



45-2023-0435



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Location Plan



Existing building/elevations



PROPOSED REAR ELEVATION



PROPOSED FRONT ELEVATION



PROPOSED REAR ELEVATION
WITHOUT THE REAR WALL

Proposed floorplan and elevations

WARD: Rhyl South West

WARD MEMBER(S): Cllr Diane King

APPLICATION NO: 45/2023/0435/ PF

PROPOSAL: Change of use of part of existing nursery to form one dwelling and associated works

LOCATION: 157 Vale Road, Rhyl, LL18 2PH

APPLICANT: Mr Chris Walsh, Walsh Commercial Properties

CONSTRAINTS: C1 Flood Zone

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 is insufficient and fails 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 later in this 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.

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES –
Traffic, Parking and Road Safety:

- Highways Officer
No objection

RESPONSE TO PUBLICITY: None

EXPIRY DATE OF APPLICATION: 27/08/2023

EXTENSION OF TIME AGREED: 13/12/2023

REASONS FOR DELAY IN DECISION (where applicable):

- additional information required from applicant

PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

- 1.1.1 The application proposes the change of use of part of existing nursery to form one dwelling and associated works at 157 Vale Road in Rhyl.

- 1.1.2 Plans submitted in support of the application show minimal external alterations proposed, the French doors to the rear would be replaced by a single door and window. The internal layout would be altered to create rooms within the relatively open plan space. On the ground floor a living room, kitchen, utility and bathroom are proposed, with 2 bedrooms above.
- 1.1.3 Plans show the walled rear yard to remain as existing, it would be accessed from a lane to the side of the site.

See plans snip Not to Scale*



1.2 Other relevant information/supporting documents in the application

- 1.2.1 The application was supported by an FCA from KRS Enviro.
- 1.2.2 The application forms state that the current use of the site is part of the adjacent Childrens Nursery known as Hannahs House Day Nursery/ Sams Learning Tree. The children's day nursery is registered for a total of 84 children, 18 of which have been in this section of the building.

1.3 Description of site and surroundings

- 1.3.1 The application site located within a terrace fronting the eastern side of Vale Road on the approach to Rhyl town centre. No. 157 is an existing two story detached property.
- 1.3.2 The property is set back from the road with a small garden area to the front bounded by a low brick wall. Access to the rear of the site is via a lane to the rear. Within the rear curtilage there is a small yard bounded by a 2 metre high wall.

*See photo snip of site frontage (LHS property painted blue)**



1.4 Relevant planning constraints/considerations

- 1.4.1 The site is located within the development boundary of Rhyl.

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 Planning permission was granted in 2005 for change of use from residential to part of the adjacent nursery.

1.6 Developments/changes since the original submission

1.6.1 Additional information was requested after the original consultation to address Flood Risk issues raised by NRW. An additional commentary to FCA was submitted by KRS 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 King.

2. DETAILS OF PLANNING HISTORY:

2.1 45/2004/1591 Change of use of existing dwellinghouse to create extension to existing day nursery (Class D1) incorporating single-storey rear extension and alterations to vehicular access/parking area. Granted 24/03/2005

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 BSC3 – Securing infrastructure contributions from Development

Policy BSC7 – Houses in multiple occupation and self-contained flats

Policy BSC11 – Recreation and open space

Policy VOE5 – Conservation of natural resources

Policy ASA3 – Parking standards

Supplementary Planning Guidance

Supplementary Planning Guidance Note: Residential Development

Government Policy / Guidance

Planning Policy Wales (Edition 11) February 2021 Chapter 6 updated October 2023

Development Control Manual November 2016

Future Wales – The National Plan 2040

Technical Advice Notes

TAN 5 Nature Conservation and Planning (2009)

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 Ecology
- 4.1.5 Drainage (including flooding)
- 4.1.6 Highways (including access and parking)
- 4.1.7 Open Space

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 vision of the adopted Local Development Plan is to make Rhyl an attractive place to live and work with improved housing stock and a reduction in the levels of multiple deprivation currently seen.

Policy RD1 advises that proposals should i) be suitable for their location, vi) not impact negatively on the character of the area and ix) should have regard to the adequacy of existing public facilities and services in the area.

There is no policy ground to resist the principle of a change of use of part of an existing nursery to residential use. 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 very minor external alterations, the most notable of which is to the rear. It would remain as existing in appearance to the main Vale Road frontage.

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 two bed property. It would meet current floor space standards in terms of internal arrangements and layout. Whilst external space at only 10 metres² is somewhat lacking, it is comparable with adjacent dwellings on the terrace, and the site is also located within 5 minutes walk of open space at the Coronation Gardens. The rear curtilage is private and bounded by an access lane to the east. The recent history of the residential use is also noted.

The acceptability of the residential use in relation to the amenity of the proposed occupiers being attached to the nursery has been tested with the original application and the relationship to the neighbours at no. 155 and deemed acceptable. The proposed situation would be no different/

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

4.2.4 Ecology

Local Development Plan Policy RD 1 test (iii) requires development to protect and where possible to enhance the local natural and historic environment.

