

FLINTSHIRE COUNTY COUNCIL

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

DATE: **WEDNESDAY, 17TH APRIL 2013**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **OUTLINE APPLICATION - ERECTION OF A CINEMA, HOTEL (UP TO 80 BEDROOMS) AND CLASS A3 FOOD AND DRINK UNITS, TOGETHER WITH CAR PARKING (UP TO 454 SPACES), LANDSCAPING AND ANCILLARY WORKS ON LAND TO THE NORTH OF BROUGHTON SHOPPING PARK, BROUGHTON**

APPLICATION NUMBER: **049943**

APPLICANT: **DEVELOPMENT SECURITIES**

SITE: **LAND TO THE NORTH OF BROUGHTON SHOPPING PARK, BROUGHTON.**

APPLICATION VALID DATE: **11TH JULY 2012**

LOCAL MEMBER: **COUNCILLOR W. MULLIN**

TOWN/COMMUNITY COUNCIL: **BROUGHTON & BRETTON COMMUNITY COUNCIL**

REASON FOR COMMITTEE **SCALE OF DEVELOPMENT RELATIVE TO DELEGATION SCHEME AND MEMBER REQUEST THAT FOR COMMITTEE DETERMINATION.**

SITE VISIT: **YES**

1.00 SUMMARY

- 1.01 This outline planning application submitted by Development Securities (DS) proposes the erection of a cinema, hotel, Class A3 food and drink units, together with car parking, landscaping and other ancillary works on land to the north of Broughton Shopping Park, Broughton. All matters are reserved for subsequent approval. The application is to be considered in conjunction with the previous application on the agenda (049857) which although submitted by a different applicant Hercules Unit Trust (HUT) proposes a competing application for a multi-plex cinema and restaurants at Broughton Shopping Park.

2.00 RECOMMENDATION: TO REFUSE PLANNING PERMISSION FOR THE FOLLOWING REASONS

- 2.01 Whilst it is recognised that there is a qualitative need for the erection of a multiplex cinema at Broughton Park, the proposal has to be considered in conjunction with an alternative and competing proposal for the erection of a multiplex cinema at this location, submitted under Code No. 049857. The Local Planning Authority are of the view that in relation to the most appropriate location for a multiplex cinema, the site the subject of this application whilst part allocated for non-retail development has a significant degree of physical separation from the existing shopping park, which when compared to the alternative proposal for the erection of a multiplex cinema within the shopping park itself, does not provide for an integrated and sustainable form of development. This it is considered is therefore contrary to Policies STR1, S3 and GEN1 of the Flintshire Unitary Development Plan.

3.00 CONSULTATIONS

3.01 Local Member

Councillor W. Mullin

Request site visit and planning committee determination in order to assess the scale/form of the proposed development and acceptability of highways/access to the site.

Adjoining Ward Members

Councillor D. Butler

Request site visit and planning committee determination given that there are 2 similar applications for the erection of a cinema at Broughton Park and there is a need to assess the adequacy of highways to serve the proposed development.

Councillor M. Lowe

Request site visit and planning committee determination in order to assess the adequacy of highways to serve the proposed development.

Broughton & Bretton Community Council

The Council supports the proposed provision of a development such as this which will bolster the existing Shopping Park and provide welcome new facilities for the area. The Council does however have concerns regarding the position of the access on Chester Road. The Council considers that this will exacerbate traffic build up and hamper traffic flows particularly at peak times. The Council would also noted that this is yet another development in this location which highlights the need for a full interchange on to and from the A55.

Countryside Council for Wales

No objection subject to the inclusion of conditions and/or obligations to (i) safeguard the great crested newt during the construction phase of the proposal and (ii) support and facilitate the implementation of great crested newt population restoration proposals for the Broughton population.

Welsh Government

Following the receipt of additional information advise that the Welsh Government as highway authority for the A55 trunk road does not wish to issue a direction in respect of this application.

Head of Public Protection

No response received at time of writing report.

Airbus

The proposed development does not conflict with aerodrome safeguarding criteria or transportation routes in and around the Broughton Retail Park. During construction phase the developer/crane operator shall obtain a crane permit from the occupant authority prior to commencing crane operation.

Clwyd-Powys Archaeological Trust

Confirm that there are no archaeological implications for this development.

Environment Directorate

(Rights of Way)

Public Footpath 69 abuts the site but appears unaffected by the development. The path must be protected and kept free from interference from the construction.

Head of Assets & Transportation

No objection subject to the completion of (i) a Section 106 Obligation to secure the payment of £2,000 in order to update the trip rates associated with this development into the existing Flintshire County Council Transit model and (ii) the imposition of conditions in respect of access, visibility, off-site highway improvements, a travel plan and parking/servicing.

Environment Agency

No response received at time of writing report.

Dwr Cymru/Welsh Water

No response received at time of writing report.

4.00 PUBLICITY

4.01 Press Notice, Site Notice, Neighbour Notification

One letter in support which recommends that improved pedestrian/cyclist access is undertaken as part of the proposed development.

