

Heading:

REFERENCE NO. 03/2012/1407
 BERWYN WORKS, BERWYN ST,
 LLANGOLLEN

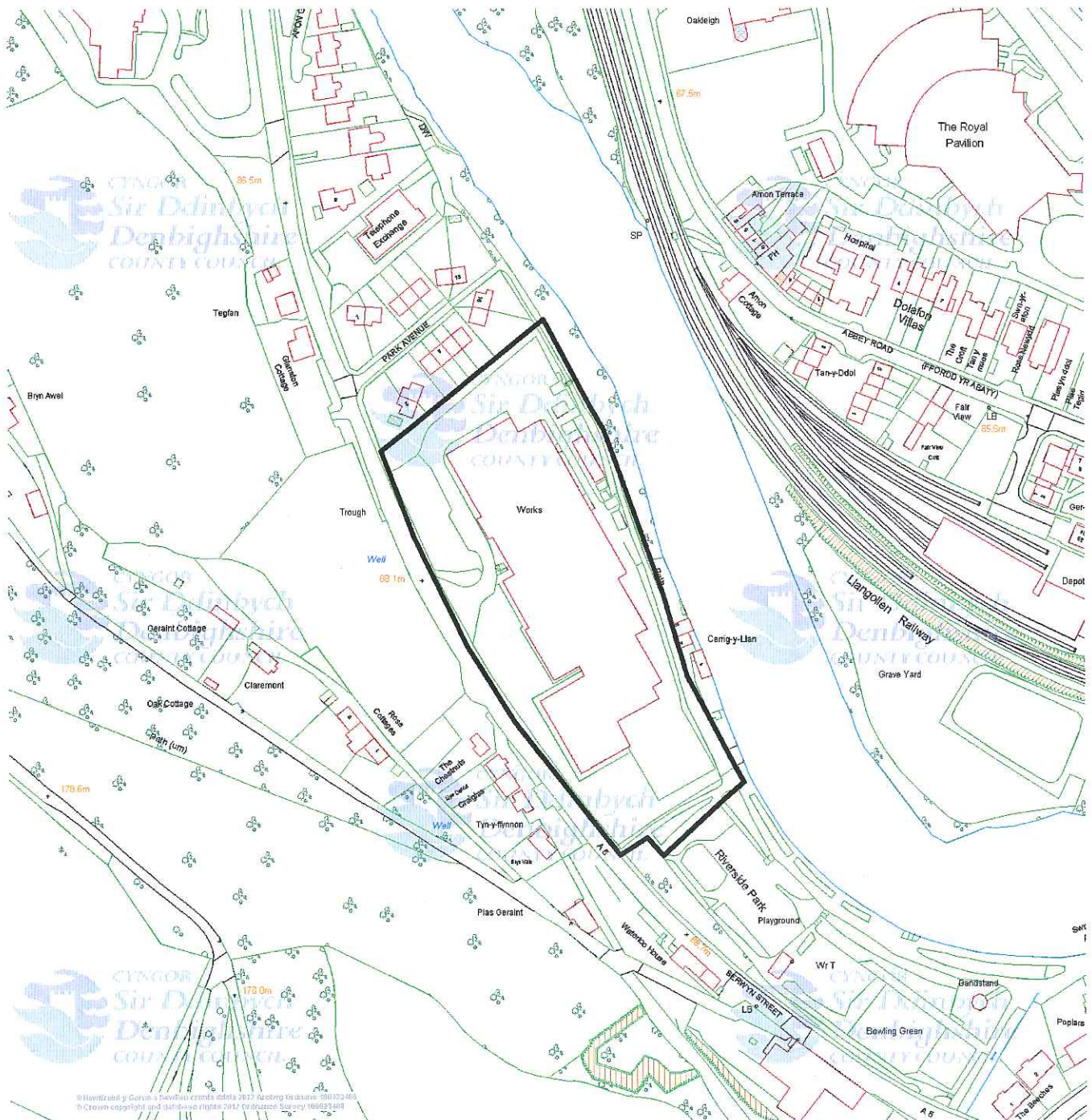
Graham Boase
 Head of Planning & Public Protection
 Denbighshire County Council
 Caledfryn
 Smithfield Road
 Denbigh
 Denbighshire LL16 3RJ

 Application Site



Date 4/12/2012 Scale 1/2500
 Centre = 320981 E 342246 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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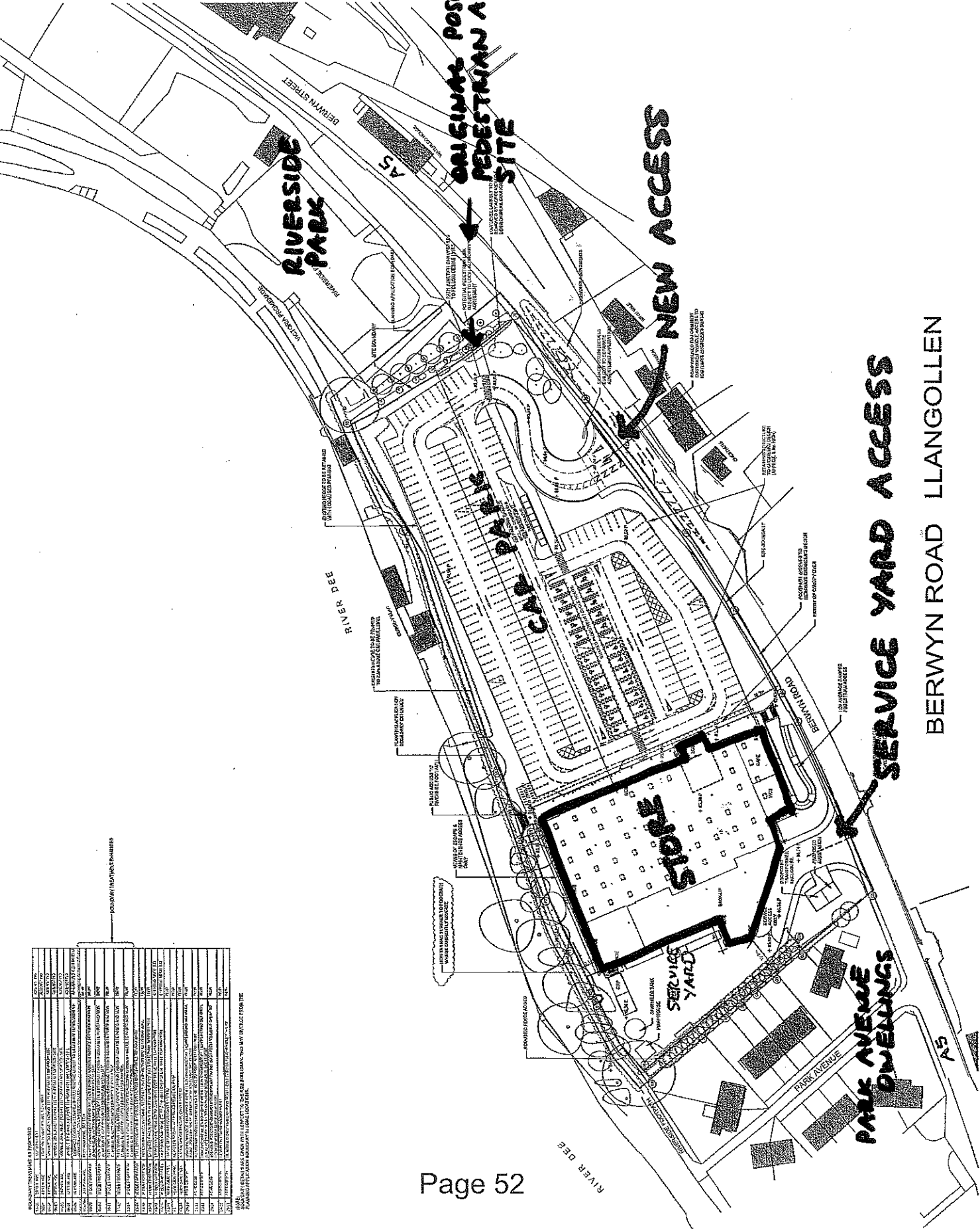
SITE PLAN

