

# Public Document Pack

**Gareth Owens LL.B Barrister/Bargyfreithiwr**  
Chief Officer (Governance)  
Prif Swyddog (Llywodraethu)



To: Cllr David Wisinger (Chairman)

CS/NG

Councillors: Mike Allport, Bernie Attridge,  
Marion Bateman, Chris Bithell, Derek Butler,  
David Cox, Adele Davies-Cooke, Ian Dunbar,  
David Evans, Veronica Gay, Patrick Heesom,  
Dave Hughes, Kevin Hughes, Christine Jones,  
Richard Jones, Richard Lloyd, Billy Mullin,  
Mike Peers, Neville Phillips and Owen Thomas

27 February 2020

Maureen Potter 01352 702322  
maureen.potter@flintshire.gov.uk

Dear Sir / Madam

A meeting of the **PLANNING COMMITTEE** will be held in the **COUNCIL CHAMBER, COUNTY HALL, MOLD CH7 6NA** on **WEDNESDAY, 4TH MARCH, 2020** at **1.00 PM** to consider the following items.

Yours sincerely

Robert Robins  
Democratic Services Manager

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## A G E N D A

- 1 **APOLOGIES**
- 2 **DECLARATIONS OF INTEREST**
- 3 **LATE OBSERVATIONS**
- 4 **MINUTES** (Pages 3 - 8)
- 5 **ITEMS TO BE DEFERRED**
- 6 **REPORTS OF CHIEF OFFICER (PLANNING, ENVIRONMENT & ECONOMY)**

The reports of the Chief Officer (Planning, Environment & Economy) are enclosed.

### **REPORTS OF CHIEF OFFICER (PLANNING, ENVIRONMENT & ECONOMY) TO PLANNING COMMITTEE ON 4 MARCH 2020**

<b>Item No</b>	<b>File Reference</b>	<b>DESCRIPTION</b>
<b><u>Applications reported for determination (A = reported for approval, R= reported for refusal)</u></b>		
<b>6.1</b>	060253 - A	Full Application - Change of Use to 3 No. Apartments at 15 - 17 Mold Road, Buckley. (Pages 9 - 16)
<b>6.2</b>	060357 - A	Change of Use of Land to Equestrian, Erection of Stables and Field Shelters in Retrospect and Proposed Erection of Barn at Hyfrydle, Marian, Trelawnyd. (Pages 17 - 26)
<b>6.3</b>	060411 - A	Application for Approval of Reserved Matters Following Outline Approval (056540) at Former Corus Garden City Site, Garden City. (Pages 27 - 50)
<b>Item No</b>	<b>File Reference</b>	<b>DESCRIPTION</b>
<b><u>General Matters</u></b>		
<b>6.4</b>		Public Services for Ombudsman for Wales Report. (Pages 51 - 86)

## **PLANNING COMMITTEE** **5 FEBRUARY 2020**

Minutes of the meeting of the Planning Committee of Flintshire County Council held at County Hall, Mold on Wednesday, 5 February 2020

### **PRESENT: Councillor David Wisinger (Chairman)**

Councillors: Mike Allport, Marion Bateman, Chris Bithell, Derek Butler, David Cox, Ian Dunbar, David Evans, Veronica Gay, Patrick Heesom, Kevin Hughes, Christine Jones, Richard Jones, Richard Lloyd, Billy Mullin, Mike Peers, Neville Phillips and Owen Thomas

**APOLOGIES:** Councillors: Adele Davies-Cooke and Dave Hughes

### **ALSO PRESENT:**

Councillor Hutchinson attended as local Member for Agenda Items 6.1 and 6.4 (060587 and 060374)

Councillor Haydn Bateman attended as an observer

### **IN ATTENDANCE:**

Chief Officer (Planning, Environment & Economy); Development Manager; Service Manager - Strategy; Team Leader - Planning; Senior Planners; Senior Engineer - Highways Development Control; Senior Solicitor; and Democratic Services Officers

## **51. DECLARATIONS OF INTEREST**

Councillor Dennis Hutchinson declared a personal and prejudicial interest on agenda item 6.1 (060587) as a governor of a school that would benefit from an education financial contribution if permission was granted by the Committee. He had been granted dispensation by the Standards Committee to speak on the item for five minutes.

Councillor Hutchinson also declared a personal interest on Agenda Item 6.4 (060374) as the owner of land with permission for residential development at Mount Pleasant, half to three-quarters of a mile from the application site. He said that there was no impact on his interest on that land arising from the application.

## **52. LATE OBSERVATIONS**

The Chairman allowed Members an opportunity to read the late observations which had been circulated at the meeting and were appended to the agenda on the Flintshire County Council website:

<http://committeemeetings.flintshire.gov.uk/ieListDocuments.aspx?CId=490&MId=4513&LLL=0>

## **53. MINUTES**

The draft minutes of the meeting on 8 January 2020 were submitted.

Application 060374 - Full Application - Conversation of Redundant Restaurant/  
Bar into 13 No. Flats/Apartments at 14 Mill Lane, Buckley

On the deferral of this application, Councillor Peers asked that minute number 48 be amended to reflect his request for a meeting with Planning and Highways officers to discuss the concerns about the missing footpath and other matters raised during the site visit. In respect of these comments, he added that officers had met the applicant but had failed to meet with Members.

The Development Manager said that having reviewed the webcast of the meeting, Councillor Peers had not specifically made this request and had only asked that officers have regard to the concerns of local Members and requested to speak with Highways - who the Chief Officer had confirmed to be Streetscene rather than Planning. She therefore suggested that the minutes were accurate and went on to explain that the concerns raised - namely the footpath, the lack of windows in internal rooms and refuse issues - had all been reflected in the report.

This was acknowledged by Councillor Richard Jones who said that representations had been made at the meeting that officers should meet with Members to discuss their concerns. He expressed his disappointment that Members had not been involved in discussions prior to publication of the report and that the item should be deferred until those talks had taken place.

The Senior Solicitor said that the discussion appeared to accept that the minutes were a true record and that there was an opportunity to raise specific concerns when the report was considered later in the meeting. On the resolution of application 060374, he clarified that the correct reason for deferral was to resolve issues regarding the land ownership certificate submitted by the applicant and he asked that Members support this correction.

Councillor Peers said that in addition to the correct reason for deferral, the resolution should also include that officers were to investigate the other issues which he had raised.

The amendments put forward by the Senior Solicitor and Councillor Peers were moved and seconded by Councillors Bithell and Dunbar. On being put to the vote, this was carried.

**RESOLVED:**

That, subject to the amendments on minute number 48 and the resolution for application 060374, the minutes be approved as a true and correct record and signed by the Chairman.

**54. ITEMS TO BE DEFERRED**

No items were recommended for deferral.

**55. REPORTS OF THE CHIEF OFFICER (PLANNING, ENVIRONMENT & ECONOMY)**

**RESOLVED:**

That decisions be recorded as shown on the Planning Application schedule attached as an appendix.

**56. MEMBERS OF THE PUBLIC AND PRESS IN ATTENDANCE**

On commencement of the meeting, there were 15 members of the public and no members of the press in attendance.

(The meeting started at 1.00pm and ended at 3.40pm)

.....  
**Chairman**

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**PLANNING COMMITTEE ON 5 FEBRUARY 2020**

ITEM NO	TOWN/ COMMUNITY COUNCIL	SITE/PROPOSAL	THIRD PARTY SPEAKERS / ACTION	RESOLUTION
060587	Buckley Town Council	Full Application - The Demolition of 81 Drury Lane and the Erection of 56 Dwellings, Access, Parking, Open Space and Associated Works at 81 Drury Lane, Buckley.	Mr. Keig spoke against the application.  Having declared a personal and prejudicial interest and been granted dispensation by the Standards Committee, Councillor Hutchinson, as local Member, spoke against the application.	That planning permission be refused in accordance with the officer recommendation.
060667	Broughton & Bretton Community Council	Change of Use from Dwelling into Multiple Occupancy, Alterations to Front Porch and form Drop Kerbs across site frontage to facilitate parking (partly in retrospect) at 24 Larne Drive, Broughton.	Ms. L. Jones spoke against the application.	That planning permission be refused, against the officer recommendation, on the following grounds: The change of use is not in keeping with the street scene, insufficient parking provision for tenants and their visitors, and detriment of living conditions.

ITEM NO	TOWN/ COMMUNITY COUNCIL	SITE/PROPOSAL	THIRD PARTY SPEAKERS / ACTION	RESOLUTION
059457	Buckley Town Council	Outline Application for Construction of Two Semi-Detached Two Storey Houses at 128 Mold Road, Buckley.	Mr. A. Franco (applicant) spoke in support of the application.  Councillor Heesom asked that his vote against the application be recorded.	That planning permission be granted subject to the applicant entering into a Section 106 Obligation and the conditions within the report, in accordance with the officer recommendation. Additional Conditions 8, 9 and 10 on site access and surface water as set out in the late observations.
060374	Buckley Town Council	Full Application - Conversion of Redundant Restaurant/Bar into 13 No. Flats/Apartments at 14 Mill Lane, Buckley.	Mr. G. Mitchell spoke against the application.  Councillor Hutchinson, as local Member, spoke against the application.	That planning permission be refused, against the officer recommendation, on the following grounds: Impact on the vehicle access and egress, impact on the amenity of Millers Court residents, lack of separation between habitable rooms below the standard and the impact on the amenity of future occupiers due to the lack of light and windows on ground floor bedrooms.
059026	-	General Matters - Proposed Variation to Section 106 Agreement - Issa Farm, Bryn Road, Bryn y Baal, Mold.	-	That the Section 106 Agreement is varied to provide for nine affordable home ownership dwellings and nine affordable rental dwellings.

ITEM NO	TOWN/ COMMUNITY COUNCIL	SITE/PROPOSAL	THIRD PARTY SPEAKERS / ACTION	RESOLUTION
<b>APPEAL</b>			<b>NOTED</b>	
059673	-	Appeal by Sandra Roberts Against the Decision of Flintshire County Council to Refuse Planning Permission for an Outline Application for the Erection of a 4 Bedroomed Detached Dwelling at The Old Toll Cottage, Whitford Road, Whitford - DISMISSED	-	-



## FLINTSHIRE COUNTY COUNCIL

**REPORT TO:** **PLANNING COMMITTEE**

**DATE:** **4<sup>th</sup> MARCH 2020**

**REPORT BY:** **CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**

**SUBJECT:** **FULL APPLICATION- CHANGE OF USE TO 3 NO. APARTMENTS**

**APPLICATION NUMBER:** **060253**

**APPLICANT:** **MR PAUL SMITH**

**SITE:** **15-17 MOLD ROAD, BUCKLEY**

**APPLICATION VALID DATE:** **16<sup>TH</sup> JULY 2019**

**LOCAL MEMBERS:** **COUNCILLOR N PHILLIPS OBE**

**TOWN/COMMUNITY COUNCIL:** **BUCKLEY TOWN COUNCIL**

**REASON FOR COMMITTEE:** **MEMBERS REQUEST – IMPACT UPON NEIGHBOURING AMENITY**

**SITE VISIT:** **YES**

### **1.00 SUMMARY**

1.01 This is a full application for the change of use of 2 no. retail units into 3 no. residential apartments at 15-17 Mold Road, Buckley

### **2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-**

- 2.01
1. Time Limit
  2. In accordance with plans
  3. Details of bin storage
  4. Materials
  5. No parking within the boundary of the application site.

### **3.00 CONSULTATIONS**

- 3.01 Local Member  
Councillor N Phillips: Requests committee determination and site visit

Buckley Town Council

Object to proposal

Loss of another commercial property in or near to town centre which would detract from efforts to regenerate town centre

- Questions need for more residential properties in or near the town centre when recent developments are taken into account.

Community and Business Protection

No objection

Highways Development Control

No objection

Dwr Cymru/Welsh Water

No objection.

Aura Leisure

No response at time of writing

**4.00 PUBLICITY**

- 4.01 Site notice

7 Letters of objection received

- Highways concerns with particular regard to Orchard Close
- Impact upon viability of commercial area
- Lack of parking
- Works being undertaken without benefit of planning permission

**5.00 SITE HISTORY**

- 5.01 057559- Alterations and improvements to shop to form 2no. units and to first floor residential amenity area to form 2no. apartments- Approved 9/11/2017

**6.00 PLANNING POLICIES**

- 6.01 Flintshire Unitary Development Plan  
STR4- Housing  
GEN1- General Requirements for Development  
HSG3- Housing on Unallocated Sites within Settlement Boundaries

## **7.00 PLANNING APPRAISAL**

### **7.01 Proposal**

This application is for the conversion of units 15-17 Mold Road Buckley, which are currently retail units, to 3 no. apartments. The upper floors of the building already contains 2 no. apartments. The application is being made partly in retrospect.

#### **Principle**

The site is located within the settlement boundary and designated town centre of Buckley within the Flintshire Unitary Development Plan. The application site is outside of the core retail area for Buckley

The proposal is for a residential development, of which the policies within the Flintshire Unitary Development Plan are supportive. There is no policy basis to preclude the loss of retail units as the site is outside of the core retail area.

Paragraph 4.3.2 in Planning Policy Wales 10 states that: “Retail and commercial centres should be identified in development plans and include established city, town, district, local, village and neighbourhood centres, which provide a range of shopping, commercial and leisure opportunities as well as places of employment, education, civic identity and social interaction. Opportunities to live in these centres, combined with their good public transport links, make them the most sustainable places..” The principle of integrating residential development as part of a mixed use within settlements alongside retail and other uses

I consider that the principle of development is acceptable, and that the development is in accordance with the relevant policies within the Flintshire Unitary Development Boundary.

#### **Impact upon Streetscene**

The proposal intends to remove the existing shop frontage elevation on Mold Road and block up this entrance, in effect reversing the orientation of the building so that the front of the resulting building faces onto Orchard close and the rear elevation occupies the more prominent Mold Road position.

The site lies outside the core retail area for Buckley, which is located on Brunswick road, however part of policy STR5 requires the LPA to resist development “which would be harmful to the vitality,

attractiveness and viability of nearby centres". It has been suggested that the loss of these retail units and the creation of what is in effect a blank rear elevation erodes the character and appearance of the vicinity and that whilst outside the core retail area, the site clearly lies within the town centre and the shop units serve to strengthen this character which is typified by its mix of retail, food and entertainment and administrative uses, with residential predominantly restricted to the upper floors.

The applicant has designed the conversion so that the shop fronts could be reinstated with relative ease. It should be noted, however, that the policies within the Flintshire Unitary Development Plan have a presumption in favour of residential development within the settlement boundary and outside of the core retail area. It is a strong argument, which I give significant weight to, that a mix of smaller types of residential accommodation within a close walking distance of the core retail area helps to maintain a user base who are likely to utilise the shops and other facilities within close proximity, with aids the vitality of the town. This is particularly the case when you consider that the alternative is empty shop units which do not assist either the vitality or attractiveness of the town centre.

I do not consider that the loss of shop fronts in this location would be necessarily detrimental to the Streetscene.

### **Highways**

Third party concerns have been raised due to the site access to the rear, which is either through Orchard Close, a private way, or the narrow access to the rear of the properties on Tabernacle Street. There is concern that a greater use of this access would have an impact on highways safety. It should be noted that the application does not propose or include any parking. As such it is recommended a condition is imposed to prevent any parking to the rear of the building.

The site is located within a town centre location within close proximity of shops, schools and services, public car parks. There are good public transport links easily accessible from the site. As such it is considered that the proposal is in accordance with the guidance within SPGN11- Parking Standards and Flintshire Unitary Development Plan policy AC18 which allows for a reduction in parking provision within town centres in such locations.

