

Adroddiad

Ymchwiliad a gynhaliwyd ar 22-24/11/16

Ymweliad safle a wnaed ar 23/11/16

**gan Richard Duggan BSc (Hons)
DipTP MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11.01.2017

Report

Inquiry held on 22-24/11/16

Site visit made on 23/11/16

**by Richard Duggan BSc (Hons) DipTP
MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 11.01.2017

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

APPEAL BY MRS MARGARET CREWE

HOME FARM, GRESFORD ROAD, LLAY, WREXHAM, LL12 0NW

File Ref: APP/H6955/A/16/3147116

Site address: Home Farm, Gresford Road, Llay, Wrexham, LL12 9NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Margaret Crewe against the decision of Wrexham County Borough Council.
- The application Ref LLA P/2014/0905, dated 2 December 2014, was refused by notice dated 5 October 2015.
- The development proposed is described as 'outline application for up to 365 dwellings and erection of 300m² retail unit – all detailed matters reserved'.

Summary of Recommendation: That planning permission be granted.

Procedural Matters

1. The appeal has been recovered for determination by the Welsh Ministers as the proposed development falls within the Welsh Ministers recovery criteria, being residential development of more than 150 units on more than 6 hectares of land.
2. The appeal application is made in outline form with all matters reserved for subsequent approval. I have dealt with the appeal on this basis, treating the site layout plans and various other plans as indicative.
3. The description of the development has changed from the application determined by the Council. As part of the appeal the Appellant has requested a minor amendment to the description of the development by the inclusion of the words "up to" before "365 dwellings". The Council has confirmed its agreement to this amendment as it does not materially alter the development being proposed. I consider that no substantial prejudice has occurred to interested parties as a result of this amendment. Therefore, I have used this description for the purposes of this report.
4. An amended planning application red line plan (OS Map 653 P (00) 001 Rev A) has been submitted as part of the appeal to correct a slight error. As the correct red line was shown on the Site Layout Plan that accompanied the application both parties agreed that no prejudice has occurred to interested parties as a result of this amendment. I have no reason to disagree with this approach and the appeal should proceed on this basis.
5. A signed Unilateral Undertaking (UU) dated 24 November 2016¹ was submitted at the Inquiry and provides obligations to provide affordable housing, to secure the management and maintenance of on-site public open space / green space; the long term management and maintenance of any on-site habitat mitigation; and staged payments of educational contributions towards primary and secondary school education.
6. A screening direction was given by the Planning Inspectorate under the authority of the then Minister for Natural Resources as to whether the proposal is Environmental Impact Assessment (EIA) development within the meaning of the then relevant Environmental Impact Assessment (England and Wales) Regulations 1999 (as amended). The direction given was that the proposal is not EIA development as it is

¹ Inquiry Document 4 (vi)

not a major development of more than local importance, is not proposed in an environmentally sensitive or vulnerable location and is not likely to give rise to unusually complex and potentially hazardous environmental effects. This direction accords with the screening opinion given by the Council².

7. Since the application was determined both Planning Policy Wales and Technical Advice Note 4: "Retail and Commercial Development" (TAN 4) have been updated. The relevant documents are now PPW Edition 9, November 2016 and TAN 4 November 2016. The previous versions of these documents have been referred to in the parties' submissions. Both main parties agreed at the Inquiry that neither update makes any material difference to the main issues. I am satisfied that the general content of the updated national policy remains similar to that in the superseded versions and my recommendations have been made on the basis of the updated versions.
8. I undertook an accompanied site visit on 23 November 2016 and carried out three other unaccompanied visits to the surrounding viewpoints and area before and during the Inquiry.

The Site and Surroundings

9. The site extends to approximately 15.86 hectares and comprises agricultural land, which is currently being farmed, agricultural sheds and areas of hardstanding used for parking farm vehicles. It is located immediately north east of the existing settlement of Llay between the B5373 Gresford Road and the B5102 Straight Mile, both of which lead to the main crossroads/junction named as the Crown Junction.
10. The site is gently undulating and is split into a number of fields, the majority of which are bounded by stock proof hedgerows. The north-western boundary runs along the Straight Mile with the Crown Junction being located on the western corner of the site. The boundary running in a south-easterly direction along Gresford Road from the Crown Junction contains a number of tall mature trees which provide some screening of the site from the junction. The boundary along the south-eastern corner part of the site is made up by a stone wall.
11. The site is bounded to the south-west by continuous residential properties and Llay Industrial Estate is located to the west across the Crown Junction. The land to the north and east of the site is generally open countryside containing sporadic development.
12. The site falls within LANDMAP landscape character area 8 '*Gwersyllt, Llay, Gresford, Borrás*' and is not subject to any landscape designations.

Planning Policy

13. The development plan for the area comprises the Wrexham Unitary Development Plan (UDP), which was adopted in 2005 and covers the period 1996 -2011. The Proposals Map of the UDP indicates the site as being outside of the settlement limit of Llay and that the site, in policy terms, is within the countryside. The site is also partially subject to a Protection of Mineral Resources designation as shown on the UDP

² Inquiry Documents 1 (i) Folder 2 Tabs 86, 87 and 88

Proposal Map 3, as such, the planning application was supported by various reports³ which do not dispute the fact that the site has sand and gravel resources. However, the evidence concluded that the resources are at such a depth their prior removal would not be viable. This has been confirmed by the North Wales Minerals and Waste Planning Service⁴.

14. The relevant policies referred to by the Council in the single reason for refusal are PS1, PS2 and H5. Policy PS1 is strategic in nature and relates to 'settlement limits' and states that new development for housing, employment and community services will be directed to within defined settlement limits/employment areas. Policy PS2 states that development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment. Policy H5 restricts housing outside defined settlement limits to, amongst other things, affordable housing exception sites, infilling or those who have an essential need based on agricultural or forestry jobs.
15. A number of other development plan policies have been cited as being materially relevant in the consideration of the proposed development, and these have been identified and agreed by the Council and the Appellant in the Planning Statement of Common Ground (PSoCG)⁵.
16. The parties agree that the main sources of national policies relevant to this appeal are contained in PPW Edition 9 and associated Technical Advice Notes (TANs), but TAN 1: Joint Housing Land Availability Studies (2015) is of particular relevance to the appeal and should be afforded great weight.
17. PPW is the overarching national planning policy document that guides planning and development in Wales. PPW paragraphs 2.14.1 to 2.14.4 relate to emerging or outdated development plan policies and where such policies are found, decreasing weight in favour of other material planning considerations, such as national planning policy including the presumption in favour of sustainable development, should be given.
18. Chapter 4 *Planning for Sustainability* places achieving development that is economically, socially and environmentally sustainable at the heart of planning decision making in Wales. Paragraph 4.2.4 states where policies are considered to be outdated or superseded there is a presumption in favour of proposals in accordance with key principles and key policy objectives of sustainable development in the planning system. In doing so, proposals should seek to maximise the contribution to meeting the local well-being objectives, but where these are not in place, the well-being goals contained in the Well-being of Future Generations (Wales) Act should be used.
19. Paragraph 9.2.3 of PPW requires local planning authorities to ensure that sufficient land is genuinely available or will become available to provide a 5-year supply of

³ Inquiry Document 1(iii) Folder 2: CD15, CD16, CD17

⁴ Inquiry Document 1(iii) Folder 2: CD18

⁵ Inquiry Documents 1 (xi): PSoCG paragraphs 4.4 to 4.6

housing land. TAN 1 explains that the housing supply figure will be taken from the current Joint Housing Land Availability Study (JHLAS). Paragraph 6.2 of the TAN provides that, where such a study shows a supply below 5 years, the need to increase supply should be given considerable weight when dealing with development that would otherwise comply with development plan and national planning policies.

20. TAN1 advises that local planning authorities must ensure that sufficient land is genuinely available to provide a 5 year supply of land for housing. In accordance with paragraph 6.2, the results of the Joint Housing Land Availability Study (JHLAS) should be treated as a material consideration in determining planning applications for housing.
21. TAN 18 recognises that the location of new residential development has a significant influence on travel patterns and requires appropriate levels of access by walking, cycling and public transport for new residents and the wider community to local services. It adds that where a development proposal is assessed as having relatively poor accessibility this may be sufficient grounds to refuse planning permission.
22. Both parties have referred to the emerging Wrexham Local Development Plan (2) (2013-2028) (LDP), and associated evidence base including background and consultation papers. The plan is at an early stage of preparation and is not expected to be adopted until sometime after 2018.

The Proposal

23. The proposed scheme seeks the redevelopment of land surrounding Home Farm for a mixed use development of up to 365 residential dwellings, including a 25% affordable housing provision, and the erection of a 300m² (use class A1) retail unit. The indicative Site Layout Plan shows that the dwellings would be evenly spread across the site with areas of formal and informal public open space, including a pond and informal play area. The site would be accessed via roundabout junctions on the Straight Mile and Gresford Road, and other works would include improvements to footways along Gresford Road and Straight Mile which would be routed within the site and behind hedgerows and walls to retain boundary features. A reduction of the speed limit along Straight Mile and improvements to the traffic signal arrangements and layout of Crown Junction would also be part of the development.

Agreed Facts

24. The main parties have agreed a PSoCG dealing with a number of matters including issues relating to planning, highways, community infrastructure, drainage and ecology. Some of the main matters in agreement include the following (a full list is provided in the PSoCG⁶):
 - The site is not covered by any landscape designations and the visual impact would be limited to the immediate locality;
 - there is not a 5 year supply of housing land in the County Borough of Wrexham;

⁶ Inquiry Document 1 (xi): PSoCG, pages 14 - 21

- that the provision of market housing and 25% affordable housing is acceptable and would be a significant contribution to housing need in the area;
- in technical terms the proposed site access arrangements onto Gresford Road and the Straight Mile are suitable to serve the development;
- the site is in a sustainable location and that the proposed retail unit would contribute to the sustainability of the development and the eastern side of Llay;
- the Health Board did not respond to the application and the Education Authority raised no objection, subject to contributions towards primary and secondary education;
- the proposed development is not subject to biodiversity designations and not likely to be detrimental to the maintenance of the favourable conservation

The Case for Mrs Margaret Crewe

25. At the outset of the Inquiry the following main issues were identified:

- (i) Whether the appeal site is an appropriate site for housing having regard to planning policies that control the location of development including protection of the countryside and the provision of sustainable development;
- (ii) Whether the site is logical for development having regard to the character and appearance of the area; and
- (iii) Ecological issues relating the GCN and bat population locally.

26. In respect of the above issues other matters upon which additional information was required included:

- (a) the weight to be given to the UDP;
- (b) the sustainability of the site;
- (c) the 5-year housing land supply and the weight to be attached to that as a material consideration;
- (d) the relevance of the pattern of development of Llay;
- (e) the visual impact on the character and appearance of the locality; and
- (f) further information on the ecological assessments and whether the proposed condition requiring further survey work is appropriate.

27. All the above issues are clearly interrelated and within the submissions that follow the above main issues are addressed with reference, as appropriate, to the specific information referred to above.

Introduction

28. Since the Council's witness, Mr Mathew Phillips, recommended the scheme for approval neither the relevant planning policy context, nor the nature of the landscape on or surrounding the site has changed. Mr Phillips in his professional opinion still regards the site as acceptable but has done his best to understand what Members meant in refusing the scheme. But the case, in essence, goes no further than a complaint about built development on greenfield land beyond the settlement boundary. The argument rests on Gresford Road being the logical boundary to development and that settlement boundaries should remain static and once a boundary is established that is the boundary for all of time.
29. That position is itself illogical and not supported by any national policy or guidance. As a proposition, if adhered to, every settlement would be constrained by its current boundary and could never grow regardless of the need or demand for new development. Gresford Road is no different to many roads around settlements. There is nothing special about its suburban character or any reason to keep development only on one side of it. No specific landscape or visual case has been advanced by the Council at this appeal.

Common Ground and Weight to the UDP

30. There is significant common ground between the parties recorded in the PSoCG and it confirms that there are no technical matters outstanding between the parties. The Appellant has submitted a large collection of technical reports and there is no evidence to dispute the findings of those reports or the endorsement of the relevant consultees. In addition to that recorded in the PSoCG, agreement was reached at the Inquiry in respect of policies PS1 and H5 of the UDP. In particular, it is agreed that the policies can only be afforded limited weight in this appeal by virtue of the fact that they are outdated and superseded as a result of the housing land supply position, and the fact that the identified need for housing going forward cannot be accommodated by those policies.
31. The Council acknowledges that those policies are a constraint on development⁷ and that there is insufficient brownfield land to accommodate the level of housing need, such that the Council must look beyond the development boundaries to greenfield sites to provide the housing land required in breach of those policies. The policies are therefore incompatible with national policy that seeks to secure appropriate levels of housing land as well as ensuring that development plans are up to date⁸.
32. In respect of policy PS2, the parties agree that the policy can be accorded significant weight in the determination of the appeal. It is however the Appellant's case that the policy is not offended by the proposals.

⁷ Inquiry Document 1 (iv): CD 34, page 115

⁸ PPW paragraphs 9.2.3; 2.1.2 and 3.1.3

33. The Council agrees that insofar as all other relevant policies are concerned the scheme accords with them⁹. As relevant policies of the UDP that are not outdated or superseded, those policies continue to attract significant weight in the planning balance.