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EXISTING TREES AND HERES SHOWN FOR DETAILS OF PROPOSED LANDSCAPING AND DRIVING 100% (S)

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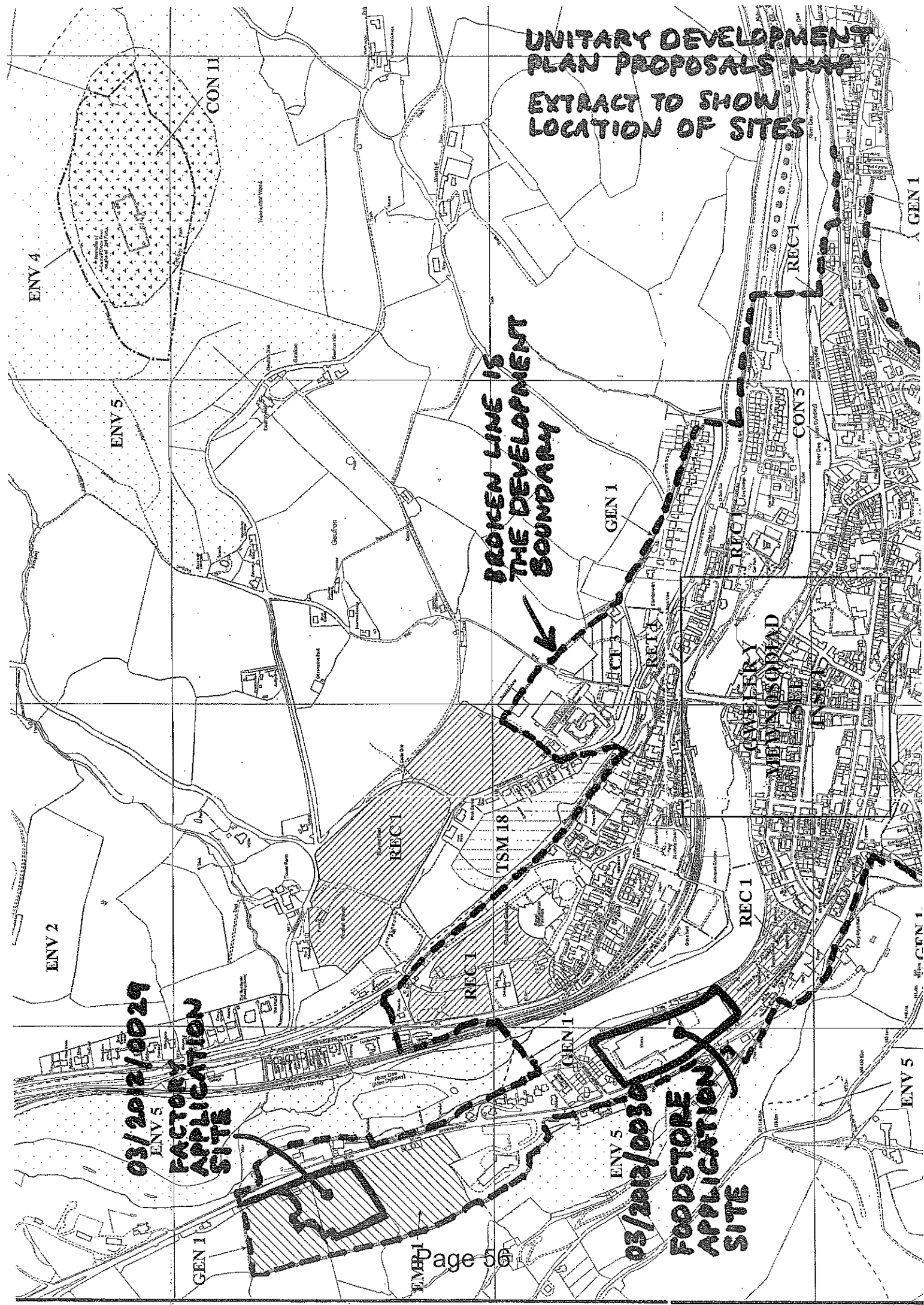
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**UNITARY DEVELOPMENT
PLAN PROPOSALS MAP
EXTRACT TO SHOW
LOCATION OF SITES**

