

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.
- 1.3 Members will recall that this item was deferred at the May 2024 Planning Committee to allow Officers time to provide further detail and clarity on the proposed terms of the s106 legal agreement.

2. BACKGROUND

- 2.1 Members will be aware that planning application 01/2020/0315/PF was originally presented to and discussed by Denbighshire County Council Planning Committee on Wednesday 8th September 2021.
- 2.2 The planning 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.

- 2.4 A copy of the committee report presented to the September 2021 planning committee is included as appendix A to this report.
- 2.5 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 being reported back to a future Planning Committee, be resolved to be granted.
- 2.6 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)
- 2.7 A copy of the minutes of the planning committee discussion is included as appendix B to this report.
- 2.8 Since the September 2021 resolution the applicants have been working with Officers of the Council and Natural Resources Wales to progress the heads of terms of the Section 106, agree a set of conditions and fine tune the detail of the proposals.
- 2.9 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.

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 planning application 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. Similarly the reference to the amount of land being allocated for business and commercial uses has been removed from the description. Both of these matters are considered to be better controlled through the imposition of specific planning conditions.
- 3.4 The rationale for these changes to the proposed application description is that this is a large scheme, with multiple components. The development could span a number of years where the economic climate could change significantly. As such, it is important to include some flexibility into the planning permission. Controlling the quantum of development through planning condition allows more flexibility moving forward, while still affording the Local Planning Authority (LPA) full control over those matters. Members should be reassured that the proposed section 106 legal agreement and proposed planning conditions will offer the LPA sufficient control over the site as development progresses.

3.5 Members will also note that the reference to the relocation of Denbigh Cricket Club has been removed. The previous inclusion of the “siting of Denbigh Cricket Club” was driven by an aspiration of Denbigh Cricket Club to relocate. This 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.

3.6 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.”

3.7 Having consulted with the Council’s Legal representatives, the changes to the description are not considered material. The principle of what is being proposed is still the same as that previously resolved to be approved in 2021.

3.8 Since the 2021 resolution, the applicants have submitted a set of amended plans which better show how the proposed conversion of the main range listed building would be undertaken. Members are advised, however, that the precise detailing of how the main range is to be restored and converted will be controlled through a further Listed Building Consent application. Notwithstanding this, it is noted that the Council’s Conservation Officer has raised **no objection** to the revised plans.

3.9 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.

3.10 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 has, however, been demonstrated that even with significant grant funding, it is not currently viable to retain the Aled Ward. This has been verified by those public sector bodies offering funding to the scheme. The demolition of the Aled Ward is referred to in the description of the proposal. The Council’s Conservation Officer, however, has further requested that the Aled Ward should be retained for as long as possible during the development of the site. As the development could take many years and, as has been mentioned, economic conditions could change, Officers are keen to set out certain controls in the proposed s.106 legal agreement and conditions to ensure that the Aled Ward Building is the last building to be demolished and to retain the Aled Ward up until its scheduled demolition. At this point, if a viability report still shows it would not be feasible to save the Aled Ward, the demolition could proceed.

3.11 All relevant amendments, revisions and additional information have been made available to view on the planning portal and statutory consultees have had an opportunity to provide further comments. No objections have been received from such consultees.

3.12 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 valid.

4. LEGAL AGREEMENT AND PLANNING CONDITIONS

4.1 For a major scheme such as the redevelopment of the Former North Wales Hospital Site, it is 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 usual means, in planning terms, of saving a heritage asset such as the Former North Wales Hospital (FNWH) building is by allowing "enabling development". This is a process by which additional development, such as housing, is allowed to be built close to the heritage asset with the sales proceeds then reinvested in the restoration of the asset. The principle of allowing additional development is that it should always be the minimum necessary to save and restore the asset. Members will know that significant "enabling" development is proposed with this scheme and this was all set out in the 2021 Planning Committee Report.

In this case, however, Members will also note that, even with the significant "enabling" development proposed in the FNWH scheme, there remains a huge funding gap. As such, Levelling Up Funding (LUF) and other public sector funding is proposed to be used to create a viable means to save the asset. This is seen as a huge positive for the site and the surrounding area in terms of saving a significant historic asset and creating new jobs and economic activity.

Officers have been working closely with public sector funding bodies, the developer, Natural Resources Wales and other technical Officers to try to ensure that, notwithstanding the viability difficulties, the scheme is able to progress and can deliver some key outcomes. These include compliance with legislation linked to the rich and varied biodiversity on site, contributions to off-site highway projects and, importantly, the phased restoration and conversion of the main range Listed Building. The controls and delivery for these key elements are to be set out in the suggested planning conditions and the terms of the proposed s.106 legal agreement as below.