Development Plan Policies

34. It is clear that neither the Council's witness nor Members have undertaken the correct planning balance in this matter, because the right exercise has not been carried out in respect of policies PS1 and H5. The policies have hitherto been given full weight in the planning balance, but as a result of the recent Hafod Tileries appeal decision¹⁰, the Council now accepts those policies attract only limited weight. In particular and in relation to this scheme the following paragraphs of that decision are relevant, and they contain principles with which the Council agreed in cross examination:
- (i) Inspectors Report (IR) 136/137 deal with the weight to be given to policies PS1 and H5, and in particular, noting that *"the settlement boundaries ... are out of date and were drawn in response to a housing target set out in the now out of time UDP... The settlement limits were defined in the light of a different housing requirement and the Council acknowledged that they will have to be re-drawn to accommodate existing needs."*
 - (ii) IR 140 in respect of the housing land position, it *"...weighs heavily in favour of the proposed development. There is a pressing need for housing, however given the early stage the LDP is at, there is little prospect of a plan led solution any time soon;"*
 - (iii) IR 141; the provision of 60 affordable units at a below policy compliant level was regarded as *"significant"* and *"would make an important contribution to a local identified need."* The Council agreed that the contribution of a policy compliant level of affordable housing at more than 90 affordable housing in this case was significant;
 - (iv) IR 180/181 built on the argument expressed earlier in IR 136/137 in confirming that relevant policies of the UDP that seek to control development outside the settlement boundaries are *"outdated."*
35. The Council does not suggest an alternative approach to that taken in the Hafod Tileries appeal decision, but looks upon it as though it is a revelation in respect of the proper approach to UDP policies. While the Council now acknowledges that para 4.2.4 of PPW is a material consideration in assessing development plan policies, the exercise should have been obvious all along.
36. On the basis of the Hafod Tileries decision, the Council's witness agreed that those decisions at appendix 2 of his proof of evidence, and which largely concern land

⁹ Inquiry Document 1 (xi): PSoCG, paragraph 4.6

¹⁰ Inquiry Document 1 (xiii): Welsh Ministers decision letter dated 14 November 2016 and the Inspectors report APP/H6955/A/15/3135730, Hafod Tileries, Johnstown, Wrexham.

designated as green barrier / Special Landscape Area (SLA), are less relevant in the context of the present appeal. The Appellant agrees that the context of those cases where there were specific landscape designations protecting the various sites is vastly different to the appeal proposals.

37. The exercise set out at PPW paragraph 4.2.4 is not an academic exercise. It is not the same one as is set out in TAN1 at para 6.2 that, where there is not sufficient HLS considerable weight should be given to proposals for housing. That is a material consideration, but the PPW approach affects the starting point as it impacts on the weight that can be given to the policies themselves against which the proposals are measured. The Council conflated the different concepts and in doing so approached the task in the wrong way.
38. Having accepted that policies PS1 and H5 are outdated and superseded, *"there is a presumption in favour of proposals in accordance with the key principles and key policy objectives of sustainable development in the planning system"*¹¹. The Council agreed that the scheme was in accordance with the key principles of sustainability; the report to the committee confirms that the scheme would broadly accord with the presumption in favour of sustainable development set out in PPW¹² and the Council did not depart from that view in evidence when questioned about it.
39. Further, the Appellant's planning witness, Ms Hawkins, has undertaken the exercise of assessing the scheme against the criteria listed in paragraph 4.3 of PPW at appendix 2 to her evidence, and again, the Council does not take any issue with this evidence.
40. One of the points that the Appellant makes, and which is agreed by the Council, is that the simple fact that the site is a greenfield site beyond the settlement boundary cannot weigh against it. There simply has to be more if the scheme is to be considered inappropriate, or the Council will never be in a position to adopt a new plan and there is not sufficient land on any other approach.
41. The Council refers to a number of decisions where permission has been granted in the County Borough for housing schemes outside of settlement limits¹³. The objective of this evidence is to indicate that the Council will set aside the UDP where appropriate. However, many of those schemes are on SLAs or Green Barriers and the Council accepts those designations will have to be reviewed in respect of their suitability for housing if the Council is to meet its housing need. The Council also agreed that it is sequentially preferable to develop land such as the appeal site that is not so designated. The grant of planning permission on this site may well negate the need to develop at least some land that is presently designated and which in policy terms should be afforded greater protection. That is a benefit of this scheme.

¹¹ PPW paragraphs 4.2.4; 4.3 and 4.4

¹² Inquiry Document 1 (iv): CD 34, Planning Committee Report page 118

¹³ Inquiry Document 2 (iii) Council proof of evidence, Appendix 1

Housing Land Supply

42. The need to have a five year housing land supply is set out in paragraph 9.2.3 of PPW. This is a key planning policy requirement as paragraph 2.1 of TAN1 emphasises. It is an important aim of PPW to secure sufficient housing to meet the needs of all communities¹⁴. That is undoubtedly one of the reasons why it is so important to have an up to date plan¹⁵ but that is not a realistic solution to the housing land shortage in this case, not least because securing a HLS is a pre-requisite to adopting the plan and the Council are a long way off that.
43. The Council's witness agreed under cross examination that:
- (i) the existing housing requirement is based on projections from 1996 and those have been superseded by more recent projections;
 - (ii) the Council's preferred housing figure in the emerging LDP more than doubles the previous requirement (5,775 to 11,715 over a 15 year plan period) ;
 - (iii) the Council has a zero housing land supply;
 - (iv) the HLS over the years has deteriorated;
 - (v) the position now in respect of market and affordable housing is acute;
 - (vi) in the past three years, the Council has not delivered more than 235 houses in any one year;
 - (vii) the latest completions data shows delivery of only 199 completions;
 - (viii) the housing need moving forward is 922 dwellings per annum;
 - (ix) to deliver that need will require a "step change" in housing delivery;
 - (x) it is a level of delivery not achieved by the Council in recent times;
 - (xi) the only way to improve the position in the short term is to start granting planning permissions; and
 - (xii) as part of the housing mix, there will inevitably be reliance on large sites such as the appeal site.
44. The Council acknowledges that without the housing land supply required it would not be able to adopt a new Plan. The Council also agrees that the housing land supply position is critical and that the failure to provide the housing requirement is harmful to the economic prosperity of the County Borough, a point which is highlighted by the Appellant¹⁶. The Appellant's planning witness made clear in her evidence that, while it is right to acknowledge the Council has granted permission for some sites outside of the settlement boundaries, the number permitted does not achieve the step change that is required to meet the housing need and get a plan in place sooner rather than later.
45. The Appellant accepts that in an ideal world the best place to discuss the comparative merits of sites is through the development plan process. However, the Council does not have the luxury of comparing this site against potential sites elsewhere, and the

¹⁴ PPW paragraphs 1.2.2, 9.2.3 and p.50 "A Wales of Cohesive Communities"

¹⁵ PPW paragraph 2.1.2

¹⁶ Inquiry Document 1 (x): Stephanie Hawkins' Proof of Evidence, Appendix 6

need is real and it should be met now. If the situation continues the Council will never be in a position to get to a plan examination, where that debate can take place, because it simply will not be able to secure a five year housing land supply. There is a clear discord in that sense between officers of the Council and its Members. In particular, the Council appears to be promoting a plan with a significantly increased housing requirement that relies on sites such as this coming forward, while its Members seek to prevent development on the erroneous belief that the substance of the emerging Plan might radically change such that the Council will be able to rely on brownfield land to meet the requirement and settlement limits won't have to change.

46. In response to the issue of weight to be given to the 5 year housing land supply position, it is agreed between the parties that the housing land supply position, and the immediate need for housing, is a significant consideration that weighs heavily in favour of the scheme.

Affordable Housing and Infrastructure Contributions

47. It is important to again understand the planning context that sits behind the affordable housing (AH) contribution; that is, the Council does not seek AH contributions on schemes of less than 25 dwellings. The effect is twofold:
- (i) first, the Council is reliant on larger schemes to deliver AH. To improve the AH delivery, it will need schemes the size of the appeal site to make a meaningful contribution to that requirement; and
 - (ii) specifically to Llay, the Miners Welfare Site is for up to 18 dwellings¹⁷. That will not deliver any AH which means that at present, there is no way of delivering any AH in Llay. It is worth noting that Llay sits in the area of Wrexham County Borough with the highest affordable housing need. However, it doesn't matter where you are in Wrexham, there is a significant need for AH everywhere.
48. The Miners Welfare Scheme is similar to the majority of schemes listed in Appendix 1 of the Council's proof of evidence, which demonstrates that the schemes that have been granted permission are by and large small schemes that will not be required to make a contribution to AH. There is also a broader point to be made, and that is that larger schemes are often required to, and do, deliver more infrastructure improvements than smaller schemes because smaller schemes do not generate sufficient financial return to provide the level of contributions that might be desirable. In this instance for example, works to the Crown Junction are proposed that would improve the future traffic situation if the development goes ahead as compared to the "do nothing" scenario without the development. That will be a real benefit to existing residents, and it is because of the size of the scheme that it is capable of making a meaningful difference that might otherwise not come about.

¹⁷ Inquiry Document 2 (iii) Council proof of evidence, Appendix 1

49. The proposed development would provide 91 affordable units which equates to 25% of the total housing to be provided. The Local Housing Needs Assessment Contextual Report (2015) identifies Llay as being within the Western Border sub area where there is the greatest annual imbalance between need and supply of AH, which at 69 dwellings per annum equates to approximately 44% of the County Borough's affordable housing need¹⁸.
50. Transport issues are clearly high on the list of concerns for residents, but at present there are no other solutions or schemes for mitigation to that junction in the pipeline. Therefore, the development proposals provide the most beneficial way of proceeding.
51. The Appellant's highways witness gave evidence as to how improvements along Gresford Road would ensure pedestrian connectivity, and would slow traffic down because of the introduction of a compact roundabout. Congestion would be further alleviated by the introduction of an additional lane on the Straight Mile and the introduction of a microprocessor optimised vehicle actuation (MOVA) system at the Crown Junction. Vehicle speeds on the Straight Mile are also to be reduced.
52. An interim Travel Plan has been produced in order to provide initiatives and measures to encourage sustainable travel patterns; it is to be secured by condition and monitored annually.
53. Financial contributions within a Section 106 Agreement or UU have to meet the tests set out in the Community Infrastructure Levy (CIL) Regulations 2010 (reg.122), and so there is a process to be followed: the Appellant should not be expected to solve existing problems, or make speculative contributions that have not been requested or properly evidenced.
54. In respect of education and NHS contributions, the Appellant is reliant on the relevant education and health authorities to set out the justification for a financial contribution. If those authorities do not engage in the process that is not the fault of the Appellant regardless of how frustrating it might be for local residents; it is those bodies that have the statutory duty to provide education and healthcare, and it is up to them to seek contributions where necessary.
55. In this instance, it is agreed between the parties that contributions are made through the UU in respect of all infrastructure to which a contribution should be made. The Appellant's evidence includes correspondence between the Council and the Planning Strategy and Engagement section of NHS Wales¹⁹, and this demonstrates the lack of response that has been forthcoming. The Council and the Appellant must therefore proceed on the basis that NHS Wales do not consider a contribution towards Llay surgery is necessary, and invite the Inspector and Minister to do the same.

¹⁸ Inquiry Document 1 (x): Stephanie Hawkins Proof of Evidence, page 36

¹⁹ Inquiry Document 1 (xii) Folder 6, CD60

56. Mr Owen, a local resident, submitted emails to the Inquiry from Susan Roberts at Alyn Family Doctors²⁰. However, those emails do not demonstrate the need for a contribution or what the contribution should comprise. The email indicates that the Practice has “concerns” about the scheme, and the potential for pressure on the availability of appointments. That falls a long way short of meeting the relevant statutory tests for a contribution. Moreover neither the surgery generally nor Susan Roberts personally have engaged with this process in any sensible way or offered any evidence of capacity, or suggested what appropriate mitigation might be in the circumstances.
57. On the best evidence available, all contributions that meet the relevant CIL tests have been agreed between the parties and secured in the UU. It can be concluded therefore that the scheme would not give rise to any infrastructure capacity difficulties.

Ability of the site to deliver

58. The Appellant accepts that a condition should be attached to any permission granted that requires commencement of the scheme within 3 and not 5 years. There are two house builders that have expressed an interest in developing the site²¹ and thus the scheme would make a significant contribution to the housing land shortfall within the 5 year period, a point agreed by the Council. It would undoubtedly help the Council to find the housing land supply required to adopt an up to date development plan. The Council’s witness agreed that the deliverability of the scheme was a benefit.

Appropriateness of the site, sustainability, and logical development

59. The planning application subject to this appeal included a Landscape and Visual Impact Assessment (LVIA) dated November 2014, which was updated in August 2015 to take account of an alternative access point for the site²². It should be noted that the Council broadly accepts the conclusions of the Appellant’s LVIA²³ and it has not produced its own landscape evidence, and thus the only evidence of a formal assessment that is before the Inquiry is that of the Appellant.
60. Both parties agree that the topography of the wider landscape, together with features within it such as trees, hedgerows and buildings, would prevent a material impact on longer distant views of the site²⁴. Agreement was also reached that the proposal would be visible within the area immediately adjacent to the site and that visual impact would be limited to the immediate context, primarily Gresford Road and the

²⁰ Inquiry Document 4 (xv): Email correspondence between Llay Community Council and Alyn Family Doctors dated 3 February 2015

²¹ Inquiry Document 1 (x): Stephanie Hawkins’ Proof of Evidence, Appendix 12

²² Inquiry Document 1 (ii): CD10 Landscape Visual Impact Assessment

²³ Inquiry Document 2 (iii) Council proof of evidence, paragraph 3.12

²⁴ PSoCG paragraph 5.2

approaches from Rackery Lane, Chapel Lane and Straight Mile²⁵. However, the main area of disagreement between the main parties is in respect of the visual impact of the development closer in to the site and at site level. A plan showing the zone of theoretical visibility (ZTV) in the immediate context has been agreed and included within the PSoCG²⁶.

