

PLANNING APPEAL STATEMENT

Appeal against refusal of full planning application for the
Demolition of existing structure and erection of nine No. affordable homes
apartments with associated parking and access

LPA Application Ref: P/2017/0319

Appeal Site:

Engedi Chapel, High Street, Byrmbo,
Wrexham, LL11 5BL

Decision Date: 5th February 2018

Appellant:

Steggles Property Limited
Cedar Hall
The Green
Gresford
Wrexham
LL12 8RG

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1. Introduction

The Appellant, Steggles Property Limited, submits this appeal against the decision of Wrexham County Borough Council to refuse a full planning application ref. P/2017/0319 on 5th February 2018 for the demolition of existing structure and erection of 9 No. affordable homes apartments with associated parking and access at Engedi Chapel, High Street, Byrmbo, Wrexham, LL11 5BL.

2. Reasons for Refusal

The application was refused planning permission by Wrexham County Borough Council on 5th February 2018 for the following reason:

- 1) The lack of a financial contribution toward a shortfall in education provision will result in a detrimental impact upon existing community infrastructure and the capacity of local schools to accommodate the proposed development. To allow the development without such provision would be contrary to Policy GDP2 of the adopted Wrexham Unitary Development Plan.*

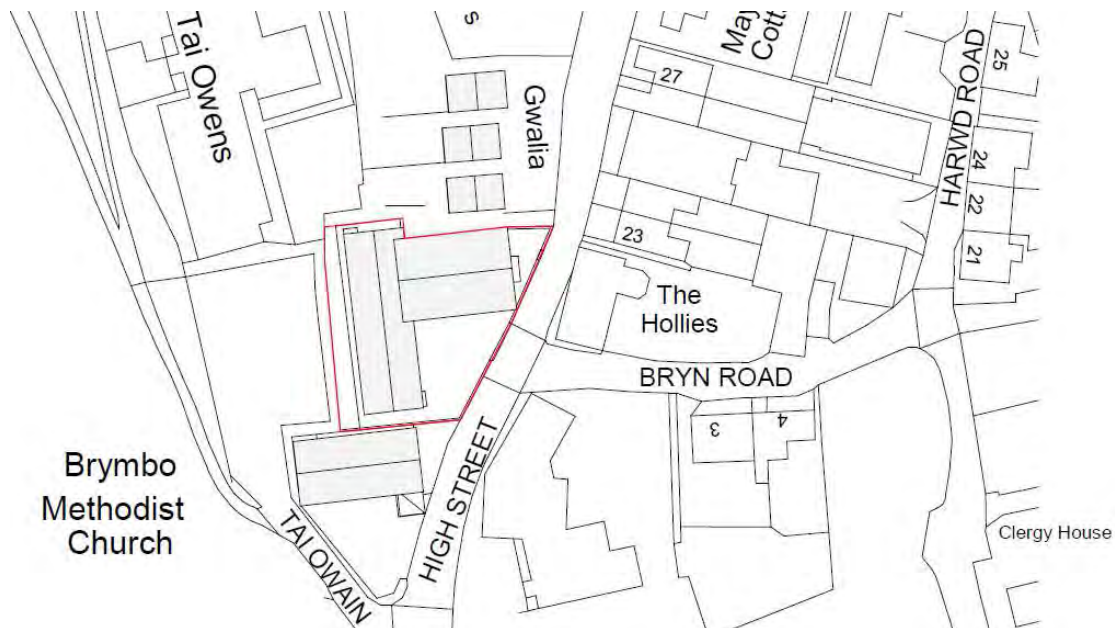
A copy of the Decision Notice issued by Wrexham County Borough Council is included within the submitted appeal documentation.

3. Site Description and Location

The appeal site comprises the former Engedi Chapel (rebuilt circa 1895) which has been vacant since the Chapel's closure in 2003. Since then, the property has fallen into an increasing state of disrepair and is now derelict and unsafe, with overgrown grounds and boarded up windows. There have been instances where the fabric of the building has become unsafe, with roof slates and other masonry falling onto the ground below during adverse weather conditions.



