

PLANNING & DEVELOPMENT CONTROL COMMITTEE

15 JANUARY 2014

Minutes of the meeting of the Planning & Development Control Committee of Flintshire County Council held in the Council Chamber, County Hall, Mold CH7 6NA on Wednesday, 15th January, 2014

PRESENT: David Wisinger (Chairman)

Councillors: Derek Butler, David Cox, Ian Dunbar, David Evans, Jim Falshaw, Alison Halford, Ron Hampson, Ray Hughes, Christine Jones, Richard Jones, Brian Lloyd, Richard Lloyd, Mike Peers, Neville Phillips, Gareth Roberts, Carolyn Thomas and Owen Thomas

SUBSTITUTIONS:

Councillors: Marion Bateman for Carol Ellis and Mike Lowe for Billy Mullin

ALSO PRESENT:

The following Councillor attended as local Member:-
Councillor Nancy Matthews – agenda item 6.1

The following Councillor attended as an observer:-
Councillor Haydn Bateman

APOLOGY:

Councillor Chris Bithell

IN ATTENDANCE:

Head of Planning, Development Manager, Planning Strategy Manager, Senior Engineer - Highways Development Control, Housing Strategy Manager, Senior Planners, Senior Minerals and Waste Officer, Planning Support Officers, Principal Solicitor and Committee Officer

125. **ANNOUNCEMENT BY THE CHAIRMAN**

The Chairman indicated that Councillor Ted Evans had passed away and asked those present to stand for a minute's silence.

126. **DECLARATIONS OF INTEREST**

Councillor Carolyn Thomas declared a personal interest in the following application as she was Chair of the Clwydian Range and Dee Valley AONB:-

Agenda item 6.1 – Restoration of Cambrian Quarry by the importation and recycling of inert materials at Cambrian Quarry, Glyndŵr Road, Gwernymynydd (050695)

Councillor Ray Hughes declared a personal and prejudicial interest in the following application as he was a Governor at Castell Alun High School:-

Agenda item 6.4 – Reserved Matters application – amended layout to include substitution of 15 No. house types and the addition of a

further 5 No. dwellings on land to the rear of Adwy Deg, Fagl Lane, Hope (051449)

In line with the Planning Code of Practice:-

Councillor Alison Halford declared that she had been contacted on more than three occasions on the following application:-

Agenda item 6.2 – Erection of a four bedroom detached dwelling at 37 Wood Lane, Hawarden (051234)

127. **LATE OBSERVATIONS**

The Chairman allowed Members an opportunity to read the late observations which had been circulated at the meeting.

128. **MINUTES**

The draft minutes of the meeting of the Committee held on 11 December 2013 had been circulated to Members with the agenda.

Councillor Richard Jones referred to the resolution to minute number 118 and asked whether a response had been received from Network Rail who had been given two weeks after the meeting to reply. The Development Manager advised that a response had been received which he felt had indicated that they were happy with the details, but that he would confirm this to Councillor Jones following the meeting.

Councillor Mike Peers referred to the last sentence in the first paragraph on minute number 120 where it was reported that he had left the meeting prior to the discussion of the item but had not been called back for the remainder. He felt that the process needed to be examined to ensure that Councillors who had left the meeting could return following the discussion of the relevant item.

RESOLVED:

That the minutes be approved as a correct record and signed by the Chairman.

129. **ITEMS TO BE DEFERRED**

The Head of Planning advised that none of the items on the agenda were recommended for deferral by officers.

130. **RESTORATION OF CAMBRIAN QUARRY BY THE IMPORTATION AND RECYCLING OF INERT MATERIALS AT CAMBRIAN QUARRY, GWERNYMYNYDD (050695)**

The Committee considered the report of the Head of Planning in respect of this application which had been the subject of a site visit on 13 January 2014. The usual consultations had been undertaken and the responses received detailed in the report. Additional comments received since the preparation of the report were circulated at the meeting.

The officer detailed the background to the report and explained that there was a long history of quarrying at the site which had existing and extant planning permissions. Operations ceased in 2000 and there was no restoration scheme currently in place for the quarry. The application involved the importation of inert waste materials for use in the restoration of Cambrian Quarry in order to make the quarry faces stable and safe. The application also involved the recycling of inert waste materials which would be exported off site for reuse elsewhere. Access to the site would be facilitated by the construction of a new internal access road, the widening of Glyndŵr Road, and the removal and restoration of the existing quarry access. It was proposed that the work would be undertaken in five phases, with the first four phases being to shore up the quarry slopes and the final phase would be required for landscape reasons. The proposed restoration would take between 6.5 and nine years. It was anticipated that the total quantity of material to be transported into Cambrian Quarry would be between 145,000 and 200,000 tonnes per annum. Approximately 30% of the material (45,000 to 60,000 tonnes) would be recycled and exported off site and 70% of the materials imported would be used in the restoration of the site. The proposal included locating the recycling plant within the quarry void initially during phase one at the most southerly location and then subsequently moving it to the north of the site but no higher than 287m AOD within the quarry void; this was below the quarry rim.