61. The LVIA confirms that the site falls within LANDMAP landscape character area 8 'Gwersyllt, Llay, Gresford, Borrass' [12]. The Council's adopted LPG relating to the area describes the area as a valuable lowland plateau of well drained agricultural land, sand and gravel extraction and commuter villages with a mining history, which surround Wrexham to the north and east. The site has no landscape importance other than its largely undeveloped appearance.
62. The Appellant's proof of evidence²⁷ which should be read together with the submitted LVIA concludes that:
 - (i) in terms of landscape character, the site is a common example of its type within a larger landscape area (paragraph 10.3);
 - (ii) the landscape sensitivity of the site is low, and the magnitude of development in that context is considered to be low. The change is adverse, but of minor significance (paragraph 4.8);
 - (iii) in terms of visual impact, there are few residential receptors (paragraph 10.5);
 - (iv) the existing boundary vegetation provides a level of natural screening that is instant mitigation, and the landscape strategy would provide further significant mitigation including open greenspace and landscaped areas with enhanced and new planting; those measures would help integrate the scheme into its surroundings and provide a number of pleasant areas for people to walk and play. There is therefore no conflict with policy PS2 (paragraph 10.10).
63. The Appellant points out the landscape mitigation strategy²⁸ could lead to ecological benefits on site, and would provide a number of opportunities for local residents to access greenspace on land that is not presently open to the public. The Council's case associates the visual change brought about by the proposals with harm. However, that is not necessarily so (as shown in the Hafod Tileries decision²⁹), and change can be accommodated in this instance because of the low sensitivity of the site, the ability to mitigate the impacts of the scheme and the fact that it is brought forward in a context where built development is already a key feature of the area; there are already a number of urbanising features in the locality. It is quite remarkable that a

²⁵ PSoCG paragraph 5.2

²⁶ PSoCG Appendix 4

²⁷ Inquiry Document 1 (x): Tom Hollick (Landscape) Proof of Evidence

²⁸ Inquiry Document 1 (x): Tom Hollick (Landscape) Proof of Evidence, Appendix 2, Plan 17

²⁹ Inquiry Document 1 (xiii): Inspectors report APP/H6955/A/15/3135730 paragraphs 161/165.

scheme this size can be accommodated with such limited visual and landscape impacts.

64. The Council does not have any concerns about the amenity of local residents, and while those living on Gresford Road would experience a change in the view, views can and do change over time. The appeal site is privately owned and if the landowner wanted to erect agricultural buildings or increase planting around the boundary of the site, that wouldn't require consent and would block out the view as it exists for residents of Gresford Road. The planning system does not exist to protect private views, and so no weight can be given to those concerns in the planning balance where there is no demonstrable harm to amenity.
65. Further, despite the complaint that arises in the Council's evidence as to the change in views from Gresford Road and the Straight Mile, those routes are not identified as important in landscape terms or in any document the Council has produced. No important view from either road has been identified, and the majority of road users (those in cars) are low sensitivity receptors in any event.
66. Page 119 of the Council's Planning Committee report records that:
"the indicative plan shows that the existing external boundary hedges can be retained. It also demonstrates that public open space and landscape buffers can also be provided along the Gresford Road and Straight Miles frontages. These, in conjunction with a well laid out and designed development, will ensure the proposals do not have a detrimental impact upon the immediate locality." No conflict with policy PS2 was identified.
67. The maps setting out the historic evolution of Llay³⁰ demonstrate that Llay has grown to accommodate the needs of the settlement over a relatively short time period, primarily in response to the enormous success of Llay colliery. The colliery has of course been closed for a considerable time, but there is still an economic driver in Llay in the form of the industrial estate, and no reason why the settlement should not continue to provide an appropriate place for further growth in response to the need now arising in Wrexham County Borough.
68. The expansion of Llay to the north east would not be out of keeping with the pattern of development historically; there is nothing illogical about expansion in that direction as it would not intrude on any area of particular landscape value, would not lead to the coalescence of settlements, and as the Appellant's planning witness explained in evidence, it makes sense to place development on both sides of Gresford Road given the accessibility that it provides to the appeal site, the rest of Llay and Wrexham. It is clear that settlement boundaries that may have existed at one time or another in Llay have been continually expanded and renewed, including development leaping over the strong physical feature of the Nant - y - Gaer wood and valley.

³⁰ Inquiry Document 1 (x): Tom Hollick (Landscape) Proof of Evidence, Appendix 1

69. However, growth in Llay has been limited since the 1980s as agreed with the Council's witness in cross examination, by which time, most if not all of the Gresford Road development was complete. Surprisingly, given its fairly recent origins, it is that development that seems to have generated the most objections to the proposals.
70. The accessibility of the site is good as set out in the Appellant's highways witness proof of evidence³¹. It concludes at paragraph 7.2.40 that the site:

"...is located in a position to benefit from existing pedestrian, cycle and public infrastructure. There are a range of facilities, substantial employment opportunities and other residential areas within the vicinity of the site; and areas such as Wrexham are readily accessible by public transport."

71. This conclusion is agreed by the Council who do not object to the scheme on highways grounds and accept that the site is sustainably located. Both parties agree that Llay contains a range of local facilities³² including; a nursery and primary school; health centre; library/resource centre; convenience stores and a post office; four churches; and three drinking establishments. The appeal site is also within close walking distance of Llay Industrial Estate which is a key strategic employment site in the County Borough. There are four bus services accessible to the site providing a total of 11 services on a weekday and nine services on a Saturday, providing the opportunity for residents to use public transport rather than the private car to access employment, leisure, retail and other facilities within Wrexham approximately 6.5km to the south of Llay.
72. The Appellant acknowledges that the proposal would result in the loss of an area of land that is currently in agricultural use. The Welsh Government Land, Nature and Forestry Division (LNFD) has reviewed³³ the Agricultural Land Classification report prepared by the Appellant³⁴, and it was concluded that the land is not considered to be predominantly best and most versatile due to soil wetness and workability, with the exception of 2.7ha (approximately 17% of the site) that the LNFD consider should be grade 3a land (best and most versatile land (BMV)). It is agreed with the Council³⁵ that the irreversible loss of a small element of BMV agricultural land is outweighed by housing need and the inevitable requirement to release greenfield land for development, including the release of BMV agricultural land.
73. The site is large and it is accepted that it would increase Llay by 20%, but both the Council and the Appellant agree that size is not the measure of acceptability. The Council accepted that some settlements would have to extend significantly beyond existing boundaries to accommodate new development. As a sustainable settlement,

³¹ Inquiry Document 1 (x): Alex Vogt (Highways) Proof of Evidence, Section 7

³² PSoCG paragraph 3.8

³³ Inquiry Document 1 (vii) Folder 6: CD51 Welsh Government LNFD review

³⁴ Inquiry Document 1 (iii) Folder 2: CD14 Agricultural Land Classification report, November 2014

³⁵ PSoCG paragraph 5.9

Llay is an appropriate place for growth in principle. This is further supported by the fact that:

- (i) In the present UDP, Llay is listed as an “urban village.”
 - (ii) In the emerging LDP, Llay is a tier three local service centre³⁶, but is acknowledged to be one of the larger settlements in that cluster, more akin to a tier two settlement³⁷;
 - (iii) Tier 3 is expected to accommodate 1230 homes over the plan period, which the Council agreed was a significant level of growth, and is in fact more than the total anticipated to go to tier 2.
 - (iv) Ms Hawkins includes a table in her evidence at p.19 that shows the settlement functions and development potential of Llay graded on a traffic light system. There is only one red in the whole matrix, and that relates to the school, to which a contribution would be made from this scheme.
 - (v) The matrix is positive in terms of the accessibility of the settlement, and the level of employment opportunity.
74. The Council’s witness was keen to point out that Llay industrial estate is a key strategic employment site in the County Borough, the second largest, which gives Llay an important economic function in the wider area. The witness also accepted the benefits of co-locating employment uses and residential uses. That is precisely the situation that would arise in Llay with the appeal scheme being in close proximity, and certainly within walking distance of the industrial estate.
75. That is a feature that indicates the logicity of the development. The Council’s only point on logicity is that the site would extend Llay beyond the boundary feature that is Gresford Road. However the argument assumes that settlement boundaries should never change and that Llay will never expand northwards. That cannot be right as the site is technically unconstrained, accessible, and is presently the only proposal for Llay. There are no other applications in the system from potential sites to the west which appear to be constrained by heritage considerations anyway. The Appellant pointed out that consideration of other sites, for which there are no proposals, is an “academic irrelevance”. There is no detail on the acceptability of those sites to accommodate residential development in clear contrast to the information provided in respect of the appeal site.
76. The Appellant also points out that the LDP(2) Preferred Strategy will allocate sites of 10 or more dwellings, and to inform this process the Council has compiled a Site Register. Parts of the appeal site have been identified by officers of the Council as being potentially suitable for future development and are included in the Candidate Site Register. The two parcels of land (LL04OS and LL05OS) are noted as ‘complying with the Council’s Preferred Strategy and having potential to contribute to meeting future growth demands within the County Borough’. The Appellant goes on to highlight that, given parts of the appeal site within the site register have been put forward as officers sites and assessed as suitable for development, it suggests that

³⁶ Inquiry Document 1 (x): Stephanie Hawkins Proof of Evidence, Appendix 8, page 63

³⁷ Inquiry Document 1 (x): Stephanie Hawkins Proof of Evidence, Appendix 15, page 24

the Council must consider these parts of the appeal site, at least, to form a logical extension to Llay³⁸. The Council agreed under cross examination that a significant amount of land outside current settlement limits would need to be allocated to meet the future housing requirement of the new LDP.

77. Both parties agree³⁹ that the proposed retail unit would be developed in conjunction with a large housing development and not in isolation, and that in the context of the development as a whole it would be located within a built up area rather than countryside and would, therefore, accord with UDP policy S6⁴⁰. The Council's assessment⁴¹ confirms that retail unit would also be a benefit to the eastern side of Llay and that it would not divert significant trade from Gresford district shopping centre. The Council agree that the retail unit on site would help increase its sustainability further. That would also help integrate the site into its surroundings as well as the provision of open and play space and footpath links throughout the site. There is no doubt that the wider community would benefit from a well designed scheme on the appeal site, and no reason why the appeal site should not come to be viewed as part of Llay in the same way that the Gresford Road development identifies as part of Llay.
78. The Appellant has carried out two assessments of the site against national policy set out in PPW⁴² and the Council disputes neither. Appendix 2 of Ms Hawkins' evidence in particular sets out an assessment of the proposals set against the sustainable development principles and objectives, none of which rest on maintaining roads as settlement boundaries.
79. The Appellant pointed to a number of specific sections within PPW that support this scheme on this appeal site:
- (i) paragraph 4.7.8 of PPW states that development in the countryside should be located within and adjoining settlements, and draws a distinction between edge of settlement schemes and isolated countryside development. The Council accepted that the site is well related to the settlement edge;
 - (ii) paragraph 9.3.6 of PPW largely repeats the same point that it is development in the countryside away from established settlements that should be "strictly controlled";
 - (iii) In respect of paragraph 9.3.1 of PPW, the Council conceded in cross examination that the scheme accords with that paragraph, and so it is clear that the scheme is the sort of development anticipated by PPW;
 - (iv) Paragraph 5.3.2 PPW talks about the value of landscape and draws a distinction between landscape that is designated and that which is not, as

³⁸ Inquiry Document 1 (x): Stephanie Hawkins Proof of Evidence, page 23 and Appendix 18

³⁹ PSoCG paragraph 5.16

⁴⁰ UDP Policy S6 'Local Need Shopping'

⁴¹ Inquiry Document 1 (iv) Folder 3: CD34 Planning Committee Report page 118

⁴² Inquiry Document 1 (x): Stephanie Hawkins Proof of Evidence, page 24 and appendix 2

discussed earlier in these submissions. PPW states that LPAs should have regard to the relative significance of international, national and local designations in considering the weight to be attached to nature conservation interests and should take care to avoid placing unnecessary constraints on development.

80. In conclusion, Llay and the appeal site in particular, is an appropriate and suitable location for further growth. There is no basis upon which the proposals can be regarded as illogical as the site is closely related to the existing settlement and highly accessible. The landscape impacts are such that they cannot be regarded as being in conflict with policy PS2, particularly when viewed through the lens of PPW that accepts there is a distinction to be drawn between landscapes of different value.

Ecology

81. The planning application subject to this appeal included an Environmental Statement (ES) which provides a summary of the findings and conclusions of an ecological assessment⁴³. The ecological assessment comprising an extended Phase 1 habitat survey found that trees on the boundary of the site had potential to support roosting bats and must be subject to further inspection prior to works commencing. The assessment also established that there are three water bodies on the site and a number of ponds in the wider area (outside the application/appeal boundary) of connected habitat which have the potential to support GCN, and these will require detailed surveys prior to the development commencing.
82. At the time of the 2014 phase 1 habitat survey there were three waterbodies on the appeal site, a wet ditch in the south of the site along the boundary, a pond of standing water in the centre of the site and a pond in the south eastern corner which appeared to be seasonally dry or ephemeral. In the wider area there were ten ponds within 500m. The majority of the waterbodies were surveyed and those in the wider area were categorised as having 'average' suitability to support GCN; the wet ditch in the site was also assessed as 'average', and the pond on site was found to be 'below average'. The assessment recommended that further survey work be carried out on the waterbodies on site and within 250m.
83. NRW responded to the planning application consultation by raising no objections to the development and that it was satisfied that the ecological survey had been undertaken to an acceptable standard⁴⁴.
84. Following the response from NRW, the Appellant in consultation with the Council's ecologist, prepared a GCN Mitigation Strategy⁴⁵ which acknowledges that GCN are known to be within 1km of the site and that there is potential for populations of GCN to the east to be able to access the site. The mitigation strategy advises that further survey work is carried out to find out the GCN population levels and this will inform

⁴³ Inquiry Document 1 (iii) Folder 2: CD 21 TEP Ecological Assessment (2014)

⁴⁴ Inquiry Document 1 (vii) Folder 6: CD52 NRW consultation letter dated 9th January 2015

⁴⁵ Inquiry Document 1 (iii) Folder 2: CD 22 GCN Mitigation Strategy

appropriate mitigation measures in order to maintain the population's favourable conservation status.

