

**FLINTSHIRE COUNTY COUNCIL**

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

**DATE:** **25<sup>TH</sup> JULY 2012**

**REPORT BY:** **HEAD OF PLANNING**

**SUBJECT:** **VARIATION OF CONDITION NO. 3 ATTACHED TO OUTLINE PLANNING PERMISSION REF. 035575 TO ALLOW 7 YEARS FOR THE SUBMISSION OF RESERVED MATTERS FROM THE DATE OF THE OUTLINE PLANNING PERMISSION BEING GRANTED RATHER THAN THE 5 YEARS PREVIOUSLY PERMITTED AT LAND AT CROES ATTI, CHESTER ROAD, OAKENHOLT.**

**APPLICATION NUMBER:** **049426**

**APPLICANT:** **ANWYL HOMES LTD**

**SITE:** **LAND AT (WHOLE SITE)  
CROES ATTI,  
CHESTER ROAD,  
OAKENHOLT,  
FLINTSHIRE**

**APPLICATION VALID DATE:** **06/02/2012**

**LOCAL MEMBERS:** **CLLR. R. JOHNSON**

**TOWN/COMMUNITY COUNCIL:** **FLINT TOWN COUNCIL**

**REASON FOR COMMITTEE:** **MEMBER REQUEST AS IT CONFLICTS WITH COMMITTEE DECISION. ALSO THE SCALE OF DEVELOPMENT WOULD REQUIRE A COMMITTEE DETERMINATION**

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

**1.00 SUMMARY**

- 1.01 The proposed development relates to the variation of condition No.3 attached to outline planning permission Ref: 035575 to allow 7 years for the submission of reserved matters from the date of the outline planning permission being granted rather than the 5 years previously

permitted at "Croes Atti", Chester Road, Oakenholt.

- 1.02 The application site is 27 hectares which was granted outline planning permission for a mixed use development scheme in July 2006 and comprises residential development, public open space, infrastructure works, landscaping and education and community facilities. Since the outline planning permission was granted two further applications have been granted for reserved matters on the site with a total of 321 units. The overall site has an extant i.e. live permission that is valid until 11th July 2013, however the outline planning permission required the submission of all the reserved matters within five years of the granting of that permission and this date has now lapsed - the applicant seeks to extend the time to allow for the submission of the remainder of those reserved matters applications within the lifetime of the outline permission.
- 1.03 The proposal is an identical application to planning reference 049154 which was considered by Members at March's Planning Committee and where Members were asked to determine the stance to be pursued by the Council in light of the fact that the applicant had submitted an appeal against non-determination of the application – on that application Members resolved to pursue the appeal based on applying the previously permitted conditions and legal agreement that were attached to the original outline planning application with a slight variation to some conditions to be attached, and if deemed necessary a financial contribution for enhanced educational facilities contribution in schools to be reasonably served by the development. Also as regards the stance to be adopted by the Council for that appeal Members resolved that the Inspector be made aware that a condition be applied requiring a play area to an adoptable standard, it be offered for adoption and a 10 year maintenance should be paid. However subsequent to that Committee stance, Members at last month's Planning committee resolved that the Council stance on the appealed application should be not to pursue the adoption of public open space, nor to seek an educational contribution.
- 1.04 At the April committee meeting, certain members queried the validity of this application (and the one the subject of the appeal) in circumstances where (in the view of those members) Section 73 did not allow the period for the submission of reserved matters to be extended. Those members were also concerned that inconsistent information had been given on the relevant application forms, i.e. the box on the application form in Section 5 (Description Of Your Proposal) "Has the development already started?" had been ticked "Yes" for application 049154 (the application the subject of the appeal), but "No" for this application.
- 1.05 The Principal Solicitor advised the meeting that he suspected that any misunderstanding regarding the process might have arisen from the fact that amendments made to the Section by the Planning and Compulsory Purchase Act 2004 only applied to England, not Wales,

and that an error of that nature on the application form would not affect the applications' validity. Notwithstanding the advice given, I confirmed that we would also seek the advice of Counsel regarding the issues raised by members.

- 1.06 The advice of Counsel has now been received which is summarised as follows:-
- the prohibition on granting permission under Section 73 where it has the effect of extending the time, e.g. for the submission of an application for approval of reserved matters does not (at present at least) apply in Wales. Accordingly, the applications do not seek permission for something which the Local Planning Authority (or the Welsh Government) could not lawfully grant.
  - errors on the application form do not of themselves necessarily make an application invalid. In this case, Counsel does not see why such an error would have that effect. As stated above, in Wales an application of this sort can still be made under Section 73 to extend time by which applications for reserved matters can be submitted. Mistakenly stating that development has commenced does not of itself take it outside that provision.

