
Adroddiad

Ymweliad â safle a wnaed ar 19/04/21

**gan Richard E. Jenkins BA(Hons) MSc
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 14.09.2021

Report

Site visit made on 19/04/21

**by Richard E. Jenkins BA(Hons) MSc
MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 14.09.2021

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 77

APPLICATION BY MR GINO PALETTA OF TRAILWALK LTD.

LAND AT SCRAP YARD, LLWYNEINION ROAD, LEGACY, RHOSLLANERCHRUGOG, LL14 4ET

File Ref: APP/H6955/V/20/3262399**Site Address: Land at Scrap Yard, Llwyneinion Road, Legacy, Rhosllanerchrugog, LL14 4ET**

- The application was called in for a decision by then Minister for Housing and Local Government, one of the Welsh Ministers, under section 77 of the Town and Country Planning Act 1990, on 30 October 2020.
- The application is made by Mr Gino Paletta of Trailwalk Ltd. to Wrexham County Borough Council.
- The application Ref: P/2020/0072 is dated 3 February 2020.
- The development proposed is residential development for up to 15 units, including segregated ecological area for Great Crested Newts.

Summary of Recommendation: That the application be refused.

Background and Procedural Matters

1. Wrexham County Borough Council (CBC)(the Council) resolved to grant outline planning permission¹ for the development proposed, contrary to the professional advice of its officers. The Officer's Report² recommended the following reason for refusal: *"The site lies outside of a settlement limit and on open countryside. The proposals will result in an unsustainable development not in keeping with the rural character of the locality. As such the proposals do not accord with policies PS1, GDP1 and H5 of the Wrexham Unitary Development Plan, as well as paragraphs 3.35, 3.56 and 4.1.12 of Planning Policy Wales (PPW)"*³. Members resolved to grant permission despite the identified policy conflict, citing specific material considerations that weigh in favour of the proposed development.
2. The Welsh Government (WG) subsequently directed that the application be called in for a decision by the then Minister for Housing and Local Government, under Section 77 of the above Act. The full reasons for that direction are set out in WG's letter dated 30 October 2020⁴. That letter also identified the main issues in relation to the call-in request. These were set out as follows:
 - *Site not located within a defined settlement boundary - the application proposes residential development on land located outside of a defined settlement boundary;*
 - *Development in the Open Countryside - the site does not accord with any of the provisions of Policy H5 in respect of housing development in the open countryside and is contrary to PPW;*
 - *Former Coal Workings - Coal mining legacy potentially poses a risk to the proposed development;*
 - *Effects on Protected Species - the development is likely to impact upon both bats and Great Crested Newts;*
 - *Minerals Safeguarding - The site lies within the mineral buffer zone surrounding Llwyneinion Quarry;*

¹ With all matters reserved for subsequent approval

² Document 1: Officer's Report to Planning Committee (Submission Document)

³ PPW Edition 10, which has since been superseded by PPW (Edition 11, 2021)

⁴ Document 2: Welsh Government Letter, dated 30 October 2020

- *Contaminated Land* - The application site was last used as a scrapyard and is sited on an area of land that was historically two landfill sites; and
 - *Site Access and Parking Provision* - The site is not accessible by public transport and there are no local needs retail facilities or other essential services close to the site. Future occupiers would therefore be entirely dependent upon private car journeys to travel to/ from the site.
3. Since the call-in, NRW has raised concerns regarding the proposed drainage strategy and, in particular, the potential for likely significant effects upon the integrity of the River Dee and Bala Lake Special Area of Conservation (SAC). As set out in its representation dated 4 March 2021⁵, Natural Resources Wales (NRW) has published an evidence package outlining phosphorus levels for all river SACs across Wales and, as part of that package, has issued a Planning Position Statement⁶ which advises that any development that might increase the amount of phosphate within a river SAC catchment could lead to damaging effects upon the SAC.
 4. As the development proposes to dispose of foul water via a private treatment plant, it has been necessary to undertake an assessment for consideration by the Welsh Ministers in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017, as amended (hereinafter referred as the Habitats Regulations). The Assessment is set out in full at Annex C of this Report.
 5. To facilitate this process, the applicant was invited to provide a justification for the drainage strategy proposed, along with further information necessary to assist in assessing the implications of the proposed development upon the qualifying features of the SAC⁷. Representations were also received from NRW⁸, the Council⁹ and Dwr Cymru Welsh Water (DCWW)¹⁰ in respect of such matters, with rebuttals received from the applicant on 13 May 2021 and 1 July 2021¹¹.
 6. Given that WG published PPW (Edition 11, 2021) and Future Wales: *The National Plan to 2040* (herein after referred as Future Wales) after the application was called in by Welsh Ministers, the applicant was also given the opportunity to comment on such changes to national policy¹². The applicant submitted representations in this respect¹³.

The Site, Surroundings and Proposed Development

7. The application relates to some 6.7 acres of what is largely previously developed land located to the south of Llwyneinion Road, near Llwyneinion and Rhosllanerchrugog within the County Borough of Wrexham. The land has most recently been utilised as a scrap yard and I am advised that the necessary licences to resume that use remain in place. The site adjoins a dismantled railway to the west and commercial uses to the north east, with a number of residential properties sporadically located along Llwyneinion Road. Nonetheless, the wider environs clearly incorporate a rural

⁵ Document 3 – NRW representation, dated 4 March 2021 (Representation submitted to PINS)

⁶ Hyperlink provided via NRW representation dated 4 March 2021

⁷ Document 4 – Planning Inspectorate letter to applicant, dated 23 April 2021

⁸ Document 5 & 6 – NRW letter dated 28 May 2021 and email dated 26 July 2021

⁹ Document 7 – Email to Planning Inspectorate from Wrexham CBC, dated 2 June 2021

¹⁰ Document 8 – Email to Planning Inspectorate from DCWW, dated 9 June 2021

¹¹ Documents 9 and 10 – Representations from Applicant, dated 13 May 2021 and 1 July 2021

¹² Document 11 – Letter from Planning Inspectorate, dated 14 June 2021

¹³ Document 12 – Letter to Planning Inspectorate from Applicant, dated 1 July 2021

character, with the site some distance from day to day facilities and services and without a pedestrian footway.