Highways development control have raised no concerns over this aspect of the development. It would appear that when the premises were used as shops it is possible vehicular access, assumed by the shop owners, may have been utilised for deliveries or parking for staff. As there is no vehicular access or parking proposed then any issues

raised relating to these matters attract very minor weight in the overall planning balance.

### **Other Matters**

The application is being made partly in retrospect as building work has commenced on site, although this is not complete. Although the works have been undertaken without the benefit of planning permission this is at the developers own risk. The partial or full retrospective nature of a planning application is not a matter which significant weight should be attached.

### **Conclusion**

I consider the proposal to be in accordance with the relevant Flintshire Unitary Development Plan policies and I therefore recommend accordingly.

## **8.00 CONCLUSION**

### **8.01 Other Considerations**

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

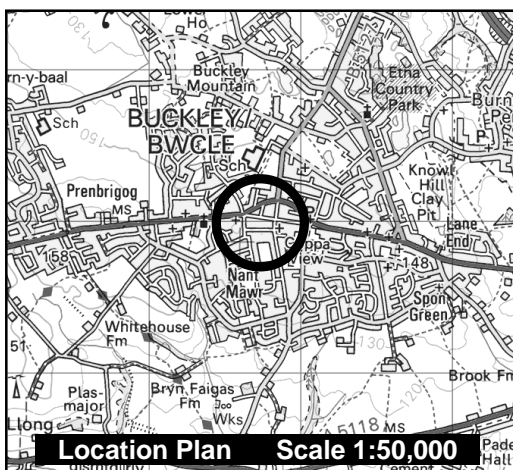
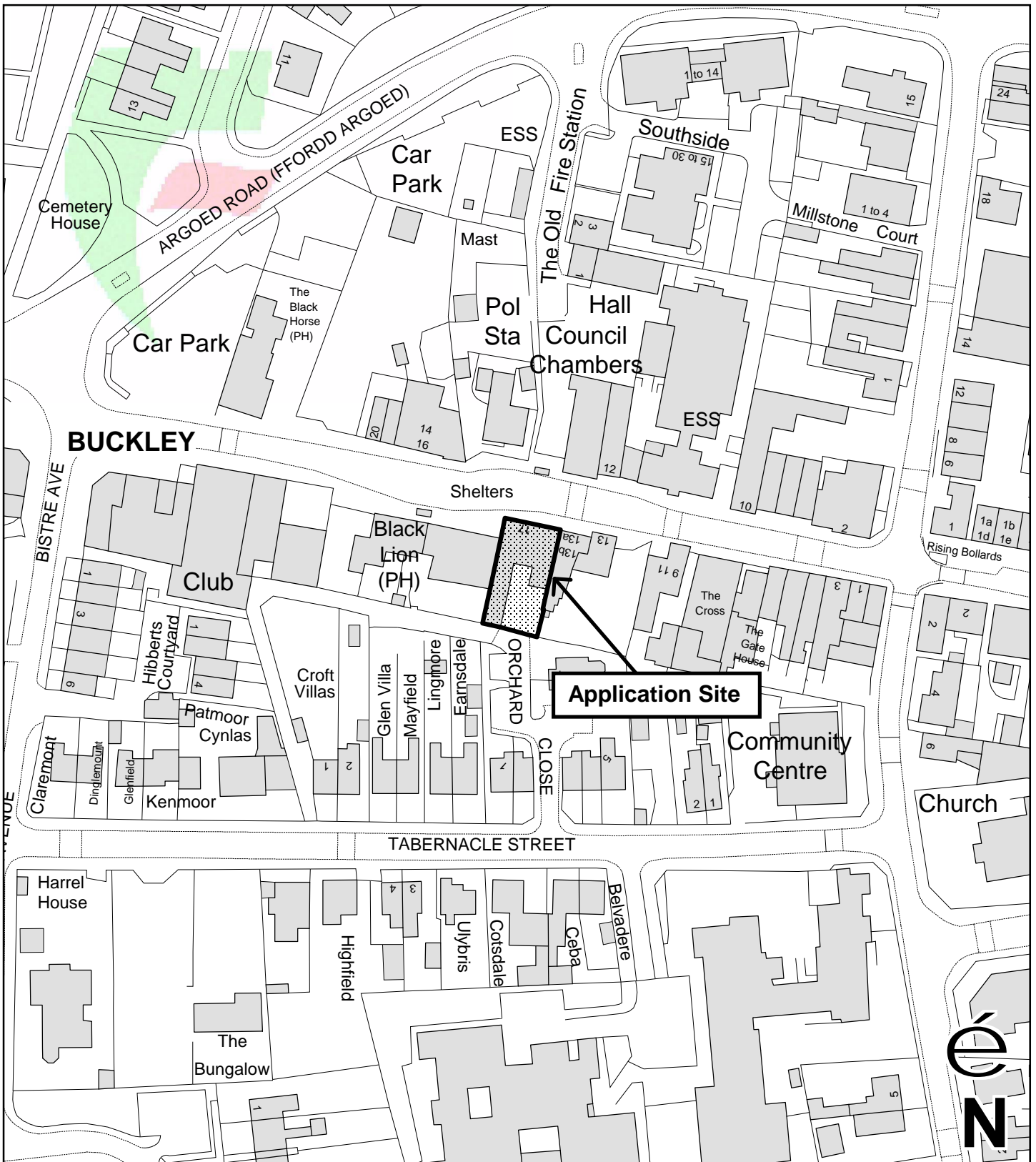
The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.


### **LIST OF BACKGROUND DOCUMENTS**

Planning Application & Supporting Documents  
National & Local Planning Policy  
Responses to Consultation  
Responses to Publicity

**Contact Officer:**

**Telephone:**  
**Email:**







**Sir y Fflint**  
Flintshire  
COUNTY COUNCIL

Planning, Environment & Economy,  
Flintshire County Council, County Hall,  
Mold, Flintshire, CH7 6NF.  
Chief Officer: Mr Andrew Farrow

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**Legend**

-  Planning Application Site
-  Adopted Flintshire Unitary Development Plan Settlement Boundary

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Map Scale	1:1250
OS Map ref	SJ 2764
Planning Application	<b>60253</b>

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## FLINTSHIRE COUNTY COUNCIL

**REPORT TO:** **PLANNING COMMITTEE**

**DATE:** **4<sup>TH</sup> MARCH 2020**

**REPORT BY:** **CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**

**SUBJECT:** **CHANGE OF USE OF LAND TO EQUESTRIAN, ERECTION OF STABLES AND FIELD SHELTERS IN RETROPECT AND PROPOSED ERECTION OF BARN AT HYFRYDLE, MARIAN, TRELAWNYD.**

**APPLICATION NUMBER:** **060357**

**APPLICANT:** **MR GARRY GOODFELLOW**

**SITE:** **HYFRYDLE, MARIAN, TRELAWNYD**

**APPLICATION VALID DATE:** **29<sup>TH</sup> AUGUST 2019**

**LOCAL MEMBERS:** **COUNCILLOR T. ROBERTS**

**TOWN/COMMUNITY COUNCIL:** **TRELAWNYD AND GWAENYSGOR COMMUNITY COUNCIL**

**REASON FOR COMMITTEE:** **LOCAL MEMBER CONCERNS REGARDING IMPACT ON AMENITY**

**SITE VISIT:** **YES**

### **1.00 SUMMARY**

- 1.01 This is a full application which is part retrospective for the change of use of land to equestrian, erection of stables and field shelters in retrospect and proposed erection of a barn. The application was received following an investigation by Planning Enforcement. The owner then appointed a planning agent who undertook pre-application advice. In the pre-application advice the planning officer provided advice on how the development could be managed to avoid adverse harm upon the living conditions of neighbouring properties, the character and appearance of the area and on the highway.

The application is considered acceptable in policy terms, subject to the site not being used for commercial purposes. It is considered the application will not have a detrimental effect on the living conditions of neighbouring occupiers in the locality, the character and appearance of the area or on the highway network.

**2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-**

- 2.01
1. Time limit on commencement
  2. In accordance with approved details
  3. No commercial livery, riding school or any other such use
  4. Burning of waste material associated with the keeping of horses prohibited
  5. Facilities to be provided within the site for the loading, unloading, parking and turning of vehicles
  6. The development hereby permitted shall be used solely as a private stables and shall not be used at any time as a commercial livery/riding school or for any other commercial use.

**3.00 CONSULTATIONS**

3.01 Local Member  
Councillor T. Roberts

I request this application to be referred to Planning Committee due to resident concerns over impact to amenity.

Trelawnyd and Gwaenysgor Community Council  
No objections to the application.

Community and Business Protection  
No adverse comments to make regarding this proposal.

Highways Development Control  
It is considered that the traffic generation associated with the proposed equine use will be no more onerous than that potentially generated by the former agricultural use.

Natural Resources Wales  
No objection to the proposed development as submitted, subject to advice note being provided in respect of protected species and contaminated surface water.

**4.00 PUBLICITY**

4.01 Site Notice and Neighbour Notification

4no. letters of objection received upon the following grounds:

- Impact upon residential living conditions
- The effect upon highway safety
- Detrimental impact upon the character and appearance of the area

## **5.00 SITE HISTORY**

### 5.01 059585

Application for a lawful development certificate for the existing use of a static caravan as an annexe to the dwelling house.

Granted 26.3.19

### 059557

Application for a Lawful Development Certificate for an existing use of land as residential.

Granted 26.3.19

## **6.00 PLANNING POLICIES**

- 6.01 Flintshire Unitary Development Plan  
STR1 - New Development  
GEN1 - General Requirements for Development  
GEN3 - Development in the Open Countryside  
D2 - Design  
L1 - Landscape Character  
AC13 - Access and Traffic Impact

**Planning Policy Wales Edition 10 (December 2018)**

## **7.00 PLANNING APPRAISAL**

### 7.01 Introduction

This is a full application for the change of use of land to equestrian, erection of stables and field shelters in retrospect and proposed erection of barn at Hyfrydle, Marian, Trelawnyd.

This application which is retrospective in nature has been submitted following investigation by the Councils Planning Enforcement Team after a number of complaints were received from neighbouring residents and from the Local Member. To summarise, the complaints received are in relation to the impact on residential amenity from noise, odour, amount and type of vehicles generated by the proposal and subsequent impact upon the highway and harm to the character and appearance of the open countryside.

Particular concerns have been raised over the use of the site for commercial activities relating to the equine use.

When the application was first submitted a larger area of land was included within the application site. The area of land has now been reduced and Area 6 shown on the site plan has been retained as agricultural land. This leaves a buffer between properties on Rose Hill and the application site. The total area of land amounts to 0.994 hectares. Consultations were carried out initially on the larger area of land and a further period of consultation followed upon receipt of the amended site plan.

#### Site Description

The application site is situated in a rural location but is located close to the A5151 London Road. The site is split into 3 parcels of land, identified as Area 1 to the south of Hyfrydle, Area 4 to the west of Hyfrydle and Area 5 to the west of Marian House. The land is relatively flat and each parcel is fairly rectangular and is bound by mature hedging.

There are several residential properties within close proximity to the site and 3 properties in particular which share the same private access road used to access the application site. A further field also in equine use but under different ownership is located to the east of the site and is also accessed from the same private lane.

#### Proposed Development

The retrospective part of the application seeks consent for the erection of 5 stables in Area 1, comprising of a modular block of 3 modern wooden stables located along the western boundary and two older self- build wooden stables located along the eastern boundary, to the north of the site access. A field shelter located near to the southern boundary of Area 4 and a smaller field shelter located close to the western boundary of Area 5 are also in retrospect. A modern barn is proposed to be located within Area 1 to replace an older barn structure. The proposals are for personal use for the applicant only.

#### Background

The application was submitted following involvement by Planning Enforcement in relation to the unauthorised change of use of land and the erection of stables and field shelters. Prior to the submission of the application the applicant sought pre-application advice to avoid detrimental harm to neighbouring residential living condition, impact upon the character and appearance of the area and on the highway.

#### Main Issues

The main issues are the impact of the proposals upon the living conditions of neighbouring occupiers, the character and

appearance of the open countryside location and on the highway network.

#### Principle of Development

The principle of development is considered to be acceptable as ancillary works to support a recreation use in the open countryside. In accordance with FUPD Policy GEN 3 (g). The impact of the development regarding social, natural and the built environment as required by Policy GEN 3 are considered below;

#### Impact on Residential Living Conditions

The representations received raise concerns in relation to the impact of the use of the land and the noise and odour which occur as a result of this use. These matters have been considered in consultation with the Pollution Control Service and due to the small number of stables located on the land it is not considered that this amount will cause detrimental harm to the living condition of the existing neighbours. Land located directly to the east of the site is also used for equestrian purposes and is located in close proximity to the same neighbouring properties and there is no evidence of harm or complaint relating to an existing similar use. The level of equine use proposed to be regularised as part of this application and the existing small scale neighbouring are cumulatively, when considered over both site areas small in scale and therefore it is considered that both uses will not jointly create an issue.

The proposed location of the muck heap has been sited within the south west corner of the land marked Area 1 on the site plan and is well screened by mature hedging. The muck heap has been located away from residential properties and is approximately 45m away from the nearest property, Myrtle Cottage, which is situated to the east. As previously stated Pollution Control have no objection to this proposal.

It is therefore considered that the proposal would not have an impact on the living conditions of neighbouring occupiers and would therefore be in accordance with Policy STR1 and GEN1 of the Flintshire Unitary Development Plan.

#### Impact on the Open Countryside

The site is situated within the open countryside and the proposals submitted are for personal leisure and recreational purposes, which are considered acceptable under policy GEN3, provided that there is no unacceptable impact on the social, natural and built environment. The proposals are also considered acceptable under policy L1 providing that the landscape character is maintained or enhanced.

The applicant proposes to retain the existing mature hedgerows which will retain the character and appearance of the area. This is

particularly prevalent in Area 1 where the hedgerows provide adequate screening for the stables, muck heap and proposed barn when viewed from the north, south and west. The buildings within Area 1 are only visible when viewed from the east, when passing the entrance to the site on the private lane.

The proposed barn is intended to replace an existing barn type structure which is roughly 17m long by 6m wide and 3.8 high. The existing barn type structure has been constructed out of wooden and different forms of metal cladding. The structure appears run down and is considered to be affecting the character and appearance of the area. The replacement barn is proposed to be 13.8m long by 5.10m wide and 3.2m high and will be treated timber construction with steel juniper green sheets on the roof.

The existing field shelter within Area 4 measures approximately 10.6m long by 5.2m wide and 2.8m high and the existing field shelter in Area 5 measures approximately 8m long by 2.9m wide and 2.8m high. Both structures are considered to be small scale and are of wooden construction, which helps the structures to blend in with the local area. The field shelters are therefore considered to have no unacceptable impact upon the natural environment.

The applicant has proposed to carry out further planting on neighbouring land to help screen the proposals. This is not considered necessary by the Council and therefore officer's are not seeking to secure this undertaking with a legal agreement. However if the applicant may pursue this separately if they wish.

It is therefore considered the proposal is in accordance with FUDP Policy GEN 3 and L1.

#### Impact on the Highway

The representations received raise concerns in relation to commercial activity taking place associated with the equine use and the amount and type of traffic generated having a detrimental impact upon the highway network. The application has been assessed by Highways and the information submitted relates to the use of the site for the applicant only and contains no reference to commercial activity. The application has therefore been assessed on this basis and it is considered that the amount of traffic generated by the proposed equine use to be no more onerous than that potentially generated by the lawful agricultural use. On this basis the proposals are acceptable and Highways raise no objection, subject to a condition restricting the use of the site to private use, with no associated commercial or livery aspect. The proposals are in accordance with policy AC13 of the Flintshire Unitary Development Plan.