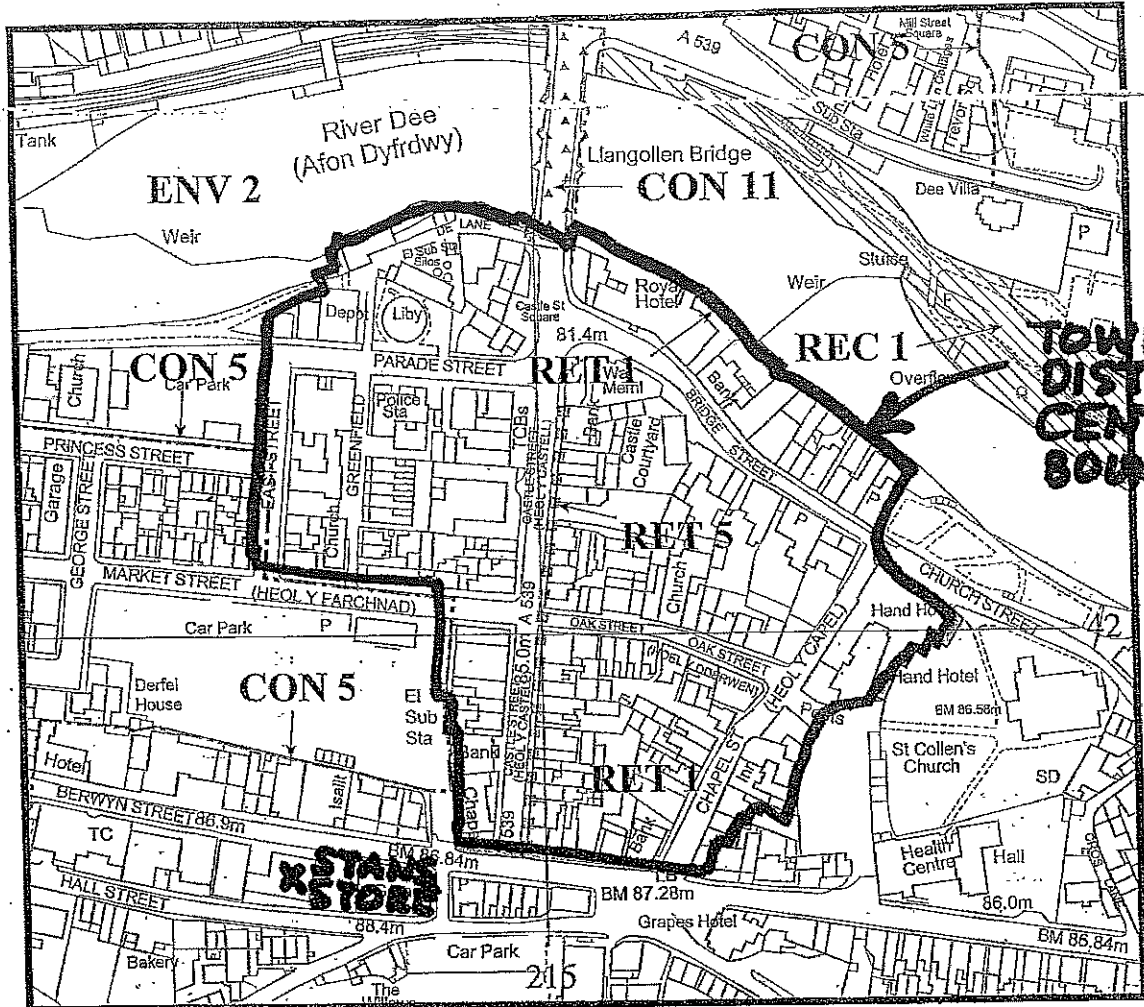
**BROKEN LINE IS
THE DEVELOPMENT
BOUNDARY**

**03/2012/0029
ENV 5
FACTORY
APPLICATION
SITE**

**03/2012/0030
ENV 5
FOODSTORE
APPLICATION
SITE**



**INSET MAP TO
UNITARY DEVELOPMENT
PLAN PROPOSALS MAP**



**CANOL TREF LLANGOLLEN/
LLANGOLLEN TOWN CENTRE**
Graddfa/Scale 1:2500

ITEM NO: 3

WARD NO: Llangollen

APPLICATION NO: 03/2012/1407/ PS

PROPOSAL: Proposed variation of conditions attached to planning permission 03/2012/0030/PF for Use Class A1 foodstore :- Condition 8d : in relation to the restriction on the provision of a cafe facility within the store, to delete this requirement;- Condition 13b : in relation to noise emissions, to vary the restrictions on permitted levels;- Condition 16 : in relation to measures to be taken in the event of noise emissions exceeding permitted levels, to vary the arrangements for investigation and implementation of mitigation;- Condition 19 : in relation to the need to submit a Certificate of Compliance with BREEAM standards before trading commences, to require the submission within 12 months of the store opening;- Condition 21 : in relation to the provision of an additional pedestrian access into the site, to revise the wording of the condition to refer to a revised or additional pedestrian access

LOCATION: Berwyn Works Berwyn Street Llangollen

APPLICANT: J Ross Developments Ltd.

CONSTRAINTS: World Heritage Site Buffer
AONB

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

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

- Recommendation to grant / approve – 4 or more objections received
- Recommendation to grant / approve – Town / Community Council objection
- Referral by Head of Planning / Development Control Manager

CONSULTATION RESPONSES:

LLANGOLLEN TOWN COUNCIL

"Members did not support the removal of Condition 8d as it was felt the provision of a café facility would have an impact on other similar facilities in the town centre and therefore Members wished to mitigate potential trade impact to protect the viability and vitality of the town centre.

Members had no objections in respect of the other variations to the other conditions".

LLANGOLLEN CIVIC SOCIETY

Remain opposed to the original application but accept the decision of the County Council subject to conditions imposed. Oppose the current application as planning permission may well not have been given had the conditions not been applied. If permission is given, this would be a signal to the applicants that they can ignore or remove other conditions agreed.

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES –

Pollution Control Officer

In relation to Condition 13(b) – Noise levels – accepts the proposed variation. The increase in noise limit from 45dB(A)eq, 1hr to 50dB(A)eq, 1hr between the hours of 07:00 – 21:00hrs is acceptable as it falls within the suggested levels in BS 8233:1999 which states, 'In gardens and balconies etc. it is desirable that the steady noise level

does not exceed 50LAeg, TdB and 55LAeg, TdB should be regarded as the upper limit'. So although it allows the applicant a bit more flexibility with regards to noise, it is still at an acceptable level so as to avoid disturbance.

Retail Consultant

Roger Tym and Partners were engaged by the Council to address retail impact issues on the original application. Their initial response indicated that consideration should be given to 'conditioning out' a café use to recognise potential trade impact on the town centre, but this was challenged by the applicants/agents and was reassessed by Roger Tym as part of the appraisal of issues relevant to the determination. The final comments from Roger Tym on the café issue were as follows:-

"Having considered the issue in some detail, however, we consider that the nature of the café and the type of food and drink on offer is more important than the size of the facility. WYG asserts that the proposed café will not be in direct competition with the cafes and restaurants in the town centre.

WYG states that the proposed café will not serve the type of hot meals commonly found in cafes and restaurants in the town centre, such as light lunches and snacks, fish and chips, burgers, lasagne and pizza. WYG instead refers to the café in the proposed Sainsbury's store as a 'coffee bar' which will offer a refreshment break to customers. We acknowledge that the offer available in the cafes and restaurants in the town centre is likely to be more extensive than in the proposed Sainsbury's café, although we note that the Sainsbury's website indicates that Sainsbury's Cafes and Coffee Bars do offer a fairly extensive range of food and drink.

Notwithstanding the comments above, however, and whilst we consider that the proposed café could potentially result in some diversion of trade from existing facilities in the town centre, we acknowledge that a café at Sainsbury's is unlikely to be as attractive to most tourists as these existing facilities, which we accept are primarily serving a tourist market.

Taking account of the factors outlined above, our considered view is that there is probably no strong basis to condition out a café at the proposed foodstore".

