**AGENDA ITEM NO.**

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| **REPORT TO:** | Planning Committee |
| **REPORT NO.** | COEP/41/25 |
| **DATE:** | 7 July 2025 |
| **REPORTING OFFICER:** | Chief Officer Economy and Planning |
| **CONTACT OFFICER:** | Matthew Phillips – Extension 8780 |
| **SUBJECT:** | Status of Development Plans for decision making |
| **WARD:** | N/A |

## 1.0 PURPOSE OF THE REPORT

1.1 To advise Members on the policy framework applicable to the determination of planning applications

## 2.0 DEVELOPMENT PLANS APPLICABLE TO WREXHAM

2.1 On 20 December 2024, the Court of Appeal handed down judgement on an appeal lodged against the judgement of Eyre J of 29 November 2023 that the Planning and Compulsory Purchase Act 2004 (the 2004 Act) imposed a statutory duty on Councils to adopt a Local Development Plan. The Court of Appeal overturned the judgement of 29 November 2023, ruling that the 2004 Act does not impose such a duty.

2.2 Following a challenge brought under section 113 of the 2004 Act, the High Court issued an Order received on 12 June 2025. The effect of the Order is that the vote by Full Council on 20th December 2023 to adopt the LDP is quashed, returning the LDP to the status of an unadopted plan. The LDP therefore no longer has the status of a development plan for the purposes of Section 38(6) of the 2004 Act.

2.3 For the purposes of any area in Wales, section 38(4) of the 2004 Act defines a development plan as:
(a) the National Development Framework for Wales,
(b) any strategic development plan for an area that includes all or part of that area, and
(c) the local development plan for that area .

**Status of the UDP**

2.4 The quashing of the decision of Full Council to adopt the LDP means the Wrexham Unitary Development Plan 1996-2011 (UDP) is returned to the status of the 'adopted development plan', albeit under Chapter 1, section 27A of the Town and Country Planning Act 1990 (the 1990 Act). Section 27A was inserted by section 20 of the Local Government (Wales) Act 1994.

2.5 Section 27A of the 1990 Act was repealed in Wales on 15 October 2005, subject to provisions set out in The Planning and Compulsory Purchase Act 2004 (Commencement No.6, Transitional Provisions and Savings) Order 2005. This provided for a transitional period between 15 October 2005 and the date an LDP was adopted whereby a UDP would be development plan for the area for the purposes of Section 38(4)(c) of the 2004 Act.

2.5 Section 38(6) of the 2004 Act states that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The quashing of the Full Council vote therefore means the UDP becomes the starting point for determining planning applications once again.

2.6 The UDP was formally adopted in February 2005. However, the plan is now out of date being underpinned by an evidence base that is over 20 years old. This has already been confirmed in recent years by applications and appeals allowed for developments that do not conform with UDP policies. In all cases, there have been material considerations, including evidence prepared to underpin the unadopted LDP, that have been considered to carry sufficient weight to justify a departure from certain UDP policies. Some UDP policies do not align with Planning Policy Wales 12 or Technical Advice Notes (TANs).

2.7 The National Development Framework for Wales also has the 'development plan' status, as defined by section 38(4)(a) of the 2004 Act. Future Wales: The National Plan 2040 (FW) was adopted on 24 February 2021 by the Welsh Government, and therefore is also part of the starting point for determining planning applications, in addition to the UDP. However, the UDP pre-dates FW and makes no specific provisions to deliver its key principles and objectives, in particular, the designation of Wrexham and Deeside as a growth area.

2.8 Paragraph 7.8 of Welsh Government's Development Plans Manual (Edition 3) advises that where development plans are outdated, Local Planning Authorities should give the plan decreasing weight in favour of other material considerations, such as national planning policy.

**Status of the LDP**

2.9 As noted in paragraph 2.2 above, the LDP now has the status of an unadopted plan. However, the unadopted LDP has not been formally withdrawn and it does not disappear. The High Court decision has no effect on the conclusion of the Examination Inspectors that the LDP is 'sound' or the underlying evidence base.

