

PLANNING COMMITTEE

12 APRIL 2017

REPORT BY HEAD OF PLANNING AND PUBLIC PROTECTION:

OFFICER GUIDANCE ON SUGGESTED REASONS FOR REFUSAL ON PLANNING APPLICATION REF 01/2016/0374/PF – Erection of 75 dwellings, together with associated roads, open space and related works, Land at Cae Topyn, off Old Ruthin Road, Ffordd Eglwyswen, Denbigh

1. INTRODUCTION

1.1.1 Members will recall that Planning Committee resolved to refuse planning permission for the above development when it met on 15th March 2017. This decision was contrary to the Officer recommendation. The vote to refuse was based on 8 issues as proposed by Councillor Mark Young and seconded by Councillor Merfyn Parry. The vote was 24 to refuse, 1 to grant. The 8 issues, as recorded in the relevant minutes, to form the basis of the refusal were:

- Drainage/flood risk
- Lack of Education contributions
- Highway safety including safe routes to school/pedestrian links
- Lack of on-site open space
- Removal of hedgerow and ecological impact
- Impact on welsh language
- Density, character and scale including housing need in the locality
- Impact of pumping station on Brookhouse Chapel.

1.1.2 At the March Planning Committee the Head of Planning and Public Protection advised that a further report would be presented to this planning committee to offer guidance on the strength of those reasons for refusal and to suggest the detailed wording of the refusal reasons. The reason for reporting the application back to Committee was **NOT** to revisit the decision to refuse. That decision has been accepted by Officers. For information, however, the original Officer report, the late addendum sheets from the March Committee and the relevant Site Development Brief (SDB) are attached to this report.

1.1.3 The decision to report the matter back to Planning Committee is in accordance with the adopted Scheme of Delegation. Officers feel it appropriate to provide detailed information on the 8 issues which Members had put forward as their reasons for refusal. The purpose of the report therefore is to advise and guide Members so that they can make an informed

decision as to whether they would want to defend each of the 8 reasons should any appeal be submitted, having regard to costs of defending those reasons at an appeal, as well as the risks of possible unreasonable behaviour and an award of costs against the council at appeal.

- 1.1.4 It is important Members understand that any reason for refusal will need to be rigorously defended at appeal, which brings its own costs that the Council have to pay, but in addition if the Council are unable to defend any reason for refusal, then there is a risk that the Council will also have to pay the appellants costs. So for example if there are 8 reasons for refusal and there is an appeal, it is likely that the appeal will be dealt with by way of a Public Inquiry. Such a Public Inquiry could last for a number of days. At a Public Inquiry the Council and Appellant are likely to appoint Barristers and “experts” to address each reason for refusal. The costs to the council of defending such a complex and time consuming appeal and paying the appellants costs if the Council was seen to be unreasonable could easily cost the Council in excess of a 6 figure sum.
- 1.1.5 It is for this reason, when Members make decisions contrary to Officer recommendation, that Officers have a duty to advise Members on the most appropriate reasons for refusal, so as to avoid unnecessary costs of defending a number of reasons for refusal and to avoid the very real risk of having to also pay the Appellants costs of appealing the decision.
- 1.1.6 In the event that the applicants lodge a formal appeal against the planning refusal the Council could be at risk of an award of costs should it be shown that have acted unreasonably. Examples of possible unreasonable behaviour include (as taken from government guidance):
- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - failure to produce evidence to substantiate each reason for refusal on appeal
 - vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
 - acting contrary to, or not following, well-established case law
- 1.1.7 The following sections present possible reasons for refusal, the need for expert input into the appeal process (at cost to the Council) and whether Officers feel, based on the information submitted with the application and the controls which could be imposed through planning and other processes, there are possible risks of costs being awarded against the Council for unreasonable behaviour.