## **8.00 CONCLUSION**

On balance it is considered that the proposals are acceptable within the open countryside location and the scale and design will have no unacceptable impact on the social, natural and built environment in accordance with policy STR1, GEN1, GEN3 and D2 and will maintain the landscape character of the area in accordance with policy L1. It is considered that the proposals will cause no detrimental impact upon residential amenity in accordance with policy GEN1 and no adverse impact upon the highway in accordance with policy AC13 of the Flintshire Unitary Development Plan.

Having considered the objections received and all other matters I recommend that the application is approved.

### **8.01 Other Considerations**

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

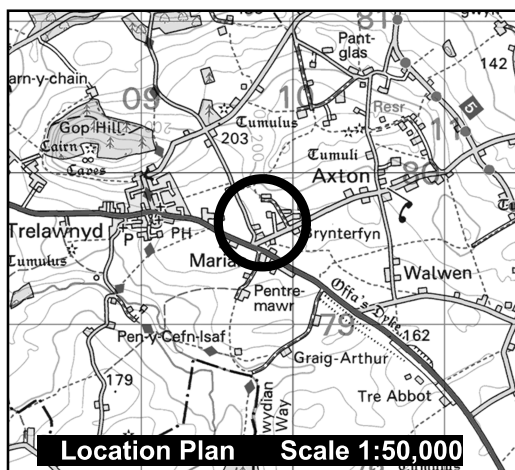
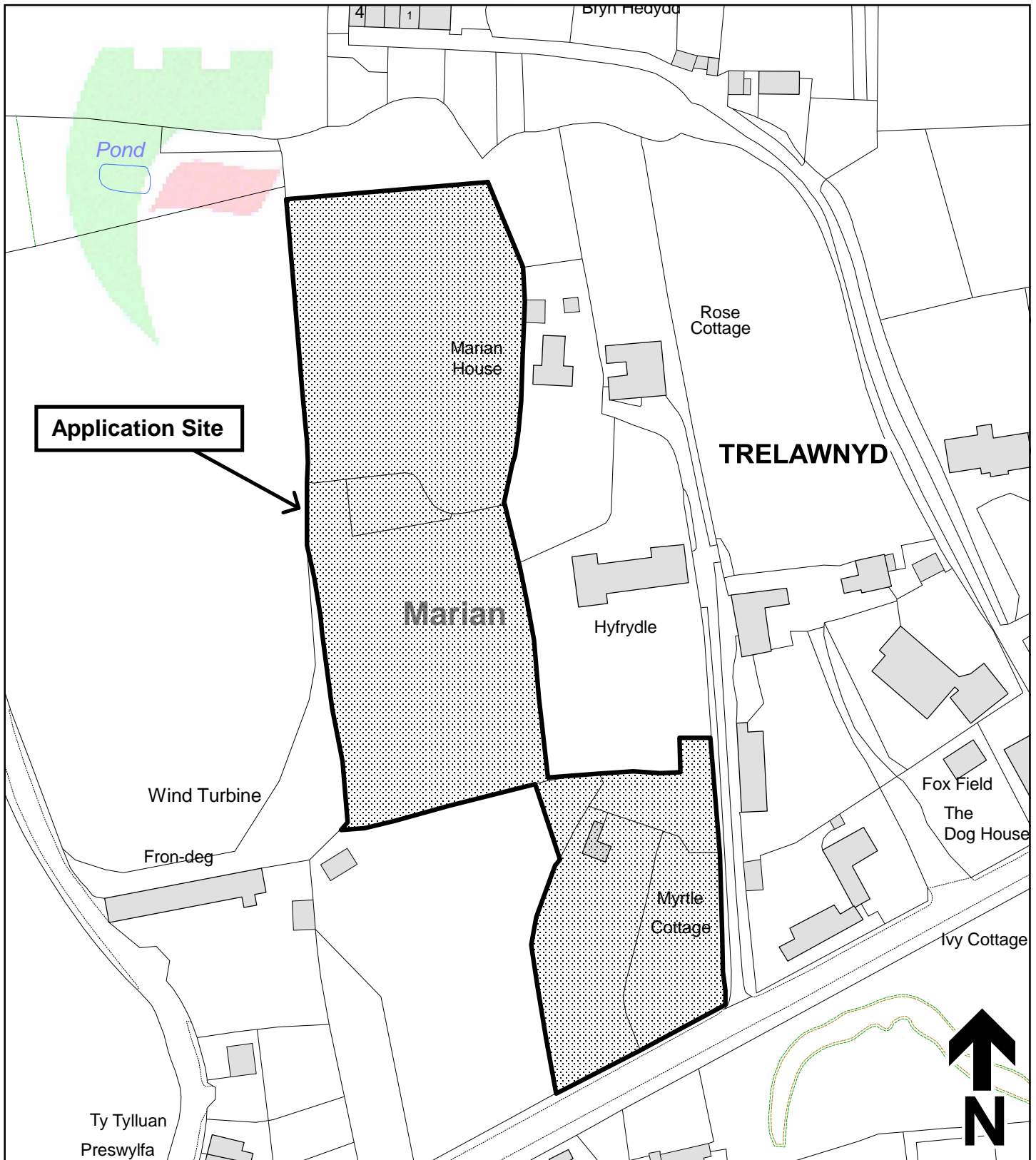
#### **LIST OF BACKGROUND DOCUMENTS**

Planning Application & Supporting Documents  
National & Local Planning Policy  
Responses to Consultation  
Responses to Publicity

**Contact Officer: Alison Dean**  
**Telephone: 01352 702012**  
**Email: [Alison.dean@flintshire.gov.uk](mailto:Alison.dean@flintshire.gov.uk)**







Planning, Environment & Economy,  
 Flintshire County Council, County Hall,  
 Mold, Flintshire, CH7 6NF.

Chief Officer: Mr Andrew Farrow

**Legend**



Planning Application Site



Adopted Flintshire Unitary  
 Development Plan  
 Settlement Boundary

Page 25

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OS Map ref SJ 0979

Planning Application **60357**

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## FLINTSHIRE COUNTY COUNCIL

**REPORT TO:** **PLANNING COMMITTEE**

**DATE:** **4<sup>TH</sup> MARCH 2020**

**REPORT BY:** **CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**

**SUBJECT:** **APPLICATION FOR APPROVAL OF RESERVED MATTERS FOLLOWING OUTLINE CONSENT FOR THE ERECTION OF 129 NO. DWELLINGS ON LAND AT FORMER CORUS SITE, GARDEN CITY**

**APPLICATION NUMBER:** **060411**

**APPLICANT:** **KEEPMOAT HOMES**

**SITE:** **LAND AT FORMER CORUS SITE, GARDEN CITY, DEESIDE**

**APPLICATION VALID DATE:** **19<sup>TH</sup> SEPTEMBER 2019**

**LOCAL MEMBERS:** **COUNCILLOR MS C M JONES**

**TOWN/COMMUNITY COUNCIL:** **SEALAND COMMUNITY COUNCIL**

**REASON FOR COMMITTEE:** **MEMBER REQUEST & SCALE OF DEVELOPMENT**

**SITE VISIT:** **NO.**

### **1.00 SUMMARY**

1.01 This is a reserved matters application pursuant to outline planning permission ref: 056540 which was for an employment led mixed use development and associated infrastructure comprising construction of accesses, roads, footpaths, cycle paths, earthworks, and flood mitigation on land at Former Corus Site, Garden City, Deeside.

The original outline consent ref: 050125 was granted planning permission in 2014, and in recent years has been subject to a variation referred to as ref: 056540, a reserved matters permission for the Phase 1a enabling and infrastructure works along with the associated discharge of conditions attached to the varied consent ref:

056540. The Former Corus Site together with the neighbouring Airfields Site forms part of a long standing aspiration of Flintshire County Council and Welsh Government to bring forward a comprehensive, mixed use redevelopment in this area (referred to as a whole as the Northern Gateway) taking advantage of the strategic location and the availability of previously developed land.

This reserved matters application relates to the 1<sup>st</sup> phase of residential development at the Former Corus Site, which proposes the erection of 129 no. dwellings together with associated infrastructure, recreational space and landscaping. The proposed scheme would deliver a mix of 2, 3 and 4 bedroomed properties in a variety of house types.

This site forms part of the wider mixed use strategic allocation including housing, Policy HSG2A in the Flintshire Unitary Development Plan, the principle of development is therefore considered acceptable in planning policy terms. Issues in respect of design, layout, access, residential amenity, interface distances, flood risk and developer contributions have been negotiated and resolved.

**2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-**

2.01 That conditional planning permission be granted subject to the applicant entering into a Section 106 Obligation to provide the following:

- Provide the gifting of land (0.35ha) to Sealand Primary School.
- Payment of £10,000 in relation to ecological mitigation for wintering birds.
- Payment of £4,500 in relation to a Traffic Regulation Order
- Provide that a management company is incorporated for the management and future maintenance of the onsite public open space and communal landscaped areas.

Conditions

1. In accordance with approved plans
2. Samples of materials for external finishes
3. Specification for the type, location and amount of play equipment to be provided
4. Site levels shall be set at a minimum of 5.50m AOD
5. Finished floor levels of the proposed dwellings to be set at a minimum of 5.95m AOD
6. Access shall have a visibility splay of 2.4m x 43m in both directions

7. Facilities shall be provided and retained within site for parking and turning
8. Front of garage set back a minimum distance of 5.5m behind the back of footway line or 7.3m from the edge of the carriageway
9. Positive means to prevent the run-off of surface water
10. Erection of acoustic fencing as per the recommendations of the Noise Assessment ref AA18-1114-R01v2 dated February 2019
11. Installation of acoustic glazing and ventilation to properties as per the recommendations of the Noise Assessment ref AA18-1114-R01v2 dated February 2019

If the Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as outlined above) is not completed within 3 months of the date of the Committee resolution, the Head of Planning be given delegated authority to REFUSE the application.

### **3.00 CONSULTATIONS**

#### Local Member

##### Councillor Ms C M Jones

Raises no objection to the proposed development but requests the application is reported to the planning committee in the interests of the site being brought forward and the proposed scale.

#### Sealand Community Council

No objections to the proposed development.

#### Highways Development Control

A swept paths analysis and a revised layout drawing had demonstrated there is an acceptable layout. The applicant's engineers have suggested the inclusion of parking restrictions to ensure there are no obstructions along the access route. A S106 agreement for the sum of £4500 will be required to fund a Traffic Regulation Order.

I recommend that any permission shall include a Section 106 agreement and the imposition of conditions.

#### Community and Business Protection

Raises no objection subject to the imposition of conditions relating to noise mitigation as per the recommendations of the noise assessment submitted.

Appropriate site investigations, remediation and verification reports which address Land Contamination required by condition(s) attached to the outline consent have been submitted and approved as part of the Phase 1a Enabling Works and separate discharge of condition packages. The site has therefore been subject to the relevant

treatment which has prepared it for its end use and there is no need to impose further conditions relating to this matter.

#### Welsh Water/Dwr Cymru

The principle of the onsite and offsite drainage proposals as indicated on drawing 7037/01 are considered acceptable, on the basis that surface water flows are discharged to a watercourse, and foul flows are discharged to a public foul gravity sewer.

#### Natural Resources Wales

As controlled by condition attached to the outline consent, the application is supported by a site specific Flood Consequence Assessment (FCA). NRW have reviewed the content together with the revised submission and confirm that provided the mitigation measures which includes raising site levels outlined in the FCA (including appendices) are fully implemented then they raise no objection to the reserved matters proposal. The FCA (including appendices) should form part of the approved list to any grant of permission which should also include a condition which requires the site levels to be set at a minimum of 5.50m AOD which will ensure that the development platform is flood free during all considered fluvial and tidal events.

The applicant has submitted an Ecological Assessment to inform the reserved matters application. NRW confirm that they are satisfied with the reserved matters ecological submissions and therefore raise no objection.

#### Public Rights of Way

Public footpath no.3 crosses the site and Public Footpath no. 1 abuts the site. The applicant must contact the Rights of Way Section before proceeding with any works. The legally defined public rights of way must be marked out in strict accordance with the definitive map and with the prior approval of the surveying authority before commencement of any of the development. The surface of the right of way must not be disturbed without lawful permission and development over the line of the public rights of way must not commence until any necessary diversion or extinguishment has been lawfully authorised under the appropriate legislation.

#### Education

##### **Sealand CP School Calculations**

School Capacity  $215 \times 5\% = 10.75$ , rounded to 11  
Trigger for Contributions is therefore  $215 - 11 = 204$

Number of Units,  $129 \times \text{Primary Multiplier, } 0.24 = \text{Child Yield, } 30.96$   
rounded to 31

Child Yield, 31 x Cost per Pupil Multiplier, £12,257.00 = Developer Contribution, £379,967.00

Current Numbers on Roll, 190 + Child Yield, 31 = Potential Numbers on Roll, 221

The Potential Numbers on Roll do exceed the Trigger for Contributions.

Potential Numbers on Roll, 221 – Trigger for Contributions, 204 = Potential Number of Contributions Sought, 17

Actual Number of contributions Sought, 17 x Cost per Pupil Multiplier, £12,257.00 = Contribution Required, £208,369.00

### **Connah's Quay High School Calculations**

School Capacity 1200 x 5% = 60  
Trigger for Contributions is therefore 1200 - 60 = 1140

Number of Units, 129 x Secondary Multiplier, 0.174 = Child Yield, 22.446 rounded to 22

Child Yield, 22 x Cost per Pupil Multiplier, £18,469.00 = Developer Contribution, £406,318.00

Current Numbers on Roll, 988 + Child Yield, 22 = Potential Numbers on Roll, 1010

The Potential Numbers on Roll do not exceed the Trigger for Contributions.

### **Conclusion**

Primary School: Sealand CP School

- It has been agreed that the land owner will gift a parcel of land to the Council to enable the school site to be expanded to meet the future numbers on roll, based on anticipated pupils generated from the development.
- Therefore, it is our intention not to seek a Section 106 contribution for £208,369.00.

Secondary School: Connah's Quay High School

- It is our intention not to seek a Section 106 contribution.

### Housing Strategy

I would advise that given that the Countryside planning application ref 059514 as the 1<sup>st</sup> phase of residential development on the Airfields site have delivered 10% affordable housing provision meeting in excess of the immediate demand in the Garden City area. There is a need to adopt a balanced approach to affordable housing provision

on the Northern Gateway as a whole and would therefore be satisfied that no affordable housing is provided on this application at the former Corus Site Phase 1 residential development given there being no evidenced need to be met and the risk of saturation of the scheme as a whole with affordable housing. I am mindful also that whilst there is no evidenced need, the applicant has made viability claims which have been accepted, and as such the applicant has demonstrated that there are significant infrastructure and flood mitigation costs which need to be absorbed in order to feasibly deliver phase 1 on this site.

#### Aura

In accordance with Planning Policy Guidance Note no. 13 Public Open Space Provision, the Council should be seeking developments for 100+ dwellings to provide in addition to the standard requirement for recreation space, to make provision for small-medium sized sports facilities such as tennis courts, bowling green, basketball courts.

#### Clwyd-Powys Archaeological Trust (CPAT)

Confirms there are no additional requirements for this reserved matters. The former estate dwellings recorded at Garden City have been archaeologically excavated by Oxford Archaeology, with the report received being considered acceptable.

