

**REPORT BY THE HEAD OF PLANNING, PUBLIC PROTECTION AND COUNTRYSIDE SERVICES**

S106 Legal Agreement Terms and updated planning conditions for Hybrid Planning Application 01/2020/0315/PF at Former North Wales Hospital:

*Conversion, restoration, part demolition and adaptation of main range listed buildings to residential use, demolition of Nurses Home, Mortuary, Isolation ward, Aled ward and former gasworks buildings. and development of land within the hospital grounds for mixed use as enabling development, including residential units and business/commercial units, provision of biodiversity areas and open space, access, drainage and associated works.*

**1. PURPOSE OF THIS REPORT:**

- 1.1 To provide Members with details of the Heads of Terms for the proposed s.106 legal agreement and the proposed schedule of planning conditions for the redevelopment of the Former North Wales Hospital site.
- 1.2 The report seeks Members agreement to allow Officers to finalise and complete the s.106 legal agreement on the basis of the terms presented, enabling the relevant planning permission and conditions to be issued.

**2. BACKGROUND**

- 2.1 Members will be aware that planning application 01/2020/0315/PF was presented to and discussed by Denbighshire County Council Planning Committee on Wednesday 8<sup>th</sup> September 2021.
- 2.2 The application involves the full details for the change of use and conversion of the main range listed buildings to residential use, and outline details for the development of land within the grounds for residential and commercial uses, hence in effect being in part for full planning permission and in part for outline permission.
- 2.3 In terms of the main elements of the proposals, considered in 2021:

**The full application element** sought approval for the following:

- Repair and Conversion of the existing main range listed buildings to provide 34 residential units;
- Construction of 2 new main vehicular access points;
- Associated works including demolition, and car parking provision within the existing airing courts.

**The outline application element** sought approval for the following:

- Outline consent with all matters reserved apart from access;
- Enabling development of up to 300 units on 9 hectares of land for residential development and associated works;
- Associated development of up to 1114 square metres of business units (comprising a mix of A1, A2, A3, B1, C1, C2, C3, D1 and D2 uses) and associated works;
- Illustrative layout and positioning of Denbigh Cricket Club ground and pavilion;
- Provision and retention of open space and parkland, and attenuation water features.
- Potential restoration of Aled Ward, subject to further financial support being made available.

- 2.2 A copy of the committee report presented to the September 2021 planning committee is included as appendix A to this report.
- 2.3 The committee debated the item at length, and it was proposed by Councillor Merfyn Parry that planning permission subject to the final Heads of Terms of the Section 106 and planning conditions be reported back to planning agreement prior to the decision being released.
- 2.4 The planning committee voted unanimously to grant planning permission in accordance with Councillor Parry's proposal and officer recommendation. (15 For, 0 Against, 0 Abstentions)
- 2.4 A copy of the minutes of the planning committee discussion is included as appendix B to this report.
- 2.3 Since the 2021 resolution the applicants have been working with Officers of the Council and Natural Resources Wales to finalise the heads of terms of the Section 106, agree a set of conditions and fine tune the detail of the application.
- 2.4 Other than the introduction of a revised Chapter 6 (relating to Green Infrastructure), Officers can confirm that there have been no material changes to planning policy which would have a direct impact on the previous resolution of the Committee to grant planning permission for the proposal. IN relation to Chapter 6 the proposal has been designed fully taking into account the need to mitigate and enhance the proposals impact upon protected species and green ifrastrucutre.

### **3 AMENDMENTS TO 'THE PLANNING APPLICATION' SINCE 2021**

- 3.1 In order to ensure that the planning permission reflects current planning law regarding the description of a proposal, and to reflect changes to what can be delivered on site the description of 01/2020/0315 has been amended.
- 3.2 In 2021, the proposed works were described as:
 

