

FLINTSHIRE COUNTY COUNCIL

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

DATE: **WEDNESDAY 17TH APRIL 2013**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **FULL APPLICATION - MULTIPLEX CINEMA, RESTAURANTS (5) AND ASSOCIATED WORKS AT BROUGHTON SHOPPING PARK, BROUGHTON, CHESTER**

APPLICATION NUMBER: **049857**

APPLICANT: **HERCULES UNIT TRUST**

SITE: **BROUGHTON SHOPPING PARK, BROUGHTON, CHESTER**

APPLICATION VALID DATE: **18/06/2013**

LOCAL MEMBERS: **COUNCILLOR W. MULLIN**

AJAGENT WARD MEMBERS
COUNCILLOR D. BUTLER
COUNCILLOR M. LOWE

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

REASON FOR COMMITTEE: **MAJOR DEVELOPMENT, LAYOUT, TRAFFIC IMPACTS**

SITE VISIT: **YES**

1.00 SUMMARY

1.01 The proposal is full planning application for a multiplex cinema, 5 associated restaurants and associated works at Broughton Shopping Park. The site is currently used for parking but has had an historical planning permission for retail development. The issues for consideration are the principle of development/planning policy context, impacts on visual amenity, impacts on residential amenities, highways, ecology and drainage.

2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION,

SUBJECT TO THE FOLLOWING:-

- 2.01
1. Five year permission
 2. Carried out in accordance with submitted details
 3. Samples of external materials to be approved beforehand
 4. Detailed scheme to be submitted and approved for the footway link to adjacent to A5104 and completed to an agreed timeframe.
 5. Facilities to be provided and retained for loading/unloading parking and turning of vehicles in accordance with a submitted and approved scheme
 6. No development to commence until submission and approval of the Construction Traffic Management Plan
 7. Submission and approval of a Full Travel Plan and implementation of the scheme within 6 months of the occupation of the development
 8. Submission and approval of a phasing plan for the infrastructure works
 9. Removal of permitted development rights for the hosting of external events and fairs on existing car park
 10. Submission and approval of a strategy to manage and monitor the provision of staff parking within the development
 11. Watching brief for Great Crested Newts
 12. Surface water drainage details submitted and approved
 13. Submission and approval of details regarding minimising light spillage
 14. BREEAM compliant
 15. Submission for approval of a landscape scheme
 16. Implementation of approved landscape scheme
 17. Position & design of litter bins outside of the building.

3.00 CONSULTATIONS

3.01 Local Member

Councillor W. Mullin

Requests the application be referred to Planning Committee due to concerns about traffic movements and the improvements of bus shelters that will be erected, including lay-bys. Requests a Committee Site Visit to allow the committee a good understanding of the layout and size of the development.

Adjacent Ward Members

Councillor D. Butler

Requests the application be referred to Planning Committee with a Committee Site Visit as it is a major prestigious site and there would be lots of transport impacts.

Councillor M. Lowe

Requests the application be referred to Planning Committee and Committee Site Visit as it is felt committee should discuss the matter

and the implications on traffic.

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 notes the proposal to replace the lost car parking spaces for staff use but questions how this will be enforced. The Council would also note that this is yet another development in this location which highlights the need for a full interchange on to and from the A55.

Head of Assets and Transportation

No objection subject to conditions

Environment (Rights of Way)

No observations

Head of Public Protection

No objections as regards noise

Welsh Government Transport

Does not wish to issue a direction

Welsh Water/Dwr Cymru

No response received at time of writing report.

Environment Agency

No objection subject to condition

Airbus

No aerodrome safeguarding objection, however, condition should be added to reduce light spillage.

SP Powersystems

No objection. Advise applicant of plant/apparatus in area.

Civil Contingencies Manager

No objection

Clwyd-Powys Archaeological Trust

No archaeological implications

Countryside Council for Wales

No objections

4.00 PUBLICITY

4.01 Press Notice, Site Notice, Neighbour Notification

The proposed development has been advertised by way of press and site notices and neighbour letters. 14 letters/emails have been

received , 6 supporting the scheme and 8 objecting which can be summarised as follows,

The letters of support are summarised as follows,

- will bring facilities /activities to the site and Broughton
- is served by good road linkage
- would bring much needed employment and boost local economy
- will enhance the shopping park
- proposed location is under used and therefore shouldn't have major impact on parking and the increased pedestrian walkways compliment what has already been put in place

