

45/2023/0108



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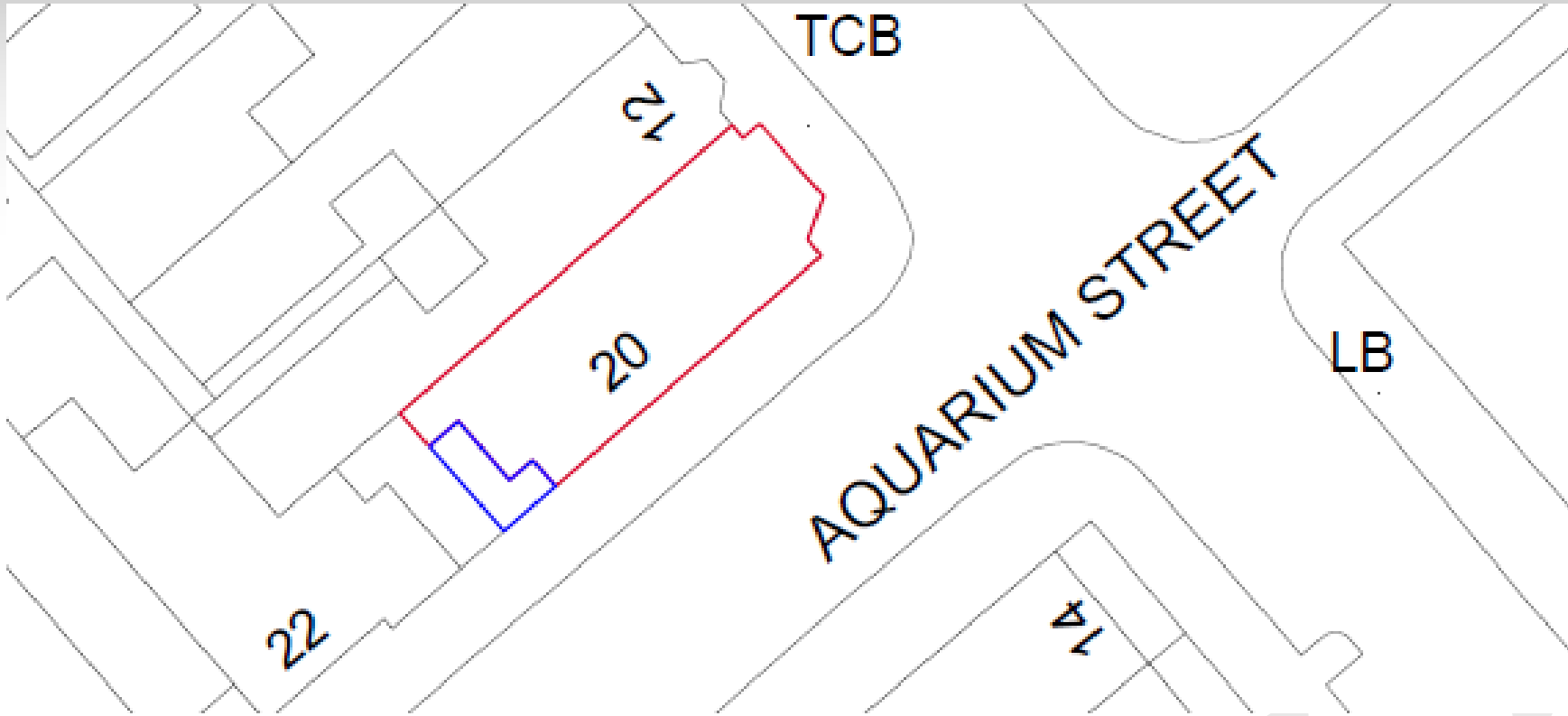
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45 / 2023 / 0108

