, or that the option of 'transferring' 6 affordables to the Orchards site is acceptable. There are particular reservations over the practicality of linking developments in the circumstances applying here, and it is not recommended that the Orchards application should be supported on the basis of providing an alternative location for affordables for the Castlefields development.

Taken purely as a standalone development, it is suggested that there may be a basis of support for a minor overprovision of affordable units

on the Orchards site, providing the scheme results in a suitable mix of dwellings. On that basis, officers would have no overriding concerns over a total of 7 affordables on the site as originally proposed with this application, (subject to suitable legal controls), as this would represent an 'additional' 4 units on top of the 3 required by the affordables policy in the Unitary Development Plan.

- viii) Open space  
Policy STRAT 16 and Policy REC 2 of the Unitary Development Plan require, where appropriate, that new development should provide landscaped amenity areas on developments of 10 or more units. SPG 4 outlines the options to consider provision of open space areas. The requirement for an on site open space for 10 residential units, based on the current adopted Council standards amounts to 960sqm (720m<sup>2</sup> for Community Recreational Open Space (CROS) and 240m<sup>2</sup> for Children's play provision).

In similar fashion to the 2006 application for 16 flats, the current proposal shows limited open space provision and no formal provision included for recreational space. The Planning Committee accepted in 2006 that given the location of the site and proximity to open space areas in Rhuddlan, that a commuted sum approach would be reasonable in this case.

In support of this application, the application site lies within easy, accessible walking distance (less than 10 metres) to the Admiral's Field and play fields. It is understood that the Admiral's Field is one of the local facilities in need of refurbishment.

Amendments to the proposal include revisions to site layout which has led to an improvement in the level of both private amenity spaces and the relationship with neighbouring residential properties.

Having regard to the detailing, and the requirements of SPG 4, and following discussions with the Council's Parks and Gardens Officer, the proposal to adopt a commuted sum approach is considered to comply with the policy and guidance. The additional finances could provide an opportunity for community benefits on a recreation site within walking distance of the proposal. Based on the current standard approach, the commuted sum payment would include £33,957.60 - off site provision = £20,671.20 and maintenance £13, 286.40 of open space (subject to inflation).

A commuted sum payment can be dealt with by way of a Section 106 obligation tied to any permission.

- ix) Landscaping  
The submission includes limited landscaping details. In light of the site's location and the response of The Council's Parks and Gardens Officers, sensitive and appropriate boundary details are essential, and can be covered by condition. Although the proposal involves the removal of some trees, these have previously been acknowledged as of no significant visual value.
- x) Inclusive design  
Members will be aware that Access Statements are now mandatory for most planning applications, and access issues have to form part of a

planning assessment. The approach is outlined in TAN 18 Transport, and Policy GEN 6 which sets out the need to provide safe and convenient access for persons with disabilities. SPG 8 'Access for All' supplements this policy, together with SGP 25 'Residential Development Design Guide' and the Council's document 'Planning and Inclusive design'.

The application details show a positive approach to inclusive design, respecting the Welsh Assembly approach for residential development quality standards. The proposal is considered to be acceptable in this respect.

#### **SUMMARY AND CONCLUSIONS:**

Having due regard to the issues, it is considered of some relevance here that the previous scheme (for 16 flats) established the principle of residential development for this site. Therefore, taken purely in terms of a layout and design, the current proposal is considered acceptable and merits support.

In relation to the affordable housing issues, at the time of preparing the September Committee report, The Orchards application was assessed as a 'stand alone' proposal, with no affordable housing link with the Castlefields site. Officers considered that current planning policy and guidance allowed the Council to support a higher proportion of affordable units ( 7 out of 10), on the basis of sound evidence and need, and having established that the evidence existed in this case, it was recommended that permission be granted subject to completion of a Section 106 Agreement. Officers remain of the opinion that this is an acceptable approach in principle.

In concluding on The Orchards application, officers do not consider that the proposals to 'transfer' 6 affordable units from the Castlefields site, and to allow the applicants to sell the remaining open market units to a housing association, should they so choose, are acceptable.

The recommendation is therefore for the grant of planning permission based on the submitted layout and design, and to the completion of a legal agreement restricting the number of affordable units to 7, none of which should be as a 'transfer' from the Castlefields site. The recommendation is to GRANT subject to the completion of an obligation under section 106 of the 1990 Planning Act to secure the following:-

- in relation to open space provision :the payment of £33, 957.60 - off site provision £20,671.20 ; maintenance £13, 286.40 of open space (subject to inflation)
- in relation to affordable housing; the provision of 7 affordable housing units and their retention thereafter for affordable housing purposes (but not as units 'transferred' from the Castlefields site).

The permission will only be released on completion of the Obligation. The Obligation must be completed within 12 months of the date of the resolution by the Committee to grant permission; otherwise the application will be reported back to the committee and determined against relevant policies and guidance at that time.

#### **RECOMMENDATION: - GRANT** subject to the following conditions:-

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
2. PRE-COMMENCEMENT CONDITION

The detailed layout, design, means of traffic calming, signing, drainage construction and lighting of the access and internal estate road shall be submitted to and approved by the Local Planning Authority prior to the commencement of any site works.

3. None of the dwellings hereby approved shall be occupied until the roads and pavements have been constructed to base coat level.
4. Facilities shall be provided and retained within the site for the loading/ unloading, parking and turning of vehicles in accordance with the approved plan and which shall be completed prior to the development being brought into use.
5. The highways works shall be completed to wearing course level before the last dwelling is occupied.
6. All foul drainage shall be directed to a foul sewerage system and all surface water drainage to a surface water system unless otherwise agreed by the Local Planning Authority.
7. There shall be no discharge of surface water to the combined sewer system.
8. PRE-COMMENCEMENT CONDITION

No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in TAN 15, and the results of the assessment provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. include a timetable for its implementation; and specify the responsibilities of each party for the implementation of the SUDS scheme, and
- iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

9. PRE-COMMENCEMENT CONDITION

No development shall take place until there has been submitted to, and approved in writing by, the Local Planning Authority, a detailed scheme of hard and soft landscaping for the site, and such scheme shall include details of:

- (a) all existing trees, hedgerows and other vegetation on the land, details of any to be retained, and measures for their protection in the course of development.
- (b) proposed new trees, hedgerows, shrubs or vegetation, including confirmation of species, numbers, and location and the proposed timing of the planting;
- (c) proposed materials to be used on the driveway(s), paths and other hard surfaced areas;
- (d) proposed earthworks, grading and mounding of land and changes in levels, final contours and the relationship of proposed mounding to existing vegetation and surrounding landform;
- (e) Proposed positions, design, materials and type of boundary treatment.

10. PRE-COMMENCEMENT

Prior to the commencement of the development, the written approval of the Local Planning Authority shall be obtained in respect of the walls and roof materials to be used for the development hereby permitted and no materials other than those approved shall be used.

