

Heading:

REFERENCE NO. 03/2015/0340
BERWYN WORKS,
BERWYN STREET, LLANGOLLEN

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Head of Planning & Public Protection
Denbighshire County Council
Caledfryn
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Denbigh
Denbighshire LL16 3RJ

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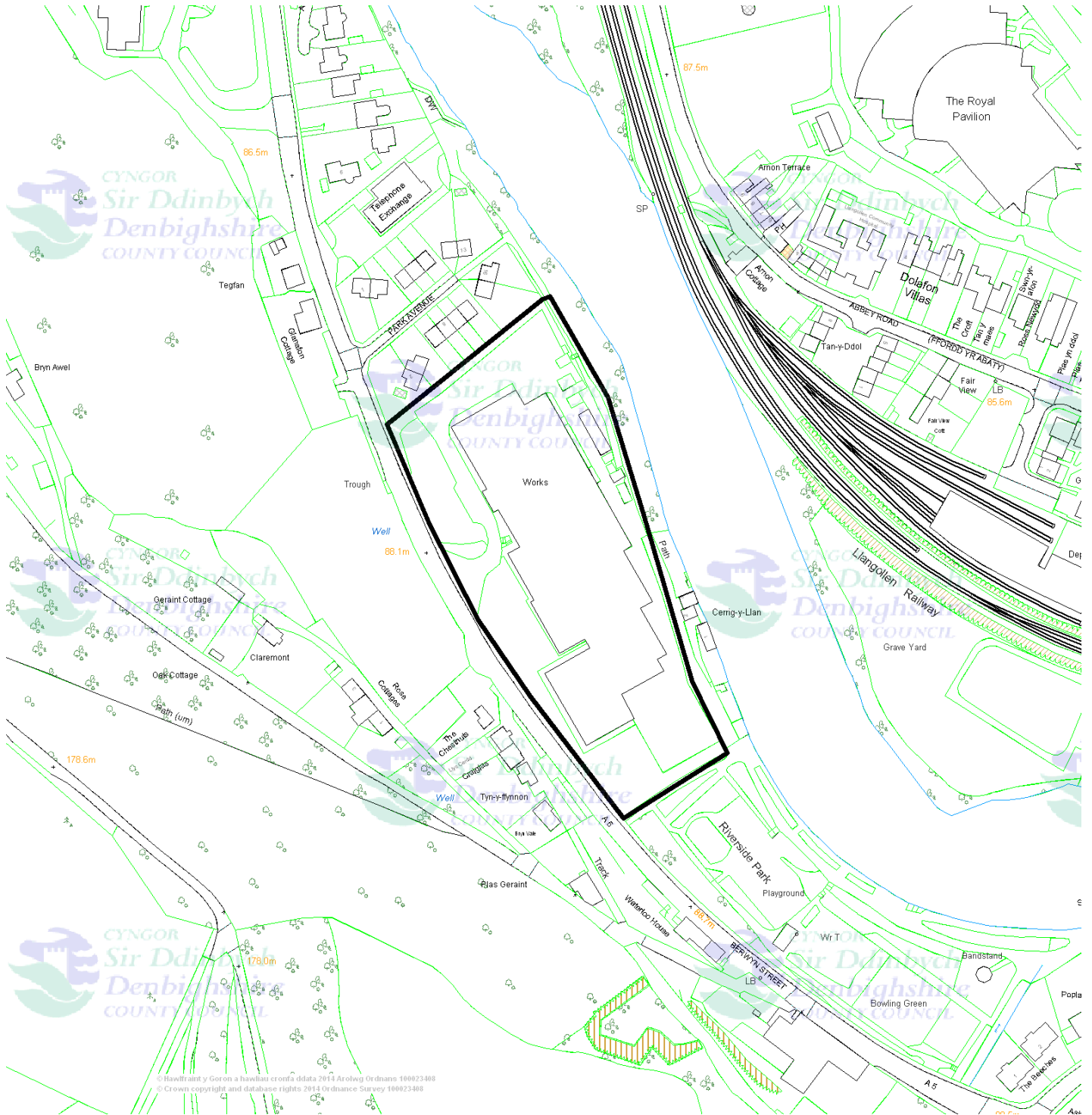
 Application Site



Date 27/4/2015
Centre = 320977 E 342236 N

Scale 1/2500

This plan is intended solely to give an indication of the LOCATION of the application site which forms the subject of the accompanying report. It does not form any part of the application documents, and should not be taken as representative of the proposals to be considered, which are available for inspection prior to the meeting.



