

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING & DEVELOPMENT CONTROL COMMITTEE**

DATE: **WEDNESDAY 25 JULY 2012**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **GENERAL MATTERS - RESIDENTIAL DEVELOPMENT CONSISTING OF 51 NO. DWELLINGS, NEW ROAD AND CREATION OF MITIGATION LAND IN RELATION TO ECOLOGY ON LAND BETWEEN AND BEHIND MAISON DE REVES AND CAE EITHIN, VILLAGE ROAD, NORTHOP HALL**

1.00 APPLICATION NUMBER

1.01 048855

2.00 APPLICANT

2.01 T ANWYL & SONS LTD

3.00 SITE

3.01 LAND BETWEEN AND BEHIND MAISON DE REVES AND CAE EITHIN

4.00 APPLICATION VALID DATE

4.01 20/07/2011

5.00 PURPOSE OF REPORT

5.01 Following the resolution at the 14th March 2012 Planning and Development Control Committee to refuse this application, Members will recall that it was intended to report back to Committee on May 27th to seek guidance regarding the reasons for refusal. Consideration of that General Matters report was deferred at the May 27th. Committee in order that consultants could be engaged to address each of the reasons for refusal. At that time an appeal against non-determination had been submitted, although we have not been advised by the Inspectorate that this is valid at the time of writing this report, but a resolution is now sought in respect of the position to be adopted by the Council in relation to the appeal.

5.02 This report now presents the consultants' conclusions, which find that

none of the four reasons put forward are strong and conclude that these are probably not sustainable at appeal. Each of these is addressed below and it is therefore recommended that the appeal should not be contested by the Council. My original report to committee on March 14th is attached as Appendix 1 and the text of the consultants' reports in relation to each of the four reasons (without their appendices) are attached as Appendices 2-5

6.00 REPORT

- 6.01 At the 14th March meeting, it was resolved to refuse this application for the following reasons:
1. Ecological impact of development (newts and badgers).
 2. Highway safety issues (capacity/design of existing network).
 3. Density of development too high.
 4. Lack of geological survey.
- 6.02 Where a decision is taken at Committee against officer recommendation on any particular application, it is the role of officers to draft the precise terms of that decision. In this instance it is the reasons for refusal of planning permission (although now overtaken by the appeal process). From discussion at the Committee meeting on 14th March 2012, Members will be aware of the views of officers with regard to the robustness of the refusal having regard, not least, to the fact that the site is allocated for residential development in the Flintshire Unitary Development Plan.
- 6.03 Before Committee could reconsider the matter an appeal against non-determination was submitted and private consultants have now been engaged to address each of the reasons for refusal on the basis of the information available, to report on the sustainability of each at appeal (and if these were found to be robust they would be engaged to prepare and present the Council's case at the appeal).
- 6.04 Members are aware that each reason put forward on appeal must be supported by evidence in order on the one hand to seek to defend the Council's position and on the other hand to minimise any risk of costs against the Council, regardless of the eventual decision on appeal. Each of the reasons for refusal arising from the original resolution is addressed below. It is recognised that these largely arose from third party representations made during the application process and it should be noted that it would be open to third parties to introduce these topics at the appeal against the decision.
- 6.05 Ecological Issues
At the March Committee Members were concerned about the need to provide new habitat for the great crested newt (GCN), which had been resident in the pond to the east of the application site. The report explained that GCNs had not been found in that pond since 2004, even though there had been regular surveys, and the pond did not provide a

suitable breeding ground. It is the Council Ecologist and CCW's view that this application provides a betterment of the existing situation by the provision of 2 new ponds within the mitigation area to the south of the proposed residential development. As such it satisfies the appropriate derogation tests.

- 6.06 The Consultants conclude in respect of this issue that *“appropriate GCN surveys are required to confirm the location and detail of the proposed mitigation measures and that a European Protected Species licence would be required to conform with due legal process. These are matters that may be appropriate for a planning condition. If appropriate survey and mitigation is put into place and the Countryside Council for Wales and Flintshire’s ecologist are satisfied that there will be no ecologically detrimental aspect of the proposals then there should be no cause for them to object to the proposals.”*
- 6.07 The County Ecologist has provided further comments in the light of the Consultants’ report, to the effect that CCW have confirmed that there is sufficient data to inform mitigation, license and the decision making process, considering that the Consultants have applied the English (Natural England) requirements, rather than those operative in Wales. Regardless of this last fact, the conclusion is that a reason referring to a detrimental effect of the development on Great Crested Newts cannot be sustained.
- 6.08 Members were also concerned about the effect of the proposed development on the badgers which inhabit part of the site. The report to the March committee explains that the proposal involves creating a new sett on land immediately to the south of the proposed dwellings, within 100m of the existing sett and fence from public access. The Consultants’ conclude with regard to this issue that *“ Appropriate badger surveys are required to confirm the location and design of the proposed mitigation measures and that a badger licence would be required to conform with due legal process. These are matters that may be appropriate for a planning condition. If appropriate survey and mitigation is put into place and the Countryside Council for Wales and Flintshire’s ecologist are satisfied that there will be no ecologically detrimental aspect of the proposals then there should be no cause for them to object to the proposals”.*
- 6.09 Subject to the proposed mitigation in the case of GCN and badgers both the Countryside Council for Wales and Flintshire’s ecologist are satisfied that there will be no ecologically detrimental aspect of the proposals, subject to the conditions recommended and a legal obligation. On this basis it is recommended that this reason should not be pursued at the appeal.
- 6.10 Highway Safety Issues
At the March Committee meeting debate focused in part upon the issue

of the likely highway impacts arising from the additional traffic generated from the proposed development in view of the limited width in places, alignment and lack of footways along Village Road. Members were concerned that Village Road is currently used as a rat run and the proposed development would add more traffic, making the situation worse.