85. NRW provided further advice to the Council⁴⁶ which confirmed that it concurred with the approach of the applicant and recommended that the requirements for the provision of a compensation area and its long term management would need to be subject to planning condition and obligations.
86. The Appellant has undertaken further survey work and a GCN Assessment and Mitigation report has been submitted⁴⁷. The report presents the results of a Habitat Suitability Index (HIS) survey of the waterbodies within the site and a 250m area around the site, and provides the results of a presence/absence survey of the waterbodies using Environmental DNA (eDNA). It goes on to outline a GCN mitigation strategy based on the results of the eDNA survey and the site habitat assessment.
87. In respect of bats, the phase 1 habitat survey confirmed that the trees located along the Gresford Road boundary have the potential to support roosting bats. The Appellant confirms that the indicative site layout plans show these trees to be retained in any development, and the Appellant's ecology witness confirmed that as the trees are to be retained there is no risk to the species from the proposals, which was confirmed by NRW⁴⁸.
88. At the start of the Inquiry the Appellant submitted a note relating to the queries raised in respect of ecological issues, namely bats and GCN⁴⁹ and the position is agreed by the Council. During the Inquiry the Appellant provided further confirmation⁵⁰ that NRW is content that the reserved matters application(s) can be informed by subsequent surveys and that outstanding issues relating to ecology can be appropriately addressed by condition.
89. The main point of the Appellant's additional submission on ecological issues is to demonstrate that the Council, the Appellant and the final decision takers are entitled to rely on the view expressed by NRW in terms of the production of ecological information and the use of a condition to secure further ecological work and mitigation.
90. In this instance, while there is more work to be done to finalise the detail of any necessary mitigation strategy, there is a good level of information that allows the potential impacts on site to be understood and assessed. In that respect, there is:

⁴⁶ Inquiry Document 1 (vii) Folder 6: CD53 NRW email dated 7th April 2015

⁴⁷ Inquiry Document 1 (x): S Hawkins Proof of Evidence, Appendix 20: Penny Anderson Associates GCN Assessment and Mitigation, October 2016

⁴⁸ Inquiry Document 1 (vii), Folder 6: CD53 NRW email dated 07 April 2015

⁴⁹ Inquiry Document 4 (i): Appellant's Submissions on Ecological Issues

⁵⁰ Inquiry Documents 4(i) and 4(v): NRW emails of 21st and 23rd November 2016

- (i) the June 2014 Ecological Assessment⁵¹ which is a Phase 1 Habitat Survey;
- (ii) the GCN Mitigation Strategy⁵²; and
- (iii) an Ecological Update⁵³ which takes the survey work a stage further in respect of newts.

91. Accordingly, there is no conflict with TAN5 which is directed to instances where the presence or otherwise of protected species and the extent to which they may be affected by the proposed development has not been addressed. That is not the case here. More work will have to be done prior to reserved matters and that is accepted by the Appellant, but the latest report from Penny Anderson Associates takes matters a stage further than the initial Phase 1 Habitat Survey.
92. The Appellant's ecology witness confirmed in evidence that as the trees with bat roosting potential are to be retained⁵⁴ and there is no risk to the species from the proposals. That is confirmed by NRW⁵⁵:

"In our view, as informed by the above, the proposal will not be detrimental to the maintenance of the Favourable Conservation Status of bat populations at this locality."

93. In respect of newts the position is slightly different. The further work that has been undertaken identifies a cluster of water bodies to the north east of the site (about 170m away) that returned positive results for GCN presence using environmental DNA surveys, which the Appellant's ecology witness confirmed is a very reliable method of survey. In terms of on-site waterbodies, waterbodies P1 and P3 shown on Figure 1 of the Penny Anderson Associates report are ephemeral and were dry at the time of the survey. It is right that they may have potential to support GCN when wet, but the Appellant's witness confirmed this is unlikely because:
- (i) newts tend to stay close to their breeding ponds;
 - (ii) the water bodies are ephemeral, and when dry, do not provide a suitable habitat for GCN;
 - (iii) habitats within the site are generally low quality for GCN as they comprise grazed improved grassland with few opportunities for feeding or shelter.
94. Accordingly, while there is potential for GCN originating from water bodies to the north to come to site, they are unlikely to be on site in anything other than low

⁵¹ Inquiry Document 1 (iii), Folder 2: CD21: TEP Ecological Assessment (June 2014)

⁵² Inquiry Document 1 (iii), Folder 2: CD22: General Great Crested Newt Mitigation Strategy

⁵³ Inquiry Document 1 (x): S Hawkins Proof of Evidence, Appendix 20: Penny Anderson Associates GCN Assessment and Mitigation, October 2016

⁵⁴ Inquiry Document 1 (iii), Folder 2: CD21: TEP Ecological Assessment (June 2014) Phase 1 habitat survey plan, G4358.01.001)

⁵⁵ Inquiry Document 1 (vii), Folder 6: CD53 NRW email dated 07 April 2015

numbers. In addition, GCN coming to site would have to cross over the Straight Mile road in the process which is an impediment to their movement, albeit not a total barrier.

95. The Appellant's ecology witness confirmed that any impact on GCN can be effectively mitigated and may not require a license from NRW at all. In particular, if the level of likely harm is very low that harm may be capable of being mitigated using a reasonable avoidance approach which can be implemented without a license. If a license is required, the Appellant's ecology witness confirmed that one is likely to be forthcoming for two reasons:
- (i) there is an inherently low risk to GCN from development on site; the site is not a difficult one from an ecological perspective; and
 - (ii) there is nothing in NRW's general approach to suggest otherwise.
96. It is important to look at NRW's approach first and foremost as they are the statutory consultee, and it is their comments that have guided both the Appellant and the Council in this matter, and they have remained consistent throughout.
97. In NRW's planning application consultation letter⁵⁶ it was confirmed that NRW were content that the ecological survey work undertaken by TEP was done to an acceptable standard, and that as long as the survey work and mitigation / avoidance measures are adhered to and implemented:
- "the impact upon protected species is unlikely to be significant."*
98. NRW share the view of the Appellant's ecological studies that the risk to protected species is low. It stands to reason that if NRW considered there was a real risk of harm to the favourable conservation status of the species then they could not have adopted their present position. Further, in April 2015⁵⁷, NRW confirmed that they were content with the mitigation offered in the GCN Mitigation Strategy and recommended that the strategy be secured by condition.
99. The view of the Council's ecologist, as expressed in the Planning Committee Report⁵⁸ and confirmed by the Council's witness, is that subject to a condition requiring further survey work and, if necessary, appropriate mitigation then the Council is also satisfied that the development would not adversely impact upon the favourable conservation of protected species.
100. It is plain then that:

⁵⁶ Inquiry Document 2 (i): NRW letter dated 9th January 2015

⁵⁷ Inquiry Document 2 (i): NRW letter dated April 2015

⁵⁸ Inquiry Document 1 (iv): CD 34, Planning Committee Report page 121

- (i) the presence of GCN on site has been explored, and has been recognised as a material consideration in this appeal by the Appellant, the Council and NRW; and
- (ii) there is no objection from the statutory consultee providing a condition is imposed on any permission to ensure further work is undertaken as part of the reserved matters application and appropriate mitigation, in whatever form it takes, is secured.

101. In principle there is no objection to granting planning permission subject to further survey work being done. It is plainly good practice to update survey work prior to a development commencing in any event, because all sorts of changes may have taken place in the interim. As indicated in the Appellant's ecological note⁵⁹, the condition circular recognises that follow-up surveys may be required post permission and prior to development.
102. Accordingly, in this instance, any harm to protected species can be avoided. That is plainly the aim of the relevant legislation, to avoid harm, and it can obviously be achieved in this instance.
103. The Appellant's additional submission on ecological issues⁶⁰ refers to the possible need for a licence⁶¹ and the prospects of such a derogation licence being granted by NRW. The Appellant refers to two cases⁶² and states that decision takers, be it the LPA, the Inspectorate or Welsh Ministers, should not be expected to police NRW, or go behind it's judgement on matters relating to protected species where a view has been expressed that the proposals are acceptable.
104. A further case is added to these submissions; Stevens –v- Blaenau Gwent County Borough Council [2015] EWHC 1606 (Admin)⁶³, where it was alleged that the Council had acted in breach of its biodiversity duties in granting planning permission without appropriate ecological surveys for cabling trenches as part of solar development. There were two route options, one was subject to a phase 1 habitat survey, and the other, the southern access route, wasn't (paragraph 18).
105. A condition was suggested in respect of the southern access route which had not been subject to the phase 1 survey, and that it be subject to assessment prior to development (condition 19). A letter of objection was received and the condition was removed (paragraphs 20-22). A condition was instead imposed preventing the southern access route coming forward altogether (paragraph 36).

⁵⁹ Inquiry Document 4 (i): Appellant's Submissions on Ecological Issues

⁶⁰ Inquiry Document 4 (i): Appellant's Submissions on Ecological Issues

⁶¹ Regulation 53, the Conservation of Habitats and Species Regulations 2010

⁶² see Prideaux [2013] EWHC 1054 (Admin) which applies the Supreme Courts' 2011 decision in Morge.

⁶³ Inquiry Document 4 (viii)

106. The claimant in the case continued to allege that there was a failure to take into account the ecological information and that it was illogical to remove the southern access route and not the other because:

"the alternative route suffers from the same deficiency namely the absence of an ecological survey." (paragraph 37)

107. Ground three therefore alleged that the Council failed to take into account the ecological report. The defendant had to be satisfied that there was no significant detrimental ecological effect from the development, and without an ecological assessment of the connection tracks it was impossible for the defendant to be satisfied. The effects of excavating a long access track were unknown without such an assessment (paragraph 44i).

108. The Defendant Council argued that:

"45...it was not likely that the cable connection would have any significant effect on the environment. The defendant's approach of addressing environmental considerations by way of condition was, therefore, lawful and so there was no need to consider detailed ecological surveys as part of the application before it as a material consideration. "

109. Patterson J set out her conclusions from paragraph 48 finding that conditions 17 and 18, which required additional ecological work to be undertaken and mitigation secured, were appropriate. The claim was dismissed.

110. Paragraph 50 is particularly apposite in respect of this appeal:

"The reason for the ecologist's view that it was preferable to have an updated report and that the matter could be dealt with by condition was because the risk to protected species (in particular, badgers, breeding birds and to a lesser extent bats) and the nearby SINC as a consequence of the construction of the route was low. Her recommendation of the original conditions was thus considered to be a low risk strategy."

111. Likewise, as confirmed by the Appellant's ecology witness, the risk to GCN in this case is low and so aligns with the position in Stevens.

112. Accordingly, it is submitted on behalf of the Appellant, as an agreed position with the Council and NRW, that the matter of protected species has been adequately explored to date, and that it is appropriate to secure the submission of further detailed surveys by way of condition. After the drafting of these submissions NRW has once again confirmed that it is content with the matter proceeding subject to condition⁶⁴.

⁶⁴ Inquiry Document 4 (v) NRW email dated 23rd November 2016

Conclusions

113. There are significant benefits associated with the scheme, chief among them being the provision of market and affordable housing which is largely addressed above, but there are additional social, economic and environmental benefits⁶⁵. As the Appellant explained, economic benefits associated with development should be understood and given equal consideration with social and environment issues. Further, *"there will be occasions when the economic benefits will outweigh social and environmental considerations"*⁶⁶.
114. The Council accepted the evidence given by the Appellant⁶⁷ which outlines the following points:
- (i) Economic growth is a key component of sustainable development;
 - (ii) New housing stimulates economic growth;
 - (iii) Failure to provide sufficient housing is harmful to the economy;
 - (iv) The scheme would support construction jobs as well as supply chain jobs, and further jobs generated by spend in the local economy; and
 - (v) People living on the development would spend money, which would lead to a significant economic benefit to the locality.
115. In conclusion, it is clear that there are only very limited impacts to be weighed against a number of very significant number of benefits. Even if there were a conflict with policy PS2, which it is not accepted there is, the Appellant is clear that given the housing land supply position, and the benefits associated with bringing forward this scheme in this location, the balance continues to weigh heavily in favour of the grant of planning permission.
116. The site is entirely suitable to accommodate residential development in principle and of this scale; there is no sensible basis upon which to resist the grant of planning permission on the site.
117. Accordingly, it is respectfully submitted that the appeal should be allowed and that the recommendation to the Welsh Ministers should be that planning permission should be granted subject to the proposed conditions and the UU.

⁶⁵ Inquiry Document 1 (xi): PSoCG paragraph 5.4

⁶⁶ PPW paragraph 7.2.2

⁶⁷ Inquiry Document 1 (x): S Hawkins Proof of Evidence, Appendix 27 'Economic Benefits Statement'

The Case for Wrexham County Borough Council

118. It is the Council's case that in the circumstances the reason for refusal is justified and reasonable, and as such the Inspector is respectfully requested to recommend within his Report to the Welsh Ministers that the appeal be dismissed.

Issues

119. At the outset of the Inquiry the following issues were identified:

- (i) Whether or not the appeal site is suitable for housing with regard to planning policies in terms of sustainability and protection of the countryside?
- (ii) Is the site a logical site for development having regard to the effect on the character and appearance of the area?
- (iii) Ecological issues.

120. In respect of the above issues other matters upon which additional information was required included:

- (i) The extent of weight to be given to the UDP;
- (ii) The sustainability of the site;
- (iii) The five year housing land supply situation and weight given to that consideration;
- (iv) The pattern and development of Llay and the impact upon character; and
- (v) Clarification of the ecological issues.

121. All the above issues are clearly interrelated and within the submissions that follow the main issues are addressed individually with reference as appropriate to the specific information referred to above.

Issue 1 - Whether or not the Appeal site is suitable for housing with regard to Plan Policies on sustainability and protection of the countryside?

122. This first issue can be further sub-divided as follows:

UDP Policies

123. In this regard consideration needs to be given to the extent of weight to be given to the UDP policies. It is agreed by the Appellant in evidence and under cross examination that significant weight should be placed upon policy PS2. In terms of weight the dispute between the parties relates to the amount of weight to be given to policies PS1 and H5.

124. The Appellant contends that due to the zero land supply for housing, as a consequence of the UDP having expired, policies PS1 and H5 which deal with housing outside settlement limits and exception policies in relation to housing in the countryside respectively, are outdated and superseded. Under cross-examination the Appellant's planning witness, Ms Hawkins, initially suggested that it was akin to having no policy at all, and thereafter resiled from that comment when further

questioned. Eventually the Appellant agreed with the evidence given by the Council that these policies should be given reduced weight.