A new internal access road would be constructed which would run parallel with Glyndŵr Road and would then rejoin the existing access. The existing access was very steep and on a blind bend and Glyndŵr Road was very narrow. The officer explained that part of the bank would be removed on Glyndŵr Road to widen the road to up to 10 metres in width which would allow two HGVs to pass and advanced planting would be undertaken of any trees lost as a result of the new access. The applicant was offering to manage the site for a total period of 15 years after completion of restoration which would ensure that the aspirations of the restoration were successful; this would be secured by a section 106 agreement. There were a number of constraints on the site such as it being in the Area of Outstanding Natural Beauty (AONB), a Site of Special Scientific Interest (SSSI) and the trees in the northern part of the site were covered by a Tree Protection Order (TPO). The north eastern part of the site was a concern due to it containing a bat habitat but no HGVs would track over the underground silica mine workings to ensure protection of the bats. As a result of the proposal, a number of trees would be lost which would be removed under licence from Natural Resources Wales (NRW) and under reasonable avoidance measures that would be conditioned. Three mine entrances were not in the quarry void and these would be protected to provide bat mitigation; this would also be done under a licence. A brick building currently on site would be restored to provide a bat roost which NRW felt would provide a beneficial habitat for the bats. As there was evidence of great crested newts on the site, surveys would be undertaken prior to commencement of the development and the creation of ponds in the north of the site would be required to provide habitats for the newts and other amphibians. The nearest properties to the quarry void were between 80 and 125 metres from the eastern quarry boundary and were 20 to 40 metres below the height quarry boundary.

The restoration would create a shallow valley landform that would be used for agriculture and nature conservation once restored. The officer explained that

there were no safety benches within the quarry development. Consequently, there was evidence of rock falls which was a concern, along with possible landslips which could be a risk for any trespassers. If the application was not approved, the owners would be served with a prohibition notice as the site had not been quarried for more than two years. Restoration secured through the prohibition process would not enable any importation of materials and it was therefore considered that the proposals would secure a higher quality restoration than if the site was left to regenerate naturally.

In conclusion, the officer said that national policy on waste indicated that landfill was not acceptable but as this was a recovery operation, it was considered that the proposals complied with draft Technical Advice Note (TAN) 21 regarding exceptional circumstances and the applicant had demonstrated that there was a need to infill the site to phase four for stability reasons and phase five for landscape reasons. With regard to the recycling element, UDP policy supported the re-use and recycling of inert waste and the proposals accorded with the waste hierarchy. There would be no HGVs in the majority of Glyndŵr Road, and even though the site was in the AONB, SSSI and had TPOs on some trees, the assessments which had been undertaken provided evidence that the proposal would provide a better habitat for wildlife. The officer explained that there had been a large number of objections from residents but none had been received from statutory consultees. Noise, dust and vibration would be monitored and controlled by conditions and any crushers used on the site would be permitted under a separate Environmental Permit issued by NRW but would be subject to conditions to ensure that any emissions would be minimised.

Mr. C. Bradshaw spoke against the application. He said that there were many reasons for concern about the application but the main one was the junction between the A494 and Glyndŵr Road. He felt that this was a hazardous junction which could not cope with up to 150 32 tonne lorries travelling to and from Cambrian Quarry. It was not fit for purpose and could not accommodate the vehicles safely. He referred to paragraph 7.92 where it was indicated that there had been no reported accidents at the junction in the past five years. Mr. Bradshaw said that he was aware of two accidents including a very serious one in 2008 ¼ mile down Gwernymynydd Hill which had been life changing for the person involved. As a result, Gwernymynydd Community Council and local residents had formed an action group which had put forward seventeen proposals to Flintshire County Council and the Trunk Road Agency to improve road safety in the community. Of these, fifteen had been implemented by the Agency such as raised hatchings in the road and the provision of bollards. Mr. Bradshaw said that some of the people proactively involved in implementing these safety features were now saying that this proposal was very dangerous. He asked the Committee to refuse the application to put the safety of the community first.

Mr. Neil Hassall, for the applicant, spoke in support of the application. He said that it was vitally important for the future of the business that the application be approved and that Cambrian Quarry would provide the operators with a much needed site to recycle materials. He referred to the recent restoration at the Bryn y Gaer quarry near Llay which had been the subject of objections prior to the start of the project but once it was underway, there had been no complaints. An Environmental Impact Assessment had been undertaken; the company had

listened to the objections made and had amended the Assessment to take account of the concerns raised. He concurred that statutory consultees had not objected to the proposals. It seemed that the main concern was the traffic and the recycling element to the application. A new junction and new internal road were proposed and as a result, Glyndŵr Road would not be used by traffic going to Cambrian Quarry. The recycling plant was not a major operation, consisting of one crusher and one screener which would be removed by the end of phase four, and it would be 45 feet below the level of the quarry. The company currently operated at Deeside but as this was a time limited consent, this proposal would enable ASH to use the Cambrian Quarry site which was ideal for their requirements and would restore the natural landform. There was a proven and urgent need for the site.

Councillor K. Hughes from Gwernymynydd Community Council spoke against the application explaining that it would be the community of Gwernymynydd that would have to live with the consequences if the application was approved. He referred to a significant number of houses on a nearby estate who had not been consulted on the proposals as it was not felt that they would be affected by the application. However, a number of those residents had responded in writing. A traffic survey had not been carried out on the A494 by Flintshire County Council and Councillor Hughes felt that the report did not reflect the true nature of this stretch of road. He referred to the bus stop which was close to the junction of Glyndŵr Road and remarked that its location might contribute to an accident occurring. The community had been fighting for road improvements and a reduction in the speed limit. Councillor Hughes referred to the Gwernymynydd Development Plan, a Welsh Government initiative, which had been developed to help with such issues and concerns raised by the community. The document had been identified as an example of good practice but the applicant argued that it was not a statutory document and therefore had no bearing on the application. If that was so, Councillor Hughes felt that the document might as well be ignored.