20 Aquarium Street, Rhyl

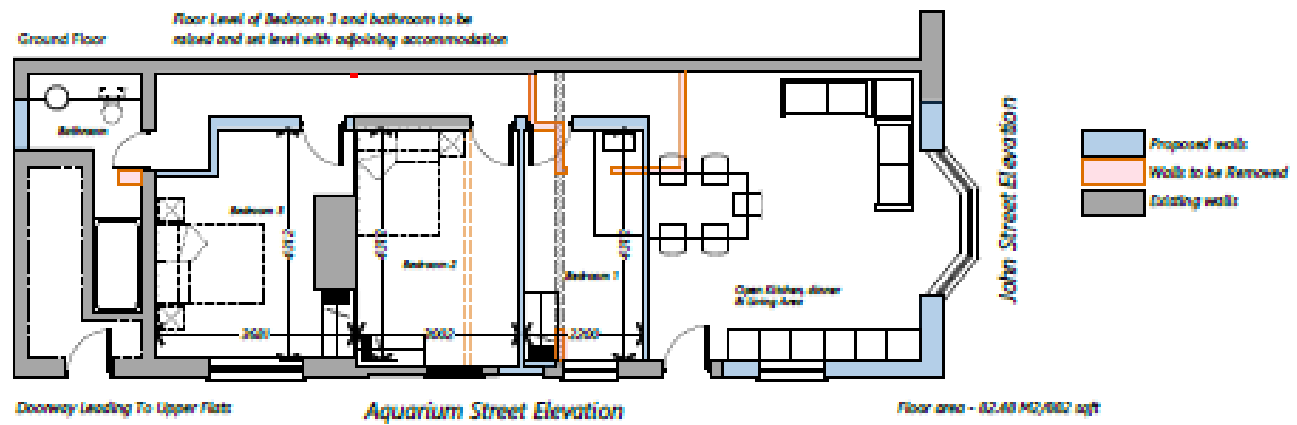
**Conversion of ground floor retail premises to form a
self-contained apartment and alterations to
principle elevations**



Site Plan



Existing building/elevations



Proposed elevations and floorplan

WARD: Rhyl West

WARD MEMBER(S): Cllr Joan Butterfield
Cllr Alan James (c)

APPLICATION NO: 45/2023/0108/ PF

PROPOSAL: Conversion of ground floor retail premises to form a self-contained apartment and alterations to principle elevations

LOCATION: 20 Aquarium Street Rhyl LL18 1PH

APPLICANT: Mr Chris Walsh, EMW Developments

CONSTRAINTS: C1 Flood Zone
Article 4 Direction

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

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

- Member request for referral to Committee

CONSULTATION RESPONSES:

RHYL TOWN COUNCIL
"No objection"

NATURAL RESOURCES WALES

Objects to the proposed development as submitted and considers that the Flood Consequence Assessment (FCA) submitted has failed to demonstrate that the consequences of flooding can be acceptably managed over the development lifetime. Further detail of NRW's assessment and conclusion is contained in section 4.2.4 of the report.

NRW advise that if the Council is minded to grant planning permission, NRW should be informed of all matters that influence this decision prior to granting permission.

RESPONSE TO PUBLICITY: None

EXPIRY DATE OF APPLICATION: 18/06/2023

EXTENSION OF TIME AGREED: 08/11/2023

REASONS FOR DELAY IN DECISION (where applicable):

- additional information requested
- awaiting consideration by Committee

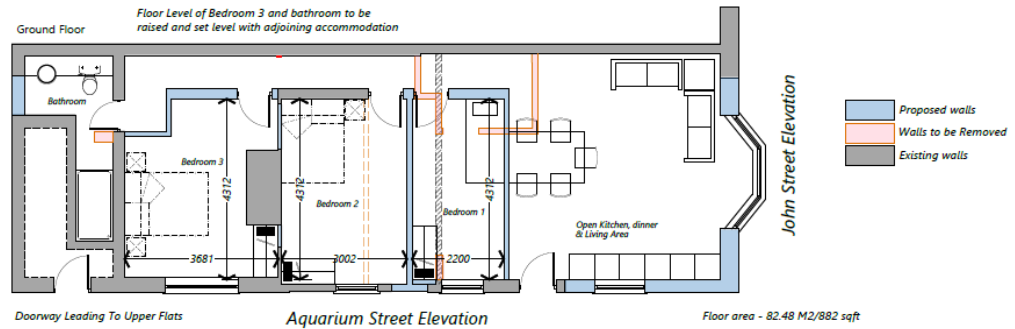
PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

- 1.1.1 The application proposes the “Conversion of ground floor retail premises to form a self-contained apartment and alterations to principle elevations” at 20 Aquarium Street in Rhyl.
- 1.1.2 Plans submitted in support of the application show minor external alterations proposed to remove the shopfront and fascia and re-install a more traditional frontage with bay window to match the adjacent properties. Internally the 82m² flat would comprise of a living room/kitchen, 3 bedrooms and a bathroom.