11. PRE-COMMENCEMENT CONDITION

Prior to the commencement of development the following details shall be submitted to and approved in writing by the Local Planning Authority:

- Additional newt mitigation detail
- Timing of works on site

The reason(s) for the condition(s) is(are):-

1. To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. To ensure that the estate road system is constructed to adoption standards and in the interests of traffic safety, is capable of catering for the amount of traffic that is likely to be generated by the proposal.
3. In the interest of highway safety and to ensure the development is served by a satisfactory form of access prior to completion of the service road.
4. To provide for the loading/ unloading, parking and turning of vehicles and to ensure that reversing by vehicles into or from the highway is rendered unnecessary in the interest of traffic safety.
5. In the interests of traffic safety.
6. To ensure the proper drainage of the site and to minimise the risk of pollution.
7. There is insufficient capacity in the existing drainage system to cater for additional surface water flow.
8. To ensure proper drainage and maintenance of the site.
9. To ensure in the interests of visual amenity a satisfactory standard of landscaping in conjunction with the development.
10. In the interests of visual amenity.
11. In the interests of safeguarding potential adverse affects on adjacent Great Crested Newts.

**NOTES TO APPLICANT:**

Your attention is drawn to the attached Highway Supplementary Notes Nos. 1, 3, 4, 5 & 10.

The Highway Authority advise that there will be a need for a Section 278 Agreement under the Highways Act to be entered into prior to the commencement of the development.

Your attention is drawn to the attached Part N form (New Road and Street Works Act 1991).

You are advised to liaise with the Countryside Council for Wales and the County Ecologist with a view to complying with any relevant Great Crested Newts licencing requirements.

The landscaping details required shall include habitat suitable for great crested newt. Details included for additional newt mitigation measures should also include how the measures will be overseen and monitored by a licensed ecologist and actual timing of measures.

<b>ITEM NO:</b>	4
<b>WARD NO:</b>	Rhyl South East
<b>APPLICATION NO:</b>	45/2009/0437/ PO
<b>PROPOSAL:</b>	Development of 0.85 hectares of land by erection of residential care home (Class C2) and ancillary development of day nursery (Class D1) and community centre (Class D2), ancillary parking areas and associated access road (Outline application)
<b>LOCATION:</b>	Land Off Ffordd Elan Rhyl
<b>APPLICANT:</b>	T Anwyl & Son Ltd.
<b>CONSTRAINTS:</b>	C2 Flood Zone C1 Flood Zone Groundwater Vulnerability 1 Article 4 Direction
<b>PUBLICITY UNDERTAKEN:</b>	Site Notice - Yes Press Notice - Yes Neighbour letters - Yes

#### **CONSULTATION RESPONSES:**

##### **External Consultees**

RHYL TOWN COUNCIL – “Object on the following grounds:-

1. The Planning Committee understands that the application site is currently designated within the UDP as CF4 Community Facilities. The Committee does not consider that the proposed use of land as a residential care home would satisfy this designation for community use.
2. The Planning Committee is concerned that the existing infrastructure would be unable to deal with water drainage from the development. The Committee notes the concerns expressed by local residents that the site and the adjacent open space is currently subject to flooding and further significant development on the site is likely to exacerbate that problem.
3. The development of the site will lead to increased traffic within the residential estate”.

ENVIRONMENT AGENCY – The risks and consequences of flooding could be acceptably managed in accordance with TAN 15. No objection subject to the inclusion of conditions to ensure finished floor levels are set at 5.4 AOD minimum and a surface water regulation system be agreed to deal with any increased risk of flooding.

DWR CYMRU/WELSH WATER – Raise no objection to the proposal subject to a Sustainable Urban Drainage System (SUDS) being implemented to ensure foul and surface water discharges are dealt with separately. This can be controlled through suitable conditions.

COUNTRYSIDE COUNCIL FOR WALES – CCW does not wish to comment on the proposal.

NORTH WALES POLICE – No response received

RHYL ENVIRONMENTAL ASSOCIATION – No response received.



## **DCC CONSULTEES**

HEAD OF HIGHWAYS AND INFRASTRUCTURE – No objection in principle subject to a new section of cycleway/footway constructed along the verge of Llys Brenig to connect to other facilities. Conditions would also be needed to ensure adequate visibility splay at mini-roundabout junction.

COMMUNITY SAFETY MANAGER – No response received

HEAD OF HOUSING SERVICES – Already have capacity in this sector in Denbighshire and do not anticipate needing additional provision in the foreseeable future. Under these circumstances a care home is unlikely to be a viable proposition.

HEAD OF LEISURE SERVICES – No response received.

## **RESPONSE TO PUBLICITY:**

Letters of representation received from:

Mr P Worley, 9 Llys Eirlys, Rhyl

Ms. W. Glass, 1, Llys yr Wyddfa, Rhyl

Mr. D. Morris (via e-mail)

Mrs. L. Byrne, 10, Llys Eirlys, Rhyl

Mr. & Mrs. Reece, 2, Lon Llelog, Rhyl

Mr. D. McGregor, 9, Lon Rhosyn, Park View Estate, Rhyl (x2)

Mr. A. Loftus, 11, Lon Celynnen, Rhyl

Mr. H. E. Roach, 7, Llys Cowlyd, Rhyl

Mr. S. Argent, 26, Lon Hafren, Rhyl

P. & M. E. Smith, 1, Lon Bedw, Park View Estate, Rhyl

Mrs. K. Mifflin, 11, Llys Tegid, Rhyl

D. I. Parry, Enfys, 11, Lon Bedw, Rhyl

The Owner/Occupier, 22, Ffordd Anwyl, Rhyl

John Whitehurst, 20 Lon Bedw, Rhyl LL18 4FY

Frances Whitehurst, 20 Lon Bedw, Rhyl LL18 4FY

Mr. P. Roberts, 7, Lon Ystrad, Rhyl

Mrs. C. Jones, 39, Llys Brenig, Rhyl

Mr. & Mrs. E. F. Flavell, 8, Llys y Tywysog, Rhyl

Mr. & Mrs. M. Hughes, The Sycamores, 26, Lon Bedw, Rhyl

Mr. R. W. Gardiner, 77, Ffordd Elan, Park View Estate, Rhyl via e-mail

C. & B. Tredrea, 14, Llys Alwen, Park View Estate, Rhyl

Mr. P. & Mrs. K. M. Greaves, 2, Llys Dinas, Rhyl

Mr. F. M. Richards, 4, Llys yr Wyddfa, Rhyl

Mrs. L. Sharp, 1, Lon Celynnen, Park View Estate, Rhyl

Mr. & Mrs. M. Loftus, 6, Llys Sion, Park View Estate, Rhyl

Mr. C. & Mrs. A. Deeley, 6, Llys Eirlys, Rhyl

V. Jeffries & G. Powers, Deers Leap, 1, Fron Haul, Park View Estate

Mr. & Mrs. P. Jones, 38, Ffordd Elan, Rhyl

C. & E. Gardiner, 4, Llys Tywi, Rhyl

Mr. M. T. Gardiner, 28, Juniper Way, Rhyl

Mrs D Bennison, 4 Llys Eirlys, Park View, Rhyl LL18 4LX

Mr R Bennison, 4 Llys Eirlys, Park View, Rhyl LL18 4LX

Mr. A. Hattersley, 4, Llys Tegid, Park View Estate, Rhyl

L. Wheatley, 6, Llys-yr-Wyddfa, Rhyl

Mr. & Mrs. D. T. & E. Buckley, 1, Lohn Hedyn, Rhyl

M. & C. Patterson, 20, Lon Hafren, Rhyl

Mrs. B. Cox, 2, Llys Tudur, Park View Estate, Rhyl

Mrs. M. D. Roberts, 40, Ffordd Anwyl, Rhyl

Mr. R. V. Bennison, 4, Llys Eirlys, Park View, Rhyl (e-mail)