RESPONSE TO PUBLICITY:

In objection

Representations received from:

G. Thomas, Llangollen Country Market, The Elms, 6, Maes Bache, Llangollen

C. Bourne, Plas Geraint, Geraint, Llangollen

L. Ridley by email

D. Beech, 5, Hill Street, Llangollen

G. Thomas, The Elms, Llangollen

M. Crumpton, Hafod y Maidd Ucha, Berwyn, Llangollen

W. Davies, Haylaur, Regent Street, Llangollen

K. Polley, 7, Regent Street, Llangollen

P. Smout, Bryn Offa, Pen y Gardden, Ruabon, Wrexham

P. Thane, Bryn Villa, Pencoed Road, Llangollen

G. Forster, 3, Mile End Cottages, Llangollen

G.C. Smith, 4-7 Castle Street, Llangollen (Gifts from Wales Ltd., Cottage Cards and Crafts, Cottage Tea Rooms, Cottage Cream and Candy)

P. Carol, Pro Adventure Ltd.

J. Wallis by email

S. Collinge, Glanrafon, Abbey Road, Llangollen

J. Palmer, Llangollen Chamber of Trade and Tourism, Town Hall, Parade Street, Llangollen

C. Burfitt, J. Evans, F. Harrison, C. Veasey, Llangollen Foodstore Cooperative, Oak Street, Llangollen

C. Veasey (on behalf of Friends of the Earth, Coleshill, Aber Adda, Hill Street,

Llangollen
K. Skates AM, Unit 19, The Malthouse, Regent Street, Llangollen

A separate email from Mr. Crumpton has been received which appends an "online petition from people who oppose the relaxation or removal of conditions imposed on PA 03/2012/0030". The petition is headed as follows:-

"Reject Sainsbury's attempts to be released from Denbighshire Planning Committee's Conditions

About the petition

Denbighshire Local Planning Authority has already caved in to Sainsbury's over a condition to prevent them operating an in-store butchers and an in-store delicatessen. Now Sainsbury's want the LPA to overturn other restrictions, such as non in-store café and many others. These conditions were designed to protect our High Street traders, and now Sainsbury's has shown its true, predatory colours in appealing against these restrictions. Please join us in opposing Sainsbury's and protect our town and high street. We only have 21 days from now to influence the LPA".

The document submitted contains 37 'signatures' which include a mix of individual names (no addresses), one referred to as Llangollen Preservation, and one Anonymous.

Summary of planning based representations in objection:
In relation to the different conditions:-

In general

Concerns over precedent/other applications will follow to dilute the original consent/thin end of the wedge/Council should uphold original terms of permission/cynical to seek variations once permission granted/still opposition to the principle of the foodstore development.

Condition 8d (to delete restriction on the provision of a café).

In store café would damage other cafes and independent shops selling refreshments/proposed size of café would be large compared with those in the town centre/no justification in a town with between 20 and 30 cafes, restaurants and food outlets/statements in submission do not stand scrutiny (an in store café would cater for the same groups of people as use town centre cafes/restaurants/shops, i.e. people taking a break whilst out shopping, and local workers on the way to work and at meal breaks)/local traders disagree with views of Council's retail consultant/applicants arguments are self serving/Committee's decision was not focussed solely on the impact on the snack bar adjacent to the site/applicants argued originally that the store would bring trade to the town, the footpath link would encourage linked trips but this would remove a reason for customers to make that link/foodstore offering free parking, free toilet facilities, and lower prices for goods would inevitably divert potential visitors from the town centre/café would encourage people to spend longer in the store and not cafes or other shops in the town centre/advice from Council's Retail Consultant at original application stage was contradictory/purpose of café is clearly to capture passing trade/café is not necessary to the functioning of the store and many others locally do not have cafes/no qualitative or quantitative need for café.

Condition 13b (noise levels)

Acoustic fencing would be of no help to properties across the A5 which look down on the development/ essential to keep delivery times as set/essential to keep lower noise emissions to avoid sleep disturbance/proposed levels would negatively affect local residents (3 times louder than original limit) as the dBL unit is logarithmic not

linear)/tendency is to operate to a limit rather than below it/45dB is more than irritating/noise spikes could be significantly higher/WHO guidelines also mention children as a vulnerable group in relation to noise and sleep disruption, hence 50dB limit should only be permitted until 8pm, preferably 7am – 7pm/there are many retired residents nearby likely to be affected during daytime hours.

Condition 16 (measures in the event of noise emissions exceeding agreed levels)
Should not be altered – it is not unreasonable to expect a business to comply with set noise emission levels and if there is a problem, for them to take action before any investigation which could take some time/variation would be unfair on those negatively affected by a breach, and put residents' rights and well being as a secondary consideration.

Condition 19 (certification of compliance with sustainability code requirements)
12 month period for compliance with BREEAM standards seems excessive/store could be designed to exceed BREEAM standards but this suggests applicants are looking to pass the tests with the minimum expense/what guarantee would there be that the store complies in due course.

Condition 21 (wording of condition relating to provision of pedestrian access)
Difficult to understand variation sought/must ensure details are agreed before construction of car park is started/don't allow applicants to wriggle out of providing a direct link from the car park to the path.

EXPIRY DATE OF APPLICATION:

REASONS FOR DELAY IN DECISION (where applicable):

- awaiting consideration by Committee

PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

- 1.1.1 The application seeks the Council's agreement to the variation of a total of 5 conditions imposed on the planning permission granted at Planning Committee in September 2012 for the development of a Use Class A1 foodstore on the site of the Dobson and Crowther factory site. The planning permission Code No. for the foodstore was 03/2012/0030/PF.
- 1.1.2 The application effectively requires 5 separate decisions by the local planning authority, as the proposed variations relate to different conditions on the foodstore permission, each imposed for different reasons.
- 1.1.3 Section 4 of the report sets out the details of each of the requests for variation. In summary, the application seeks the following:-

Condition 8b) – to remove the restriction prohibiting an in-store café facility.
Condition 13b) – to vary the permitted noise levels arising from the operation of the service yard and associated plant and equipment.
Condition 16 – to vary the arrangements for the investigation and implementation of measures in the event of noise exceeding permitted levels.
Condition 19 – to vary the requirement to submit a certificate of confirmation of compliance with relevant sustainability code standards in relation to the building.
Condition 21 – to revise the wording of the condition to refer to the requirement for a revised, or additional pedestrian access.

- 1.1.4 The application is submitted by White Young Green Planning and Design, as agents for J. Ross Developments. It contains a 4 page letter detailing the justification for the variation of each of the conditions, and the suggestions for 'revised' conditions "that will ensure that the foodstore can be operated successfully". As noted, these are detailed in Section 4 of the report.

1.2 Description of site and surroundings

- 1.2.1 The site proposed for the foodstore is occupied by the existing Dobson and Crowther Works on Berwyn Road, Llangollen. This is located some 500 metres to the north west of the A5 traffic lights in the centre of Llangollen.
- 1.2.2 The site is occupied by the existing print works and extends to some 1.6 hectares.
- 1.2.3 It can be seen from the location/site plans at the front of the report that there are dwellings adjacent to the site at Park Avenue to the north, on higher ground to the west of the A5, and between the site and the River Dee to the east. The Riverside Park is to the south, and contains a small café/snack bar.