See plans snip * not to scale



Proposed floorplan



Proposed elevations

1.2 Other relevant information/supporting documents in the application

- 1.2.1 The application was supported by an FCA from KRS Enviro Services.
- 1.2.2 The last known use of the shop was a Dog Grooming shop, however the business moved to Water Street in 2022. It is understood that the site was on the market for an alternative use since October 2022 but there has been little interest in a commercial use.

1.3 Description of site and surroundings

- 1.3.1 The site is located on the junction of Aquarium Street and John Street close to Rhyl town centre.
- 1.3.2 No. 20 is an existing three story detached property with the retail unit on the ground floor and two flats above. Access to these flats is from a separate entrance onto Aquarium Street. The property fronts the street on both elevations with no rear external space.

1.4 Relevant planning constraints/considerations

1.4.1 The site is located within the development boundary of Rhyl. It is within the West Rhyl Regeneration Area Supplementary Planning Guidance Note area.

1.4.2 It is also within a C1 floodzone as defined by the DAM maps of TAN 15 Development and Flood Risk.

1.5 Relevant planning history

1.5.1 There is no planning history on the site.

1.6 Developments/changes since the original submission

1.6.1 Information was requested after the original consultation to address Flood Risk issues raised by NRW. An addendum to the FCA by submitted by Brian Killingworth to support the application.

1.7 Other relevant background information

1.7.1 The application is being considered by Planning Committee on the request of Cllr Alan James to consider the wider impacts of the development on the area.

2. DETAILS OF PLANNING HISTORY:

2.1 N/A

3. RELEVANT POLICIES AND GUIDANCE:

The main planning policies and guidance are considered to be:

Local Policy/Guidance

Denbighshire Local Development Plan (adopted 4th June 2013)

Policy RD1 – Sustainable development and good standard design

Policy BSC1 – Growth Strategy for Denbighshire

Policy VOE1 - Key areas of importance

Policy PSE3 – Protection of employment land and buildings

Supplementary Planning Guidance

Supplementary Planning Guidance Note: Residential Development Design Guide

Supplementary Planning Guidance Note: Residential Space Standards

Supplementary Planning Guidance Note: West Rhyl Regeneration Area

Government Policy / Guidance

Planning Policy Wales (Edition 11) February 2021

Development Control Manual November 2016

Future Wales – The National Plan 2040

Technical Advice Notes

TAN 15 Development and Flood Risk (2004)

4. MAIN PLANNING CONSIDERATIONS:

In terms of general guidance on matters relevant to the consideration of a planning application, Section 9.1.2 of the Development Management Manual (DMM) confirms the requirement that planning applications 'must be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise'. It 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. The DMM further states that material considerations 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 (Section 9.4).

The DMM has to be considered in conjunction with Planning Policy Wales, Edition 11 (February 2021) and other relevant legislation.

Denbighshire County Council declared a climate change and ecological emergency in July 2019. In October 2020 the Council approved an amendment of its Constitution so that all decisions of the Council now have regard to tackling climate and ecological change as well as having regard to the sustainable development principles and the well-being of future generations.

The Council aims to become a Net Carbon Zero Council and an Ecologically Positive Council by 31 March 2030. Its goal and priorities are set out in its Climate and Ecological Change Strategy 2021/22 to 2029/30. The actions, projects and priorities in the Strategy directly relate to council owned and controlled assets and services. One priority of the Strategy is to promote the existing policies within the Local Development Plan (LDP) 2006 to 2021 and Supplementary Planning Guidance (SPG) which contribute to environmentally responsible development. In preparing these reports to determine planning applications we therefore highlight the LDP 2006 to 2021 and appropriate SPG. Applications that are determined in accordance with the LDP 2006 to 2021 are environmentally responsible developments.

Planning applications are assessed in accordance with statutory requirements including The Environment (Wales) Act 2016, national policy (Future Wales, PPW 11) and local policy (LDP 2006 to 2021) and therefore they are assessed with regard to tackling climate and ecological change which is a material consideration.

The following paragraphs in Section 4 of the report therefore refer to all statutory requirements, policies and material planning considerations which are considered to be of relevance to the proposal.

