

Report of the Chief Officer Planning and Regulatory

4 October 2021

APPLICATION NO:

P/2021 /0521

LOCATION:

LAND TO THE SOUTH WEST OF
THE OLD BLACK HORSE PUBLIC
HOUSE HIGH STREET
RHOSTYLLEN WREXHAM
LL14 4AG

DATE RECEIVED:

18/05/2021

COMMUNITY:

Esclusham

CASE OFFICER:

SEH

WARD:

Esclusham

DESCRIPTION:

DILEU AMOD RHIF 09 CANIATAD
CYNLLUNIO RHIF P/2016/0809 /
REMOVAL OF CONDITION 09 OF
PLANNING PERMISSION
P/2016/0809

AGENT NAME:

MR PAUL BIGNALL

APPLICANT(S) NAME:

MR PAUL BIGNALL

This application was deferred at the planning committee meeting on Monday 6 September 2021, following a request by the Local Member for the submission of a recent / updated traffic speed survey. The applicant has confirmed that a further traffic speed survey is not to be submitted, and requests that the application be determined on the basis of the information currently submitted.

Applicant's Submission: It is already agreed that the western access is substandard. I do not dispute this and to carry out a speed survey is without merit as it will only confirm what we already know. The western access is not under my ownership and does not form part of the access to the development site. The development site already has a valid planning permission and as such the condition is redundant, it was merely offered up as a gesture by the previous owners.

Highways have not objected to leaving the western access open, and the proposal to remove the condition changes nothing about the approved eastern access, which will serve the development site. Furthermore, the granted planning permission only serves to reduce the amount of traffic using the western access as it reduces the size of the public house car park. I respectfully request that you support the removal of condition no. 9, as there are no material planning grounds to support a refusal. The retention of the condition is not considered 'fair or reasonable' considering both the change in ownership and extant planning permission. Please note that condition no.11 clearly sets out the agreed eastern access, at Figure 1 in the original report (below).

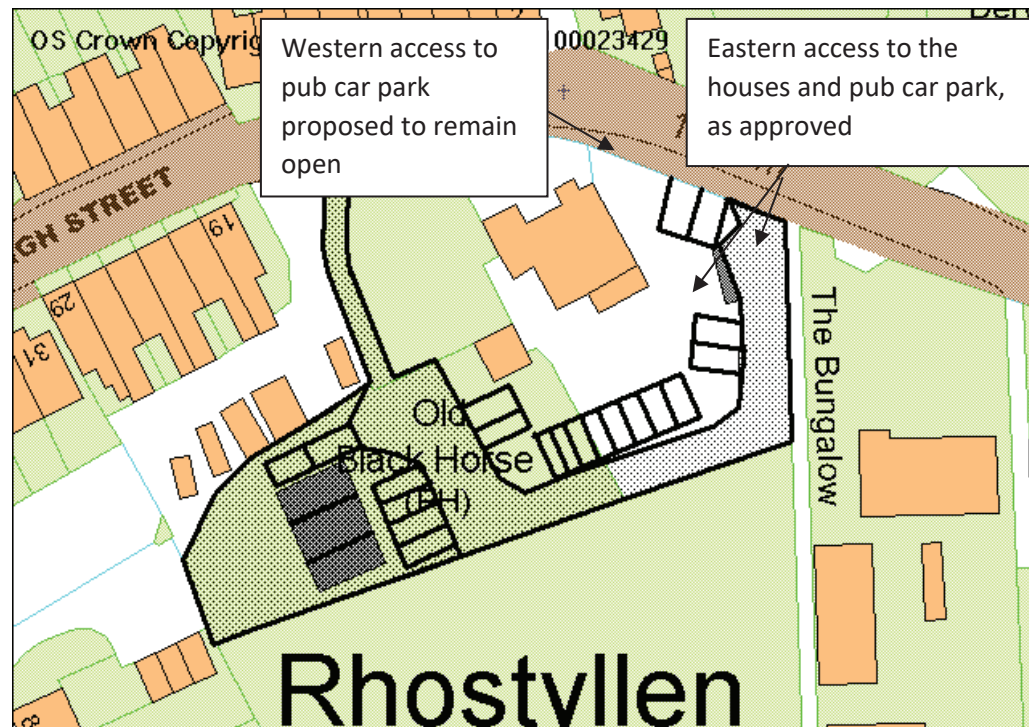
Conclusion: The applicant has adequately explained the position, and there is no change to my recommendation that planning permission should be granted.