1.3 Relevant planning constraints/considerations

- 1.3.1 The site is within the development boundary for Llangollen shown on the Unitary Development Plan proposals map. There is no specific use allocation for the site on the proposals map. The site is some 400 metres outside the area shown as the Town and District Centre on the proposals map (see the plan at the front of the report).
- 1.3.2 Llangollen now lies within the recent extended Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB). The site is within the Buffer Zone of the Pontcysyllte Aqueduct and Canal World Heritage site (WHS), within the River Dee and Bala Lake Special Area of Conservation, and the historic landscape of the Vale of Llangollen.

1.4 Relevant planning history

- 1.4.1 Prior to the submission of the 2012 application for the foodstore development (referred to below), the only records relate to the printing works, so are not of direct relevance to the current application.
- 1.4.2 The key planning consent is the recently granted permission for a Class A1 foodstore on the site, which members may recall considering at the September 2012 meeting of the Committee. The permission was subject to a number of conditions.
- 1.4.3 The foodstore consent involves a main building and service area at the north end of the site, and a parking area with a new vehicular access on the 'town' side of the store. The layout plan is attached at the front of the report for information.

1.5 Developments/changes since the original submission

- 1.5.1 None.

1.6 Other relevant background information

- 1.6.1 In relation to a recently granted planning consent, planning legislation permits applicants to lodge an appeal to the Planning Inspectorate against conditions imposed (within 6 months of the date of grant), or to submit applications to vary or delete conditions (under Section 73 of the 1990 Planning Act). The

applicants have submitted the current application under Section 73.

- 1.6.2 Procedurally, Officers understand the application has to be dealt with in 5 separate parts, i.e. each request for a variation has to be determined independently and either granted or refused (and if refused, with a land use planning reason capable of being defended at any subsequent appeal which could follow to the Planning Inspectorate).
- 1.6.3 The application is not an opportunity to re-visit the principle or detailing of the foodstore development or conditions other than those on which variations are now sought. The considerations have to be applied purely to the specific variations sought to the conditions specified in the submission.

2. DETAILS OF PLANNING HISTORY:

2.1 03/2012/0030/PF

Demolition of existing printing works, erection of Use Class A1 foodstore with associated access, parking, servicing, landscaping, surface water attenuation system, and construction of new vehicular and pedestrian accesses – GRANTED 23/10/2012. The permission was subject to a number of conditions requiring submission of further details and to restrictions on the use. The ones relevant to the application are quoted in the following sections of the report.

3. RELEVANT POLICIES AND GUIDANCE:

- 3.1 As the application relates to a number of individual conditions on the foodstore permission, the report sets out in Section 4 the planning policies and guidance it is considered relevant to each of the variations proposed.
- 3.2 The overarching advice for Local Planning Authorities on the use of conditions in planning permissions is contained in Welsh Office Circular 35/95. Circular 35/95 is a significant consideration in the context of the current application, as it sets basic tests which have been set down from the Courts for the validity of planning conditions. For Members' information, the Circular advises that as a matter of policy, conditions should only be imposed where they satisfy all of the following tests:-
- (i) necessary;
 - (ii) relevant to planning;
 - (iii) relevant to the development to be permitted;
 - (iv) enforceable;
 - (v) precise; and
 - (vi) reasonable in all other respects
- 3.3 The relevance of the tests set out in Circular 35/95 can not be understated as the Council has to apply them both when granting planning permission and when considering applications such as this to vary conditions imposed on an existing permission.

4. MAIN PLANNING CONSIDERATIONS:

The proposals for variation of the conditions are each taken in turn with an individual assessment and recommendation on each.

4.1 Condition 8(d)

4.1.1 Condition 8 as worded on the planning permission states as follows:-

- "8. The floorspace hereby permitted shall not provide for any of the following in store facilities:-
- a) a post office counter;
 - b) an opticians;

- c) a dry cleaner;
- d) a café facility;
- e) an independent butcher separate to the supermarket function;
- f) an independent delicatessen separate to the supermarket function".

The reason for Condition 8 was:-

"In order that the Local Planning Authority retains control over the floorspace and uses within the foodstore, to mitigate potential trade impact to protect the viability and vitality of the town centre".

Clause 8(d) is the only part of Condition 8 on which a variation is being sought. The other clauses are not for reconsideration as part of the application.

4.1.2 Agent's submission

The agents consider 8d) to be unreasonable, unnecessary, and 'ultra vires'. They refer to advice received by the Council from independent retail consultants, which stated a need for the condition was not justified, i.e. unnecessary. They suggest there is no evidence to support the condition and that it should be removed, not only being unnecessary but placing unjustifiable burdens on the applicant. They refer to arguments presented previously as to why the café would not have an adverse impact on the future vitality and viability of the town centre – the key policy test – and they consider it was clear from discussion at the September Committee that the condition was used to protect the commercial interests of the existing café in the Riverside Park, which is out of the town centre. The agents suggest it is not the remit of the planning system to protect commercial interests and block fair competition, and there is no evidence to suggest the future of the café in the park would be adversely affected anyway, albeit this is not a planning matter.

The agents suggested revision to Condition 8 is to delete in its entirety clause (d) restricting a café use, but to include as a condition an additional restriction on the floorspace of the café as proposed as part of the development, subject to a maximum of 5% of the gross floorspace. This is considered by the agents to be a nominal level of floorspace and would not have any impact on the town centre. Their suggestion is therefore to insert a Condition 8b with the following wording:

"The proposed café within the store will not exceed 5% (or 160 square metres) of the gross floorspace of the foodstore (rounded to the nearest 10 square metres)".

4.1.3 The relevant policy and guidance in relation to Condition 8(d) are considered to be:

Denbighshire Unitary Development Plan

- Policy STRAT 10 - Town Centres
- Policy RET 1 - Town and District Centres
- Policy RET 3 - Food Supermarkets
- Policy RET 7 - Fringe areas adjacent to Town and District Centres

Welsh Government

Technical Advice Note 4 – Retailing and Town Centres
 Planning Policy Wales Edition 5 November 2012

In relation to the matters to be addressed in relation to the variation of Condition 8(d), the basis of the abovementioned policies and the recently published revision to Planning Policy Wales remains the need to maintain the attractiveness, viability and vitality of town centres. There is no detailed

guidance on the handling of one off applications involving such a specific 'impact' issue as an in store café in an out of centre foodstore, on a town centre.

- 4.1.4 Individual responses to the application express concerns over the potentially damaging impact of an in store café on existing independent cafes and restaurants operating in the town, suggesting an in store café would cater for the same groups of people as use those facilities in the centre, and that the size of the café would be large compared with typical cafes in the town. The Chamber of Trade and Tourism and other local organisations echo these objections in suggesting the purpose of the café is clearly to capture passing trade, which would otherwise be directed to the town centre, and that contrary to the applicants' contentions, the presence of a café is not essential to the functioning of the store as many local foodstores do not have cafes. It is also suggested there is no qualitative or quantitative need for a café.