5. LEGAL AGREEMENT TERMS

5.1 The key elements of the draft section 106 heads of terms are discussed below:

Ecology/Biodiversity:

The proposed development site contains a high level of biodiversity and certain key 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 'tranches', which will deliver the required mitigation and enhancement as the development progresses. One of the key requirements of Natural Resources Wales (NRW), as the body responsible for protecting environmental interests, is that a responsible authority (DCC) should be directly involved in the protection, enhancement, management and mitigation for biodiversity areas around the site, as development progresses. This will require legal controls on land transfer and on-going funding to enable DCC to undertake the required controls and ensure favourable conservation status of key species. This is proposed to be done in a number of "tranches" of work across the site with such tranches being identified in the approved Management Plan. The 'tranches' will deliver the following:

TRANCHE 1

Establishment

Establishment of Tranche 1 (comprising the construction of bat houses and areas around the newly opened stream protected by a bund) to be carried out by the Developer.

Following completion of Establishment of Tranche 1 (including carrying out any remedial works reasonably required by the Council) land transferred to the Council upon completion of Establishment.

Restrictions

The following restriction will apply:

1. No commencement of the wider development on site shall be carried out unless and until Tranche 1 has been transferred to the Council and the first instalment of the Tranche 1 Contribution has been paid. **[NOTE: if there are any works that are required to be carried out prior to delivery and transfer of Tranche 1 to the Council these must be agreed in advance.]**

Annual payment

The Tranche 1 Annual payment of £13,417.40 (index linked) is to be paid by the Developer to the Council, with the first payment due upon completion of the transfer of Tranche 1 and subsequent payments to be made annually thereafter in perpetuity (see comments below re the funding of future payments through service charges on new dwellings).

TRANCHE 2

Establishment

Establishment of Tranche 2 to be carried out by the Developer and transferred to the Council following its Establishment (including carrying out any remedial works reasonably required by the Council) and prior to the earlier of:

1. Occupation of the final Dwelling in plots A2 to A5 (inclusive); and
2. Commencement of development of plots A6 to A9 (inclusive)

Restrictions

The following restrictions will apply:

1. No more than 119 Dwellings to be Occupied within plots A2 to A5 (inclusive) unless and until Tranche 2 has been Established (including carrying out any remedial works reasonably required by the Council) and transferred to the Council

2. No Development shall be Commenced within plots A6 – A9 (inclusive) until Tranche 2 has been Established (including carrying out any remedial works reasonably required by the Council) and transferred to the Council and the first instalment of the Tranche 2 Annual Payment has been paid

Annual Payment

The Tranche 2 Annual payment of £16,045.24 (index linked) is to be paid by the Developer to the Council, with the first payment due upon completion of the transfer of Tranche 2 and subsequent payments to be made annually thereafter in perpetuity (see comments below re the funding of future payments through service charge).

TRANCHE 3

Establishment of Tranche 3 to be carried out by the Developer (including carrying out any remedial works reasonably required by the Council) and transferred to the Council within 12 months of Occupation of all Dwellings in plots A6 – A8.

Restrictions

The following restriction will apply:

1. No Development shall be Commenced within plot A9 until Tranche 3 has been Established (including carrying out any remedial works reasonably required by the Council) and transferred to the Council and the first instalment of the Tranche 3 Annual Payment has been paid

The Tranche 3 Annual payment of £4,160.34 (index linked) is to be paid by the Developer to the Council, with the first payment due upon completion of the transfer of Tranche 3 and subsequent payments to be made annually thereafter in perpetuity (see comments below re the funding of future payments through service charge).

TRANCHE 4 (Church Area)

Proposed that the area around the Church should be placed in its own tranche to avoid delays in transferring Tranche 2.

TRANCHE 5 (Balancing Pond)

Establishment of the Balancing Pond to be carried out by the Developer (including any remedial works reasonably required by the Council) and transferred to the Council within 12 months of the date of issue of final certificates/adoption of the access roads connecting the Development to the public highway.

FUNDING OF CONTRIBUTIONS

Each of the Tranche Contributions will be payable to the Council in full on an annual basis upon transfer of the relevant Tranche to the Council. In some instances, this will mean that the payments will fall due prior to disposal of Dwellings and therefore prior to receipts from ground rent/service charge being capable of covering the full amount of the contributions. During such period, the Developer will be responsible for paying the shortfall to the Council such that the full amount of the Tranche Contributions is paid.