2 REASONS FOR REFUSAL:

2.1 DRAINAGE & FLOOD RISK:

- 2.1.1 Possible wording for reason for refusal:
It is the opinion of the Local Planning Authority that the use of soakaway drainage systems in this location is not acceptable given the existing ground conditions and that the submitted Drainage Strategy fails to demonstrate that surface water run-off can be adequately handled within the site, and that the development is likely to result in flooding of adjacent properties and within the site itself. Accordingly it is considered that the proposal fails to comply with the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP policy RD1 'Sustainable Development and Good Design' criteria xi), Policy VOE 6 'Water Management', Technical Advice Note 15 'Development and Flood Risk' and Planning Policy Wales 9.
- 2.1.2 The site development brief identifies flooding issues around Brookhouse Cottages (200m south west of the site) caused by the Afon Clwyd, and on the Brookhouse Chapel bend. For this reason the Site Development Brief requires that surface water run-off from the site should be minimised. It also requires the maintenance of the drainage systems to be detailed.
- 2.1.3 The application is accompanied by a geotechnical and geo-environmental report, and a drainage strategy. These documents are written by Civil and Structural Engineers, and assess the suitability of the ground for the use of 'soak-aways' at this site. The conclusion of the submitted reports is that the proposed system of surface water drainage would be able to accommodate the run off for up to 1 in 30 year event and would empty to half in 24 hours. The applicants propose to maintain the soak away surface water from residential properties by establishing a maintenance company funded through an 'occupier charge' system. To safeguard against the insolvency of such a company, the LPA, or other responsible statutory body, could take over the operation of the maintenance company and run its own 'occupier charge' scheme. This 'reserve' clause could be built into any subsequently finalised s.106 legal agreement.
- 2.1.4 This proposal has been studied by the Council's own Land Drainage Engineer, who concurs with its conclusion, and sees no reason why, subject to the final design of the engineering solutions being controlled through the imposition of a planning condition (a standard approach to determining planning applications), the proposed surface water drainage system would meet the requirements of Technical Advice Note 15 "Development and Flood Risk" in terms of surface water run-off rates. The Highway Engineer has confirmed that the Authority could adopt the highway surface water run-off system. The Council's Network Management Manager has also confirmed that the localised flooding on the Brookhouse Chapel bend is a highway maintenance issue.

- 2.1.5 During the debate at Committee, Members were clear that the proposed drainage system would not work based on own experiences. It was voiced that the surface water would have to be discharged into a water course. Evidence in the form of photographs showing the flooding of the Brookhouse Chapel bend were referred to. Members also voiced concern that legal agreements are not necessarily robust enough to provide sufficient safeguards.
- 2.1.6 If Members resolve to refuse the application on the grounds of flooding/drainage (as per the suggested reason for refusal), and the refusal is appealed, the Council would be required to defend the reason by providing technical data that showed the ground conditions are unsuitable for the proposed surface water drainage system, that the proposal would result in additional flooding off site, and that planning conditions and legal agreements are not sufficient to control the development. The appellants would, no doubt, use technical specialists in this field to justify why their proposal is acceptable. Members would need to give consideration to employing, at cost to the Council, similar specialists to try to defend any reason for refusal.
- 2.1.7 If the Council cannot provide such evidence, there is clear risk of the Council having to pay the Appellants costs in this regard.

2.2 LACK OF EDUCATION CONTRIBUTIONS:

- 2.2.1 Possible wording for reason for refusal:
In the opinion of the Local Planning Authority, the proposal would result in an increase in demand on nearby education facilities that cannot be currently accommodated and would put further strain on education infrastructure. Without such a contribution the option of parents to send their children to Welsh schools would be unacceptably limited. The proposal does not provide a developer contribution to increase capacity in Denbigh Schools and replace mobile classrooms, and therefore fails to comply with the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP policy BSC3 'Securing infrastructure contributions from development', policy RD 1 'Sustainable Development and Good Design' criteria ix), SPG 'Planning Obligations' and Planning Policy Wales 9.
- 2.2.2 The site development brief states that primary school capacity is limited in both Welsh and English medium education in Denbigh. Therefore, a developer contribution to increase capacity in Denbigh primary schools and move away from mobile classrooms would be required. Appendix 1 of the Site Development Brief states that school capacity is to be calculated net of any capacity that has been achieved through using mobile accommodation. It should be noted that this information on capacity was correct at the time of writing the SDB. Members will appreciate, however, that pupil numbers are going to vary over periods of time and this will impact upon capacity.