Policy VOE 5 requires due assessment of potential impacts on protected species or designated sites of nature conservation, including mitigation proposals, and suggests

that permission should not be granted where proposals are likely to cause significant harm to such interests.

This reflects policy and guidance in Planning Policy Wales (PPW 11) which was updated in October 2023 by the publication of an amended Chapter 6 – Distinctive and Natural Places. Section 6.4 'Biodiversity and Ecological Networks', current legislation and the Conservation and Enhancement of Biodiversity SPG stress the importance of the planning system in meeting biodiversity objectives through promoting approaches to development which create new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable.

Planning Policy Wales (PPW 11) sets out that "*planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species (not including non native invasive species), locally or nationally and must work alongside nature and it must provide a net benefit for biodiversity and improve, or enable the improvement, of the resilience of ecosystems*" (Section 6.4.5).

Planning Policy Wales (PPW 11) also draws attention to the contents of Section 6 of the Environment (Wales) Act 2016, which sets a duty on Local Planning Authorities to demonstrate they have taken all reasonable steps to maintain and enhance biodiversity in the exercise of their functions. It is important that biodiversity and resilience considerations are taken into account at an early stage when considering development proposals (Section 6.4.4).

The updated Chapter 6 of PPW 11 introduces policy changes relating to green infrastructure, net benefits for biodiversity and the Step-Wise Approach, protection for Sites of Special Scientific Interest (SSSI) and Trees and Woodlands.

- **Green Infrastructure**
A stronger emphasis on taking a proactive approach to green infrastructure covering cross boundary considerations, identifying key outputs of green infrastructure assessments and the submission of proportionate green infrastructure statements with planning applications.
- **Net Benefit for Biodiversity and the Step-wise Approach**
Further clarity is provided on securing net benefit for biodiversity through the application of the step-wise approach, including the acknowledgement of off-site compensation measures as a last resort, and, the need to consider enhancement and long-term management at each step. A number of factors will affect the implementation of the step-wise approach, pre-emptive site clearance works should not be undertaken however if this does occur its biodiversity value should be deemed to have been as it was before any site investigations or clearance took place and a net benefit for biodiversity must be achieved from that point.
- **Protection for Sites of Special Scientific Interest (SSSI)**
Protection is strengthened with increased clarity on the position for site management and exemptions for minor development necessary to maintain a 'living landscape.
- **Trees and Woodlands**
A closer alignment with the stepwise approach, along with promoting new planting as part of development based on securing the right trees in the right place.

Future Wales – The National Plan 2040 (2021) Policy 9 advises that 'In all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated as part of development proposals through innovative, nature based approaches to site planning and the design of the built environment'. It is therefore recommended that these are included and form part of any planning application.

The proposal would result in very minor alterations to an existing property within the development boundary. It was submitted before the Chapter 6 amendments. However it is noted that there would be no change to the site layout or services. It is not supported by an ecology survey.

PPW states that all new developments should demonstrate a biodiversity enhancement. It is suggested that a condition could ensure that biodiversity enhancement will be provided at the site as a result of the development. It is therefore considered subject to a condition, that the proposals are in line with the advice contained in PPW 11 and would provide enhancement measures to increase the biodiversity net gain at the site.

4.2.5 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 (FMfP) indicates that the site is in Flood Zone 3 (Sea), with the most likely source of flooding being the Irish Sea and Tidal Clwyd.

The development proposal is for the change of use from nursery to a residential dwelling. The existing lawful planning use would be classed as 'vulnerable', given the sites most recent use as a nursery. However NRW consider the proposed use to be

an intensification in vulnerability, as the development now proposes overnight accommodation.

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

"We have reviewed the Flood Consequences Assessment (FCA) submitted in support of the application by KRS Enviro (dated June 2023; ref: KRS.0690.003.R.001.A). Our advice to you is that the FCA fails to demonstrate that the proposed development can be designed to comply with TAN15 for the reasons below.

Section A1.14 of TAN15 requires the FCA to demonstrate that the proposed development can be designed to be flood free in the 0.5% (1 in 200 year) Annual Exceedance Probability (AEP) tidal event with allowance for climate change over the lifetime of the development and appropriate breach scenarios. On page 13, the FCA states that the site would not be at risk of flooding from overtopping in the above (defended) scenario for 2117. The figure referred to in support of this statement (figure 9) shows an output from the tidal flood model only, which does not account for the influence of the Tidal Clwyd. Figure 11 shows an output from the relevant model which combines flood risk from both tidal frontage and the Clwyd. Referring to this figure, the FCA acknowledges on page 14 that the site would be subject to flooding in the design event (for 2092); however, this model output is not used to provide site specific flood level/depth data. Instead, the FCA uses data from the 2015 Tidal Clwyd Study and climate change calculations to give an estimated flood depth at the site of less than 0.5 m in 2123. We would recommend that flood levels/depths are taken from the relevant outputs from the linked Tidal and Tidal Clwyd runs of the Point of Ayr to Pensarn study – in this instance, they show that significantly more flooding is likely in the 2092 event than is predicted for 2123 by the FCA. We advise that the FCA fails to demonstrate that the proposal can comply with A1.14, since it does not demonstrate that the proposed development can be designed to be flood free in the required design events. Therefore, we raise concerns with the application and request a revised FCA is submitted.