8. The proposal seeks outline planning permission, with all matters reserved for subsequent determination, for up to 15No. residential units that would be sited on approximately 2.7 acres of land. The site would be accessed via an existing vehicular access off Llwyneinion Road. The proposed '*Site Plan*'¹⁴ submitted with the application indicates that the dwellings would generally be served by private driveways that would lead from an adoptable highway that would run in a north-south arrangement through the site. The remaining land would be utilised as public open space, with a segregated ecological area proposed as mitigation for great crested newts.
9. The '*Drainage Strategy*'¹⁵ indicates that foul effluent would be discharged to a private waste water treatment plant on site. That facility would serve all 15No. dwellings, with treated effluent discharging into a private pipe in adjacent land which outfalls into the open watercourse. Surface water flows would discharge into the same pipe, with the applicant contending that this would dilute foul flows. It is stated that the entire foul network and wastewater treatment plant would be maintained by a management company funded by prospective residents of the development.

Planning Policy Framework

National Policy

10. Future Wales sets out a national development framework that sets the direction for development in Wales to 2040. It is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities.
11. It places a strong emphasis on the climate emergency and sets a direction for where Wales should be investing in infrastructure and development. It is generally consistent with the overarching principles of the Well-being of Future Generations (Wales) Act 2015 (WBFG Act) and seeks to influence the way new development is planned. Specifically, it demands that development and the use of land contributes to improving the economic, social, environmental and cultural well-being of Wales. It provides support for sustainable development and puts placemaking at the heart of the planning system. It seeks to direct growth towards urban areas, whilst supporting sustainable rural communities and proportionate growth in rural towns and villages. It also seeks to ensure that the delivery of affordable housing is increased in areas where it is needed.
12. The Planning (Wales) Act 2015 and the WBFG Act enact the sustainable development principle and require planning decisions to comply with seven wellbeing goals. Consistent with such principles, PPW seeks to ensure that the planning system operates to deliver sustainable development and improves the social, economic, environmental and cultural well-being of Wales. It creates a presumption in favour of sustainable development that ensures social, economic, cultural and environmental issues are balanced by the decision-taker in making decisions on individual planning

¹⁴ Document 13 – Drawing P115/006 Planning: Site Plan, dated Sep 2019 (Submission Document)

¹⁵ Document 14 – Drawing 7251/SK01 Proposed Drainage Layout, dated 23.05.19 (Submission Document)

applications and emphasises the importance of placemaking. It sets out five key principles in delivering sustainable places. These are growing the economy in a sustainable manner, making best use of resources, facilitating accessible and healthy environments, creating and sustaining communities and maximising environmental protection and limiting environmental impact¹⁶.

13. PPW sets out a framework for strategic placemaking, with the aim to make the best possible use of suitable previously developed land in preference to greenfield sites. Development in the countryside should be located within and adjoining those settlements where it can best be accommodated in terms of infrastructure, access, habitat and landscape conservation. Infilling or minor extensions to existing settlements may be acceptable, in particular where they meet a local need for affordable housing or it can be demonstrated that the proposal will increase local economic activity. However, new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled¹⁷.
14. Previously developed land should, wherever possible, be used in preference to greenfield sites where it is suitable for development. In settlements, such land should generally be considered suitable for appropriate development where its re-use will promote sustainability principles and any constraints can be overcome. It is recognised, however, that not all previously developed land is suitable for development. This may be, for example, because of its unsustainable location, the presence of protected species or valuable habitats or industrial heritage, or because it is highly contaminated¹⁸.
15. PPW promotes distinctive and natural placemaking and well-being, with green infrastructure playing a fundamental role in shaping places and our sense of well-being. The planning system should protect and enhance green infrastructure assets and networks because of their multi-functional roles. The protection and enhancement of biodiversity must be carefully considered as part of green infrastructure provision alongside the need to meet society's wider social and economic objectives and the needs of local communities. Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity. In doing so Local Planning Authorities (LPAs) must also take account of, and promote, the resilience of ecosystems.
16. Before authorising development or adopting a land use plan which is likely to have a significant effect on a SAC or Special Protection Area (SPA) (including where outside the boundary of the SAC or SPA), LPAs must carry out an Appropriate Assessment of the implications for the designated features, consult NRW and have regard to NRW's representations. The development can normally only be authorised, if the LPA ascertains that it will not adversely affect the integrity of the site, if necessary, taking into account any additional measures, planning conditions or obligations. Development for which there is no alternative solution and which must be carried out for imperative reasons of over-riding public interest may be authorised notwithstanding a negative assessment of the implications, subject to notifying Welsh Ministers. Any necessary

¹⁶ Figure 4, Chapter 2, PPW

¹⁷ Paragraph 3.60, PPW

¹⁸ Paragraph 3.55, PPW

compensatory measures to protect the overall coherence of the network of SACs and SPAs must be secured¹⁹.