To assist with managing costs, the Council have calculated the Contributions on the following basis:

- As new tranches are added, actions on site can be combined, so mobilisation costs decrease, resulting in cost efficiencies over time
- The Council have delayed the inclusion of “risk” payments (to cover unexpected costs and potential requirement for third party resource) until Tranche 2 as this is when the properties will be occupied, and a ground rent/service charge will be applied.
- Tranche 1 will need to be covered annually by the Developer until such time as dwellings in Plots A2- A5 are sold, and ground rent/service charges come into play.
- As indicated above, the Developer will be required to continue to pay a proportion of the costs until all houses are built and sold such that the full amount of the Tranche Contributions remains payable to the Council following transfer of the relevant Tranche, regardless of ground rent/service charge receipts.
- The current cost to the homeowners after all tranches are transferred currently works out at £112.08 per annum (excluding any contribution which may be secured from the proposed business units).
- All figures are to be index linked, to ensure that they grow with inflation.

Conservation – Works to the Main Range Listed Building

Officers are keen to ensure that the Main Range Listed Buildings on site are protected from further deterioration and can then be suitably restored and converted as the “enabling development” proceeds across the site.

This will require both triggers for when surveys and works should be undertaken on the Main Range alongside on-going viability reports and “stops” on enabling development until such time as those works are completed. In this way, phases of development across the site can run concurrently with the restoration of the Listed Buildings.

Officers would, therefore, propose that the s.106 should provide for the following agreed principles:

- Requirement for a Detailed Survey of the listed buildings to be carried out prior to commencement of development. The results of which shall inform the preparation of a detailed phasing statement (or updates to be made to the existing phasing statement) by the Developer for submission to the Council for its written approval.
- The Phasing Statement shall as a minimum set out:
 - o Scope and details of the works required to the listed buildings;
 - o Proposed phasing of such works to ensure:
 - The most urgent works are prioritised and carried out within Phase 1 of the Development, with associated restrictions on commencing development across other phases until such works have been carried out;
 - The remaining works to restore the listed buildings are delivered as early as possible in the development timeline with a series of agreed triggers and restrictions on bringing forward the wider development being required to ensure this;
 - o A package of evidence (including viability and financial evidence) which demonstrates that the proposed phasing of the listed building works accords with the above requirements.
- There will be restriction on commencement of development until such time as the detailed survey and phasing statement has been approved in writing by the Council.
- The triggers for delivery of the listed buildings works (and associated restrictions on wider development) set out in the agreed phasing statement shall thereafter apply.

Off Site Highway Improvements

DCC’s Highway Engineers have been fully involved in the assessment of highway impacts from the proposed development of the FNWH site. Further, they have been working with colleagues and the developer to ensure identified highway improvements to better link the development site with the town of Denbigh are undertaken at key points in the development.

Some key improvements are already factored in to the future Active Travel programme which will be funded by the public sector. These projects are set out in the attached table:-

	Off-site highways requirements	Current position
A	Improvements to PROW linking the B4501 with St David's lane	<p>A feasibility study and public engagement exercise is required to determine the possibility of upgrading the existing public right of way, that links St David's lane and the B4501, so that it becomes a shared use active travel route.</p> <p>This route will provide a link from the proposed FNWH development site to lower Denbigh and will provide safe, and traffic free, access to a number of key amenities such as Denbigh High School and Denbigh Leisure Centre.</p> <p>We estimate that the feasibility study and associated public engagement will cost £40k. We seek a fixed contribution of £20k from Jones Bros towards this cost with the remaining £20k+ to be provided from Shared Prosperity Fund.</p> <p>The costs to actually construct the path would be the subject of a WG bid for Active Travel grant. We believe a grant application for this project would have a high likelihood of being successful.</p> <p>In terms of timing, we want to undertake the feasibility study before the end of calendar year 2024, so that a bid for construction of the project can be submitted for financial year 2025-26. This also ties in with the funding timescales for SPF which must be spent by the end of December 2024.</p> <p>Constructing the path early, as suggested, will help to encourage active travel from the outset of the development being occupied.</p> <p><u>Suggested S106 wording:</u></p> <p>£20k contribution from Jones Bros to be made within one month of planning consent being granted</p> <p><u>Note:</u></p> <p>In the unlikely event that a Denbighshire County Council bid for Active Travel grant funding for construction is unsuccessful, then the Council will seek feedback from the Welsh Government, make the necessary changes to the project and resubmit for funding the following financial year.</p>
B	Improvements to PROW linking Lon Llewelyn and Lon Cae Glas	This section of Public Right of Way will form part of a key active travel route that links the proposed development site