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

- 2.01 That condition No.3 attached to the outline planning permission ref. 035575 is varied to allow 7 years for the submission of reserved matters from the date of outline planning permission being granted. That all previous planning conditions attached to the outline planning permission are re-imposed and subject to the applicant entering into a section 106 Obligation/Unilateral Undertaking to re-impose all the requirements of the original legal agreement attached to the outline planning permission i.e.
- scheme to be in general conformity with the Revised Development Brief,
  - construct or to reimburse the Council for the reasonable cost of a footpath/cycleway linking the site with Leadbrook Drive,
  - phasing/occupation of housing,
  - setting aside of 1.5 hectares of land and its transfer for a school site and an extension to the school site of not less than 1.0 hectare,
  - setting aside of land for a shop site,
  - setting aside of a site of 0.45 hectares for a health centre,
  - setting aside of a site of 0.25 hectares for a community centre and its transfer
  - provision of 4.5 hectares of open space including an enclosed equipped children's play area, a landscape strategy, a management strategy for open space areas including establishment of a management company
  - Provide for a maximum of 10% of number of dwellings for

affordable use

Conditions

1. Re-apply conditions 1-29 of outline planning permission Ref. 035575 except as amended below.
2. Condition 13 of outline planning permission Ref. 035575 which referred to a SUDS drainage system no longer required in consultation with the Environment Agency.
3. Condition 14 of outline planning permission Ref. 035575 amended to reflect occupancy rate of a maximum of 200 units per year commencing in 2012 and thereafter 100 units per year (previous condition referred to an occupancy rate commencing on 2006).
4. Code for Sustainable Homes applied to any new reserved matters applications on the site.
5. Foul water to discharge to Oakenholt Mains Sewage Pumping Station.
6. Foul and surface water drained separately from site.
7. No surface water to connect to public sewerage system unless otherwise approved.
8. Land drainage run-off not permitted to discharge to public sewerage system.
9. Scheme for comprehensive/integrated drainage of site.
10. No building permitted within 3 metres of sewer.

### **3.00 CONSULTATIONS**

#### 3.01 Local Member

Cllr. R. Johnson

Requests the application be referred to the Planning Committee as it would conflict with a committee decision. The application should be refused.

#### Adjacent Flint Members

Cllr. D Cox, Cllr. A. Aldridge & Cllr. Howorth

Agree to determination under delegated powers

#### Flint Town Council

No objection on the basis that no development works has taken place to date

#### Head of Assets and Transportation

No objections

#### Public Protection Manager

No adverse comments in regards to pollution control

#### Welsh Government

No direction to be issued

#### Welsh Water

Request conditions relating to use of Oakenholt Main Sewerage Pumping Station, foul/surface/land drainage, comprehensive drainage scheme, building near to sewer

#### **4.00 PUBLICITY**

- 4.01 The application has been advertised by way of a press and site notices.  
One letter of objection has been received and is summarised as follows,
- Questions the validity of whether a Section 73 application can be used to extend time limits for the site
  - Questions nature of works already carried out on the site by applicant.

#### **5.00 SITE HISTORY**

- 5.01 **98/17/1308**  
Outline residential development and associated recreational, community and retail was originally reported to committee on 14.12.99 which resolved to approve subject to a Section 106 Agreement - No decision was ever issued due to changed circumstances of the applicants.

##### **035575**

Outline application for a mixed use development including residential, open space, infrastructure, landscaping, education and community facilities was reported to committee on 19.7.2004 which resolved to approve subject to a Section 106 Agreement - the agreement was signed and the permission issued on 11.7.06.

##### **044035**

Highway improvements, street lighting and all associated works, on land at Croes Atti, Chester Road, Oakenholt, in connection with the outline planning permission ( ref. 035575) - Granted permission on 23rd April 2008.

##### **044033**

Reserved matters application - residential development consisting of 189 no. dwellings, public open space, new roundabout and all associated works at Croes Atti, Oakenholt - Granted 11th July 2008.

##### **046562**

Substitution of house types on plots 119, 124, 128-129, 131-132, 136, 138, 139, 142-144, 146-150, 160-163, 165-166, 170-177 and 183 on land at Croes Atti, Oakenholt, granted 11th July 2008.

##### **046595**

Reserved matters application for residential development consisting

132 no. dwellings, new roads, open space and all associated works on land at Croes Atti, Chester Road, Oakenholt, granted on 19th January 2012.

