

**FLINTSHIRE COUNTY COUNCIL**

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

**DATE:** **21<sup>st</sup> July 2021**

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

**SUBJECT:** **OUTLINE APPLICATION – RESIDENTIAL DEVELOPMENT  
AND ASSOCIATED WORKS WITH ALL MATTERS EXCEPT  
FOR ACCESS RESERVED**

**APPLICATION  
NUMBER:** **052236**

**APPLICANT:** **MR PAUL HARDING**

**SITE:** **ATLAS EXPRESS LIMITED,  
ATLAS YARD, CORWEN ROAD,  
PONTYBODKIN, MOLD, CH7 4TG**

**APPLICATION  
VALID DATE:** **2<sup>ND</sup> JUNE 2014**

**LOCAL MEMBERS:** **COUNCILLOR D HUGHES**

**TOWN/COMMUNITY  
COUNCIL:** **LLANFYNYDD COMMUNITY COUNCIL**

**REASON FOR  
COMMITTEE:** **AT THE REQUEST OF CLLR D. HUGHES WHO WISHES  
COMMITTEE MEMBERS TO ASSESS THE IMPACTS OF  
FLOODING**

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

## **1.00 SUMMARY**

- 1.01** Members will recall that this matter was reported for consideration to the Planning Committee held 26<sup>th</sup> May 2021, at which it was resolved that determination be deferred to allow the applicant a period of time to submit the required further information in respect of flood risk at this site. Members resolved to allow a period of 3 weeks, expiring on 15<sup>th</sup> June 2021. The deferment included that If the information was not submitted or remains unsatisfactory then the item can be reported to the next available Planning Committee.
- 1.02** The planning agent submitted the relevant information on 8<sup>th</sup> July 2021. After the deadline specified by Planning Committee by which time the items for the agenda of this Planning Committee had been agreed with the Chair of Planning Committee for publication.
- 1.03** Natural Resources Wales (NRW) were consulted regarding the new information on 9<sup>th</sup> July 2021. NRW normally take a number of weeks to respond to a planning consultation however in order to avoid any further delays the item is being included on the Planning Committee agenda. This will allow for any response by NRW to be given in late observations and the possible determination of the planning application.
- 1.04** The application consists of an outline planning application for residential development on approximately 0.2ha of land. All matters (appearance, landscaping, layout and scale) have been reserved for future consideration except for access.
- 1.05** The indicative details submitted show the site could be developed for 6 detached dwellings. The detailed layout and design of the houses does not form part of this application and therefore only very little weight should be attached to that indicative plan in the overall planning balance.

## **2.00 RECOMMENDATION: REFUSE OUTLINE PLANNING PERMISSION FOR THE FOLLOWING REASONS: -**

### **2.01 Reasons**

- 1 The site is located within an area where the Local Planning Authority have been advised by Natural Resources Wales that there is an unacceptable risk of flooding for it to be considered suitable for residential use. The submitted Flood Consequence Assessment fails to comply with A1.12, A1.14 and A1.15 of TAN15. As such the proposal fails to comply with Planning Policy Wales (11th Edition – February 2021), TAN15, Policy 8 of the Future Wales Plan and Policies STR1, GEN1 and EWP17 of the Flintshire Unitary Development Plan.

2 The proposal does not provide an adequate mechanism either through the completion of a Section 106 Obligation/ Unilateral Undertaking or advance payment for the affordable housing contribution and public open space commuted sum required in connection with the development. This is therefore contrary to Policies IMP1 and HSG10 of the Flintshire Unitary Development Plan and Supplementary Planning Guidance Note 13 – Open Space Requirements

### **3.00 CONSULTATIONS**

#### **3.01 Local Member Councillor Dave Hughes**

- This piece of land would benefit from development as it is an eyesore.
- It is suggested by some that it could flood in very extreme weather conditions but that is very much speculation with no evidence to support that and this could easily be overcome if that be true.
- Local residents would welcome development. Not only this is my view but also that of the Llanfynydd Community Council.

#### **3.02 Llanfynydd Community Council**

No Objection to the application for the following reasons.