3 third party letters of objection received the main points of which can be summarised as follows:-

- Question need for two cinemas at Broughton Shopping Park.
- Question need for combined level of A3 food outlets at Broughton Shopping Park.
- Development is proposed on Greenfield site which should be retained.
- Increase in traffic generation and inadequacy of existing highway network.
- Impact on existing well-established businesses in the locality.

4 letters of objection received from the applicants proposing the competing scheme (Hercules Unit Trust) included under the following specific headings:-

Policy Context

“45% of the application site is greenfield, falling outside both the non-retail commercial allocation and the defined settlement boundary. Consequently, almost half the application site does not represent previously developed land and, importantly, falls within the open countryside. A major element of the Development Securities proposal therefore relates to land which is clearly less favoured in policy terms than the brownfield application site proposed by HUT. In these circumstances, the principle of permitting a commercial leisure development in the open countryside is questioned when there is a clear and deliverable opportunity to permit another leisure proposal on a favoured brownfield site within the demise of the Broughton Shopping Park. This sequential approach, whereby brownfield land is used/utilised in preference to greenfield land represents a key spatial element of the Flintshire Unitary Development Plan strategy”.

Highway Access/Safety

“Whilst the application submission acknowledges that the location and layout of the proposed access arrangements is a fundamental consideration, it also claimed that an access layout fully compliant with accepted design standards is being promoted. In light of the failure of the Development Securities proposal to attain the requisite "Design Manual for Roads and Bridges" (DMRB) standards, this represents a major failing of their proposal. Secondly, given the strategic importance of the A5104 Chester Road, alterations to the A5104 and impacts on existing access and cyclists, it is considered that this proposal is seriously flawed in highway safety terms. This position cannot be remedied by Development Securities seeking to access their proposal from the south, as the Development Securities proposals do not benefit from the necessary rights to access over

HUT's service road, nor is there any prospect of such rights being granted”.

Integration with Existing Development

“Relevant in the context of the site’s potential suitability is its relationship to and integration with existing development having regard to Unitary Development Plan’s policies S3, AC2 and the Welsh Assembly Government’s objectives for transport as set out in Technical Advice Note 18 which encourage the co-location of commercial developments in order to encourage multi purpose trips. Such co-location, as provided for in HUT's proposal, is appropriately seen in policy terms as being an essential pre-requisite to encouraging linked trips, creating and maintaining complementary developments, and delivering associated economic and sustainability benefits. Assessed in terms of these policies and the rational underpinning them, it is particularly relevant that the leisure facilities proposed by Development Securities are divorced from the Shopping Park’s retail frontages and, as a consequence, any linkage is likely to be limited to car-borne trips given the inability of Development Securities to provide a direct route for pedestrians wishing to walk from the Development Securities site to the Shopping Park over HUT's service road - the necessary consent for any alterations to permit this will **not** be given by HUT, as previously advised”.

Availability

“A major part of the Development Securities application site is covered by a restrictive covenant not to develop (save in respect of limited exceptions which are not comprised within the development proposals), the benefit of which are vested in the HUT land. There is no realistic prospect of that restrictive covenant being released, nor the serious access problems faced by the Development Securities site being resolved. In sharp contrast, there are no such impediments or, indeed, any obstacle preventing the deliverability of HUT's leisure proposal - which has operator support and development funding and which, if consent is granted, will be implemented”.

5.00 SITE HISTORY

- 5.01 The site has an extensive planning history since opening in 1999, it is considered the most recent and relevant planning history is detailed as follows:-

037891

Outline – Extension to existing shopping park including 15,859 sq.m (170,000 sq.ft) of new retail floorspace, plus 2,500 sq.m (27,000 sq.ft) of mezzanine, additional and reconfigured car parking, on and off site highway improvements, enhanced bus, cyclist and pedestrian provision, landscape and ecological improvements – Granted 15th February 2007.

040534

Upgrading the existing interchange on the A55 at Broughton to a full grade separated junction – Granted 8th January 2007.

043751

Variation of Condition No. 34 attached to outline planning permission ref: 37891 (relating to controls over the subdivision of units) – Granted 23rd November 2007.

045215

Variation of Condition 3 & 4 of planning approval 043751 relating to controls over junction improvements – Permitted 31st December 2008.

045216

Variation of Conditions 3, 4 & 5 of planning permission 040534 relating to controls over junction improvements – Permitted 31st December 2008.

045911

Various of Condition Nos 3, 4, 9, 12, 33, 34 of planning permission ref: 045215 – Refused 26th November 2009.

045912

Variation of Condition Nos 3, 4 & 5 of planning permission ref:

045216

Refused 26th November 2009.

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan

Policy STR1 – New Development.

Policy STR5 – Shopping Centres & Commercial Development.

Policy STR11 – Sport Leisure & Recreation.

Policy GEN1 – General Requirements for Development.

Policy D1 – Design Quality, Location & Layout.

Policy D2 - Design.

Policy D3 – Landscaping.

Policy D4 – Outdoor Lighting.

Policy D5 – Crime Prevention.

Policy D6 – Public Art.

Policy AC2 – Pedestrian Provision & Public Rights of Way.

Policy AC3 – Cycling Provision.

Policy AC4 – Travel Plans for Major Traffic Generating Developments.