The final advice from the Council's Retail Consultant at the time of considering the original application was that there was no strong basis to condition out a café at the foodstore. Whilst it was accepted that an in store café could potentially result in some diversion of trade from existing facilities in the town centre, it was suggested that the offer available from cafes and restaurants in the centre is likely to be more extensive than a café at Sainsbury's, which is unlikely to be as attractive to most tourists since the facilities in the town centre are primarily serving a tourist market.

- 4.1.5 Members may recall that the restriction on the operation of an in store café was imposed at the request of Members during debate at the September Committee. Officer advice at the time, on the basis of the considered conclusions of the Council's Retail Consultant, was that there was no strong basis to condition out a café use. The specific advice of the Retail Consultant on the issue of the café is set out at the start of this report.

In relation to the current application to vary the condition, having due regard to the applicants' arguments, the many points raised by objectors, and to the comments of the Council's Retail Consultant, Officers would suggest the issues are finely balanced.

Initially, in addressing the issues on the variation sought it is important to note the reason for the imposition of Condition 8 of the original permission was to control the uses in the foodstore, to mitigate potential trade impact, and to protect the viability and vitality of the town centre. Officers would suggest these remain the relevant planning policy tests.

It would not therefore be appropriate in Officers' opinion to base any decision on the proposed variation to 8(d) on the potential impact on the café/snack bar within the Riverside Park, since this is not in the town centre, and it would be contrary to basic principles to justify a decision on the protection of a single business.

It is not necessary to oblige assessment of qualitative and quantitative need for a café facility in an approved foodstore. The Council's Retail Consultant has advised that these 'need' tests apply to the more general consideration of need for a foodstore development in and around town centres.

Officers would agree with the Retail Consultant that the size of the proposed Café is not a significant consideration, as it is the nature of the use and the type of food and drink on offer which would give rise to competition with town centre cafes and restaurants. In this respect, it needs to be noted there are no realistic controls open to the Council to restrict the store operators from offering whatever range of food and drink they choose, even if it has been

indicated the facility would not be to serve as wide a range of items as town centre cafes etc.

On the matter of trade impact on town centre cafes/restaurants, the Retail Consultant has accepted there could be some diversion of trade, but it is clearly not possible to conclude on the actual level of such diversion, to assist consideration of its significance to the functioning of the town centre. Representations on the application refer to between 20 and 30 café/restaurant/food outlets in the town centre, which suggest there is a fairly high demand for such facilities from existing residents and visitors to the town.

In this context, there is an argument that one additional café facility in a foodstore some 500 metres to the west of the main street is unlikely in reality to pose a direct threat to between 20 and 30 established businesses in the town, any more than an additional café which may open in the centre itself, which would give rise to further competition between businesses. The Retail Consultant's view was that a café at the foodstore was unlikely to be as attractive to most tourists as existing facilities which are geared to serving a tourist market. In a situation where it is inconclusive whether there would be a damaging level of trade impact on existing cafés and restaurants and no clear evidence that there would be an adverse impact on the vitality and viability of the town centre (a more onerous test), it may be difficult to justify precluding a café use on these grounds, with any realistic prospect of defending a refusal on appeal.

The Retail Consultant's final conclusions, having given the matter detailed consideration, was that there is no strong basis to condition out a café at the foodstore. Whilst Officers consider there are a number of relevant arguments in objection to the variation proposed, the absence of support for a refusal from the Retail Consultant offers little professional backing for a negative recommendation here, and it is ultimately considered unreasonable to insist on precluding a café use which is now a common facility ancillary to the operation of a modern foodstore.

RECOMMENDATION 1

That permission be GRANTED to delete clause 8d) and to revise condition 8 as follows:-

8(a) The retail unit hereby permitted shall not provide for any of the following facilities within the confines of the store:-

- a) a post office counter;
- b) an opticians;
- c) a dry cleaners;
- d) an independent butcher separate to the supermarket function; and
- e) an independent delicatessen separate to the supermarket function.

8(b) The proposed café within the store shall not exceed 5% (or 160 sq.m) of the gross floorspace of the foodstore (rounded to nearest 10 sq.m).

4.2 Condition 13(b)

4.2.1 Condition 13(b) as worded on the planning permission states as follows:-

"13 b) Noise emissions arising from the delivery and collection of goods, and any other activity in the service yard, shall not be permitted to exceed 45 dBLAeq, 1 hour / 60 dBLAmax between 2300 – 0700 and 45 dBLAeq, 1 hour between 0700 – 2300 at any noise sensitive façade".

The reason for condition 13(b) was:-

"In the interests of residential amenity".

4.2.2 Agent's submission

The agents acknowledge the need to control noise in the daytime given the close proximity of residents. However, the restriction of 45dBLAeq, 1 hour during the daytime is considered unnecessary and onerous, as it seeks the same controls during the day when the store is open as it is at night, when the store is closed. The agents have discussed matters with the Council's Public Protection Pollution Control Officer and are proposing limits which achieve the 'good' standard in BS 8233 (a 1999 British Standards document setting out a Code of Practice in relation to Sound Insulation and noise reduction for buildings). The agents state the condition would ensure protection for residents after 2100 (9p.m.). They also refer to the proposal to provide an acoustic barrier in the service yard, the design of which will be finalised as the scheme is progressed, as this will help to mitigate noise in that area. The suggested revised wording of Condition 13(b) is:-

"b) noise emissions arising from the delivery and collection of goods, and any other activity in the service yard, shall not be permitted to exceed 45 dBL AEQ, 1 hour/60 Dbl amax between 23:00-0700 and 50 dBL AEQ, 1 hour between 0700 – 2100 at any noise sensitive façade, and 45 dBL AEQ, 1 hour between 2100 and 2300 at any noise sensitive façade".

4.2.3 The relevant policy and guidance in relation to Condition 13(b) is considered to be:-

Denbighshire Unitary Development Plan
Policy GEN 6 - Development Control Requirements

Welsh Government
Technical Advice Note 11 – Noise
Planning Policy Wales Edition 5 – November 2012

4.2.4 Representations in relation to the variation to Condition 13(b) express concern over the negative effect of proposed noise levels on local residents, suggesting the existing restriction should be retained. Comments are made that a 5dBL increase is significant, the 45dBL level is in itself 'irritating', and it is contended that the proposed limit is three times louder than the original limit as the dBL unit is logarithmic not linear.

The Council's Pollution Control Officer has no objections to the proposed variation between 0700 and 2100 as it falls within British Standards considered acceptable to avoid disturbance in gardens etc. In relation to the contentions of the objectors over the increased noise issue, the Pollution Control Officer confirms that:-

"The increase in 5dB is not three times louder than the original limit. BS4142 describes a 5dB increase as being of marginal significance. A 10dB increase in sound level is generally perceived as being a doubling of loudness".

4.2.5 In Officers' opinion, the proposed variation of Condition 13(b), as worded by the agents is acceptable. The Pollution Control Officer is satisfied that the variation complies with British Standards and would retain suitable controls over noise levels in relation to nearby properties.