17. The presence of a species protected under European or UK legislation, or under Section 7 of the Environment (Wales) Act 2016 is a material consideration when an LPA is considering a development proposal which, if carried out, would be likely to result in disturbance or harm to the species or its habitat and to ensure that the range and population of the species is sustained.
18. PPW seeks to balance the fundamental requirement to ensure an adequate supply of minerals with the protection of amenity and the environment. The key principles are to, amongst other things, provide positively for the safeguarding and working of mineral resources to meet society's needs now and in the future, encouraging the efficient and appropriate use of high quality materials. PPW also states that buffer zones should be used by LPAs to provide areas of protection around permitted and proposed mineral workings where new development which would be sensitive to adverse impact, including residential areas, hospitals and schools, should be resisted. Within the buffer zone there should be no new mineral extraction or new sensitive development, except where the site of the new development in relation to the mineral operation would be in a location remote from the active mineral site or on the far side of an existing built up area which already encroaches into the buffer zone²⁰.
19. PPW is supplemented by a suite of Technical Advice Notes (TANs). The following TANs are of particular relevance to the main issues to be considered in this application: TAN2: *Planning and Affordable Housing (2006)*; TAN5: *Nature Conservation and Planning (2009)*; TAN 6: *Planning for Sustainable Rural Communities (2010)*; TAN12: *Design (2016)*; and TAN23: *Economic Development (2014)*.
20. National policy is also supported by a series of Circulars, including Circular 008/2018: '*Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants*' (2018) (hereinafter referred as WG Circular 008/2018). This states that, when drawing up sewerage proposals for any development, the first presumption must always be to provide a system of foul drainage discharging into a public sewer. If, by taking into account the cost and/ or practicability, it can be shown to the satisfaction of the LPA that a connection to a public sewer is not feasible, a package sewage treatment plant should be considered. The plant should offer full treatment with the final effluent discharge from it meeting the standard and conditions set by NRW. If the non-mains sewage disposal proposals are assessed as being unsatisfactory, this would normally be sufficient to justify the refusal of planning permission.

Local Policy

21. In addition to Future Wales, the development plan for the area includes the adopted Wrexham Unitary Development Plan (UDP) (Adopted 2005). The site lies outside of the settlement boundaries identified in that document and is, therefore, classified as countryside for the purposes of planning policy. The site also lies within a mineral buffer zone associated with the nearby Llwyneinion Quarry.

¹⁹ Paragraph 6.4.18, PPW

²⁰ Paragraph 5.14.44

22. The Council has identified a number of UDP policies as being relevant to the determination of the application. These are considered later in this Report, under the Planning Appraisal, and include:
- Policy PS1: *The Broad Location of Development*;
 - Policy PS3: *The Broad Location of Development*;
 - Policy GDP1: *Development Objectives*;
 - Policy EC4: *Hedgerows, Trees and Woodland*;
 - Policy EC6: *Biodiversity Conservation*;
 - Policy EC15: *Small Scale Neglected Sites*;
 - Policy H5: *Housing in the Countryside*;
 - Policy CLF6: *Informal Recreation*; and
 - Policy MW11: *Mineral Buffer Zones*.
23. The Council's emerging Local Development Plan (LDP) is at an advanced stage of preparation. However, it is yet to be adopted meaning that the weight to be attributed to it should be limited in accordance with the advice set out in the Welsh Government's Development Management Manual²¹. Notwithstanding this, I have not seen anything to indicate that the status of the site under the LDP would be materially different to that established by the adopted UDP

The Case for the Applicant

24. The applicant's case is set out through a number of '*Application Submission Documents*', with the principal arguments in favour of the development summarised in the Applicant's Statement of Case²² which was submitted after the application was called-in for determination by the Welsh Minister.
25. In summary, the applicant notes that there is an extant licence to use the site as a scrap yard, with potential for car dismantlers to occupy the site. The applicant therefore argues that the proposed development would have amenity and health benefits for existing residents. The preference for the development of previously developed land over greenfield sites has also been identified as a main argument in favour of the development, referencing national planning policy.
26. The site is well served by water and electricity infrastructure and the resulting dwellings would be within relative close proximity to existing dwellings which benefit from refuse collections. The applicant argues that the existing road network is adequate to cater for the proposed development, subject to access details being subsequently approved. With regards the issue of sustainable transport, it is argued that the proposed scheme would represent a betterment relative to the lawful use which attracts HGVs and broad range of movements by both customers and employees.
27. The development would make a positive contribution towards the local housing land supply and would offer the opportunity to improve the appearance of the area. The residential site would be well-screened by mature vegetation and would not, therefore, result in any significant adverse impacts on the landscape. The proposal would provide mitigation for great crested newts²³ and would provide wider ecological benefits, as well as public open space that would benefit both existing and proposed residents.

²¹ Section 9.4.8

²² Document 15 – Applicant's Statement of Case (Application Submission Document)

²³ Document 16 – Ecology Report (Application Submission Document)

28. It is proposed that foul effluent would be drained to a wastewater treatment plant given difficulties connecting to the public sewer. It is submitted that that facility would need to be maintained by a management company and fitted with alarms to ensure a prompt response in the case of any failure. It is therefore contended that the development would not adversely impact upon the integrity of the qualifying features of the River Dee and Bala Lake SAC.
29. In summary, the applicant contends that the positive benefits of the development far outweigh the policy conflict associated with its countryside location.

The Case for the Council

30. The Council made its decision contrary to its professional officer's recommendation. The officer's assessment of the proposal and recommended reason for refusal is set out in the Officer Report to committee, dated 27 July 2020²⁴. Notwithstanding this, Members resolved to approve the planning application, but no substantive planning reasons were provided prior to the application being called in. The Council has since submitted its Statement of Case²⁵ which outlines its position.
31. Specifically, it is clarified that the Council took its decision contrary to professional advice due to specific material considerations that were considered to weigh in favour of the proposals. These include the fact that the site represents previously developed land and the contention that the proposals would improve what is an otherwise untidy site. The development was therefore considered to be consistent with the thrust of Policy PS3 and Policy EC15 of the adopted UDP. It also states that the housing need identified in the emerging LDP would only be satisfied through the doubling of the annual housing completions across the County Borough. Concerns have been raised regarding the fact that the site benefits from a licence for the use of the land as a scrapyard, meaning that that use could resume at any time. It is said that the resumption of such a use would detract from the rural character of the area and reintroduce heavy goods vehicles travelling along Llwyneinion Road. It is also noted that the site has been a target for anti-social behaviour in recent years.
32. Notwithstanding this position, the Council was subsequently consulted on the concerns raised by NRW in respect of the proposed drainage strategy and the associated levels of phosphates being discharged into the River Dee and Bala Lake SAC. At an officer level, concerns have been raised that the proposals *"...have potential to increase phosphate levels... which in turn would have a detrimental impact upon the SAC"*²⁶.