The derelict, unutilised site is located centrally within the village in an area characterised predominantly residential use. With the exception of Byrmbo Methodist church to the south, the site is bounded on three sides by dwelling houses (The Hollies to the east and Gwalia to the north), with a car parking area to the east, which serves the Tai Owens sheltered housing accommodation, situated to the north-east.



4. Relevant Planning History

Planning application ref. P/2005/1152 by Maelor Construction was refused by Wrexham County Borough Council on 8th March 2007 for the demolition of the chapel building at the appeal site and replacement with the erection of 4 no. dwelling houses and associated works. The application was refused by the Council for heritage, design and highways reasons. No planning appeal was lodged against the Council's decision to refuse the application. No proposals were re-submitted subsequent to the refusal prior to the current appeal proposal.

5. Planning Policy Context

The Planning and Compulsory Purchase Act (2004) requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

This section summarises adopted development plan policy and other material considerations that are relevant to the appeal proposal.

The Development Plan

In this instance, the Development Plan for the area comprises the Wrexham Unitary Development Plan (UDP) 1996 - 2011, which was adopted by Wrexham County Borough Council on the 14th February 2005. The Plan covers the administrative area of the Wrexham County Borough Council. It supersedes previous adopted development plans, namely the Wrexham Maelor Local Plan: Forward to 2001, the Glyndwr District Local Plan, and the Clwyd Structure Plan: First Alteration.

At the outset, it is emphasised that the UDP is time-expired and was only intended to meet the development needs of the Borough up to 2011. Accordingly, it is based on an outdated housing and economical need and has been superseded by changes in policy at the national level.

The appeal proposal is for residential development and the appeal site is located within the settlement limits of Brymbo as defined in the UDP. In the context of the appeal site, and as recognised by the Council, the following UDP policies are relevant to the proposed development:

- GDP1 – Development objectives
- GDP2 – Capacity of infrastructure and community facilities
- H2 – Residential development in settlements
- PS1 – Settlement limits
- PS2 – Development and the environment
- PS3 – Brownfield land
- T8 - Parking

Material Planning Considerations

The following documents are material considerations in the determination of planning applications in Wrexham:

- National Guidance set out in Planning Policy Wales (PPW) Edition 9, 2016;
- Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (2015);
- Technical Advice Note (TAN) 2: Planning and Affordable Housing (2006);
- Technical Advice Note (TAN) 12: Design (2016);
- Technical Advice Note (TAN) 18: Transport (2007); and
- Technical Advice Note (TAN) 24: The Historic Environment (2017).
- Guidance contained in Local Planning Guidance Notes: 16 – Parking Standards; 21 – Space Around Dwellings; and Note 27 - Developer Contributions to Schools
- The Council evidence base underpinning the UDP and its monitoring, including the Wrexham Joint Housing Land Availability Study (JHLAS).
- The Development Management Manual, Section 12 Annex: Award of Costs

It is important to note that, whilst the development plan is the starting point for the decision maker in determining a planning application, material considerations are afforded equal weight in the decision making process. Material considerations can override the provisions of a development plan and justify the granting of planning permission.

Aside from the adopted development plan policies identified above, supporting LPG's and national guidance can be grouped into a series of planning policy considerations of relevance in determining the application, combined into the following key themes.

Presumption in Favour of Sustainable Development

Paragraph 4.2.2 of Planning Policy Wales (2016) states that; *'The planning system provides for a presumption in favour of sustainable development to ensure that social, economic and environmental issues are balanced and integrated, at the same time, by the decision-taker when:*

- *preparing a development plan; and*
- *in taking decisions on individual planning applications.*

PPW establishes the meaning and application of the presumption in favour of sustainable development. Paragraph 1.2.1 of PPW states:

“The planning system manages the development and use of land in the public interest, contributing to the achievement of sustainable development. It should reconcile the needs of development and conservation, securing economy, efficiency and amenity in the use of land, and protecting natural resources and the historic environment. A well-functioning planning system is fundamental for sustainable development”.

