Report of the Chief Officer Economy and Planning

Application Reference
P/2024/1291

Applicant
Mr Sean McBride Castlegreen Homes

Agent

Site Address
LAND TO THE NORTH AND SOUTH OF LANE FARM, ROSSETT ROAD, TREVALYN, ROSSETT, WREXHAM, LL12 0DS

Description of Development
AMRYWIO AMOD 5 O APÊL I BENDERFYNIADAPP/H6955/A/19/3231048 (P/2018/0560) I DIWYGIO MYNEDIAD / VARIATION OF CONDITION 5 OF APPEAL DECISION APP/H6955/A/19/3231048 (P/2018/0560) TO AMEND ACCESS

Ward
Rossett/Yr Orsedd

Community
Rossett/Yr Orsedd

Recommendation
Grant

Officer Report

Site Description
The application site comprises of two separate parcels of land. One lies to the south-east of Trevalyn Hall View on the north side of Rossett Road, the other lies to the east of Trevalyn Way and Moss Green on the south side of Rossett Road.



Proposal

The application seeks permission for the variation of condition 5 of appeal decision reference APP/H6955/A/19/3231048 (P/2018/0560) to substitute the approved access plan for an amended plan and to amend the plans previously submitted to discharge conditions 8 and 9 approved under reference P/2021/0111.

The proposed amendments are:

1. Alterations to pedestrian access arrangements between the site and the south-eastern boundary of Trevalyn Hall View;
2. The formation of an additional pedestrian accesses on either side of Rossett Road, together with a pedestrian crossing;
3. The re-positioning of a pedestrian footway connection onto Trevalyn View. The position of this would align with the pedestrian footway connections shown on the Reserved Matters approved site layout plan.

The application initially also sought permission for the creation of an additional access onto Harwoods Lane. However amended plans have subsequently been submitted omitting this.

Reason for Committee Determination

The Community Council have objected.

Site History

P/2018/0560 OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT OF TWO PARCELS OF LAND (NORTHERN PARCEL FOR UP TO 61 NO. DWELLINGS, SOUTHERN PARCEL FOR UP TO 71 NO. DWELLINGS), EXTENSION TO COMMUNITY PARKING FACILITY (IN ASSOCIATION WITH NORTHERN PARCEL) WITH ASSOCIATED MEANS OF ACCESS AND ALL OTHER MATTERS RESERVED WITH INDICATIVE PROVISION MADE FOR PEDESTRIAN CROSSING, PEDESTRAIN LINKAGES, PUBLIC OPEN SPACE AND AFFORDABLE HOUSING. Refused 7.1.2019. Allowed on appeal 14.12.2020

P/2021/0110 RESERVED MATTERS PURSUANT TO OUTLINE APPLICATION P/2018/0560. Approved 7.2.2022

P/2021/0111 DISCHARGE OF CONDITIONS 6 (ARBORICULTURAL METHOD STATEMENT), 8 (HIGHWAYS), 9, (HIGHWAYS) 10 (CONSTRUCTION METHOD STATEMENT) , 14 (TRAVEL PLAN) AND 15 (LIGHTING) OF PLANNING PERMISSION P/2018/0560. Approved 22.08.2023

P/2022/0241 PART DISCHARGE OF CONDITION 7 (DRAINAGE) OF APPEAL DECISION APP/H6955/A/19/3231048 (P2018/0560). Approved 7.12.2023

P/2023/0435 TEMPORARY ADVERTISEMENT CONSENT FOR SALES SIGNAGE FOR APPROVED RESIDENTIAL DEVELOPMENT (IN RETROSPECT). Pending

P/2023/0851 DISCHARGE OF CONDITION 7 (DRAINAGE) OF APPEAL DECISION APP/H6955/A/19/3231048 (P/2018/0560). Approved 29.1.2024

P/2023/0852 DISCHARGE OF CONDITION 2 (FLOOD) OF PLANNING PERMISSION P/2021/0110. Approved 15.3.2024

P/2023/0853 NON-MATERIAL AMENDMENT TO PLANNING PERMISSION P/2021/0110 TO AMEND LAYOUT AND LANDSCAPING PLAN INCLUDING ADDITION OF AN ATTENUATION BASIN AND PUMP STATION. Granted 29.1.2024

P/2024/0023 NON-MATERIAL AMENDMENT TO RESERVED MATTERS APPROVAL P/2021/0110 TO VARY CONDITION 2. Granted 29.1.2024

P/2024/0097 DISCHARGE OF CONDITION 3 (LANDSCAPE MANAGEMENT PLAN) OF RESERVED MATTERS APPROVAL P/2021/0110. Approved 1.3.2024