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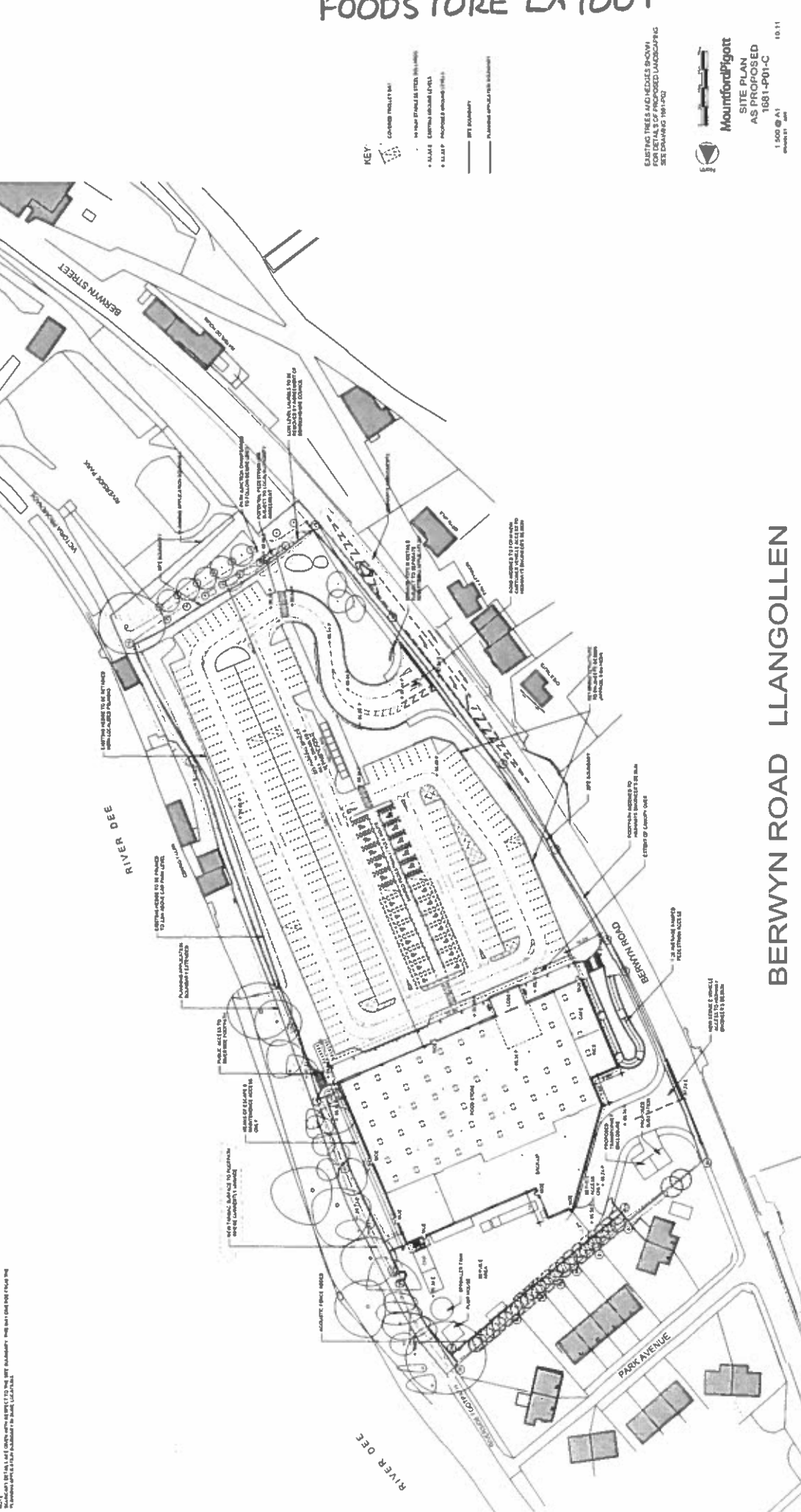
Atgynhychir y map hwn o ddeunydd yr Ordnance Survey gyda chaniatâd yr Ordnance Survey ar ran Rheolwr Llyfrfa Ei Mawrhydi © Hawffraint y Goron. Mae atgynhychu heb ganiatâd yn torri hawffraint y Goron a gall hyn arwain at erlyniad neu achos sifil. Cyngor Sir Ddinbych. 100023408. 2011.