Policy S1(6) – Retail & Commercial Allocations (Broughton)

Policy S3 – Integrating New Commercial Development.

Policy SR1 – Sports, Recreation or Cultural Facilities.

Policy EWP17 – Flood Risk.

7.00 PLANNING APPRAISAL

7.01 Introduction

The site the subject of this application amounts to approximately 2.9 hectares in area. It is located to the north-east of Broughton at the junction of Chester Road where it connects with the northern access from a roundabout into the Broughton Retail Park.

7.02 The site is currently unused and comprises a rough grassed area subdivided by lengths of mature hedgerow. The boundaries of the site are clearly defined, the eastern boundary by a mature hedgerow interspersed with trees whilst the southern boundary is defined by a post and rail fence approximately 1.5 m in height and a grass verge approximately 5 m wide. Beyond this is a service road for the adjacent Broughton Shopping Park.

7.03 To the north beyond Chester Road, there is a public house, two residential properties, commercial premises and a veterinary practice. BAE Airbus is located to the north east of the site. To the east of the site is a Great Crested Newt Reserve which was created as mitigation, for the loss of habitat associated with the development of the shopping park.

7.04 Proposed Development

The application is submitted in outline with all matters being reserved for subsequent approval (access, appearance, landscaping layout and scale of development). In summary, the application proposes development of the site for the following uses:-

- Cinema (Class D2)
- Hotel (Class C1)
- Food and drink units, including drive-thru restaurant (Class A3)
- Car parking
- Landscaping

7.05 Although submitted in outline an illustrative site layout plan has been produced as part of the application, together with a Design & Access Statement informing how it is anticipated that the site will be developed.

7.06 For Members information this includes:-

- A cinema of a maximum of 2, 323m² (25,000 sq.ft) comprising up to 6 screens. The cinema is proposed to be located in a central area of the site on the first floor of a part single and 2 storey building.
- A hotel (up to 80 bedroom) with a maximum floor area of 2,685 m²

(28,901 sq. ft). The indicative layout plans shows the hotel located in the south eastern corner of the site. It is proposed to be 3 storeys in height.

- A maximum of 1,635 m² (17,600 sq.ft) of floor spaces for uses falling within Class A3. The illustrative layout shows 4 No. A3 units at ground floor within the cinema building, with a free standing single storey drive thru restaurant of 242 m² (2,600 ft.sq) located in the north eastern corner of the site adjacent to Chester Road.
- Although the means of access to the site is reserved for future approval, the illustrative site layout shows that access to the site is to be provided from the A5104 Chester Road.
- A maximum of 454 car parking spaces to serve the development. This includes 80 spaces to serve the hotel, 15 for the drive thru restaurant and 29 disabled car parking spaces.
- Landscaping within the site and on site boundaries.

7.07 In support of the application, the agents acting on behalf of Development Securities consider that:-

- i) The Development Securities application proposals have the support of the development Plan, whereas the HUT proposals do not. To grant the HUT application would seriously undermine the recently adopted UDP and it should be refused.
- ii) While the HUT site is previously developed land, the principle of development on the Development Securities site has been established through its allocation in the recently adopted UDP and the grant of planning permission previously for car parking on part of the site.
- iii) As an allocated out of centre location the Development Securities site is sequentially preferable to the HUT site and complies with paragraph 10.2.11 of PPW.
- iv) The absence of a confirmed cinema operator or the fact that Development Securities application has been submitted in outline are not legitimate reason for doubting the deliverability of the application proposal on the Development Securities site.
- v) The outline nature of the Development Securities application provides flexibility to meet the requirements of potential occupiers, while also leaving open the opportunity to relocate the vehicular access to the development depending upon legal clarification.
- vi) The presence of the restrictive covenant on part of the Development Securities site is not a material planning consideration and in any event, is one which is considered will be resolved once planning permission

- has been granted. The Planning Authority must agree with this interpretation having allocated the covenanted land for non-retail commercial development.
- vii) There are no additional benefits to the existing shopping park that could be derived from the HUT proposals that could not be achieved through the development securities proposals. The Development Securities proposal will benefit the shopping park by providing a source of additional car parking.
 - viii) The HUT application proposal are of a regional scale, will result in the closure of a multiplex cinema in Chester and will draw trade from a significant geographical area. For a settlement the size of Broughton it is not sustainable
 - ix) The HUT application proposals are wholly inadequate in terms of car parking provision such that if the application was approved, there would be a significant overspill of car parking on the surrounding roads, raising issue of highway safety.
 - x) The Development Securities application provides a comprehensive development solution for all the land located to the north of the shopping park that has either been granted planning permission or allocated for development. The proposal on the Development Securities site provide a holistic solution with a range of uses consistent with the development plan allocation which will be of benefit to residents and businesses in Broughton and the local area, would complement the retail function of the park, would lead to a scheme of highway improvements and which will not prejudice any future retail development on the shopping park.

7.08 **Background**

For Members information there is a very significant and relevant background of planning history at this location which is referred to in paragraph 5.00 of this report. In summary part of the site the subject of this planning application (approximately 1.4 hectares) or 44% of the site adjacent the roundabout) was part of a number of sites granted outline planning permission in 2006, for an expansion of Broughton Retail Park, commonly referred to as Phase II.