Dave R Jones, 15 Llys Alwen, Rhyl LL18 4BQ

John Alan Davies, 1 Llys Catrin, Rhyl LL18 4AJ

Diane and Colin Owen, Maesglas, 28 Lon Bedw, Rhyl LL18 4FY

Mr P Worthington, 2 Llys Tegid, Rhyl LL18 4EX

Mr S R Davies, 7 Llys Bodnant, Rhyl LL18 4DQ  
 Mr D O Richards, Mawddach, 22 Maes Hedydd, Rhyl LL18 4RW  
 J. M. Parry, 3, Llys Brenig, Rhyl (via e-mail)  
 Mrs. D. Abraham, 3, Llys Dewi, Rhyl (via e-mail)  
 Dawn Jones, 15 Llys Alwen, Rhyl (via e-mail)  
 Mr R J Beckinsale, 1 Llys Eirlys Rhyl  
 Mrs M Dickin, 19 Llys Tywi, Rhyl  
 Mr J & Mrs R Williams, 14 Llys Tudur, Rhyl  
 J D Allen, 14 Llys y Tywysog, Rhyl  
 Owner/Occupier, 14 llys y Tywysog, Rhyl  
 Ms. S. Williams, 28, Ffordd Elan, Park View Estate, Rhyl  
 Mr. N. S. Wrightson, 21, Llys y Tywysog, Rhyl  
 Mr. M. P. Harris, 6 Aspen Walk, Rhyl  
 Ms. P. Williams, 16, Lon Celynnen, Park View, Rhyl  
 R. D. Seton, 2, Llys Eirlys, Park View Estate, Rhyl  
 Mrs. D. J. Hall, 15, Hazel Court, Rhyl  
 Ms. J. Woodward, 15, Hazel Court, Rhyl  
 Mr. K. I. Woodward, 15, Hazel Court, Rhyl  
 Ann Jones A.M, 25, Kinmel Street, Rhyl  
 M. & D. Johnson, 10, Llys yr Wyddfa, Park View, Rhyl  
 Mr. J. Williams, 17, Hazel Court, Rhyl (via e-mail)  
 Mrs. G. Evans, 6, Llys Tudur, Rhyl  
 Mr. P. Evans, 6, Llys Tudur, Rhyl  
 V. O'Rourke, 8, Maple Avenue, Rhyl  
 John Steele, 49 Ffordd Elan, Park View Estate, Rhyl LL18 4HZ (X2)- **In favour**  
 V Redall, 29 Ffordd Anwyl, Rhyl  
 P Adly, 6 Cedar Avenue, Rhyl  
 J E Mollatt, 2 Cedar Avenue, Rhyl  
 P J Colley, 36 Ffordd Anwyl, Rhyl  
 Mrs A Rourke, 30 Alder Court, Rhyl  
 Mr & Mrs Roberts, 41 Lon Wen, Park View, Rhyl  
 Mr E Oliver, 10 Cherry Tree Walk, Rhyl  
 S Honeywell, 16 Llys Dewi, Rhyl  
 Mrs B Newton, 29 Llys y Tywysog, Rhyl  
 Mr & Mrs C Roberts, 24 Lon Hafren, Rhyl  
 J. M. Palmer, 26, Alder Court, Rhyl  
 R. B. Palmer, 26, Alder Court, Rhyl  
 A. J. Palmer, 26, Alder Court, Rhyl  
 Mrs. J. Liddle, 54, Ffordd Anwyl, Rhyl  
 J Rough, Maes y Gog, Rhyl LL18 4QA

**A submission of in excess of 1100 individual letters was presented to the Chief Executive Officer of DCC by representatives of Park View Residents Association. All letters were signed and addressed and set out objections to the proposal.**

Summary of planning based representations:

- i) Concerns that uses proposed do not meet definition of community facilities.
- ii) Fear of crime.
- iii) Flood risk.
- iv) Proposal will exacerbate traffic problems in the area
- v) Concerns over loss of possible open space/village green.

**EXPIRY DATE OF APPLICATION: 02/07/2009**

## REASONS FOR DELAY IN DECISION:

- previous deferral by Committee for Site Panel
- previous deferral by Committee for further information
- previous deferral by officers for further information
- previous deferral by officers for further assessment
- timing of receipt of representations
- additional information required from applicant
- protracted negotiations resulting in amended plans
- re-consultations / further publicity necessary on amended plans and / or additional information

## PLANNING ASSESSMENT:

### 1. THE PROPOSAL:

#### 1.1 Outline of application

1.1.1 The application seeks outline planning permission on 0.85ha of land for the construction of a residential care home (Class C2 use) along with ancillary development of a Day Nursery (Class D1), community centre (Class D2) with parking and access road. All matters apart from means of access are reserved for future approval.

1.1.2 Supporting information submitted with the application highlight the applicants' intentions to create a two storey 60 bed care home. Whilst the information supplied is indicative at outline stage the applicants have mentioned a possible elderly persons care home which could be controlled through the imposition of conditions and/or legal agreement. Vehicular access would be provided off the existing mini-roundabout at Ffordd Elan. As an outline application it should be emphasised that details of any building, its size, scale and design would have to be subject to a further reserved matters submission should this outline proposal be approved.

#### 1.2 Description of site and surroundings

1.2.1 The application site measures some 0.85ha in size and lies to the north-east junction of Ffordd Elan and Llys Brenig on the Park View Estate. The site lies within the development boundary of Rhyl. The site is relatively flat, grassed and has been fenced around its perimeter by 1m high timber fencing. To the north of the site is located a children's play area whilst immediately to the south-east is a doctor's surgery, pharmacy and convenience store. Beyond that and surrounding the site to the south, east and west are residential dwellings forming part of the Park View Estate.

#### 1.3 Relevant planning constraints/considerations

1.3.1 The site is located within the development boundary of Rhyl and is designated within the Denbighshire Unitary Development Plan for Community Facilities (Policy CF4). The site is also located within a C1 flood zone as identified in the Environment Agency Flood Maps. Technical Advice Note 15 "Development and Flood Risk" describes the proposed uses as highly vulnerable.

#### 1.4 Relevant planning history

1.4.1 There are a number of planning records for this and adjacent sites which will be outlined in full in the main history section below.