FOODSTORE LAYOUT

BERWYN ROAD FOODSTORE LAYOUT
 THIS LAYOUT IS A PRELIMINARY DESIGN AND IS SUBJECT TO APPROVAL BY THE LOCAL AUTHORITY. IT IS NOT A GUARANTEE OF ANYTHING. THE DESIGN IS BASED ON THE INFORMATION PROVIDED TO US. WE HAVE ASSUMED THAT ALL INFORMATION IS CORRECT AND COMPLETE. WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM THE USE OF THIS LAYOUT. THE DESIGN IS BASED ON THE INFORMATION PROVIDED TO US. WE HAVE ASSUMED THAT ALL INFORMATION IS CORRECT AND COMPLETE. WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM THE USE OF THIS LAYOUT.

NO. OF TOWNPLANNING PERMITS	1
NO. OF BUILDING PERMITS	1
NO. OF PLANNING PERMITS	1
NO. OF CONSTRUCTION PERMITS	1

NO.	REVISION	DATE	BY
1	ISSUE FOR TENDERS	10/11/2011	MARK
2	FOR APPROVAL	11/11/2011	MARK
3	FOR APPROVAL	12/11/2011	MARK
4	FOR APPROVAL	13/11/2011	MARK
5	FOR APPROVAL	14/11/2011	MARK
6	FOR APPROVAL	15/11/2011	MARK
7	FOR APPROVAL	16/11/2011	MARK
8	FOR APPROVAL	17/11/2011	MARK
9	FOR APPROVAL	18/11/2011	MARK
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12	FOR APPROVAL	21/11/2011	MARK
13	FOR APPROVAL	22/11/2011	MARK
14	FOR APPROVAL	23/11/2011	MARK
15	FOR APPROVAL	24/11/2011	MARK
16	FOR APPROVAL	25/11/2011	MARK
17	FOR APPROVAL	26/11/2011	MARK
18	FOR APPROVAL	27/11/2011	MARK
19	FOR APPROVAL	28/11/2011	MARK
20	FOR APPROVAL	29/11/2011	MARK
21	FOR APPROVAL	30/11/2011	MARK
22	FOR APPROVAL	01/12/2011	MARK
23	FOR APPROVAL	02/12/2011	MARK
24	FOR APPROVAL	03/12/2011	MARK
25	FOR APPROVAL	04/12/2011	MARK
26	FOR APPROVAL	05/12/2011	MARK
27	FOR APPROVAL	06/12/2011	MARK
28	FOR APPROVAL	07/12/2011	MARK
29	FOR APPROVAL	08/12/2011	MARK
30	FOR APPROVAL	09/12/2011	MARK



BERWYN ROAD LLANGOLLEN

BERWYN ROAD FOODSTORE LAYOUT
 MARK 10/11/2011

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EXISTING TREES AND HEDGES SHOWN
 AS PROPOSED LANDSCAPING
 SEE DRAWING 10/11/2011