125. For the avoidance of doubt it is submitted that (as was eventually conceded by the Appellant), there is still room for the use of settlement limits. In this regard the Council relies on and refers to PPW Section 4.7 and paragraph 9.6.3 in respect of policy H5.
126. Whilst the Appellant's planning witness was reluctant to concede under cross examination, it is abundantly clear that there is more than a "technical conflict" between the development and policies PS1 and H5. Although the Council has conceded that due to the zero housing land supply (as further commented below), less weight is placed upon them, the policies still have more than a minor consideration within the balancing exercise for the decision maker.
127. The Council has been shown to be correct in affording significant weight to the policies of the UDP in light of the various appeal cases in the County Borough where Inspectors have also done so when dismissing appeals for development outside settlement limits⁶⁸.
128. Nonetheless, the Council has referred to a number of sites outside settlement limits within the County Borough which have either been granted planning permission or have resolutions to grant permission⁶⁹ to demonstrate that the Council has allowed housing in conflict with Policy PS1. This includes a 0.8hectare site south of the Miners Welfare Institute in Llay for which the Planning Committee resolved to grant outline planning permission in June 2016. The Committee's decision on this site and the other sites listed in the Council's evidence clearly demonstrates that the Council is not opposed to additional development in Llay and that it is not trying to resist all development beyond the existing settlement limit.

Housing Land Supply

129. It is accepted that due to the fact that the UDP has expired the Council is unable to demonstrate whether it has a five year housing land supply and in practice this means that Wrexham County Borough has a zero housing supply figure. This is confirmed within the Council's Housing Land Monitoring Statement 2015 and within the PSoCG⁷⁰. The Council further concedes that TAN 1⁷¹ advises that in cases where it is not possible to undertake a joint housing land supply the need to increase supply should be given considerable weight as a material consideration.

⁶⁸ Inquiry Document 2 (iii) Council's proof of evidence Appendix 2

⁶⁹ Inquiry Document 2 (iii) Council's proof of evidence Appendix 1

⁷⁰ PSoCG paragraphs 4.16 – 4.17

⁷¹ TAN1, paragraph 1

130. As accepted by the Appellant, each and every case has to turn upon its own facts and it does not automatically follow that permission should always be granted in a zero land supply instance.

Protection of the Countryside

131. There is disagreement between the parties in relation to the effect of the proposal upon the countryside. Whilst it is accepted by the Council that the only landscape assessment before the Inquiry is that produced by the Appellant, the only concession made by the Council appears at paragraph 3.12 of the Council's evidence which confirms that the LVIA is broadly accepted in respect of impact of the development on the wider rural landscape. The Council's contention is that the proposal would have significant urbanising effect at site level. It is submitted that this is clearly the case.
132. Mr Hollick, the Appellant's landscape witness, save for disagreeing and asserting that the converted buildings in the farmyard of Home Farm did not have a rural character, agreed that the appeal site is farmland bound by a stock proof perimeter hedge which includes some mature trees, and internally divided into five enclosures by way of a stock proof hedge. The current character is clearly rural forming part of and designated within landscape character assessment number 8.
133. There would be, as admitted by Mr Hollick, significant change as a result of the development in relation to the transformation from pasture to residential, and despite some mitigation measures 12.36 hectares of the 15.85 hectares would be subject to development. This, it is submitted, is a significant change in the local context which would have a material change upon the character of the locality and in the circumstances is harmful and contrary to policy PS2.
134. For the reasons as set out above, whilst it is accepted that less weight can be placed upon policies PS1 and H5, weight should continue to be placed upon them and the proposal is clearly in conflict with these policies.

Is the Site a Logical Site for Development having regard to the effect on the Character and Appearance of the area

135. The Council confirmed that the assessment of whether this site would be a logical extension to Llay was only considered in terms of the impact of the development on the character and appearance of the area. No other issues were taken into account by the Council to assess the logicity of the site.
136. On any view Gresford Road is the current boundary to the settlement. The Appellant agreed that Gresford Road was a strong boundary, but sought to qualify the answer by making the point that boundaries are not static.
137. As can be seen from the Council's evidence⁷², the aerial photograph sharpens the definition between the built up area and the open fields, a point confirmed by the

⁷² Inquiry Document 2 (iii): Mathew Phillips proof of evidence, Figure 2 – aerial photograph

Appellant's landscape witness under cross-examination. Simple perusal of the aerial photographs and plans clearly indicates that this is the logical and permanent boundary between Llay and the open countryside. The limited development on the opposite side of Gresford Road is rural in setting and distinction can be clearly seen. To allow the development would artificially extend the built up area of Llay into the countryside to the north east of the village. As was mentioned by one of the objectors, this may well have the effect of the creation of a stand-alone urbanised area within the open countryside.

138. In the circumstances, the appeal site does not form a logical site for development, and for the reasons as set out above, and also for the reasons set out under issue 1, would have a harmful impact upon the character of the area.
139. Despite screening measures the houses would still be seen in part at least, even after the mitigation measures which in themselves would take some seven to eight years to fully mature, a point that was conceded by the Appellant's landscape witness.
140. All of this has a significant impact at site level which is in clear conflict with policy PS2 and, in the balance in relation to the decision making process, is a significant and determinative factor in this specific case, extending the built up area of Llay into the open countryside to the north east of the village, at its widest some 500 metres beyond the current settlement limit.
141. Whilst it is accepted that settlement limits may have to change this is not the logical site for change in respect of Llay. Further in this regard, the Council refers to the LDP (2) Candidate Site Register and associated plans⁷³. The areas included around Llay Hall Farm would be a more logical extension and they have been identified by officers during the Candidate Site exercise. With the exception of the sports ground, the area is bound by road and housing development to the south east and Llay Road to the north. As opposed to the appeal site, the cumulative effect of development on both sides of Llay Road would not project out into the countryside significantly beyond existing developed land, including the former Llay Main Colliery spoil tip.

Ecological Matters

142. Evidence was heard from the Appellant in relation to the ecological matters raised at the start of the Inquiry. The Appellant and the Council are in agreement with regard to the ecological issues relating to GCN and bats.
143. The Council agrees that sufficient survey work has been undertaken and is fortified in that view by virtue of confirmation from NRW, the statutory consultee in respect of such matters.

⁷³ Inquiry Document 1 (x): S Hawkins Proof of Evidence, Appendix 18

Conclusion

144. For all the reasons as set out above it is submitted that despite what is said on behalf of the Appellant the refusal of planning permission is appropriate in the circumstances of this case. Accordingly, the Inspector is respectfully requested to recommend in his report to the Welsh Ministers that the appeal be dismissed.

Other interested parties or persons appearing at the Inquiry

145. The following interested persons spoke at the Inquiry in support of the Council's decision to refuse planning permission: Mr Dennis Owen, a Community Councillor representing Llay Community Council and the Gresford Road Action Group; Mr Eifion Roberts, a local resident living on the boundary of the development site; and Cllr Robert Walsh, a Wrexham County Borough Councillor representing Llay. In broad terms their objections and concerns are summarised as follows:

- The development is situated outside the existing settlement boundary and is grade 3b agricultural land which is currently being farmed, and this would be lost forever;
- Photographic evidence shows that the land has sunk over recent years and some of the underground workings pass across this land, and one of them joins up with the workings at Gresford Colliery. Some of the undulations in the fields are such a depth they form ponds which attract birds;
- The Council and the Safety Advisory Group removed permission for a music festival to be held on the site in 2012 due to waterlogged conditions that was deemed unsafe for a large number of parked vehicles;
- According to the Soakaway Report 50% of rainwater from a heavy storm must be dispersed within 24 hours, but the results show that none of the seven test pits worked to BRE 365 standards. How can the fields cope with 365 dwellings;
- The planning officer's report states that the development has the potential to increase flood risk off site. No evidence has been provided showing that ground conditions are suitable for infiltration and there is no indication of any watercourse on site suitable to accept surface water. The development would cause flooding;
- The bottom of the garden of Mr Roberts' property, which is located on the south eastern boundary of the site, is full of water for substantial parts of the year and the cellar of Maes Y Rhedyn has also flooded;
- There has been considerable pressure on the sewerage system already due to previous housing and the industrial estate. Since October 2015 there has been severe flooding close to the Crown Junction;
- The Straight Mile is a very busy road and is already congested with large numbers of HGVs using the roads, especially at peak times. Gresford Road is unsuitable for increased traffic due to constraints on Griffin Hill and Gresford School. Chapel Lane/Higher Lane/Gegin Lane are dangerous single carriageways with blind bends and are increasingly used to avoid the Straight Mile. The new Police Headquarters with 350 personnel would add to the traffic;

- Local schools are at capacity and cannot absorb the number of children from the development. The financial contributions go to the Education Authority and not to the named local schools. A new school is needed;
- Children that have lived in the village for years may be forced to attend schools further away causing upset;
- The local health centre wrote to Llay Community Council in February 2015 stating their strong opposition to the development due to increased patient numbers and the inability to develop the practice in Llay;
- On 1st December 2014 the planning officer recommended refusal of one dwelling on Gegin Lane, Llay as it would be unsatisfactory and undesirable as it would be a greenfield site outside any settlement limits and it would be detrimental to the countryside and would represent an undesirable visual intrusion into the landscape. The proposed development is adjacent to this site;
- The development is not a logical extension to the village and involves a major intrusion of some 500m into open countryside;
- No system of pedestrian links has been established in the village;
- The bus stops would give access to Wrexham and Chester and the market housing would be attractive to people who work in Chester or in the industrial areas beyond in the North West, Ellesmere Port, Stanlow, Runcorn and Warrington which are all within easy commuting distance. It would soon become a dormitory for Chester and the industrial areas beyond with little or no benefit to Llay or Wrexham;
- Not one Councillor voted in favour of the planning application;
- The previous LDP had the settlement limits in the current location;
- If settlement boundaries have to move that is a discussion for another day and it should be done through the LDP;
- The development is flawed.

Written Representations

146. In response to the appeal publicity, 23 letters of objection were received from concerned residents and Mr Ian Lucas MP. The concerns broadly reflect the comments raised by Mr Dennis Owen, Mr Eifion Roberts and Cllr Robert Walsh as indicated in the preceding paragraph. However, additional issues raised by objectors are summarised as follows:

- The retail development would increase traffic on an already busy fast road;
- The production of an almost new village by its sheer size;
- An incongruous development of the local area;
- There are other smaller developments being granted in the area which need to be considered; we don't have the facilities to cope;
- Need to retain greenspace around the village;
- It does not respect the character of the area and is not of appropriate scale and design;
- Brownfield sites are available;
- Construct all these dwellings on the site of the former Brymbo Steelworks;
- The size, depth, width, height and massing of the development would have an unacceptably adverse impact on the amenities of the properties immediately

- adjacent to the site by reason of overlooking, loss of privacy and visually overbearing impact;
 - The Straight Mile is a historic road of Roman origin and it is unacceptable to vandalise this historic local feature by breaking the Straight Mile to build a roundabout;
 - The development may set a precedent for further growth and expansion.
 - The dwellings would not be considered affordable to people on a low income;
 - The Human Rights Act in particular protocol 1, article 1 which states that a person has the right to peaceful enjoyment of all their possessions which includes the home and other land;
 - The development would lead to an increase in noise exposure as well as fumes/emissions.
147. Other written objections (amounting to about 185 representations and a petition with 265 signatures) that have been taken into account are those from local residents submitted to the Council at the application stage, and which are on the case file. Again, the objections to the development broadly reflect those issues raised by residents and the Community Council, the Gresford Road Action Group and the County Councillor set out in the preceding paragraphs.
148. Responses received from consultees and other organisations at the application stage have also been taken into account. As detailed within the Council's planning officer delegated report⁷⁴, there were no objections to the proposal from the Council's highways and public protection sections subject to the imposition of conditions. In addition there were no objections from the Council's ecologist, parks countryside and rights of way section, or from Welsh Water Utilities⁷⁵, the Coal Authority⁷⁶ and the Clwyd Powys Archaeological Trust (CPAT)⁷⁷. NRW raised no objection subject to the imposition of appropriate conditions⁷⁸.

Conditions and Obligations

Conditions

149. The PSoCG presented a draft list of suggested and agreed conditions. At the Inquiry the conditions were discussed in the light of Circular 16/2014⁷⁹. That list forms the basis of the schedule set out in Annex A to this report. The conditions put forward within the PSoCG are as follows.

⁷⁴ Inquiry Document 1 (iv): CD 34, Planning Committee Report

⁷⁵ Inquiry Document 1(iii) Folder 2: CD31 Developer Impact Assessment Gresford WwTW

⁷⁶ Inquiry Document 1(iii) Folder 2: CD19 and CD20

⁷⁷ Inquiry Document 1(vii) Folder 6: CD57 CPAT email dated 8 April 2015 and Inquiry Documents 4(i) and 4(v): NRW emails of 21st and 23rd November 2016

⁷⁸ Inquiry Document 1 (vii), Folder 6: CD53 NRW email dated 07 April 2015

⁷⁹ Circular 16/14, *The Use of Conditions for Development Management*

150. The first condition would require the submission of those matters reserved for a later application, that is, access, appearance, landscaping, layout and scale. Condition 2 requires the first reserved matters application to include a phasing plan. Conditions 3 and 4 relate to time limits and require the submission of the reserved matters for the first phase to be within 2 years, and subsequent phases before the expiry of 3 years of the date of the permission, and that the development be commenced within 3 years. Condition 5 requires any reserved matters to be carried out in accordance with the approved plan and condition 6 limits the number of dwellings and the size of the retail unit within the development.
151. Condition 7 ensures that the hours of opening of the retail unit and the deliveries to it are agreed to protect the living conditions of residents. Condition 8 responds to the ecological interests of GCN and bats, and the need for further survey work and a management plan, and to ensure that protected species and other species are mitigated for, the submission of a 'biosecurity risk assessment' to prevent the introduction of invasive non-native species during construction, and measures to control any such species that may already be present.
152. Condition 9 relates to the remediation of Japanese Knotweed and conditions 10 and 11 require a scheme to deal with any contamination on the site. Condition 12 requires a detailed arboricultural method statement to be submitted to include methods of tree protection and retention. Conditions 13 & 14 relate to drainage matters and the submission of a scheme to include hydraulic modelling to accommodate foul water discharges from the development, with no part of the development being occupied until the approved scheme has been fully implemented.
153. Condition 15 relates to highway matters and require the submission of details relating to such matters as a scheme of improvements to the junction of the B5102, the B5373 and Chapel Lane. Condition 16 relates to the submission of a travel plan for each phase of the site, and would include details such as an annual monitoring report for the first five years.
154. Condition 17 requires the submission of details relating to a construction method statement, and conditions 18, 19 and 20 require the submission of details relating to noise and any required mitigation measures.
155. Condition 21 requires the submission of landscaping details to also include all areas of public open space, green space and the equipped children's play areas and timing of the landscaping.
156. Condition 22 relates to the submission of a landscape management plan.