## 2. RELEVANT PLANNING HISTORY:

2.1 2/RYL/359/95/P – Proposed commercial centre comprising shops, public house and some residential development. REFUSED 27<sup>th</sup> February 1996, DISMISSED on appeal 8<sup>th</sup> October 1997.

45/172/96/PO – Development of 1.15ha of land for residential purposes. REFUSED 6<sup>th</sup> June 1996.

45/657/96/PO – Development of 1.15ha of land for residential purposes and neighbourhood centre comprising retail and/or non-residential institution uses (Class D1). REFUSED 8<sup>th</sup> January 1997. DISMISSED following appeal 8<sup>th</sup> October 1997.

45/2001/0006/PF – Erection of Doctor's Surgery, pharmacy and convenience store and construction of new vehicular/pedestrian access – GRANTED 13<sup>th</sup> February 2002.

### **3. PLANNING POLICIES AND GUIDANCE:**

#### 3.1 DENBIGHSHIRE UNITARY DEVELOPMENT PLAN (adopted 3<sup>rd</sup> July 2002)

Policy STRAT 1 - General

Policy STRAT 5 - Design

Policy STRAT 6 - Location

Policy STRAT 7 – Environment

Policy STRAT 15 – Housing

Policy STRAT 16 – Community Facilities and Benefit

Policy GEN 1 – Development within Development Boundaries

Policy GEN 6 – Development Control Requirements

Policy ENP 6 – Flooding

Policy CF 4 – Community Facilities

Policy TRA 6 – Impact of New Development on Traffic Flows.

Supplementary Planning Guidance

SPG 3 – Children's Day Care

SPG 21 - Parking

#### GOVERNMENT GUIDANCE

Planning Policy Wales, March 2002

Technical Advice Note 15 – Development and Flood Risk

### **4. MAIN PLANNING CONSIDERATIONS:**

4.1 The main issues in this case are considered to be:-

4.1.1 Principle of proposed uses in this location

4.1.2 Impact upon visual amenity

4.1.3 Impact upon residential amenity

4.1.4 Impact upon highway safety

4.1.5 Fear of crime

4.1.6 Flood risk and drainage implications

4.2 In relation to the main considerations listed above:-

#### 4.2.1 Principle of proposed uses in this location

The application site is designated within the adopted Unitary Development Plan for Community Facilities (Policy CF 4). The elements contained within the proposal comprise a residential care home, community centre and a children's day nursery. The initial assessment, therefore, is whether the proposed uses would meet the general intentions of the site designation which was to provide community facilities on this site. Chapter 14 of the Unitary Development Plan – Community Facilities sets out in its first paragraph that, "**Community facilities include community centres, medical facilities, places of worship, schools, nurseries, library services and premises providing accommodation and/or an element of care for certain sections of the community.**" Having regard to this general list it is considered that the proposed uses in themselves would generally comply with the intentions of the Policy CF 4 designation. Clearly other development control considerations will now be looked

at in more detail to see whether the development proposal is acceptable in this location.

#### 4.2.2 Impact upon visual amenity

The application has been made in outline form with only details of means of access submitted at this stage. As such it is difficult to judge the potential impact the proposed uses and their subsequent buildings will have upon visual amenity at this stage. It is, however, important to note that the area in and around the site is generally flat. Nearby developments are generally of a single storey or two storey design and do not appear to have had to incorporate higher finished floor levels to accommodate potential flood risk. As part of the consultation process the Environment Agency (EA) have specified that the finished floor levels of any building on this site would need to be set at 5.4m AOD. This is having regard to the location of the site within a C1 Flood Zone and the submitted Flood Consequences Assessment. As the uses proposed are categorised as highly vulnerable the EA recommend that, amongst other mitigation measures, the floor levels of the buildings are raised. This may result in the potential 60 bed residential care home for the elderly, children's nursery and community centre having their finished floor levels set higher than those residential properties nearby. This could give rise to the potential for the buildings to impact negatively on the visual amenities of the site and surroundings. This would be in direct conflict with criteria of Policy GEN 6 which seeks to ensure development respects the site and surroundings by reason of its scale and form.

#### 4.2.3 Impact upon residential amenity

The site is located within an existing residential estate. It is considered that, given the size of the site at 0.85ha, it would be possible to locate the intended buildings themselves so as not to directly overlook or cause significant loss of amenity to nearby residential dwellings. As mentioned previously the uses themselves would generally fit with the site designation. They would be community related uses which would be located so as to serve the local community. Details of the siting of the buildings would be something for a future reserved matters application and it is considered, subject to detail, this could be done to an acceptable standard for existing residential dwellings.

#### 4.2.4 Impact upon highway safety

The highway engineers have assessed the proposal on the basis of the size of the proposed site and the uses specified. It has been estimated that around 50 car parking spaces will be required to serve the development with bicycle and motorcycle parking required in addition to that. The means of access shown is to be off the existing mini-roundabout and to preserve visibility; a splay of 2.4m x 40m in both directions will need to be provided. The development proposed can be adequately catered for on site in terms of parking, turning and loading (subject to detail) and highway engineers do not consider the amount of traffic generated will cause any significant highway safety concerns. The site is on a bus route and it should be emphasised that the proposed uses on site should be, in the main, serving the local community without the specific requirement to use a car.

#### 4.2.5 Fear of crime

There have been some concerns raised as to the potential residents of any residential care home on this site. The applicants have mentioned that the building would be likely to cater for the elderly. Given the designation of the site for community facilities it is considered adequate controls could be imposed through the imposition of conditions or through a legal agreement to ensure that residents in the care home are elderly and, where necessary, have local connections. It is not considered that there is any justification, in terms of the proposed uses, to refuse this application on the basis of a fear of crime. Planning conditions could be imposed which control the future uses of any buildings, their occupation and hours of operation.

#### 4.2.6 Flood risk and drainage implications.

The site is located within a C1 Flood Zone. The flood zone map is attached at the front of this report. Technical Advice Note (TAN) 15 does state that new development should be directed away from Zone C and towards suitable land in other zones where river or coastal flooding will be less of an issue. It should be noted that the proposed development would be considered as highly vulnerable.

The TAN goes on to state that all new development should only be permitted in Zone C1 if determined by the Local Planning Authority to be justified in that location. Development will only be justified if it can be demonstrated that:-

- i) Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy (the development plan) required to sustain an existing settlement; **or**,
- ii) Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and any other key partners, to sustain an existing settlement or region;

**And,**

- iii) It concurs with the aims of PPW and meets the definitions of previously developed land; and,
- iv) The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria is found to be acceptable.

In short, the above criteria set out how and when development may be allowable within zone C areas. One should have regard, however, to the general principle to try to direct development away from such areas unless justified. The criteria suggest that should a site have been designated within a Local Plan for a particular use this could justify development within a zone C location. This would, however, need to be accompanied by an adequate flooding consequences assessment which would show that the flood risk could be managed on that particular site.

In this instance the application site was designated for community facilities within the adopted UDP. A Flood Consequences Assessment (FCA) has been submitted to and accepted by the Environment Agency subject to certain conditions.