KEY
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MountfordPigott
 SITE PLAN
 AS PROPOSED
 1881-P01-C
 10/11/2011

WARD : Llangollen

WARD MEMBER(S): Cllr Rhys Hughes (c)
Cllr Stuart Davies (c)

APPLICATION NO: 03/2015/0340/ PS

PROPOSAL: Removal of conditions imposed on planning permission 03/2012/1407/PS for foodstore development:
Conditions 18 and 19 - to remove conditions requiring compliance with BREEAM standards, as these are no longer required in Wales
Condition 45 - to remove restriction on the development of land below 84.6M AOD, as no areas are within a flood zone

LOCATION: Berwyn Works Berwyn Street Llangollen

APPLICANT: MrJames Ellis J Ross Developments

CONSTRAINTS: None

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

REASON(S) APPLICATION REPORTED TO COMMITTEE:
Scheme of Delegation Part 2

- Recommendation to grant / approve – Town / Community Council objection

CONSULTATION RESPONSES:

LLANGOLLEN TOWN COMMUNITY COUNCIL

In relation to conditions 18 and 19 - "Members noted that compliance with BREEAM standards was no longer a requirement in Wales but objected to the removal of the condition on grounds that the development should still be subject to the highest standards of sustainable design, construction and operation".

In relation to Condition 45 – "...as no areas are within a flood zone, Members had no objections to the removal of this condition".

NATURAL RESOURCES WALES

Are satisfied that the applicants have demonstrated the proposed raising of the car park at the southern end will not result in increased flood risk elsewhere. Have no objection to the modification / withdrawal of Condition 45.

RESPONSE TO PUBLICITY:

None at the time of preparing the report.

EXPIRY DATE OF APPLICATION:

04/06/2015

PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

1.1.1 The application seeks the Council's agreement to the removal of 3 conditions imposed on a planning permission granted at Planning Committee in December 2012 involving the development of a Use Class A1 foodstore on the site of the Dobson and Crowther factory site, under Code No.03/2012/1407/PF.

1.1.2 The application effectively requires separate decisions by the local planning authority, as the proposals relate to removal of different conditions on the foodstore permission.

1.1.3 Section 4 of the report sets out the details of each of the requests for removal. In summary, the application seeks the following:-

Conditions 18 and 19 – to remove the requirement for compliance with BREEAM construction standards in the foodstore development.

Condition 45 – to remove the restriction on the development of land below 84.6m AOD.

1.1.4 The application is submitted by J. Ross Developments. It contains a short statement on the grounds on which the removal of the conditions are sought;

- In relation to Conditions 18 and 19 – 'BREEAM has been removed as a requirement from Welsh Government Policy. It is proposed to remove these conditions as they are no longer in line with current planning policy for Wales'.
- In relation to Condition 45 – 'refers to areas that may flood, NRW have confirmed that no areas of the site are within the flood zone and so the condition is not correct and needs to be removed'.

1.2 Description of site and surroundings

1.2.1 The site has been occupied until recently by the former Dobson and Crowther Works, on Berwyn Road, Llangollen. It is located some 500 metres to the north west of the A5 traffic lights in the centre of Llangollen, immediately north west of the Riverside Park. It extends to some 1.6 hectares.

1.2.2 At the time of drafting this report, demolition works are well advanced on the old print works buildings in preparation for the erection of the foodstore building and its associated access, parking and servicing. Dobson and Crowther have now relocated into a purpose built factory at Cilmedw.

1.2.3 There are dwellings adjacent to the site at Park Avenue to the north, on higher ground to the west of the A5, and between the site and the River Dee to the east. The Riverside Park contains a small café/snack bar kiosk.

1.3 Relevant planning constraints/considerations

1.3.1 The site is within the development boundary for Llangollen shown on the Local Development Plan proposals map. There is no specific use allocation for the site on the proposals map.

