



6 January 2022

Matthew Phillips
Wrexham County Borough Council
Planning Services
16 Lord Street
Wrexham
LL11 1LG

BY E-MAIL ONLY

Dear Matthew

The Oaks, Oak Road, Wrexham Industrial Estate, Wrexham, LL13 9RG

PA Ref. P/2021/0471

We said we would like to work positively with Officers, but without any prior notification you have gone straight to committee. This is despite your email of 26 November 2021 where you were looking to get Emma Broad's availability for a meeting to discuss ecology. We remained patient for the meeting to be arranged because we recognised the significant resource challenges the department was (and still is) under with the loss and movement of staff, but for the committee report to be launched without such a meeting does come across as being unreasonable.

Further, we have not been formally notified of the committee meeting so must reserve our right to speak at the meeting should the proposal not be withdrawn from the agenda – which is what this letter requests be done.

The applicant seeks the withdrawal of this item from the meeting agenda for 10th January 2022 and a deferral to allow for issues to be narrowed and/or resolved.

The Applicant is concerned that the behaviour of Officers in dealing with this application to date has been unreasonable. As you are aware, we have repeatedly tried to engage with Officers, including through the pre-application procedure and post-submission, to understand if Officers have any concerns or issues in respect of the application, so that we are able to work proactively with the Council to resolve any such concerns.

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The Applicant's intention is to bring forward a high-quality scheme to meet the employment and economic development needs of the County Borough, and had hoped to work constructively with the Council to do so. However, as I have previously set out, despite repeated attempts to engage with Officers there has been no response and the report now raises a number of technical issues; some that are entirely new and being raised for the very first time (i.e. economic development issues), only a week before the Committee hearing; leaving insufficient time for the applicant to respond.

The Applicant therefore reiterates his request for a deferral. Even if it remains the case that there is an objection in principle to the application from Officers, the Applicant should be given the opportunity to address the technical and other issues that have now been raised for the first time.

Further and in any case, we do not consider that Officers are in a position to properly advise Members in a fair and impartial way without affording the Applicant a proper opportunity to address these concerns and without hearing our response to them.

We reiterate our previous point that we do not consider Officers' handling of the application to date to be reasonable, and that this will be compounded if you refuse to adjourn determination of our application to allow constructive dialogue to take place between us. This course of action is likely to lead to an appeal, and abortive costs being incurred in respect of matters that were capable of agreement, but with which Officers have refused to engage. We note the guidance in the Development Management Manual (section 12 Annex : Award of Costs) which expressly gives several examples of unreasonable behaviour on behalf of the LPA (both procedural and substantive) at Para 3.11:

- *Lack of co-operation with another party by refusing to provide requested information or seek additional information;*
- *Deliberately concealing relevant evidence either as part of its determination of a planning application or at a subsequent appeal or call in;*
- *Introducing new / substantial evidence or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process, or at the application stage;*
- *Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;*
- *Failure to produce evidence to substantiate the impact of the proposal, or each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without there being reasonable planning grounds to do so);*
- *Failing to grant or support a further permission for a scheme that is the subject of an extant or recently expired permission, where there has been no material change in circumstances;*
- *Refusal to offer pre-application services, or to provide reasonably requested information, when a more helpful approach is likely to have avoided an appeal or narrowed the issues considered as part of an appeal or application (such as the failure of a local planning authority to provide information such as site history and constraints where knowledge of that information may have avoided an appeal).*

The Applicant reserves the right to draw an Inspector's attention to this letter, along with the Council's previous failure to engage adequately in previous pre-determination discussions, in any future appeal and costs applications. You will be aware that there is an appeal (ref. APP/3273101) held in abeyance with PEDW (formerly PINS) against the refusal of the previous application (P/2019/0877) that this current proposal was seeking to address.

You will be aware from previous correspondence that the applicant has sought Counsel Opinion on his position from Kings Chambers, Manchester and the advice is that should an appeal be progressed that not only is our case strong. However, the applicant is still keen to work positively with the Council in finding a solution and avoid costs being incurred and with this in mind we would invite Officers to agree to removing this item from the 10th January agenda to allow for proper engagement with your incoming head of service and Officer team.

We have set out our preliminary thoughts above and the applicant therefore hopes that this letter provides you with an opportunity to adjust and alter your views on the proposal. However, we would note that we are not in a position to provide a full response on all matters in such a short time period, which is precisely why we have requested an adjournment of the application so that we can enter into discussions with Officers and (where necessary) provide any additional information.

The applicant is cogent of the fact that he is afforded only 3 minutes at committee and that the points in this letter cannot be realistically conveyed in such a short amount of time. As such, he requests that this letter is circulated to Members as a late item so they can appreciate the applicant's position and that their deliberations are based upon not just a 3-minute talk, but a more incisive rationale.

This letter will now present the applicants rationale for a deferral step-by-step which follows the order of the three reasons for refusal being advocated by the officer report.

Ecology [REASON 1]

As mentioned above, we asked for a meeting and you promised one but none has been forthcoming.

The applicant's position is well documented in recent correspondence with the Authority, yet none of this appears in the Officers report and instead it is heavily weighted to a single-sided opinion that entirely ignores the hugely significant environmental net positive benefits and gains that are being offered by this scheme.

For example, just 25% of the site is being proposed for development with the remainder offering habitat types and management that will be of greater importance to the species present than the status quo of allowing continued unauthorised public access, vandalism and habitat degradation with no supportive management regime in place. The applicant is concerned that the scale of these benefits appear (as supported by NRW in relation to the draft S106 HOT's) to have been totally disregarded and ignored in arriving at a balanced planning judgement.

