



CYNGOR  
**Sir Ddinbych**  
**Denbighshire**  
 COUNTY COUNCIL

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Heading:

REFERENCE NO. 45/2012/1181/PF  
 REAR OF TOWN HALL, PART OF MARKET ST,  
 GLANGLASFOR AND HIGH ST, RHYL



Application Site

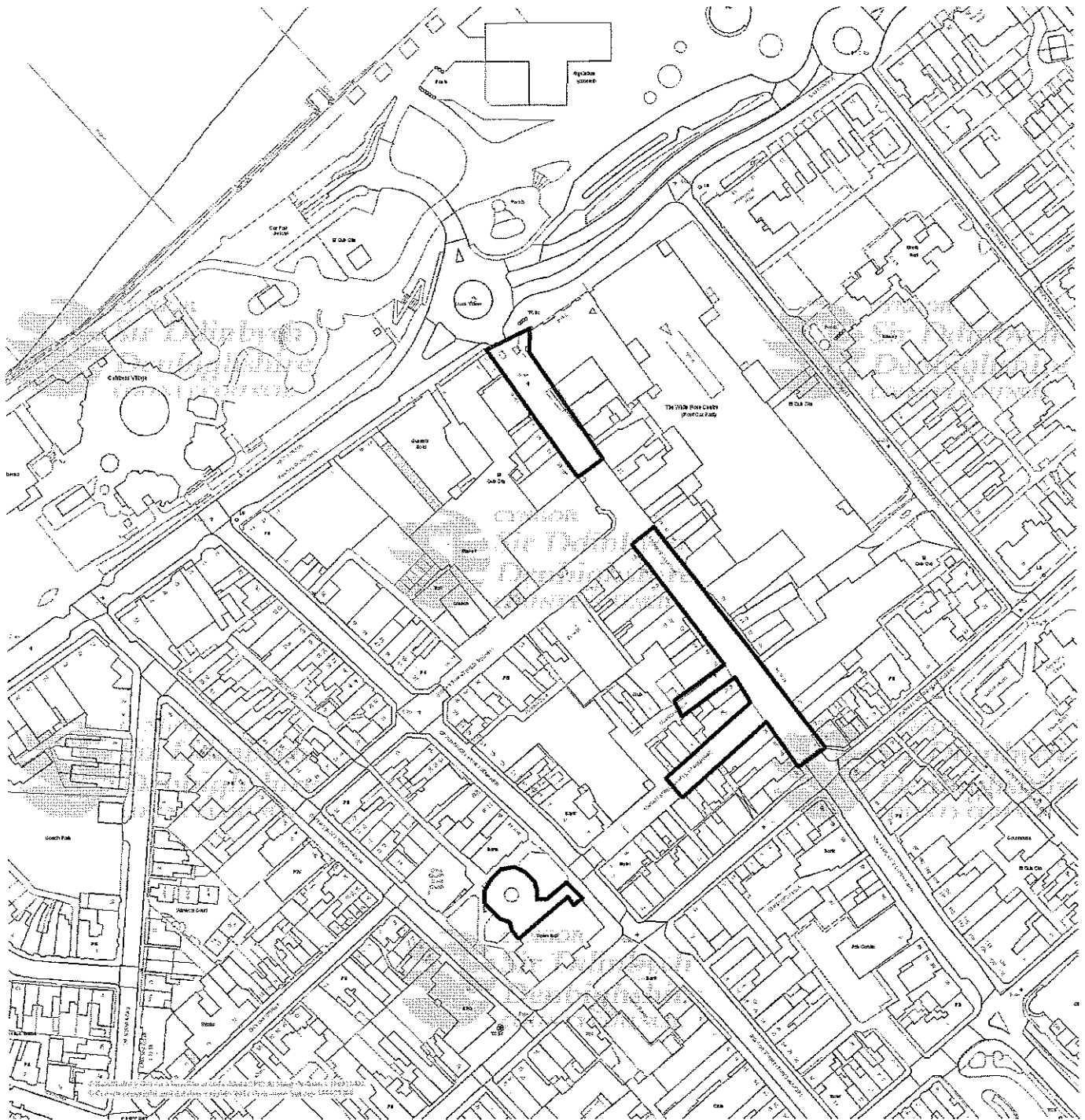


Date 3/10/2012

Scale 1/2500

Centre = 300740 E 381523 N

This plan is intended solely to give an indication of the LOCATION of the application site which forms the subject of the accompanying report. It does not form any part of the application documents, and should not be taken as representative of the proposals to be considered, which are available for inspection prior to the meeting.