- 2.2.3 In assessing this element of the proposal, using formula in the Site Development Brief, Officers calculated that the number of school age children generated from the development would be 18 primary age and 13 secondary age. Colleagues in our Education Service have confirmed that the only school in Denbigh that uses mobile classrooms for education is St Brigids. It is also understood that those mobile classrooms have been in use for at least 5 years. Welsh Government Guidance advises that in calculating school capacity, mobile classrooms that have been used for more than 3 years contribute towards the schools capacity. This approach is reflected in the adopted SPG Planning Obligations. Officers are of the opinion that **there is capacity** in local schools (even when excluding the capacity created by mobile classrooms at St Brigids).
- 2.2.4 Consideration has also been given to the implications of developing the adjacent site covered by the Site Development Brief. The planning application on the adjacent site is currently held in abeyance pending the submission of significant additional information and cannot be determined. Further it is made in outline, and there is not an indication of the numbers of dwellings. Given that the current application the subject of this report does not currently outstrip school capacity in the area, there would still potentially be some capacity remaining for the other site. It is however likely that the other site would over reach capacity in the local schools, and may be liable to have to pay an education contribution accordingly.
- 2.2.5 Notwithstanding the above, it was clear during the debate at planning committee that members felt strongly that the capacity and infrastructure of local schools were not adequate to accommodate the demand generated by this development. In particular, and with reference to paragraph 1.2 of Appendix 1 of the Site Development Brief, Members referred to apparent capacity shortfalls within specific year groups. It is understood that members consider a contribution of half a million pounds is required.
- 2.2.6 To defend this reason for refusal at planning appeal, a clear current capacity shortfall will need to be identified, using a robust method of calculating the number of places that certain year groups may be short of. That figure will then be the basis for calculating the financial contribution required. Officers have liaised further with colleagues in Education Services and hope to be able to provide further clarity on capacity in specific year groups in specific schools on the late/blue sheet.
- 2.2.8 Members must be advised that the vagaries involved in predicting population numbers, ages and language preferences make it extremely difficult to find an accurate methodology. Whilst accepting that reference to year group capacity is contained within Appendix 1 of the Site Development Brief, Officers consider that this was aspirational and may not stand closer independent scrutiny by a Planning Inspector.

2.2.9 Notwithstanding the above, it should also be noted that the applicants have not been afforded an opportunity to comment on this education contribution issue, owing to Officers not requesting a contribution. In Officers opinion it would be unreasonable at this point to refuse on the basis of lack of an education contribution, without giving the applicants the opportunity to comment.

2.2.10 Members are advised that it may be possible to raise the issue of education contributions within any subsequent appeal process. It is usual practice in an appeal for the Inspector to explore potential conditions and unilateral undertakings in the event that the appeal is allowed. This would be the point that Members representing the Council at the appeal could request that any potential terms of a s.106 legal agreement include the requirement for an education contribution to be paid. The case will still have to be made as to the need for a payment, as outlined above, but in the event that the inspector doesn't agree with the Council, it would be unlikely that the costs could be awarded against the council. This option therefore represents a low risk for Members. **(See Recommendation (B) at end of report)**

However if Members insist on having a reason for refusal linked to Education Contributions Officers could defend that position, without having to employ "experts", but there is clear risk of the Council having to pay the Appellants costs in this regard.

2.3 HIGHWAY SAFETY (including safe routes to school and pedestrian links):

2.3.1 Possible wording for reason for refusal:

It is the opinion of the Local Planning Authority that the proposal would result in an unacceptable impact upon highway safety as a result of:

- ***introducing a significant number of additional vehicular movements to the locality which would exceed the capacity of the existing local transport infrastructure;***
- ***not providing adequate parking facilities for St Marcellas Church and Brookhouse Chapel;***
- ***failing to improve pedestrian linkages with Denbigh Town which would result in not creating safe routes to school; and,***
- ***does not propose an adequate means of mitigating the***

impact.

The proposal is therefore contrary to the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP policy RD 1 'Sustainable Development and Good Design' criteria viii), SPG Residential Development, Technical Advice Note 18 'Transport' and Planning Policy Wales 9.

2.3.2 The Site Development Brief is extensive in its requirements regarding highway considerations. This included an assessment of highway issues and constraints in the area, and details them specifically. It also required the submission of a Transport Assessment that assessed the impact of traffic of from the development upon the local highway

infrastructure and identifies 7 areas/junctions for specific detailed assessment. The intention of the development brief was to guide developers towards key areas of consideration in order to assist them to comply with standard regulations regarding highway design and capacity. It also raised the issue of parking for Brookhouse Chapel. It does not set a standard higher than that required anywhere else.