		<p>with key amenities such as Morrison’s supermarket and the Lenten Pool transport interchange.</p> <p>The improvements to this section of path, will include widening and re-surfacing works.</p> <p>DCC Highway Officers are now proposing that the design and construction of this path will be fully-funded from the Welsh Government Core Active Travel grant, meaning there will no longer be a requirement from Jones Bros to fund this.</p> <p>DCC would potentially undertake these works in financial year 2025-26.</p>
C	Lenten Pool Roundabout improvements	<p>This proposed off-site highway improvement has now been Included in Denbighshire County Council’s Core Active Travel fund programme.</p> <p>Therefore, the responsibility for the development, and delivery, of the Lenten Pool highway improvements will be the responsibility of Denbighshire County Council with no costs to Jones Bros.</p>
D	Love Lane / A534 junction improvements	<p>The purpose of these works are to discourage through-traffic from using Love Lane as a “rat-run” – both during construction of the FNWH development, and once the development is occupied.</p> <p>The risk of increased traffic on Love Lane has been flagged as a concern by local members. Having recently discussed this with the members, Highway Officers have agreed to undertake a feasibility study to consider permanent traffic management options for Love Lane, including the possibility of a reversal of the existing one-way traffic restriction. The feasibility study will also require extensive engagement with the local community to ensure that their views are taken into account.</p> <p>Highway Officers estimate the feasibility study and public engagement will cost £20k to undertake. DCC are seeking a fixed £10k contribution from Jones Bros towards the cost of this feasibility study with the remaining £10k to be sourced from Shared Prosperity Fund.</p> <p>Owing to the concerns about use of Love Lane during construction, DCC want to undertake the feasibility study and public engagement during financial year 2024-25 so that</p>

		<p>any potential improvements are identified quickly. The SPF grant has to be spent by the end of December 2024.</p> <p>The cost of the improvements themselves would be relatively minor as it would only require the cost of signage changes and the cost of a new Traffic Regulation Order. These costs would be met from the existing Traffic Capital budget.</p> <p><u>Suggested S106 wording:</u></p> <p>£10k contribution from Jones Bros to be made within one month of planning consent being granted.</p>
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For the purposes of the Section 106 Agreement, therefore, the following contributions will be required to be made by the Developer:

Payment of £20,000 as a contribution towards the Council's costs of undertaking a feasibility study and associated public engagement in connection with the required improvements to PROW linking the B4501 with St David's Lane, such contribution to be payable within 1 month of the date of grant of Planning Permission for the proposed development;

Payment of £10,000 as a contribution towards the Council's costs of undertaking a feasibility study and associated public engagement in connection with the required improvements to Love Lane/A534 junction improvements, such contribution to be payable within 1 month of the date of grant of Planning Permission for the proposed development;

Areas of General Public Open Space on Site

This relates to land not dealt with/controlled as part of the "Tranches" set out in the previous Ecology/Biodiversity section above.

It is usual for developers to have such areas of general public open space managed and maintained by their own management companies and paid for through service charges on each dwelling.

The Council will, however, require the following controls within the s.106:-

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 Liaison Committee

Given the historic and biodiversity significance of this development site Officers are keen to see a Liaison Committee set up and managed for the site. This could include representatives of the Council, specialist bodies and the community to ensure the historic asset and rich biodiversity is looked after appropriately for future generations.

As such, this element of the proposed 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. The controls would be as follows:-

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.

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.

6.2 Members will note that the 2021 committee report (Appendix A) suggested that the following matters be controlled through the section 106: A Renewable Energy Strategy, a Health and Travel Plan, a Welsh Language, and a Local Labour strategy.

6.3 Officers have concluded that these items are better controlled through planning condition, and therefore the requirement to provide the said strategies is included in condition 1 of the draft conditions (Appendix C).

7. RESOLUTION:

- a) Having regard to the intended controls set out in this report and within the draft planning conditions, that Members resolve to allow Officers to finalise the precise terms of the s.106 legal agreement and planning conditions (subject to minor/non-material changes), in liaison with Denbigh Members, for subsequent signing. Should any fundamental changes or issues arise a report would then be returned to Planning Committee for a further assessment and resolution.
- b) Having regard to a) above, that Members resolve to allow the release of the planning permission 01/2020/0315/PF with agreed planning conditions, on the completion and signing of the s.106 legal agreement.

EMLYN JONES HEAD OF PLANNING, PUBLIC PROTECTION AND COUNTYSIDE SERVICE