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**ITEM NO:** 5

**WARD NO:** Rhyl West

**APPLICATION NO:** 45/2012/1181/ PF

**PROPOSAL:** Use of land as market for sale of Class A1 (retail goods) and Class A3 (hot food and drink) on Thursdays and Saturdays with 14 additional days in any one year

**LOCATION:** Rear of Town Hall, part Market Street, part Glanglasfor and Part High Street Rhyl

**APPLICANT:** Denbighshire County Council

**CONSTRAINTS:** C1 Flood Zone  Groundwater Vulnerability 1  Article 4 Direction  Town Heritage Area  Conservation Area  Listed Building

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

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

- Referral by Head of Planning / Development Control Manager

**CONSULTATION RESPONSES:**

**RHYL TOWN COUNCIL:**  
Response to be reported

**RHYL GROUP FORUM**  
Response to be reported

**DENBIGHSHIRE COUNTY COUNCIL CONSULTEES:**  
**HEAD OF HIGHWAYS AND INFRASTRUCTURE:**  
No objections

**STRATEGIC REGENERATION MANAGER:**  
No objections, the independent retail consultants using a statistically valid survey methodology have concluded that the street market makes a positive contribution to the vitality and viability of Rhyl town centre and that the overall increase in footfall that the market generates can provide opportunities from which all the town centre businesses can potentially benefit. The consultants have also made further recommendations about how the market might enhance the town's retail offer and these can be addressed through its on-going management arrangements.

**RHYL TOWN CENTRE MANAGER:**  
No objection in principle, but suggests that there needs to be a concentrated effort to secure a market tenant mix that will enhance the shopping provision of the town, not in direct competition with it.

**RESPONSE TO PUBLICITY:**

The application was publicised by way of 13 site notices, and approximately 100 letters to properties on Water Street, Market Street, Glanglasfor, High Street, Sussex Street and East Parade.

In objection

Representations received from:

Joy Atkins, Snax Cafe, 16 Wellington Road, Rhyl  
Ms G Williams, Aquarius, 2 Market Street, Rhyl, including a petition of 185 names and addresses  
Ms Anthea Davies, Church Secretary, 3 Tai Newydd, Trelawnyd

Summary of planning based representations:

- The market would have a detrimental impact on the viability of the town shops/centre

**EXPIRY DATE OF APPLICATION: 04/11/2012**

**REASONS FOR DELAY IN DECISION (where applicable):**

- n/a

**PLANNING ASSESSMENT:**

**1. THE PROPOSAL:**

1.1 Summary of proposals

- 1.1.1 This is a County Council application seeking a permanent permission for the use of land in four locations within Rhyl's town centre as an open air retail market. These areas are located to the rear of Rhyl Town Hall, on the north eastern end of Market Street, on Glanglasfor, and on the northern and southern end of High Street, (but not the central part of High Street). However, the market operators have suggested that the inclusion of land to the rear of Rhyl Town Hall is for consistency with the temporary planning permission, and have committed to not using this particular area on a regular basis, instead reserving its use for special events only. Members are referred to the plan at the front of the report which identifies the respective locations and their extent.
- 1.1.2 The current submission follows the granting of a temporary permission last year for the use of these sites as an open air retail market. That permission expires on the 31<sup>st</sup> October 2012. The market has been in operation since November 2010.
- 1.1.3 The market would, if granted permission, continue to operate in a similar manner to how it has operated to date. It is proposed that the market would operate on Thursdays and Saturdays each week, with an additional 14 days in any calendar year reserved for additional use. Hours of operation are proposed to be 9am to 6pm. It has been noted during discussions with the operators that the market may benefit Rhyl Town Centre more by holding it in on two different days of the week instead of Thursdays and Saturdays. This issue is discussed further in the detailed analysis section below.
- 1.1.4 The goods to be sold would continue to be retail goods (an A1 planning use) and hot food and drink (an A3 use).
- 1.1.5 Members will recall that the purpose of granting a temporary permission was to allow for the impacts of the market on the town centre to be assessed. Accordingly the current application is accompanied by a review of the role of

Rhyl street market and its impacts on the wider performance of Rhyl Town Centre. The review has been carried out by an independent retail consultant commissioned by the Council.