Councillor Derek Butler proposed the recommendation for approval which was duly seconded. He said that the Quarry had been an industrial site for many years and that the hazards that had been identified were being addressed in a beneficial way for the community. He queried the timescale for the completion of phase four and commented that the proposed conditions would be better than those which applied when the site operated as a quarry.

Councillor Ron Hampson said that he could understand the passion of the protestors but that their main concern about the access was being addressed by widening it by three metres. The Trunk Road Agency had not put forward any objections, the bats were to be protected, the site would be stabilised, and it would become a pleasant environment once the works were completed. He did not consider that the development would result in the disruption claimed and if the application was refused then the applicant would appeal and the Council would lose and have costs awarded against it.

The Local Member, Councillor Nancy Matthews, spoke against the application. She referred to the draft TAN 21 where it was reported that infill of quarries was only acceptable in exceptional circumstances; she queried what these were. She felt that even after the restoration had been completed, the land

would still be unstable and highlighted paragraph 7.30 where it was reported that the Gwernymynydd Community Development Plan opposed any use of redundant quarries for landfill. On the issue of the access, she said that the applicant had made significant efforts to address concerns but it was still insufficient. Councillor Matthews referred to UDP Policy AC13 which indicated that access roads should be adequate without compromising health and safety; she did not feel that the proposed access complied with the policy. She asked that the application be refused but if it was allowed, that extra conditions be included to require a Liaison Committee to be established and that there be no working on a Saturday, and for the section 106 obligation to include provision for projects in the community.

Councillor Mike Peers felt that there were three parts to the application – filling of the void; recycling works; and the road junction and its implications. He asked for further information about the road improvements as it was clear that what was currently in place was inadequate. He felt that condition nine should be reworded to reflect that the existing access should be closed if the application was approved, although the consensus was that infilling the site was itself an issue. He said that some of the objections referred to the proposal being unacceptable in a rural location but this was an old industrial site. Objectors also talked of devaluation of their properties but this was not a material consideration in the determination of the application. It was reported that 70% of the inert material would be used to fill the void but residents had indicated that this would only be 5%. Councillor Peers highlighted paragraph 5.06 where it was reported that previous applications had been refused on highway safety grounds and queried why this was no longer the case. He sought more clarity on the details of the amount of 477,000m³ that would be required to infill the quarry void, whether further materials would be required, and more detail about that to be exported. In highlighting paragraph 7.21, he said that ensuring that the site was restored to a suitable landform would enable the quarry to be made safe. Councillor Peers asked what weight was to be afforded to the draft TAN 21 and said that even though the bus stop near the junction with Glyndŵr Road was used very infrequently, it could still create a problem if a bus stopped and a lorry was waiting to turn to access the quarry. He suggested that a layby be considered for the bus stop.

Councillor Carolyn Thomas queried what the exceptional circumstances were to permit this application based on the draft TAN 21. She referred to the AONB, SSSI and TPO and said that the AONB Joint Advisory Committee was concerned about the impact on the community and queried whether there was a spatial plan in place. The AONB had been designated because of the tranquillity of the area which would be harmed by the noise and traffic from the proposal. She queried why the proposal was not being suggested for an urban environment and asked why the Robin Jones site at Parry's Quarry was not being used for the recycling. As the quarry had been allowed to restore naturally up to now, Councillor Thomas queried why this could not continue and added that biodiversity was better if it was left, as nature could not be forced. She referred of the newts on the site and, in commenting that she did not think that the proposal could be classed as an exceptional circumstance, added that there were better areas for recycling.

Councillor Owen Thomas said that the access to the Glyndŵr Road was dangerous and there had been a number of accidents in the area. He could not understand why the ledges had not been made safe when the quarry closed and asked whether restoration formed part of any previous planning permissions. He queried why the recycling plant was proposed for a site that did not have good access and said that vehicles to the site would have to travel through Mold. He referred to the recycling plant in Ewloe and queried whether there was a need for a further site. He added that the Welsh Government had said that each county should look after its own waste but he felt that waste from other counties would be brought to this site. He felt that the conditions did not safeguard the public in relation to the operating hours of the quarry and he raised concern that the proposal would destroy part of the SSSI.

Councillor Ian Dunbar hoped that the amendments to the road junction and access were satisfactory for HGVs if the application was approved. He asked whether there was any public access to the area around the quarry which he felt was dangerous. He concurred with Councillor Matthews that the needs of the community should be looked at if the application was approved.

In referring to quarries in Buckley, Councillor Neville Phillips said that he had objected to each application and would also vote against this application on highway grounds. He referred to the five pages in the report on highways issues and said that he could not remember a time when an officer had spent so much time trying to convince Members in respect of a single issue. He said that there were two bus stops close by the junction which could create significant problems for lorries needing to access the quarry and that the passing place referred to in paragraph 7.93 would only be put in place if the application was approved. He also referred to the one way system used by Eagles and Crawford on their site which had been requested due to the dangerous nature of the road.