*"Conversion, restoration, part demolition and adaptation of main range listed buildings to residential use (34 dwellings); demolition of Nurses Home, Mortuary, Isolation ward, Aled ward and former gasworks buildings; and development of land within the hospital grounds for mixed use as enabling development, including up to 300 no. residential units and up to 1114 square metres of business units (comprising a mix of A1, A2, A3, B1, C1, C2, C3, D1 and D2 uses); siting of the Denbigh Cricket Club; and construction of access, drainage and associated works"*
- 3.3 Following discussions with Legal representatives, the reference to the number of residential units has been removed from the description and included as a planning condition. Similarly the reference to the amount of land being allocated for business and commercial uses has been removed from the description and included as a planning condition.
- 3.4 The rationale for these changes is that clearly this is a large scheme, and as members will be aware the economics of developing sites in the current economic climate are changing rapidly. When considering a scheme that could take at least 10 years to develop, it is important to include some flexibility into the planning permission. If development quantities are included in the description there is no way of varying that quantity without a complete new application. By controlling those quantities through planning condition allows a more flexibility moving forward, while still affording the Local Planning Authority complete control over those matters.
- 3.5 Members will also note that the reference to the relocation of Denbigh Cricket Club has been removed. The previous inclusion of relocating Denbigh Cricket Club was driven by an aspiration of Denbigh Cricket Club, which no longer exists as Denbigh Cricket Club has opted to remain in its current site. The reference to that element of the proposal is therefore obsolete and has been removed.
- 3.4 The proposed works are now described as being for the:

*“Conversion, restoration, part demolition and adaptation of main range listed buildings to residential use, demolition of Nurses Home, Mortuary, Isolation ward, Aled ward and former gasworks buildings. and development of land within the hospital grounds for mixed use as enabling development, including residential units and business/commercial units, provision of biodiversity areas and open space, access, drainage and associated works.”*

- 3.5 Having consulted with the Councils Solicitors, the changes to the application description are not considered material. The principle of what is being proposed is still the same as Planning Committee previously resolved to be approved in January 2021.
- 3.6 Since the 2021 resolution, the applicants have also been undertaking more work on the detailing of the works to the main listed building itself. This has resulted in a set of amended plans being submitted which better detail how the proposed conversion would be undertaken. Members are advised however that the final detailing of how the main range building is to be converted, in terms of precise detail, will be controlled through a Listed Building Consent application – still to be submitted. Notwithstanding this, it is noted that the Councils Conservation Officer has raised no objection to the revised drawings.
- 3.7 Significant additional work has also been carried out by the applicant in relation to the detailing of the landscaping layout, ecology and biodiversity management schedule and plan, biodiversity surveys, bat house designs, site lighting strategy, highway layout, health impact assessments and viability report.
- 3.8 With specific reference to the viability report, it is noted that previously Officers and Members were keen to explore the options available to save the Aled Ward. It is now been demonstrated that even with significant grant funding, it is not viable to retain the Aled Ward at this point. This has been verified by those public sector bodies offering funding. The demolition of the Aled Ward was previously referred to in the description of the proposal, however, the Conservation Officer has requested that the Aled Ward is retained for as long as possible, and not demolished until all means to retain and convert the building have been explored. This is to be controlled through the Phasing Strategy.
- 3.8 All amendments, revisions and additional information have been consulted on, where necessary, with the relevant consultees, and no objections have been raised.
- 3.9 Officers consider that the amendments do not materially affect the nature of the application, and that the previous resolution of Denbighshire County Council Planning Committee is still relevant.

#### **4. LEGAL AGREEMENT AND PLANNING CONDITIONS**

- 4.1 For a major development such as the redevelopment of the Former North Wales Hospital Site, it was important to ensure that a s.106 legal agreement and a set of planning conditions provide relevant and enforceable obligations, controls and triggers to enable the land to be developed and key elements delivered appropriately.
- 4.2 Members should note that there are legal tests for the use of s.106 legal agreements. These are set out in Regulation 122 of the Community Infrastructure Regulations 2010 ("CIL Regulations"). The CIL Regulations require that the terms of any s106 agreement should be:
  - Necessary to make the development acceptable in planning terms.
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
- 4.3 In addition Members should note that there are legislative controls on the use of planning conditions in planning consents. These are set out within Welsh Government Planning Circular 16/2014 and set out six key tests for the use of conditions. Any conditions imposed should be:

Necessary  
Relevant to planning  
Relevant to the development  
Enforceable  
Precise; and  
Reasonable.

- 4.4 It is important for members to note that the proposal is solely focussed on Enabling Development. The detail of what 'enabling development' is, is set out in the previous committee report. However, it is worth highlighting that a key test of Enabling Development is that the amount of development required to make saving the heritage asset viable is the minimum required. On that basis, usual legal obligation matters such as Affordable Housing etc would result in more enabling development being required. For this reason, the Section 106 agreement does not look to secure affordable housing.

## 5. LEGAL AGREEMENT TERMS

5.1 For ease of reference the following table sets out a summary of the relevant legal agreement terms and includes a brief commentary on the main financial payments, controls and triggers.