Written Representations submitted to the Council

33. A number of representations were submitted to the Council prior to the application being called in for determination by the Welsh Minister. The Council's Officer's Report to Committee²⁷ summarises the main points.
34. There were a number of representations of support for the proposal. These were that the development would:
- *represent an effective re-use of previously developed land;*

²⁴ Document 1 – Planning Officer's Report to Committee (Application Submission Document)

²⁵ Document 17 – LPA Statement of Case

²⁶ Document 7 – Email from Wrexham CBC to Planning Inspectorate, received 2 June 2021

²⁷ Document 1 – LPA Officer's Report to Committee (Submission Document)

- *make a positive contribution to the housing land supply;*
- *improve the character and appearance of the area;*
- *represent an improvement relative to the fall-back position as a scrap yard, having particular regard to impacts upon local amenity;*
- *provide ecological mitigation and enhancements;*
- *make provision for public open space;*
- *minimise the potential for anti-social behaviour at the site; and*
- *make improvements to the existing vehicular access.*

35. NRW raised significant concerns in respect of the proposal, particularly in respect of the foul drainage strategy. DCWW noted that a connection to the main sewer was not proposed, but requested that it be reconsulted if that was subject to change. Meanwhile, planning conditions were suggested by statutory consultees in respect of the following matters: *contaminated land, coal mining legacy, ecology and highway safety*.

Written Representations submitted to the Planning Inspectorate

36. In addition to the written representations submitted to the Council, a number of representations were submitted to the Planning Inspectorate.
37. NRW has raised significant concerns with the development as submitted. It states that insufficient evidence has been submitted to demonstrate that the foul drainage strategy proposed is justified. Specifically, it suggests that a connection to the main sewerage system is reasonable and necessary, particularly given the location of the site within the catchment of the River Dee and Bala Lake SAC. Moreover, it states that it has not been satisfactorily demonstrated that the foul drainage strategy would not pose an unacceptable risk to the water environment and, in particular, the integrity of the SAC. It therefore recommends that the development should be screened through a HRA. It also suggests a number of planning conditions in respect of land contamination, surface water drainage and protected species.
38. As set out above, the concerns raised by NRW in respect of the foul drainage strategy appear to have been endorsed by officers of Wrexham CBC²⁸.
39. DCWW does not object to the development given that it would not connect to the mains sewer. In response to a request for clarification, it has however explained that the nearest public sewer is located to the south of the site, some 390 metres away. It is however noted that these public sewers are within private dwelling gardens and may not be accessible to connect to. The nearest public sewer that is not within private dwellings is approximately 590 metres away. For the avoidance of any doubt, those distances have been calculated through a direct route which may not be possible given site constraints. The sewerage network to the south of the site is served by Five Fords Waste Water Treatment Plant which benefits from a phosphate permit.
40. The representations that support the proposal can be summarised as follows:

²⁸ Document 7 - Email from Wrexham CBC to Planning Inspectorate, received 2 June 2021

- *Rhosllanerchrugog Community Council supports the proposal as it would provide family homes, would represent a much more acceptable use of land and would prevent further unsocial activities at the site.*
- *Esclusham Community Council supports the development as it would utilise brownfield land and make provision for a segregated ecological area.*
- *Councillor Paul H Pemberton of Ponciau Ward supports the proposal on the basis that the former use was a blight on the community that attracted noise and air pollution. It also attracted anti-social behaviour. The development would clean up a contaminated site and would assist in meeting the area's housing need. The character and appearance of the area would be improved and there would be a reduction in HGV movements. It is therefore submitted that the benefits would outweigh the harm.*
- *Other interested parties have sought to support the scheme on the basis that the development would: prevent continued anti-social behaviour at the site; bring an end to amenity issues associated with the use of the site as a scrap yard; assist in sustaining local facilities and services; and prevent the area from suffering economic decline.*

Planning Appraisal

41. Based on the foregoing, the main considerations in this case are:

- *Whether the development would comply with the sustainability and placemaking principles that underpin both local and national planning policy;*
- *The effect of the proposed development upon ecological interests, having particular regard to: the presence of protected species; and the implications of the proposed drainage strategy upon the integrity of the River Dee and Bala Lake SAC;*
- *Whether the development would be acceptable, having particular regard to policies designed to safeguard mineral workings; and finally,*
- *Whether any identified harm would be outweighed by any benefits and other matters in favour of the development.*

Principle of Development

42. The appeal site lies outside and away from the settlement limits defined by the adopted Wrexham UDP and is therefore located within the countryside for the purposes of planning policy. Both adopted development plan and national planning policy advocate strict control of development in the countryside. Specifically, Policy PS1 of the adopted UDP states that new development for housing should be directed to sites within defined settlement limits, whilst UDP Policy H5 states that new dwellings in the countryside should only be permitted where a number of policy exemptions are satisfied. There is no dispute that the development proposed in this instance does not satisfy any of the policy exemptions specified by that policy.
43. The application site is largely detached from facilities and services and is not readily accessible by modes of public transport. The site is also not served by a dedicated pedestrian footpath. The development would therefore create a residential use that would be heavily reliant on the use of a private car for day to day facilities and services. The development would therefore run counter to the sustainability and placemaking principles that underpin both national and development plan policy²⁹.