P/2024/0144 NON-MATERIAL AMENDMENT TO RESERVED MATTERS P/2021/0110 TO AMEND APPROVED PLANNING LAYOUT. Granted 11.4.2024

P/2024/1074 VARIATION OF CONDITION 1 OF RESERVED MATTERS APPROVAL P/2021/0110 TO AMEND APPROVED PLANS. Pending

P/2024/1076 NON-MATERIAL AMENDMENT TO RESERVED MATTERS P/2021/0110 TO AMEND PARKING ARRANGEMENTS (PLOTS 24-26) AND REMOVAL OF PEDESTRIAN LINK ON BOUNDARY. Approved 7.10.2024

P/2024/1645 NON-MATERIAL AMENDMENT TO PLANNING PERMISSION P/2018/0560 TO AMEND DESCRIPTION. Approved 2.1.2025

Development Plan

Local Development Plan
Policy SP1
Policy SP2
Policy SP5
Policy SP19
Policy SP11
Policy SP14
Policy SP12
Policy SP18
Policy H1
Policy H2

Relevant National Policy

Planning Policy Wales 12
Technical Advice Note 5
Technical Advice Note 12
Technical Advice Note 15
Technical Advice Note 18

Consultation Responses

Community Council:
Objects on highway safety grounds.

Local Members:
Share the concerns of local residents.

Natural Resources Wales:
No comments to make.

Dwr Cymru Welsh Water:
Raises no objection.

Highway Officer:
Raises no objections. Comments that the location of the proposed accesses and pedestrian crossing on Rossett Road would have clear visibility in both directions. These speed limit would also be reduced to 20mph.

Public Rights of Way Officer:
No comments to make.

Ecology Officer:
Raises no objection following the submission of an updated landscaping scheme incorporating more native species hedgerow to compensate for the loss the hedgerow that would occur in order to form the additional pedestrian access.

Public Protection Officer:
No comments to make.

Publicity Undertaken:
Site Notice
Notification Letters

Responses to Publicity:
22 representations received objecting to the application and expressing the following concerns:

- Highway safety regarding vehicular access onto Harwoods Lane;
- Harwoods Lane is part of a Zone 2 undefended flood plain;
- Access for pedestrian access onto Harwoods Lane should be refused;
- It is inappropriate for the amendment of the Minister's decision. The decision was only challengeable within 6 weeks of the decision, i.e. by 28 March 2020. The developers are out of time;
- The extended community car park is incapable of amendment;
- The only legal entity of amending the permission is Welsh Government;
- Any application for amendment must be made under Section 98 of the Town and Country Planning Act 1990 and needs approval from Welsh Government;
- Condition 5 of the Minister's decision requires the development to be carried out in accordance with a specific plan;
- Suggestion that there is no obligation to create the car park is not correct;
- There can be no alteration to the access points or provision of and additional access point;
- A S278 agreement appears to have been signed without regard to the access points approved by the Minister. This agreement should be terminated;
- To provide access to the northern side there is a need to tear down fences and cross land belonging to WCBC Housing and Education;
- The north and south parts are landlocked with no prospect of access agreement;
- The latest plan removes the access to Holt Road adjacent to the zebra crossing, as the land is owned by residents of Moss Green;
- Pedestrian access points cannot be implemented because of landowner opposition;
- The applicants cannot use an application under Section 73 of the Town and Country Planning Act 1990 as this is outside of the scope of that provision of the Act;

- The application cannot be determined until pending decision by Welsh Government regarding an application to revoke the planning permission.
- The Travel Plan required by condition 14 is flawed because the pedestrian links cannot be provided;
- The Council have failed to ensure the reserved matters or discharge of conditions have actually complied with the time limitation imposed under the outline permission. All Council approvals must be judged invalid and approval to commence was ultra vires; and
- The developer is not following the Arboricultural Method Statement.

Principle of Development

Current Status of the Local Development Plan

The Court of Appeal judgement handed down on the 20th of December 2024 concluded that the Planning and Compulsory Purchase Act 2004 (the 2004 Act) does not impose a duty on a Local Planning Authority to adopt a Local Development Plan. It has the effect of overturning the High Court judgement of 29 November 2023, which had concluded to the contrary but this judgement is currently subject to an application to the Supreme Court by the Welsh Ministers to challenge.

The Wrexham Local Development Plan (2013-2028) (LDP) was adopted by Full Council on 20th December 2023. The judgement of the 20th December 2024 does not, by itself, alter the status of the LDP as 'the development plan', as defined in section 38(4)(c) of the 2004 Act and further legal process is required to 'unadopt' it. In accordance with section 38(6) of the 2004 Act, any planning applications or appeals must be determined in accordance with the development plan unless material considerations indicate otherwise.