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My original report is included below:

THE SITE



PROPOSAL

As above

RELEVANT PLANNING HISTORY

P/2016/0809	Outline application for residential development (3 no. Dwellings).
P/2020/0079	Submission of reserved matters (layout, scale, appearance and landscaping) in respect of outline application p/2016/0809 (residential development for 3 dwellings). Granted on 27/07/2020
P/2020/0534	Erection of one block of 4 flats. Decision Pending

DEVELOPMENT PLAN

Within settlement limit of Rhostyllen. Policy GDP1 of the Wrexham Unitary Development Plan (UDP) is applicable.

CONSULTATIONS

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Community Council:	The application was approved subject to a number of conditions, including, of course, 'no 9' relating to the stopping-up of the existing westerly vehicular access – the removal of which, this Community Council does not support. Our previously raised concerns regarding visibility and splays are still pertinent and especially so, should the aforementioned condition be removed. In addition, the Community Council have reservations as to the proposed set-up of the public house car park should this application for the removal of condition 'no. 9', be approved.
Local Member:	Notified 04/06/2021
Highways:	We do not consider the westerly access to be unsafe to the point to where the access should be closed, and recommend the removal of condition no. 9.
Neighbours:	Notified 10/06/2021. 30 neighbours notified, no responses received.

SPECIAL CONSIDERATIONS

Background: Outline planning permission in was granted in 2017 for the erection of 3 dwellings with associated access. Condition no. 9 was attached to the permission which required the closure of one of the 2 existing access points to the pub car park (the western access). At that time, the applicant for the outline permission was the owner of the public house, who has since sold the land off to a developer to build the approved houses.

The developer, who is the applicant for this application, does not have sufficient control over the western access point, in order to comply with condition no.9, hence this application to remove it from the permission.

The only issue to consider in this application relates therefore to the impact of the removal of this condition upon highway safety.

Highways: The development site is located with two existing access points (east and west) onto High Street which is a classified highway subject to a 30 mph speed limit. Whilst visibility from the western access is substandard, visibility from the eastern access more than meets the required visibility splays. It is this eastern access that will serve the development and also the pub car park (both customer and service / dray vehicles). Please see the access plan below at figure 1, which will remain the approved access arrangements should condition 9 be removed.

The only difference will be that the other access, to the west (immediately adjacent to the pub) will remain open. Whilst it is true to say that this existing western access is substandard in terms of visibility, it has been in situ for many years and is not impacted upon by the development for the new houses,

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which are to be served only off the easterly access. In addition to the western access, users of the pub car park can still use the eastern access, and the highway authority has confirmed that there are no objections on highway safety grounds to the westerly access remaining open.