1.3.2 Llangollen lies within the recent extended Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB). The site is within the Buffer Zone of the Pontcysyllte Aqueduct and Canal World Heritage site (WHS), within the River Dee and Bala Lake Special Area of Conservation, and the historic landscape of the Vale of Llangollen.

1.4 Relevant planning history

- 1.4.1 Prior to the submission of the 2012 application for the foodstore development (referred to below), the only records relate to the printing works, so are not of relevance to the current application.
- 1.4.2 Application 03/2012/0030/PF for the development of a foodstore was granted planning permission at Planning Committee in September 2012. The permission contained a range of conditions.
- 1.4.3 An application seeking the variation of 5 of the conditions imposed on 03/2012/0030 was submitted in October 2012, and dealt with under code no. 03/2012/1407. These variations were approved at Planning Committee in December 2012. This necessitated the effective 're-issue' of the Certificate of Decision for the foodstore development, and this is now the permission which the developers are seeking to implement.
- 1.4.4 The developers have submitted a number of detailed proposals for approval in connection with conditions on the December 2012 permission, in preparation for the demolition of the old print works buildings and the carrying out of the works associated with the foodstore.

1.5 Developments/changes since the original submission

- 1.5.1 None.

1.6 Other relevant background information

- 1.6.1 In relation to a planning consent, legislation permits applicants to lodge an appeal to the Planning Inspectorate against conditions imposed (within 6 months of the date of grant), or to submit applications to vary or delete conditions (under Section 73 of the 1990 Planning Act). The applicants have submitted the current application under Section 73.
- 1.6.2 Procedurally, Officers suggest the application has to be determined in 3 separate parts, i.e. each request for a variation has to be determined independently and either granted or refused (and if refused, with a land use planning reason capable of being defended at any subsequent appeal which could follow to the Planning Inspectorate).
- 1.6.3 The application is not an opportunity to re-visit the principle or detailing of the foodstore development or conditions other than those on which variations are now sought. The considerations have to be applied purely to the specific variations sought to the conditions specified in the submission.

2. **DETAILS OF PLANNING HISTORY:**

2.1 03/2012/0030/PF

Demolition of existing printing works, erection of Use Class A1 foodstore with associated access, parking, servicing, landscaping, surface water attenuation system, and construction of new vehicular and pedestrian accesses – GRANTED 23/10/2012. The permission was subject to a number of conditions requiring submission of further details and to restrictions on the use. The ones relevant to the application are quoted in the following sections of the report.

2.2 03/2012/1407/PS

Proposed variation of conditions attached to planning permission 03/2012/0030/PF for Use Class A1 foodstore :

- Condition 8d : in relation to the restriction on the provision of a cafe facility within the store, to delete this requirement;

GRANTED

- Condition 13b : in relation to noise emissions, to vary the restrictions on permitted levels;

GRANTED

- Condition 16 : in relation to measures to be taken in the event of noise emissions exceeding permitted levels, to vary the arrangements for investigation and implementation of mitigation;
REFUSED

- Condition 19 : in relation to the need to submit a Certificate of Compliance with BREEAM standards before trading commences, to require the submission within 12 months of the store opening;
GRANTED

- Condition 21 : in relation to the provision of an additional pedestrian access into the site, to revise the wording of the condition to refer to a revised or additional pedestrian access.
GRANTED

Date of decision : 19/12/2012

3. RELEVANT POLICIES AND GUIDANCE:

3.1 The main planning policies and guidance are considered to be:
Denbighshire Local Development Plan (adopted 4th June 2013)
Policy RD1 – Sustainable development and good standard design

3.2 Government Policy / Guidance
Planning Policy Wales Edition 7 2014

TAN 12: Design July 2014

3.3 Other material considerations:

Welsh Government Dear Chief Planning Officer Letter 31/07/2014 introducing the changes to Planning Policy Wales and guidance on sustainable buildings dated 31 July 2014.