#### Airbus

Airbus confirm there is no aerodrome safeguarding objection to the proposal based on the information provided.

#### North Wales Fire Service

The Fire Authority has reviewed the details submitted and raise no objections. Access to the properties from the road fed from Welsh Road can be achieved by priority vehicles.

### **4.00 PUBLICITY**

#### 4.01 Press Notice, Site, Notice, Neighbour Notification

No representations were received.

### **5.00 SITE HISTORY**

#### 5.01 058868 Application for approval of reserved matters relating to the phase 1a enabling and infrastructure works following outline approval. (056540). Approved 30.08.19

056540 Application for variation of conditions 5 (mix of development and phasing), 32 (highway works) and 38 (off-site highway works) and removal of conditions 6 (highway works at Station Road/Asda junction) and 10 (flood defence works) following grant of planning



permission 054758 Outline application for an employment led mixed use development incorporating logistics and technology park (B1, B2, B8), residential (C3), local retail centre (A1), Hotel (C1), Training and skills centre (C2, D1) new parkland, conversion of buildings, demolition of barns, and associated infrastructure comprising construction of accesses, roads, footpaths, cycle paths, earthworks, and flood mitigation. Approved 02.03.18

054758 Variation of conditions 6, 9 and 42 and removal of condition nos. 17, 18, 19 and 20 attached to planning permission ref: 050125 Approved 16.03.16.

050125 Employment-led mixed-use development, incorporating Logistics and Technology Park (B1,B2,B8) with residential(C3),local retail centre (A1), hotel (C1), training and skills centre(C2,D1),new parkland; conversion of buildings, demolition of barns; and associated infrastructure comprising construction of accesses, roads, footpaths/ cycle paths, earthworks and flood mitigation/drainage works approved 13.05.14

## **6.00 PLANNING POLICIES**

### **6.01 Flintshire Unitary Development Plan**

STR1 – New Development

STR4 – Housing

STR7 – Natural Environment

GEN1 – General Requirements for Development

D1 – Design Quality, Location & Layout

D2 – Design

D3 – Landscaping

TWH1 – Development Affecting Trees & Woodlands

TWH2 – Protection of Hedgerows

L1 – Landscape Character

WB1 – Species Protection

WB2 – Sites of International Importance

WB3 – Statutory Sites of National Importance

AC13 – Access & Traffic Impact

AC18 – Parking Provision & New Development

HSG1 – New Housing Development Proposals

HSG2A – Strategic Mixed Use Development, Land NW of Garden City

HSG8 – Density of Development

HSG9 – Housing Mix & Type

HSG10 – Affordable Housing within Settlement Boundaries

SR5 – Outdoor Playing Space & New Residential Development

EWP12 – Pollution

EWP13 – Nuisance

EWP14 – Derelict and Contaminated Land

EWP16 – Water Resources

EWP17 – Flood Risk  
IMP1 – Planning Conditions & Planning Obligations

SPGN No. 2 – Space Around Dwellings.  
SPGN No. 8 – Nature Conservation and Development  
SPGN No.9 – Affordable Housing  
SPGN No. 11 – Parking Standards  
SPGN No. 23 – Developer Contributions to Education  
PGN No. 13 – Open Space Requirements.

National

**Planning Policy Wales Edition 10, December 2018**

TAN 1: Joint Housing Land Availability Studies  
TAN 2: Planning & Affordable Housing.  
TAN 5: Nature Conservation & Planning  
TAN 11: Noise  
TAN 12: Design  
TAN 16: Sport, Recreation & Open Space  
TAN 18: Transport

As the site forms part of the strategic mixed use allocation of HSG2A the principle.

**7.00 PLANNING APPRAISAL**

7.01 Introduction

The application seeks approval of reserved matters (access, appearance, landscaping, layout and scale) for the development of 129 no. dwellings pursuant to outline planning permission on land at Former Corus Site, Garden City.

7.02 Site Description

The site is situated within the urban area known as Deeside to the west of the A494 and to the south of the existing Deeside Industrial Park. It is bounded by the River Dee to the south with a tree lined footpath, the existing settlement of Garden City to the east and the cycle path/former railway line to the west. The B5441 Welsh Road runs along the site's eastern boundary and Hawarden Bridge Railway Station is adjacent to the site to the North West with the Wrexham-Bidston railway line running partially along the western boundary. To the north is the former RAF Sealand South Camp, otherwise known as The Airfields, forming the other half of the UDP allocation and is in separate ownership.

7.03 The 70 ha site is the former Corus Garden City site and comprises agricultural land and buildings namely Sealand Bank Farm and brownfield land with the Listed John Summers complex of buildings and formal gardens which were previously occupied by TATA Steel. The site is predominately flat and open in character. Sealand Bank Farm is accessed off Farm Road and the TATA steel complex has an

existing access off Welsh Road, which is currently used for emergency access only.

- 7.04 The application site has been subject to a reserved matters application which approved the phase 1a enabling and infrastructure works under ref: 058868. Phase 1 extends for 8.58ha and this reserved matters application covers an area of 3.46ha within that. The site comprises a flat parcel of land bound by a mix of post and rail fencing and hedgerow. The site is situated to the south-west of the site, fronting on Welsh Road, adjacent to the former Corus junction/access point. Public Right of Way 1 runs along the River Dee to the south and along the western boundary of the application site. There are a number of watercourses and ditches which include a number of engineered culverts.
- 7.05 Proposed Development  
The application seeks approval of reserved matters (access, appearance, landscaping, layout and scale) for the development of 129 no. dwellings pursuant to outline planning permission ref. 056540 granted in 2018. Permission ref. 056540 is in itself a variation of condition application of outline consent ref. 050125 which was granted in 2014. This reserved matters application relates to the first phase of residential development of the Former Corus Garden City site.
- 7.06 The proposed development would involve the erection of 129 no. dwellings together with associated infrastructure and landscaping. The proposed scheme would deliver a mix of two, three and four bedroomed properties in a variety of house types, predominately terraced, semi-detached and detached properties. The mix of dwellings comprises 20 no. 2 bedroom, 81 no. 3 bedroom and 28 no. 4 bedroom dwellings.
- 7.07 The proposed scheme would comprise of two storey and two and a half storey properties, incorporating a palette of materials that includes brick external finishes under tiled roofs to reflect the local existing vernacular. Each dwelling will have the benefit of parking and rear private gardens.
- 7.08 The proposed development would benefit from two access points which feed onto the spine road accessed off Welsh Road. The recently approved Phase 1a enabling works comprise these works, which primarily focuses on preparing the site for development through installing the flood mitigation measures and raising land levels, however in terms of highways, improvements will be undertaken at the access road/junction into the site from Welsh Road, including re-profiling and raising a section of the spine road into the site to a height of 5.40m AOD (increase of 40cm), with footway/cycle ways to facilitate access into the residential plot subject to this application.

- 7.09 The scheme also includes the provision of high quality communal landscaped areas, to include a formal area of public open space (POS) designed to provide an equipped play area for children.
- 7.10 Principle of Development  
The site forms part of the strategic mixed use development allocation HSG2A land North West of Garden City within the Flintshire Unitary Development Plan. As explained above, the Former Corus, Garden City site and the Airfields together make up the 'Northern Gateway', a comprehensive mixed use redevelopment which takes advantage of the strategic location and the availability of previously developed land. Both component sites have the benefit of outline planning permission which as part of the approved mixed use includes a residential contribution of 1,400 new homes (cumulative) to be delivered over a phased period. This is far greater than the 650 dwellings envisaged originally for the site. The Former Corus site alone has an agreed principle of 770 residential units.
- 7.11 It is also located adjacent to the settlement boundary of Garden City in the Flintshire Unitary Development Plan, which is a Category 'B' settlement with an array of employment opportunities and a selection of facilities and services, as the site's allocation for mixed use reflects both the strategy of the Flintshire Unitary Development Plan and the principles embodied in Planning Policy Wales. In this context therefore, there is a clear policy framework supporting the principle of residential development on this site.
- 7.12 Housing Land Supply/LDP  
This site forms a significant part of the housing land supply in the Local Development Plan (LDP). Although this site has outline consent planning permission for mixed use development, it was allocated as a Strategic Site in the Preferred Strategy to re-affirm its importance in a sub-regional planning context. The site also forms an important element of the Council's on-going informal annual Housing Land Monitoring Study, recognising that within the terms of TAN1 the Council cannot presently undertake a formal Joint Housing Land Availability Study. It is therefore important in ensuring the present and future supply of viable and deliverable housing land which will contribute significantly to the ability of the LDP to demonstrate a 5 year supply of land on adoption.
- 7.13 A recent appeal decision ref. APP/H6955/A/17/3182282 land east of Tan y Bont, Main Road, Rhosrobin, Wrexham for a residential development of 189 no. dwellings considers the matters of Wrexham's emerging LDP, 5 year land supply and the weight to be afforded to TAN1. The Inspector in her appeal consideration acknowledged that whilst the site lies outside a defined settlement boundary, within the Green Wedge and was otherwise considered as 'speculative', "the current position in respect of the Council's housing land supply, the identified need to bring sites forward for development

prior to the adoption of the LDP in order to achieve the housing trajectory, and there being no immediate prospect of completions from proposed allocations in the LDP, considered that considerable weight should continue to be attributed to the need to increase housing land supply in the determination of the appeal.” The appeal was therefore allowed.

7.14 Drawing from the Inspector’s conclusions, a key factor was that the Council could not evidence that housing completions are keeping pace with the intended provision in the LDP. In the case of Flintshire completions are running slightly ahead of the LDP’s intended annual requirement, but The Airfields and Former Corus, Garden City Site(s) referred to as the Northern Gateway form a significant part of the housing land supply in the Local Development Plan (LDP), whereby the grant of planning permission for this 1st phase would demonstrate that this strategic allocated site is deliverable within the plan period, with housing completions anticipated shortly following a grant of permission. This would further demonstrate the Council’s ability, in the context of the LDP, to provide and maintain a 5 year supply of land for housing going forward, in accordance with PPW10.

7.15 Jeopardising this supply and commitment would not only be detrimental to the long term strategy for this site, but ultimately to the LDP, putting the Council at risk of being unable to robustly defend itself against unplanned, speculative development, whereby the argument of affording ‘considerable weight’ to the lack of a 5 year housing land supply, would have to be given greater consideration in the planning balance despite the disapplication of paragraph 6.2 of TAN1.

7.16 Viability

The application is supported with a financial assessment, which argues viability implications in respect of the requisite developer contributions sought. The assessment was independently assessed on behalf of the Council by an appointed valuer in January 2019 prior to the submission of this reserved matters scheme. This included a breakdown of construction costs, benchmark land values and site acquisition, estimated sales and marketing values of the properties and gross development value to determine the profit to be made.

7.17 The independent review acknowledges that in contrast to The Airfield’s site which received public advancements through the construction of the main spine road from Welsh Road, the former Corus Site has not benefited from such and therefore all investments in this part of the Northern Gateway has been acquired through the private sector as a means of ensuring the site is developable and deliverable, attributes which provide the Authority with confidence that the site remains a firm commitment, and will deliver the housing numbers it has been allocated. As such, the Phase 1a enabling and infrastructure works of the former Corus site approved under

ref.058868 involves very similar engineering approved on the Airfields site, this includes land clearance, remediation associated with contamination, the installation of significant infrastructure to include a modifications to the spine road and junction off Welsh Road, land raising and re-profiling to create development platforms, drainage, water supply and power, all of which will incur significant costs. This has a clear impact on the viability of the 1st phase of residential development coming forward.

- 7.18 The independent review concludes that the development of Northern Gateway is challenging. Early stage development is cost intensive and little value is generated for a considerable period; yet successful transformation can only be truly achieved through appropriate private sector investment at the earliest stage of development.
- 7.19 The recommendations advise that the Council would be wise not to enforce planning obligations at the earliest stage of development and to wait for later phases of development when the location had matured and values had risen. Strategic Development works best when it is delivered as a partnership between the public and private sector. The land owner is investing considerable upfront costs that, whilst they will create long term value for the owner, it is also benefitting the wider community, by creating new residential neighbourhoods and facilitating the delivery of new employment space. It will also generate new revenue from council tax and business rates. The applicant should therefore receive some flexibility in return for this.
- 7.20 In considering the above viability case and the independent review, I am mindful of the position set out within PPW10 concerning up-to-date development plans, site delivery and viability. Paragraph 4.2.21 of PPW10 sets out a clear stance that it is “for either the Applicant or the planning authority to demonstrate that particular exceptional circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision-maker, having regard to all the circumstances in the case, including whether the development plan and the viability evidence underpinning it are up-to-date, and any change in circumstances since the plan was adopted. Such circumstances could include, for example, where further information on infrastructure or site costs is required or where a recession or similar significant economic changes have occurred.”
- 7.21 In accordance with PPW10, it is considered that the applicant has reasonably and without obscurity demonstrated an exceptional circumstance that justifies a relaxation to the relevant policies which concern Affordable Housing, Education and Public Open Space. It is understood that in order to support the delivery of this 1st phase of residential development at former Corus Site, the Council needs to be mindful of the significant investments made to date, the economic

conditions and the developer risks faced in establishing this part of the Northern Gateway. The Council should however, be reassured that the outline consent imposes conditions which require such developer contributions to be provided in accordance with the relevant policies per phase of residential development, therefore allowing a reassessment of the provision and appropriate scrutiny to be reapplied to any exceptional circumstances raised in future phases. However, within the context of this application I consider significant weight should be given to the viability assessment for this 1st phase at the former Corus site for the reasons discussed.

7.22

- Education Commitment

It is clear from the examination of viability matters above that significant weight must be afforded to the viability assessment of this 1st phase of development in the overall planning balance.

Members are reminded that during the determination of the Countryside Reserved Matters Scheme ref.059514 1<sup>st</sup> Phase residential development at the Airfields, there was limited scope for physical expansion at Sealand Primary School and there was existing capacity at Connah's Quay High School. Members were advised at the time, that the limited scope for Sealand Primary School to expand was a matter that was recognised when outline planning permission was granted for development on the former Corus Site where Sealand Primary School is located. The relevant outline permission secures, by virtue of condition the requirement of a scheme to be submitted and agreed regarding the provision for a land transfer to be set aside adjacent to Sealand Primary School. As such the Section 106 agreement proposed would secure the gifting of such, this will enable the Sealand Primary school to expand to meet the increased capacity generated from residential development across both sites of the Northern Gateway.

The availability of additional land to Sealand Primary will allow for an identified project to increase capacity within which future phases of development, albeit subject to viability assessments may contribute. The evidence of an identified project will thus meet the tests of the current CIL regulations allowing the Council to reasonably request financial contributions going forward.

As there is sufficient capacity at Connah's Quay High School to accommodate pupils generated from this development no contribution would be sought.

7.23

- Affordable Housing

The Council's starting point for affordable housing in accordance with policy HSG10 for allocated sites within settlement boundaries is 30%. However, this site raises

different issues to 'normal' Greenfield development sites. As discussed above, the site has been subject to infrastructure works which aim to enable development to take place, this includes significant costs incurred in remediation, land raising and providing the necessary service points for access, utilities and power connections. Subsequently, the significant level of investment required has increased the land value and this has been demonstrated within the submitted financial assessment.

The independent review notes that various scenarios and variables have been tested, demonstrating that enforcing 30% provision of affordable housing alone together with full Section 106 contributions will result in the development being unviable. Therefore zero provision is proposed.