However, it is also important to note that the provisions of TAN 15 were written and adopted two years after the formal adoption of the Unitary Development Plan. Had the zone C issue been evident at the time of the UDP adoption it is unlikely that such a designation would have been progressed. As such, it is considered that the applicant has failed to fully justify siting highly vulnerable development within this C1 flood zone. Further, notwithstanding the acceptance by the EA of the findings of the FCA this is subject to conditions relating to the raising of finished floor levels and the production of a surface water regulation scheme. Without the necessary details of these proposed conditions at this stage it is impossible to say what impact the buildings would have on the visual amenities of the site and surroundings by way of increased floor level height. TAN 15 does state that Planning Authorities should recognise that the presence of protection measures does not eliminate risk completely and that certain developments are more vulnerable than others. There is some ambiguity over the way surface water can be dealt with as part of this proposal. The application forms indicate that the surface water will go to the main sewer.

This is something which Welsh Water has strong concerns over. The submitted FCA suggests a surface water regulation system could be used to deal with the surface water from the development. No information has been submitted by the applicant in respect of a surface water system and it is considered that such information would be required in order to adequately assess the impact of this proposal. Welsh Water acknowledges that the lack of this information would justify a refusal of this application.

In relation to criterion iii) above it is not considered that the application site would meet the criteria of Planning Policy Wales and be considered as previously developed land. As such, the Council does not consider that the proposal meets the aims of TAN 15 and should be refused accordingly.

#### **5. SUMMARY AND CONCLUSIONS:**

5.1 Whilst the uses proposed on the site generally meet with the intentions of the site designation the site does lie within a C1 flood zone. It is not considered that adequate justification has been submitted in compliance with TAN 15 to allow highly vulnerable development in this location. Notwithstanding the advice given by the EA and Welsh Water the Planning Authority consider that the proposed development, on land which has not been previously developed, is contrary to the aims of Policy ENP 6 of the UDP and the principles of TAN 15 which seek to prevent the risk of flooding.

#### **RECOMMENDATION: - REFUSE** for the following reasons:-

1. The development of this previously undeveloped site, located within a designated C1 flood zone, has not been fully justified by the applicant in accordance with the principles contained within Technical Advice Note 15- "Development and Flood Risk". Based on the information submitted it has not been adequately shown that the proposal would not exacerbate existing or create new flooding problems on other land or property through reductions in storage capacity or by impeding flood flows. This would be in direct conflict with Policy ENP 6 of the Denbighshire Unitary Development Plan, guidance contained within Planning Policy Wales - March 2002. and Technical Advice Note 15

**NOTES TO APPLICANT: none**

**ITEM NO:** 5

**WARD NO:** Llanbedr Dyffryn Clwyd / Llangynhafal

**APPLICATION NO:** 16/2009/1226/ PO

**PROPOSAL:** Development of 0.08 ha of land by the erection of a dwelling (outline application - all matters reserved)(revised application)

**LOCATION:** Plot Of Land To Front Of Bryn Melyn Llanbedr Dyffryn Clwyd Ruthin

**APPLICANT:** Mr Lyn Evans

**CONSTRAINTS:** Section 106  
Within 67m Of Trunk Road  
AONB

**PUBLICITY UNDERTAKEN:** Site Notice - No  
Press Notice - No  
Neighbour letters - Yes

**CONSULTATION RESPONSES:**

LLANBEDR DC COMMUNITY COUNCIL- No response received  
 WELSH ASSEMBLY TRANSPORT & STRATEGIC REGENERATION TRUNK ROADS- Direction not issued on the basis that there is no increase in traffic.  
 AONB JAC- 'The JAC reaffirms that it has no observations to make on the principle of development on this small plot within the village Development Boundary. However, there will be a need to carefully control the details of any new dwelling, including materials, boundary treatments and landscaping, to ensure that the development is sympathetic to the character of the AONB. The JAC also recommends that the mature tree to the rear of the site is retained and care is taken to ensure it is not compromised by the development'.  
 DENBIGHSHIRE COUNTY COUNCIL CONSULTEES  
 DCC HEAD OF HIGHWAYS & INTRASTRUCTURE- No response received however the Case Officer has indicated there are no objections on highway grounds.

**RESPONSE TO PUBLICITY:**

Letters in objection:  
 Dr. G. Wyn Hughes, Tan y Gaer, Tan y Ffordd, Llanbedr (via e-mail)  
 Mr. C. P. Pole, California, Llanbedr D.C.  
 Mr. A. Garratt Tan y Ffordd Cottage, Llanbedr DC., Ruthin (via e-mail)  
 Mr. A. & J. Hume, Tan y Ffordd, Llanbedr D.C.

Summary of planning based objections:  
 - Overdevelopment of the site in area of low density development.  
 - Impact on the AONB.  
 - Impact on the access road, decreased width leading to restricted access.  
 - Impact on amenity of adjacent occupiers.  
 - Highway safety.

**EXPIRY DATE OF APPLICATION: 15/11/2009**

**REASONS FOR DELAY IN DECISION:**

- delay in receipt of key consultation responses



## **PLANNING ASSESSMENT:**

### **THE PROPOSAL:**

#### Outline of application

Outline planning permission with all matters reserved for future approval is sought for the development of land at Bryn Melyn, Llanbedr DC. The site is approximately 0.08ha including the access road, which would connect the existing dwelling Bryn Melyn to the Tan Y Bryn estate road. The indicative plan submitted shows a dwelling sited centrally on the plot with a garage to the north.

The application includes the blocking up of the entrance from the dwelling Bryn Melyn to the access road onto the A494, obliging Bryn Melyn to be accessed off the Tan Y Bryn Estate road to the west, and the new dwelling proposed to be accessed off the access road onto the A494.

#### Description of site and surroundings

The site forms part of the garden area of Bryn Melyn and is located to the east of the access road serving Bryn Melyn and three adjacent dwellings.

The site slopes gently from the north to the A494 and is bounded by an established hedge of Leylandii to the east and a stone wall to the south, with open boundaries to the north and west. There is a mix of dwelling styles and sizes in this area, with recently constructed modern dwellings to the west of the site along the A494. The access road meets the A494 at the southern end of the site.

#### Relevant planning constraints/considerations

The site is located within the development boundary of Llanbedr DC, and the designated AONB.

#### Relevant planning history

The application is a revision to proposals previously refused planning in 2009 on highway safety grounds. The refusal was based on concerns that the development would result in an additional user of the sub standard access onto the A494 and may have created a 'short cut' from the Tan Y Bryn Estate road to the A494.

### **RELEVANT PLANNING HISTORY:**

16/2008/1226 Development of 0.09 ha of land by the erection of a dwelling (outline application - all matters reserved) Refused 29/09/2009 For the following reason:

It is the opinion of the Local Planning Authority that the proposal would result in the potential to generate increased use of a substandard access onto the A494 by traffic travelling to and from the proposed dwelling, and from the through route created onto Tan Y Bryn Estate. In the absence of any effective mechanism to prevent use of this route onto Tan y Bryn, the proposal could result in additional stopping and turning manoeuvres onto and off the trunk road to the detriment of the safety and free flow of traffic. The application is contrary to criterion viii) of Policy GEN 6 and criterion i) of Policy TRA 6 of the adopted Denbighshire Unitary Development Plan.