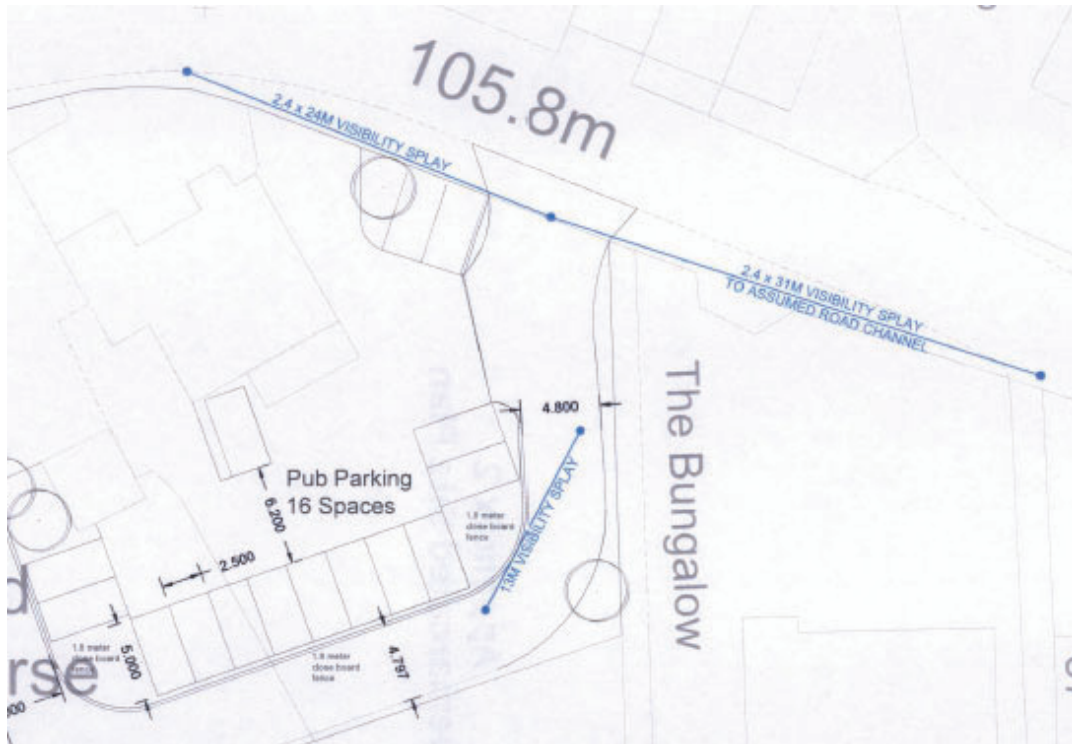


Figure 1. Approved Access Arrangements

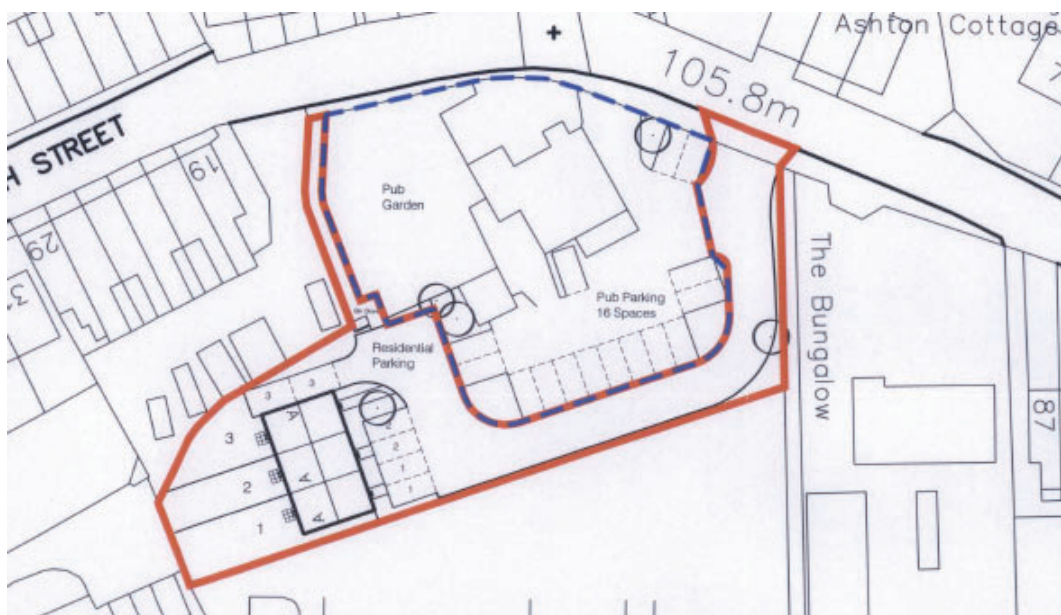


Figure 2. Approved Site Layout

CONCLUSION

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Whilst the closure of a substandard access will often be desirable as being beneficial to highway users, it is not always necessary to make a development acceptable. Given that the developer does not have control over the western access to ensure its closure, and that its closure is not necessary to make the development of the site acceptable, there are no planning grounds to insist upon the closure of the western access. The highway authority does not object to the removal of planning condition no. 9 and I recommend that this condition is deleted.

RECOMMENDATION: That permission be GRANTED

CONDITION(S)

1. The development hereby permitted shall be commenced before 27/07/2022 in accordance with the layout, scale, appearance and landscaping plans approved on 27/07/2020 under Reserved Matters Approval reference P/2020/0079.
2. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.
3. Details of proposed finished floor levels and ridge heights shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters application. The development shall be carried out in strict accordance with the details as are approved.
4. The contents of the indicative site plan submitted in support of this application shall not be regarded as representing an approved site layout or scale of development.
5. No part of the development shall commence until a scheme for the comprehensive and integrated drainage of the site indicating how foul water, surface water and land drainage will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented in accordance with a timescale to be agreed as part of the submitted details and maintained thereafter.
6. All works in relation to the implementation of this permission, including deliveries to and / or leaving the site, shall be undertaken only between the hours of 7.30 and 18.00 Monday to Friday, and 08.00 to 14.00 on a Saturday, and at no time on a Sunday or a Bank Holiday unless the prior written approval of the Local Planning Authority has been obtained.
7. There shall be no gates or other means of enclosure across the vehicular access point within 15 metres of the highway boundary.
8. Prior to first use of the development, the proposed vehicular access shall be laid out in strict accordance with approved plan no. 16021 - SK161201.1. The visibility splays shall thereafter be permanently retained free of all obstruction in excess of 1 metre in height.
9. Prior to first use of the vehicular access hereby approved, the access shall be surfaced with hard bound materials (e.g. bituminous macadam) for a minimum distance of 15 metres behind the adjoining highway.