- 1.1.6 The application relates solely to the use of the land and does not seek permission for any temporary structures (market stalls) as such structures do not constitute development and are therefore considered beyond the control of planning legislation.
- 1.1.7 Day to day market operations would continue to be regulated by the Council's Licensing Team who would deal with complaints and ensure Council approved 'Market Regulations' are adhered to. The day to day management of the market, including promoting the quality of goods sold, is a matter for the licensing team.

## 1.2 Description of site and surroundings

- 1.2.1 The sites are within the town centre, where the predominant uses are generally retail and commercial. The areas are mostly pedestrianised and feature typical street furniture such as bollards, planting and seats.
- 1.2.2 Typically many of the buildings fronting onto the proposed market areas feature large display windows.

## 1.3 Relevant planning constraints/considerations

- 1.3.1 The areas proposed for the markets are within the development boundary of Rhyl (Policy GEN 1). They are also within the designated Town and District Centre (Policy RET 1). The sections of market proposed to the rear of the Town Hall along Market Street up to Sussex Street are in the Conservation Area (subject to policy CON 5).

## 1.4 Relevant planning history

- 1.4.1 The current submission follows the granting of a temporary permission last year for the use of these sites as an open air market. That permission expires on the 31<sup>st</sup> October 2012.

## 1.5 Developments/changes since the original submission

- 1.5.1 None

## 1.6 Other relevant background information

- 1.6.1 Permission is required as the proposed use of the public highway for an open air market would exceed the 'permitted development' tolerances in current planning legislation.
- 1.6.2 Class 4 of the General Permitted Development Order (1995) allows open air markets to be held on sites for up to 14 days per year. This allowance was 'removed' in Rhyl in 1976 by way of an Article 4 Direction, which stipulated open air markets could not be held in Rhyl without the prior grant of planning permission. However, irrespective of the Article 4 Direction, the proposed use would exceed the 14 day annual allowance, and would still require permission.
- 1.6.3 Members' attention is drawn to the limits of planning control in respect of elements of proposals of this nature. For example, stall design and layout

and the type of goods being sold cannot be reasonably controlled through the planning process because of their temporary and variable nature, and attempting to do so would conflict with guidance contained within Circular 11/95 'The Use of Conditions in Planning Permissions'. This stresses that planning conditions must be necessary, reasonable, enforceable, precise and relevant to planning.

- 1.6.4 There are quite separate controls exercisable over markets through other legislation, which allows for the creation of appropriate 'Market Regulations', which are administered and enforced by the regulatory teams within "Public Protection". Should planning permission be granted, then the issue of amendments to the existing 'Market Regulations' would be reported to the Council's Licencing Committee.
- 1.6.5 Members' attention is also drawn to Welsh Office Circular 35/95 which relates to the use of conditions in planning decisions. With specific reference to section 112 which deals with temporary permissions, the Circular states that a temporary permission which serves to assess the impacts of a proposal should only be used once. If at the end of the 'trial period' there are no adverse affect arising from the proposal, then a permanent permission should be given. Similarly, if there are found to be adverse impacts then permission should be refused.

## **2. DETAILS OF PLANNING HISTORY:**

- 2.1 45/2011/0220/PF Temporary use of land as market for sale of Class A1 (retail goods) and Class A3 (hot food and drink) on Thursdays and Saturdays (with an additional 14 days in any one year). GRANTED by Planning Committee 11<sup>th</sup> May 2011.