The application was refused by Officers under delegated powers.

16/2001/1247 development of 0.1ha of land by the erection of 1 no. dwelling. (outline application) Refused 06/02/02 for the following reason:

'The proposal would generate increased use of a substandard access. The additional stopping and turning manoeuvres would lead to conditions prejudicial to the safety and free flow of traffic on the trunk road'.

The application was refused by Officers under delegated powers.

## **PLANNING POLICIES AND GUIDANCE:**

DENBIGHSHIRE UNITARY DEVELOPMENT PLAN (adopted 3<sup>rd</sup> July 2002)

Policy Gen 1 Development within Development Boundaries

Policy Gen 6 Development Control Requirements

Policy TRA 6 Impact of New Development on Traffic Flows

Policy ENV 2 Development in the AONB

## **GOVERNMENT GUIDANCE**

Planning Policy Wales

## **MAIN PLANNING CONSIDERATIONS:**

The main planning considerations are considered to be:

1. Principle
2. Visual Appearance
3. Residential Amenity
4. Highway Safety

In relation to the main considerations:

### 1. Principle

The principle of the proposal accords with Policy GEN 1. The site is located within the development boundary and as such the development of the land for residential purposes is considered acceptable subject to compliance with the general development control criteria as set out in Policy GEN 6. Policy GEN 6 must be applied to assess the capability of the plot to accommodate a dwelling and the main issues considered under this policy area set out below. ENV 2 relates to development in the AONB and states development affecting the area of outstanding beauty will only be permitted where it would not unacceptably harm the character and appearance of the landscape and area.

### 2. Visual Impact

Policy GEN 6 contains general considerations to be given to the impacts of new development. Although it is not possible to assess the visual impact of the proposal at this stage as the application is for outline permission with all matters reserved, it is considered that the site can accommodate a dwelling without appearing cramped and out of character with its surroundings. A number of sites fronting the A494 have been developed recently, including new dwellings in front garden areas; as such the precedent has been set for this type of development. With regard to the AONB JAC's response, conditions can be attached to control landscaping, boundary treatments and materials. There would be no adverse impact on the AONB.

### 3. Amenity Impact

Policy GEN 6 sets specific tests to be applied to amenity of impacts of development. Indicative plans show that the dwelling can be accommodated on the site with adequate amenity space, parking and turning. In the absence of detailed plans a full assessment cannot be made on the impact on the amenity of adjacent occupiers, however on the basis of the indicative plans and site area, it is considered that a dwelling could be accommodated on the site without significant harm to residential amenity. The proposal would not result in an overdevelopment of the site.

### 4. Highway Safety

Policy GEN 6 and TRA 6 require consideration of access and highway safety issues. In relation to highway safety and access, Highways Officers and the Welsh Assembly Trunk Roads Department have raised no objection to the proposal. Previous applications on the site have been resisted on the basis that they would result in additional users of a substandard access. This application proposes the

blocking up of the access from Bryn Melyn to the A494, obliging Bryn Melyn to be accessed solely from the Tan Y Bryn estate to the west. The proposed dwelling would use the access onto the A494, and as Bryn Melyn would no longer be using this access, there would be no increase in the level of use of the trunk road access.

**SUMMARY AND CONCLUSIONS:**

The proposal is considered acceptable under the relevant policies and therefore recommended for grant.

**RECOMMENDATION: - GRANT** subject to the following conditions:-

1. Approval of the details of the siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before the commencement of any development.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. All planting, seeding, turfing, fencing, walling or other treatment comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling and any trees or plants which, within a period of five years of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
5. All trees and hedges to be retained as part of the development hereby permitted shall be protected during site clearance and construction work by 1 metre high fencing erected 1 metre outside the outermost limits of the branch spread, or in accordance with an alternative scheme agreed in writing by the Local Planning Authority; no construction materials or articles of any description shall be burnt or placed on the ground that lies between a tree trunk or hedgerow and such fencing, nor within these areas shall the existing ground level be raised or lowered, or any trenches or pipe runs excavated, without prior written consent of the Local Planning Authority.
6. No development shall commence on the dwelling hereby approved until the existing access from Bryn Melyn to the A494 has been closed in accordance with the approved plans and there shall be no access from that property to the trunk road at any time thereafter.
7. **PRE-COMMENCEMENT**  
Prior to the commencement of the development, the written approval of the Local Planning Authority shall be obtained in respect of the walls and roof materials to be used for the development hereby permitted and no materials other than those approved shall be used.

The reason(s) for the condition(s) is(are):-

1. To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.
3. To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.
4. To ensure a satisfactory standard of development, in the interests of visual amenity.
5. In order to ensure that trees and hedges to be retained are not damaged by building or engineering works.
6. In the interest of highway safety to prevent additional users of a substandard access onto the A494.
7. In the interests of visual amenity.

**NOTES TO APPLICANT:** None

**PWYLLGOR CYNLLUNIO**  
**CYFARFOD: 25ain Tachwedd 2009**  
**Eitem: 3**

**PLANNING COMMITTEE**  
**MEETING: 25th November 2009**  
**Agenda Item: 3**

**MATERION GORFODI**

**ENF/ 2009/00071 :**

Tir i'r De-ddwyrain o  
2 & 3 Bryn Derwen, Rhewl, Llangollen

Tor-rheol:  
Heb Ganiatâd Cynllunio:

1. Creu mynedfa newydd
2. Creu llwybr ar draws cae

**PLANNING COMMITTEE  
MEETING – 25 Nov 2009  
ITEM NO. 3**

**PLANNING ENFORCEMENT REPORT**

**REFERENCE:** ENF/2009/00071  
**LOCATION:** Land to the South-East of 2 & 3 Bryn Derwen, Rhewl, Llangollen  
**INFRINGEMENTS:** Without planning permission :-  
(1) Creation of new access;  
(2) Creation of track across field.

**RELEVANT PLANNING POLICIES AND GUIDANCE**

**DENBIGHSHIRE UNITARY DEVELOPMENT PLAN**

**Policy GEN 6** – Development Control Requirements

**Policy ENV 1** – Protection of the Natural Environment

**Policy ENV 2** - Development affecting the AONB/AOB

**Policy ENV 4** – International/National Sites of Nature Conservation Value

**Policy TRA 9** – Parking and Servicing Provision

**HUMAN RIGHTS CONSIDERATIONS**

The provisions of the Human Rights Act 1988 are taken into account when considering taking enforcement action against unauthorised development, unauthorised use and other related matters.

The Act states that a person is entitled to peaceful enjoyment of his possessions. However, this does not impair the right of the State to enforce such laws as it deems necessary.

In this particular instance, matters relate to the rights of an owner of agricultural land, without authorisation from the Local Planning Authority, to create a new access and a new track on agricultural land. The rights of the owner in this situation do not outweigh the rights of the local Planning Authority to protect the amenity and safety of the area.