Members should be reminded that the Council can only request affordable housing provision based on evidenced need as per the policy HSG10, as such the Countryside Reserved Matters scheme ref. 059514 which was the 1<sup>st</sup> Phase Residential Development on the Airfields met and provided an oversupply to that need based on figures provided in May 2019.

Despite the zero provision, there is a need to adopt a balanced approach to affordable housing provision on the Northern Gateway as a whole. Housing Strategy have confirmed that they are satisfied that no affordable housing is provided on this application at the former Corus Site Phase 1 residential development given there being no evidenced need to be met and the risk of saturation of the scheme as a whole with affordable housing. Whilst there is no evidenced need, the applicant has made viability claims which have been accepted, and as such the applicant has demonstrated that there are significant infrastructure and flood mitigation costs which need to be absorbed in order to feasibly deliver phase 1 on this site.

Requesting affordable housing would therefore be unreasonable based on the fact that there is no evidenced need and the arguments made by the Applicant concerning development viability. Confidence however, remains that the controls imposed on the outline consent, allow for a reassessment of the provision for each phase of residential development thereafter, ensuring the level of provision reflects the wider demand as the site progresses.

7.24

- Public Open Space  
Planning Guidance Note no. 13 requires developments for 100+ dwellings to provide in addition to the standard requirement for recreation space, to make provision for small-medium sized sports facilities such as tennis courts, bowling



green, basketball courts. Notwithstanding the need to ensure the development remains viable, the proposed site layout identifies a designated area of formal Public Open Space (POS) designed to provide a local equipped area for play (LEAP). However, in accordance with the PGN this would represent as a shortfall in POS provision.

Unlike most developments of this scale, the former Corus site is governed by an extant outline consent with conditions attached requiring the approval of details. Such details comprised the submission of a Development Brief which included an open space strategy for the provision of informal public open space (POS) for the Corus site as a whole, a very similar approach has been adopted on the Airfields site.

The POS strategy is illustrated on the Green Infrastructure Plan which aims to provide well designed landscaped informal POS throughout the site and its peripheries. The informal POS being provided includes a network of footways, paths and cycleways and open recreation areas designed to accommodate play and sporting facilities for a community of this size. The aim is to deliver this contribution over a phased period which is subsequently dictated by the phased development of the residential areas. The Phase 1a enabling and infrastructure works approval ref. 058868 included a large area of informal POS referred to as 'The Parkland' this area extends for 5ha and lies adjacent to this proposed 1<sup>st</sup> phase of residential development as seen in drawing no. 34 Rev.E.

The layout and design of the proposed housing scheme and its formal POS have been placed in a way that maximises the connectivity with the informal POS and providing accessible, safe links to existing community facilities within the area. I therefore consider that cumulatively both formal and informal POS has been provided, to service the 1<sup>st</sup> phase of residential development in accordance with the principles agreed on the outline consent. No further requirements for POS are therefore being sought.

It is my intention to impose a condition which requires a scheme for the type, location and amount of play equipment to be provided. This will be informed through discussion with the Council's Play Officer who is monitoring the amount, location and type of facilities being proposed per phase, concerning both informal and formal POS provision, to ensure all needs are accommodated.

Furthermore, the applicant confirms that the proposed areas of POS are not envisaged to be adopted or maintained by the Council. Therefore as part of the proposed Section 106 Agreement, provision will be made to ensure the formal POS

and landscaped areas are appropriately managed and maintained for the lifetime of the development.

7.25 Flood Risk

In accordance with the NRW Development Advice Map, the site is situated within Flood Zone C1, an area considered to be at flood risk, but served by significant infrastructure, including flood defences. It has therefore been accepted that The Airfield site is at risk of flooding, with the principle source being tidal, River Dee.

7.26 As part of securing outline planning permission (2014), a detailed Flood Consequence Assessment (FCA) which included extensive hydraulic modelling, and engagements with Natural Resource Wales (NRW), agreed the principles that flood risk could be appropriately mitigated, ensuring the site remained flood free during an event and that flood risk elsewhere was not increased as a result. The FCA demonstrated compliance with TAN15 and informed the design of the site wide flood mitigation scheme, to which any future reserved matters (phase of development) should relate.

7.27 As part of the mitigation for this site, an application ref. 050730 to strengthen the north River Dee embankment flood defences was submitted and approved. The scheme involved increasing the height of the defences to 7.20m AOD and reinforced the protection against a tidal breach, not only to the 'Northern Gateway' site but to Garden City and surrounding areas. The phase 1a reserved matters application ref. 058868 for the development enabling works involved implementing the agreed mitigation scheme, which included re-profiling the site and raising site levels to create development platforms. The site works approved will see land levels raised to a minimum post development level of 5.50m AOD with finished floor levels of the proposed dwellings to be set at a minimum of 5.95m AOD.

7.28 Further to the site wide mitigation plan having been agreed, the outline consent attaches a condition which requires the submission of a 'specific' FCA relating to that phase to be submitted and assessed in accordance with TAN15. This was to facilitate necessary detailed consideration of the reserved matter proposals. This reserved matters application is therefore supported by a detailed FCA prepared by RSK, dated May 2019. As flood risk is a dynamic constraint, the requirement to provide an updated assessment of the flood risk relating to the end use or phase of development acts as a safeguarding mechanism, allowing a reassessment of the risks and mitigation proposed, the degree of which is subsequently dictated by the end use in terms of whether it relates to 'less' or 'highly' vulnerable development in accordance with TAN15.

7.29 As anticipated the proposed residential development is still considered as highly vulnerable development in accordance with

TAN15, stating that highly vulnerable development can be considered in Flood Zone C1 subject to the application of the TAN15 Justification Test and satisfying specific TAN15 acceptability criteria. The FCA submitted with this reserved matters has reviewed the outline parameters for mitigating flood risk, this comprises the modification of ground levels with the creation of floodable areas and raised development platforms (minimum 5.50m AOD). At a level of 5.5m AOD the development platform will be set at 0.77m and 95cm above the 0.5% tidal and 1% fluvial flood levels with 100 years' climate change allowance, respectively. In addition the FCA also clarifies that the finished floor levels of the residential units should be set at approximately 5.95m AOD. The units will therefore;

- ➤ Have a minimum freeboard of 140cm above 1% AEP fluvial flood levels with 100 years climate change allowance;
- Be set more than 122cm above the 0.5% AEP tidal flood levels with 100 years climate change allowance; and
- Be set above the 0.5% AEP tidal flood level (5.79m AOD) with 100 years climate change allowance and a sea levels uncertainty allowance (95% confidence bound).

7.30 The potential impact of the proposed development (raising site levels and alterations of drainage channels) on flood risk elsewhere has been quantified by comparing the results of the existing site layout simulations with the proposed development layout simulations. To provide a detailed assessment of the relative changes in flood depths throughout the floodplain, a series of water level difference maps comparing the pre- and post-development maximum water levels have been included.

7.31 NRW therefore raise no objection subject to the imposition of a condition which requires the site levels to be set at a minimum of 5.50m AOD and finished floor levels at 5.95m AOD, ensuring that the proposed development is flood free during all considered fluvial and tidal events.

7.32 Highways  
The application site will benefit from two points of vehicular access which will feed out onto the spine road which provides access to Welsh Road. The vehicular accesses to the site and modifications to the spine road including the junction onto Welsh Road form part of the approved works under the Phase 1a enabling and infrastructure consent (ref. 058868). The drawings provided demonstrate that the proposed access points are a safe and suitable standard to accommodate the traffic associated with the proposed development and therefore accords with the relevant UDP policy AC13.

7.33 Footpaths will be provided along the internal road network and residential spine road to connect up to the continuous footways and segregated cycleway along Welsh Road. Additional footpath/cycle

links will be provided from the development to Welsh Road via the informal POS to the south of the application site. The proposed footpaths and cycle links are considered to accord with Active Travel Legislation.

7.34 There will be 1 car parking space provided for the 2-bedroom dwellings; 2 spaces provided for the 3-bedroom dwellings; and, 3 spaces provided for the 4 bedroom dwellings. All parking spaces will be contained within the curtilage of each dwelling either on driveways or in garages. The submitted parking layout therefore complies with the requirements of the outline approval and the maximum parking standards as set out in SPGN 11.

7.35 It is considered that the information provided accords with the requirements of the outline permission, the Highways Authority therefore raises no objection to the development subject to the imposition of conditions and the discharge of the relevant highway conditions attached to the outline consent prior to commencement.

#### Character & Appearance

7.36 The site and areas to the north west and south, with the exception of the Deeside Industrial Park, are predominantly rural in character, with many areas having been previously developed, cleared and left to overgrow. However, to the north east/east lies established residential development whereby the prevailing house types are semi-detached two storey properties with the exception of a cluster of bungalows along Hawthorn View.

7.37 The existing dwellings in Garden City consist of a mix of architectural styles with no dominant character. They include a range of materials including pebble dash, red brick and rendering. The development comprises a majority two storey and two and a half storey scheme. The development would deliver a mix of terraced, semi-detached and detached properties with pitched roofs and boxed dormer windows. The external materials of which will be tiled roofs with a mixture of red multi brick and solid course detailing to the surrounds of window and door openings. This combined with boxed dormers, brick opening details and porch features all adds variation and interest to the development.

7.38 The site layout is conventional in style and is considered to reflect the general layout of surrounding roads and properties where the dwellings directly front onto the access and estate roads. The character and design of the proposed development has been informed in part by the pattern and appearance of the existing and recent new build developments seen within the Northern Gateway and wider County, which are of a modern suburban appearance, and in part informed by the need for a development that responds not only to the physical constraints of the site but also to the current housing market requirements. The latter indicates that there is no shortage of

larger, detached four or five bedroom 'executive-style' houses, but a general need for smaller, more affordable family dwellings with three bedrooms.

7.39 A development which is dominated by larger, detached, 'executive-style' houses would not be in keeping with the existing pattern of development within the locality and would be contrary to both national and local planning policies, which seek to ensure that new housing developments include a reasonable mix and balance of house types and sizes so as to cater for a range of housing needs.

7.40 The density of development equates to approximately 37.07 dwellings per ha for this particular application. HSG8 of the Flintshire Unitary Development Plan advises that on allocated sites, the general minimum net housing density should aim to achieve 30 dwellings per ha. Whilst the proposed density is significantly more than the stipulated minimum of 30 dwellings per ha in accordance with Policy HSG8, the approved details of the outline consent set density and height parameters for the mixed use site, for which it was agreed that the density range for the residential development would be set between 25 – 40 dwellings per ha. The proposed layout, scale and density of the development is therefore in accordance with the outline permission. This approach is also supported by PPW10 which states at paragraph 3.47 that "higher densities should be encouraged in urban centres and near major public transport nodes or interchanges, to generate a critical mass of people to support services such as public transport, local shops and schools."

7.41 A detailed landscaping scheme forms part of the submitted details, which shows the landscaping proposals to comprise of grass and shrubbery strips to the sides of the driveways to provide visual interest as well as demarcate the boundaries between public and private spaces and between units. Whilst the site resembles an open plot of land, the introduction of planting, shrubbery and a mixture of trees to the front gardens, landscaped area and the public open space areas will allow the development to harmonise, encourage ecological enhancements and add to the rural character.

#### Residential Amenity

7.42 In consideration to the siting, orientation and distance of the proposed dwellings, none of the proposed units would cause an unacceptable reduction or harm to the amenities of the any future occupiers in terms of privacy, loss of light or obtrusiveness. In terms of the size of the proposed garden depths, separation distances between the proposed dwellings etc these meet the guidelines within the SPGN no. 2 'Space Around Dwellings' by ensuring no instances of habitable rooms directly facing and where this is the case, separation distances meet the standard of 22m.

#### S106 Contributions and CIL Compliance

7.43 The infrastructure and monetary contributions that can be required from proposals have to be assessed under the Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and Welsh Office Circular 13/97 'Planning Obligations'. It is unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, if the obligation does not meet all of the following Regulation 122 tests:

1. Be necessary to make the development acceptable in planning terms;
2. Be directly related to the development; and
3. Be fairly and reasonably related in scale and kind to the development.

7.44 The gifting of 0.35ha to Sealand Primary School has been agreed by the Landowner as a means of allowing Sealand Primary School the ability to expand the facility in order to accommodate future pupil capacity. There have not been 5 contributions towards this project to date.

7.45 A payment of £10,000 towards a scheme of ecological mitigation for wintering birds, which has been coordinated with the RSPB and the Council. The applicant has agreed to pay this sum to aid towards the long term management of this scheme. Such a requirement is controlled via condition no. 23 imposed on the outline consent ref.056540. Through the payment of such, condition no. 23 can effectively be discharged. There have not been 5 contributions towards this project to date.

7.46 A payment of £4,500.00 towards a Traffic Regulation Order requested by the Highway Authority is required. There have not been 5 contributions towards this project to date.

7.47 It is considered that the contributions required meet the Regulations 122 tests.

## **8.00 CONCLUSION**

The site forms part of the strategic mixed use development allocation HSG2A land North West of Garden City within the Flintshire Unitary Development Plan.

It is also located adjacent to the settlement boundary of Garden City in the Flintshire Unitary Development Plan, which is a Category 'B' settlement with an array of employment opportunities and a selection of facilities and services, as the site's allocation for mixed use reflects both the strategy of the Flintshire Unitary Development Plan and the

principles embodied in Planning Policy Wales. In this context therefore, there is a clear policy framework supporting the principle of residential development on the site. This comprehensive report details in full the areas that required scrutiny, this being the principles of the outline consent, the viability claim, flood risk, highways, character and appearance and the impact on residential amenity of future occupiers. It is considered that these matters have been satisfied, and I therefore recommend that planning permission is granted subject to conditions, and the completion of a legal agreement as set out within paragraph 2.01 of this report.