RECOMMENDATION 2

That permission be GRANTED for the proposed variation of Condition 13(b). The wording shall be as follows:-

"13b) noise emissions arising from the delivery and collection of goods, and

any other activity in the service yard, shall not be permitted to exceed 45 dBL Aeq, 1 hour/60 dBL Amax between 2300-0700 and 50 dBL Aeq, 1 hour between 0700-2100 at any noise sensitive façade, and 45 dBL Aeq, 1 hour between 2100 and 2300 at any noise sensitive façade”.

4.3 Condition 16

4.3.1 Condition 16 as worded on the planning permission states as follows:-

”16. In the event that the noise monitoring required by Conditions 14 and 15 of this permission confirms that noise levels remain in excess of those set in Condition 13, the item(s) of plant, equipment, activities, etc., identified as giving rise to the problems shall not be permitted to continue to operate until alternative mitigation measures are approved in writing by the Local Planning Authority, the measures as approved are implemented, the same noise monitoring arrangements as set out in Condition 14 b and c are undertaken, and the written approval of the Authority is obtained to the continued operation of the particular plant, equipment, activities, etc.”.

The reason for Condition 16 was:

”To ensure suitable steps are taken to mitigate any breaches of the noise levels set in Condition 13”.

4.3.2 Agent’s submission

The agents state here that depending on the issue identified, this may require the servicing or operation of the store to cease and thus the store to effectively close. They consider this does not meet the Circular test of ‘reasonableness’ and therefore suggest a rewording to allow any acoustic issue to be resolved in parallel with the operation of the store.

The agent’s suggested variation to Condition 16 is as follows:-

”16. In the event that the noise monitoring required by Conditions 14 and 15 of this permission confirms that noise levels remain in excess of those set in Condition 13, appropriate investigations will take place immediately to ascertain the item(s) of plant, equipment, activities, etc., giving rise to the excessive noise levels identified. Appropriate mitigation measures will then need to be presented to and be approved in writing by the Local Planning Authority. The measures as approved will then be implemented by the applicant/operator at their own expense”.

4.3.3 Individual representations in relation to the proposed variation to Condition 16 contend that it would be unfair on those negatively affected by a breach of the main noise limit condition, and that it is not unreasonable to expect a business to comply with set noise levels and that if there is a problem, then for them to take action before any investigation which could take some time. The Council’s Pollution Control Officer is of the view that the original condition should remain as it provides a level of control to stop a noisy situation continuing for an unreasonable length of time; and that the variation could lead to loss of this control and breaches continuing indefinitely.

4.3.4 Whilst respecting the agents’ concerns over the possibility that Condition 16 may result in the servicing and operation of the store to cease in certain circumstances, Officers do not consider the particular condition to fail the reasonableness test or that the suggested variation would be adequate to allow the Council to secure early remediation of serious breaches of the noise condition.

The Pollution Control Officer supports this stance against the variation, in that it removes the Council's ability to take action against specific sources of noise exceeding the stated levels, where this may be justified to prevent unacceptable impact on residents of nearby dwellings. The need to protect residential amenity is one of the key considerations in Policy GEN 6 of the Unitary Plan. This is considered of some significance given the proximity of the service yard and the roof plant and equipment to dwellings at Park Avenue.

In recognising concerns over the 'potential' for impacts on the functioning of the store from the cessation of use of plant/machinery, etc., it is considered wholly reasonable to retain the ability to do so in those instances where there is clear breach of noise levels, and no immediate prospect of resolution. In reality, the likelihood of the Council seeking to serve a breach of condition notice in relation to the noise levels and preventing the operation of specified plant/machinery may be slim given the existence of problems should be identified early in the monitoring process and Officers would be working with the store operators to secure mitigation well in advance of any need to seek the cessation of the relevant machinery/processes/pending resolution of the issue. Finally, the proposed variation does not establish any timescale for the presentation of mitigation measures, which would make the removal of the clause giving the Council the ability to prevent the operation of identified machinery/processes even less acceptable in Officers' opinion. The recommendation is therefore to refuse to grant the variation to Condition 16.

RECOMMENDATION 3

That permission be REFUSED to vary Condition 16 for the following reason:

In the opinion of the Local Planning Authority, the proposed variation to Condition 16 would be unacceptable in that it would weaken the Local Planning Authority's ability to act to secure the cessation of the use of plant, machinery and activity in the service yard which may be identified as giving rise to noise in excess of the levels set in Condition 13 of the planning permission, to the detriment of the residential amenities of occupiers of nearby residential properties, in conflict with test v) of Policy GEN 6 of the Denbighshire Unitary Development Plan.

4.4 Condition 19

4.4.1 Condition 19 as worded on the planning permission states as follows:-

"19. Prior to the bringing into use of the foodstore hereby permitted, a 'Final Certificate' shall be submitted to the Local Planning Authority, certifying that a minimum BREEAM overall very good rating and a minimum of 6 credits under Ene 1 – Reduction of CO2 'Emissions' has been achieved for that building in accordance with the requirements of BREEAM in force at the time of the grant of this permission".

The reason for Condition 19 was:-

"To ensure the relevant Sustainability Code Standards are met in connection with the building".

4.4.2 Agents' submission

The agents contend that the requirement to submit a BREEAM final certificate before trading at the foodstore can commence does not meet the tests of reasonableness and necessity. The reason is that the final BREEAM survey can not be carried out until the store works are completed, and as drafted, the condition would result in the completed store sitting idle until such time as the Certificate is issued and discharged. The agents respectfully suggest that all is necessary is a requirement to achieve the relevant BREEAM standard

("Very Good" and 6 ENE 1 Credits), which can be covered by the suggested variation of wording suggested:-

"19. A 'Final Certificate' shall be submitted to the Local Planning Authority within twelve months of the store opening, certifying that a minimum (BREEAM) overall very good rating and a minimum of 6 credits under Ene 1 – Reduction of CO2 'Emissions' has been achieved for that building in accordance with the requirements of BREEAM in force at the time of the grant of this permission".

4.4.3 The relevant policy and guidance in relation to Condition 19 are:-

Denbighshire Unitary Development Plan
Policy STRAT 1 - General
Policy STRAT 12 - General
Policy STRAT 13 - New development

Welsh Government
Planning Policy Wales Edition 5 November 2012
Technical Advice Note 12 - Design
Technical Advice Note 22 - Sustainable buildings

The basis of the policies and guidance are to ensure sustainable development principles are embodied in development schemes. Welsh Government have set out in their Technical Advice Notes a framework for ensuring the standard of design, construction, and use of materials incorporates detailed measures to maximise the efficiency of a building in terms of a range of features such as use of energy, thermal insulation, recycling of water and waste and the handling of surface water. There are separate standards of assessment for environmental performance relating to dwellings (Code for Sustainable Homes) and for non-residential buildings (BREEAM standards – the Building Research Establishment Environmental Assessment Method). Local Planning Authorities are encouraged to attach conditions to planning consents to ensure sustainable building standards are achieved.

4.4.4 Individual responses relating to the request to vary Condition 19 suggest a 12 month period for compliance with BREEAM standards is excessive, and that the Council should ensure that the development is not constructed to lower standards.