Obligations

157. A duly signed UU⁸⁰, dated 24 November 2016, was submitted at the Inquiry and provides obligations to provide the following:
- The provision of 25% affordable housing of the total number of dwellings built on the site, and a payment of a commuted sum in order to secure the full 25%

⁸⁰ Inquiry Document 4 (vi)

as required by Local Planning Guidance (LPG 28) in the event of part of the AH requirement being less than a full dwelling. It also includes measures to deal with the future management of the affordable housing;

- To secure the arrangements for the management and maintenance of on-site public open space / green space;
- To secure the long term management and maintenance of any on-site habitat mitigation; and
- Staged payments of educational contributions towards primary school education (Park Community Primary School, Llay and/or All Saints School, Gresford) and secondary school education (Darland High School and/or Ysgol Morgan Llwyd).

CONCLUSIONS

158. These conclusions are based on the evidence submitted and given at the Inquiry and the written representations summarised above, and my findings at the accompanied and unaccompanied inspections of the site and surroundings. In my conclusions, numbers in [] refer to paragraphs earlier in this report. I consider that the main considerations upon which this decision should be based are:

- 1) Whether the proposed development complies with national and local policy designed to protect the countryside and whether there are other material considerations that would justify granting permission, in particular with regard to housing land supply and the sustainable credentials of the development;*
- 2) The effect of the proposed development on the character and appearance of the area; and*
- 3) The effect of the development on ecology, in particular GCN and bats.*

Compliance with national and local policy designed to protect the countryside

Settlement boundaries

159. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for the area comprises the Wrexham UDP adopted in 2005 and covers the period 1996 -2011 and it is the relevant plan against which this application should be determined, along with other material considerations.

160. It is a matter of fact that the appeal site lies outside the UDP's defined settlement boundary for Llay and there is no dispute between the parties that the appeal site fails to conform with the adopted development plan in this respect. As such, the Council's refusal reason cites policies PS1 and H5 [14]. The proposal would conflict with Policy PS1 as the proposal would fall outside the defined settlement boundary, the purpose of which is to define the areas in which development would normally be allowed and to promote the full and effective use of urban land and concentrate development within settlements.

161. Nevertheless, Paragraph 4.2.4 of PPW says that where the relevant development plan policies are considered outdated there will be a presumption in favour of development subject to meeting the objectives of sustainable development [18]. It has been accepted by the Council that there is an acute need for additional dwellings, that it cannot demonstrate a five year land supply of housing and that the current settlement limits will have to be breached to meet the Council's future housing requirement. It has also been accepted that the settlement limits in the UDP were defined in the light of a different housing requirement and the Council acknowledges that they will have to be re-drawn to accommodate existing and future housing needs [24, 31, 43, 76]. The shortage of housing supply is a consideration that carries significant weight, and it can justify departing from the restraint policies of an out-of-date development plan that does not make adequate provision for new housing, provided that the scheme performs well in terms of its particular planning merits.

162. The Council has drawn my attention to a number of sites outside settlement limits within the County Borough which have either been granted planning permission or have resolutions to grant permission, to demonstrate that the Council has allowed housing in conflict with Policy PS1 [41, 128]. Although this is commendable, the Council conceded at the Inquiry that the vast majority of those sites are small scale and the number of units permitted does not go far enough to meet the acute need for housing [43, 44]. The Council also refers to six appeal decisions and argues that Inspectors have afforded greater weight to policies aimed at protecting the countryside from development [127]. However, five of the cases are designated as being within the green barrier and the other is within an SLA, and the proposed developments have been regarded as inappropriate development for which very exceptional circumstances need to be shown if permission is to be granted, in accordance with PPW. The Council acknowledges that these sites are clearly different to this appeal [36].
163. Although the cases referred to by the Council demonstrate that it has granted permission on sites that would be contrary to Policy PS1 to increase the supply of land available for housing, the Council agreed at the Inquiry that it would be sequentially preferable to develop land, such as the appeal site, that is not designated as green barrier or SLA [41]. It follows, therefore, that the grant of planning permission on this appeal site may well negate the need to develop at least some land that is presently designated as green barrier or SLA and, which in policy terms, should be afforded greater protection from development [41].
164. Whilst the proposed development is contrary policy PS1, I would take my lead from the Minister's findings in the Hafod Tileries case, which are in line with the conclusions of the Inspector, that the settlement boundaries that PS1 seeks to maintain are out of date and were drawn in response to a housing target set out in the now out of time UDP. The settlement limits were defined in the light of a different housing requirement and the Council acknowledges that they will have to be re-drawn to accommodate existing needs. Policy H5 deals with housing in the countryside and provides that outside defined settlement limits new dwellings will only be permitted in certain limited circumstances. Those circumstances are not applicable here, and the Appellant accepts the proposed development conflicts with Policy H5 of the UDP which seeks to limit new housing outside of defined settlement limits to, amongst other things, affordable housing and where there is a proven need for such a development to house a key worker.
165. In conclusion, having regard to the above, although the development would conflict with policies PS1 and H5, I consider that they carry limited weight in the determination of this appeal [30, 31, 34].

Other material considerations

Housing Land Supply

166. Paragraphs 8.1 & 8.2 of TAN 1 state that for those Councils where a UDP is out of date and an LDP is not yet adopted then those Councils will not be able to demonstrate whether or not they have a 5 year housing land supply; in practice this means that Wrexham County Borough has a zero housing supply figure [42, 43, 129].

167. TAN 1 states that the housing land supply figure should be treated as a material consideration in determining planning applications for housing, and where the current study shows a land supply below the 5 year requirement the need to increase supply should be given considerable weight provided the development would otherwise comply with development plan and national planning policies [46, 129].
168. As the LDP (2) is at an early stage of preparation and it is not expected to be adopted until sometime after 2018, it can be afforded little weight in this process. Even if adopted at that time, allocations within the plan would need to gain consent and would not be able to be delivered until somewhat later than that date. In this regard, the Minister's findings in the Hafod Tileries case are of particular relevance in that there is a pressing need for housing, and given the early stage the LDP (2) is at, there is little prospect of a plan led solution to the supply of housing land any time soon. The situation is the same in this case.
169. Even so, the emerging LDP (2) does set out a housing requirement of 11,715 new homes to deliver a housing requirement over the plan period which is approximately double that of the UDP (5,775 between 1991-2011) [43]. It also recognises that a significant proportion of those dwellings will need to be on greenfield sites on the edge of existing settlements. The Council also accepts that within the emerging LDP(2) 'Preferred Strategy' new land outside of existing settlement limits will need to be allocated for future housing development [76].
170. Two parcels of land that are part of the appeal site have been included on a site register which identifies all potential sites that have either been put forward by the Council or submitted by interested parties for consideration as allocations. It is noteworthy that the two parcels of land were not initially put forward for consideration by the landowner but were identified by officers of the Council. The site register confirms that the two areas of land comply with the Council's Preferred Strategy and may have potential to contribute to meeting future growth demands within the County Borough [76].
171. The emerging LDP(2) designates Llay as a tier three local service centre but it is characterised as an urban village and one of the larger settlements similar to tier two settlements. Settlements within Tier 3 are expected to accommodate 1,230 homes over the plan period, which the Council's witness agreed was a significant level of growth and is more than the total anticipated to go to the tier 2 settlements [73].
172. I note from written representations made by local residents and those made at the Inquiry that consideration of whether this site should be developed or not should be through the LDP process, and that to grant permission now would be premature [145]. National policy in Paragraph 2.14.2, PPW is clear that refusal on the grounds of prematurity will not usually be justified except in cases where a development goes to the heart of the plan and is individually or cumulatively so significant that to grant permission would predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context. I do not consider that the provision of 365 houses in the context of a need for 11,715 homes is of a scale that goes to the heart of the emerging LDP(2), and it is pertinent that it would be consistent with the overall approach to housing provision in regards to meeting the need for new homes on sites on the edge of existing settlements. I do not find that the proposal would be prejudicial to the emerging LDP (2).

173. The appeal proposal has the potential to be delivered at an early stage which has particular significance given its potential to contribute up to 365 dwellings. The Appellant explained at the Inquiry that the majority of the background investigative work has already been undertaken as part of this appeal, which may not be the case for other potential development sites in the County Borough. Both parties agreed at the Inquiry that a condition could be imposed to require reserved matters applications and implementation earlier than the standard time frames, and the Appellant has provided evidence of developer interest which further demonstrates the ability to deliver the site within a relatively short timescale [58].
174. The proposed development would also provide 91 affordable units, which equates to 25% of the total housing to be provided. Llay is located within the Western Border sub area where there is the greatest annual imbalance between the need and supply of AH, which at 69 affordable dwellings per annum equates to approximately 44% of the County Borough's affordable housing need [49]. I consider that the provision of 91 units on the appeal site would be a significant amount of affordable housing and would make an important contribution to a local identified need. This provision also weighs heavily in favour of the proposal [24].
175. Whilst the proposal does not accord with the development plan in so far as it relates to development outside defined settlement boundaries, the considerable shortfall in housing supply should be given substantial weight and again weighs heavily in favour of the proposed development [46].
176. The Council acknowledges that without the housing land supply required it would not be able to adopt a new Plan, and that the housing land supply position is critical. The Council also accepts that the failure to provide the housing requirement is harmful to the economic prosperity of the County Borough [44].

Sustainable development

177. Both parties agree that Llay contains a range of local facilities and the appeal site is also within close walking distance of Llay Industrial Estate which is a key strategic employment site in the County Borough. There are four bus services accessible to the site providing the opportunity for residents to use public transport rather than the private car to access employment, leisure, retail and other facilities within Wrexham [70, 71]. Although the site is located outside the settlement boundary, the Council accepts that it lies in a broadly sustainable location [24, 38, 70, 71, 74, 77].
178. PPW presumes in favour of sustainable development [38] and the proposed development would satisfy PPW's objectives of achieving sustainable development by ensuring that local communities have sufficient housing and affordable housing for their needs and promoting access to employment, shopping and other facilities. The juxtaposition of homes and jobs is a key indicator of sustainable development, and the fact that the appeal site is located within walking distance of Llay Industrial Estate [70, 71, 74] is a significant factor that weighs heavily in its favour and as a result it would be a logical site to develop for housing.
179. A number of representations have referred to the loss of agricultural land, and it is clear that the proposal would result in the loss of an area of land that is currently in agricultural use [145, 147]. The Welsh Government LNFD reviewed the evidence

prepared by the Appellant, and the land is not considered to be predominantly best and most versatile due to soil wetness and workability, with the exception of 2.7ha (approximately 17% of the site) that the LNFD consider should be grade 3a BMV land [72].

180. PPW paragraph 4.10 states that land in grades 1, 2 and 3a should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural grades is unavailable. If land in grades 1, 2 or 3a does need to be developed, and there is a choice between sites of different grades, development should be directed to land of the lowest grade.
181. I have already referred to the weight to be attached to the housing land supply position of the Council and that the need for housing land is critical [161]. The Council also acknowledges that greenfield and agricultural land needs to be released to meet the need for housing in the emerging LDP. As such, I am of the view that the loss of a relatively modest area of BMV is significantly outweighed by the overriding need for housing in the County Borough [72].
182. Both parties agree that the proposed retail unit would be developed in conjunction with a large housing development and not in isolation, and that in the context of the development as a whole it would be located within a built up area rather than countryside and would, therefore, accord with UDP policy S6 of the UDP. I would agree with the Council's assessment that the proposed retail unit would also be a benefit to the eastern side of Llay and that it would not divert significant trade from Gresford district shopping centre [77]. The provision of the unit offers easy access to a retail facility for future residents, which in the context of the acceptability of a large residential development would not be at odds with the aims of sustainable development as espoused by PPW, nor undermine the relevant policies of the UDP.
183. I conclude that the proposal would provide much needed open market and affordable housing and would meet the short term need to address the considerable shortfall in housing supply in advance of the adoption of the LDP. Whilst there would be a loss of a small area of BMV, I am of the opinion that the site is in a sustainable location and, would substantially meet the key principles and policy objectives of sustainable development set out within PPW.
184. I consider the delivery of a development of up to 365 dwellings, of which a significant amount is to be affordable, to meet the critical need for new housing in the County Borough significantly outweighs the UDP countryside protection policies PS1 and H5. There is an overriding need for the development and in my view these considerations justify departing from the countryside protection policies (Policies PS1 and H5) of the development plan and lead me to consider that, in terms of this first main consideration, the development is acceptable.

The effect of the proposed development on the character and appearance of the area.

185. The Appellant's original submission with the planning application included an LVIA. In contrast, the Council has not undertaken any formal, methodical landscape or visual

assessment of the proposed development, but has instead relied on purely subjective assessments of likely impact [59, 131]. The Council has not disputed that the methodology used in the Appellant's LVIA was in accordance with best practice and has not disputed the findings and conclusions of the LVIA [131]. As such it must be regarded as uncontested.