The letters of objection are summarised with the following general points raised as follows,

- concerned over noise pollution from cinema particularly in evenings/night, in addition to construction noise
- will generate more traffic and create congestion and more danger locally
- non retail use will be detrimental to the area
- would be detrimental to existing cinemas which already serve the area
- there are sufficient restaurants/pubs/cafes in the local area
- car parking is already at capacity on the park
- questions the need for a cinema and restaurant development
- questions the proposed public transport improvements as a result of the development
- increased risk of anti social problems late at night by those attending the site
- Insufficient car parking is a known problem on the retail park as evidenced by a recent refusal (ref. 045911) with the HUT proposal leading to an overall reduction in public parking
- questions the adequacy of proposed levels of car parking and the use of service yards for staff parking (which has not been justified as regards demand), which almost doubles parking from 163 to 312, giving rise to health & safety issues and also in practice is unlikely to be utilised by staff who will continue to park within the main customer car parking area thereby adding to the existing problems of car park congestion and overspill onto the surrounding highways (third contention is supported by an independent Safety Audit of the HUT proposals from Madhavan Design which clarified 13 highway safety problems (9 of which are high risk) including pedestrian facilities in the service areas and limited manoeuvring space for HGV's generated by additional parking. The Safety Audit issues raised need addressing which will have a knock on effect on provision of car parking and adds weight to the refusal of planning permission. There would also be a reduction in public parking spaces (64

spaces)

- questions the robustness of HUT's parking survey taken in May 2010, two years out of date and during a non-peak period
- questions the principle of developing the site especially when an alternative application site for a similar proposal has been submitted to the north of the retail park which would meet need or commercial requirements to sustain the park and the other site complies with planning policy for such uses.
- questions the sustainability and scale of the proposal which would be likely to attract staff/customers via cars from a wide area.
- would lead to overdevelopment of the site with loss of structural planting and new areas of car parking and would not maintain or enhance the character and appearance of the existing landscape for the site contrary to the aims of Policy L1 of the adopted UDP.
- questions accuracy of submitted plans as an existing cycleway from roundabout R2 along the service road at the rear of the proposed cinema does not exist and cannot be relied upon to access the site

Other detailed Objections raised by the applicants proposing the competing scheme (Development Securities) included the following under specific headings,

Policy approach

The proposed development is unacceptable due to the availability of a site to the north of the retail park and which is currently an undetermined application before the council.

The proposed development is on a site where neither it or Broughton Shopping Park are allocated in the UDP for development at all and the shopping park is not a designated centre, as opposed to the development Securities application which has approx. 56% of its application site allocated for non-retail/commercial development under Policy S1(6) of the UDP

A material consideration is the history of the site to the north of the retail park. The western half of the development securities site was not allocated for development in the UDP as during the development plan processes it was understood the land was to be used for car parking to facilitate parking related to the shopping park. In allocating the remainder of the land north of the retail park for development it was intended for the land to be developed for non retail commercial development including leisure uses and is considered to meet a clear and demonstrable need for new leisure facilities in the Broughton area. In allocating the UDP allocation for the Dev Sec site the Council accept the principle of leisure development and that it will complement the shopping function of the park and that the two elements remain separate.

The Development securities application is entirely consistent with the allocation and is preferable in policy terms for the proposed uses than an unallocated site within the shopping park and as such there is no UDP basis for considering the HUT application is a better location for the leisure use or it is preferable.

The fact that the HUT application is on Brownfield land is of only marginal significance as the dev Sec land is partly on a site allocated for development and that the other part of the site has had planning permission granted on it for parking.

The HUT application site is not sequentially preferable to the Dev Sec site. The UDP allocated the Dev Sec application site in an out of centre location for commercial uses and the shopping park was not. In sequential terms, an allocated site in an out of centre location must be preferable to an unallocated site in an out of centre location.

Deliverability

The allocation of the land to the north of the retail park confirms there is a need for leisure uses, and whilst HUT have named operator, Dev Sec has confirmation from Vue who have expressed their wish to reach agreement with Dev Sec should planning permission be granted. The Dev Sec proposal has had strong interest for the restaurant floorspace with terms agreed with KFC and for a budget hotel. There is no doubt should planning permission be granted that Dev Sec could deliver the development.

