

**FLINTSHIRE COUNTY COUNCIL**

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

**DATE:** **22<sup>nd</sup> NOVEMBER 2023**

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

**SUBJECT:** **FULL APPLICATION-**

**APPLICATION NUMBER:** **FUL/000523/23**

**APPLICANT:** **GOWER HOMES LTD**

**SITE:** **LAND AT "FOXFIELD", FAGL LANE, HOPE, WREXHAM, FLINTSHIRE**

**APPLICATION VALID DATE:** **1<sup>st</sup> JUNE 2023**

**LOCAL MEMBERS:** **COUNCILLOR G HEALEY**

**TOWN/COMMUNITY COUNCIL:** **HOPE COMMUNITY COUNCIL**

**REASON FOR COMMITTEE:** **MEMBER REQUEST**

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

**1.00 SUMMARY**

1.01 This is a full application for the part demolition of existing dwelling and residential development comprising of 7 detached dwellings and associated roads and drainage works at "Foxfield", Fagl Lane, Hope, Wrexham, Flintshire

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

2.01 Section 106

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

- Primary School Contributions- Contribution required would be £12,257.00 towards improvements to Ysgol Estyn
- Secondary School Contributions- Contribution required would be £18,469 towards improvements to Castell Allun High School
- Public Open Space Contributions- £1,100 per unit towards the Willow Play Area

### Conditions

1. The development hereby approved shall be commenced before the expiration of five years from the date of this permission.
2. The development shall be carried out in accordance with the following approved plans and documents:
  - Application forms
  - Location plan
  - Topographical Survey
  - Arboricultural Impact Assessment
  - Ecology report
  - Ecology Update Letter
  - Demolition risk Assessment
  - Proposed Highways Layout and Setting Out
  - Swept Path Analysis Turning Head
  - Highways Construction Details
  - Drainage Statement
  - Drainage Strategy plan
  - Drainage Strategy detail 1 of 4
  - Drainage Strategy detail 2 of 4
  - Drainage Strategy detail 3 of 4
  - Drainage Strategy detail 4 of 4
  - Site plan (incorporating FFLs)
  - House Type Harlech
  - House Type Pulford
  - House Type Powis
  - House Type Montgomery
  - House Type Whittington
  - Garages
  - Design and Access Statement
  - Materials Detail
3. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the substantial completion of the development, whichever is the sooner and any trees or plants which, within a period of 5 years of the time of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.
5. The siting, layout and design of the means of site access shall be in accordance with details to be submitted to and approved by the County Council prior to the commencement of any site works.
6. The forming and construction of the means of site access shall not commence unless and until the detailed design thereof has been submitted to and approved by the County Council.
7. The proposed access shall have a visibility splay of 2.4m x 43m in both directions measured along the nearside edge of the adjoining carriageway over land within the control of the Applicant and/or Highway Authority and within which there shall be no significant obstruction to visibility.
8. The stated visibility splays at the proposed point of access shall be made available and kept free from all obstructions for the duration of site construction works.
9. Facilities shall be provided and retained within the site for the parking and turning of vehicles in accordance with the submitted scheme, such facilities being completed prior to the proposed development being brought into use.
10. The detailed layout, design, means of traffic calming and signing, surface water drainage, street lighting and construction of the internal estate roads shall be submitted to and approved by the County Council prior to the commencement of any site works.
11. The gradient of the access from the edge of the existing carriageway and for a minimum distance of 10m shall be 1 in 24 and a maximum of 1 in 15 thereafter.
12. Positive means to prevent the run-off of surface water from any part of the site onto the highway shall be provided in accordance with details to be submitted to and approved by the County Council prior to the commencement of any site works.
13. No development shall take place, including site clearance works, until a Construction Traffic Management Plan has been

submitted to, and approved in writing by, the Local Planning Authority (see attached note)

14. Notwithstanding the details hereby approved, prior to commencement of development a scheme of bird and bat boxes to be installed within the site shall be submitted and approved in writing by the LPA. The approved details shall be incorporated into the development in accordance with these details.
15. Prior to the commencement of development, including any demolition work, a scheme of Reasonable Avoidance Measures for Bats and nesting birds shall be submitted to and approved by the LPA. Henceforth all development shall be carried out in accordance with these approved details.
16. Prior to the commencement of development a scheme for biodiversity enhancement of the site shall be submitted for approval, and thereafter shall be implemented in accordance with the approved details.