<b>Description of Heads of Terms</b>	<b>Proposed Main Highlights</b>
<p><b><u>Biodiversity Mitigation and Enhancement</u></b></p> <p>The site features a high level of biodiversity and various protected species. The site layout has been designed to ensure that the impact of the development on the biodiversity of the site can be mitigated and enhanced. Key to achieving this is not just the detailing of the layout, but also the long term management of the biodiversity mitigation and enhancement areas, as the site is host to a number of multigenerational species. The biodiversity mitigation and enhancement areas have been split into 3 'tranches', which will deliver the required mitigation and enhancement as the development progresses.</p>	<p>Discussions are still ongoing regarding the long-term management of the biodiversity mitigation and enhancement areas and the funding thereof. However, at this point one option being considered is that Denbighshire County Council retain the relevant land so that Countryside services can manage and maintain the land throughout the development and in perpetuity.</p>
<p><b><u>Phasing Strategy</u></b></p> <p>A draft phasing strategy has been submitted to the Local Planning Authority.</p>	<p>The phasing strategy should ensure that the listed buildings are sufficiently protected. Phasing should be weighted more towards the prioritisation of works to the listed buildings (and in particular urgent stabilisation works) being</p>

carried out as early in the development process as possible. There will therefore be a need for conditions/obligations to be included to restrict the development/occupation of wider residential development until relevant listed building works have been completed.

Phase 1 to include a detailed survey of the main range to identify urgent works in order of priority, with the most urgent works to then be completed in Phase 1 and next most urgent works to then be completed in Phase 2

Phase 1 to deliver the Biodiversity mitigation measures required by the works to the main range and demolition of buildings.

### **Off site Highway improvements**

#### **St David's Lane to the B4501 Active Travel Route**

The developer is to fund a feasibility study for the potential for upgrading the Public Right of Way (PROW) between St David's Lane and the B4501 to an active travel route which meets Welsh Government active travel design standards. This is to be done prior to November 2024. Should the study demonstrate the project is feasible, DCC will apply to Welsh Government for grant funding for the project.

The development shall not be occupied until the works are complete.

#### **Lon Llewelyn to Smithfield Road Active Travel Route**

The PROW between Lon Llewelyn and Smithfield Road is to be resurfaced and widened so that it is compliant with the Welsh Government's Active Travel Guidance.

#### **A534 High Street/Love Lane Junction Improvement**

The Owner shall work with the Council to identify measures which will discourage the volume of traffic using Love Lane to access the development both during the construction phase and once the development is occupied.

The works are expected to be low cost.

Works to be completed prior to the commencement of development.

**Open Space**

This relates to land not dealt with/controlled as part of the Biodiversity Mitigation and Enhancement areas.

The development of any phase shall not be commenced until an Open Space Scheme detailing the location of the Open Spaces, equipment, timetable for delivery and maintenance arrangements has secured the Council's written approval. The approved Open Spaces Scheme(s) shall thereafter be implemented, managed and monitored in accord with any agreed Scheme.

**Estate Management Plan**

This element of the s.106 will deal with the longer term management of the historic site and grounds within a co-ordinated strategy to be approved by DCC.

No development (save for agreed demolition) will be allowed to proceed on site until such a masterplan for the estate is agreed. Officers envisage that this management plan will cover the whole application site and relate to issues such as preserving the historic character of the buildings and ground by setting clear conservation management and maintenance standards.

**Liaison Committee**

Officers suggest that a Liaison Committee would be a preferred way of ensuring the long term intrinsic historic character of the site is maintained and enhanced

Within six months of the commencement of development a Liaison Committee for the development shall be established with members from the developer, Council, NRW, current or future residents of the development and any other relevant non statutory organisations with the purpose of providing advice and recommendations to the Management Company set up under the Estate Management Strategy on the development.

**6. SUGGESTED PLANNING CONDITIONS.**

6.1 The suggested planning conditions are included as Appendix C to this report.

**7. RESOLUTION:**

7.1 That Members agree to the proposed planning conditions and heads of terms for the s.106 legal agreement as set out in appendix C and the table above (with any minor/non material changes resulting from ongoing discussions). In addition that Members allow the release of the Outline Planning Consent (with the relevant updated conditions) on the final completion of the s.106 legal agreement.

7.2 Officers consider that the Heads of Terms and suggested planning conditions are in line with the previous resolution of the Planning Committee.

**EMLYN JONES HEAD OF PLANNING, PUBLIC PROTECTION AND COUNTYSIDE SERVICE**