The outline nature of the Dev Sec application cannot be used to doubt its deliverability and this route has been taken to allow greater flexibility over the occupiers' requirements. Also the outline application allows the precise arrangement for accessing the site to be kept open i.e. either from Chester Road or into the retail park itself. Access to the Dev Sec site has been shown to be accessed from Chester Road (although a reserved matter is required for all access details; however the aspiration would be to link into the retail park beside Tesco's subject to point of legal clarification.

The HUT sequential assessment is objected to where it concludes that the Dev Sec site is not available, suitable or viable when it is. The HUT application is flawed in both sequential and landuse policy terms.

The existence of a restrictive covenant on the council owned land known as "Katie Green land" relating to how it can be used is not a planning matter and will not prevent the development of the Dev Sec site as it is accepted by all parties that the land is no longer required for that purpose and the Council must also hold this view otherwise they would not allocated their own land for a use which does not

comply with the covenant.

Integration and Impact on the Shopping Park

It is not accepted the HUT application is better integrated into the shopping park. The Dev Sec site is in very close proximity to the shopping park and visitors to the site would be able to readily walk to the shopping park (or vice versa) – the distance is shorter between the Dev Sec site and Tesco's than the proposed HUT application site and some of the stores on the retail park. In any event pedestrian and potentially vehicular access will be available onto the retail park.

The Dev Sec development will provide 454 car parking spaces in accordance with council's standards, however the HUT application is relying upon the use of the existing shopping park car park together with new parking within service yards. Car parking surveys carried out by Dev Sec suggest very strongly that if the HUT application were to proceed there would be inadequate car parking at peak times resulting in parking on surrounding roads and a situation that could be made even worse if the remainder of the units on the shopping park installed mezzanines leading to traffic and highway safety issues (contrary to UDP policy AC18).

The adequacy of the car parking is a significant material consideration which weighs heavily in favour of approving the Dev Sec proposal and refusing the HUT application. A car park on the Dev Sec site would also benefit the overall shopping park at peak times.

Whilst not accepted as a legitimate planning argument, any weight given to the HUT application by the Council in regards to its need to enhance the viability of the shopping park is equally applicable to the Dev Sec proposal due to the flow of custom.

Granting planning permission for the HUT application removes the option for future retail development on the Broughton site.

The Dev Sec application equally includes for improvements to accessibility for the shopping park with a relocated/upgraded bus stop on Chester Road together with real time information display board outside the proposed HUT cinema and restaurants for local bus services which would integrate the leisure and retail development across the site and is sustainable.

Other Material Issues

The scale of the HUT proposal is more akin to a regional facility than a local facility as it will draw significant custom from over a wide area by car and it is questioned if Broughton is the most appropriate place for its location.

The approval of the HUT application would result in the closure of the only cinema in Chester resulting in increased travel for residents of the city who would have to either travel to Broughton or Cheshire Oaks and the likely redeployment of existing Chester based staff to Broughton, which is unsustainable, creates uncertainty as to whether the local highway network can deal with the increase in traffic, and contrary to national Planning Policy. The Dev Sec proposal is more local in scale as a cinema and would serve a much smaller catchment, more appropriate for the locality, would not result in the closure of existing facilities, would not lead to an increase in incoming traffic from Chester, would be within an allocated site and include a hotel which would help to serve existing businesses including Airbus and is in accordance with the Council's Tourism Strategy.

5.00 SITE HISTORY

5.01 The site has an extensive planning history since opening in 1999. 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 and 4 of planning approval 043751 relating to controls over junction improvements - Permitted 31st December 2008.

045216

Variation of conditions 3, 4 and 5 of planning permission 040534 relating to controls over junction improvements - Permitted 31st December 2008.

045911

Variation of Condition No's 3, 4, 9, 12, 33, 34 of planning permission ref: 045215. Refused 26th November 2009.

045912

Variation of Condition No's 3, 4 and 5 of planning permission ref: 045216.Refused 26th November 2009.

049943

Outline planning application for Outline - Erection of 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 currently undetermined and also presented to this committee as an agenda item.