#### 8.01 Other Considerations

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

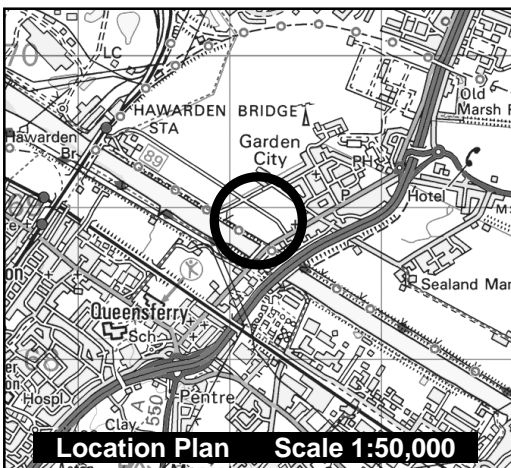
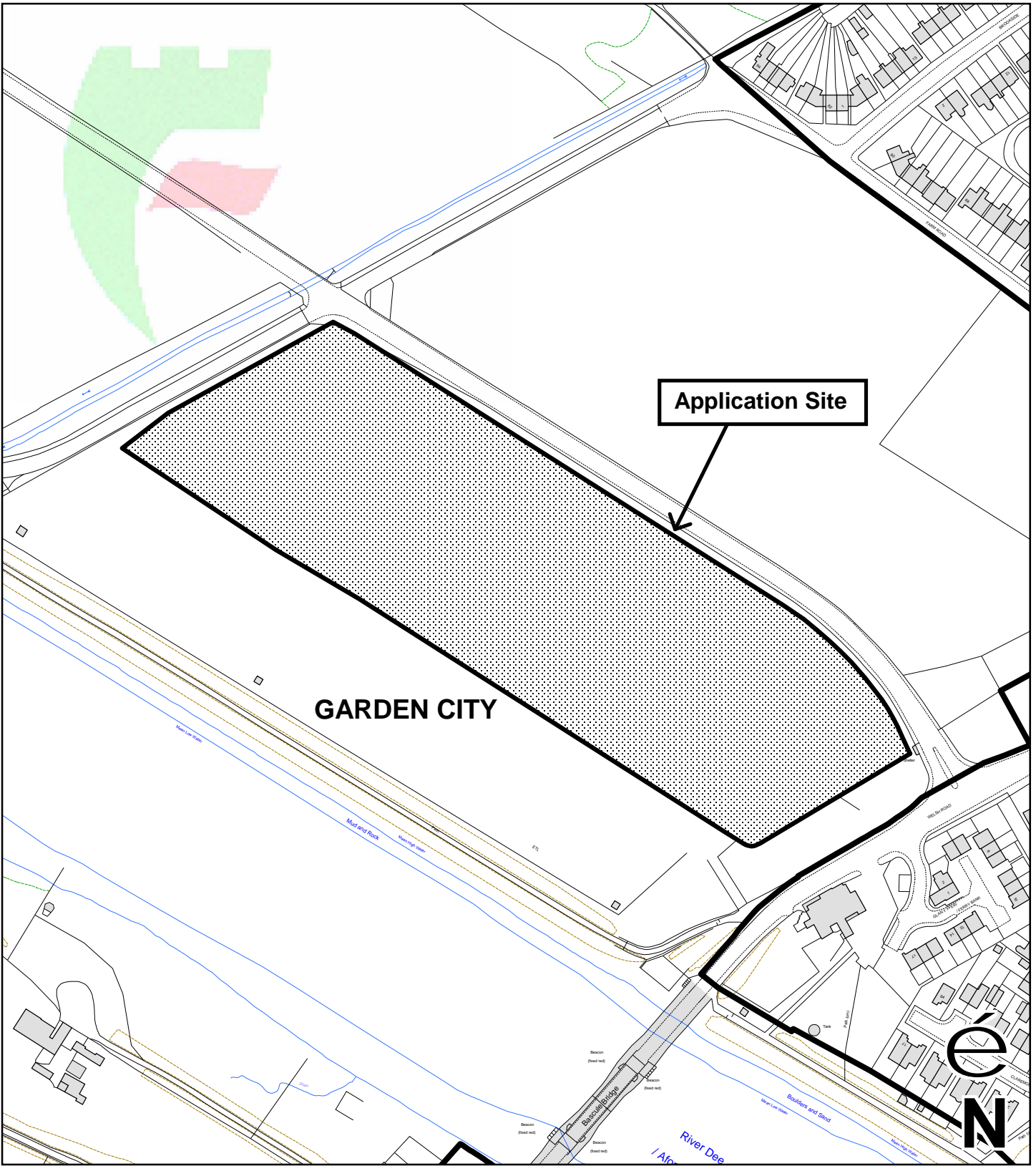
#### **LIST OF BACKGROUND DOCUMENTS**

Planning Application & Supporting Documents  
National & Local Planning Policy  
Responses to Consultation  
Responses to Publicity

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Planning, Environment & Economy,  
 Flintshire County Council, County Hall,  
 Mold, Flintshire, CH7 6NF.

Chief Officer: Mr Andrew Farrow

**Legend**



Planning Application Site



Adopted Flintshire Unitary  
 Development Plan  
 Settlement Boundary

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Map Scale 1:2500

OS Map ref SJ 3268

Planning Application **60411**

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**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:** **PLANNING COMMITTEE**

**DATE:** **WEDNESDAY, 4 MARCH 2020**

**REPORT BY:** **CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**

**SUBJECT:** **GENERAL MATTERS – COMPLAINT MADE TO THE PUBLIC SERVICES OMBUDSMAN FOR WALES**

<b>1.00</b>	<b><u>PURPOSE OF REPORT</u></b>
1.01	To share the report and its findings of an investigation by the Public Services Ombudsman for Wales against Flintshire County Council.
<b>2.00</b>	<b><u>REPORT</u></b>
2.01	Under Section 16 of the Public Services Ombudsman (Wales) Act 2005, the Ombudsman issued a public interest report on 9 January, 2020 about the Council's failure to take timely and appropriate action to deal with a car wash which was causing Statutory Nuisances of noise and water/chemical spray affecting a nearby property and which was also in breach of planning control. The complainant also complained that the Council failed to investigate and respond to its complaint appropriately and in line with the corporate complaints policy.
2.02	An anonymised copy of the full report is attached as Appendix 1. The report is anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted.
2.03	The Ombudsman found that despite identifying in 2014 that the car wash was causing a Statutory Nuisance, the Council did not open an appropriate case file until 18 months later and did not serve an Abatement Notice for a further 13 months. When the car wash continued to operate and cause the Statutory Nuisance, contravening the Abatement Notice, the Council took no further action.
2.04	The Ombudsman also found that the Council failed to respond to the complaint appropriately and escalate matters when it asked for assistance to raise a formal complaint. Following the publication of the report a number of actions in response to the report have been implemented. These actions include:

2.05	<p>a) Staff have been reminded of the importance of dealing with correspondence appropriately, including signposting individuals who want to raise a formal complaint to the Customer Services Team;</p> <p>b) The Chief Officer for Planning, Environment and Economy has apologised in writing to the Landlord and included £1000 financial redress in recognition of the failings in complaints handling and the Landlord's time and trouble pursuing the complaint for at least 5 years;</p> <p>c) The Chief Officer for Planning, Environment and Economy has apologised in writing to the complainant and included £2500 financial redress for the failure to deal with Statutory Nuisances and in recognition of the persistent and prolonged exposure to unacceptable levels of noise and water spray for at least 5 years.</p>
2.06	<p>In addition to the actions outlined above, Planning and Public Protection are establishing what powers remain available to them to resolve the issues and reach resolution. Public Protection is also reviewing the Enforcement Policy to ensure that it remains relevant, effective and compliant with Welsh Government guidelines, legislation and best practice, with particular reference to Statutory Nuisances.</p>
2.07	<p>Planning and Public Protection are developing formal procedural arrangements for co-operation between departments to improve the efficacy and efficiency of inter-departmental collaboration, with an emphasis on Planning, Legal and Environmental Health. They are also considering how human rights can be embedded into its practice when deciding whether to take enforcement action and reviewing internal communication and escalation channels.</p>
2.08	<p>The corporate complaints policy will be reviewed to ensure it is clear who should have overall responsibility for investigating and responding to complaints where the matters concern different departments in the Council.</p>
2.09	<p>The Council has a duty under Section 17 of the Public Services Ombudsman (Wales) Act 2005 to publicise the report and make it available to the public at its offices and via its website. The Council complied with this duty and publication was made on 23 January, 2020.</p>
<b>3.00</b>	<b><u>RECOMMENDATIONS</u></b>
3.01	<p>Members are asked to note the content of the report by the Public Services Ombudsman for Wales.</p>

3.02	Support the actions taken by Planning, Environment and Economy as outlined in paragraphs 54 and 55 of the report and as set out in Appendix 2
<b>4.00</b>	<b>LIST OF BACKGROUND DOCUMENTS</b>
4.01	Appendix 1 - The investigation of a complaint against Flintshire County Council – Case 201900014.
4.02	Appendix 2 – Current status in relation to the recommendations of the PSOW
4,03	Appendix 3 – Enforcement Audit Scope
<b>5.00</b>	<b>Contact Officer:</b> Andrew Farrow <b>Telephone:</b> 01352 703201 <b>Email:</b> <a href="mailto:andrew.farrow@flintshire.gov.uk">andrew.farrow@flintshire.gov.uk</a>

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# The investigation of a complaint against Flintshire County Council

A report by the  
Public Services Ombudsman for Wales  
Case: 201900014

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## Introduction

This report is issued under s16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as “the Landlord”, and to the affected tenant as “Mr R”.

## Summary

A Landlord complained that, between 2014 and 2019, Flintshire County Council failed to take timely and appropriate action to deal with a car wash which was causing Statutory Nuisances of noise and water/chemical spray affecting the Landlord's tenant, Mr R and which was also in breach of planning control. The Landlord also complained that the Council failed to investigate and respond to its complaint appropriately and in line with its Corporate Complaints Policy.

The Ombudsman found that despite identifying in 2014 that the car wash was causing a Statutory Nuisance, the Council did not open an appropriate case file until 18 months later and did not serve an Abatement Notice for a further 13 months. When the car wash continued to operate and cause the Statutory Nuisance, contravening the Abatement Notice, the Council took no further action. Consequently, Mr R had to endure significant persistent, disruptive and intrusive noise levels and water spray for a number of years. This was a significant injustice to the tenant and also to the Landlord, in view of the Landlord's obligations to its tenant and his right, under Article 8 of the Human Rights Act 1998, to the quiet and peaceful enjoyment of his home.

The Ombudsman found that the Council was aware from at least 2012 that the car wash did not have appropriate planning consent but it had almost no planning records from before August 2018. There were also failures in inter-departmental communication and co-operation. The lack of records coupled with the Council's inaction over the 5 years preceding August 2018 suggested that it did not fully consider whether to take enforcement action against the car wash and amounted to maladministration. Consequently, the Council could not explain the reasons behind its actions (and inaction) and moreover, it was impossible for the complaint to be dealt with fully and the history of the case in the Planning Department to be examined and evaluated.

The Ombudsman also found that the Council failed to respond to the Landlord's complaints appropriately and escalate them when it asked for assistance to raise a formal complaint. There was also an absence of clearly established ownership at senior levels in the Council, compounded by the length of time that the failures continued and a lack of regard for the

difficulties being faced by Mr R. Consequently, there was no appropriate investigation of the complaint and the Landlord received no meaningful response to its concerns.

The Council agreed that, within one month of the Ombudsman's report, it would:

- a) Remind relevant staff at all levels within the Council of the importance of dealing with correspondence appropriately, including signposting individuals who want to raise a formal complaint to the Corporate Complaints Team
- b) Offer a meaningful apology, in writing, to the Landlord along with £1000 financial redress in recognition of the failings in complaints handling, and the Landlord's time and trouble pursuing the complaint for at least 5 years
- c) Offer a meaningful apology, in writing, to Mr R, along with £2,500 financial redress for the failure to deal with the Statutory Nuisances and in recognition of the persistent and prolonged exposure of Mr R to unacceptable levels of noise and water spray for at least 5 years.

In January 2019 the Council reviewed and updated its policy on Planning Enforcement. The Council also agreed that, within 3 months of the Ombudsman's report, it would:

- (a) Share this report and its findings with relevant staff in the Planning, Environment and Legal Departments as well as with the Leader of the Council, the Cabinet Member for Planning and Public Protection, the Planning and Development Control Committee and the Environment Overview and Scrutiny Committee
- (b) Establish what powers remain available to it to resolve the issues and ensure that it fully exercises those powers as appropriate to achieve an ultimate resolution

- (c) Review its Public Protection Service Enforcement Policy, to ensure that it remains relevant, effective and compliant with Welsh Government guidelines, legislation and best practice, with particular reference to Statutory Nuisances
- (d) Develop formal procedural arrangements for co-operation between departments to improve the efficacy and efficiency of inter-departmental collaboration, with an emphasis on Planning, Legal and Environmental Health
- (e) Review the Complaints Policy to ensure it is clear who should have overall responsibility for investigating and responding to complaints, particularly where the matters concern different departments in the Council
- (f) Reflect on how the consideration of human rights can be embedded into its practice when deciding whether to take enforcement action, with particular reference to planning control and investigations into Statutory Nuisances
- (g) Review its internal communication and escalation channels to ensure that staff can raise concerns during their day-to-day work which can then be managed constructively, to encourage ownership and accountability whilst discouraging a “blame culture”.

## The Complaint

1. Body A (“the Landlord”) complained that between 2014 and 2019, Flintshire County Council (“the Council”) failed to take timely and appropriate action to deal with:
  - a) An identified Statutory Nuisance relating to:
    - i. Noise
    - ii. Water/chemical spray
  - b) A breach of planning control.
2. The Landlord also complained that the Council failed to investigate and respond to its complaint appropriately and in line with its Corporate Complaints Policy (“the Complaints Policy”).

## Investigation

3. I obtained comments and copies of relevant documents from the Council. There were barely any records available from the Planning Department for the time period and therefore I was obliged to extract as much information as possible about its actions from the records of the Environmental Health Department. I considered all the information available in conjunction with the evidence provided by the Landlord. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.
4. Both the Landlord and the Council were given the opportunity to see and comment on a draft of this report before the final version was issued.

## Relevant legislation and guidance

5. The Town and Country Planning Act 1990 provides the Council with discretionary powers to enforce planning control regulations and take enforcement action. A Planning Contravention Notice may be served to obtain information as a pre-requisite to enforcement action, such as serving a Planning Enforcement Notice. If a Planning Enforcement Notice

is served, a Stop Notice may also be issued to prohibit any or all of the activities which comprise the specified breach. However, there are restrictions on when a Stop Notice may be used and what activities it may prohibit.

6. Planning Guidance (Wales) Technical Advice Note 9: Enforcement of Planning Control 1997 states that initial steps should explore, with the responsible person, what might be done to reduce any adverse effects on public amenity. The intention should be to provide remedy in the event of significant or unacceptable effects of the breach.<sup>1</sup>

7. Planning Guidance (Wales) Technical Advice Note 11: Noise 1997 confirms that planning conditions can be imposed, when granting an application, to minimise the adverse noise impact of developments or change of use and prevent an unacceptable degree of disturbance.

8. The Planning (Wales) Act 2015 provides that the Council may issue an Enforcement Warning Notice before considering enforcement action where there is a reasonable prospect that a retrospective planning application may be granted.

9. The Welsh Government Development Management Manual 2016 (revised 2017) encourages prompt decision making and action because well-established unauthorised development is often more difficult to remedy. It also states that the Council should regularly review the efficiency and effectiveness of inter-departmental co-operation. Revised procedural arrangements should be introduced where necessary in the assessment process to ensure that administrative delays do not allow statutory time limits for taking enforcement action to expire.

10. The Environmental Protection Act 1990 defines a Statutory Nuisance as “an unlawful interference with a person’s use or enjoyment of land”. It places a duty on the Council to detect Statutory Nuisances and take steps to investigate any complaints it receives. If a Statutory Nuisance exists or is likely to occur or recur, an Abatement Notice must be served on the person responsible which can require the nuisance to be stopped, reduced, mitigated and/or limited to certain times of the day. Failure to comply with

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<sup>1</sup> This was subsequently incorporated into, and replaced by, the Welsh Government Development Management Manual, 2016.

an Abatement Notice is an offence for which the Council has discretion to consider taking legal action. If a commercial operation can demonstrate that it used the “best practicable means” of preventing or counter-acting the effects of its operation, then it may have a defence in any proceedings.

11. The Clean Neighbourhoods and Environment Act 2005 enables the Council to defer serving an Abatement Notice for up to 7 days to allow it to take steps to persuade the responsible person to desist, reduce or mitigate the Statutory Nuisance. However, if it is not abated, then the Council must proceed to serve a formal Abatement Notice.

12. Article 8 of the Human Rights Act 1998 provides individuals with the right to respect for their family and private life, including the peaceful enjoyment of their home. Where a person’s right is or may be infringed, the Council must balance the individual’s Article 8 rights against any competing rights and interests, to ensure that any interference with that person’s rights is not “disproportionate”.