Welsh Government CL-03-14 Planning for Sustainable Buildings – clarification on the national Planning for Sustainable Buildings policy letter dated 05 June 2014

Opinion of Max Hampton, Welsh Government Planning Manager on planning applications of this nature received 29/10/2014: "I do not believe it is possible to link the Building Regulations and Development Management processes as they are two separate regulatory functions and, given this, we accept that during this transitional period there may be some instances where development proposals will have the CfSH requirement removed and not have to comply with the 2014 Building Regulations."

3.4 The overarching advice for Local Planning Authorities on the use of conditions in planning permissions is contained in Welsh Office Circular 35/95. Circular 35/95 is a significant consideration in the context of the current application, as it sets basic tests which have been set down from the Courts for the validity of planning conditions. For Members' information, the Circular advises that as a matter of policy, conditions should only be imposed where they satisfy all of the following tests:-

- (i) necessary;
- (ii) relevant to planning;
- (iii) relevant to the development to be permitted;
- (iv) enforceable;
- (v) precise; and
- (vi) reasonable in all other respects

3.5 The relevance of the tests set out in Circular 35/95 cannot be understated as the Council has to apply them both when granting planning permission and when considering applications such as this to delete conditions imposed on an existing permission.

4. MAIN PLANNING CONSIDERATIONS

In terms of general guidance on matters relevant to the consideration of a planning application, Planning Policy Wales Edition 7, 2014 (PPW) confirms the requirement that planning applications 'should be determined in accordance with the approved or adopted

development plan for the area, unless material considerations indicate otherwise' (Section 3.1.2). PPW advises that material considerations must be relevant to the regulation of the development and use of land in the public interest, and fairly and reasonably relate to the development concerned., and that these can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment (Sections 3.1.3 and 3.1.4).

The following paragraphs in Section 4 of the report therefore refer to the policies of the Denbighshire Local Development Plan, and to the material planning considerations outlined above which are considered to be of relevance to the applications. The report deals with conditions 18 and 19 together as they involve the same issues in relation to application of national standards of construction, and takes condition 45 separately as it involves a wholly different issue.

The proposals for removal of the conditions are taken as follows :

4.1 Conditions 18 and 19

4.1.1 Condition 18 as worded on the planning permission states as follows:-

'No works of construction shall be permitted on the foodstore building hereby permitted until an 'Interim Certificate' has been submitted to the Local Planning Authority, certifying that a minimum BREEAM overall very good rating and a minimum of 6 credits under Ene 1 -Reduction of CO2 Emissions can be achieved for that building in accordance with the requirements of BREEAM in force at the time of the grant of this permission.'

The stated Reason for the condition was - 'To ensure relevant Sustainability Code standards are met in connection with the building.'

4.1.2 Condition 19 as worded on the planning permission states as follows:-

'A "Final Certificate" shall be submitted to the Local Planning Authority within twelve months of the store opening, certifying that a minimum (BREEAM) overall very good rating and a minimum of 6 credits under Ene 1 – Reduction of CO2 'Emissions' has been achieved for that building in accordance with the requirements BREEAM in force at the time of the grant of this permission.'

The stated Reason for the condition was - 'To ensure relevant Sustainability Code standards are met in connection with the building'

Background:

4.1.3 Conditions 18 and 19 were imposed on the permission for the foodstore in late 2012, in accordance with national guidance applying *at that time* to all Local Planning Authorities in Wales, as contained in Welsh Government's Technical Advice Note 22 (TAN 22) and section 4.12 of Planning Policy Wales (PPW).

4.1.4 Planning Policy Wales introduced Welsh Government's push for sustainability in the planning process and was developed in TAN 22 (introduced in June 2010) which set out a basic planning policy expectation that new forms of development should achieve certain standards of construction, in respect of minimum sustainable building standards (design, construction, and use of materials) and within these standards, a minimum carbon emission level. The guidance placed an expectation on local planning authorities to secure the relevant standards in new residential development and non residential development above a certain threshold, through imposition of planning conditions. In relation to dwellings, the requirements were in the form of a Code for Sustainable Homes, and in relation to non residential buildings, in the form of assessment under what were referred to as BREEAM (Building Research Establishment Methodology) Standards. Local Planning Authorities were expected to impose conditions on planning consents to oblige construction in accordance with the

relevant technical standards, including post-construction confirmation that such standards had been met. The wording of Conditions 18 and 19 imposed on the foodstore permission was therefore based on suggested contents in the June 2010 version of TAN 22.