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan

Policy STR1 New Development

Policy STR5 Shopping Centres and Commercial Development

Policy STR11 Sport Leisure and Recreation

Policy GEN1 General Requirements for Development

Policy D1 Design Quality, Location and Layout

Policy D2 Design

Policy D3 Landscaping

Policy D4 Outdoor Lighting

Policy D5 Crime Prevention

Policy D6 Public Art

Policy AC2 Pedestrian Provision and Public Rights of Way

Policy AC3 Cycling Provision

Policy AC4 Travel Plans for Major Traffic Generating Developments

Policy S3 Integrating New Commercial Development

Policy S6 Hot Food Takeaways, Restaurants and Cafes

Policy SR1 Sports, Recreation or Cultural Facilities

Policy EWP17 Flood Risk

Policy L1 Landscape Character

Planning Policy Wales

7.00 PLANNING APPRAISAL

7.01 The proposal is a full planning application for a multiplex cinema, 5 associated restaurants and associated works at Broughton Shopping Park. The site is currently used for parking but has had an historical planning permission for retail development.

7.02 In summary, the application is further detailed as follows:

- 3,900m² gross eleven screen multiplex cinema including a mezzanine projection floor of 562m²
- 5 restaurants with a total gross floor area of 1,719m²
- Reconfigured customer car parking and relocated/additional staff parking within service yard areas
- Accessibility related improvements, including enhanced

- provision for pedestrians and cyclists in addition to two off road bus shelters with real time service information
 - New off site footpath along Chester Road (south side)
- 7.03 In addition to the submitted drawings, the application is accompanied by a Planning Assessment, A Statement of Community Involvement, Transport Assessment, Design & Access Statement, Ecology Assessment, Landscape Assessment, Sustainability Statement and a Flood Consequences Assessment.
- 7.04 The application site is previously developed land which whilst currently in use as a car park to serve the overall retail park has been subject to a planning permission in the recent past for retail development related to the park. The site is level and is adjacent to the existing parade of shops that form the southern boundary to the site. To the immediate rear of the site is a service road beyond which is the A55, to the west of the site is the existing Tesco's Petrol station.
- 7.05 Within the Unitary Development Plan (adopted September 2011) the site is located outside of any identified town or district centre boundary and also outside of any identified settlement boundary. Whilst the proposed development is outside of a defined settlement it is not considered that this location is open countryside or has any special open or natural characteristics that require protection. The location is a built up area and is recognised in the region as a key driver of economic growth.
- 7.06 **The Principal Development Plan Policies**
The Planning and Compulsory Purchase Act 2004 states at S. 38(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".
- 7.07 The development plan is therefore the starting point for the consideration of both this application and the competing application (049943) also reported to Members as part of this agenda.
- 7.08 The proposed development has been advertised as a departure to the adopted UDP because the site is not allocated in the UDP for any specified use, and the shopping park is not part of the retail hierarchy, and nor is it within the settlement boundary for Broughton.
- 7.09 Whilst it is accepted that the proposed development is on a site where neither it nor Broughton Shopping Park are allocated in the UDP for development and the shopping park is not a designated centre, and therefore the principle of development on the site would run contrary to the adopted UDP, in the consideration of any planning application there are other material considerations which need to be assessed before concluding whether a proposed development is acceptable or

otherwise.

- 7.10 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.

Other Material Considerations

- 7.11 It is understood that the proposed cinema is the anchor without which there would be no proposal. It is therefore the cinema use that I will consider as the principal proposal of the policy assessment with the restaurants uses commented upon later in the report. (paragraph 7.25)
- 7.12 Ordinarily the proposed development is an appropriate town centre related use which benefits the 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 for the purposes of the UDP it is reasonable to interpret that a Cinema is a type of "Leisure" development and the principle land use policies of relevance are STR11 "Sport, Leisure and Recreation" and SR1 "Sports, Recreation or Cultural Facilities".
- 7.13 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 criterion 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 UDP 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." In this context it is reasonable to consider a Cinema to be a formal Leisure development and as such also reasonable to interpret the Policy SR1 as being applicable to such developments.

- 7.14 Following this and for the purposes of this policy assessment, it is considered that this proposal for an 11 screen multiplex cinema (plus ancillary A3 uses) is a “major leisure redevelopment proposal” which should ideally be located within an identified town / 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 is “Need for a Cinema” (Policy SR1), and the second test is the Sequential Test (Policy STR11 and SR1).