1. The proposed development would tidy up the site and village.
2. It is a Brownfield site and is in the right area for development.
3. NRW have concerns the site would be at risk from flooding - The development would not be impacted from the culvert across the road or surface water run-off.
4. At present wagons are parked on the site - The wagons are washed close to the highway in which the water travels across the wash area clogging the highway drains with muck and debris, this causes an issue with Highway drainage.
5. Station Yard (close to the Atlas Yard) has not come forward for development even though the site has planning permission.
6. Atlas Yard to come forward on its own merits and not be tied to the Station Yard development.

#### Community and Business Protection

No adverse comments. Requests that a condition requiring a contaminated land assessment and proposed remediation scheme be imposed.

#### Highway Development Control

Recommend that any permission be subject to the imposition of

conditions in respect of access, visibility, construction details, parking & construction traffic management plan.

### Natural Resources Wales

Significant concerns with the proposed development as submitted and recommend that additional hydraulic modelling is submitted to inform the Flood Consequences Assessment and demonstrate that flooding can be managed to an acceptable level, in the absence of which, objects to the application. Advises as follows;

We are in receipt of the hydraulic model and accompanying report (HYD126\_ATLASYARD\_HRDRAULIC\_ASSESSMENT\_FINAL\_05 February 2019), submitted in support of this planning application for residential development at Atlas Yard, Pontybodkin.

We refer you to Section 6 of TAN 15 and the Chief Officer letter from Welsh Government, dated 9<sup>th</sup> January 2014, which affirms that highly vulnerable development should not be permitted in Zone C2(paragraph 6.2 of TAN15). The justification tests in paragraph 6.2 of TAN15 do not apply to highly vulnerable development in Zone C2. Notwithstanding this policy position, we have reviewed the model and report to provide you with technical advice on flood risk at the site, following receipt of the overriding planning reasons from your authority on 3.5.2019 and 3.7.2019.

We provide the following comments on the application:

1. We are satisfied that the updated model is fit for purpose and suitable for use in terms of informing a Flood Consequence Assessment (FCA) for the site.
2. However, we have reviewed the model results and have some major concerns with what is shown. Based on the proposed scenario model result plots, whilst the properties would remain flood free in the 1% Annual Exceedance Probability (AEP) blockage event with an allowance for climate change, flooding of most of the site would be expected, including gardens and parking areas. Paragraph A1.14 of TAN15 requires the development to be designed to be flood-free in the design event in this case the 1% AEP blockage event with an allowance for climate change). 'development' in the context of A1.14 is considered to be everything within the red line site boundary, as detailed by the planning application. To meet the indicative thresholds set out in table A1.14 the entire site defined by the red line boundary should be designed to be flood-free for the relevant design event. However, for some new development proposals, allowing selective flooding to certain parts of the site may offer a means of mitigating risk, including to third parties off site. Therefore, in certain circumstances, some limited flooding may be considered acceptable as part of wider flood risk management

proposals if it can be demonstrated by a developer that the risks and consequences of flooding can be managed down to a tolerable level. If this is the case, we would still require all highly vulnerable elements of the development (properties, gardens and parking areas) to be designed to be flood free.

This approach is supported by Planning Appeals (e.g APP/A6835/A/15/3136858, 1 Queen Street). In the appeal decisions for 1 Queen Street, the Planning Inspectorate clearly stated that the development, which included car and cycle parking at the ground floor level, would be residential and thus classified as 'highly vulnerable'. We therefore consider gardens and parking to form an integral part of the highly vulnerable development. Based on the model results, the proposal would not currently comply with A1.14 of TAN15, given that the gardens and parking areas would flood on the 1% AEP blockage event with an allowance for climate change.

3. In respect to flood elsewhere, TAN15 requires that for events up to the 0.1% AEP event, the application demonstrates that there would be no detriment to flood risk elsewhere. Detriment is considered to be any increase of 5mm or more (as outlined in GN08: Modelling for flooding consequences assessments). Based on the model results for the 1%AEP event with an allowance for climate change, an area of detriment with depth increases in the region of 15mm would be expected north of the site, which includes detriment to 2 existing properties. This detriment is considered to be unacceptable and the statement in Section 5.3.1 of the report which states that 15mm is within the acceptable limit set by NRW is incorrect. It should also be noted that this appears to be for a free flowing scenario; we would also expect detriment to be considered for a culvert blockage scenario. The model results therefore do not comply A1.12 of TAN15, and any FCA submitted for the site would need to demonstrate no detriment in up to the 0.1 % AEP culvert blockage event.