Councillor Richard Jones sought clarity on the need for the proposal and said that even when phase five was completed, the void would not be full. He felt that the principles of landfill were not supported by national policy and that some of the materials not needed in this quarry would be taken to other quarries which he felt was unacceptable. He raised concern at the number of conditions proposed and said that he felt that this indicated that there was a problem with the application. He suggested that further detail should have been included for conditions 34 onwards and added that, in his opinion, some of the conditions were hardly enforceable. Councillor Jones highlighted three areas of concern which were whether the infilling was necessary; the recycling; and the number of conditions on the application.

Councillor Gareth Roberts congratulated the officer for her report. He said that, as there was an extant permission on the site, there was nothing to prevent the applicant starting up the quarry again if a suitable Environmental Statement was submitted, and this would mean that the existing junction and access could be used. If the application was refused on highway grounds and the applicant appealed the decision, he asked how this could be substantiated as the Inspector would look at the application which indicated that the junction was to be improved. Councillor Roberts could understand the residents' concerns but said that there did not appear to be any valid reasons to refuse the application and any appeal would be successful with costs being awarded against the Council.

In response to the comments made the officer provided the following answers:-

- timeframe for phases one to four would be six to eight years and the fifth phase would take an additional year
- paragraph 7.05 provided clarity on the amount of materials to be transported into and exported from the quarry (145,000 to 200,000 tonnes per annum and approximately 30% would be recycled and exported off site) so the figure of 5% infill was incorrectly quoted by some residents of which there was no evidence within the report
- there was no difference between the adopted and draft TAN 21 with regards to policy support for recycling of inert materials.
- the draft TAN introduced the wording on exceptional circumstances regarding inert landfill/disposal which would be included if the draft TAN was adopted
- the bus stop had been in place for a number of years (comments reported in late observations) and was used by approximately two to three people per day
- there were red hatched areas on the road which were a traffic improvement
- Parry's Quarry could not be used as it was not available to the applicant
- previous applications had been refused on highway grounds but this application proposed the introduction of a new access to the site to avoid the use of Glyndŵr Road and a section of the road would be widened. There had been no objections from Highways or the Trunk Road Agency
- The conditions on the quarry permission were imposed in 1951, were therefore out of date and should this application be approved, new conditions would be imposed. The site commenced operating in the 1800s when there were no rules and regulations about safety and modern quarries had safety benches in place which did not exist at this site.
- this was a complex application which required many conditions with some schemes needing to be in place before the development could commence
- proposed operating hours were reported in paragraphs 7.07 to 7.10
- the issue of need for, and capacity of, the landfill was also reported
- specialists felt that the shoring up of the quarry walls was the minimum required to make the site safe but the infilling was not up to the top of the void
- the SSSI had been designated because of the bats which used the underground mine workings. The majority of the habitat would remain untouched and NRW had indicated that reasonable avoidance measures and other mitigation would be put in place. Works would not be able to commence until a licence had been secured
- NRW suggested replacement planting was acceptable
- Most of the old quarry now comprised woodland, scrubland and calcareous grassland. The majority of this area was outside the application site and would not be affected by the proposed development.
- regarding the issue of the underground silica workings, no vehicles would go on that area of the site so there would be no risk of vibration to the bat habitat; mitigation measures had been put in place which would be beneficial for the habitat

- it was felt that the proposal would not harm residential amenity
- condition 9 had been worded as it had because the existing access would need to be used to allow for the construction of the new access but would be closed once the new access was in use
- there was no public access on the site
- the one way system used by Eagles and Crawford were reported in paragraph 7.94
- any materials not reused in this quarry would not be taken to other quarries but would be taken off site for re-use elsewhere
- regular and ad hoc monitoring of the site would take place to ensure that the conditions were enforced.

The Senior Engineer - Highways Development Control confirmed that Flintshire County Council and the Trunk Road Agency did not have any objections to the application subject to conditions. The proposal would improve the width of part of Glyndŵr Road and would lead to a better junction formation. The data on accidents was based on information logged by the Police and for this area, none had been reported. The proposed new access to the site would be closer to the A494 and the highway improvements that would be put in place prior to the use of the site would lead to the permanent closure of the existing access. When a bus was stationary at the bus stop, it would partially interfere with visibility but it would be the responsibility of the driver to decide whether to overtake the bus to proceed on his journey. She also explained that there were red hatched areas on the road to highlight that there was a need to proceed with caution.

Councillor Richard Lloyd queried whether there was a condition about the operating hours for the site and whether the public would be given access to the site once the work had been completed. The officer confirmed that condition 35 in the report (condition 46 in the draft conditions available to Members) provided a condition to control hours of operation. She explained that at this stage there was no offer from the applicant to open up the site for public access but with the proposed implementation of a Liaison Committee, this could be something to be discussed and explored in the future.

In response to a question from Councillor Peers about TAN 21, the officer confirmed that the wording that such a proposal was acceptable in exceptional circumstances was not included in the adopted TAN but was included in the draft document. The Principal Solicitor said that it was a matter for the Committee to decide how much weight to give to the draft document. He referred to the request from Councillor Matthews for a Liaison Committee, no Saturday working and a section 106 agreement for community benefits. The Liaison Committee scheme was addressed in condition 26, and paragraphs 7.07 and 7.09 indicated that works would take place on Saturdays, so this would need addressing specifically by the Committee if they felt that this was inappropriate. So far as possible community benefits were concerned, the Principal Solicitor said that there was nothing in the report about any such funding by way of a Section 106 agreement. He reminded Members that requirements in such agreements had to be directly related to the development.