Without the benefit of a meeting to "air" matters relating to ecology Reason 1 in the draft recommendation it is considered by the applicant to be a grave error of judgement because should this case find its way into a planning appeal position, where we will naturally be seeking evidence from your ecology officer with the potential for cross-examination and costs being sought.

Phosphates [REASON 2]

There appears to be inconsistency over the issue of phosphates with other applications being granted permission or being recommended for approval; for example a new school (P/2021/06880) at Westminster Park, Wrexham and new housing for 410 dwellings at Plas Coch (P/2021/0912).

Moreover, the Appropriate Assessment undertaken by NRW is out of date and there is no evidence to suggest that Five Fords WWTW does not have capacity; the position being taken could therefore be considered to be unlawful and unjustified.

Notwithstanding this, the environmental improvements (planting, landscaping, ecological net gains) are significant and whilst the applicant appreciates "phosphates" is a complex issue this has not been used to hold up other recent developments and seems to be used with irrational impunity as a reason to delay new development from taking place. Clearly there are solutions to this issue, but by not providing the applicant the opportunity to address and engage in finding a solution is considered unreasonable and we would invite Officers to provide adequate time in which this matter can be addressed, so that Reason 2 can be removed as a draft reason for refusal.

Trees [REASON 3]

You will appreciate that that applicant's position with respect the loss of 2 no. TPO trees and an additional tree of potential value is well documented as set out in our email dated 15 October 2021 and our Tree Report (Paras 4.1.1.to 4.1.8). The committee report fails to provide the applicants' case in counterbalance to this position, which is unreasonable and a mistake.

We would invite Officers to review their position with respect trees and consider withdrawing Reason 3 from the draft recommendation given that if this case does reach an appeal position we will be seeking evidence from your tree officer to support their position with the potential for cross-examination and costs be sought.

Economic Considerations

Despite this application being in since April 2021 there has been no Officer engagement or response on the issue of the Savills report that was submitted in support of the scheme and the assessment of the proposal against TAN23 and it is only now in the committee report that a position is being taken by Officers, and this position is considered by the applicant to have been taken in error. Indeed, we are not aware of there having been any consultation with your Economic Development colleagues. For example:

- The Council's primary evidence used for its employment land and premises policies is the 2015 ELR which uses property market data from 2014 and earlier. Since its publication, the employment market (and the industrial market in particular) has experienced a fundamental shift. The Council's ELR is out-of-date and can no longer be relied upon as the basis for decision making.
- The proposed development overcomes all the relevant environmental constraints. The Council's assessment of the proposed development does not sufficiently consider its environmental benefits and how environmental harm is mitigated.
- The site is indisputably brownfield land. The Council's suggestion that its status as brownfield is 'questionable' is inappropriate.
- Alternative sites: The applicant could (if necessary) use the Council's own criterion and undertake an up-to-date site assessment exercise that reflects current conditions as opposed to the exercise that was done 7-years ago in the ELR which resulted in The Oaks being ranked last amongst all potential sites. The site was penalised because of the perceived environmental harm across the range of criteria. We believe that an up-to-date assessment will show that The Oaks is far more suitable than suggested in the ELR, particularly across the criteria of Road access, Planning status, Services availability, Constraints, Environmental setting and Site availability.

- Job generation: The Council discount the estimated 200 operational jobs that would be created simply because it is an outline application. The approach to estimating jobs in the EMS follows the accepted approach set out in the HCA Additionality Guide and therefore the Council has no basis for discounting the assessment. The applicant can provide additional information on the commercial interest in the site to make clear that the 200 operational jobs are achievable.
- Special Merit: The Council states that *"the proposal does not make any contribution to special policy objectives"*. However the proposal contributes to a range of special policy objectives. For instance, the Council's evidence base shows that Wrexham suffers from high levels of deprivation and a need for new sources of employment for its population. The investment in the proposed development will also assist with the Government's Levelling Up Agenda and Wrexham's identification in the NDP as a National Growth Area, whilst also contributing to a range of socio-economic benefits. We can show that the proposed development will indeed support a range special policy objectives and that a greater balance should be reached.

The applicant feels that the findings reached on this topic have severely clouded and unjustifiably influenced the planning judgement in the report and that the overriding social, economic and environmental benefits and net gains have not been (adequately) presented and that the applicant deserves the opportunity to have them represented.

Summary

In the applicant's opinion, the technical ecology and tree reasons for refusal can be addressed, with additional supportive material on economic considerations; thereby allowing the issues to be narrowed to avoid potentially abortive costs being incurred. The issues between us on Phosphates can be debated and a vacuum in proceedings may allow for both a technical and legal resolution being found on this item. Thus, matters are capable of being narrowed if Officers are prepared to engage with us on these issues. The applicant trusts that his position, as set out above, is now taken into account by Officers (and Members) in supporting his request for a deferral.

The applicant wishes to work positively with Officers in resolving these points and, at the very least, reach agreement in narrowing key issues. An extension of time needs to be sufficient in which we can expect proper and substantive engagement over the period to resolve such matters.

I look forward to hearing from you prior to the committee meeting but also trust that support is given for a deferral should it not be removed from the agenda.

Yours sincerely



Justin Paul

BA BTP MRTPI

Cc

A Graham-Palmer, CPDL

Kings Chambers (Manchester)