### **3.00 CONSULTATIONS**

3.01 **(Local Member) Councillor G Healey:** There is a fair level of public interest in this development and I would like to call it into committee

**Hope Community Council:** Objections summarised as follows:

1. Backland Development
2. Overdevelopment of site
3. Out of keeping with locality and pattern of development
4. Loss of privacy and noise disturbance
5. Flood risk
6. Ecology
7. Highways and Pedestrian safety
8. Impact upon schools and medical practices
9. Impact upon wastewater and sewerage systems.

**Highways Development Control:** Highways conditions suggested

**Community and Business Protection:** No adverse comments to make

**Welsh Water/Dwr Cymru:** Request that if you are minded to grant Planning Consent for the above development that the Conditions and Advisory Notes provided below are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets. Dwr Cymru have confirmed that the site is served by a Wastewater treatment works which has

sufficient capacity to cater for the development and has a valid Phosphate stripping license.

**Natural Resources Wales:** Identifies that site lies within the within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). NRW also request that the Protected Species Survey is included within the list of approved documents. Without the inclusion of this document, they would object to this planning application.

#### **4.00 PUBLICITY**

4.01 14 Neighbour Notifications were sent to adjoining/nearby properties and a Site Notice was displayed at the site.

Two objections have been received which can be summarised as follows:

1. Traffic Impact
2. Lack of local facilities
3. Beyond established building line
4. Impact upon cemetery
5. Phosphates issue
6. Surface water problems
7. Overdevelopment/out of character of locality
8. Impact upon neighbouring property

#### **5.00 SITE HISTORY**

5.01 063335- Full application- Part demolition of existing dwelling and residential development comprising of 7 detached dwellings and associated roads and drainage works- Refused 26/20/22

018029- Outline application for residential development- Refused 24/8/89 Appeal Dismissed 27/2/90

#### **6.00 PLANNING POLICIES**

6.01 Flintshire Local Development Plan  
Policy STR2: The Location of Development  
Policy STR13: Natural and Built Environment, Green Networks and Infrastructure  
Policy PC1: The Relationship of Development to Settlement Boundaries  
Policy PC2: General Requirements for Development

Policy PC3: Design  
Policy PC5: Transport and Accessibility  
Policy HN2: Density and Mix of Development  
Policy EN2: Green Infrastructure  
Policy EN4: Landscape Character  
Policy EN15: Water Resources  
Policy EN17: Development of Unstable Land

## **7.00 PLANNING APPRAISAL**

### **7.01 Proposed Development**

This is a Full application for the Part demolition of existing dwelling and residential development comprising of 7 detached dwellings and associated roads and drainage works at "Foxfield", Fagl Lane, Hope, Wrexham, Flintshire

7.02 This application follows a previous refusal , reference 063335, on October 26<sup>th</sup> 2022. That application was refused on the single issue that it was considered it had not been demonstrated that the proposed development would not lead to an increase in phosphate levels in the River Dee and Bala Lake Special Area of Conservation ('the SAC'), a European protected site. Whilst all aspects of the proposal were otherwise acceptable, the position at the time with a lack of identifiable mitigation for phosphates caused an Inspector from PEDW to refuse the subsequent appeal for the same single reason. Since the Committee and an Inspector came to their respective decisions relating solely to a lack of identifiable phosphate mitigation, there has been a significant material change in circumstances on this issue since the refusal and subsequent appeal, which is explained below.

### **7.03 Site Description**

The application site is Foxfield, Fagl Lane, Hope. This site is within the settlement boundary for Hope in the Flintshire Local Development Plan. The site is currently the garden area for the property known as ;Foxfield' which is located centrally on the site. To the east of the site is a Cemetery.

### **7.04 The Main Issues**

Notwithstanding that when this application was previously considered all matters apart from phosphates were found to be acceptable, the main issues are considered to be:

- The principle of development
- Impact of the development on the character and appearance of the area
- Drainage and phosphates

- Access and highways issues
- Ecological issues

#### Principle of Development

7.05

The application site lies within the settlement boundary of Hope in the Flintshire Local Development Plan. Hope is a Tier 2 Local Service Centre in LDP policy STR2 and there is a presumption in favour of residential development in these settlements. In principle this is considered to be an acceptable windfall development on a previously developed site, in an appropriate and sustainable location for this form of development.

7.06

The proposal is considered to accord with policies STR2 and PC1 in the Flintshire Local Development Plan, and as such it is considered that the principle of development is acceptable.

#### Impact upon the character and appearance of the area

7.07

The development is arranged in fairly linear patterns, with 7 additional dwellings, and the existing dwelling 'Foxfield' arranged around a central access road which culminates in a hammer head at its south western end. Two dwellings are located facing the access road at this south western end of the site, one dwelling is located to the north of the access road, and the remaining 5 (Including the existing dwelling) are located to the south of the access road. Due to this orientation the majority of the new dwellings are located away from existing housing.