186. The LVIA and appeal documentation is supported by text and photographs and provides an indication of the potential landscape and visual impacts of the proposed development. I am satisfied that the information provided is sufficient to enable the potential landscape and visual impacts to be understood, and my findings have been informed by the evidence before me, my visit to the site and from my own observations from a number of vantage points in the surrounding landscape including those selected for the LVIA.
187. Both parties agree that the topography of the wider landscape, together with features within it such as trees, hedgerows and buildings, would prevent a material impact on longer distant views of the site [60]. There is also no dispute that the proposal would be visible within the area immediately adjacent to the site and that visual impact would be limited to the immediate locality, primarily Gresford Road and the approaches from Rackery Lane, Chapel Lane and Straight Mile. However, the main area of disagreement between the main parties is in respect of the visual impact of the development at site level [60], and whether that visibility is likely to have a significant adverse effect on visual receptors, including those who live in the area close to the appeal site, users of the public right of way and those travelling in cars.
188. The introduction of development to any undeveloped site would be very likely to significantly alter its character. However, in my opinion the proposed development would be seen largely against the backdrop of the existing built up edge of Llay when travelling along Straight Mile. Within the context of the village, the development would be perceived as a continuation of the settlement's built form and would read as a continuation of the existing housing along Gresford Road. Consequently, its effect on the character of the village would be reasonably limited when perceived from a moderate distance away, such that its effect on landscape character would be reduced in this respect.
189. The existing buildings within the Home Farm complex can be seen at close range from Gresford Road and in mid-range views from Straight Mile. Nevertheless, visibility does not necessarily result in harm to landscape character, and the topography of the site and surrounding area, as well as the existing landscaping along the boundaries of the site, would assist in screening the development from most of the identified vantage points. I accept that dwellings would be easily seen along Gresford Road and Straight Mile but in the main would be seen in the context of the existing built up edge of Llay.
190. Since the appeal site closely adjoins the edge of the settlement, the provision of housing in this location would not introduce uncharacteristic features into the landscape. I consider the site to be visually well related to the existing built form and in this respect forms a logical expansion of the settlement. Although the land presently has a rural character, the development would be in an area already subject to urban influences due to the proximity of existing housing, roads and junctions and the industrial estate. I also noted on my visits that existing residential development

in the locality is highly variable in character, largely reflecting the periods in which it was built, therefore, the proposed development would not introduce an incongruous or discordant pattern of development into this part of Llay.

191. The change from open, agricultural land to residential development would clearly have an adverse impact on the rural landscape character [62, 133], and it would introduce an additional built element into the landscape, but to my mind that additional built form would not materially change the character of the locality. The extent of hedgerows and trees that are to be retained would assist in minimising the potential impact on the character of the surrounding landscape [62]. In addition, the proposed landscape strategy would involve retaining trees along Gresford Road and would reinforce and manage the existing hedgerows along the boundaries and within the site. Subject to mitigating conditions and the scope to control landscaping details at reserved matters stage I consider the scheme acceptable in this respect [63, 155].
192. During my visits to the area I found that the appeal site is not visible to any meaningful extent and that the proposed development would have no material impact on views from more distant locations. Moreover, although the appeal site can be seen when approaching Llay along Straight Mile, it seems to me that if viewed from this location the proposed development would blend into the existing form of the built-up area and would not be unduly noticeable or prominent.
193. From a number of the viewpoints I observed that the visual impact of the development would be of limited significance due to the gently undulating topography of the site and due to screening by existing trees and hedgerows. The nearest properties to the site would be on the opposite side of Gresford Road, those residences within the Home Farm complex and the two dwellings known as Maes Y Rhedyn and Y Bwthyn on the south-eastern boundary. I accept that from these residential properties the development would be highly visible. However, based on the submitted evidence, the partial screening effects by existing and proposed landscaping [62, 63], and the setback distance of properties from Gresford Road, I do not consider those properties closest, nor any others further afield, would be unacceptably affected.
194. The Council argues that Gresford Road is a strong and defensible boundary and should not be breached [136, 137]. Given the visual relationship with the edge of the village I do not find this to be a compelling reason to resist development in this case. Residents have also highlighted that this development may set a precedent for further growth and expansion [146]. However, any future additional development in the vicinity of the appeal site would be the subject of further applications that would be considered on their own merits and do not affect consideration of this particular proposal.
195. The extent of likely visual effects of the proposed development has been set out in both the LVIA and the Appellant's landscape evidence to the Inquiry. I have examined the conclusions of this assessment and have made my own assessments on site. Having regard to the relatively flat nature of the site, the retention of existing trees and hedgerows and the proposed planting scheme, the overall visual effects arising from the proposed development would be limited and localised and would not be significant. To my mind the proposed development would not be at odds with the

LANDMAP visual characteristic for the area and would not have a significant harmful effect on the character and appearance of the landscape.

196. As such, the proposal would not have an unacceptable impact on the character and appearance of the area and I conclude that the proposal would not be in conflict with UDP Policy PS2.

The effect of the development on ecology

197. The ecological assessment comprising an extended Phase 1 habitat survey submitted with the planning application found that trees on the boundary of the site had potential to support roosting bats and must be subject to further inspection prior to works commencing. The assessment also established that there are three waterbodies on the site and that a number of ponds in the wider area have the potential to support GCN, and these will require detailed surveys prior to the development commencing [81]. Nonetheless, the assessment also found that the range of habitats across the site is of low diversity and of little ecological value. On the basis of the ecological surveys which are contained in the ES submitted with the planning application, I am satisfied that the only significant ecological resources within the zone of influence of the proposed development which are likely to be affected are bats and the GCN, which are protected under the Conservation of Habitats and Species (CH&S) Regulations 2010.
198. NRW responded to the planning application consultation by raising no objections to the development and stated that it was satisfied that the ecological survey had been undertaken to an acceptable standard. After receiving the formal response from NRW the Appellant, in consultation with the Council's ecologist, prepared a GCN Mitigation Strategy for the site. NRW again accepted the approach taken in the Mitigation Strategy and recommended that the requirements for the provision of a compensation area and its long term management would need to be subject to planning condition and obligations [85].
199. As part of the evidence for this appeal the Appellant undertook further survey work in the form of Environmental DNA (eDNA) to assess the presence/absence of GCN within the waterbodies. The Appellant's ecology witness confirmed at the Inquiry that eDNA surveys are very reliable, and while there is potential for GCN originating from water bodies to the north to come to site, they are unlikely to be on site in anything other than low numbers. In addition, GCN coming to the site would have to cross over the Straight Mile road in the process which may be an impediment to their movement, albeit not a total barrier. Accordingly, the Appellant's witness confirmed that any impact on GCN can be effectively mitigated [95, 99].
200. The scheme proposes to mitigate the potential impact on the local population of GCN in 2 ways. Firstly, it proposes to adopt measures to avoid direct harm during and after the construction phase by measures to include physical barriers and buffer landscaping works, which would be matters to be secured by planning condition [151, 155]. Secondly, the UU secures the long term management and maintenance of any on-site habitat mitigation [157].
201. In respect of bats, the phase 1 habitat survey confirmed that the trees located along the Gresford Road boundary have the potential to support roosting bats. The

Appellant's ecology witness confirmed that the indicative site layout plans show these trees to be retained in any development, and therefore there is no risk to the species from the proposals [87, 92].

202. The Appellant has provided confirmation that NRW is content that the reserved matters application(s) can be informed by subsequent surveys and that outstanding issues relating to ecology can be appropriately addressed by condition. Having regard to NRW's advice and the case law cited by the Appellant [104], I have no reason to disagree that a condition which requires additional ecological work to be undertaken and mitigation to be secured would be appropriate in this case.
203. Any works that would potentially affect a European Protected Species such as bats or GCN would require a licence and it is also necessary to consider the prospects of such a derogation licence being granted by NRW [103]. The 3 relevant tests in relation to derogation are set out in regulation 53 of the CH&S Regulations, which require that: there is an imperative reason of overriding public interest; that there is no satisfactory alternative; and, that the licence would not be detrimental to maintaining the population of the species at a favourable conservation status in its natural range.
204. In light of the case law cited by the Appellant [103, 104] the relevant question to be asked is whether it would be unlikely that the relevant licensing body would grant any licence found to be necessary. The Appellant's witness confirmed that any impact on GCN can be effectively mitigated and may not require a licence from NRW at all, and given the level of likely harm is low, that harm may be capable of being mitigated using a reasonable avoidance approach which can be implemented without a licence [95]. At this stage, and bearing in mind the favourable response of NRW to the scheme, I consider that a satisfactory licence application could be formulated at the appropriate time in the future containing all the required information, and that there is a reasonable prospect that a licence would be granted by NRW if one is deemed to be required.
205. Whilst I have noted the matters raised by objectors, I am satisfied on the evidence before me and on the absence of objections from either NRW or the Council's Ecologist, that the scheme is not likely to unacceptably affect the favourable conservation status of protected species. The requirement for a licence would also ensure that a more detailed assessment would be undertaken before any works can take place. In addition, any species present on the site would be more than adequately protected and provided for by the landscaping and other mitigation measures as proposed, the detail of these would be resolved within the reserved matters application(s) and at the stage of discharge of the suggested ecological management, monitoring and compensation condition.
206. Therefore, on this main issue I am satisfied that the scheme is consistent with national policy set out within TAN 5: Nature Conservation and Planning.

Other Matters

207. Most of the concerns raised by local residents or local groups and organisations have already been addressed under the main considerations, or the recommended

conditions [149-156], and several of the more detailed concerns raised can properly be addressed when reserved matters applications are considered.

208. Nonetheless, a considerable amount of representations was received that raised concerns with highway safety in the vicinity of the site, and specifically in regards to pedestrian safety, congestion, vehicle speeds as well as increased noise and pollution from vehicles [145-147]. Improvements would be carried out at the Crown Junction through the installation of the MOVA traffic light system that optimises traffic signals in response to the balance of traffic flow at each arm of the junction; there would also be speed limit reductions on Straight Mile and pedestrian footway improvements along Gresford Road [51]. These improvements, other than the speed limit reduction, would be secured through planning conditions [153].
209. An interim Travel Plan has also been submitted setting out measures to be put in place within the development to promote walking, cycling and the use of public transport to reduce the use of the private car. The final Travel Plan would be secured by condition prior to the occupation of the dwellings [153].
210. I am satisfied that the assessments and surveys undertaken by the Appellant, and which were assessed by the Council, were carried out using recognised and accepted methodology and provide sufficient information to understand the potential highway impacts of the development. The Council did not raise a highway objection to the proposal and did not submit evidence on highway grounds to the Inquiry [24, 148]. I have seen no technical evidence to lead me to take a different view to that of the Appellant's witness or the highways experts within the Council.
211. Concerns relating to air quality and pollution as a result of increased traffic are noted [145-147]. However, the Council's public protection section has not raised any objections to the proposed development, and I have no other evidence before me to persuade me otherwise [148].
212. A large number of residents have raised concerns regarding health and education facilities already being at capacity [145-147]. The Council's Education Section raised no objections to the proposed development subject to the provision of commuted sum payments; such a provision is allowed for in the submitted UU, and I consider it is an acceptable approach to meeting the needs of the community that would be created by the development.
213. With regard to the capacity of the local health centre, Mr Owen submitted correspondence to the Inquiry from Alyn Family Doctors [56]. The email indicates that the Practice has "concerns" about the scheme, and the potential for pressure on the availability of appointments. However, the Practice has not formally made representations to the Council or offered any evidence of capacity issues or suggested any mitigation which might be required to cater for the proposed development.
214. The Appellant's evidence also includes correspondence which the Council has had with the Planning Strategy and Engagement section of NHS Wales. No formal consultation response expressing its views on the development was received by the Council [24, 54, 55]. It can therefore be concluded that the Health Board has no objections to the proposed development based on capacity issues related to the provision of health services. Whilst I have noted the concerns raised by a large number of local

residents, I have no conclusive evidence that would lead me to reach a different conclusion to that made by the Council and the Appellant in this regard.

215. A number of local residents, some of whom have experienced at first-hand surface water and foul water flooding of their properties, are concerned that the scheme would exacerbate such problems [145-147]. Mindful of the specialist advice of NRW [148], I consider that the provision of a suitable sustainable surface water drainage system to serve the development is a matter that can be adequately addressed by a planning condition [152]. I am also satisfied that there are controls available to ensure that properly designed and constructed sustainable drainage works would be provided which would avoid flooding.
216. In respect of concerns with regard to sewerage issues [145 - 147] and the capacity of the Gresford Waste Water Treatment Works, Welsh Water has withdrawn its objections to the proposed development subject to the imposition of appropriate conditions for the provision and implementation of schemes for surface and foul water drainage on the site [152].
217. In terms of the design and layout of the proposed development this would be addressed at the reserved matters stage. Nevertheless, bearing in mind the separation distances between existing and the proposed houses which would be assessed in detail at the reserved matters stage, and the potential to secure additional screening through new boundary enclosures, I consider that the scheme would not give rise to unacceptable impacts in terms of overlooking or visual intrusion of neighbouring properties [146].
218. Objections have also referred to the potential that the houses would not be for local or Welsh people. I have no reason to believe that this would be the case or that local people would not be able to purchase the houses, indeed 91 of the units would be provided as affordable dwellings. Potential devaluation of property is not, in itself material to a planning decision which is concerned with matters of public rather than private interest [147].
219. Part of the site is subject to a Protection of Mineral Resource Designation. However, the North Wales Minerals and Waste Planning Service has confirmed that the resources are at such a depth their prior removal would not be viable [13].
220. Objectors have raised concern with regard to the stability of the land and that the ground has sunk over recent years due to underground mine workings [145-147]. The Coal Authority confirms that ground movement from these coal workings should have stopped by now. Whilst I have noted the concerns raised by local residents, I have no evidence that would lead me to reach a different conclusion to that made by the Coal Authority or that the site would be unsuitable for development [148].
221. I have had regard to the representations referring to the Straight Mile being an historic road of Roman origin. However, the Clwyd Powys Archaeological Trust (CPAT) has confirmed to the Council that no further archaeological investigations are required and there are no predicted archaeological impacts [148].
222. I have considered all the other matters raised by local residents in objection to the scheme, but none justify withholding permission.