**049312**

Application for a Lawful Development Certificate for construction of vehicular access from Prince of Wales Avenue, Flint to serve residential development at Croes Atti, Oakenholt, permitted by outline planning permission code number 035575 dated 11th July 2006 – granted 5th April 2012.

**049154**

Application for variation of condition no.3 attached to outline planning permission ref: 035575 to allow 7 years for the submission of reserved matters from the date of the outline planning permission being granted rather than the 5 years previously permitted - non determination appeal submitted, it is to be considered by way of a public inquiry in August.

**049425**

Variation of condition no.15 attached to planning permission ref:046595 at Croes Atti, Chester Road, Oakenholt - undetermined

**6.00 PLANNING POLICIES**

**6.01 Flintshire Unitary Development Plan ( FUDP )**

The FUDP shows the land as a housing commitment and outline planning permission has now been issued. In the context of the development as a whole a large number of the policies of the plan are relevant but the most significant policy is Policy HSG2 - Housing at Croes Atti, Flint, other relevant policies include D1-D4 which refer to design/location/layout/landscaping and Policy GEN1 (General Requirements for Development).

As regards the status of the Development Brief that relates to the Croes Atti site Members should be aware that at the Planning Committee of 08.02.06 the following was resolved :

"RESOLVED: That planning permission be granted, subject to completion of a satisfactory Section 106 Agreement to ensure development of the site accords with the provisions of the approved Development Brief, including the provision of off- site highway works and the upgrading of existing services, as appropriate, and to the other conditions detailed in the report to the Chief Planning Services Officer. "

It is the officers opinion that this must have referred to the revised brief of which had been prepared at that time.

The proposal is considered to accord with the aims of the relevant

policies and development brief for the overall site.

## **7.00 PLANNING APPRAISAL**

### **7.01 Principle of Development**

The proposed development relates to the variation of condition No.3 attached to outline planning permission Ref: 035575 to allow 7 years for the submission of reserved matters from the date of the outline planning permission being granted rather than the 5 years previously permitted at "Croes Atti", Chester Road, Oakenholt. The application site is 27 hectares which was granted outline planning permission for a mixed use development scheme in July 2006 and comprises residential development, public open space, infrastructure works, landscaping and education and community facilities. Since the outline planning permission was granted two further applications have been granted for reserved matters on the site with a total of 321 units. The overall site has an extant i.e. live permission that is valid until 11th July 2013, however the outline planning permission required the submission of all the reserved matters within five years of the granting of that permission and this date has now lapsed, although two reserved matters applications have been approved - the applicant seeks to extend the time to allow for the submission of the remainder of those reserved matters applications within the lifetime of the outline permission. As regards the validity of the outline planning permission to be varied by way of a planning condition – in the interests of clarity it should be noted that within Wales Section 73 of the 1990 Act does allow for the submission of such an application.

7.02 In considering this application whilst the principle of the development is not in dispute, the Council can potentially review aspects of the scheme e.g. educational provision. The variation of condition no. 3 is considered acceptable in principle subject to conditions to re-applied to the overall consent and any changes to the legal agreement if these were warranted.

### **7.03 Effect on adjacent/future residential amenities**

These issues would be addressed via any future reserved matters applications, however, the Council's normal standards regarding space about dwellings and distance away from either proposed dwellings or existing dwellings would be applied.

### **7.04 Provision of Public Open Space**

Overall the site has to provide a total area of approximately 4.5 hectares of open space which includes the village green. The site would benefit from the previously approved formally laid out "village green" which would include a mini soccer pitch, a junior play area, a toddlers/picnic area, a Multi Use Games Area (MUGA) which forms part of the wider open space allocation for the overall site. The public open space on the site would be subject to a landscape strategy, a management strategy including the establishment of a management company to be included in the legal agreement.

7.05 Affordable Housing

Ordinarily for a site on the scale of Croes Atti Policy HSG10 of the adopted UDP would be likely to be applied i.e. the provision of 30% affordable housing where there is a demonstrable need for affordable housing to meet local needs. Such affordable provision can be attained in a number of ways e.g. low cost home ownership at 70% of open market value, or subsidised housing provided via a Registered Social Landlord or "gifted" units where the Council are given units to use for affordable purposes.

7.06 However, in regards to the current application site, Policy HSG10 has to be read in conjunction with Policy HSG2 of the newly adopted UDP, where Policy HSG2 of the adopted UDP refers to housing allocation at Croes Atti and indicates that it will be developed subject to an appropriate provision of affordable housing and that "The location and extent of land uses within the site and the means of delivering them in the future, including the protection of landscape features, have been set out in a detailed Development Brief for the site, which has been agreed between the Council and the developers as the basis on which to develop this site". The agreed Development Brief for the site stipulates that a maximum of 10% affordable housing will be required on the Croes Atti Site and this is reinforced in the existing Section 106 Legal Agreement. Bearing in mind the UDP policies have recently been adopted, it is considered reasonable that Policy HSG2 (and thereby any reference to the Development Brief) should be afforded significant weight when setting the upper limit for affordable units on the site i.e. 10%.