7.09 The Phase II development comprises some 18,500 sq.m. of A1 retail floorspace which was linked by condition to the requirement for a new A55 interchange which would allow traffic from Broughton Retail Park to join the A55 westbound carriageway. These two planning applications (the retail park and the interchange) were granted permission and linked by phased planning conditions and a legal agreement. The original permissions (037891 & 040534) were later varied on two separate occasions to create new planning permissions, the most recent of which were granted in outline in December 2008

(045215 & 045216). Legal advice has been obtained, confirming that in the subsequent period, it is only the deadline for the submission of reserved matters that has expired and on the basis that the development should be implemented within 5 years of the decision it is possible prior to December 2013 to extend the deadline for the submission of reserved matters.

7.10 **Planning Policy**

The Planning and Compulsory Purchase Act 2004 states at S38(6) that “If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

7.11 The Development Plan is therefore the starting point for the consideration of both this application and the competing application (049857) also reported to Members as part of this Agenda.

7.12 For Member’s information the site is located outside of any identified town or district centre and settlement boundary as defined in the adopted Flintshire Unitary Development Plan (UDP). Within the 2003 deposit draft of the UDP, a proposal was made for a non-retail commercial allocation to the North of Broughton Retail Park (S1(10)). At the time the UDP was placed on deposit Flintshire County Council were in discussions regarding the Phase II expansion of the park. It was anticipated that the proposed allocation (S1(10)) would make provision for future non-retail needs of the Park beyond the Phase II development.

7.13 The allocation (S1(10)) was the subject of representations of objection including by both British Land and Development Securities and subsequently was the subject of consideration by the Planning Inspector at the UDP Public Inquiry in 2007-08. It was concluded by the Inspector in relation to allocation S1(10) that:-

- i. The allocation for non-retail commercial use represented planned growth and does not conflict with the UDP strategy to the detriment of town and district centres.
- ii. The principle of Phase II retail park expansion is accepted.
- iii. That the allocation S1(10) (later re-numbered to S1(6)) should be amended in light of the Phase II planning permission and amended in light of logical changes to the Greenspace designation (L3(5)) as uses accepted at the Public Inquiry.
- iv. That the UDP should make it clear within its glossary what constituted non-retail commercial development.

7.14 The UDP Inspector also considered whether Broughton Retail Park should be included within the Broughton settlement boundary. It was however concluded by the Inspector that the “Retail Park is a built up

area in its own right and in my opinion it does not necessarily follow that it has to be included within the Broughton settlement boundary". The Inspector's rationale for this approach was that to include the Retail Park within the settlement boundary would in all likelihood encourage further development to the detriment of designated Flintshire Towns and District Centres. As part of this site the subject of this application lies outside the non-retail allocation, the proposed development has been advertised as a departure to the adopted Unitary Development Plan.

7.15 If it were simply a case of assessing the competing applications on the basis of their degree of compliance with the development plan alone, then given the part allocation of the Development Securities application for commercial uses then it should be considered preferable to the HUT application under consideration in this report. However, it is not as straight forward as that particularly given the directly competing nature of the main elements of each scheme, namely a multiplex cinema, which brings into play the need to compare the two schemes on the basis of other material considerations that define the specific context here for how each of these applications should be compared and judged, over and above their status in the development plan.

7.16 **Main Planning Issues**

It is considered that the main planning issues can be summarised as follows:-

- a. The principle of development having regard to the planning policy framework.
- b. Comparison of proposal with competing application for a similar development at this location (see report 049857).
- c. Adequacy of access to serve the development.
- d. Impact on ecology.
- e. Adequacy of drainage system to serve the scale of development.

7.17 **Principle of Development**

The proposed development is anchored by a multi-plex cinema and hotel, my understanding being that without these key elements the proposal would not be a viable proposition. It is therefore these two uses that I will consider as the principal proposals in this policy assessment.

7.18 UDP Policies T2 (Serviced Tourist Accommodation) and STR11 (Sport Leisure & Recreation) are therefore appropriate and relevant to the determination of this application.

7.19 UDP Policy T2 is clear that "Serviced Tourist Accommodation" including Hotel's should be located within defined settlement boundaries unless the proposal is for an extension of an existing Hotel

or as part of the conversion of existing building. In this case the proposal is for a new build hotel outside of any defined settlement boundary and appears to be contrary to the provisions of Policy T2. In considering the advice of the Inspector regarding the location of Broughton Retail Park and its character as a built up locality it is my view that the approach of T2 to resist new hotels in the open countryside where such development can have a detrimental impact on the open character of otherwise undeveloped locations is not applicable in this particular instance. Importantly the allocation of part of this land for a non-A1 commercial use lends itself to a hotel development which would undoubtedly be valuable and complementary to the economic and employment importance of the locality, i.e. the Broughton British Aerospace Facility.