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10. No part of the development shall commence until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in strict accordance with the Method Statement as is approved. The Method Statement shall include the following:
- a) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
 - b) A Tree Protection Plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;
 - c) A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;
 - d) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
 - e) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
 - f) Method for protecting retained trees during demolition works;
 - g) Details of all proposed tree works, including felling and pruning.
11. No part of the development shall commence until full details for the arboricultural supervision of tree protection measures and any ground works within retained tree(s) Root Protection Areas, as specified by BS5837:2012 or as shown on a Tree Protection Plan have been submitted to and approved in writing by the Local Planning Authority. The supervisory works shall be carried out in strict accordance with the details as approved.

REASON(S)

- 1. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
- 2. To protect the integrity of the public sewerage system and prevent hydraulic overloading of the public sewerage system. To protect the health and safety of existing residents and to ensure no detriment to the environment.
- 3. To protect the amenities of the occupiers of nearby properties.
- 4. To ensure that all details are reserved for future consideration.
- 5. To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system.
- 6. To protect the amenities of the occupiers of nearby properties.
- 7. In the interest of the free and safe movement of traffic on the adjacent highway and to ensure the formation of a safe and satisfactory access.
- 8. To ensure the formation of a safe and satisfactory access.
- 9. To ensure that no deleterious material is carried onto the highway, in the interests of highway safety.
- 10. To ensure the work is carried out to accepted arboricultural practices for the long term wellbeing of the tree(s).

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11. To ensure the work is carried out to accepted arboricultural practices for the long term wellbeing of the tree(s).

NOTE(S) TO APPLICANT

The applicant is advised that compliance with condition no. 8 does not provide an exemption from the statutory noise nuisance provisions of the Environmental Protection Act 1990. Any complaints received relating to noise from the development during the permitted hours may still be investigated using the Council's Standardised Procedure for Dealing with Noise Nuisance Complaints and legal action may be taken where appropriate.

The applicant is advised that the Council has the option to control construction noise by serving a Control of Pollution Act 1974, Section 60, Notice where deemed necessary, and failure to comply with such a Notice can result in prosecution. For further information and advice regarding construction noise please contact the Council's Housing and Public Protection Department on 01978 315300.

The Applicant is advised that under the Environmental Protection Act 1990, dust from construction and/or demolition activities can be judged to be causing a statutory nuisance to neighbouring properties. A legal notice can be served requiring that any dust nuisance is abated and failure to comply with the requirements of the notice can result in prosecution. The applicant should contact the Council's Housing and Public Protection Department on 01978 315300 for further advice and information.

The separate written consent of the Local Highway Authority must be obtained before any work is carried out within the confines of the highway.

A licence should be obtained (as required by section 184 of the Highways Act 1980) from the Highway Authority in order to lower the kerbline and cross the footpath at the new access position. Further guidance can be obtained from the Highways Department of Wrexham County Borough Council on telephone 01978 729690.

The scheme of arboricultural supervision required in connection with condition no. 14 above shall make provision for a pre-commencement site meeting between the Local Planning Authority's Arboriculturist, the Developer/ Applicant/ Agent and their appointed Arboricultural Supervisor to agree matters of detail. It shall specify the frequency of arboricultural monitoring and reporting to the Local Planning Authority on the status of all tree protection measures throughout the course of the development and make provision for the submission and approval of a satisfactory arboricultural completion statement

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

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It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at: <https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com or a similar service provider.

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

You are advised that building work which involves work on an existing wall shared with another property, building on the boundary with a neighbouring property or excavating near a neighbouring building may require the separate consent of the neighbour under the provisions of the Party Wall Act. If you require further information or advice please contact the Building Control Section on 01978 292050.

The permission hereby granted does not authorise encroachment upon, or interference with, the adjoining property.

The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water industry Act 1991. If

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the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991).

The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication ""Sewers for Adoption""? 7th Edition. Further information can be obtained via the Developer Services pages of www.dwrcymru.com

The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water on 0800 085 3968 to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.