4.1 The main land use planning issues in relation to the application are considered to be:

- 4.1.1 Principle
- 4.1.2 Visual amenity
- 4.1.3 Residential amenity
- 4.1.4 Landscape
- 4.1.5 Ecology
- 4.1.6 Drainage (including flooding)
- 4.1.7 Highways (including access and parking)

4.2 In relation to the main planning considerations:

4.2.1 Principle

The main Local Development Plan Policy relevant to the principle of the development is Policy BSC 1. This policy seeks to make provision for new housing in a range of locations, concentrating development within development boundaries of towns and villages. It encourages provision of a range of house sizes, types and tenure to reflect local need and demand and the Local Housing market assessment.

The site is located within the development boundary of Rhyl which is defined as a lower growth town in the LDP.

The site is located within the West Rhyl SPG Regeneration Area, the majority of the attached properties on John Street and Aquarium Street at the rear are residential and allocated for minimal interventions in the SPG. That said it is noted that there is a general presumption in the SPG for the provision of family homes (i.e. larger dwellings) across the SPG area. It could be argued that a 3 bed flat could be considered within the intentions of the policy.

The existing use of the site as commercial use is noted and the implications of PSE 3 which aim to protect existing employment sites are therefore relevant. It is noted that this shop has been vacant for at least a year and has been marketed without success for commercial uses in the interim period.

Given the above, the principle of change of use to residential is considered acceptable in this location. Officers suggest the acceptability of the proposal therefore has to rest on assessment of the local impacts and constraints which are reviewed within the following sections of the report.

4.2.2 Visual amenity

Local Development Plan Policy RD 1 test (i) requires due regard to issues of siting, layout, form, character, design, materials, aspect, microclimate and intensity of use of land / buildings and spaces between buildings, which are matters relevant to the visual impact of development; test (vi) requires that development does not unacceptably affect prominent public views into, out of, or across any settlement or area of open countryside; test (vi) requires the incorporation of existing landscape or other features, takes account of site contours, and changes in levels and prominent skylines; and test (xiii) requires the incorporation of suitable landscaping measures to protect and enhance development in its local context.

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The visual amenity and landscape impacts of development should therefore be regarded as a potential material consideration.

The application proposes minor external alterations to the building to remove the shopfront/oversized fascia and install a bay window to match the adjoining properties. Arguably the change of use would result in a positive impact on the area by enabling the reuse of a vacant property and avoiding a boarded-up shopfront in an area which has seen significant regeneration efforts of late.

The proposal is therefore considered acceptable in relation to the visual amenity policies and guidance listed above.

4.2.3 Residential amenity

Local Development Plan Policy RD 1 test (i) requires due regard to issues of siting, layout, form, character, design, materials, aspect, microclimate and intensity of use of land / buildings and spaces between buildings, which touch on the potential for impact on residential amenity; test (vi) sets the requirement to assess the impact of development on the amenities of local residents, other land and property users, or characteristics of the locality, in terms of increased activity, disturbance, noise, dust, fumes, litter, drainage, light pollution, etc..

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The residential amenity impacts of development should therefore be regarded as a potential material consideration.

The proposed dwelling would be a three-bedroom flat located in a predominantly residential area. It would meet current floor space standards in terms of internal arrangements. Whilst external space is lacking it is located close to the town centre, opposite the relatively new Gerddi Heulwen open space, and within a 2-minute walk of the Seafront. The orientation of the property is such that windows are all street facing which is not unusual in this area.

Whilst it would be preferable to have more amenity space for a dwelling of this size (i.e. 3 bedrooms) on balance the proposal is therefore considered acceptable in relation to the residential amenity policies and guidance listed above.

4.2.4 Drainage (including flooding)

Local Development Plan Policy RD 1 test (xi) requires that development satisfies physical or natural environmental considerations relating to drainage and liability to flooding.

Planning Policy Wales confirms that factors to be taken into account in making planning decisions (material considerations) must be planning matters; that is, they must be relevant to the regulation of the development and use of land in the public interest, towards the goal of sustainability. The drainage / flooding impacts of a development proposal are a material consideration.

Planning Policy Wales (PPW 11) Section 6.6.22 to 6.6.29 identifies flood risk as a material consideration in planning and along with TAN 15 – Development and Flood Risk, which provides a detailed framework within which risks arising from different sources of flooding should be assessed.