4.4.5 The basic variation sought to Condition 19 relates to the timing of the submission of the Final Certificate confirming the foodstore is complete and operating in accordance with the relevant BREEAM standard. The request is to allow this to be submitted within a period of 12 months from the opening of the store, rather than prior to its operation. Having discussed this matter with Design Services and strategic assets colleagues, it is considered that the request is reasonable, as there are a range of assessments/ surveys necessary once a building is brought into use to determine whether BREEAM compliance is being achieved (e.g. energy consumption and demand, CO2 emissions, acoustic surveys effectiveness of operational layout within the store and servicing areas, mobility arrangements, etc), which may in turn oblige further mitigation measures to be introduced before a 'Final Certificate' can be issued to demonstrate compliance. On this understanding, it is suggested that a one year period as suggested is reasonable for providing a 'Final Certificate' on a scheme of this scale and nature.

RECOMMENDATION 4

That permission be GRANTED to vary Condition 19 as follows:-

19, A 'Final Certificate' shall be submitted to the Local Planning Authority within twelve months of the store opening, certifying that a minimum (BREEAM) overall very good rating and a minimum of 6 credits under Ene 1 – Reduction of CO2 'Emissions' has been achieved for that building in accordance with the requirements BREEAM in force at the time of the grant of this permission.

4.5 Condition 21

4.5.1 Condition 21 as worded on the planning permission states as follows:-

"21. Notwithstanding the submitted details on the site plan 1681- P01-C, and the landscaping / planting plans 1681-PO2-C, LLa1/DO1 rev I, and LLa1/DO3 rev E, the development shall not be undertaken in accordance with the proposed detailing in respect of the matters set out below, which shall be in accordance with such alternative plans as may be submitted to and approved in writing by the Local Planning Authority prior to the commencement of works on the car parking area and pedestrian accesses to the site:

a) the treatment of the area between points 08 and 16 on the site plan (Riverside Walk boundary and pathway);

b) the treatment of the area between points 18 and 20 (pathways and proposed pedestrian entrance from Riverside Park), which shall provide for an additional pedestrian access into the site from the south east corner of the site (at point 18), the use of railings to compliment those in the Riverside Park, and shall ensure the removal of the leylandii trees,

c) the landscaping / planting within the car park, which shall provide for the planting of additional trees to break up the extent of hard surfacing;

d) the provision of suitable signage within the site directing the public to the town centre.

The development shall be carried out strictly in accordance with the details as approved under this condition, and the works shall be completed before the store is brought into use.

The reason for Condition 21 was:-

" In the interests of visual amenity, and to ensure the site is fully accessible to pedestrians from the Riverside Park, in order to encourage linked trips to the town centre".

4.5.2 Agent's submission

The Agents have requested revisions to the wording of clause b) of the Condition to reflect their understanding of Local Members desire to provide either an additional pedestrian access into the site from the south east corner near the Riverside Walk, or a revised location of the single pedestrian access within the Riverside Park (proposed in the original plans near the A5 footway), closer to the south east corner. Their suggested variation to Condition 19 is therefore:-

"Notwithstanding the submitted details on the site plan 1681 – P01-C, and the landscaping/planting plans 1681-P)2-C, LLa1/DO1 rev I, and LLa1/DO3 rev E, the development shall not be undertaken in accordance with the proposed detailing in respect of the matters set out below, which shall be in accordance with such alternative plans to be submitted and approved in writing by the Local Planning Authority prior to the commencement of works on the car parking area and pedestrian accesses to the site:-

a) the treatment of the area between points 08 and 16 on the site plan

(Riverside Walk boundary and pathway),
b) the treatment of the area between points 18 and 20 (pathways and proposed pedestrian entrance from Riverside Park), which shall provide for a revised (or additional) pedestrian access into the site which better links the car park to the Riverside Walk, the use of railings to complement those in the Riverside Park, and shall ensure the removal of the leylandii trees,
c) the landscaping/planting within the car park,
d) the provision of suitable signage within the site directing the public to the town centre.

The development shall be carried out strictly in accordance with the details as approved under this condition, and the works shall be completed before the store is brought into use”.

- 4.5.3 The relevant policy and guidance in relation to Condition 21 are considered to be:-

Denbighshire Unitary Development Plan

Policy GEN 6 - Development Control requirements

Policy TRA 8 - Transport requirements in Major developments

Welsh Government

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Technical Advice Note 18 – Transport

The thrust of the planning policies and guidance of relevance to Condition 21 is the need to ensure new development incorporates satisfactory arrangements for access by all potential users, including pedestrians.

- 4.5.4 Individual responses received in relation to the proposed variation to Condition 21 express confusion over what is being sought and insist details of the new pedestrian access(es) are agreed before work on the car park is started.

- 4.5.5 In noting the comments in individual responses, the main purpose of clause b) of condition 21 was to ensure that provision was made for a pedestrian access closer to the Riverside Walk at the south east corner of the foodstore site, to encourage use both by foodstore customers and pedestrians walking along the Riverside Walk, to maximise the potential for linking trips to and from the town centre. The requirement was included at Members’ request in debate on the application at the September Planning Committee. As noted in 4.5.2, the agents are pointing out that the wording of Condition 21b) refers exclusively to provision of an additional pedestrian access, whereas their understanding of local Members’ intention is that the option of a suitably located single pedestrian access point from the Riverside Park may be an acceptable solution.

Officers are satisfied that the suggested variation to include for either an additional or revised pedestrian access, which better links the foodstore car park to the Riverside Walk, is reflective of Local Members’ wishes and merits support. Fully detailed plans of the proposals would still need to be submitted for the Council’s consideration and approval prior to commencement of works on the car park area, under the terms of the revised condition, and these would need to demonstrate an acceptable arrangement for the access(es).

RECOMMENDATION

That permission be GRANTED to vary condition 21 as follows:-

”21. Notwithstanding the submitted details on the site plan 1681-P01-C, and the landscaping/planting plans 1681-P02-C, LLa1/DO1 rev I, and LLa1/DO3 rev E, the development shall not be undertaken in accordance with the proposed detailing in respect of the matters set out below, which shall be in

accordance with such alternative plans to be submitted and approved in writing by the Local Planning Authority prior to the commencement of works on the car parking area and pedestrian accesses to the site.

- a) the treatment of the area between points 08 and 16 on the site plan (Riverside Walk boundary and pathway),
- b) the treatment of the area between points 18 and 20 (pathways and proposed pedestrian entrance from Riverside Park), which shall provide for a revised (or additional) pedestrian access into the site which better links the car park to the Riverside Walk, the use of railings to complement those in the Riverside Park, and shall ensure the removal of the leylandii trees,
- c) the landscaping/planting within the car park,
- d) the provision of suitable signage within the site directing the public to the town centre.

The development shall be carried out strictly in accordance with the details as approved under this condition, and the works shall be completed before the store is brought into use.

NOTES TO APPLICANT: None