The Need for a Cinema

- 7.15 The applicant has considered the need for the cinema in the context of qualitative and quantitative terms.

a. The Qualitative Assessment of Need

- 7.16 The applicant identifies that at present there is only one Cinema in Flintshire, at Theatr Clwyd in Mold. Theatr Clwyd is a nationally renowned publicly owned theatre which stages theatrical performances throughout the year. In association with the theatre there is one cinema screen which generally has between one and three film screenings a day. Theatr Clwyd does show national film releases however the theatre occupies a market niche in showing many “Art House” and small British Film Productions. This is a very different type of Cinema Facility than the commercial Multi-Plex Cinema proposal.
- 7.17 Beyond the Theatr Clwyd there are commercial multiplex 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. Objections to the proposal have referred to the fact that the approval of the HUT application would result in the closure of the only cinema in Chester resulting in increased travel for residents of the city who would have to either travel to Broughton or Cheshire Oaks and the likely redeployment of existing Chester based staff to Broughton, which is unsustainable, creates uncertainty as to whether the local highway network can deal with the increase in traffic, and would be contrary to national Planning Policy.
- 7.18 Objectors have also stated that the Dev Sec proposal is more local in scale as a cinema and would serve a much smaller catchment, more appropriate for the locality, and would not result in the closure of existing facilities. Whilst it is arguable that the closure of the cinema in Chester could result in inward traffic to the County which would not be sustainable, there is an equally compelling case that it could potentially reduce vehicle trips outside the county and thereby assist the principle of sustainability. The potential loss of the cinema site in Chester whilst regrettable should not be a significant material consideration in the determination of this application especially when it

is accepted that there is a qualitative need for a Cinema in Flintshire. Indeed such a facility would have a positive benefit in meeting the viewing needs of Flintshire residents as well as providing local employment and investment opportunities in Flintshire.

b. The Quantitative Assessment of Need

- 7.19 The applicant has undertaken a Quantitative assessment for the Cinema proposal. Having examined National Planning Policy and Technical Advice Notes I am not aware of any standardised or recommended approaches to assessing "Quantitative Demand for a Cinema". It is evident from the applicant's Planning Statement that the quantitative assessment utilises data from National Data Sources including Dodone Research. The basis of the quantitative assessment appears to begin with an assumption of 2.78 visits/person in 2015; multiplied by the catchment head of population (in 2015); and average annual admissions per screen of (46,842) again in 2015. Using the above figures the applicant makes the argument that by 2015 there will be net capacity for 12 cinema screens in the County (taking account of the Theatr Clwyd Cinema Screen).
- 7.20 On the basis of my assessment (above) together with the HUT qualitative and quantitative assessment provided with the application, it is accepted that there is a need for a multi-plex cinema in Flintshire at this time.
- 7.21 **The Sequential Assessment**
The applicant was asked by Council Officers to look at 16 different sites from town and district centres across the County. The applicant has formalised this Site Selection Assessment into a report which has been submitted in support of their planning application. In assessing the potential for alternative sequentially preferred town & district centre sites the applicant stated that the site required was 1.9 hectares in size to accommodate a Cinema, several restaurants and car parking. The applicant inferred that this site area requirement assumed the potential for onsite shared parking arrangements such as those at Broughton Retail Park where there are some 2,300 car parking spaces at present. The applicant has stated that the Cinema is required by Cineworld which has an operational requirement to be in new accommodation by 2014 before its existing lease at Greyhound Retail Park expires in early 2015.
- 7.22 In assessing this proposal it is the Council's view that the applicant has overstated the site size requirements as in relation to town and district centres where there are many existing food and drink uses and also public car parking provision (at present there is free parking in all centres bar Mold & Holywell where there is a 20 pence charge). On this basis it would seem that the Cinema proposal could be accommodated on a site smaller than the required 1.9ha stated by the applicant. However it is accepted that the timeframe for

accommodating the Operator means that any sequentially preferable site should be available either now or in the next 12 months i.e. it is considered reasonable that a 12 month period be applied as the applicant cannot wait indefinitely for the ideal site to come forward, when other sites may be acceptable (subject to material considerations). National Planning advice in Planning Policy Wales refers to the economic imperative for the planning system to promote development, subject to the assessment of all applicable material considerations.

7.23 On the basis of the above the Sequential Assessment submitted by the applicant has been reviewed with a particular focus on sites 1-6 below which the Council considers could have the greatest potential to accommodate a Cinema. The Council's view on these 6 sites is set out below and is based on recent and ongoing discussions with landowners and developers linked to each site.