- 2.3.3 The issues needing assessment and the standard national requirements relating to highway design and capacity were well detailed in the officers' report to committee, and included a detailed response from the Highway Officer that referred to each issue in turn. It also discussed the parking arrangements. The Local Highway Authority raised no objection to the application.
- 2.3.4 It was clear from the discussion at the March Committee that Members felt the Transport Assessment was inadequate, and that the application did not meet standards regarding the adequacy of highway infrastructure, including, junction capacity, strength of bridge adjacent to the Brookhouse Mill Public House, pedestrian linkages, and safe routes to school.
- 2.3.5 To defend this reason for refusal, Members will have to provide technical data to demonstrate that the submitted Transport Assessment is incorrect in its conclusions, and that the junctions are inadequate for the predicted additional traffic. Members will also need to demonstrate that the application does not improve pedestrian linkages to Denbigh Town Centre, or provide safe routes to school. Members should also be comfortable with justifying why planning conditions and legal agreements are insufficient to control the elements they are concerned about. The appellants would, no doubt, use technical specialists in this field to justify why their proposal is acceptable. Members would need to give consideration to employing, at cost to the council, similar specialists to try to defend any reason for refusal.
- 2.3.6 If the Council cannot provide such evidence, there is clear risk of the Council having to pay the Appellants costs in this regard.

2.4 LACK OF ON SITE PUBLIC OPEN SPACE:

- 2.4.1 Possible wording for reason for refusal:

It is the opinion of the Local Planning Authority that the proposal fails to provide an adequate amount of open space within the site, and that in the absence of other accessible public open space in the locality this would be detrimental to the amenity of the area, adding unacceptable demand on existing public open space. Accordingly, the proposal is considered to be contrary to the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP policy BSC3 'Securing infrastructure contributions from development', policy BSC 11 '

Recreation and open space', SPG 'Recreational Public Open Space', SPG Residential Development and Planning Policy Wales
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- 2.4.2 The site development brief outlines the requirements of LDP Policy BSC 11, reiterating the requirement that all open space should be provided on site, except where local circumstances suggest other-wise, in which circumstance a commuted sum would be acceptable.
- 2.4.3 The proposal would provide all of the required children's recreational open space on site, along with the suggestion of establishing a maintenance company to look after the open space. The proposal also offers a £31,000 commuted sum to contribute towards the provision of outdoor sport including playing pitches – as per adopted Supplementary Planning Guidance which sets a threshold of 200+ houses for the onsite provision of outdoor sports facilities: SPG 'Recreation and Open Space' (adopted 15th March 2017), and SPG 'Planning Obligations' (adopted 16th November 2016), both of which introduce said thresholds for on-site provision. In this regard, the Open Space SPG supersedes the SDB in relation to the requirements for Open Space. The latest adopted SPGs on this issue therefore only require children's' recreational open space to be provided on a site of this size and not outdoor sport facilities (formerly Community Recreational Open Space).
- 2.4.4 During the debate, Members were clear in their opinion that the Site Development Brief (SDB) required **all** open space to be provided on site. Members voted to refuse the application on lack of open space, as all open space should be provided on site, and that a commuted sum would not meet the aims of the policy or Site Development Brief. This, however, is clearly contrary to the now adopted Supplementary Planning Guidance on Open Space (March 2017).
- 2.4.5 If members are still minded to refuse the application on this basis, (bearing in mind the adoption of the SPG on Public Open Space, at the same committee which states that only children's recreational open space need be provided on a site of this size) they will need to be certain of the harm caused to the amenity of the area, and explain why a commuted sum would not be acceptable. There is probably no advantage to be gained in employing expert opinion to defend this reason for refusal.
- 2.4.6 Officers strongly advise that Members need to take into account the evidence base of the most recent Open Space SPG (March 2017) and if they choose not to then there is clear risk of the Council having to pay the Appellants costs in this regard.

2.5 REMOVAL OF HEDGEROW AND ECOLOGICAL IMPACT:

- 2.5.1 Possible wording for reason for refusal:

It is the opinion of the Local Planning Authority that the removal of hedgerows at the site boundaries will have a detrimental impact upon the amenity of the area and ecology of the area. The proposal is therefore contrary to the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP policy RD 1 'Sustainable Development and Good Design' criteria xiii), LDP policy VOE5 'Conservation of Natural Resources', SPG Residential Development , Technical Advice Note 5 'Nature Conservation and Planning' and Planning Policy Wales 9.