TAN 15 advises that in areas which are defined as being of high flood hazard, development proposals should only be considered where:

- new development can be justified in that location, even though it is likely to be at risk from flooding; and
- the development proposal would not result in the intensification of existing development which may itself be at risk; and
- new development would not increase the potential adverse impacts of a flood event

The general approach adopted in TAN 15 is to advise caution in respect of new development in areas of high risk of flooding, and it sets out a 'precautionary' framework to guide planning decisions, seeking to direct new development away from areas at risk. It details specific tests for local planning authorities to apply to development proposals, requiring an authority to be satisfied a proposal is first *justified* (criteria set out in Section 6) and then that the *consequences of flooding* (set out in Section 7) are acceptable. It advises that where the risks and consequences of flooding cannot be managed to an acceptable level for the nature and type of development, development should be avoided irrespective of the justification. TAN 15 stresses the need for suitable Flood Consequences Assessments to be submitted with applications, to establish the source / mechanism of flooding, the consequences of flooding, and as appropriate, details of mitigation measures to show if risk can be managed to an acceptable level for the type of development.

The site is located within Zone C1 of the Development Advice Map (DAM) as referred to by the Technical Advice Note (TAN) 15: Development and Flood Risk. The Flood Map for Planning identifies the application site to be at risk of flooding and is partially within Flood Zone 3 (sea), partially within Flood Zone 2 (rivers).

The development proposal is for the change of use from a shop to residential, the existing lawful planning use would be classed as 'less vulnerable', given the sites most recent use. As such the proposal would increase the land use vulnerability of the site, from less vulnerable to highly vulnerable land use.

NRW's detailed comments on the application are as follows:

We have reviewed the FCA undertaken by KRS Enviro, dated April 2023, reference KRS.0690.002.001.A. Our advice to you is that the FCA fails to demonstrate that the

risks and consequences of flooding can be managed to an acceptable level for the reasons explained below.

The proposed development is for the change of use from a retail premises to a ground floor flat. This is classified as change of vulnerability from less to highly vulnerable development, in line with Figure 2 of TAN15.

The FCA confirms that the main flood risk posed to the site is tidal - from the sea and tidal river Clwyd. The FCA includes outputs from the Tidal Clwyd Study (2015), Point of Ayr to Pensarn Study (2017) and the Denbighshire Strategic Flood Consequences Assessment (SFCA) (2018).

We note that the model outputs from the SFCA have not been acquired and the PDF maps are not of sufficient quality to derive site specific flood depths. We would expect the consultant to source the modelled flood outputs for the 0.5% AEP breach events (Marine Lake and Rhuddlan Clwyd) with an allowance for climate change, and to derive site specific flood levels and depths. Nonetheless the outputs used demonstrate flooding on site during the 0.5%AEP breach event with climate change. The Point of Ayr to Pensarn Study (2017) outputs demonstrate flooding to the site during the 0.5% AEP defended flood event with climate change. There is no flood risk to the site during the breaches modelled in this study. During the defended 0.5% Annual Exceedance Probability (AEP) flood event for 2123 (with an appropriate sea level rise uplift) the Tidal Clwyd study demonstrates flooding on site up to a depth of 0.5m; this is based on overtopping.

In order to comply with A1.14 of TAN15 development should be designed to be flood free during the 0.5%AEP breach flood event with an allowance for climate change (100 years). We advise that the proposed development fails to comply with this. Whilst the data included within the FCA is not comprehensive, it is clear that the site would not be flood free during the design event. Finished floor levels are proposed to remain as existing. The proposed mitigation includes flood resilience measures such as raising electrical sockets and providing flood barriers; and developing an emergency flood plan. Whilst these resilience and emergency planning measures are encouraged, they do not provide appropriate mitigation to comply with A1.14 and do not negate our concerns regarding introducing a new highly vulnerable, ground floor only, residential development to a flood risk area.

Based on the flood levels anticipated on site, and the works required to mitigate this, it is unlikely that the proposed development would be able to comply with TAN15, and thus we raise concerns. If the FCA is updated we advise that the SFCA outputs are sought to inform site specific flood levels onsite during the design breach event.

It is clear from the above that the flooding issues require careful assessment in relation to the general advice in PPW and the detailed contents of TAN15, all in the context of the information provided by the applicants and response from NRW.