1. The Former Kwik Save Site in Mold Town Centre. Ongoing discussions with the landowner indicate that 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.
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. Whilst the land does not benefit from a road frontage it is very well related to a locally renowned music venue (the Tivoli) and located in a highly accessible location at the heart of Buckley, one of the largest towns in Flintshire. Unfortunately discussions with landowners revealed a reluctance to consider any use other than a Food Supermarket use. Indeed since those discussions a resolution to grant planning permission subject to the signing of a Section 106 agreement has been made, for the expansion of the Co-operative Foodstore which proposes to use the land to the rear of the Tivoli and Co-op for car parking to accommodate the foodstore extension (some 1,200 square meters).
4. The Civic Centre Site and associated uses in Connah's Quay District Centre. This site is earmarked for redevelopment within the Connah's Quay & Shotton Masterplan. The site in its entirety encompasses an operational public and private car park; an operating Police Station; the former FCC Civic Centre Offices (staff in process of being relocated); a former Co-Operative Foodstore and a former Peacocks Clothing Store

(both units now empty); an operating Public Library; and an operating Job Centre Plus. Whilst the process of bringing some of the land owners together to discuss redevelopment options began in 2011 Economic Development Colleagues advise that it continues to prove difficult to secure discussions with the Co-Operative and it may be that this unit is only leased by Co-Operative. It would appear that this site is unlikely to be available in the short to medium term (at least 5 years).

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 began in September 2012 and it is anticipated that the Maisonettes will be cleared by 2013 however the land is required for residential development as part of the replacement of existing public housing provision.
6. The former Morrisons Site in Saltney (edge of centre site). As part of pre-application discussions with the developer alternative uses were mooted but the developer was keen to move forward with a speculative A1 retail scheme. The site was then the subject of a planning application for some 4,500 square meters of A1 comparison goods floorspace. Planning Committee resolved to grant planning permission for this site subject to a S106 in July 2012.

7.24 In addition to the sites 1-6 above other sites within the applicant’s report have been reviewed in a planning as well as Economic Development context and it is considered that at the present time there are no alternative “Town or District Centre” sites available. Clearly in the event the Local Planning Authority were to choose to refuse this application in favour of a sequentially preferred site it would be necessary that the alternative site be “suitable” and “available” to deliver the proposed scheme within a reasonable timeframe. Unfortunately no such sequentially preferred site currently exists within a defined Town or District Centre in Flintshire.

7.25 As mentioned earlier in this report the proposed development whilst anchored by the cinema, also has complementary development including five restaurants and associated changes to the parking arrangements within the park (this issue is addressed later in this report under the highway implications). Policy S8 of the UDP does not preclude the level of restaurants outside of designated centres so long as the amenity of nearby residents is protected. In these terms that element of the scheme would not necessarily go against the policies of the Development Plan. However, the scheme is considered in its entirety as one entity and therefore is not considered compliant with the Development Plan as detailed at paragraph 7.08 of this report.

- 7.26 **The Land to the North of Broughton Retail Park (S1 (6))**
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 well be the most appropriate location for the proposed development. Indeed an allocation exists in the adopted UDP to the North of Broughton Retail Park (S1(6)) for commercial development, which is subject to the competing application 049943.
- 7.27 Clearly the non-retail allocation at Broughton has been the subject of a Public Inquiry and subsequent changes recommended by the UDP 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. A cinema use on this allocation is a commercial use as defined by the UDP definition of Commercial. 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".
- 7.28 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.
- 7.29 Following this therefore, it is considered that if no sequentially preferred sites existed within Flintshire town and district centres; the proposal for a Cinema on the Allocation S1(6) would be acceptable in principle, but on that part of the site **within** the allocation. However not all of the application site is within the allocation, and for this reason the Dev Sec application was also advertised as a departure from the development plan.

7.30 Given all of the above, the HUT proposal needs to be compared against the competing proposal from Dev Sec because despite the Dev Sec application's degree of compliance, there are other material considerations over and above the weight to attach to UDP compliance, that set the two proposals apart. When compared against the Development Securities application 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 businesses such as cinema operators are outside of the ability of the Local Planning Authority to determine or control and therefore a consideration given very little weight to in planning terms.
- 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 who 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 development, it is considered that there is a high degree of visual relationship and physical connectivity between the proposed Cinema and the existing Retail Park and existing Public Transport Interchange (near to the Tesco). However in the case of the competing site 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 implemented and as such it is sensible, logical and appropriate to develop out the Retail Park before expanding the Park further.