- 2.5.2 The site development brief requires the hedgerow along Old Ruthin Road to be retained and enhanced. However, the SDB also indicates that the access to the site should be from Old Ruthin Road, and encourages dwellings along this boundary to face onto the highway. The SDB therefore further advises that any loss of hedgerow in this location should be replaced. It does not specifically require the hedgerow along Whitchurch road to be retained.
- 2.5.3 With regard to ecology, the site development brief acknowledges there are no known protected species recorded at the site, but suggests the hedgerows can play an important role in visually screening the sites and providing habitat for local wildlife. It also suggests a wildlife corridor be created along the north eastern boundary.
- 2.5.4 The application was submitted with ecological surveys that concluded limited impact upon local wildlife. It also indicated that a wildlife corridor would be created along the north eastern boundary.
- 2.5.5 Officers' opinion, based on the information/surveys submitted with the application, is that the removal of the hedgerows was necessary for the development of the site, and that there is limited evidence that it would be so detrimental to the local wildlife and visual amenity of the area. Impacts of the loss of hedgerows could be offset through the imposition of a landscaping condition.
- 2.5.6 At committee, members suggested that the application should be refused as it failed to adhere to the Site Development Brief, and that the loss of the hedgerows was unacceptable in visual and ecological terms. The use of planning conditions in order to control this issue was dismissed by members.
- 2.5.7 If the application is refused for the reason suggested above, Members need to be satisfied that sufficient evidence of the harm to local wildlife and amenity of the area can be provided and that the use of a landscaping/planting condition would be ineffective in offsetting the impact of the proposal in this respect. The appellants would, no doubt, use technical specialists in this field to justify why their proposal is acceptable. Members would need to give consideration to employing, at cost to the Council, similar specialists to try to defend any reason for refusal.

If the Council cannot provide such evidence, there is clear risk of the Council having to pay the Appellants costs in this regard.

2.6 IMPACT UPON WELSH LANGUAGE:

- 2.6.1 Possible wording for reason for refusal:

It is the opinion of the Local Planning Authority the application does not adequately demonstrate that it would not have a detrimental impact upon the character and language balance of the community. The proposal is therefore unacceptable and contrary to the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP Policy RD5 'The Welsh Language and the Social and Cultural Fabric of Communities', SPG Planning and the Welsh Language, Technical Advice Note 20 'Planning and the Welsh Language' and Planning Policy Wales 9.

- 2.6.2 The Site Development Brief requires that a 'A Community and Linguistic Impact Assessment' would be required to accompany the application, and states that as a minimum, development proposals should seek to use locally relevant Welsh names for streets and the development as a whole.
- 2.6.3 The application is accompanied by a Community Linguistic Impact Assessment that concludes the impact of the development is likely to have a positive impact upon the character and language balance of the community. The applicants have also agreed to use welsh names and bi-lingual signage. Officers have no evidence to contradict the submitted Community Linguistic Impact Assessment, and recommended the imposition of a planning condition to secure the submission of a Local Employment Strategy to provide further details of how the development would contribute to the promotion and enhancement of the Welsh language and local employment.
- 2.6.4 Members were quite clear in the debate that they did not feel the application demonstrated sufficiently enough that the proposal would not be harmful to the Welsh language and culture.
- 2.6.5 The appellants would, no doubt, use technical specialists in this field to justify why their proposal is acceptable. Members would need to give consideration to employing, at cost to the Council, similar specialists to try to defend any reason for refusal.
- 2.6.6 If the Council cannot provide such evidence, there is clear risk of the Council having to pay the Appellants costs in this regard.

2.7 DENSITY, CHARACTER AND SCALE INCLUDING HOUSING NEED IN THE LOCALITY:

- 2.7.1 Possible wording for reason for refusal:

It is the opinion of the Local Planning Authority that the proposal would have an unacceptable impact upon the character and amenity of the area by virtue of its density, design, and scale. The proposal is therefore contradictory to the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP Policy RD1 'Sustainable Development and a good Standard of Design' criterion i), iii), iv), v), xiii) , SPG Residential Development, the Local Market Housing Assessment and Planning Policy Wales 9.

- 2.7.2 The Site Development Brief contains various statements throughout that relate to the objective of ensuring the development does not unacceptably affect the character and appearance of the area. Areas of note are the landscaping of boundaries and spaces within the site, the heights of buildings and public views of and across the site. The SDB proposed a lower density than the LDP's requirement of 35 dwellings per hectare.
- 2.7.3 The application includes a range of house types and designs. Detailed landscaping was left to be controlled through planning condition, although opportunities to create a strong north eastern boundary by planting a wildlife corridor were identified. The site density proposed is 25 dwellings per hectare, 10 dwellings per hectare less than that required by the LDP.
- 2.7.4 From the debate, it is clear that members felt that there were too many dwellings on the site, and the design and appearance of them would be out of character with the edge of settlement location, and surrounding open countryside. Members felt the development would have an unacceptable impact upon important views across the site. Member's opinion was that there should be more space between the dwellings.
- The appellants would, no doubt, use technical specialists in this field to justify why their proposal is acceptable. Members would need to give consideration to employing similar specialists to defend any reason for refusal.
- 2.7.5 If the Council cannot provide such evidence, there is clear risk of the Council having to pay the Appellants costs in this regard, however in Officers opinion, this is one of the stronger reasons for refusal. **(See Recommendation (A) at the end of the report)**