2.10 Paragraph 9.4.11 of the Welsh Government's Development Management Manual (DMM) advises that the weight to be attached to an unadopted LDP will depend on the stage it has reached within the plan making process, with certainty regarding the content of the plan being achieved when an Inspector delivers a binding report. In considering the weight that should be afforded to the policies in an unadopted LDP that apply to a particular proposal, it is necessary to consider the underlying evidence and the background to the policies.

2.11 The evidence that underpins the unadopted LDP is, in every respect more up to date then the evidence that underpins the UDP. Moreover, the unadopted LDP provides a planning framework for the County Borough for 2013-2028, in contrast to the UDP which was adopted to provide a plan for 1996-2011.

2.12 The LDP has been subject to Examination in Public, with the LDP Inspectors concluding that subject to the binding changes set out in their report (which have been incorporated into the final version of the written statement and proposals maps), '*the Wrexham Local Development Plan satisfies the requirements of section 64(5) of the 2004 Act and meets the procedural requirements and tests of soundness'.*

2.13 In addition to a Local Development Plan, the National Development Framework for Wales also has 'development plan' status, as defined by section 38(4)(a) of the 2004 Act. As noted in paragraph 2.7, Future Wales: The National Plan 2040 (FW) was adopted on 24 February 2021, therefore in addition to any local development plan, planning applications or appeals must be determined in accordance with the FW unless material considerations indicate otherwise. The LDP Inspectors concluded that *FW 'forms part of the Council's statutory development plan and, which, this plan needs to be in general conformity. The LDP is consistent with its main principles, particularly, that, as recognised in Policy 20- National Growth Area, Wrexham and Deeside will be the main focus for growth and investment in the North region'.*

**Dealing with Conflict between UDP and LDP**

2.14 There are a number of differences between the UDP and the unadopted LDP. These will be identified and considered in Officer reports on a case by case basis. However the most significant are:

- Differences between UDP and unadopted LDP settlement boundaries;
- Housing provision, specifically allocated sites;
- Employment provisions and specially the proposed extension to Wrexham Industrial Estate (Key Strategic Site 3);
- Green Barrier/Green Wedge designations;
- Special Landscape Area designations; and
- Affordable housing

2.15 Where these differences occur, planning applications that accord with the unadopted LDP may conflict with UDP policies. In some cases, the degree of conflict may represent a significant departure from the policies in the UDP. For example, 13 of the unadopted housing allocations lie outside of a settlement limit as defined in the UDP.

2.16 Because the UDP is now outdated, conflict with one or more UDP policies would not, in itself, be fatal to individual planning applications, unless the proposed development also conflicted with PPW12, guidance in relevant TANs, FW or policies within the unadopted LDP.

2.17 Conversely, where a proposed development accords with policies in the unadopted LDP, in the view of Officers, this will be a material consideration that weighs heavily in its favour and will outweigh conflict with UDP policies, provided the proposed development also accords with PPW12, guidance in relevant TANs and FW.

## 3.0 RECOMMENDATION

3.1 That Committee notes the above report.

| BACKGROUND PAPERS | LOCATION | WEBSITE INFO. |
|---|---|---|
| Planning and Compulsory Purchase Act 2004 | Legislation | Planning and Compulsory Purchase Act 2004 |
| Town and Country Planning Act 1990 | Legislation | Town and Country Planning Act 1990 |
| Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005 | Legislation | The Planning and Compulsory Purchase Act 2004 (Commencement No.6, Transitional Provisions and Savings) Order 2005 |
| Future Wales: The National Plan 2040 | Welsh Government | Future Wales: The National Plan 2040 \| GOV.WALES |
| Development Plans Manual (Edition 3) | Welsh Government | development-plans-manual-edition-3-march-2020.pdf |
| Development Management Manual | Welsh Government | Development Management Manual |