In summing up, Councillor Butler thanked the officer for the very comprehensive report and reiterated his proposal of approval. He said that the

NRW had answered all the questions on ecology issues. Following on from the comments of Councillor Matthews, he felt that the Liaison Committee should be established before the works commenced and suggested that the operators could consider altering the start time of operating to later than 7am. Councillor Butler also felt that, through the medium of the Liaison Committee, discussions with the operators might identify some community benefits.

Councillor Richard Jones requested a recorded vote and was supported by the requisite five other Members. On being put to the vote, planning permission was granted by 12 votes to 8 with no abstentions. The voting being as follows:-

FOR – GRANTING PLANNING PERMISSION

Councillors: Derek Butler, David Cox, Ian Dunbar, David Evans, Jim Falshaw, Ron Hampson, Ray Hughes, Christine Jones, Richard Lloyd, Mike Lowe, Gareth Roberts and David Wisinger

AGAINST – GRANTING PLANNING PERMISSION

Councillors: Marion Bateman, Alison Halford, Richard Jones, Brian Lloyd, Mike Peers, Neville Phillips, Carolyn Thomas and Owen Thomas

RESOLVED:

That planning permission be granted subject to:-

- the condition detailed in the late observations;
- the conditions detailed in the report of the Head of Planning; and
- the applicant entering into a legal agreement under the terms of the Town & Country Planning Act 1990 (as amended) Section 106 to:-
 - surrender the old mineral and waste planning permissions
 - 15 year management post restoration as set out in the outline management plan with periodic review
 - control of operations within the quarry but outside of the application site in terms of hours of operation and no artificial lighting activities not related to the application

If the Section 106 Agreement (as outlined above) is not completed within six months of the date of the committee resolution, the Head of Planning be given delegated authority to REFUSE the application.

131. **FULL APPLICATION - ERECTION OF A FOUR BEDROOM DETACHED DWELLING AND DETACHED DOUBLE GARAGE AT 37 WOOD LANE, HAWARDEN (051234)**

The Committee considered the report of the Head of Planning in respect of this application. The usual consultations had been undertaken and the responses received detailed in the report.

The officer detailed the background to the report which had been deferred from the Committee meeting in December 2013. Following a request from

Councillor Mike Peers, she detailed which sections in the report had been amended to address the issues of affordability, housing need and backland/tandem development. She highlighted the section on local need and Policy HSG3 which required that any additional housing had to be justified on the grounds of local need where the growth in a settlement area exceeded 15%. The personal circumstances of the applicant and his family were detailed in paragraph 7.08 and their local connections had been demonstrated to Cymdeithas Tai Clwyd who maintained the Affordable Housing Register on behalf of the County Council. Any planning permission would restrict the first occupation to Mr & Mrs Shaw and would require a Section 106 Agreement which would put a charge on the house so that, if it was sold in the future, 30% of the money would be paid back to the Council. The Housing Strategy Officer considered that the applicants met the affordable housing criteria under policy HSG3 in terms of their local connection and affordable housing need. Members had questioned the need for a four bedroom house and double garage and details of the requirements were reported in paragraph 7.10.

The development was a form of backland development but this did not, in itself, mean that the application should be refused. The important issue to consider was the harm that this form of development might cause in terms of impacts on residential amenity to the occupiers of 37 Wood Lane, the proposed dwelling, and adjoining properties, and the impact of the development on the character and appearance of the area. The impact from the increased vehicle movements to the occupiers of 37 Wood Lane when in the existing conservatory would be minimised by the introduction of obscure glazing to reduce any impact on privacy. The officer explained that there was no direct overlooking with 37 Wood Lane or any adjacent properties but there was potential for overlooking to the rear garden of 35 Wood Lane, although this was common in urban areas. Any impact could be dealt with by the retention of the existing boundary hedgerow and other suitable boundary treatment which could be dealt with by condition.

Mr. I. Warlow spoke against the application. He said that two previous applications had been refused and that this proposal was on a footprint of a similar size to those applications, so should also be refused. He felt that a four bedroom dwelling could not be classed as an affordable dwelling and that the proposal was exploiting a planning loophole which he suggested other developers would use if the application was approved. Mr. Warlow said that the average price of a four bedroom property in the area was £300,000 and again queried how this could be an affordable dwelling. He felt that the affordable homes policy was aimed at enabling families onto the property ladder. He highlighted paragraph 7.16 about backland development and queried the need for the dwelling. He felt that the three metre hedge at the property was higher than was allowed by law and raised concern that the five metre hedge could be retained to reduce the impact of the dwelling on his garden. He said that corners had been cut and laws flouted and if the application was approved it would become a test case in law.

The Principal Solicitor advised that there was nothing in the report, and nothing that he was aware of, to suggest that laws had been flouted and no cause for concern over the way in which the application had been handled.