In terms of procedure, paragraph 4.2.4 of PPW states:

‘Legislation secures a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise. Where:

- there is no adopted development plan; or*
- relevant development plan policies are considered outdated or superseded; or*
- where there are no relevant policies*

there is a presumption in favour of proposals in accordance with the key principles and key policy objectives of sustainable development in the planning system’ (our emphasis)

It is clear that in Wrexham, the presumption in favour of sustainable development should be applied to planning decisions.

Housing Policy Considerations

Government guidance in PPW and TAN, and relevant development plan policy are consistent in aiming to deliver a wide choice of high quality homes. Housing delivery is a central thread in the planning system, including the objective of providing a mix of market and affordable housing in the most sustainable locations to meet identified need. Doing so in a manner consistent with the spatial strategy for the county is an important function of the planning system and the decision making process.

PPW states at paragraph 9.1.1 that:

“A home is a vital part of people’s lives; it affects their health and well-being, quality of life and the opportunities open to them. The Welsh Government’s approach... is to:

- Provide more housing of the right type and offer more choice;*
- Improve homes and communities, including the energy efficiency of new and existing homes; and*
- Improve housing-related services and support, particularly for vulnerable people and people from minority groups”*

Paragraph 9.1.1 of PPW states that the Welsh Government will seek to ensure that *“the overall result of new housing development in villages, towns or edge of settlement is a mix of affordable and market housing that retains and, where practical, enhances important landscape and wildlife features”.*

PPW paragraph 9.2.3 also requires that:

“Local planning authorities must ensure that sufficient land is genuinely available or will become available to provide a 5-year supply of land for housing judged against the general objectives and the scale and location of development provided for in the development plan...For land to be regarded as genuinely available it must be a site included in a Joint Housing Land Availability Study.”

The latest Wrexham County Borough Council 'Housing Land Monitoring Statement 2017' (HLMS) presents the housing land supply for the area at the base date of April 2017.

The document acknowledges that in the absence of an up-to-date Unitary Development Plan and adopted Local Development Plan (in accordance with latest Welsh Government Guidance within TAN1) there is no requirement for a Local Authority to produce a JHLAS and the authority is considered to have a zero land supply.

In Wrexham, the historic figures at Appendix 3 of the HLMS show a considerable and on-going undersupply of housing in the area compounding the undersupply of housing within the Council's area.

Necessary Planning Obligations

PPW sets out the purpose and principles for the in paragraph 3.5.5 that

"Planning obligations are useful arrangements to overcome obstacles which may otherwise prevent planning permission from being granted. Contributions from developers may be used to offset negative consequences of development, to help meet local needs or to secure benefits which will make development more sustainable. It is essential that arrangements are fair to both the developer and the community, that the process is as transparent as possible and that development plans provide guidance on the types of obligations which authorities may seek from developers. When granting planning permission local planning authorities may seek to enter into a planning obligation with a developer to:

- restrict development or use of the land;*
- require operations or activities to be carried out in, on, under or over the land;*
- require the land to be used in a specified way; or*
- to require payments to be made to the authority either in a single sum or periodically*

PPW paragraph 3.5.7 makes it clear that "Planning obligations should only be sought where they are necessary to make a proposal acceptable in land use planning terms. Planning permission may not be bought or sold and negotiations should be conducted in a way that is seen to be fair, open and reasonable. Unacceptable development should never be allowed because of unrelated benefits. Acceptable development should never be refused simply because an applicant is unwilling to offer such benefits."

Other Planning Policy Considerations

Aside from sustainable development and the delivery of new housing to meet identified need, development plan policies and national guidance are aligned in forming the following policy considerations of relevance in determining the application:

- High quality design and landscaping – achieving high quality and inclusive design that responds positively to the surrounding context is an important aspect of realising healthy sustainable communities.*
- Conserving and enhancing the natural environment – safeguarding and enhancing the natural environment by protecting valued landscapes, minimising impacts on biodiversity and taking opportunities to ensure net gains through new development.*

- *Preserving and enhancing the historic environment* – understanding and preserving the significance of identified heritage assets, taking account of the public benefits of the proposal.
- *Promoting sustainable transport* – managing patterns of growth and development to minimise the need to travel, promote alternative modes of transport and ensure highways safety and capacity.
- *Adapting to climate change* – promoting sustainable design, contributing towards reduced emissions and the move towards low carbon and managing risk.