The LDP therefore remains adopted and therefore the starting point for the determination of planning applications until the Court orders to the contrary.

The application site lies within the defined settlement limit for Rossett and is allocated for residential development. Policy H1 allocates the site for 137 dwellings. The site also benefits from outline planning permission and reserved matters approval. All pre-commencement conditions have been discharged and development has lawfully commenced. The principle of development is therefore acceptable.

In dealing with this application, the Council is limited to considering the merits of the amendments proposed. It is not an opportunity to revise the merits of development or to review matters outside of the scope of this application. The extant planning permission would remain in place irrespective of whether permission is granted to amend condition 5 of the outline planning permission, with the developer able to continue to build under the previously approved plans.

Design

The amendment to the pedestrian access arrangements between the site and the south-eastern side of Trevelyan Hall View would result in a minor change to the appearance of the development. These changes arise from the omission of a previously proposed car park. The effect of the changes would not materially alter the overall character and appearance of the development or materially change its impact upon the appearance of the wider locality. Regardless of whether the previously approved plans or the amended plans were implemented, the development would have internal footways that connect to adjoining land.

The additional pedestrian access point onto Rossett Road would result in a gap of approximately 4m in what would otherwise have been a continuous hedgerow. This would be a relatively minor change to the overall appearance of the development. The additional access would be viewed in conjunction with a residential development and the associated pedestrian footways within the site, as well as those in the wider locality. The appearance of this additional access would therefore not be unusual when viewed in this context, nor materially harmful to the character of the area. Amendments to the landscaping scheme have been proposed to compensate for the loss of hedgerow.

The amended access onto Trevalyn Way would be approximately 10 metres to the south of where it is shown on the approved access plan. This would not materially alter the appearance of the development, particularly as 3 pedestrian access points onto Trevalyn Way were approved and only 2 are now proposed.

Having regard to the above, the proposed access would accord with policy DM1.

Impact on Neighbouring Amenity

Trevalyn Hall View

The approved plan shows pedestrian access being gained to the site via an enlarged parking area that would comprise of both Council owned land and land owned by the applicants. The approved plan also shows footways connecting to both Rossett Road and an existing pedestrian path in Trevalyn Hall Way. Proposals to enlarge the existing parking area and the associated footpaths have now been omitted. The amended plans propose a single pedestrian access to connect to the existing footpath on the south-eastern side of Trevalyn Hall View.

The proposed amendments would not result in any additional pedestrian traffic utilising existing footpaths in Trevalyn Hall View than the approved plans.

Rossett Road

The additional pedestrian access and crossing would be approximately 40 metres from the nearest existing dwelling. It would therefore not have any significant effect on the living conditions of the occupiers of dwellings in Trevalyn Hall View, Moss Green or Trevalyn Way.

Trevalyn Way

The amended position of the southern most pedestrian access would not give rise to any materially different impacts on the living conditions of properties on the opposite side of Trevalyn Way in terms of overlooking. The nearest dwellings (Nos. 46 and 48 Trevalyn Way) both front onto a section of highway that has a footway along its western side, therefore pedestrians would already pass much closer to the properties than any pedestrians using the proposed footway.

Having regard to the above, the proposed amendments accord with policy DM1.

Highway Considerations

The Council's Highway Officer raises no objection. The proposed additional pedestrian accesses onto Rossett Road would directly face each other and enable pedestrians to cross the road. A raised speed table would be provided at the point pedestrians would cross the road. The 20mph speed limit would also be extended to beyond the south-eastern boundary of the development. Taken together, these would limit traffic speed and assist pedestrians to safely cross the road in this location.

The minor changes to the pedestrian accesses to Trevalyn Hall View and Trevalyn Way would not give rise to any highway safety concerns and would be no less safe for pedestrians to use than the previously approved arrangements.

Conditions 8 and 9 of the appeal decision require the implementation of a number of off-site footway connections and footpath improvements. The details required by both conditions were approved under reference P/2021/0111. The application does not propose amending or removing the requirements of either condition. However, the amendments to the pedestrian access arrangements require minor changes to the previously approved plans. The developer therefore proposes to substitute the approved plans for an updated suite of plans.

Having regard to the above, the proposed amendments accord with policy DM1.

Other Considerations

Objectors have suggested that the applicants are unable to comply with the conditions of the outline planning permission because approved pedestrian access points and associated off-site footpath improvements cannot be constructed. It is correct that some of these works would require the agreement of the Council, as landowner. That is an entirely separate matter to the consideration of this application. The developers are not seeking permission to implement the planning permission without providing the previously approved links and improvements. Should it become clear that further changes are required to the site access arrangements, the developer would need to submit a further application accompanied by amended plans for consideration in due course.