Mr. C. Shaw, the applicant, spoke in support of the application. He said that he hoped that the Committee now had knowledge of his circumstances and the application's compliance with Policy HSG3 and local housing need. The proposed dwelling satisfied the requirements of space around dwellings including parking, turning places and backland development. The application for local housing need had the support of Tai Clwyd and Mr. Shaw confirmed that the current family home would need to be sold to finance the proposed dwelling. The property was currently on the market for £247,000, which was lower than the £300,000 talked of by the previous speaker, and an offer lower than this had been accepted. The house was now sold subject to contract and the people purchasing the property had seen the plans for the proposed dwelling. If the application was successful, he would enter into a section 106 agreement to repay 30% of the property value if it was sold in the future. The dwelling, which would provide a home for himself and his family, was smaller than the property that they currently lived in. He confirmed that he was not a property developer and even though he worked for a building company, this was on the industrial side, not the house building side. He had approached the occupiers of 35 Wood Lane and they had raised concerns, but Mr. Shaw felt that these had been addressed in a sensitive manner.

Councillor Alison Halford proposed refusal of the application against officer recommendation which was duly seconded. She said that she was being accused of impropriety and referred to an email that she had received from the Monitoring Officer which put her in difficulty as she had asked questions as an Elected Member which she was entitled to ask. She did not think that policy HSG3 had been complied with in this case and raised concern that great emphasis had been given to the policy but there was nothing in the report about affordability. Councillor Halford had asked questions about affordability and queried whether it was necessary for the applicant to sell his home to fund the new dwelling as she had been told that it was not necessary. She referred to 41 houses which were to be built within a quarter of a mile of this dwelling on a site which was outside the settlement boundary in the Unitary Development Plan yet no consideration appeared to have been given to the growth of 18.1% in the settlement.

Councillor Derek Butler felt that the application was complicated and he had asked for it to be deferred last time as it was full of anomalies. He referred to the footprint being similar to the footprint on two previous applications which had been refused. He also commented on the growth rate of 18.1%. He referred to the affordable housing element and queried whether this would set a precedent of people buying houses that they could not afford to get on the Affordable Housing Register. However, he added that, as all the criteria had been met, he was minded to grant the application. Councillor Butler referred to paragraph 7.18 and queried whether the piece of land that the applicants leased was a capital asset. The Principal Solicitor said that if the land was leased from the electricity company by the applicant then the applicant did not own it and therefore could not obtain any capital from its sale.

Councillor Richard Lloyd queried whether the investigation works requested by the Coal Authority and the Head of Public Protection should be carried out before the application was determined to establish whether there was a mining risk. He also asked whether the 30% value of property would be based

on the value at the time of sale or the current value. Councillor Lloyd sought clarification about the piece of land leased from the electricity company and whether it formed part of the current garden area and asked for further information on the parking of vehicles to the front of 37 Wood Lane. He also asked whether the applicant had to sell the family home before building the new property.

Councillor Mike Peers said that the applicant's financial situation had been dealt with by Tai Clwyd and they were satisfied that he could go on the Affordable Housing Register. He asked if the dwelling would be allowed on the site if the 30% charge to the Council was not proposed. He said that the Committee had to determine whether the proposal could go on the site, and as the issues of impact on residential amenity and backland development had been considered in the report and the affordability element had been dealt with by Tai Clwyd, he felt that the recommendation of approval was correct.

Councillor Gareth Roberts said that the issue of affordability had been pushed by Government to give the appearance of dealing with affordable housing but if the loophole existed and was legal then he believed that approval was the correct decision. However he felt that approval of the application could set a dangerous precedent and requested that the Planning Strategy Group consider the particular issue.

In response to the comments made, the officer said that this application was not considered to be a loophole to Policy HSG3, and as the local housing need had been proved, the application was justified. She explained where the land that the applicant leased from the electricity company was located and said that the further investigative works required by the Coal Authority would need to be undertaken before the development started but not before the determination of the application. The 30% charge would be based on the value of the property at the time of the sale, and on the issue of parking to the front of 37 Wood Lane, this was deemed to be acceptable and sufficient for the size of the dwelling and it was currently used as a parking area. The officer indicated that the Council could not force the applicant to sell his current property but he had said that his financial circumstances required him to do so. She also confirmed that the dwelling would be allowed without the 30% scheme were it not for the fact that the cumulative growth of housing in Ewloe within the UDP period exceeded 15%.

The Principal Solicitor emphasised that if the housing growth figure had not been exceeded then the dwelling would not need to be an affordable.

Councillor Halford said that she had checked with Tai Clwyd and they did allow applications from people who currently had a property, with caveats, but they relied very heavily on the financial aspect of the matter with help from Flintshire's Housing officers. She said that it cost £180,000 to build a new dwelling and she felt that this could put the applicant in a worse financial state. His property was on the market for £247,000 but had not yet been sold. She raised concern that other building would be allowed to take place outside the boundary of Ewloe in the UDP and again referred to a site for 41 dwellings. She concluded that the Committee was here to ensure that policies were sound and transparent.

On being put to the vote, the proposal to refuse the application was LOST.

RESOLVED:

That planning permission be granted subject to the conditions detailed in the report of the Head of Planning and subject to the applicant entering into a Section 106 Obligation/Unilateral Undertaking to provide the following:-

- The property shall be occupied by the applicants Mr and Mrs Shaw in the first instance
- If the property is put up for sale in the future 30% of the property value is repaid to the Council, secured as a charge on the property

If the obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as outlined above) is not completed within six months of the date of the committee resolution, the Head of Planning be given delegated authority to REFUSE the application.