Ecological Matters

- *Protected Species*
44. The ecology report accompanying the application confirms that the existing building on site has moderate bat roost potential and is currently being used by bats. That building would be demolished in order to facilitate the proposed development. The European Protected Species (EPS) licencing regime would offer controls over the existing bats on site and mitigation measures, that could include the creation of new roosting opportunities, could be secured through the imposition of a suitably worded planning condition.
45. Appropriate measures would also need to be put in place to minimise the risk of harm to great crested newts. The indicative site plan shows the provision of a dedicated habitat for great crested newts and the implementation of ecological mitigation and enhancement measures could be secured through a planning condition. NRW has

²⁹ PPW (Edition 11, 2021), Future Wales (2021), UDP Policy PS1, UDP Policy GDP1 and UDP Policy H5

confirmed that it has no objection on such grounds subject to planning conditions being imposed and I am satisfied that mitigation measures would prevent any unacceptable impacts on the maintenance of the populations of both bats and great crested newts. There would not, therefore, be any conflict with the legislative or policy framework in this respect.

- *River Dee and Bala Lake SAC*

46. The site is located within the catchment area of the River Dee and Bala Lake SAC. The proposed drainage strategy would see foul effluent disposed to a private treatment plant before being discharged to a private pipe in adjacent land which outfalls into an open watercourse. NRW objects to the principle of such an arrangement on the basis that it considers the site to be within 350 metres of a public sewer and therefore within a 'sewered area'³⁰. WG advice states that any development discharging domestic sewage should connect to the foul sewer where it is reasonable to do so. Development proposals that would include a connection to a non-mains drainage facility would only be considered acceptable if a connection to a public sewer is not feasible. Such an approach is advised given that the installation of private sewage treatment facilities provide a greater risk of failures leading to pollution of the water environment.
47. The applicant contends that the mains sewer is some 800 metres away in this instance and that it would not allow a gravity connection from the site. As such, it is submitted that the development would not be viable for a 15No. plot development. In its most recent correspondence³¹, however, DCWW has confirmed that the site is some 390 metres from the nearest public sewer, with alternative public sewers some 590 metres away. I acknowledge that the nearest public sewers are within private dwellings and may not be accessible. I also acknowledge the implications of topography, vegetation and other site constraints in the wider area. However, I have not had sight of a detailed feasibility assessment that discounts a connection to the mains sewer. Furthermore, whilst some calculations have been provided to indicate that the costs of connecting to the main sewer are greater than providing the proposed private treatment facility³², this falls some way short of a financial viability assessment relating to the development as a whole.
48. In the absence of any cogent evidence to discount a connection to a public sewer on feasibility or viability grounds, I find that the development would run counter to the thrust of the advice contained within WG Circular 008/2018. Moreover, the proposed means of drainage gives rise to concerns over the effects on the River Dee and Bala Lake SAC which is not currently meeting its phosphate targets.
49. NRW's evidence package advises that any proposed development that might increase the amount of phosphate (or phosphorous) within a river SAC catchment could lead to damaging effects to the SAC. For this reason, the development has been screened and subject of an Assessment under the Habitats Regulations³³. The proposed development would see foul effluent discharged at a rate of some 9,900 litres per day to a private waste water treatment plant on site, with treated effluent discharging with surface water flows into an open watercourse. The applicant's own evidence indicates that the

³⁰ Utilising 30 metres per property (30 x 15No properties = 450 metres) as a guide, as referred in Section 21 of the Building Act 1984 which requires a connection to main sewer if a proposed property is within 30.48 metres of a sewer.

³¹ Document 8 - Email from DCWW to Planning Inspectorate, dated 9 June 2021

³² Document 10 - Representations from Applicant, dated 1 July 2021

³³ Refer to Annex C of the Report

Falcon 70 sewerage system proposed in this instance is not currently capable of reducing the amount of phosphate in the effluent, although it is stated that a tank system with phosphate removal capability is currently being tested. Specifically, it is anticipated that such infrastructure could reduce phosphate levels to between 0.4 and 1.5mg/l, with an average of 1mg/l.

50. However, the applicant's case is heavily reliant on standard technical specification information and does not appear to be based upon a site specific assessment or a detailed design proposal. I recognise that the application is made in outline only. However, drainage is not a reserved matter and WG Circular 008/2018 states that developers should make a full assessment of the suitability of any proposals for non mains sewerage at project design stage.
51. Notwithstanding such matters, I have not seen any evidence to confirm that the levels of phosphate anticipated by the applicant would ensure an acceptable impact upon the water environment. Whilst NRW has also failed to provide any project specific evidence in this respect, its advice is clear that any development that might increase the amount of phosphate (or phosphorus) within a river SAC catchment could lead to damaging effects to the SAC. Phosphate targets are not currently being met at the River Dee and Bala Lake SAC and any further loading of phosphates into the environment would inevitably exacerbate the existing damaging effects on the characteristics of the SAC.
52. The applicant's evidence indicates that the waste water treatment facility could be maintained by a management company and that that company could be funded by future residents. Such arrangements could, in principle, include alarms and telemetry to notify the management company of any failure. However, I have not been provided with full details of such proposals or any mechanism by which such arrangements could be secured and retained in perpetuity. NRW has noted a greater risk of failures leading to pollution of the water environment arising from private treatment facilities and, despite being requested, there is a lack of a robust assessment in this case of the likely implications of a failure to effectively treat and manage the foul effluent as envisaged.
53. Within this context, I conclude that the development proposal would give rise to likely significant effects on the integrity and qualifying features of the SAC which cannot be satisfactorily mitigated. In this case, the evidence indicates that the nearest public waste water treatment plant benefits from a phosphate permit. A connection to this network has not been adequately discounted as unfeasible and/ or rendering the scheme financially unviable. Thus an alternative to the identified harm cannot be ruled out based on the available evidence. The Assessment at Annex C also concludes that there are no imperative reasons of overriding public interest that would justify the proposals and, as such, the scheme conflicts with the legislative position set by the Habitats Regulations, as well as the planning policy position set at a national level. It would also conflict with the general thrust of Policy EC6 of the adopted UDP which seeks to conserve biodiversity interests .