It should be noted that given that detriment to flood risk elsewhere is shown for the existing scheme, which proposes raising of finished floor levels, it will likely be difficult to demonstrate compliance with A1.12 of TAN15 based on a scheme which proposes raising of the site (or all highly vulnerable elements as a minimum).

4. We are aware that the model has been produced on the basis that a Grampian Condition could be imposed restricting development/occupancy of the proposed Atlas Yard site until after the culverts on the Station Yard site have been opened up, and we have previously advised that the Applicant enters into discussions with your authority regarding whether the imposition of such a condition would be viable. We would reiterate this point and if agreement has been reached, would welcome confirmation of this.
5. If additional modelling work is undertaken, we would want to review the updated model in order to assess how the proposed

development scheme has been represented in the model.

In view of the above, we continue to raise significant concerns with the application. The model results presented do not comply with TAN15 and the proposals fails to comply with TAN15, both in terms of the site being designed to be flood free in the design event (a1.14) and the impacts of the proposals on flood risk elsewhere (A1.12). An FCA prepared on this basis would therefore also not comply with TAN15.

The applicant should be required to undertake additional hydraulic modelling, which should subsequently be used to inform an updated FCA, prior to the determination of the application. We can then advise you whether the model outputs and revised FCA is in accordance with the technical criteria in Appendix 1 of TAN15. If no further information is submitted, or the revised FCA fails to demonstrate that the consequences of flooding can be acceptably managed over the lifetime of the development, then we would recommend that the application be refused.

If, contrary to the requirements of TAN15, your Authority is minded to grant permission, we should be informed of all matters that influence this decision, prior to granting permission, allowing sufficient time for further representations to be made. During this time, we will also consider whether the application should be referred to Welsh Government for a potential call-in.

#### Dwr Cymru/Welsh Water

No objection subject to the imposition of a condition to restrict foul water only into public sewerage system

#### Aura

In lieu of on site Public Open Space, request the payment of £1100 per dwelling to enhance existing facilities

### **4.00 PUBLICITY**

**4.01** Press Notice, Site Notice and Neighbour Notification.

**4.02** An email of support has been received.

- does not understand why NRW are objecting to the application as it is not impacted by the culvert across the road at the back of Rhyd Osber water does not across the road in times of heavy storms as shown in the photos during Storm Christoff.
- The culvert took all the water but there was run off from Tir y Fron lane and swell from the rear of the watercourse and the old railway line.
- The site is level with the road, does not flood and the houses will be built with steps up.
- A property which is further down the road from the site, is the first to be impacted from water off the highway as it is lower

than road level, all the modelling unfortunately shows this.

- Supports the development of the site so that there is less water flowing onto the highway from the brownfield site which is currently used as a lorry park and vehicles are washed near the entrance leaving grit on the highway which is washed into the highway gullies.
- The adjacent Station Yard site has planning permission, and there was more concerns regarding development of that site impacting on the area and it was approved although it has not yet been developed.

## **5.00 SITE HISTORY**

**5.01** There is no relevant planning history to the site. However, the site forms part of the allocated housing site (HSG1(39)) within the Flintshire Unitary Development Plan. The remainder of the allocation (in different ownership) has been granted outline permission which is listed below:

**5.02** Outline residential development on land at SPA Davies and Sons, Station Yard, Corwen Road, Coed Talon, Granted 23.07.2015

## **6.00 PLANNING POLICIES**

### **6.01 Flintshire Unitary Development Plan**

Policy STR1	New Development Policy
Policy STR4	Housing
Policy STR10	Resources
Policy GEN1	General requirements for development
Policy GEN2	Development inside settlement boundaries
Policy HSG1(39)	New Housing Development Proposals
Policy HSG8	Density of Development
Policy HSG10	Affordable housing within settlement boundaries
Policy AC13	Access and Traffic Impact
Policy L3	Green Spaces
Policy EWP 14	Derelict and Contaminated Land
Policy EWP 16	Water Resources
Policy EWP17	Flood Risk
Policy SR5	Play areas and new housing development
Policy IMP1	Planning conditions & planning obligations

### Future Wales Plan

Policy 8 – Flooding

### **6.02 Supplementary Planning Guidance**

Supplementary Planning Guidance Note 2: Space Around Dwellings  
Supplementary Planning Guidance Note 4: Trees and Development.  
Supplementary Planning Guidance Note 13: Open Space

## Requirements

### **6.03** National: Guidance

Future Wales~: The National Plan 2040

Planning Policy Wales Edition 11 February 2021

Technical Advice Note (TAN) 15: Development and Flood Risk

### **7.00** PLANNING APPRAISAL

#### 7.01 Proposal and Site description

This outline application proposes to use the 0.2ha of previously developed land for residential development. All matters (appearance, landscaping, layout and scale) have been reserved for future consideration except for access.