Objectors have questioned whether it is possible for the Council to grant permission for amendments to a planning permission granted by the Welsh Ministers. Section 73 of the Town and Country Planning Act 1990 enables a Local Planning Authority to determine applications for the removal or variation of

conditions imposed on an extant planning permission, subject to giving consideration to:

- Whether permission should be granted subject to conditions that differ from the conditions imposed on the extant planning permission; or
- Whether permission should be granted subject to the same conditions as those subject to the extant planning permission.

Section 73 does not impose limitations on the ability of a Local Planning Authority to consider or to grant applications to remove or vary conditions imposed on appeal decisions. For the purposes of Section 73 of the Act, there is no distinction between a planning permission granted by a Local Planning Authority or by PEDW/Welsh Ministers on appeal. However, Case Law has established that there are limits to the extent of amendments to planning permissions that can be granted under Section 73. It is only possible to grant planning permission under Section 73 where the resulting decision would not introduce a condition that creates conflict with or that is inconsistent with the wording of the original planning permission.

The description of development of the extant outline planning permission originally made specific reference to an extension to the existing community parking facility adjacent to no.1 Trevalyn Hall View. The report presented to Planning Committee on the 7 January 2019 specifically advised Members that, although the car park was originally considered desirable, particularly to assist St Peter's primary school peak times, the measure was not required to mitigate against an impact arising directly from the development. It was therefore considered unnecessary to make the development acceptable in planning terms. As such, a condition to require it to be constructed would not accord with advice in Circular 016/2014: The use of Planning Conditions for Development Management.

Planning permission was refused by Committee but subsequently allowed on appeal. Neither the appeal Inspector nor the Minister made reference to the car park being necessary and the planning permission does not include any conditions to require the parking area to be constructed. The developer is therefore not under an obligation to undertake the works. This was confirmed in the report presented to Planning Committee on 7 February 2022 in respect of the reserved matters application. However, the description of development for the outline planning permission makes specific reference to *'EXTENSION TO COMMUNITY PARKING FACILITY (IN ASSOCIATION WITH NORTHERN PARCEL'.*

S96A of the Town and Country Planning Act 1990 allows for amendment to the description of development, provided the amendment is considered non-material. The developer applied to make a non-material amendment to the description of development, omitting reference to the extension to the communal parking area (P/2024/1645). As confirmed above, the car park was not necessary to make the development acceptable in planning terms, therefore its omission from the description of development is a non-material amendment. The

application was approved on 2 January 2025. The description of development now reads as follows:

OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT OF TWO PARCELS OF LAND (NORTHERN PARCEL FOR UP TO 61 NO. DWELLINGS, SOUTHERN PARCEL FOR UP TO 71 NO. DWELLINGS), WITH ASSOCIATED MEANS OF ACCESS AND ALL OTHER MATTERS RESERVED WITH INDICATIVE PROVISION MADE FOR PEDESTRIAN CROSSING, PEDESTRAIN LINKAGES, PUBLIC OPEN SPACE AND AFFORDABLE HOUSING.

Following the S96A decision, the amendments proposed by this application and by application No. P/2024/1074 would not be inconsistent with or in conflict with the operative wording of the planning permission.

Having regard to the above and in light of the matters discussed earlier in the report, there would be no valid planning grounds to refuse this application.

Conclusion

The proposed amendments to the pedestrian access arrangements to the development would not give rise to visual impact, residential amenity or highway safety concerns and therefore accord with the relevant LDP policies.

Conditions

1. The development shall be carried out in accordance with the appearance, landscaping, layout or scale detailed approved under reserved matters approval reference P/2024/1074 on 2 December 2024 .

2. The development shall be carried out in accordance with the phasing plan reference No. ROSSRD-PP.01 dated 4 May 2021. The affordable housing to be delivered within each phase shall consist of 25% of the total number of dwellings to be built on the site.

3. The development shall only be carried out in accordance with the following plans and documents: Drawing No. Plnc-100-37-RLP-01; and Drawing No. Plnc-100-37-SMPA-01 Revision B in respect of vehicular and pedestrian access.

4. The development shall take place in strict accordance with the Ascerta Arboricultural Impact Assessment, Rossett Road, Rossett, Wrexham, reference P.1416.20 Version E approved on 28 August 2023 under reference No. P/2021/0111.

5. The development shall be carried out in accordance with the foul water drainage scheme approved under reference No. P/2022/0241 on 7 December 2023 and the surface water drainage scheme approved under reference no. P/2023/0851 on 29 January 2024.