2.8 IMPACT UPON THE AMENITY OF THE ADJACENT CHAPEL:

- 2.8.1 Possible wording for reason for refusal:

It is the opinion of the Local Planning Authority that the proposed sewage pumping station, in close proximity to Brookhouse Chapel would have an unacceptable impact upon the amenity of users of the chapel by virtue of noise and odour. The proposal is therefore in conflict with Policy RD1 'Sustainable Development

and a good Standard of Design' criteria vi), SPG Residential Development, and Planning Policy Wales 9.

- 2.8.2 The site development brief does not refer to the amenity of Brookhouse needing to be protected. However, Policy RD1 contains criteria which seek to safeguard the amenity of other land users. Officers discussed the proposal with Public Protection Officers and no concerns were raised.
- 2.8.3 Members raised concern that the location of the sewage pumping station was too close to the chapel, and that in their opinion this would result in an unacceptable level of noise and odour, and be detrimental to the amenity of the chapel.
- 2.8.4 At appeal, the level of noise associated with a sewage pumping station, and the odour levels will have to be evidenced. Members will need to be satisfied that any detrimental impacts caused by the pumping station (as operated by Welsh Water) couldn't be controlled through the statutory nuisance legislation. The appellants would, no doubt, use technical specialists in this field to justify why their proposal is acceptable. Members would need to give consideration to employing similar specialists to defend any reason for refusal.
- 2.8.5 If the Council cannot provide such evidence, there is clear risk of the Council having to pay the Appellants costs in this regard.

3. OFFICERS OPINION:

- 3.1.1 With respect to the opinions and reasons for refusal that Members put forward at Planning Committee on 15th March, Officers are duty bound to offer professional advice as the robustness of the 8 reasons for refusal.
- 3.1.2 Members are reminded that in a Planning Appeal situation, all reasons for refusal need to be supported with evidence ideally provided by persons with appropriate qualifications and experience. If the Council cannot provide such evidence it puts itself at risk of having costs awarded against it for unreasonable behaviour.
- 3.1.3 On the basis of the original Officers Committee Report, the responses received from Technical Consultees and the clarification in this report, Officers consider that all 8 reasons put forward by members could not be defended in their entirety. This would most likely result in a substantial award of costs against the Council in addition to the costs of trying to defend those reasons at Appeal. In Officers professional opinion only 1 of the suggested reasons for refusal would meet the relevant criteria of a) being possible to defend at an appeal, b) needing minimal cost to promote a robust technical defence and; c) having a likely award of costs against the Council for unreasonable behaviour.
- 3.1.4 Officers are obliged to advise that it would be in the best interest of Planning Committee and the Council to focus on the impact of the

proposal on **the character and openness of the area**. Whilst acknowledging that the Council would only be defending a single reason for refusal Members are reminded that it would only require a single reason to successfully have an appeal dismissed by an Inspector.

- 3.1.5 It should be noted, however, that should members agree to reduce the reasons for refusal as recommended by Officers, this would not preclude members of the public or County Councillors acting independently of the Council and making their own representations to the Planning Inspectorate. The Planning Inspectorate is duty bound to consider all representations, including those made by third parties. In this way the Council can considerably reduce its financial risks by refusing on one reason, whilst allowing other third parties to raise all of their concerns. The Inspector would need to weigh up all those concerns, as well as the Council's reason for refusal in eventually determining the appeal.

4. RECOMMENDATION (A)

- 4.1.1 That members resolve to refuse planning permission for application ref 01/2016/0374/PF for the following reason:

It is the opinion of the Local Planning Authority that the proposal would have an unacceptable impact upon the character and amenity of the area by virtue of its density, design, and scale. The proposal is therefore contradictory to the adopted Site Development Brief 'Residential Development – Brookhouse Sites, Denbigh', LDP Policy RD1 'Sustainable Development and a good Standard of Design' criterion i), iii), iv), v), xiii) , SPG Residential Development, the Local Market Housing Assessment and Planning Policy Wales 9.

RECOMMENDATION (B)

- 4.1.2 That members resolve to seek any appropriate and relevant financial contribution (in liaison with relevant Officers at that time) towards education provision at any subsequent appeal should the applicant/appellant fail to unilaterally offer the requisite contribution at such an appeal.