7.02 The new vehicular access would be from the A5104. It would replace a substandard access to Harcroft and include the provision of a road and footway to adoptable standards. The access is 5.5metres wide and would provide visibility splays of 2.4mx43m.

7.03 The site lies within the settlement boundary of Coed Talon & Pontybodkin which is predominantly residential in character. It comprises a vehicle repair yard sited between the existing properties Talcoed, Gemstone and 2 dwellings at Harcroft.

7.03 Dense landscaping forms the north, south and western boundary to the site. There is a fence on the eastern boundary which separates the site from Harcroft.

7.05 Immediately to the north is SPA Davies and Sons, Station Yard, which is accessed c.140metres west, on Corwen Road. Black Brook, a tributary of the River Alyn, runs along the western boundary as both a watercourse and a culvert in sections.

#### 7.06 Main Issues:

The main issues to be considered in determination of this planning application relate to :-

- a) Principle of the development
- b) Housing land supply
- c) Flood Risk
- d) Highways
- e) Land Contamination Issues
- f) Drainage

#### 7.07 Principle of the Development.

The site forms part of the allocated housing site (HSG1(39)) in the settlement of Coed Talon & Pontybodkin within the Flintshire Unitary Development Plan. The remainder of the allocation (in different ownership) has been granted outline permission for residential development under 051831.

- 7.08 Whilst the housing site allocation would support the principle of residential development, the allocation itself would not have been accompanied by a full detailed site analysis, with these matters being considered in the required subsequent planning application. Therefore, in considering proposals for development all material planning consideration must be fully assessed, including flood risk.
- 7.09 In accordance with UDP policies STR1, STR4, STR10 and GEN2, the principle of residential development on a previously developed site within a settlement that has been allocated for housing is acceptable, but this is subject to demonstrating an acceptable level of risk/consequences associated with flooding.
- 7.10 Housing Land Supply  
The site is allocated as a Housing Commitment (Station Road/Depot) in the emerging LDP (2019).
- 7.11 Welsh Government have now permanently revoked TAN1. The result of this is that there is no longer a requirement to demonstrate a 5 year supply of housing land. Instead, housing delivery for each authority will be measured against the trajectory in the adopted LDP. The new approach to measuring housing provision against the LDP trajectory, whilst the LDP is not yet adopted, Welsh Government have confirmed that the use of the draft LDP trajectory is a material consideration in assessing applications such as this proposal. In terms of present LDP performance in enabling the delivery of housing, in the first 4 years of the LDP Plan period, the Council has seen annual completions of 662 (2016), 421 (2017), 608 (2018) and 454 (2019) which gives a total of 2,145 completions or an average of 536 units per annum. This is in excess of the Plan requirement of 6950 dwellings (or 463 units per annum) and is very close to the Plan's housing provision of 7,950 dwellings (or 530 units per annum). The LDP is therefore on track to deliver the amount of housing it is required to meet.
- 7.12 It is also important to mention that Welsh Government, in their formal representations on the Deposit Plan have no fundamental concerns about the soundness of the Plan. In their covering letter Welsh Government states 'The Welsh Government is generally supportive of the spatial strategy and level of homes and jobs proposed and has no fundamental concerns in this respect'. In the supporting document the Welsh Government 'support in principle' the scale and location of homes and jobs. This formal response does not suggest that there are concerns about the Plan 'not delivering' or being unsound.
- 7.13 For the reasons outlined above the site would make a valued contribution to the Council's housing land supply.
- 7.14 Flood Risk  
The site is located within Flood Zone C2 and the nature of the proposals means they are classed as highly vulnerable

development.