7.07 The original outline planning permission for the overall site required that if justified, up to 10% of dwellings on the site should be social/affordable and was secured via a Section 106 legal agreement. The exact number/location of affordable units within any future phases of the development has yet to be determined, however, any new affordable dwellings would need to indicate a potential mix of properties which are spread geographically across the site with that final figure being in accordance with the terms of the original Section 106 legal agreement.

7.08 Drainage and Contamination Issues

The Environment Agency/Welsh Water have not objected to the proposal. It should be noted that approx. £2.1 million has been spent for the off site sewer works and these works include improvements to a pumping station which in addition to catering for the Croes Atti development will also generally improve drainage in the area. Contamination reports relating to the discharge of conditions on the outline overall site have revealed lead contamination. As part of the remediation strategy for the overall site the Council are satisfied any contamination can be adequately addressed during the course of construction with final verification of remediation being on a plot by



plot basis.

7.09 Highways

The Head of Assets and Transportation has raised no objections to the application. When the original outline planning permission was granted it was envisaged the site would be accessed via three points i.e. Chester road, Prince of Wales Avenue and Coed Onn Road.

7.10 The access component of the Croes Atti development has been the subject of extensive negotiations with the applicant. Due to highway concerns raised as part of the public consultation process to the last reserved matters application on that part of the site commonly known as the "Thomas Land", the applicant was requested to submit an updated Transport Assessment for the proposal. An updated Transport Statement was submitted based on the original TIA of 2003 but updated with particular reference to the following:-

- assess the proposed detailed design layout which incorporates a roundabout access off the A548, linking to Prince of Wales Avenue and Coed Onn Road via a sinuous alignment spine road
- review trip generation against contemporary TRICS data
- provide an updated assessment of shopping/leisure based trips
- consider revised assessment years
- provide an assessment of routes that would be used by construction period traffic
- general update of previous TIA data relating to the local area (traffic flow/accident data etc)
- the influence that construction of two nearby schools may have had on traffic patterns adjacent to the development site

The Transport Statement concluded that,

- The development can be served satisfactorily by the proposed A548 Chester Road roundabout with additional access to Coed Onn Road and Prince of Wales Avenue
- Traffic generated by the proposed residential development off Prince of Wales Avenue/Coed Onn Road in isolation can be accommodated by the existing road network without improvement.
- FCC's "traffic calming scheme" which has been implemented along Prince of Wales Avenue, Coed Onn Road and adjoining roads to compliment the traffic management scheme in Flint town centre, has enhanced safety for road users by reducing traffic speeds
- The presence of traffic calming along Prince of Wales Avenue and Coed Onn Road will also detract usage from the proposed development
- Based on the assessment undertaken the development is expected to have minimal impact on the existing highway environment. Modelling analysis has identified that the proposed A548 Chester Road Roundabout has adequate

capacity to accommodate the expected traffic flows from the 683 dwellings. Traffic flows on the existing routes (A548, Prince of Wales Avenue, Albert Avenue and Coed Onn Road) are well within theoretical capacities.

- Public transport links will be extended into the proposed development, subject to reaching agreement with local bus companies
- Existing footpaths will be retained/enhanced

The assessment undertaken of the alterations will be marginal and have a minimal impact on the local road network when compared to the current situation.

7.11 The findings of the updated Transport Assessment to the last reserved matters application are clearly relevant to the current application. The updated Transport Assessment was independently reviewed on behalf of the Council by the Transport Consultancy Atkins who concluded that the proposed development was acceptable in highway terms.

7.12 The Council's Head of Assets and Transportation accepted the findings of the independently reviewed Transport Assessment and therefore offered no highway objections to that scheme, nor to the current application.

7.13 Education

The original planning permission/legal agreement required the setting aside of 1.5 hectares of land and its transfer for a school site, in addition to an extension to the school site of not less than 1.0 hectare. The council's Head of Education and Resources has stipulated that the previous requirements in the original planning permission to set aside a site for a school should be re-imposed.

**8.00 CONCLUSION**

8.01 I recommend approval subject to conditions and legal agreement as attached to the previously approved outline planning permission and revised at paragraph 2 of this report.

8.02 In considering this planning application 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.

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