7.20 With regards the cinema, this is an appropriate town centre related use which benefit their operators and their users from being in highly accessible locations i.e. Town & District Centres. The Unitary Development Plan contains no specific policies with regards “Cinemas” however it is reasonable to interpret the intentions of the Plan that a Cinema is a type of “Leisure” development and as such the principle land use policies of relevance are STR11 “Sport, Leisure and Recreation” and SR1 “Sports, Recreation or Cultural Facilities”.

7.21 Policy STR11 “Sport, Leisure and Recreation” requires in criterion a. “.that new facilities are of a scale and type appropriate to the locality, and in the case of major development proposals, adopt a sequential approach to site location whereby town and district centres, then edge of centres, are considered and discounted before consideration is given to other sites.” This policy approach is supported in Policy SR1 where-in criteria a. requires that “leisure uses best located in town centres adopt a sequential approach to site selection utilising suitable sites or buildings within town centres, or where this is not practicable, they utilise a site/building within settlement boundaries as close to the town centre as possible.” Policy SR1 also states that “In the case of Leisure developments outside the defined town centres, applicants will be required to demonstrate a need for the facility.” The reasoned justification for Policy SR1 in paragraph 15.7 of the adopted Unitary Development Plan states that “It is intended that this policy should cover formal leisure developments such as public halls, libraries, and museums and sports facilities such as stadiums, pitches and pavilions.” Given these examples, it must be the case that Cinemas are considered to be a formal Leisure development in the same way, and as such Policy SR1 is therefore applicable to such developments.

7.22 It is my view that this proposal for a 6 screen multiplex cinema is, for the purposes of this policy assessment, a “major leisure development proposal” which should ideally be located within a town or district centre. Given that the proposal is made outside of any identified town or district centre it is necessary to apply two key tests in assessing this proposal the first being the “Need for a Cinema” (Policy SR1), and

the second is the Sequential Test (Policy STR11 and SR1).

7.23 **The Need for a Cinema**

The applicant has not provided any assessment on the need for this facility on the basis that they consider that “given the allocation of part of the application site in an up to date development plan for non-retail uses (including cinema, hotel and restaurants) that it would be inconsistent in these circumstances to establish a demonstration of need”.

7.24 The competing application on the agenda (049857) as submitted by Hercules Unit Trust however has been the subject of an assessment of need and sequentially preferred sites. It is therefore considered appropriate and necessary as part of considering this application to consider some of the relevant points from this parallel exercise, in relation to this proposal by Development Securities.

7.25 **The Qualitative Assessment of Need**

At present there is only one cinema in Flintshire, located at Theatre Clwyd, Mold. Theatre Clwyd however only has one cinema screen and generally has one screening a day. This is recognised as being a very different type of cinema facility than the commercial multi-plex cinema proposal.

7.26 Beyond Theatr Clwyd, there are commercial multi-plex cinemas in Ellesmere Port, Chester, Wrexham, Prestatyn and Rhyl all of which draw film going audiences from Flintshire. This draw of custom from Flintshire to cinemas outside of the County is likely to generate unsustainable vehicular trips to the detriment of the environment. It is therefore accepted that there is a qualitative need for a cinema in Flintshire. Indeed such a facility would have a positive benefit to meeting the viewing needs of Flintshire residents; to providing local employment and investment opportunities in Flintshire; and reducing trip lengths and associated environmental impact. In correspondence Development Securities have made it quite clear that the two applications are considered to be competing proposals confirming my view that there is only need for one new cinema in Flintshire at the present time.

7.27 **The Sequential Assessment**

In considering this application an assessment has been undertaken by Officers of alternative preferred sites within a Town or District Centre which would be large enough to accommodate a cinema proposal (1 hectare) and available either now or within the next 12 months to deliver the proposal.

7.28 On the basis of the above a review has been undertaken of available sites in the County where the greatest potential exists to accommodate a cinema at sites within town or district centres, based on recent and current discussions with landowners and developers.

Six sites with potential to accommodate the proposal were identified and have been considered as follows:

1. The Former Kwik Save Site in Mold Town Centre. Ongoing discussions with the landowner indicate that it is anticipated this site will be developed for a Food Supermarket and that there will be no space for any other uses even if the site was to be enlarged.
2. The Land Adjacent Buckley Precinct in Buckley Town Centre. The Buckley Masterplan has ear-marked this land for a new Food Supermarket and it is anticipated that there is little potential, given the constraints of the continued need to accommodate public car parking, to facilitate any other development on this site. Therefore this site is not available for a Cinema use at the present time.
3. The Land to the South of Brunswick Road in Buckley Town Centre. This land was earmarked for an unspecified "Leisure" use in the Buckley Masterplan. A planning application has recently been approved subject to a S106 agreement for the expansion of the Co-operative food store which proposes to use the land to accommodate the food store extension.
4. The Civic Centre and associated uses in Connah's Quay District Centre. This site is unlikely to be available in the short to medium term (at least 5 years) given the need to secure agreement for its release from relevant multiple landowners.
5. The existing/former Maisonettes in Flint Town Centre. The Flint Town Centre Masterplan is driven by a desire to replace the existing public sector accommodation in the "Lea Walks" and "Castle Walks" Maisonettes. Demolition of the "Lea Walks" began in September 2012 and it is anticipated that the Maisonettes will be cleared by mid 2013. The land is required for new housing development to, in part, re-home decanted residents from the Maisonettes. Therefore the land at the Maisonettes is not available for a Cinema.
6. The former Morrisons Site in Saltney (edge of centre site). The site has been the subject of a planning application for some 4,500 square meters of A1 comparison goods floorspace which was granted planning permission subject to a S106 in July 2012. The permitted retail units are currently being marketed. This site is not available for a Cinema use at the present time.