No human rights issues have been raised in this case.

**1. BACKGROUND INFORMATION**

- 1.1 The field stands in an Area of Outstanding Beauty (AOB), adjacent to a classified road within the rural community of Rhewl, which is 3.7 miles from Llangollen. The total area of the field is approximately 0.2 of a hectare.
- 1.2 The site was first inspected on 20 April 2009, following receipt of several complaints about the creation of a new access and the creation of a new wide track across the field.
- 1.3 A letter was sent to the owners on 28 April 2009, confirming that breaches of planning control had been assessed to have taken place as a result of the unauthorised creation of the new access and the unauthorised engineering operation involved in creating the track across the field.

- 1.4 A site meeting with the owners was arranged for 26 May 2009 with DCC Officers attending from Planning Enforcement and Development Control, and in addition, two Officers from Highways. The owners inter alia claimed that a vehicular access had always been in this location and they were therefore asked to provide evidence.
- 1.5 Having checked all available history and photographs made available to us by the owners and from other interested parties, Officers concluded that circa 1988, fencing effectively closed off the field to all vehicles until the hedge was removed by the current owners 20 years later; in late 2008, when the new vehicular access was created.
- 1.6 Clearly there was no virtue in requesting a retrospective application in these circumstances, since the unauthorised access had already been judged unacceptable by both the Council's Planning Department and Highways Department. The engineering operation which created the track was also deemed unacceptable by Planning Enforcement and Development Control. These views were made clear to the owners.
- 1.7 The owners subsequently informed the Planning Department that they intended to submit an application for a Certificate of Lawfulness with regard to the unauthorised access.

## **2. REASONS FOR ISSUING AN ENFORCEMENT NOTICE**

- 2.1 The application for a Certificate of Lawfulness with regard to the unauthorised access was refused on 30 October 2009 and no application has been submitted in respect of the unauthorised track.
- 2.2 The unauthorised development is contrary to policies contained within the adopted Denbighshire Unitary Development Plan 1996 and advice contained within Planning Policy Wales 2002 in respect of :-

### **(i) Visual impact**

A pre-requisite of development should be that it is not detrimental to visual amenity and must be in sympathy with the natural environment. **Policy GEN 6** aims to ensure minimum impact and **Policy ENV 2** aims to prevent unacceptable harm to the character and appearance of the landscape in areas of outstanding beauty (AOB), such as this location. Overall, it is considered that the unauthorised works represent a significant adverse effect on the landscape in terms of visual amenity. Taking into account these policies, it is considered in particular that the removal of a substantial length of hedging and the creation of a wide new access, has harmed the soft boundary edge to the road and has disrupted a continuous visual feature. It is also considered that the wide track across the land represents an intrusive feature, which has an unacceptable visual impact in this rural setting.

### **(ii) Highway Safety**

The owners have failed to satisfy this authority that a vehicular access existed in this location. **Policy GEN 6** aims to ensure access is safe for pedestrians, cyclists and vehicles and **Policy TRA 9** seeks to ensure adequacy of manoeuvring facilities. It is considered that in this particular case, where the unauthorised vehicular access is located, the visibility is extremely poor due to the curvature of the road and as such, in the opinion of both Highways and Development Control, it poses a dangerously high risk to highway safety.

### **(iii) Impact on the Special Area of Conservation (SAC)**

**Policy ENV1** aims to protect and enhance the natural environment by maintaining or enhancing the landscape character of the countryside and biodiversity of the natural environment. **Policy ENV 4** aims to protect the integrity of a site designated of European nature conservation value by requiring the Local Planning Authority to assess the conservation implications

of works carried out which could effect a 'European site'. In this particular case, with regard to the impact of the engineering works in this location, our County Ecologist was consulted and she advised that there was a potential for the activities on this site "to cause pollution effects on the water quality of the River Dee SAC in the absence of measures to ensure that EA guidelines to prevent contamination of the watercourse were followed". She therefore advised of the requirement for a Habitat Screening Assessment to be carried out prior to any works in this location, in order to assess the potential impact on the SAC. No such assessment had been carried out prior to the works.

- 2.3 Should the Planning Committee resolve not to take enforcement action, after four years the unauthorised access point and track would become immune from any further enforcement action.

### **3. RECOMMENDATION**

- 3.1 That the Planning Committee authorise the service of an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990, with a 6 month compliance period, requiring :-
- (i) the unauthorised access to be permanently closed up and the substantial length of roadside hedge, which has been removed, to be restored by replacing it by the end of the earliest planting season within the compliance period.
  - (ii) the unauthorised track to be removed and the field to be restored to its previous state as an agricultural field.
- 3.2 To instigate prosecution proceedings where any person on whom a Notice has been served fails or refuses to comply with the provisions of the Notice.

**CEISIADAU GALW I MEWN**

1. **CYNNIG I DDYMCHWEL RHAN O ADEILAD A CHODI DAU ANNEDD AR DIR YNG NGHEFN 47/49 STRYD CLWYD, RHUTHUN (CAIS RHIF. 02/2008/1153/PF)**
2. **CYNNIG I DDYMCHWEL MODURDAI AC ADEILADU 3 ANNEDD AR DIR YNG NGHEFN Y ROYAL OAK, 51, STRYD CLWYD, RHUTHUN (CAIS RHIF. 02/2008/0592/PF)**
3. **CYNNIG I DDYMCHWEL RHAN O ADEILAD AC ADEILADU 2 ANNEDD AR DIR YNG NGHEFN 47/49 STRYD CLWYD, RHUTHUN (ADEILAD RHESTREDIG CAIS RHIF. 02/2009/0477/LB)**
4. **CYNNIG I DDYMCHWEL MODURDAI AC ADEILADU 3 ANNEDD AR DIR YNG NGHEFN Y ROYAL OAK, 52, STRYD CLWYD, RHUTHUN (ADEILAD RHESTREDIG CAIS RHIF. 02/2009/0446/LB)**

**1. DIBEN YR ADRODDIAD**

- 1.1 Mae'r adroddiad yn ceisio rhoi diweddariad gwybodaeth i'r Pwyllgor mewn perthynas â'r ceisiadau a nodir uchod.
- 1.2 Efallai y bydd yr Aelodau'n cofio bod y ceisiadau uchod wedi eu cyflwyno i gyfarfod 29 Gorffennaf 2009 y Pwyllgor Cynllunio. Mae'r ceisiadau yn ymwneud â datblygiadau ar ddau safle yn Rhuthun, sydd angen caniatâd cynllunio a Chaniatâd Adeilad Rheoli ar wahân.