Minerals Safeguarding

54. The site lies within a mineral buffer zone surrounding Llwyneinion Quarry, as defined by the adopted UDP. Policy MW11 seeks to resist new sensitive non-mineral development within buffer zones designated around active and inactive mineral sites in order to avoid conflicts arising from existing or future workings on such sites. Nevertheless, whilst the Council acknowledges that the development would conflict with the aims of Policy MW11, it notes that there are a number of other residential properties within the vicinity of the inactive quarry and argues that any future

proposals for mineral working would have to have due regard to the amenity of the occupiers of existing properties.

55. However, whilst I accept that the practical effect on future mineral workings may be limited by the presence of existing houses in the area, the development would clearly conflict with the aims of Policy MW11 and national policy. I have not seen any persuasive evidence that leads me to conclude that the development would not result in the prospective dwellings being subject of the harmful effects of quarrying which, in turn, could result in a more restrictive environment for mineral operators. Such concerns therefore serve to reinforce my overall findings regarding the suitability of the site for residential development.

Other Material Considerations

56. Given the former uses of the site, including as a scrapyard and landfill site, there is a high probability that the land is contaminated. However, the Council's environmental health representatives are satisfied that such matters could be addressed through the imposition of suitably worded planning conditions and I have not seen any reason to deviate from this position.
57. The Coal Authority has identified the site as falling within the defined '*Development High Risk Area*' as a result of its coal mining legacy. However, the applicant has obtained appropriate and up to date coal mining information to inform a Coal Mining Risk Assessment Report. There are some concerns over the indicative layout submitted. However, the application is in outline only, with layout reserved for subsequent determination, and The Coal Authority is satisfied that planning conditions that require site investigation works prior to the commencement of development would prevent any material harm.
58. It is likely that some mature trees would need to be removed to facilitate the development. However, given the wider context of the site, and the ability for an integrated scheme of landscaping to be provided, I do not consider that such matters weigh significantly against the proposal. I therefore find no policy conflict in this respect.
59. All matters associated with access, traffic and highway safety could be satisfactorily addressed through reserved matters applications that would include details in respect of, amongst other things, layout and access. Furthermore, whilst the footpath Esclusham Above No.4 crosses the site, the indicative layout indicates that provision could be made for the footway to cross the site unobstructed.

Benefits & Other Matters in Favour of the Development

60. Much of the arguments in favour of the scheme relate to the site's former uses. Indeed, there is little doubt that the development would utilise what is predominantly previously developed land, whilst also enhancing the appearance of the site. There is support in this respect from UDP Policy PS3, which provides a preference for the re-use of previously developed land, and UDP Policy EC15, which states that action will be taken to protect and enhance general amenity through the reclamation and restoration of derelict sites and through the improvement of untidy sites.
61. Nevertheless, consistent with the thrust of national policy, such provisions are qualified and fall some way short of providing blanket support for new residential development, particularly where such proposals raise significant sustainability and other concerns. Indeed, whilst the re-use of previously developed land and improvements to the site's

appearance clearly weigh in favour of the development, PPW recognises that not all previously developed land is suitable for development. This may be, for example, because of its unsustainable location, the presence of protected species or valuable habitats, or because it is highly contaminated³⁴.

62. I have considered the potential for the former use to resume which, in itself, could generate numerous HGV journeys as well as other adverse implications. Nevertheless, there is a lack of any cogent evidence to enable a detailed comparison of impacts and, in any event, I have not seen any persuasive evidence to suggest that such a use would be resumed should the planning application fail. I therefore attribute limited weight to such arguments.
63. The development would clearly make a positive contribution to the housing land supply within the County Borough which has failed to keep pace with requirements. It would also make provision for public open space and would have a positive impact on the local economy, not least through the construction process. Nonetheless, whilst such matters weigh in favour of the development, they need to be considered within the context that the emerging LDP is at an advanced stage of preparation and would provide a framework to address housing and open space requirements.
64. I note the evidence that indicates that the site has suffered from instances of anti-social behaviour in recent years. However, that evidence is largely anecdotal and is not in itself a determinative factor, not least because there may be other means of addressing such problems.

Planning Balance & Overall Conclusions

65. Whilst I have found that a number of site constraints could be satisfactorily mitigated through the imposition of suitably worded planning conditions, I have also found that the proposal represents an unsustainable form of development that would conflict with the sustainability and placemaking principles that underpin national and local policy. It has also not been satisfactorily demonstrated that a connection to the mains sewer would not be feasible or financially viable. Such a concern, along with the fact that the development would introduce new sensitive development within a designated minerals buffer zone, serve to reinforce the foregoing concerns regarding the location of development. The development would therefore conflict with the aims of Policy PS1, Policy GDP1, Policy H5 and Policy MW11, as well as the thrust of PPW, Future Wales and WG Circular 008/2018.
66. The Assessment at Annex C of this Report also demonstrates that the scheme would have implications for the integrity of the River Dee and Bala Lake SAC. A grant of planning permission would therefore represent a breach of the Habitats Regulations and would conflict with the thrust of the advice contained within planning policy, including that set out in Policy EC6 of the adopted UDP, PPW, Future Wales and TAN5.
67. Such harm and associated policy conflict is not in my view outweighed, either individually or cumulatively, by the benefits and other material considerations that weigh in favour of the development. Indeed, I consider that the foregoing concerns demonstrate why planning permission should be withheld in this instance. In coming to this conclusion, 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)

³⁴ PPW, Para 3.55

Act2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and 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, as required by section 8 of the WBFG Act.