7.29 Given the above the lack of a suitable sequentially preferred site within a defined town or district centre means that it is appropriate to consider that the out of town Broughton Retail Park may be the most appropriate location for the proposed development.

- 7.30 Clearly the non-retail allocation at Broughton has been the subject of a Public Inquiry and subsequent changes recommended by the Inspector. Of relevance is the fact that the Inspector has recommended retention of the Allocation S1(10) (later re-labelled S1(6)) within the UDP for non-retail commercial development. It is also clear however that in confirming this allocation on the edge of the Park, the UDP Inspector was aware that opportunities for development within the Park had been exhausted by virtue of the Phase II extension permission, which is in the same location as HUT's present application, and which the Inspector considered to be a "fait accompli".
- 7.31 This raises two further points about where commercial development can and should take place at the Shopping Park. Firstly, in considering the Phase II permission as a "fait accompli" the UDP Inspector accepted that the principle of development (albeit retail) had been established within the confines of the existing Park, and that following on from this development, any future development could only take place on the edge of the Park, hence the allocation of S1(6). However, in the unlikely event that the Phase II extension is to proceed it is reasonable in planning terms to compare the HUT application which sits on its footprint, with the competing Dev Sec application, part of which is covered by the allocation S1(6). This requires consideration of all material factors over and above the part allocation of one of the sites, a comparison of course that the UDP Inspector was unable to make, notwithstanding the fact that she saw a need for commercial development to support the Park, but was limited in her consideration of where that should be. No such limitations exist now to prevent a fair comparison of sites, and indeed the competing cinema elements of each application require a broader comparison to be made in order to arrive at the best location for the development, rather than one where the UDP was limited in terms of site selection.
- 7.32 Following this therefore it is considered that if no sequentially preferred sites existed within Flintshire town and district centres, that the proposal for a cinema on the allocation S1(6) would be acceptable in principle on that part of the site within the allocation. However not all of the site is within this allocation and for this reason this application has been advertised as a departure from the Development Plan and needs to be compared on the basis of other material factors with the competing application submitted by HUT.
- 7.33 **Comparison of Proposal with Competing Application (049857)**
Given all of the above, the Development Securities proposal has been compared against the competing proposal from HUT because despite the Development Securities application's degree of plan compliance, there are other material considerations over and above the weight to attach to UDP compliance, which set the two proposals apart. When compared to the HUT proposal it is considered that:

- the HUT proposal is more complementary to the existing retail park given that there is land available and suitable within the confines of the existing shopping park and therefore where the principle of development within the confines of the park has already been established;
- The redevelopment of this brownfield land within the Shopping Park itself allows for direct vehicular and pedestrian linkages which would be of direct benefit to shoppers at the retail park and to existing traders and would boost general trading conditions on the Park;
- From a visual aspect the HUT proposal creates an easily readable sense of visual enclosure to the existing site, where in contrast the Dev Sec proposal is an obvious peripheral extension to the existing Shopping Park, turning its back on the existing Park given the only indicated means of access from Chester Road;
- In sustainability terms whilst objectors have raised the future closure of a facility in Chester as a result of permitting the HUT application, and its impacts in terms of unsustainable traffic movements as staff and customers travel to Broughton, I am of the opinion that whilst regrettable, closure of a named operator elsewhere is a market driven decision and cannot be material to the consideration of the HUT application, nor for that matter the Development Securities application; The commercial decisions of business such as cinema operators are outside the ability of the Local Planning Authority to determine or control and therefore in planning terms can be given little weight.
- Reference has been made to the unsustainability of such a development on Broughton, however, the sustainability argument can be assessed in a number of ways, for instance whilst people may travel from outside the catchment area to visit a cinema site, conversely others currently leave the County to go to the cinema i.e. most cinema goers who are Flintshire residents; then on sustainable grounds these journeys will potentially be reduced – the net effect being Quid Pro quo.
- Policy S3 of the UDP entitled “Integrating New Commercial Development” seeks to reduce the need to travel and to promote more sustainable forms of transport. This aim has significant relevance to commercial development. New commercial development should integrate with existing commercial environments ensuring that the site is within easy walking distance of existing commercial developments and other facilities and link to existing transport interchanges. As regards the proposed developments, when compared on this basis it is considered that there is a high degree of visual relationship and physical connectivity between the proposed Cinema in the HUT scheme and the existing Retail Park as well as the existing Public Transport Interchange within the Park

(near to the Tesco). However in the case of the competing proposal by Dev Sec to the North of the Retail Park, it is considered that there would be a degree of physical separation which would not achieve the UDP aims in ensuring that the new development was as integrated as it could be within the Park itself.