132. **CHANGE OF USE TO SMALLER A1 USE AT GROUND FLOOR AND 2 NO. ONE BEDROOM APARTMENTS TO THE REAR OF THE EXISTING BUILDING ALLOWING FOR NEW APERTURES AT GROUND FLOOR AT 79 CHESTER ROAD WEST, SHOTTON (051378)**

The Committee considered the report of the Head of Planning in respect of this application. The usual consultations had been undertaken and the responses received detailed in the report.

The officer detailed the background to the report and explained that the main issues included the principle of development, the highway implications and the effects upon the amenities of adjoining residents and wildlife. There were four apartments at the first floor level and this proposal would reduce the A1 use of the ground floor and create two one bedroom apartments. The shop unit was outside the core retail area and therefore the reduction in retail floor space was acceptable. The officer explained that as the site was in a highly sustainable location, it was not proposed to provide any on site off street parking spaces with the development.

Mr. G. Muggleton spoke in support of the application. He explained that the main reason for the proposal was to enable his business to carry on trading on the High Street. There had been a decline in trade and footfall and costs had increased, so reducing the size of the shop would reduce running costs. He hoped to continue the business, which had been operating for over 50 years, for several years to come and asked Members to approve the application.

Councillor Derek Butler proposed the recommendation for approval which was duly seconded. Councillor Owen Thomas felt that this was a sign of the times and the proposals were preferable to the closure of the business.

RESOLVED:

That planning permission be granted subject to the conditions detailed in the report of the Head of Planning and subject to the application entering into a

Section 106/Obligation/Unilateral Undertaking or making direct payment to provide the following:-

- Payment of £733.00 per residential unit in lieu of on site public open space. The payment would be used to enhance existing recreation facilities in the community and to be provided upon 50% sale or occupation of the development.

If the Obligation/Unilateral Undertaking or direct payment is not completed/made within six months of the date of the committee resolution, the Head of Planning be given delegated authority to REFUSE the application.

133. **RESERVED MATTERS APPLICATION - AMENDED LAYOUT TO INCLUDE SUBSTITUTION OF 15 NO. HOUSE TYPES AND ADDITION OF 5 NO. DWELLINGS AT ADWY DEG, FAGL LANE, HOPE (051449)**

The Committee considered the report of the Head of Planning in respect of this application. The usual consultations had been undertaken and the responses received detailed in the report. Additional comments received since the preparation of the report were circulated at the meeting. Councillor Ray Hughes, having earlier declared an interest in the application, left the meeting prior to its discussion.

The officer detailed the background to the report explaining that the proposal was for the substitution of 15 house types and the provision of five additional dwellings. The previous reserved matters application had been permitted in December 2011 and there were no other modifications to the proposals and no issues about the principle of development, design or layout. If the application was approved, it would require a supplemental section 106 agreement to link it to the section 106 agreement entered into under reserved matters approval reference 048186. The supplemental agreement would also provide for the additional payment of a £5500.00 recreational contribution in lieu of further on site provision arising from the additional 5 no. new dwellings.

Councillor Mike Peers proposed the recommendation for approval which was duly seconded. He said that it was one of many applications for change of house types due to changing times and market forces and added that there had been no comments from the Community Council.

Councillor Richard Jones referred to paragraph 7.02 and queried whether the number of house type substitutions was 16 not 15. The officer explained that plot 41 was not affected by the proposal and therefore the total was confirmed as 15. Councillor Jones raised concern that developers submitted applications which were approved at outline and then at the reserved matters stage, requests were submitted for changes which resulted in different house types and an increased number of dwellings. He felt that developers would continue to submit requests for this type of application until they got what they wanted. The Planning Strategy Manager said that this proposal would allow for a better mix of house types than what had previously been permitted. The previous approval was below the 30 per Hectare and it was now at 30.5 per Ha.

The Principal Solicitor said that the process of substituting house types was allowed by the law and that if the change had been unacceptable in policy terms then it would be refused.

Councillor Carolyn Thomas said that she had visited the site and confirmed that the proposals fitted in better than the previous mix of dwellings. She queried whether the applicant had undertaken an assessment of the area at the pre-planning stage.

Following a question from Councillor Richard Lloyd about the £5500.00 recreational contribution, the officer confirmed that it was subject to approval of the application and the applicant signing the supplemental section 106 agreement.

Councillor Butler said that the issue of increases in the number of houses had been undertaken for a significant number of years and had always been a cause of concern for Members. The Principal Solicitor reminded Members that the Section 106 agreement included the provision of 16 no. affordable homes if the application was approved.

RESOLVED:

That planning permission be granted subject to:-

- the additional condition detailed in the late observations,
- the conditions detailed in the report of the Head of Planning
- the applicant entering into a supplemental Section 106 agreement which linked the approval granted under this application to the provisions of the Section 106 agreement entered into under Reserved Matters Approval Ref:- 048186, providing for the following:-
 - (a) The provision of 16 No. affordable homes, to be made available at 70% of market value with the Council retaining the 30% equity and nomination rights for occupiers being retained by the Council having regard to people registered upon its Affordable Home Ownership Register.
 - (b) Ensure the payment of an educational contribution of £31,500 towards educational provision/improvements to local education facilities. The contribution shall be paid prior to occupation of the first dwelling.
 - (c) Ensure payment of a sum of £45,000 towards the maintenance of the play area upon adoption.
 - (d) Ensure payment of £29,150 in lieu of 50% on site provision of recreation/open space.
 - (e) Ensure the transfer of wildlife mitigation land to a suitable body in order to secure its future management and funding.