7.31 **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 LPA 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.

7.32 Development Securities have confirmed that they are still awaiting legal clarification on the access issue to the rear of Tescos and therefore whilst it may be possible for vehicular access to the site to be achieved from the existing retail park this cannot be confirmed at present. The reality is that in delivery terms whilst nothing is guaranteed, the HUT application would appear to be more deliverable within a reasonable time period to a committed cinema operator (notwithstanding the expressions of interest shown by cinema operators with the Development Securities site).

7.33 In summary and from the above assessment set in the context with the competing proposal it is considered that there are good reasons why the 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 centre. It is reasonable to state that there is a need for a facility of this type and given the need has

been demonstrated it is necessary to accommodate the proposed development in an appropriate location.

- 7.34 Clearly the submission of the two applications have required that the Local Planning Authority take an approach of comparison and contrast between the two applications. The evidence provided in support of the applications identified the need for one new cinema and it is clear from the approach of the two applicants that they view their proposals as competitive and not complementary. Of the two proposed locations for the Multi-Plex Cinema development the British Land site is immediately and physically well related to the existing Retail Park; the land has a context for development (Phase II Scheme); the land is previously developed land; and the site provides very 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 a relatively modest non-A1 commercial development. However at this time it is important to reiterate the point that so long as there exists appropriate development opportunity within the boundaries of the existing retail park for a complementary use (i.e., the Cinema) that it is sustainable and logical that this previously developed land should be developed out first before allowing the Retail Park to expand North of the Service Access Road.

Other Policy Based Aspects to the Proposal

- 7.35 As mentioned previously the propose scheme whilst being anchored by the cinema nonetheless will form part of a wider development including 5 restaurants. In consideration of this aspect of the scheme, UDP Policy S8 which relates to Hot Food Takeaways, Restaurants and Cafes, permits such development subject to criteria including impact on residential amenity, disposal of litter/waste and traffic/highway considerations. The subtext to the policy states that outside of designated shopping centres i.e. Broughton Retail Park, restaurants/cafes will be carefully treated to ensure the amenities of residents are protected.

As regards the application of the above policy I would comment as follows,

- **Impact on Residential Amenity**

It is noted that objections received refer to noise nuisance and general activity associated with the proposed use which would be detrimental to residential amenity. The Head of Public Protection has not raised any objections to the proposed development based on noise nuisance. The proposed development would in effect be an extension to the existing built commercial form at Broughton Retail Park which has no restriction of hours of operation, with Tesco's having operated 24 hours with no history of nuisance (check with PP). The proposed

restaurant uses (and for that matter the cinema uses as well) are considered to be located a sufficient distance from residential properties, with intervening development so as not to detrimentally affect the amenities of occupants of those properties.

- **Disposal of Litter/Waste**

The proposed restaurants are of the “sit down” variety and therefore the likelihood of litter/waste being a problem is limited, however, should Members grant planning permission then a planning condition should be attached requiring details for the positioning and type of litter bins to the front of the development to safeguard against litter/waste on the external car park to the overall site.

- **Highway/Traffic Considerations**

Highway aspects of the overall proposed development have been mentioned previously in this report and considered further below in a separate section to the report, where it is concluded that the proposed development (including the restaurants) would not be detrimental to highway/traffic safety.

Therefore when the restaurant element of the proposed development is considered against Policy S8 of the UDP it is considered compliant and acceptable in principle.

Highways

7.36 The proposed development would be located on land currently used as car parking. The highway aspects of the scheme can be summarised as follows,

- bus parking will be provided off the circulation roads servicing two new bus shelters with real time information to facilitate ease of accessibility for other road users and, the applicant maintains, for public safety.
- There will be dedicated timetable for Broughton Shopping Park
- The internal pedestrian infrastructure will be upgraded to include new public realm and dedicated pedestrian walkways.
- A revised staff parking strategy will move staff from parking in front of shop units to the under utilised service yards to enable an increase in turn over of car spaces.
- There will be an increase in the proportion of parent and child parking and disabled spaces from 4% to 10%, in line with FCC’s standards, and an overall increase of car parking provision across the site from 2323 to 2408.
- A new mini roundabout and entrance will be provided to ease access into the site and, the applicant maintains will ease congestion