6. No dwelling shall be occupied on the land to the north of Rossett Road until the following scheme have been implemented in full in accordance with the details shown on drawing No. 3261-D004 Revision B approved on 22 August 2023 under reference No. P/2021/0111 and drawings Nos. 3261-D001 Revision Q, 3261-D002 Revision O, 3261-D003 Revision K, , 3261-D005 Revision D:

1. Speed limit amendments along Rossett Road;

2. Pedestrian footway links to Holt Road, Darland View, Trevalyn Hall View and Darland High School;

3. Provision of a pedestrian footway along the south side of Holt Road;

4. Bus stop provision; and

5. Street lighting along the Rossett Road frontage of the site.

7. No dwelling shall be occupied on the land to the south of Rossett Road until the following scheme have been implemented in full in accordance with the details shown on drawing No. 3261-D004 Revision B approved on 22 August 2023 under reference No. P/2021/0111 and drawings Nos. 3261-D001 Revision Q, 3261-D002 Revision O, 3261-D003 Revision K, , 3261-D005 Revision D:

1. Speed limit amendments along Rossett Road;

2. Pedestrian footway links to Holt Road and Trevalyn Way,

3. Provision of a pedestrian footway along the south side of Holt Road

4. Bus stop provision; and

5. Street lighting along the Rossett Road frontage of the site.

8. The following documents approved on 22 August 2023 under reference No. P/2021/0111 shall be adhered to throughout the construction phase of the development:

Construction Method Statement Revision D

Drawing no. ROSSRD-CMP.01 Revision B; and

Cheshire Ecological Services, Preliminary Ecological Appraisal & Badger Survey reference CES:750.084/06-21/GB dated June 2021

9. Prior to their first use the vehicular accesses shall provide visibility splays of 2.4 metres x 56 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

10. A 3 metre wide combined footway and cycleway that shall be provided along the full length of both frontages of the site with

Rossett Road. The combined footways and cycleways shall be provided in accordance with the detailed approved on 2 December 2024 under reference P/2024/1074 prior to the first occupation of the dwellings in the respective phase of the development that they are situated within.

11. Public open space shall be provided on site within each phase in accordance with the detailed shown on the plans approved on 2 December 2024 under reference No. P/2024/1291.

12. Measures to encourage occupiers of the development to walk, cycle and use public transport shall be implemented in accordance with the details set out in the Eddisons Residential Travel Plan, Issue 1 dated 4 March 2022 approved on 22 August 2023 under reference No. P/2021/0111.

13. Street lighting shall be installed in accordance with the details shown on Drawings Nos. 22475-D-01 Revision C (all sheets) and 21900-D-01 Revision B and in the Outdoor Lighting Report reference 22475-A-01C approved on 22 August 2023 under reference No. P/2021/0111.

Reasons

1. To comply with the provisions of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

2. In the interests of a co-ordinated approach to the development of the site.

3. To define the scope of the planning permission and in the interest of pedestrian and highway safety in accordance with policy DM1 of the Wrexham Local Development Plan.

4. To ensure the work is carried out to accepted arboricultural practices for the long term wellbeing of trees within/adjacent to the site in accordance with policy NE3 of the Wrexham Local Development Plan.

5. To ensure the propose management of surface water in order to avoid on or off-site flooding in accordance with policy DM1 of the Wrexham Local Development Plan.

6. To secure safe and convenient means of pedestrian access to the site in the interests of promoting sustainable transport choices in accordance with Policies DM1 and T2 of the Wrexham Local Development Plan.

7. To secure safe and convenient means of pedestrian access to the site in the interests of promoting sustainable transport choices in

accordance with Policies DM1 and T2 of the Wrexham Local Development Plan.

8. In the interests of minimising disruption arising from the development as well as securing a sustainable use of materials excavated during construction in accordance with Policy DM1 of the Wrexham Local Development Plan.

9. To ensure that adequate visibility is provided at the proposed point of access to the highway in accordance with Policy DM1 of the Wrexham Local Development Plan.

10. To secure safe and convenient means of pedestrian access to the site in the interests of promoting sustainable transport choices in accordance with Policies DM1 and T2 of the Wrexham Local Development Plan.

11. In the interests of the appearance of the development and the standard of amenity afforded to future occupiers in accordance with Policies DM1 and CF2 of the Wrexham Local Development Plan.

12. To assist future occupiers of the development make sustainable transport choices in accordance with Policies DM1 and T2 of the Wrexham Local Development Plan.

13. To ensure the development takes place without harming statutory protected species in accordance with Policy DM1 of the Wrexham Local Development Plan.