- The Phase II development has not been and is unlikely to be implemented and as such it is sensible, logical and appropriate to develop out the Retail Park before expanding the Park further. Indeed that is the sequence of land use considered by the UDP Inspector.

7.34 It is acknowledged that in the event that Phase II had been implemented; and if no sequentially preferred sites existed within Flintshire town and district centres; that the proposal for a Cinema on the Allocation S1(6) could have been acceptable in principle. However given that Phase II has not been implemented and given that there is previously developed land available as well as suitable capacity within the confines of the retail park it appears in my view that the development of S1(6) to the North of Broughton Retail Park is premature, in that the present needs of the park can be met through the redevelopment of existing operational land. Indeed the redevelopment of this land within the Shopping Park itself allows for direct vehicular and pedestrian linkages which would be of direct benefit to shoppers at the retail park and to existing traders and would boost general trading conditions on the Park. Clearly the UDP defines Broughton Retail Park as an Out of Town Retail Park and the Shopping Centre Hierarchy of the County and quite rightly affords no protection to the Retail Park. However, in a situation where a complementary development to the retail park should be either incorporated actually within the Retail Park or on a separate site, I believe the wider principles of reducing the need to travel, promoting accessibility and accommodating complementary development set out in Policies STR1 “New Development” and S3 “Integrating New Commercial Development”, are of key sustainability importance.

7.35 In summary it is considered that in the case of the Hercules Unit Trust application (049587) that this is previously developed land, that this has a high degree of visual relationship and connectivity between the proposed cinema and the existing Retail Park, and existing Public Transport Interchange (near the Tesco store). However in the case of the site to the North of the Retail Park it is considered that there would be a significant degree of physical separation which would not achieve the UDP aims and objectives in ensuring that the new development was as integrated as it could be within the Park itself. The Phase II development has not been and is unlikely to be implemented and as such it is logical and sustainable to locate the competing principal land use, i.e. the cinema, within the confines of the Retail Park, before expanding the Park onto undeveloped and only part allocated greenfield land.

7.36 **Deliverability**

In considering this planning application and in particular the issue of “Availability” as part of the Sequential Assessment, the issue of “Deliverability” has been raised which requires some consideration. First and foremost it is important to state that “Deliverability” is a consideration for the Local Planning Authority in that the Local Planning Authority must have the confidence in granting planning permission that the permission can and will be implemented. In this regard it is important for the Council to take a “reasonable approach” which is mindful of the ability of the development to be delivered. For example in the Sequential Assessment in such an instance that a sequentially preferable site was identified it would be important for the Council to be reasonable in assessing the suitability and availability of the site to accommodate the proposed development and the development to be delivered within a reasonable timescale.

7.37 Supporting information from the applicant’s agent recognize that whilst Hercules Unit Trust have a named cinema operator as part of their proposals, three main cinema operations have expressed a strong desire to open in Broughton. I have been advised that Development Securities had previously been in discussion with the cinema operator named as part of the HUT submission but following pressure from the competitor applicant in relation to other commercial deals have indicated that they no longer support the Development Securities proposals. It has been confirmed however that this situation could change were this application (049943) to be successful.

7.38 In addition the applicant’s agent has advised that “there is strong interest in the restaurant floorspace proposed, including for the drive thru restaurant where terms have been agreed and for the budget hotel which has always been supported by Airbus”. I therefore consider that should planning permission be granted for this application, from an end user interest perspective Development Securities could deliver the development.

7.39 **Adequacy of Access**

Although submitted in outline, the indicative site layout plan shows access to the site being obtained from the A5104 Chester Road. Discussions have however taken place with the applicant’s agent to clarify whether it would be possible to serve the site from the existing service road which is located to the rear of the existing Tesco Store. It is understood however, that there are a number of legal issues over the interpretation of certain access rights from the service road, which would not allow this option to be confirmed at this stage.

7.40 Notwithstanding the above a full and detailed Transport Assessment has been submitted by the applicant’s highway consultants. For Members information, this has been reviewed and assessed by both

the Head of Assets & Transportation and independent highway consultants. As a result it has been concluded that the proposed development would not lead to any adverse impact on the existing transport network and that the principle of development is acceptable subject to the completion of a Section 106 Obligation and imposition of planning considerations.

7.41 **Ecology**

Consultation on the application has been undertaken with the Countryside Council for Wales given the proximity of the site to the Great Crested Newt Reserve, created as mitigation, for the loss of habitat associated with the development of the shopping park. For Members information, there is no objection to the principle of development subject to conditions/obligations to safeguard the habitat during the construction phase of any development.

7.42 **Representations Received**

A number of points have been raised by objectors to the scheme and have been addressed in the body of this report, however, I considered that it is important to review for Members final comparison the summary objections received from the applicant for the competing proposal to this scheme (HUT) as set out earlier in section 4.01, as well as my final response to those, as this serves to summarise the key differences identified in considering the two applications, that have led me to my respective conclusions and recommendations on each application.