## **3. RELEVANT POLICIES AND GUIDANCE:**

The main planning policies and guidance are considered to be:

- 3.1 DENBIGHSHIRE UNITARY DEVELOPMENT PLAN (adopted 3<sup>rd</sup> July 2002)
- Policy GEN 1 – Development Within Development Boundaries
  - Policy GEN 6 – Development Control Requirements
  - Policy RET 1 – Town and District Centres
  - Policy RET 18 – Markets
  - Policy TRA 6 – Impact of New Development on Traffic Flows

### **3.2 GOVERNMENT GUIDANCE**

- Planning Policy Wales 4 (February 2011)
- Technical Advice Note 4 Retailing and Town Centres (November 1996)

## **4. MAIN PLANNING CONSIDERATIONS:**

4.1 The main land use planning issues are considered to be:

- 4.1.1 Principle
- 4.1.2 Impact on the vitality and viability of the town centre
- 4.1.3 Highway impact
- 4.1.4 Visual and conservation area impact

4.2 In relation to the main planning considerations:

### **4.2.1 Principle:**

The site is located within the development boundary of Rhyl, where the general principle of suitable commercial/retail development is acceptable. The site is within the designated town centre where Policy RET 1 is of relevance,

and aims to ensure that town and district centres are the main location for retail uses, provided those retail uses are of a scale and type appropriate to the size, character and function of the centre and that there is no harm to the vitality or viability of that centre. Policy RET 18 refers specifically to markets, and permits them provided there are no negative impacts upon the retail function of town centres or amenity of areas. It is therefore considered that the proposal may be acceptable in principle, but is necessarily subject to assessment of the relevant detailed impacts.

#### 4.2.2 Impact on the vitality and viability of the town centre:

Policy RET 1 requires retail proposals within town centres to either maintain or enhance the vitality and viability of the town centre. Policy RET 18 - Markets, emphasises this requirement and relates it specifically to street markets.

To assess the impacts of the market upon the vitality and viability of Rhyl Market, the Council's strategic regeneration team commissioned an independent study which has been submitted as a supporting document to the application. The Rhyl Market Study, undertaken by Roger Tym and Partners, took the form of a comprehensive consultation exercise involving market traders, town centre businesses, town centre shoppers and visitors, and other key stakeholders. The study found that the most popular reason for visiting Rhyl town centre was to visit town centre shops, but that on market days the presence of the street market was the second strongest factor in encouraging visits. 25% of visitors to Rhyl said that the market did make it more likely that they would visit the town centre, and only a very small minority said it would deter them. The study suggests that the market is influential in encouraging footfall within the town centre and that the market is likely to be supporting the overall levels of trade within the town centre.

The study concludes that overall the Rhyl street market makes a positive contribution to the vitality and viability of Rhyl town centre. In acknowledging an inevitable diversion of some trade away from town centre shops it is not considered to be at an unacceptable level, affecting in the main marginal businesses retailing goods of similar price and quality. The study further reminds that competition between in-centre operators is not a material planning consideration.

Based on the findings of the Rhyl Market Study, it is Officers' view that the continuation of Rhyl street market would not result in harm to the vitality or viability of Rhyl town centre, and it is accordingly considered that the proposal complies with planning policies RET 1 and RET 18

#### 4.2.3 Highway impact:

Policy TRA 6 permits development where there would be no detrimental impact upon the safe and free flow of traffic on the highway. In addition Policy RET 18 requires proposals for markets to not result in a traffic hazard on the surrounding highway network and that there is sufficient parking available for traders and customers.

The areas in which the market is to be held are subject to Traffic Orders which prevent vehicles from being there between 10am and 5pm. It is considered the market can be run without significant conflict with these Orders, and subject to controls over the hours of trading to tie in with the Traffic Orders, it is not considered that there would be a significant impact on the safety of pedestrians. It is considered that there is sufficient parking within Rhyl town centre to accommodate the uses. The Head of Transport and Infrastructure has not raised an objection to the proposal.

It is considered that the proposal would not result in a detrimental impact upon the safety of the users of the surrounding highway network. Confidence in this can be found in the preceding 18 months of activity in which limited highway problems have arisen as a result of the market being in operation. The proposal is compliant with policies TRA 6 and RET 18.