- 6.11 Members were advised by officers that this issue had been considered by the Head of Assets and Transportation in the formulation of advice to the Committee. The advice concluded that, with traffic calming measures implemented along Village Road and provision of additional footways, the existing highway network had the capacity and is capable of accommodating traffic generated from the proposed dwellings.
- 6.12 Members were advised in the report to the March Committee that this site forms part of an allocated site in the Flintshire Unitary Development Plan. In that Plan the whole allocation is for 93 units and the Flintshire Unitary Development Plan Inspector concluded that a safe access could be achieved and the local highway network had the capacity to deal with the number of trips likely to be generated by 93 units.
- 6.13 The consultants query the lack of a transport assessment submitted with this application and briefly mention an alternative access from the south, off the old A55 which, in their opinion *“would in principle appear to offer from a purely transportation perspective an attractive potential alternative road access arrangement (with pedestrian/ cycle and emergency access only from Village Road)”*. Such an access arrangement would not be acceptable in planning terms but regardless of this, the consultants conclude in respect to the highway issue that: *“Based on our review of all available data and on-site observations it would be helpful if further details are provided on the following aspects:*
- more comprehensive on-street car parking surveys during times most likely to generate peak parking demand from residents and visitors alike;*
 - the potential traffic calming benefits of mini-roundabout access arrangement; and*
 - confirmation that the proposed traffic calming scheme for the village has committed funds and will be implemented prior to first occupation.*
- 6.14 *Notwithstanding, it is our professional judgement that this development accompanied by appropriate highway access arrangements and mitigation is not likely to result in a detrimental impact to the safe and efficient operation of the local highway network. Indeed the introduction of the proposed traffic calming scheme would provide a more formal controlled arrangement of traffic movements through the existing narrower sections of highway which in conjunction a new 2 metre wide footpath across the site frontage would result in a level of betterment to the existing highway network. Furthermore, such measures would further reduce the “attractiveness” of Village Road as a potential rat-run between the A55 and Connah “s Quay.”*

6.15 Consequently, it is recommended that the reason referring to highway safety issues should not be pursued at the appeal

6.16 Density of Development

The scheme submitted shows a density of development of 22 dwellings per hectare. This falls significantly below the density envisaged by the Inspector in allocating this site in the UDP (30 dwellings per hectare). The original report to the March committee (appended to this report) sets out the circumstances behind this. It is significant that this application covers only part of the allocation, giving an opportunity for the imbalance in terms of density to be addressed to some extent in the consideration of the subsequent application. The density of 22 per ha. also reflects the existing pattern of development and takes account of site constraints.

6.17 The consultants concur with this view, concluding that *“Having due regard to the proposals within the context in the PPW, and the Flintshire County Council adopted UDP, a reason for refusal based upon the density of the proposed development being too high would have very limited chance of success at being upheld at appeal.”*

6.18 When the application was discussed previously, it was proposed by some members that the density should be higher, in line with the UDP policy. Whilst the proposed density is lower than that envisaged by the UDP this can be justified for the reasons stated in the preceding paragraphs. However, a reason for refusal based upon a density of development which is lower again cannot be justified. On this basis it is recommended that this reason should not be pursued at appeal.

6.19 Geological Survey

At the March 14th Committee Members also resolved that the application should be refused on the basis of the lack of a geological survey. This followed some discussion regarding the potential impact of the former mining works on or near the site and was despite the fact that the case officer advised that this matter had been addressed and was covered by Condition 4 of the recommendation (see report appended). In order for this information to be required prior to the application being determined, rather than by condition, evidence would need to be provided that the risks are such that this course was justified. No such evidence has been provided by the relevant consultees and the consultants share this view, concluding that *“From review of the documents prepared by REFA Consulting Engineers, the developer has commissioned the level of ground investigation that you would expect for a residential development”*. In the light of this it is again recommended that this reason should not be pursued at appeal.

7.00 RECOMMENDATION

- 7.01 That the reasons for refusal proposed within the original resolution on application reference 048855 (relating to ecology, highway safety, density and lack of a geological survey) are not pursued by the Council in the preparation of a case in relation to the appeal against the non determination of the application
- 7.02 Should Members resolve not to accept the above recommendation in relation to any or each of these factors, that delegated authority be given to the Head of Planning to draft reasons based on these issues and to prepare a case in respect of each of these in relation to the appeal.

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