Planning Conditions

68. The Council has provided a list of suggested planning conditions³⁵ and the applicant has been provided with the opportunity to comment on such matters. Whilst I do not consider that these satisfactorily mitigate the foregoing concerns, I have considered them in the event that the Minister takes a different view. Specifically, I have assessed the suggested conditions within the context of the advice set out in Welsh Government Circular 16/2014: '*The Use of Planning Conditions for Development Management*' and have provided an amended schedule of conditions, with reasons, at Annex B.

Recommendation

69. For the above reasons, and having considered all matters raised, I recommend that planning permission should be refused.

Richard E. Jenkins

INSPECTOR

³⁵ Document 17 – LPA Statement of Case

ANNEX A – LIST OF DOCUMENTS REFERENCED IN REPORT

Doc No.	Description
1	Officer's Report to Planning Committee
2	WG Letter, dated 30 October 2020
3	NRW Representation to Planning Inspectorate, dated 4 March 2021
4	Planning Inspectorate Letter to Applicant, dated 23 April 2021
5	NRW Letter to Planning Inspectorate, dated 28 May 2021
6	NRW Email to Planning Inspectorate, dated 26 July 2021
7	LPA Email to Planning Inspectorate, dated 2 June 2021
8	DCWW Email to Planning Inspectorate, dated 9 June 2021
9	Applicant Letter to Planning Inspectorate, dated 13 May 2021
10	Applicant Letter to Planning Inspectorate, dated 1 July 2021
11	Planning Inspectorate Letter, dated 14 June 2021
12	Applicant Letter to Planning Inspectorate, dated 1 July 2021
13	Drawing No. P115/006, Planning: Site Plan, dated September 2019
14	Drawing No. 7251/SK01, Proposed Drainage Layout, dated 23 May 2019
15	Applicant – Statement of Case
16	Applicant – Ecology Report
17	LPA – Statement of Case

ANNEX B – RECOMMENDED PLANNING CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.

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

- 2) Any application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

REASON: To comply with Section 92 of the Town and Country Planning Act, 1990.

- 3) The development shall begin either before the expiration of five 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.

REASON: To comply with Section 92 of the Town and Country Planning Act, 1990.

- 4) No part of the development shall commence until a scheme for the comprehensive and integrated drainage of the site (foul and surface water), including a management plan setting out the long term management arrangements for the proposed waste water treatment plant, 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.

REASON: To ensure that effective drainage facilities are provided for the proposed development in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.

- 5) Development shall not commence until a scheme that includes the following has been submitted to and approved in writing by the Local Planning Authority:
 - i. a report of the findings of a scheme of intrusive site investigations for the mine entries and shallow coal workings;
 - ii. details of any remedial measures that are necessary, including the submission of a layout plan which identifies appropriate zones of influence for the mine entries, and the definition of suitable 'no-build' zones.

Where remedial measures are proposed, they shall be implemented in strict accordance with the approved details prior to the commencement of the development.

REASON: *In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.*

- 6) Development shall not commence until the following has been submitted to and approved in writing by the Local Planning Authority:
- i. Full details of the proposed Great Crested Newt Mitigation Area to include a timescale for its being provided and a long term management and maintenance plan;
 - ii. a scheme of Reasonable Avoidance Measures in respect of Great Crested Newts has been submitted to and approved in writing by the Local Planning Authority.

Development shall thereafter only take place in strict accordance with the scheme as approved. The Great Crested Newt Mitigation Area shall thereafter be permanently retained and managed and maintained in accordance with the approved long term management and maintenance plan.

REASON: *In order to protect wildlife interests, which are afforded special protection in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.*

- 7) 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 approved Method Statement. 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.

REASON: *In the interest of visual amenity in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.*

- 8) No development shall take place until a phased site investigation of the nature and extent of contamination has been carried out and submitted to and approved in writing by the Local Planning Authority. If any contamination is found during the site investigation, no part of the development shall commence until a scheme specifying the measures that will be taken to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The site shall thereafter be remediated in accordance with the approved scheme. If during the course of development any contamination is found that has not been identified in the site investigation, no further development shall take place on those parts of the site where that contamination has been found until an additional scheme of remediation has been submitted to and approved in writing by the Local Planning Authority for those parts of the site. The relevant parts of the site shall thereafter be remediated in accordance with the additional scheme of remediation.

REASON: *In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.*

- 9) Each part of the site subject to the remediation under the scheme(s) approved as part of Condition No.8 shall not be occupied/used until a Validation Report has been completed in respect of that part of the site and submitted to and approved in writing by the Local Planning Authority.

REASON: *In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.*

- 10) The reserved matters shall include an area or areas of public open space to be provided within each phase together with a scheme that includes the following details:
- i. hard and soft landscaping of the open space area(s);
 - ii. the timing of the construction and landscaping of the open space area(s);
 - iii. A long term management and maintenance plan for the area(s) of open space.

Public open space shall be provided in accordance with the scheme as approved. It shall thereafter be permanently retained and managed and maintained in accordance with the approved long term management and maintenance plan.