- 7.15 TAN 15 is a significant material consideration in the determination of the application. TAN 15 states that ***“highly vulnerable development and Emergency Services in zone C2 should not be permitted”***.
- 7.15 TAN 15 goes on to advise (section 6) that “Development, including transport infrastructure, will only be justified if it can be demonstrated that:-
- i. Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,
  - ii. Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region; and
  - iii. It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and,
  - iv. The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 7 and appendix 1 found to be acceptable.
- 7.17 The above indicates that justifying the location of development should comply with either Criterion 1 **or** Criterion 2 and both Criterion 3 and 4.
- 7.18 It is not accepted that it could be argued that the development of 0.2ha of land for housing (approx. 6 dwellings) is required to sustain the existing settlement of Coed Talon & Pontybodkin or region in accordance with criteria I and ii.
- 7.19 As outlined above the site is previously developed land. It concurs with the aims of aims of PPW and meets the definition of previously developed land satisfying Criteria 3.
- 7.20 More critically the potential consequences of a flooding event have been considered and NRW have raised significant concerns as the FCA and hydraulic modelling submitted do not demonstrate that the risks and consequences of flooding can be managed to an acceptable level.
- 7.21 Therefore, it is considered that criteria 4 has not been satisfied.
- 7.22 Additional hydraulic modelling and an updated FCA have been required since 12/08/2019 when the NRW provided their response.
- 7.23 The applicant/agent has been given the opportunity to address the concerns of the NRW. However, no additional hydraulic modelling or updated Flood Consequences Assessment have been submitted

at the time of writing this report, nor has there been any written confirmation that the applicant/agent is prepared to provide this information.

- 7.24 TAN 15 makes clear that whether a development should proceed or not will depend upon whether the consequences of flooding of that development can be managed down to a level which is acceptable for the nature/type of development being proposed, including its effects on existing development.
- 7.25 Furthermore the Future Wales Plan Policy 8 Flooding makes clear that development should be prioritised in places that are not at flood risk, followed by places where flood risk can be managed in an acceptable way. As the agent has not submitted evidence that the consequences of flooding can be managed the proposal directly conflicts with this recently adopted Development Plan.
- 7.26 It is considered that there is inadequate information to demonstrate that flooding can be managed to an acceptable level. Consequently, the proposals are contrary to Policy EWP17, TAN15 and Policy 8 of the Future Wales Plan.
- 7.27 Highways  
The new access replaces the existing substandard access to Harcroft. Visibility splays required are 2.4m x 43m in both directions which appear to be achievable and can be secured by condition. It is considered that the proposed access is adequate and safe and in accordance with policy AC18.
- 7.28 Land Contamination Issues  
Given the previous uses, a scrap yard and railway yard and station, the land is likely to be contaminated. This can be adequately addressed with a condition requiring a detailed assessment and where required detailed remediation measures. For the reasons outlined above, the proposal satisfies policy EWP 14.
- 7.29 Drainage  
The foul drainage would be discharged via the main drains. Welsh Water have no objection subject to the imposition of a condition to restrict foul water only into public sewerage system. This can be secured and controlled by a condition. This would satisfy policy EPW16.
- 7.30 Planning Balance  
The application site is part of an allocated housing site on previously developed land within the settlement boundary of Coed Talon & Pontybodkin and its redevelopment for housing would be welcomed if all outstanding development management matters could be resolved.
- 7.31 However, the FCA and hydraulic modelling is inadequate and out of

date and does not demonstrate that flooding can be managed to an acceptable level. It is therefore considered the proposal fails to comply with the National and Local Development Plan and national planning guidance (TAN 15) in relation to flooding.

7.32 The planning matters in favour of the development do not outweigh the fundamental issue that the management of the risk of flooding for highly vulnerable development within in Flood Zone C2 has not been evidenced.

7.33 **CONCLUSION**

In conclusion, it is considered that the Flood Consequences Assessment in its current form fails to demonstrate that flooding can be managed to an acceptable level in accordance with policies GEN1 and EWP17 and Policy 8 of the Future Wales Plan. Additional information has been requested but has not been provided.

7.34 Consequently, the principle of residential development cannot be supported.

7.35 Given the key issue of flooding has not been resolved, there has been no discussions on preparing a Section 106 Legal Agreement or other mechanism.

7.36 The application is therefore recommended to be REFUSED.

8.00 **Other Considerations**

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

8.01 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.

8.02 The Council has had due regard to its public sector equality duty under the Equality Act 2010.

8.03 The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

9.01 **LIST OF BACKGROUND DOCUMENTS**

Planning Application & Supporting Documents  
National & Local Planning Policy

Responses to Consultation Responses to Publicity

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