4.2.4 Visual and conservation area impact:

Policy GEN 6 includes criteria which seek to preserve to the visual amenity of areas. As three of the sites are located within the conservation area, there is an additional requirement to ensure the historic character of the area is not harmed as required by policy CON 5. These requirements are again emphasised with specific reference to markets by policy RET 18.

As stated in paragraph 1.6.3 above, the specific detailing of market stalls and the layout is not a matter which the planning function can concern itself with as these are temporary and do not fall within the definition of development. The use of the land and the implications of that use on the appearance of the area are material considerations. It is noted, however, that the Council has purchased a number of "gazebos" for use in the market which has resulted in a standard appearance which is considered acceptable.

Whilst a market which draws additional shoppers to a town centre is likely to result in a noticeable increase in activity, it is considered that in this town centre location the 'hustle and bustle' associated with the market is entirely appropriate and relevant to the historic commercial centre of the town, and would not have an adverse impact on visual amenity or on the character of the Conservation Area.

It is considered that the proposal complies with planning policies GEN 6, CON 5 and RET 18, and is acceptable in terms of visual amenity and impact upon the conservation area.

**5. SUMMARY AND CONCLUSIONS:**

5.1 The principle of establishing a street market in Rhyl is considered acceptable with regard to current planning policies. The past year and a half of operation suggests that the concerns which have historically been raised by town retailers can be dealt with satisfactorily through separate Market Regulations.

5.2 It is suggested that the submitted Rhyl Market Study by Roger Tym and Partners adequately demonstrates that a permanent open air retail market would not undermine the vitality or viability of Rhyl Town Centre, and that the market offers opportunities which may be of benefit to all users and retailers in Rhyl Town Centre.

**RECOMMENDATION: GRANT** - subject to the following conditions:-

1. The market shall only be permitted to operate on the following basis: a) Thursdays and Saturdays, between 1000 hours and 1700 hours. b) A maximum total of 14 additional days in any calendar year (1 Jan - 31 Dec), between 1000 hours and 1700 hours.
2. On all days and hours when the markets operate, the bollards in the positions annotated on the submitted plan shall be put in place to prevent vehicular access between 1000 and 1700 hours, and then shall not be permitted to remain in place outside those hours.
3. No markets shall be held other than on Thursdays and Saturdays unless a minimum of 14 days advance warning has been given in writing to the local planning authority, and the applicants or operators of the markets shall keep an up to date Register of the dates all markets are held. The Register shall be made available on request for inspection by officers of the local planning authority.

4. Within one month of the date of this permission a detailed method statement shall be submitted for approval with regard to the means of setting up and managing the 'Bollards' (physical barriers). The details shall include the following:

(a) The proposals for setting up, removal and management during the market hours of the Bollards (physical barriers) as shown on the approved plan dated 22/03/2011. The details shall include the type, size, colour, materials, positioning and fixing of any bollards, barriers, signs etc to be used within the public highway.

(b) Consultation method and proposed future arrangement and management for the exiting Pedestrian Zone permit holders and the restrictions within Areas 1 and 3 / red and green diagonal lines on the approved drawing during the hours of operation of the market. (c) Proposals during the market hours for emergency access arrangements only for emergency vehicles, statutory undertakers and permit holder.

The reason(s) for the condition(s) is(are):-

1. For the avoidance of doubt.
2. For the avoidance of doubt and in the interests of traffic safety.
3. To ensure a suitable record is kept of the number of days the markets are held, and to ensure the requirements of condition 2 are being met.
4. In the interest of highway and pedestrian safety.

#### **NOTES TO APPLICANT:**

In accordance with the existing access restrictions on the Pedestrian Zone no vehicle other than a goods vehicle will be permitted entry to service the market stalls. Service vehicles shall be completely removed from the Pedestrian Zone before 10 a.m. and will not be permitted re-entry under any circumstances until after 5 p.m. No other type of vehicle associated with the market stalls (e.g.) will be permitted entry to the Pedestrian Zone at any time. No service vehicles associated with the market stalls shall be permitted entry at any time to the length of High Street between its junction with Sussex Street and Market Street (Area 2/blue diagonal lines) on the approved plan which is subject to an 'Extinguishment of Vehicular Rights' Order. The setting up and removal of market stalls within this area must be undertaken manually.