- 4.1.5 Significantly, Welsh Government have since reviewed the national planning policy requirements for sustainable building standards being secured through the planning process, as outlined above in Planning Policy Wales and TAN 22: Planning for Sustainable Buildings. The decision was taken in 2014 to remove the sustainability requirements from PPW, and TAN 22 was cancelled. Fundamentally, it was considered that changes to the Building Regulations in 2014 would adequately address the energy and carbon performance of buildings, avoiding the need for duplication through the planning process. In the context of the foodstore conditions, new guidance in Technical Advice Note 12; Design (July 2014) sets out the relevant construction standards which now have to be met to comply with the Building Regulations. TAN 12 5.4.7 states the level of carbon reduction expected will be determined by the minimum required by Building Regulations (Part L); Appendix 3 (Sources and Further Information) lists Welsh Government (2014) Building Regulations – Part L (Conservation of Fuel and Power). These require compliance with stricter standards, for example in terms of thermal performance.
- 4.1.6 It is clear from the above that there is no longer a requirement for Local Planning Authorities to administer the sustainability requirements previously set out in PPW and TAN 22, as this is now a matter for consideration and enforcement in relation to the wholly separate Building Regulation process.

Assessment:

- 4.1.7 The relevant policy and guidance in relation to Conditions 18 and 19 are considered to be:-
Denbighshire Local Development Plan
Policy RD1 – Sustainable development and good standard design

Planning Policy Wales Edition 7 2014
TAN 12: Design July 2014

Welsh Office Circular 35/95 – The use of conditions in planning permissions

- 4.1.8 In respecting the comments of the Town Council, having due regard to the significant changes to Welsh Government policy since the grant of planning permission, the general guidance in relation to the use of planning conditions, and the fact that the development has to comply with the new, more up to date sustainable building requirements of the 2014 Building Regulations, it is considered wholly unreasonable to refuse to consent to the removal of conditions 18 and 19. In an appeal situation, it is suggested the Council would be open to cost claims for ignoring changes in Welsh Government guidance as there are now no Sustainability Code or BREEAM requirements relevant to planning legislation.

Recommendation 1

That the Committee GRANT the application to remove Conditions 18 and 19.

4.2 Condition 45

- 4.2.1 Condition 45 as worded on the planning permission states as follows:-
“There shall be no development or raising of ground levels on land currently within 0.1% floodplain i.e. land below 84.6m AOD”.
The stated reason for the condition was – ‘In order to reduce the risk of flooding to the development and ensure no increase in flood risk to third parties’.

Background:

4.2.2 Condition 45 was imposed on the 2012 permission at the request of Natural Resources Wales, having regard to the information provided with the application and available flood data. The applicants have now submitted further information including interpolation of water levels, to demonstrate their proposals will not result in increased flood risk elsewhere.

Assessment:

4.2.3 The relevant policy and guidance in relation to Condition 45 is considered to be:-
Denbighshire Local Development Plan
Policy RD1 – Sustainable development and good standard design

Planning Policy Wales Edition 7 2014
TAN 15: Development and Flood Risk

Welsh Office Circular 35/95 - The use of conditions in planning permissions

4.2.4 Natural Resources Wales have advised that they are satisfied that the information provided indicates the proposed land raising of the car park at the southern end of the site will not result in increased flood risk elsewhere, and have no objection to the proposed removal of the condition.

4.2.5 Officers consider the comments of Natural Resources Wales to be critical to the determination of this element of the application and that it would be in order to agree to the removal of Condition 45.

Recommendation 2

That the Committee GRANT the application to remove Condition 45.