REASON: *In the interests of the appearance of the development and the standard of amenity afforded to future occupiers in accordance with policies GDP1(a) and CLF5 of the Wrexham Unitary Development Plan.*

ANNEX C – HABITATS REGULATIONS ASSESSMENT

Background and Preliminary Matters

1. The project subject of this Habitats Regulations Assessment (HRA) relates to an outline planning application for 15No. residential units that would incorporate a segregated ecological area for great crested newts and an area of public open space. After Wrexham County Borough Council (the Council) resolved to grant planning permission for the development, the Welsh Government (WG) directed that the application be called in for a decision by the Welsh Ministers.
2. The potential for the development to have likely significant effects upon the integrity of the River Dee and Bala Lake Special Area of Conservation (SAC) was not raised during the Council's jurisdiction period. However, given that the site lies within the catchment of a SAC that is failing to meet phosphate targets, and that the application proposes to dispose of foul water via a waste water private treatment plant, it is necessary to screen the proposals in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017, as amended (hereinafter referred as the Habitats Regulations).
3. The applicant has had the opportunity to provide a justification for the drainage strategy proposed and to submit further information to assist in assessing the implications of the proposed development upon the qualifying features of the SAC³⁶. The development proposal has not however been the subject of a shadow HRA. Representations were also sought from Natural Resources Wales (NRW), the Council and Dwr Cymru Welsh Water (DCWW) in respect of such matters.
4. The need for HRA is set out within Article 6 of the EC Habitats Directive 1992, which has been transposed into British Law by the Habitats Regulations. The decision maker, as competent authority with respect to the Regulations, will need to decide whether '*likely significant effects*', either alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
5. The Regulations provide strict protection, although they are not a prohibition on new development. Rather, they involve a case-by-case examination of the implications for each European protected site, its qualifying features and its conservation objectives. There is no statutory method for undertaking HRA and the approach can vary on a case-by-case basis. Nonetheless, guidance issued from the European Commission³⁷ sets out a four-stage assessment process involving '*Screening*'³⁸, '*Appropriate Assessment*', '*Assessment of Alternatives*' and '*Imperative Reasons of Overriding Public Interest*'.

Likely Significant Effects

6. The application site lies within the catchment of the River Dee and Bala Lake SAC which is currently failing to meet phosphate targets. The entry in the register of European sites for Wales outlines the habitat types and species for which the SAC is designated as such. The drainage strategy proposed in this case indicates that foul

³⁶ Document 4 - Refer to Annex A: List of Documents Referenced in this Report

³⁷ Assessment of plans and projects significantly affecting Natura 2000 sites' (2001)

³⁸ Consideration of likely significant impacts

effluent would be discharged to a private waste water treatment plant on site. That facility would serve all 15No. dwellings, with treated effluent discharging into a private pipe in adjacent land which would outfall into an open watercourse.

7. At some 9,900 litres per day, outflows from the waste water treatment facility would not be insignificant and the applicant's own evidence indicates that the Falcon 70 sewerage system proposed in this instance is not currently capable of reducing the amount of phosphate in the effluent. The applicant has stated that a tank system that would culminate in phosphate removal is currently being tested. However, whilst the intention is that such infrastructure could reduce phosphate levels to between 0.4 and 1.5mg/l, with an average of 1mg/l anticipated, this appears to be generic technical data which is not supplemented by a site specific assessment or detailed design.
8. Notwithstanding this, I have not seen any evidence to confirm that the levels of phosphate anticipated by the applicant would ensure an acceptable impact upon the water environment. Whilst NRW has also failed to provide any project specific evidence in this respect, its advice is clear that any development that might increase the amount of phosphate (or phosphorus) within a river SAC catchment could lead to damaging effects to the SAC. Phosphate targets are not currently being met at the River Dee and Bala Lake SAC and any further loading of phosphates into the environment would inevitably exacerbate the existing damaging effects on the characteristics of the SAC.
9. Even if it was established that the predicted phosphate discharge was at an acceptable level, there is no certainty that this could be ensured in the long term. NRW refers to a greater risk of failures leading to pollution of the water environment arising from private treatment facilities and, despite being requested, there is a lack of a robust assessment of the likely implications of a failure to effectively treat and manage the foul effluent as envisaged.
10. The proposed development would therefore be likely to have a significant effect upon the qualifying features of the River Dee and Bala Lake SAC. As such, and bearing in mind the fact that the development would be functionally linked to the European site, an Appropriate Assessment is necessary.

Appropriate Assessment

11. No mitigation has been advanced that would prevent the discharge of phosphates from being discharged into the water environment. However, for completeness, I have considered whether the proposed mitigation measures to control the predicted discharge rates would be effective.
12. The applicant states that the treatment facility would be maintained by a management company funded by future residents. Such arrangements could, in principle, include alarms and telemetry to notify the management company of any failure. However, the scheme lacks detail and it remains unclear how it would be secured to ensure that it operates effectively in the long-term. As set out above, there is also a lack of a robust assessment of the likely implications of a failure to effectively treat and manage the foul effluent as envisaged.
13. It therefore follows that it has not been satisfactorily demonstrated that the proposed development would not adversely affect the integrity of the River Dee and Bala Lake SAC.

Alternative Schemes

14. The applicant contends that the costs of connecting to the public sewer are greater than providing the proposed private treatment facility. However, such evidence falls significantly short of satisfactorily demonstrating that a connection to the public sewer would be unfeasible and/ or render the scheme financially unviable. Thus, an alternative to the harmful scheme currently proposed cannot be ruled out. In case the Welsh Ministers disagree with me on this point, I have gone on to consider whether there are any imperative reasons of overriding public interest that represent a justification for the scheme.

Imperative Reasons of Overriding Public Interest

15. The benefits of the scheme have been set out in the main body of the Report to Ministers³⁹. However, for reasons set out therein, I have concluded that the benefits and other matters that weigh in favour of the development fail to carry the necessary cumulative weight to off-set the identified planning harms. For the same reasons, they also fall significantly short of constituting imperative reasons of overriding public interest.

Overall Conclusions

16. Based on the foregoing analysis, I conclude that it has not been satisfactorily demonstrated that the scheme, taking into account any mitigation measures, would not have an adverse effect on the integrity of a European Site, namely the River Dee and Bala Lake SAC. An alternative scheme cannot be discounted and the identified harms are not justified by imperative reasons of overriding public interest. The proposed development therefore conflicts with the provisions of the Habitats Regulations. Planning permission should therefore be refused.

Richard E. Jenkins

INSPECTOR

³⁹ Paragraph 60 onwards