### The background events

13. In August **2012** the Council noted that a car wash within its authority (“the Car Wash”) was operating without planning permission. A retrospective planning application (“the first application”) was submitted on 26 November **2013**. There is no other information available from that time about the Car Wash, although it appeared that the first application was “invalid” and that ownership of the Car Wash subsequently changed hands.

14. In 2014 a Planning Enforcement Manager (“the Planning Manager”) exchanged emails with the Landlord about the Car Wash, which the Landlord said was causing a nuisance to its tenant (“Mr R”) in a neighbouring property (“the property”). The Landlord asked the Council to take action because the Car Wash was causing “constant noise... into the late evening, 7 days a week” and affecting Mr R’s health.

15. On 5 August the Planning Manager and a Pollution Control Officer (“the Environmental Officer”) met a representative of the Landlord, Mr R and the Car Wash Operator. The Environmental Officer noted that both the noise and the amount of water spray coming from the Car Wash probably constituted Statutory Nuisances. Furthermore, he felt that if a retrospective

planning application was made without addressing this issue, it would probably be refused on the grounds that it was causing a significant loss of amenity to the property and having a significant impact on Mr R. However, he believed that if the Council were to issue an Abatement Notice, and the Statutory Nuisance had continued, the options to the Council would then have been limited. Firstly, the potential for the Car Wash to use the “best practicable means” defence might limit the realistic prospect of a conviction. Secondly, given that the Car Wash was unregulated, it would have been inappropriate for the Council to have encouraged or required the Car Wash to spend money on mitigation measures at the same time as saying that it was operating unlawfully and was unlikely to be regularised. Thirdly, there could be no guarantee that any potential mitigation measures would be successful or sufficient to pass the planning process and they might, actually, have required planning permission in their own right.

16. In November the Planning Manager proposed to allow the Car Wash Operator 2 more months to identify a suitable alternative site to relocate the Car Wash. It is not clear whether this decision was relayed to the Landowner or the Car Wash Operator because there is no documentary evidence available.

17. By 29 April **2015** the Landlord told the Planning Manager that Mr R was “extremely stressed” and that “the intensity of the use of the car wash seem[ed] to be increasing”. On 25 June the Landlord told the Environmental Officer that it wished to make a formal complaint and asked for his assistance on the process. The Environmental Officer emailed a Planning Enforcement Officer (“the First Planning Officer”) to confirm that having visited the property again, his opinion was unchanged. However, rather than serve an Abatement Notice at that time he suggested it would be more appropriate and effective for the Planning Department to take enforcement action and potentially issue a Stop Notice, to prevent the Statutory Nuisances and require the Landowner/Car Wash Operator to submit a retrospective planning application. He suggested the Council could then consider imposing appropriate conditions on any planning consent which might be granted.

18. Although the First Planning Officer noted that he would ask the Car Wash Operator to cease operating and allow time for a retrospective planning application to be submitted, there is no evidence available that any



action was taken until 1 September. The Chief Officer of Planning and Environment (“the Chief Officer”) wrote to the Landowner confirming that as there was no extant planning permission, the Car Wash was in breach of Planning Control and the Landowner should discuss the matter with the First Planning Officer, before submitting a retrospective planning application.

19. In October and November, the Landlord and the Environmental Officer requested updates from the First Planning Officer. The Landlord wrote to the Environmental Officer on 23 November, stating that “Nothing has happened... and the whole scenario is now causing [Mr R] stress and anxiety”. The Environmental Officer emailed the First Planning Officer again and referred the matter to his Team Leader (“the Environmental Team Leader”). Two days later, the Chief Officer requested either a valid planning application from the Landowner or for the Car Wash to cease operating by 23 December. Assurances were given to the Environmental Officer and to the Landlord that, should the Landowner fail to comply, a Planning Enforcement Notice would be served.

20. However, on 8 January **2016** the First Planning Officer advised the Landlord that he did not intend to take enforcement action yet because he anticipated a retrospective planning application, including proposals to mitigate the noise and spray, within a couple of weeks. Four days later the Landlord wrote to the Environmental Team Leader, requesting that she look into its complaint urgently and provide information on what steps the Landlord needed to take to pursue the complaint further.

21. On 1 February the Environmental Team Leader told the Acting Head of the Planning Department that the Environmental Health Department could not delay taking action any longer, given the length of time that had passed and the Council’s duty under the Environmental Protection Act. A Statutory Nuisance complaint file was opened and Mr R was asked to complete log sheets of the Car Wash’s activities.

22. A retrospective planning application was received from the Owner of the Car Wash (“the Owner”) on 7 April (“the second application”). The Owner was advised that the second application was invalid owing to missing information and errors on the form, and the application was closed on 15 August.

23. In June the Landlord again requested an update. On 6 September the Environmental Officer wrote to the Landlord, Mr R and the Owner, confirming that monitoring was ongoing. The Owner's letter was returned to the Council marked "gone away" and was re-sent to him at an address abroad in January **2017**.

24. On 17 March the Environmental Officer served Abatement Notices on the Owner and the Car Wash Operator, which advised that if evidence was found that the Statutory Nuisances were continuing after 21 days then further legal action might be taken, including potential prosecution in a Magistrates Court. The Landlord emailed the Environmental Officer for an update on 15 May.

25. On 2 June the Landlord outlined the history of the complaint back to 2014 in an email to the Chief Officer and the Development Manager for Planning and Enforcement ("the Development Manager"), asking what would be done to resolve it. In June the Environmental Officer visited the property again and re-assessed the Statutory Nuisances.

26. On 10 August the Environmental Officer wrote to the Owner and the Car Wash Operator. He confirmed that monitoring had identified a breach of the Abatement Notice and so the case was being referred to the Council's Legal Department to consider prosecution. However, the records do not reflect that this took place.

27. On 5 December the Landlord wrote again to the Chief Officer and the Development Manager, noting that no response had been received from either of them and there had been no progress on its complaint. The only response apparent was another assurance from the Environmental Officer that prosecution would be considered. On 19 January **2018** the Environmental Officer requested advice from the Legal Department, again noting that he believed a Stop Notice was the better course of action.

28. In May my office informed the Council that I had received a formal complaint from the Landlord, which the Environmental Team Leader noted that she had been expecting. Internal emails demonstrated that the Environmental Officer was still trying to arrange a meeting with the Legal Department up to 1 June. However, by that time, the Owner's company had been dissolved and the Car Wash was also under new

management. It was agreed that the Environmental Officer would draft a Statutory Enquiry Notice (which legally requires the recipient to respond) to ascertain who owned the site and the Car Wash, as well as current contact details for both parties.

29. On 20 June in response to a further update request from the Landlord, the Environmental Officer apologised for the delay and explained that the Council had to start the Statutory Nuisance process again because the business had changed hands. He again asked the Planning Department to consider acting to stop the unauthorised Car Wash but assured the Landlord that he would continue with pollution control action at the same time. Two days later the Environmental Officer met the prospective new owner of the Car Wash by chance (“the New Owner”), who said he was keen to find a way to continue the Car Wash operation.

30. On 9 July after my office referred the Landlord’s complaint to the Council to complete its complaints process, a Corporate Complaints Officer (“the Complaints Officer”) acknowledged the complaint and advised the Landlord that she was aiming to send a full response at the beginning of August. On 20 August the Community and Business Protection Manager (“the Environmental Manager”) advised the Complaints Officer that officers had “recently met ... to find a way forward” and agreed to issue the Statutory Enquiry Notice, but that it was likely additional monitoring would be required. Furthermore, environmental legislation remained unlikely to resolve the problem because it did not provide the necessary regulatory power to stop the business operating permanently.

31. The next day, the Complaints Officer wrote to the Landlord (“the first response”) explaining that the case had not progressed “as the Council would usually intend”. It provided a potted history of the complaint but did not explain why the case had not been progressed. However, it provided assurances that the Planning and Environmental Health Departments were committed to working together to address the concerns raised, and would keep the Landlord updated.

32. On 23 August the Council opened a new Planning Enforcement case file. The Chief Officer acknowledged the Landlord’s “recent enquiry” and asked it to have patience while the Council investigated. There was no response to the Landlord’s request for a timeframe in which it might expect

the complaint to progress. On 20 September the Environmental Officer advised that he had been nominated as the Landlord's single point of contact and confirmed that the New Owner planned to approach an acoustic consultant to advise on how the noise issues could be overcome, before submitting a planning application to regularise the Car Wash ("the second response").

33. At the end of January **2019** the Landlord raised a further complaint with my office. As my staff did not consider that either the first or the second response had adequately explained the length of time it had taken to consider enforcement action, or addressed the fact that the Landlord's formal complaint had been overlooked, the Council was asked to explain the current position. A Complaints Officer noted that she "[did]n't think anyone was aware of the background". The Council agreed to provide a full, formal, final response by 21 February.

34. On 7 February the Environmental Officer told the New Owner that progress must be made to resolve the issues as a matter of urgency, otherwise the Council would consider taking enforcement action to abate the Statutory Nuisances and regularise the Car Wash. He noted that the Council's primary concern was Mr R, who had been suffering the nuisance and requested a response within 7 days. The New Owner confirmed that the Acoustic Consultants had designed a potential solution. However, when the plans were submitted 3 days later the Environmental Officer thought that they did not include an appropriate noise assessment and he did not consider the proposed solution would adequately resolve the problem.

35. On 15 February the Council served the New Owner with a Planning Contravention Notice. Five days later a Second Planning Officer and the Environmental Officer met the New Owner and his Acoustic Consultants. It was noted that the best solution would require affixing a barrier to the fence bordering the property. The next day the Environmental Officer emailed the Landlord ("the third response"). He offered re-assurance that, whilst it would require more time to resolve the problem the New Owner was "fully engaged in the process" and he was hopeful that the matter could move forward quickly. When the Landlord enquired why the Council did not issue a Stop Notice in the meantime, the Environmental Manager responded that the Council believed a Planning Contravention Notice was more appropriate, given the New Owner's apparent commitment

to resolve the noise and spray issues. On 12 March the New Owner responded to the Planning Contravention Notice and by 3 May he had confirmed his intention to submit a planning application within the next 2 weeks.

36. On 22 May an Enforcement Warning Notice was served on the New Owner confirming that he was required to either submit a valid retrospective planning application, provide evidence that the breach had persisted for more than 10 years without interruption or cease operation of the Car Wash within 14 days. On 15 July a retrospective planning application was submitted (“the third application”).

### The Landlord’s evidence

37. The Landlord said that Mr R had been significantly affected by the situation and he had been prevented from peaceful enjoyment of his home, for 7 days a week, for years. It said he cannot use any area of his garden without being covered in spray, and that the noise from the Car Wash is intrusive throughout the whole of the property. As a result of the stress of being subject to the Statutory Nuisances for so long and without respite, Mr R now suffers from anxiety and depression. The Landlord felt that it had been very patient in its attempts to engage the Council and said it did not understand why neither the Planning Department nor the Environment Department was willing to take appropriate enforcement action.

### The Council’s evidence

38. The Council acknowledged that its Planning Enforcement records prior to August **2018** were incomplete and recognised that there had been delays by both the Planning and Environment departments in responding to the Landlord’s concerns. It contended that formal investigation of any Statutory Nuisance could not take place until a formal complaint was received, but that the formal Statutory Nuisance case file was opened after the Landlord made an official complaint. It said the delays in monitoring were owing to difficulties accessing the property, work pressures, including high demand on monitoring equipment, and difficulties identifying and locating the Landowner.

39. The Council also said that the Development Manager was new in post and unfamiliar with the history of the case when the Landlord wrote to her in July **2017**. Therefore, she thought it was an ongoing matter related to the second application (in **2016**) and did not progress it under the Complaints Policy. The Council stated that in future, it would share information between Departments to clarify at each stage which team is responsible to take forward any potential enforcement action. It also stated that in future, neither department would delay starting an investigation, even if a department was of the view that it was preferable for another department to take the lead in any matter.

### Analysis and conclusions

40. The Landlord complained that the Council failed to take timely and appropriate action in respect of the Statutory Nuisances. I **uphold** this element of the complaint. The duty on the Council to investigate a Statutory Nuisance is not discretionary; once the Council was satisfied that a Statutory Nuisance existed it was under a duty to serve an Abatement Notice on the Car Wash Operator and deferment of that obligation is permitted for only 7 days. The Council did not open a Statutory Nuisance case file until 18 months after the Statutory Nuisance was identified by the Council. Even if I accept that the Council needed to receive a “formal complaint” before it could begin monitoring, its duties to act under the Environmental Protection Act 1990 are clear. Moreover, the Landlord advised the Planning Manager in April 2014 that the Car Wash was a nuisance to Mr R and the property and by June 2015 the Landlord had told the Environmental Officer that it wished to raise a formal complaint. I do not know what more the Landlord could or should have said to indicate that it wanted to raise a complaint and for the Council to investigate it.

41. Having considered the evidence on the Council’s files I believe that the Environmental Officer genuinely considered that the more effective route to deal with the Statutory Nuisance was via the planning process. The Officer’s suggestion when matters were fresh for a retrospective planning application to be submitted which could then have been refused or granted with conditions to address the Statutory Nuisances was reasonable. Also, the further option of a Stop Notice with or after a

Planning Enforcement Notice would not have been unreasonable had the matter been acted upon in a timely manner.

42. However, as time progressed with no action being taken by the Planning Department, internal emails demonstrate that both the Environmental Officer and the Environmental Team Leader were aware that the delay in addressing the Statutory Nuisance was unreasonable. The evident reluctance to act resulted in a staggering lack of urgency, not just to open a Statutory Nuisance case file, but to deal with it properly once that decision had finally been made. I recognise there were some genuine external obstacles over the years, which hindered progress, but there were also numerous examples of procrastination, missed opportunities and inaction for months at a time.

43. It appears that legal advice was not formally sought from the Legal Department promptly, despite express assurances being given to the Landlord in August 2017 by the Environmental Officer.

44. Whilst the Environment and Planning Departments failed to make any meaningful progress from 2014, the Landowner eventually dissolved his business and moved abroad and the business officially changed hands in September 2018 which resulted in further, significant delays as the Council attempted to identify and locate the responsible individuals. This amounts to maladministration.

45. The Landlord also complained that the Council failed to take appropriate action in respect of the breach of planning control. I **uphold** this element of the complaint. Evidently, the Council was aware as early as 2012 that the Car Wash had been opened despite no application for a change of use on the site being submitted or approved. However, the information about how the first and second planning applications were considered is inadequate and that is unacceptable. Whilst it was at the Council's discretion to consider whether to take any planning enforcement action, it is impossible for me to know at this remove and with no records available, whether enforcement action was considered in line with relevant legislation and guidance, or whether a decision not to take action was properly made. The Council's Planning Department's failure to communicate with the Environmental Health Department is also evidence of maladministration.

46. I acknowledge that in August 2018 the Council opened a Planning Enforcement case file and efforts then began to work with the New Owner, who was willing to co-operate to both mitigate the nuisance and seek retrospective planning permission. I also note the Legal Department's advice that, in the circumstances, it was appropriate to begin the process again. I am pleased that since that time, both the Environmental Officer and the Second Planning Officer appear to have engaged fully with each other, and the New Owner, to seek a solution and that appropriate enforcement action has been pursued. I recognise that the Council has latterly, therefore, demonstrated appropriate regard for the considerations it must balance in relation to both the New Owner of the Car Wash and Mr R. If matters are not yet resolved however, the Council should consider using the various powers available to it to resolve these issues. In view of the significant passage of time which has elapsed the Council must consider what options remain available to it and ensure that it fully utilises them to resolve the matter.