Firstly in relation to applying the TAN 15 tests "Justification test"

Section 6.2 states that 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 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 other key partners, to sustain an existing settlement or region;
- and,
- iii) It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and,

iv) The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 7 and appendix 1 found to be acceptable.

Having regard to the justification criteria in paragraph 6.2 of TAN15, Officers' view is that;

i) The proposal would comply with test i) in that the provision of a dwelling would assist the Growth Strategy for the County in Local Development Plan Policy BSC1, which is to provide housing to meet the needs of local communities and population changes, and it would contribute to expanding the range of accommodation in the town. The site is an existing building located within the development boundary of the adopted Local Development Plan. Housing development in existing settlements concurs with the aims of Planning Policy Wales.

The SPG area of West Rhyl acknowledges the C1 Flood risk designation. And reiterates that development in these areas will only be permitted where it can be demonstrated to provide an employment or regeneration objective (see TAN15). It goes on to say that development which accords with this SPG will be considered to meet the necessary regeneration / employment objectives.

iii) As an existing building it is a brownfield site which meets the definition of 'previously developed land' in PPW, hence the proposals comply with test iii).

iv) In respect of criterion iv) it is not considered that the potential consequences of a flooding event for the particular type of development have been found to be acceptable.

NRW have reviewed the FCA and as the expert consultee have advised that they do not consider the FCA to demonstrate that the risk and mitigation in relation to flood risks can be managed. On this basis they recommend refusal of the application.

4.2.5 Highways (including access and parking)

Local Development Plan Policy RD 1 supports development proposals subject to meeting tests (vii) and (viii) which oblige provision of safe and convenient access for a range of users, together with adequate parking, services and manoeuvring space; and require consideration of the impact of development on the local highway network.

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The highway impacts of development should therefore be regarded as a potential material consideration.

The existing property has a permitted commercial use with no onsite parking. There is on street parking in the wider area. The proposed dwelling would have 3 bedrooms. Whilst parking standards advise that 3 spaces would be required for an equivalent size dwelling, the existing use/situation, proximity to the town centre and alternative means of transport (rail, bus and cycle network) are noted.

Having regard to the nature of the proposed development and existing arrangements, it is considered that the proposals would not have an unacceptable impact on highway safety. It would therefore be in general compliance with the tests of the

policies referred to.

Other matters

Well – being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 imposes a duty on the Council not only to carry out sustainable development, but also to take reasonable steps in exercising its functions to meet its sustainable development (or well-being) objectives. The Act sets a requirement to demonstrate in relation to each application determined, how the development complies with the Act.

The report on this application has taken into account the requirements of Section 3 'Well-being duties on public bodies' and Section 5 'The Sustainable Development Principles' of the Well-being of Future Generations (Wales) Act 2015. The recommendation is made in accordance with the Act's sustainable development principle through its contribution towards Welsh Governments well-being objective of supporting safe, cohesive and resilient communities. It is therefore considered that there would be no significant or unacceptable impact upon the achievement of well-being objectives as a result of the proposed recommendation.

Equality Act 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. A public authority must, in the exercise of its functions, have due regard to advancing equality.

Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The above duty has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

5. SUMMARY AND CONCLUSIONS:

5.1 Whilst the principle and other planning considerations on this proposal may be acceptable, NRW have made a clear objection to the application on the basis of flood risk. Members will recall recent applications in Bedford Street in Rhyl and Station House Prestatyn where the advice was similar and Planning Committee overturned the recommendation of Officers at Committee and may feel some frustration that the application currently before Committee is similar. However, Officers are professionally bound to take the advice of NRW as statutory consultee in relation to flood risk matters into account in their decision making. Here they clearly state that the proposal fails to meet policy tests, hence Officers have no option but to accept this advice recommend refusal of the application.

RECOMMENDATION: REFUSE - for the following reason:

The reason for refusal is;

1. It is the opinion of the Local Planning Authority that the proposal is not acceptable in relation to flood risk. The FCA acknowledges that the site would be subject to flooding during the 0.5%AEP breach event with climate change and mitigation measures would not be adequate to mitigate the risks from the flood levels anticipated onsite. As such the application fails to demonstrate compliance with A1.14 of TAN15 and would be contrary to Local Development Plan Policy RD 1 test (xi) which requires that development satisfies physical or natural environmental considerations relating to drainage and liability to flooding, and advice contained in Planning Policy Wales Section 6.6.22 to 6.29.