The revised FCA should provide site specific flood level and depth information for the design event provided above, from the relevant model outputs – in this case, the linked Tidal and Tidal Clwyd runs of the Point of Ayr to Pensarn study (2018). We note that flood levels at the site are likely to be in excess of 1 m, so it may be difficult to demonstrate compliance with A1.14. If no further information is submitted, or the revised FCA fails to demonstrate that the consequences of flooding can be acceptably managed over the lifetime of the development, then we object to this application and recommend that the application be refused. If, contrary to the requirements of TAN15, your Authority is minded to grant permission, we should be informed of all matters that influence this decision, prior to granting permission, allowing sufficient time for further representations to be made."

Additional information was provided by the authors of the FCA and NRW re-consulted, they responded:

"We have We have reviewed the Flood Consequences Assessment (FCA) submitted in support of the application by KRS Enviro (dated June 2023; ref: KRS.0690.003.R.001.A) and the associated addendum to the Flood Consequences Assessment (FCA) submitted by KRS Enviro (dated 25th September 2023 ref: KRS.0690.003.R.002.A).

Our advice remains that the FCA (and associated addendum) fails to demonstrate that the proposed development can be designed to comply with TAN15 for the reasons below.

Section A1.14 of TAN15 requires the FCA to demonstrate that the proposed development can be designed to be flood free in the 0.5% (1 in 200 year) Annual Exceedance Probability (AEP) tidal event with allowance for climate change over the lifetime of the development and appropriate breach scenarios. On page 13, the FCA states that the site would not be at risk of flooding from overtopping in the above

(defended) scenario for 2117. The figure referred to in support of this statement (figure 9) shows an output from the tidal flood model only, which does not account for the influence of the Tidal Clwyd. Figure 11 shows an output from the relevant model which combines flood risk from both tidal frontage and the Clwyd. Referring to this figure, the FCA acknowledges on page 14 that the site would be subject to flooding in the design event (for 2092); however, this model output is not used to provide site specific flood level/depth data. Instead, the FCA uses data from the 2015 Tidal Clwyd Study and climate change calculations to give an estimated flood depth at the site of less than 0.5 m in 2123. We would recommend that flood levels/depths are taken from the relevant outputs from the linked Tidal and Tidal Clwyd runs of the Point of Ayr to Pensarn study in this instance, they show that significantly more flooding is likely in the 2092 event than is predicted for 2123 by the FCA. We advise that the FCA fails to demonstrate that the proposal can comply with A1.14, since it does not demonstrate that the proposed development can be designed to be flood free in the required design events. Therefore, we raise concerns with the application and request a revised FCA is submitted.

The revised FCA should provide site specific flood level and depth information for the design event provided above, from the relevant model outputs in this case, the linked Tidal and Tidal Clwyd runs of the Point of Ayr to Pensarn study (2018). We note that flood levels at the site are likely to be in excess of 1 m, so it may be difficult to demonstrate compliance with A1.14. If no further information is submitted, or the revised FCA fails to demonstrate that the consequences of flooding can be acceptably managed over the lifetime of the development, then we object to this application and recommend that the application be refused.”

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 KRS 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.

iii) As an existing property 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 be sufficient or to demonstrate that the risk and mitigation in relation to flood risks can be managed. On this basis they recommend refusal of the application.

On the advice of NRW which clearly states that the proposal fails to meet policy tests Officers have no option but to accept this advice recommend refusal of the application.

4.2.6 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.

Highways Officers have raised no objection to the application.

The existing property has a permitted commercial use as part of a children's day nursery with no on-site parking. There is restricted on street parking in the wider area. The proposed dwelling would have 2 bedrooms. Whilst parking standards advise that 2 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.

4.2.7 Open Space

Policy BSC 3 of the local development plan sets the basic requirement for development to contribute, where relevant, to the provision of infrastructure, including recreation and open space, in accordance with Policy BSC 11.

Policy BSC 11 specifies that all new housing developments should make adequate provision for recreation and open space. All such schemes put increased demand on existing open spaces and facilities and therefore the policy applies to all developments including single dwellings.

The existing use of the property is part of a children's day nursery accommodating up to 18 children and staff. Historically the property was a single dwelling only changing to the nursery in 2005. Considering the planning history, and nature of the existing use which could have placed some demand on local open space, Officers do not consider an open space requirement (i.e. a financial contribution) to be appropriate here. The proposal is considered acceptable in relation to open space policy.

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. Officers are acutely aware of recent Planning Committee decisions for similar development in the Rhyl area, including Aquarium Street and Bedford Street in the town centre. However on the advice of NRW which clearly states that the proposal fails to meet policy tests of TAN 15, Officers have no option but to recommend refusal of the application on the grounds of flood risk.

RECOMMENDATION: REFUSE for the following reasons:

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 and NRW confirm that flooding would be in excess of 1 metre, 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.