**2. CEFNDIR**

- 2.1 Roedd adroddiad y swyddog cynllunio yn argymhell caniatáu'r 4 cais. Ar ôl trafodaeth fanwl ar y ceisiadau, penderfynodd yr aelodau gefnogi'r argymhellion ar y pedwar cais.
- 2.2 Yn union ar ôl cyfarfod y Pwyllgor Cynllunio, derbyniodd y Cyngor hysbysiad gan Gynulliad Cymru dan ddarpariaethau Erthygl 13 Deddf Cynllunio Gwlad a Thref a oedd yn 'cyfeirio' na ddylai'r Cyngor roddi caniatâd cynllunio ar y ddau gais cynllunio, sef cais cynllunio cod 02/2008/1153/PF a chais cynllunio cod 02/2008/0592/PF.
- 2.3 Mae llythyr 'cyfeirio' LICC (dyddiedig 29 Gorffennaf 2009) yn nodi

'In accordance with this power I hereby direct your Council, (with effect from the date of this letter), not to grant planning permission in respect of ;

- a) these applications; or**
- b) any development of the same kind as that which is the subject of**



***the applications (referred to above) on any site which forms part of or includes the land to which these applications relate.***

***without the prior authorisation of the Welsh Ministers.***

***I issue this Direction to enable further consideration to be given to whether or not the applications should be referred to the Welsh Ministers for determination.***

***The Direction prevents your Council only from granting planning permission. It does not prevent it from continuing to process or consult on the applications. Neither does it prevent it from refusing planning permission.'***

- 2.4** Nid oedd llythyr 'cyfeirio' LICC yn rhwystro ceisiadau Adeiladau Rhestredig 02/2009/0477LB a 02/2009/0466/LB rhag cael eu trin yn y dull arferol, ac anfonwyd y ddau gais at CADW ar 3 Awst 2009 ar gyfer eu hasesiadau a'u trafodaethau hwy.
- 2.5** Ar 24 Awst 2009 cadarnhaodd llythyr pellach gan Adran Gynllunio LICC; *'We are continuing to give consideration to the request for the applications to be called in for determination by the Welsh Ministers. Cadw's assessment of the listed building consent applications has now been received and we anticipate that the papers will be submitted to the Minister for Environment, Sustainability and Housing for consideration shortly. We hope to be in a position to issue the decision on call –in as soon as possible after that.*
- Yn yr un llythyr, cadarnhaodd LICC hefyd y gellid trin y "galwad i mewn" fel cais i alw i mewn y ceisiadau cynllunio a'r ceisiadau adeilad rhestredig.
- 2.6** Ar 22 Hydref 2009, derbyniodd y Cyngor hysbysiad ffurfiol gan LICC y bydd y ceisiadau cynllunio a'r ceisiadau adeilad rhestredig yn cael eu penderfynu gan Weinidogion y Cynulliad. Gweinyddir y rheolau statudol a'r gweithdrefnau yn yr achos hwn gan yr Arolygiaeth Cynllunio.
- 2.7** Mae hysbysiad LICC yn nodi bod y *'Minister considers that the proposed development raises planning issues of more than local importance. In particular, she has concluded that it raises issues which may conflict with national planning policy in listed buildings and conservation areas'*. Mae hefyd yn tanlinellu gofynion y Cyngor i hysbysu'r ymgeisydd o'r cyfeiriad a'r hawl i gael gwrandawriad gan berson a benodwyd gan Weinidogion y Cynulliad.
- 2.8** Mae'r swyddogion wedi cwblhau'r gofynion hysbysu gofynnol. At hyn, mae pawb sydd â diddordeb, gan gynnwys gwrthwynebwyr, wedi derbyn cadarnhad ffurfiol bod y ceisiadau wedi eu "galw i mewn" a byddant yn cael eu hysbysu o drefniadau dilynol ar gyfer trin y ceisiadau.

### **3. ARGYMHELLIAD**

**3.1** Bod yr Aelodau'n cydnabod yr adroddiad.

**ADRODDIAD GAN Y PENNAETH CYNLLUNIO A GWARCHOD Y CYHOEDD**

**EITEM ER GWYBODAETH AR GYFER Y PWYLLGOR CYNLLUNIO  
RHAGLEN HYFFORDDI CYNGOR TREF A CHYMUNED AR GYFER 2010**

**1. DIBEN YR ADRODDIAD**

Hysbysu'r Aelodau o'r Rhaglen Hyfforddi a bennwyd ar gyfer Cynghorau Tref a Chymuned ar gyfer 2010.

**CEFNDIR**

Oherwydd llwyddiant sesiynau hyfforddi Cynghorau Tref a Chymuned a gynhaliwyd trwy gydol 2009, cytunwyd bod y sesiynau hyn yn parhau trwy 2010.

Estynnwyd y gwahoddiad i sesiynau hyfforddi Cynghorau Tref a Chymuned hefyd i aelodau'r Cyngor Sir i roddi cyfle ychwanegol i aelodau gyrraedd eu targed o ddau sesiwn bob bwyddyn Cyngor; bydd hyn yn parhau. Cynhelir cyfarfodydd Cynghorau Tref a Chymuned gyda'r nos ac felly bydd cyfle amgen i aelodau'r Cyngor Sir na fedrent fynychu sesiynau dydd a drefnwyd yn benodol ar eu cyfer.

Dyma'r dyddiadau:

Llun	-	25 Ionawr 2010
Mawrth	-	20 Ebrill 2010
Iau	-	22 Gorffennaf 2010
Iau	-	21 Hydref 2010

Bydd pob sesiwn yn cychwyn am 6.30 p.m.

Mae'r sesiynau hyn yn debygol o gael eu cynnal yn Neuadd y Sir, Rhuthun ac fe gadarnheir hyn yn nes at yr amser. Bydd nodyn hefyd yn nyddiadur y Cynghorwyr Sir er gwybodaeth.

**2. ARGYMHELLIAD**

Bod yr Aelodau'n cydnabod cynnwys yr adroddiad hwn.

**ADRODDIAD GAN Y PENNAETH CYNLLUNIO A GWARCHOD Y CYHOEDD**

**EITEM ER GWYBODAETH I'R PWYLLGOR CYNLLUNIO  
COMISIWN CYNLLUNIO SEILWAITH (IPC)**

**1. DIBEN YR ADRODDIAD**

Dwyn Pecyn Cyfathrebu'r Comisiwn Cynllunio Seilwaith i sylw'r Aelodau.

**2. CEFNDIR**

Comisiwn Cynllunio Seilwaith Cymru

Sefydlwyd yr IPC fel rhan o weithredu Deddf Cynllunio 20098. Sefydlwyd y drefn newydd i ddarparu dull cyflymach, tecach a mwy agored o ddarparu prosiectau seilwaith mawrion.

Darparwyd 'pecyn' gan yr IPC i roddi cipolwg ar sefydlu'r Comisiwn Cynllunio Seilwaith, ei strwythur a'i arferion gwaith, a'i rôl o fewn y drefn ganiatâd newydd ar gyfer ceisiadau seilwaith cenedlaethol mawrion.

**3. MATERION I'W HYSTYRIED**

Mae copi o'r 'pecyn' ynghlwm fel Atodiad 1 er eich gwybodaeth.

**4. CASGLIAD**

Bod yr Aelodau'n cydnabod y wybodaeth a ystyriwyd yn y 'pecyn'.