7.08

Further to discussions held with the Case Officer following the initial submission of the scheme the proposal has been redesigned with the deletion of one of the proposed dwellings and a site redesign to ensure that the new dwellings have sufficient garden depths and are sensitive to perceived overlooking of the adjacent cemetery site. The dwellings that back onto this facility are located at a slightly lower level to the cemetery, however, as a result of the required 11 metre garden depths being met and retention of the existing boundary screening I do not consider that they will unacceptably impact users of the cemetery by being overly intrusive. The Appeal Inspector noted that the site's relationship with the cemetery would be similar to that seen in other residential settings and there is no evidence that future residents would be likely to create unacceptable noise or disturbance to cemetery visitors.

7.09

It is noted that the local Council have objected to the proposal partly on the basis of a potential loss of privacy, however there is no direct overlooking from any of the proposed dwellings onto existing

neighbouring properties and it is not considered that the proposal would result in a loss of privacy for neighbouring properties.

7.10 The proposed house types are detached, and of brick and tile construction. The existing housing in the locality is mixed although whilst there are some other house types including single storey dwellings the types of housing that is typically found in close proximity to the application site tends to be detached and either of a brick or rendered finish. The proposed dwellings are similar in style to those constructed on Tudor Close, across Fagl Lane from the application site. I consider them to be appropriate for use in this location.

7.11 Submitted floor levels for the proposed dwellings, the garages and the garden areas are appropriate for the locality and follow the existing landform and the relative floor levels for neighbouring development. This will ensure that the development integrates into the street scene and prevailing pattern of development.

7.12 Phosphates and drainage

Following a wastewater pre-development enquiry with Welsh Water, the applicant is proposing to discharge into the public foul sewer network in Fagl Lane approximately 200m west of the site boundary. The levels do not allow for a gravity connection from the site so a foul pumping station will be required within the development proposals. This pumping station is located to the front of the site.

7.13 The application site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). On the 21st January 2021, NRW published an evidence package outlining phosphate levels for all river SACs across Wales. As part of this package, they issued a Planning Position Statement, in which they advised that any proposed development that might increase the amount of phosphate within a river SAC catchment could lead to damaging effects to the SAC. Therefore, such proposals should be screened through a Habitats Regulations Assessment (HRA), to determine whether they are likely to have a significant effect on the SAC. NRW have also issued Planning Advice (August 2023) which gives specific advice in respect of foul drainage arrangements for new developments

7.14 There are no designated sites in proximity to the application site, but the application site is close to the River Alyn a tributary of the River Dee designated as an SSSI and SAC, designated primarily for migratory fish but also otter. While it is not directly affected, all developments now need to consider phosphate pathways and a potential increase in levels within the River Dee Special Areas of Conservation (SAC) to ensure there are no impacts.

7.15 The previous application was refused solely on the basis of uncertainty over the phosphates issues, and this sole reason was



upheld on appeal. Since that time a significant change has occurred where the phosphate permits for affected waste water treatment works in Flintshire that include Hope, have been updated and re-issued by Natural Resources Wales, and can now be relied upon in making an assessment of the site's impact on the SAC.

7.16 Following the review of the Hope WWTW permit, Welsh Water have confirmed that there are no capacity issues at the waste water treatment works as it has a valid phosphate permit and as a result there is headroom at the treatment works to treat the additional phosphate that would be derived from the proposed development. In accordance with the NRW advice referred to earlier, a Test of Likely Significance has been undertaken on this site.

7.17 It is considered that no likely significant effects on the SAC are anticipated as a result of these development proposals as there is unlikely to be a source of additional phosphorus or pathway for impacts (given that the treatment works can process the phosphates). The development is therefore screened out as not likely to have a significant effect on a river SAC in relation to phosphorus inputs as it falls within the following criterion in the NRW advice (both points 1 and 3 apply):

- there is capacity to treat additional wastewater from the proposed development within revised environmental permit limits, or
- the necessary treatment capacity to remain within revised environmental permit limits will be delivered within the agreed Asset Management Plan (AMP) and that when implemented the treatment capacity will ensure that additional wastewater generated in consequence of the proposed development will remain within the revised permit limits and
- that the sewer network and associated WwTW has the hydraulic capacity to accommodate additional wastewater without contributing to an increase in frequency or duration of storm overflows.

7.18 As such, it is considered that the proposal is in accordance with policy EN15 in the Flintshire Local Development Plan.