Objections have been raised to the proposed development in regards

- 7.37 to the adequacy of the proposed parking for the overall retail park should the HUT application be approved. The Head of Assets and Transportation has sought the views of an independent external highway consultant to assess the adequacy of the scheme from a highways and parking perspective. That independent review did not raise any issues over the proposed level of car parking, the arrangements for that car parking, nor any detrimental off site implications on the wider highway network. The methodology used for assessing car parking on the site as independently reviewed was considered acceptable to the Head of Highways and Transportation and meets standards as set out in the Council's adopted LPG11 , which also details guidance in regards to sustainable elements to a proposal i.e. public transport, cycling, walking – which it is considered the proposal meets. The independent review also highlighted that peak car parking requirements for the overall site are unlikely to coincide with peak demands for the proposed development i.e. evenings. Staff car parking strategy as proposed would be subject to planning condition i.e. Full Travel Plan and monitoring/managing staff parking. As regards safety issues as they relate to the location of the staff car parking, this has been subject to a highways "Safety Audit" and found to be compliant.
- 7.38 The Head of Assets and Transportation in reviewing the scheme and assessing the independently sought highways opinion therefore has no objections to the proposal subject to conditions. At present the bus stop serving the site is not considered to be ideally located. The proposed new bus lay-bys with real time bus information are considered an improvement to public transport provision serving the overall site and are to be welcomed. The increase in overall parking for the site is marginal, however, Head of Assets and Transportation has included a planning condition that would require a full travel plan to be submitted and approved.
- 7.39 **Design and Appearance**
The proposed development would be contemporary in design and would include the use of metal cladding, timber veneer and glazed areas. The existing pedestrian accessibility across the site will be enhanced and strengthened with an improved north/south link which further aides integration of the proposal into the existing retail park. The proposed development would integrate into the existing built form and creates a greater sense of enclosure to the existing retail park.
- 7.40 Objections received refer to the proposed development leading to overdevelopment of the site with loss of structural planting and new areas of car parking and would not maintain or enhance the character and appearance of the existing landscape for the site contrary to the aims of Policy L1 of the adopted UDP. Whilst the proposed development would to lead to the loss of existing planting, new landscaping is proposed for the overall site which is to be subject to a condition attached to any grant of planning permission. In visual terms

the existing site is a car park and adds little visually to the locality, whereas the proposed development is a modern bespoke design which enhances the visual appearance of the retail park and the wider area.

7.41 The proposed development is therefore acceptable in design and appearance subject to a condition on the use of external materials and landscaping.

7.42 **Ecology**

The Countryside Council for Wales has not raised any objection to the proposed development and are of the opinion that the proposal is not likely to adversely affect protected sites or species. Due to the proximity of the ponds to the north and west of the shopping park where Great Crested Newts are found it is considered a watching brief for them should be attached to any grant of planning permission.

7.43 **Drainage**

The Environment Agency has not objected to the proposed development subject to appropriately worded planning conditions.

Representations received

7.44 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 (Dev Sec), 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.

7.45 The concluding points of objection raised by Development Securities are summarised as follows,

1. 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.
2. 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.
3. 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.
4. The absence of a named 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 Dev sec site.
5. The outline nature of the Dev Sec 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.
 6. 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.
 7. 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 Dev Sec proposal will benefit the shopping park by providing a source of additional car parking.
 8. The HUT application proposals 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
 9. 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.
 10. The dev Sec 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 Dev Sec 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.

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

- As regards points 1, 2 & 3 above, 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;

- As regards point 4 above, 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.
- As regards point 5 above, 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 Dev Sec 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;
- As regards point 6 above, 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.
- As regards point 7 above, 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 was not considered to be sufficiently materially significant to alter the acceptability of the HUT scheme as it was already acceptable from a parking perspective.

- As regards point 8, 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 they consider '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. (Refer to paragraph 7.30 point 4 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.
- As regards point 9, the parking and highway implications of the HUT application has been considered in detail in this report and are acceptable subject to conditions as detailed at paragraph 2.
- As regards point 10, 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 planning policy terms there is no doubt the proposed development is contrary to the adopted development plan, and s. 38(6) of the 2004 Act states determinations should be made in accordance with the plan unless material considerations indicate otherwise, however the other

material considerations highlighted and detailed above would lead me to conclude in a finely balanced assessment that the proposed development is considered acceptable in principle subject to the conditions stated 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.

Contact Officer: Declan Beggan
Telephone: (01352) 703250
Email: Declan.beggan@flintshire.gov.uk