In addition, the Supplemental Agreement shall provide for the additional payment of a £5500 recreation contribution in lieu of further on site provision arising from the additional 5 no. new dwellings. Such payment shall be made upon sale or occupation of 50% of the total dwellings approved.

134. **GENERAL MATTERS - USE OF LAND FOR THE STATIONING OF CARAVANS FOR THE RESIDENTIAL PURPOSE FOR 5 NO. GYPSY PITCHES TOGETHER WITH THE FORMATION OF ADDITIONAL HARD STANDINGS AND UTILITY/DAYROOMS ANCILLARY TO THAT USE LAND ADJACENT TO EWLOE BARN WOOD, MAGAZINE LANE, EWLOE (050463)**

The Committee considered the report of the Head of Planning in respect of this application.

The officer detailed the background to the report and explained that paragraph 6.02 detailed the reasons for refusal of the application when it had been considered by the Committee on 15 May 2013. The Head of Public Protection had raised some concerns in respect of air pollution which were detailed in the report. Following the submission of the appeal, the appellants had submitted an addendum report to the Air Quality Assessment and it had addressed the matters which had been raised by the Head of Public Protection. He had assessed the information received and had concluded that his concerns had been addressed and therefore the inclusion of the reason for refusal relating to air pollution could no longer be sustained at appeal.

Councillor Alison Halford proposed that the officer recommendation to withdraw the second reason for refusal relating to air pollution and the impacts of road traffic pollutants on the health of the site occupants be refused and that it be pursued at the forthcoming appeal against the refusal of planning permission, but this was not seconded.

Councillor Derek Butler then proposed the officer recommendation to withdraw the second reason for refusal which was duly seconded.

Councillor Halford said that she felt removing the reason for refusal was premature and referred to the comments of the applicant's agent at an earlier Committee meeting. She said that there was evidence that traffic and children did not go well together and added that the Inspector had been critical that Flintshire County Council had ignored noise assessments. She felt that the addendum report was late in being submitted and that it should be up to the Inspector to decide whether the reason for refusal was valid.

The Principal Solicitor said that the Committee needed to disregard the perceived actions of the agent at the Committee meeting as it was not relevant. It was a common occurrence for further information to be provided during the appeal process. Advice had been taken from the Head of Public Protection following receipt of the assessment which had been shared with Counsel and, on his advice, it was proposed that the second reason for refusal be withdrawn. There was a sound basis for the recommendation in the report and if the advice was ignored, there was potential for an application for costs against the Council if they could not provide evidence of the basis for the reason for refusal.

Councillor Halford then withdrew her proposal to refuse the application and said that she was grateful for the advice from the Principal Solicitor and that she had not appreciated that Counsel's advice had been sought.

Councillor Mike Peers said that the Head of Public Protection had had concerns but the appellant had submitted information which overcame those issues. He asked whether Flintshire County Council had submitted an air pollution assessment. In response, the officer confirmed that this had not been undertaken, but confirmed that the levels of pollution on the site were within current guidelines and the assessment had therefore addressed the concerns raised by the Head of Public Protection.

RESOLVED:

That reason for refusal (2) relating to air pollution and the impacts of road traffic pollutants on the health of the site occupants be withdrawn and not pursued as a reason at the forthcoming appeal against the refusal of planning permission.

135. **APPEAL BY MR. J.P. CARR AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE ERECTION OF FOUR DWELLINGS AT LAND ADJACENT TO NO. 1 PAPERMILL COTTAGES, PAPERMILL LANE, OAKENHOLT - DISMISSED (050243)**

RESOLVED:

That the decision of the Inspector to dismiss this appeal be noted.

136. **APPEAL BY MR. ANDREW CROSTON AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE ERECTION OF 2, TWO BEDROOM SEMI-DETACHED DWELLINGS WITH PARKING TO FRONT AND REAR AT LAND OFF FERN LEIGH, BROOK STREET, BUCKLEY - ALLOWED (050291)**

RESOLVED:

That the decision of the Inspector to allow this appeal be noted.

137. **APPEAL BY MR. J. WILLIAMS AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE ERECTION OF 4 NO. 2 BED APARTMENTS AND 3 NO. 1 BED APARTMENTS WITH ASSOCIATED PARKING AT 3 CHURCH VIEW, QUEENSFERRY - DISMISSED (050531)**

RESOLVED:

That the decision of the Inspector to dismiss this appeal be noted.

The Chairman thanked the officer for her presentation at the appeal hearing. The Head of Planning said that if the appeal was as a result of refusal against officer recommendation, then an independent consultant usually put

forward the Council's case. On this occasion, the Local Member and the Planning Officer defended the appeal. He said that, given the current financial climate, this could become a more common occurrence in the future.

138. **MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE**

There were 3 members of the press and 51 members of the public in attendance.

(The meeting started at 1.00 pm and ended at 3.46 pm)

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Chairman