7.43 In response to the points raised, I respond and conclude as follows:

- The Development Securities application does not have the full support of the Development Plan for the reasoning detailed above, i.e. a significant part of the site is outside of the allocation for such development and having been considered as part of the Plan process was still not allocated in the adopted UDP. Whilst I accept that the HUT application is also contrary to the Development Plan, other significant material considerations detailed earlier in this report, do in my opinion as part of a balanced assessment, favour the HUT scheme which would not undermine nor go to the heart of the recently adopted UDP, nor advice given in Planning Policy Wales. Without the competing Cinema element, the remaining uses proposed by the Dev Sec application may be considered acceptable in a revised application context;
- Both the HUT and Development Securities applications have indicated that their sites can be delivered via named operators. The deliverability of either of the proposed developments as regards the ability to get a named operator “on board” has not been a major material factor to the consideration of the applications, however, the reality is that the HUT application

appears as a matter of fact to have a named operator who wants to implement that scheme in the very near future.

- It is accepted that the final position of the access to the Development Securities site has yet to be fixed and is still subject to legal clarification, however, at this moment in time the most likely access, and the only one to which Members can attach any certainty of implementation, does appear to be onto the Chester Road as indicated in their indicative details submitted with the application. In this context the resultant consideration of the Development Securities application is of a scheme that would be accessed from outside of the current park via a separate entrance and therefore if approved would turn its back on the existing shopping park, thereby not providing for as acceptable a degree of integration with the present arrangement and function of the park, as would the HUT scheme;
- The presence of the restrictive covenant on part of the Development Securities site has not been a material planning consideration in the assessment to either application for cinema development.
- The benefits to be derived from either application for cinema development on the existing shopping park are finely balanced, as set out in the assessment of material considerations detailed earlier in this report; however, on balance the HUT scheme is considered the more acceptable proposal in planning terms. For the reasoning given in this report, parking for the overall shopping park is considered to be adequate having assessed the evidence submitted with the HUT application and therefore any potential benefit from overspill parking facilities on the Development Securities site is not considered to be sufficiently materially significant to alter the acceptability of the HUT scheme, as it is already acceptable from a parking perspective.
- In scale both applications are for multiplex cinemas with ancillary/complimentary development i.e. they are both large scale developments. Whilst the Dev Sec application suggests a six screen multiplex cinema which the applicant considers 'local' in scale, they do not define the extent of 'local' which could still draw on a very large urban population within a five or ten minute drive time of the site. In addition it is understood from Dev Sec that one cinema operator that has expressed an interest in their scheme subject to planning permission, has suggested a requirement for up to nine screens which would set the Dev Sec proposal at a very similar scale to the HUT application, thereby negating their own objection. The future closure of a facility in Chester whilst regrettable is a market driven decision and cannot be material to the consideration of

the HUT application, nor for that matter the Development Securities application. (As per point 4 at paragraph 7.33 of this report.) Reference has made to sustainability of such a development on Broughton, however, the sustainability argument can be assessed in a number of ways, whilst people may travel from outside the catchment area to visit a cinema site, conversely others currently leave the County to go to the cinema i.e. most cinema goers, then on sustainable grounds these journeys will be potentially reduced – the net effect is Quid Pro quo.

- Given the competing elements of each scheme both the HUT application and the Development Securities application in part were contrary to the Development Plan, however significant weight attaches to other material planning considerations as detailed in this report, which has led me to conclude that on balance the HUT application is the more acceptable in planning terms and better than the Development Securities proposal. As far as prejudicing any future retail development on the Shopping Park is concerned, given the out of town location of the Park and its non-designation as part of the retail hierarchy in Flintshire, any future retail development would not necessarily be acceptable when considered against the relevant policies of the adopted UDP and PPW.

8.00 CONCLUSION

- 8.01 In conclusion it is my view that following assessment of the Hercules Unit Trust and the Development Security Proposals “there are good reasons why Flintshire County Council should choose to approve only one application at this time. For the reasons set out above in this Policy Assessment it is fair to say that neither of the two application sites are the ideal locations for this proposed development given that neither are within a defined town or district centres. However at this time it is reasonable to conclude that there is a need for this facility and given the need has been demonstrated it is necessary to accommodate the proposed development in most appropriate location on a site that is capable of delivering the proposed scheme within the appropriate timeframe.
- 8.02 Of the two proposed locations for the Cinema the Hercules Units Trust site is well related to the existing Retail Park and provides good opportunities to link existing public transport interchanges and pedestrian routes to the direct benefit of the retail park users and traders. The Development Securities site in contrast has been part-allocated in the UDP for non-A1 commercial development which will in all likelihood be developed at a suitably appropriate future point to meet future complementary retail park needs. However at this time it is important to reiterate that as there exists appropriate capacity for

complementary development opportunities within the boundaries of the existing retail park, and that it is logical and sustainable that this land should be developed out first before allowing the Retail Park to expand North of the service access road. As such this follows the same sequence of development in and around the Park as that considered by the UDP Inspector.

- 8.03 For the reasoning given above and on balance having regard to the Cinema element of the Development Securities proposal, is not considered to be acceptable given a) the likely capacity and need for only one multi-plex cinema in Broughton; and b) the existence of a competing application on the agenda (049857) which achieves a greater degree of integration with Broughton Retail Park and has greater associated complimentary benefit for the existing retail park. I therefore recommend accordingly.
- 8.04 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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