47. Ultimately on balance, the lack of records coupled with the Council's inaction over the 5 years preceding August 2018 suggest that it did not fully consider whether to take enforcement action against the Car Wash. This in itself, is maladministration resulting in a significant injustice to both the Landlord and Mr R because the Council cannot explain the reasons behind its actions (and inaction). Furthermore, it is impossible for the complaint to be dealt with fully and the history of the case in the Planning Department to be examined and evaluated.

48. It is not my function to make definitive findings about whether a public body has breached an individual's human rights by its actions or inaction. However, where I identify evidence of maladministration which has caused injustice, I may consider whether a person's human rights may have been engaged and comment on a public body's regard for them. The Landlord made it clear that the Car Wash was impacting on Mr R's living and enjoyment of his home and garden, and that the stress was significantly impacting on his health. In addition, the fact that the Environmental Officer identified the existence of the Statutory Nuisance in 2014 without the need for monitoring provides an indication of just how disruptive and intrusive the noise and the water spray was to Mr R. I am of the view that the Council did not give due regard to Mr R's right under Article 8 of the Human Rights Act,



to the quiet and peaceful enjoyment of his home when addressing the concerns raised. This is a significant injustice to Mr R and to the Landlord, in view of the Landlord's obligations for Mr R. The fact that the failings continued for over 4 years means that the injustice to Mr R is even more serious.

49. The Landlord also complained that the Council failed to investigate and respond to its corporate complaint appropriately. I **uphold** this element of the complaint. Whilst I agree that the very first contacts were, strictly speaking, service requests rather than a formal complaint, it was soon obvious that the Landlord was frustrated by the lack of response and the lack of action. If anything, those sentiments were echoed in the difficulties the Environmental Officer experienced when attempting to engage his colleagues in the Planning Department. As soon as the Landlord clearly expressed its dissatisfaction with the actions of the Planning Department to the Environmental Officer, its concerns should have been escalated or, at the very least, information on the Complaints Policy should have been provided. It is disappointing that the Landlord had to try to identify for itself how to escalate its concerns and that it had to contact the Council repeatedly for updates, particularly in light of the evidence that some staff were very aware of the situation.

50. Each time the Landlord escalated its concerns and each time the Ombudsman asked the Council to respond, the complaint was simply sent back to the Environmental Officer, who had neither the impartiality nor the seniority to be able to identify what had gone wrong, ensure that lessons were learned and take action to put things right. As a result, the timeline put forward was compressed, misrepresented the order of events and minimised the significant delays. Furthermore, the responses issued were little more than sporadic updates on the current situation, which were often only provided following prompting from the Landlord and appeared, at times, to be disingenuous.

51. In fact, the approach of senior officers to the Landlord's complaint and direct correspondence is, in my view, the most troubling element of this part of the complaint. Notwithstanding that she was new in post, I do not accept that in July 2017 the Development Manager was unaware that the case dated back to 2014 because the Landlord's email outlined the history of the case and clearly expressed its frustration with the Planning Department and

the lack of communication. Furthermore, the Council has not been able to explain why the Environmental Team Leader, the Development Manager and the Chief Officer all failed to respond to direct correspondence from the Landlord even when it wrote again to complain that no acknowledgement or response had been received.

52. The Complaints Officer's internal note in January 2019 that she thought "no one was aware" of the history of the case is concerning for 2 reasons. Firstly, it suggests that no attempt had been made up to that point to look into the complaint properly; a cursory review should have recognised that the Planning Department's records were non-existent while those for the Environmental Health Department were littered with complaints. Secondly, however, the records that are available indicate that staff were, in fact, anticipating the intervention of my office but remained unwilling or unable to accept ownership of the situation and take any action to prevent it. Moreover, I am unable to identify any sympathy for Mr R and the Landlord's position, or appreciation for the fact that this matter had been ongoing for at least 6 years. In this context the Chief Officer's letter in August 2018, which requested the Landlord "be patient" while the Council considered its "recent enquiry" was wholly inconsiderate and inappropriate.

53. The Council still did not take appropriate action to investigate the full circumstances of the complaint or offer any substantive explanation or meaningful response to the Landlord when it responded under its corporate complaints process. The absence of clearly established ownership at senior levels in the Council, the fact that the failures continued for so long and the lack of regard for the difficulties being faced by Mr R all raise serious concerns which I consider should be publicly reported in the public interest.

## Recommendations

54. I **recommend** that within one month of this report, the Council should:

- (a) Remind relevant staff at all levels within the Council of the importance of dealing with correspondence appropriately, including signposting individuals who want to raise a formal complaint to the Corporate Complaints Team

- (b) Offer an apology, in writing, to the Landlord along with £1000 financial redress in recognition of the failings in complaints handling, and the Landlord's time and trouble pursuing the complaint for at least 5 years
- (c) Offer an apology, in writing, to Mr R, along with £2,500 financial redress for the failure to deal with the Statutory Nuisances and in recognition of the persistent and prolonged exposure, of Mr R, to unacceptable levels of noise and water spray for at least 5 years.

55. In January 2019 the Council reviewed and updated its policy on Planning Enforcement. I **recommend** that within three months of this report, the Council should:

- (a) Share this report and its findings with relevant staff in the Planning, Environment and Legal Departments as well as with the Leader of the Council, the Cabinet Member for Planning and Public Protection, the Planning and Development Control Committee and the Environment Overview and Scrutiny Committee
- (b) Establish what powers remain available to it to resolve the issues and ensure that it fully exercises those powers as appropriate to achieve an ultimate resolution
- (c) Review its Public Protection Service Enforcement Policy, to ensure that it remains relevant, effective and compliant with Welsh Government guidelines, legislation and best practice, with particular reference to Statutory Nuisances
- (d) Develop formal procedural arrangements for cooperation between departments to improve the efficacy and efficiency of inter-departmental collaboration, with an emphasis on Planning, Legal and Environmental Health
- (e) Review the Complaints Policy to ensure it is clear who should have overall responsibility for investigating and responding to complaints, particularly where the matters concern different departments in the Council

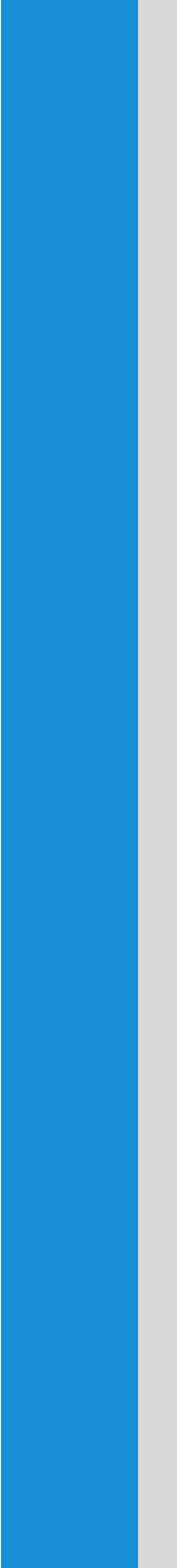
- (f) Reflect on how the consideration of human rights can be embedded into its practice when deciding whether to take enforcement action, with particular reference to planning control and investigations into Statutory Nuisances
- (g) Review its internal communication and escalation channels to ensure that staff can raise concerns during their day-to-day work which can then be managed constructively, to encourage ownership and accountability whilst discouraging a “blame culture”.

56. I am pleased to note that in commenting on the draft of this report **Flintshire County Council** has agreed to implement these recommendations.



**Nick Bennett**  
Ombudsman

9 January 2020



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## PSOW Case 201900014: Update Against Agreed Recommendations

REF NO	RECOMMENDATION	TIMESCALE	STATUS
54(a)	Share this report and its findings with relevant staff in the Planning Environment and Legal Departments as well as with the Council's Planning and Development Control Committee and its Environment Overview and Scrutiny Committee	3 months	<p><b>Completed</b></p> <ul style="list-style-type: none"> <li>▪ Report has been shared with relevant staff.</li> <li>▪ Review at Planning Committee and Environment Overview and Scrutiny Committee has been scheduled for the 4<sup>th</sup> March and 20<sup>th</sup> March respectively.</li> </ul>
54(b)	Remind relevant staff at all levels within the Council of the importance of dealing with correspondence appropriately, including signposting individuals who want to raise a formal complaint to the Corporate Complaints Team	1 Month	<b>Commenced</b>
54(c)	Offer a meaningful apology, in writing, to the Landlord along with £1000 financial redress in recognition of the failings in complaints handling, and the Landlord's time and trouble pursuing the complaint for a least five years	1 Month	<b>Completed</b>
54(d)	Offer a meaningful apology, in writing, to Mr R, along with £2,500 financial redress for the failure to deal with Statutory Nuisances and in recognition of the persistent and	1 Month	<b>Completed</b>

	prolonged exposure, of Mr R, to unacceptable levels of noise and water spray for at least five years		
55(a)	Establish what powers remain available to it to resolve the issues and ensure that it fully exercises those powers as appropriate to achieve an ultimate resolution	3 Months	<p><b>Commenced and ongoing.</b></p> <p>13.12.19 Development Management and Community and Business Protection jointly served Planning Enforcement Notice and Abatement Notice. Abatement Notice require nuisance to cease immediately.</p> <p>Operator submitted Planning Enforcement Notice appeal.</p> <p>19.12.19 Equipment seized by Community and Business Protection.</p> <p>13.01.20 Owner has re-arranged the site largely abating the nuisance and meeting requirements of Planning Enforcement Notice by re-locating the jet-wash/spraying equipment.</p> <p>Current position: Community and Business Protection are preparing for prosecution on 17.03.20 with regard to seized equipment at Wrexham's Magistrates Court.</p> <p>Planning Enforcement have submitted all necessary documents to Planning Inspectorate on 13.02.20 respond to the Planning Enforcement Notice Appeal. A decision is now awaited from the Inspector.</p>



			An Enforcement Warning Notice to require the owner to regularise the re-arranged car wash facility has been served on 20.02.20 requiring the submission of a planning application.
55(b)	Review its Public Protection Enforcement Policy, to ensure that it remains relevant, effective and compliant with Welsh Government guidelines, legislation and best practice, with particular reference to Statutory Nuisances	3 Months	<b>Commenced</b>
55(c)	Develop formal procedural arrangements for cooperation between departments to improve the efficacy and efficiency of inter-departmental collaboration, with an emphasis on Planning, Legal and Environmental Health	3 Months	<b>Completed</b>
55(d)	Review the Complaints Policy to ensure it is clear who should have overall responsibility for investigating and responding to complaints, particularly where the matters concern different departments in the Council	3 Months	<b>Completed</b>
55(e)	Reflect on how the consideration of human rights can be embedded into its practice when deciding whether to take enforcement action, with particular reference to planning control and investigations into Statutory Nuisances	3 Months	<b>Commenced</b>

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## Audit Scope Document

<b>Audit Title</b>	Public Sector Ombudsman for Wales Report – Enforcement
<b>Portfolio:</b>	Planning Environment and Economy
<b>Period:</b>	2019/20
<b>Chief Officer:</b>	Andy Farrow
<b>Service Manager:</b>	Mandy Lewis, Sian Jones & Jenny Prendergast

### Background to the proposed review:

This review is being carried out at the request of the Chief Officer, following a Public Services Ombudsman for Wales (PSOW) report into the handling of a case of Statutory Nuisance by a company trading without planning permission. The report identified maladministration, failings in record keeping, failure to follow statutory processes, poor internal communications and a failure to respond adequately to external communications.

### Service / System Objective:

*The Planning, Environment and Economy portfolio is responsible for delivering a planning and public protection service and taking timely and appropriate action to respond to complaints. The Council has the responsibility to investigate and the power to enforce under a range of legislation. The Council has a responsibility to ensure the rights of the citizens of Flintshire*

### Identified Risks:

The defined potential risks which may affect the achievement of the service / system objectives include:

- There are current cases which are suffering the same issues and have not been resolved over a long period
- The weakness in controls identified by the PSOW report have/are not being addressed and continue
- There is a failure to work jointing between planning enforcement and public protection (pollution control).

### Identified Performance Indicators:

The PIs below measure progress against the implementation of the service objectives:

- These will be identified during the course of the review

### Additional Management Concerns:

*Management have responded to the PSOW report and identified actions they will take. The report is a public document which will be presented to Planning Committee on 4<sup>th</sup> March 2020 and Environment Overview and Scrutiny Committee on 10<sup>th</sup> March 2020 as required by the PSOW.*

### Audit Objective:

To ensure the weakness in controls raised in the PSOW report are being addressed and both Planning Enforcement and Community and Business Protection's Pollution Control team have reviewed all current open cases to ensure they are progressing in line with legislation and internally agreed processes.

### Scope of review:

The audit will review and consider the adequacy and effectiveness of the operating controls in relation to Planning Enforcement and Pollution Control Statutory Nuisance Notice processes. Focus will be placed upon:

- A review of the progress of implementation of the agreed action plan from the PSOW report.
- Establish if all current cases in both Planning Enforcement and Pollution Control have been reviewed for progress in line with current legislation.
- Review how the service responds to corporate complaints.
- Review external correspondence processes in Planning Enforcement, Pollution Control and in the Chief Officer's office.
- A sample of current Planning Enforcement cases will be tested to ensure progression in line with legislation and internal procedures.
- A sample of current Pollution Control cases will be tested to ensure progression in line with legislation and internal procedures.
- Evaluate how the service provides assurance of the status of all car washes across Flintshire.

**Approach to the review and deliverables:**

The work will be performed following our standard audit methodology in conformance with Public Sector Internal Audit Standards (PSIAS).

Principal activities will include: e.g.

- A small number of material or key controls;
- Assessing compliance with established procedures and good practice;
- A review of the actions taken to implement previous recommendations;
- Meetings / discussions with key Flintshire managers, employees, partners etc
- Documenting procedures and controls
- Reviewing relevant documentation
- Examining a sample of transactions and reconciliations in detail
- Analysis of data and interpretation of results
- In all areas we consider the possibility of the risk of fraud or theft
- Consideration in all areas of GDPR

We will produce a draft report which sets out our findings and any identified risks / issues which we believe are not being managed appropriately. Once management has confirmed their agreed action to mitigate the risks identified we will produce a final report. Agreed actions will be the subject of tracking with management to confirm their implementation. A follow up review may be scheduled if major areas of concern are identified.

**Records Required:**

To enable us to commence our fieldwork on the agreed start date, we will require access to the following information, records or system at the start of the first day of the audit. This includes:

- Access to Flare
- Current case load for Planning Enforcement and Pollution Control
- Communication Policy for the service
- Complaints Policy for the portfolio and how the Corporate complaints policy is applied

**Timing of the review and days available:**

We will commence our fieldwork in week commencing 17 February 2020. We will aim to complete the fieldwork within 10 days and a debrief meeting will be arranged approximately 20 days after completing our fieldwork.

<b>Days Available:</b>	10 days
<b>Location Based:</b>	We will be based at Ty Dewi and County Hall Council Offices for 10 days.

<b>Distribution of Scope:</b>	<b>Extension:</b>
Xxx – Accountable Officers for the implementation of the Agreed Actions	
Andy Farrow – Chief Officer	3201

## Flintshire Internal Audit

Mandy Lewis – Development Manager	3248
Sian Jones –Community and Business Protection Manager	2132
Jenny Prendergast – Health & Safety Team Leader	3382
David Glyn Jones – Development Management Team Leader	3281
Karl Slater – Development Management Team Leader	3259

<b>Senior Auditor:</b>	Beth Vaughan	Ext 2226
<b>Principal Auditor:</b>	Simi Johl	Ext 2248
<b>Date of Scope:</b>	12/02/2020	

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