Conditions and Obligations

223. In the event that Welsh Ministers decide to allow the appeal, I consider that the conditions set out in Annex A would be necessary and reasonable for the reasons set out above and would satisfy all the tests set out in Circular 16/14 , *The Use of Conditions for Development Management* . I have re-ordered some of the conditions, reworded some slightly and combined other conditions in the interests of precision.
224. The PSoCG suggested further conditions relating to details of off street parking and vehicle turning areas for the housing and the retail unit. However, both parties agreed at the Inquiry that the conditions were not reasonable or necessary given that the details of parking and turning areas would be the subject of reserved matters application(s). The condition relating to the speed limit reduction on Straight Mile is unreasonable as this is a function of the Council and will be undertaken through other powers under the Council's own controls. At my request a discussion was held at the Inquiry regarding conditions relating to the hours of operation of the retail unit and the hours of deliveries to it. In addition, a condition relating to noise emanating from any outside mechanical equipment on the retail unit was discussed. Both parties agreed that conditions would be reasonable and necessary in the interests of safeguarding the living conditions of neighbouring residents.
225. I consider that the obligations set out within the UU are necessary, are related to the proposed development, and related in scale and kind, and therefore meet the appropriate tests set out in Section 122(2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97 'Planning Obligations'. Accordingly the UU should be afforded weight in the determination of the appeal.

Overall conclusions

226. A decision on the appeal is required to be made in accordance with the development plan unless material considerations indicate otherwise. The UDP is the development plan.
227. There is a considerable and pressing need to increase the supply of housing in Wrexham County Borough. In the circumstances, I consider that the scheme's important contribution to addressing the present significant shortfall in the supply of housing, including affordable housing, is a consideration that attracts considerable weight.
228. The conflict with the development plan arises from the site's location outside the defined settlement boundary (UDP Policies PS1 and H5). However, the development plan (the UDP) is out of time and the current settlement boundaries were drawn in response to meeting the housing target of the UDP. As such they can be regarded as out of date and afforded significantly limited weight. The Council accepts that these settlement limits will have to be breached to meet future housing need as part of the emerging LDP, but given the early stage of the LDP there is no prospect of a plan led solution to increase housing land supply any time soon. In any event, the envisaged contribution of the proposed development to the supply of housing is a significant material consideration which is of sufficient weight to justify departing from the development plan.

229. The proposal would constitute sustainable development being located in close proximity to the settlement boundary with its range of services and facilities and would be in close proximity to public transport. Even though the proposed development would be contrary to the relevant policies of the development plan, I consider it would provide a suitable site for housing and a retail unit, having regard to the principles of sustainable development as advocated in PPW. In the particular circumstances of this case I find the contribution to the supply of housing, including affordable housing, in a sustainable location close to a large source of employment (Llay Industrial Estate) to be material considerations that outweigh the conflict with the development plan.
230. Having regard to the relatively flat nature of the site, the retention of existing trees and hedgerows which would be strengthened by the proposed planting scheme, the overall visual effects arising from the proposed development would be limited and localised and would not be significant. For the reasons highlighted in this report I do not consider the proposed development would result in any significant harm to the character of the landscape or to the visual amenity of the area. Consequently the proposal would not be contrary to Policy PS2 of the UDP which seeks to prevent unacceptable landscape and visual impacts.
231. I have assessed the Environmental Statement and all other environmental information, including the evidence relating to ecological issues, and I conclude that the scheme is not likely to unacceptably affect the favourable conservation status of protected species. I have also taken into account the Unilateral Undertaking and accord it significant weight. I have considered the conditions that should be applied to a grant of planning permission and have set out a list of recommended conditions at Annex A.
232. I have taken into account all other matters raised, but find none that would lead me to a different conclusion. I conclude that the appeal should be allowed and planning permission be granted subject to conditions.
233. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

Recommendation

234. For the reasons above I recommend that the appeal be allowed, and planning permission granted subject to the conditions set out in Annex A.

Richard Duggan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Thea Osmund-Smith of Counsel instructed by Ms Stephanie Hawkins, Bilfinger GVA

She called

Ms Sacha Rogers BSc(Hons), CEnv, MCIEEM Penny Anderson Associates

Mr Alex Vogt BSc MSc MCIHT TPP Curtins

Mr Tom Hollick BA(Hons) DipLD CMLI Consultant to BCA Landscape

Ms Stephanie Hawkins, BSocSC(Hons) Bilfinger GVA

MPhil, MSc, MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Mr Trefor Lloyd of Counsel instructed by Mr Aled Rowlands of Wrexham County Borough Council

He called

Mr Mathew Phillips Planning Case Officer

THIRD PARTIES

Mr Dennis Owen Vice Chairman of Llay Community Council and acting as lead for the Gresford Road Action Group

Cllr Robert Walsh Wrexham County Borough Councillor

Mr Eifion Roberts Llay resident

INQUIRY DOCUMENTS

1. Appellant's supporting documents:

- i. Grounds of appeal and a bundle of appeal submission documents (Folders 1 + 2)
- ii. Core Documents Folder 1 CD1- CD11
- iii. Core Documents Folder 2 CD12 – CD32
- iv. Core Documents Folder 3 CD33 – CD35
- v. Core Documents Folder 4 CD36 – CD39
- vi. Core Documents Folder 5 CD40 – CD47
- vii. Core Documents Folder 6 CD48 – CD61
- viii. Core Documents Folder 7 CD62 – CD64
- ix. Statement of Case
- x. Proofs of Evidence from Alex Vogt, Tom Hollick and Stephanie Hawkins
- xi. Planning Statement of Common Ground including suggested list of conditions (October 2016)
- xii. Draft Unilateral Undertaking
- xiii. Welsh Ministers decision letter dated 14 November 2016 and a copy of the Inspectors report APP/H6955/A/15/3135730, Hafod Tileries, Johnstown, Wrexham

2. Council's supporting documents:

- i. Appeal questionnaire and bundle of supporting documents
- ii. Statement of Case
- iii. Proof of Evidence from Mathew Phillips
- iv. Statement on Planning Obligations Requirements
- v. Appeal notification letter and list of those notified and Press notice

3. Appeal Representations:

- i. Letter of objection from Carol Wilding
- ii. Letter of objection from M. Crowe
- iii. Letter of objection from Mrs. Connolly
- iv. Letter of objection from Mrs P.A. Raw
- v. Letter of objection from Miss Caroline Raw
- vi. Letter of objection from Miss Rachel Coles

- vii. Letter of objection from Mr Luke Williams
- viii. Letter of objection from Dianne Higgins
- ix. Letter of objection from Mrs Yvette Cairns
- x. Letter of objection from Elizabeth Andrews
- xi. Letter of objection from Cllr Robert Walsh
- xii. Letter of objection from Mr & Mrs Owen
- xiii. Letter of objection from Mr D. Wynne
- xiv. Letter of objection from B & K Taylor Mugridge
- xv. Letter of objection from Noel & Ceri Williams
- xvi. Letter of objection from Myra Jones
- xvii. Letter of objection from Elizabeth Pettitt
- xviii. Letter of objection from Peter Maddocks
- xix. Letter of objection from Brian and Jean Gresty
- xx. Letter of objection from Karen Price
- xxi. Letter of objection from Ben Andrews
- xxii. Letter of objection from Mr R Lea
- xxiii. Letter of objection from Ian Lucas MP

4. Documents submitted during the course of the Inquiry:

Appellant:

- i. Appellant's submissions on Ecological Issues, including NRW email dated 21 November 2016
- ii. Written opening statement of Thea Osmund-Smith
- iii. List of appearances on behalf of the Appellant
- iv. Copy of Phase 1 Habitat Survey plan
- v. Email correspondence between Stephanie Hawkins, Bilfinger GVA and Matt Ellis, NRW dated 23 November 2016
- vi. Signed and dated Unilateral Undertaking, 24 November 2016
- vii. Written closing submissions of Thea Osmund-Smith
- viii. High Court Judgement: *Stevens (T/A KCS Asset Management) v Blaenau Gwent County Borough Council [2015] EWHC 1606 (Admin)*

Council:

- ix. Written opening statement of Trefor Lloyd
- x. Revised wording for conditions
- xi. Written closing submissions of Trefor Lloyd

Interested Parties:

- xii. Written statement of Mr Eifion Roberts
- xiii. Photographs of appeal site
- xiv. Written statement of Mr Dennis Owen
- xv. Email correspondence between Llay Community Council and Alyn Family Doctors dated 3 February 2015
- xvi. Email correspondence dated 24/25 October 2016 between Mathew Phillips Wrexham County Borough Council Planning and Paula Parry, Access and School Places Manager, Wrexham County Borough Council.

ANNEX A – Recommended Conditions

- 1) Details of the access, appearance, landscaping of the site, layout and scale, (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any part of the development begins. The development shall be carried out in accordance with the details as approved for each phase of the development.
- 2) The first reserved matters application shall include a plan showing the site and location of the first phase of the development and all subsequent phases of development (‘the Phasing Plan’). The Phasing Plan shall include the percentage of affordable housing in each phase, which across the phases shall consist of no less than 25% of the total number of dwellings to be built on the site. All subsequent reserved matters applications shall be submitted in accordance with the approved Phasing Plan unless otherwise agreed in writing by the local planning authority.
- 3) Plans and particulars of the first reserved matters referred to in conditions 1 and 2 shall be submitted in writing to the Local Planning Authority not later than 2 years from the date of this permission. The reserved matters applications for subsequent phases of the development shall be submitted not later than 3 years from the date of this permission. The development shall only be carried out in strict conformity with such details as are thereby approved.
- 4) The development shall begin either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plan: OS Map 653 P (00) 001 A.
- 6) This permission shall provide for a maximum of 365 dwellings and a sales area of no more than 300m² for the retail unit.
- 7) The retail unit shall not be brought into use until details of the hours that it shall be open for customers and the hours of deliveries have been submitted to and approved in writing by the Local Planning Authority. The retail unit shall thereafter be operated in accordance with the approved details.
- 8) An ecological management plan and ecological method statement, to include details of all surveys recommended by TEP Ecological Assessments (Reference 4358.01.001 Version 1.0 June 2014) for the approved site, shall be submitted to and approved in writing by the Local Planning Authority as part of the first reserved matters application. This information shall demonstrate how the findings of the surveys have informed the layout of the development, show how existing features of ecological interest will be protected, including protection measures during the construction period, identify areas of compensation and mitigation, include biosecurity risk assessments and demonstrate the management and monitoring of the site in the long term. The management plan and method statement as approved shall be fully implemented in accordance with timescales to be agreed in writing as part of the approved details. All subsequent reserved matters applications shall be submitted in

accordance with the approved ecological plan and ecological method statement unless otherwise agreed in writing by the local planning authority.

- 9) No part of the development shall commence until a detailed method statement for the removal and long term management of Japanese Knotweed on the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved method statement unless otherwise agreed in writing by the local planning authority.
- 10) No part of the development shall commence until a scheme to deal with potential contamination at the site has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include a phased investigation approach to identify the extent of contamination and any measures required to remediate the site, including post-development monitoring.
- 11) No part of the development shall be occupied until a Verification Report which demonstrates that the remedial works approved as part of condition no. 10 above have been satisfactorily carried out, has been submitted to and approved in writing by the Local Planning Authority.
- 12) No part of the development shall commence until there has been submitted to and approved in writing by the Local Planning Authority a detailed Arboricultural Method Statement and Tree Protection Plan which shall include:
 - a) all site instructions and prohibitions necessary to the success of the Tree Protection Plan;
 - b) a programme for arboricultural supervision and monitoring;
 - c) a programme for any pre-development access facilitation works; and
 - d) the requirements for any contractors engaged to provide such services.

The development shall be undertaken in accordance with the approved Arboricultural Method Statement and Tree Protection Plan unless otherwise agreed in writing by the Local Planning Authority.

- 13) No part of the development shall commence until a scheme for the surface water and land drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted, an assessment shall be carried out of the site potential for disposing of surface water by means of a sustainable drainage system (SUDS), and the results of the assessment provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- ii. specify the responsibilities of each party for the implementation of the scheme and a period for its implementation; and
 - iii. provide a management and maintenance plan of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 14) No part of the development shall commence until a sewerage scheme to satisfactorily accommodate the foul water discharges from the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of and be informed by a Hydraulic Modelling Assessment. No part of the development shall be occupied until the foul water system has been fully implemented and brought into use in accordance with the approved scheme.
- 15) Prior to the commencement of development a detailed scheme to improve the junction of the B5102, the B5373 and Chapel Lane, and a scheme to provide pedestrian footway improvements along Gresford Road shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved.
- 16) Prior to the occupation of each phase of the development, a Travel Plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include the details of an annual monitoring report, which shall be submitted to the Local Planning Authority for written approval following the first anniversary of the first use of the development, and every year up to and including the fifth anniversary.
- 17) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during demolition and construction;
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii. hours of working; and

- ix. construction vehicle routing and access.
- 18) No development shall commence in any phase with a boundary bordering the Straight Mile until a scheme of noise mitigation for the dwellings in that phase has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the approved noise mitigation scheme has been implemented.
- 19) The rating level of any noise generated by reason of the retail unit included in the development shall not exceed the pre-existing background level by more than 5dB(A) at any time. The noise levels shall be determined at nearby noise sensitive premises, and measurements and assessment shall be made in accordance with BS4142:2014 Method of Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.
- 20) All mechanical plant and equipment shall be enclosed in sound insulating material, mounted and located to minimise the transmission of structure borne sound in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority before the retail use hereby permitted is open for trading and thereafter maintained as such.
- 21) The landscaping and layout reserved matters to be submitted for the approved development pursuant to the requirements of Condition 1 above shall include a scheme for all areas of open space and green space to be provided within the development site, including public amenity space and equipped children's play areas. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwellings unless otherwise agreed in writing by the Local Planning Authority.
- 22) As part of the first reserved matters, a landscape management plan, to include the timing of the implementation of the plan, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscape management plan shall be carried out in accordance with the approved details.