7.19 Access and Highways

The site is located on Fagl Lane, a classified highway. As such it is a road designed to carry significant volumes of traffic. It is not considered that a development of this scale will unacceptably impact upon highways safety. Highways Development Control have raised no objection to the proposal, and requested conditions should planning permission be agreed to ensure that the internal road and

access point are constructed to appropriate standards. This has been their consistent position since the previous application.

#### 7.20 Ecology

The site consists of modern, well-maintained buildings and garden, predominantly mown grass with shrubs and occasional trees and a mature hedgerow next to the cemetery. There are no designated sites adjacent to the site but it is within 300m of the River Alyn with farmland with trees and tall hedgerows in between and just over 300m to GCN ponds in the north.

7.21 The presence of trees and open water within the locality increases the chance of a bats roost being present but the buildings to be demolished are single storey, well maintained with low potential for roosting bats. Bat emergence surveys were undertaken in Aug & Sept 2021 and show that 1 Common Pipistrelle emerged from small gap in SW facing gable of garage on both visits. Mitigation proposed is acceptable, namely reasonable avoidance measures and bat boxes to be built into new houses. The proposed bat boxes should be incorporated into the design plans to guarantee installation.

7.22 The shrubs and trees and particularly the boundary hedge also have potential for nesting birds and the proximity to known GCN sites means there is potential for GCN to be present on site so appropriate reasonable avoidance measures for GCN during site clearance would be required.

7.23 Biodiversity enhancements in line with WG policy would need to be incorporated into the new buildings, for example bat and bird boxes, and a condition requiring this detail is suggested. Other details such as species proposed for hedges and ornamental shrubs can be included on the landscape plan and can also be conditioned.

7.24 It is considered that from an ecological point of view the proposal is acceptable and in accordance with the relevant Local Development Plan policies.

#### 7.25 Green Infrastructure

In advance of an updated Planning Policy Wales (PPW) Chapter 6 of PPW11 has been amended with regards to green infrastructure, net benefit for biodiversity, the protection afforded to Sites of Special Scientific Interest and trees and woodlands. The Welsh Ministers have made this guidance operational with immediate effect.

7.26 It will be essential that the development appropriately engages with these matters and meets the policy requirements of the amended Chapter 6 of PPW11.

7.27 The application is well supported with regard to the approach to sensitively addressing ecological issues, including arboricultural concerns. The landscaping of the site will be controlled by condition but will ensure that the non-designated green infrastructure of the locality is appropriately treated.

7.28 It is considered that the proposal complies with the advice within PPW11 as well as policy EN2 in the LDP.

#### Planning Obligations

7.29 The infrastructure and monetary contributions that can be required from a planning application through a S106 agreement have to be assessed under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and Welsh Office Circular 13/97 'Planning Obligations'.

7.30 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.

7.31 Leisure services have advised that in accordance with Planning Guidance Note No.13 POS provision, the Council should be seeking an off-site contribution of £1,100.00 per dwelling in lieu of onsite Public Open Space.

7.32 The payment would be used to enhance toddler play facilities at The Willow Play Area, which is the closest play area to the site. Working with Planning Policy, they have confirm that the pooled contributions thresholds have not been exceeded with regards to The Willow Play Area. As such and in accordance with the CIL regulations the LPA can request these contributions through a legal agreement.

7.33 Education and Youth Services have confirmed that should planning permission be granted then they would be requesting developer contributions of £12,257 for Primary School contributions to Ysgol Estyn and £18,469 for Secondary school contributions to Castell Alun. It is similarly considered that these are valid requests in accordance with the CIL regulations.

The developer has submitted a Unilateral Undertaking to address these requests in support of the application. The requests have

7.34 previously been identified and agreed upon at the time of the previous application and planning appeal.

#### Other Matters

7.35 The Community Council have raised concerns over issues of flood risk. The site is not in a flood risk area, and the applicant will be required to obtain SAB approval with regards to the surface water drainage solutions on site. There are no flood concerns and the proposal is considered to be in accordance with LDP policy EN14: Flood Risk.

### **8.00 CONCLUSION**

The proposal represents an acceptable windfall development within the settlement boundary of a sustainable settlement. There are no unacceptable impacts upon local amenity, ecology, or as a result of highways or drainage issues, as in the previous consideration of this application. The phosphates issue, which was the only previous impediment to issuing a positive decision in relation to this scheme has now been overcome. Accordingly, I recommend that the proposal is acceptable subject to the suggested conditions and legal agreement as outlined in paragraph 2.01.

#### 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: James Beattie**  
**Telephone: (01352) 703262**  
**Email: [james.beattie@flintshire.gov.uk](mailto:james.beattie@flintshire.gov.uk)**