Given the Council's acknowledged position in terms of housing land supply, an adopted UDP which is out-of-date and location of the site within the Brymbo settlement boundary, the appeal proposals clearly benefit from the presumption in favour of sustainable development.

The appeal proposals have been considered by the local planning authority to be acceptable in respect of all relevant material considerations, with the exception of the 'lack of a financial contribution' towards education. There were no other technical reasons cited by the Council to justify planning permission not being granted. The following section addresses the background, policy requirement, the viability appraisal and demonstrable exception by the appeal proposal to this education planning obligation.

6. Justification for Development

This section outlines the case in support of the appeal proposal taking into consideration the above Local and National Planning Policies and the Council's reason for refusal.

Having regards to the single reason for refusal, and all relevant material considerations, including Planning Policy Wales, the main issue for the appeal is whether there a requirement for the appellant to pay a financial contribution toward education provision in the local area to make the development proposals acceptable.

The Appellant's case for addressing this main issue, and therefore justifying the granting of full planning permission for the appeal proposal, is now considered below.

Background

The Council Planning Officer's report to the 2nd October 2017 meeting of the Council's Planning Committee recommended that planning permission should be granted for the appeal proposals, concluding:

"I am satisfied that the proposed development would result in the positive use of this site which is redundant and offers little prospect of an economical reuse. The provision of nine residential units will make a positive additional to the Council's housing supply needs in a sustainable location. As such I consider that a favourable recommendation should be made"

Following the above, a resolution to grant planning permission was passed on 2nd October 2017, subject to the preparation and signature of a planning obligation under Section 106 of the Town and Country Planning Act 1990. The obligation was required at the time to secure contributions towards a reported shortfall in education infrastructure provision in the locality. The Head of Environment and Planning was given delegated authority to secure the final form and content of that agreement.

In the intervening period, the appellant approached the Council with concerns that the requirement for such a contribution will render the scheme financially unviable. A financial viability assessment was provided by a suitably qualified chartered surveyor. The methodology, assumptions and findings in the appellant's assessment were then independently assessed and found to be acceptable by the Council. This culminated in a Planning Officer report to the 5th February 2018 Planning Committee meeting with the amended recommendation that planning permission should be granted without the submission of a financial contribution towards education. Contrary to the amended Officer recommendation, the Planning Committee decided to refuse the application based on the absence of this education contribution.

Policy Requirement

UDP Policy GDP2 states:

"Where the capacity of infrastructure, including community facilities, is likely to be deficient as a consequence of new development, a planning agreement/obligation will be negotiated whereby the developer provides the additional capacity either on or off-site, and/or provides funding for the Council to provide the additional capacity itself. Requirements will be fairly and reasonably related in scale and kind to the proposed development. (our emphasis)

Local Planning Guidance Note 27 - Developer Contributions to Schools is designed to amplify UDP Policy GDP2 and identifies the circumstances and locations in which developer contributions to the provision of education facilities, such as additional classrooms, will be necessary.

The schools contributions policy in LPG Note 27 applies to development comprising 4 or more new dwellings and is therefore applicable to the appeal proposal for 9 No 2-3 bed flats. Table 1 in Note 72 sets out the costs guidelines for calculating contributions commensurate with the number of bedrooms per dwelling. As a result, the Education department's consultee response stated:

"A contribution would be required for secondary as it is full... Brymbo Aided has a few surplus places overall... primary schools within the area are either in deficit or that they are filling up from the younger years and therefore the schools are full."

In an update Addendum to the October Officer's report, the Education department's response was reported to the Committee:

"Education - confirmed that there is a shortfall in primary and secondary education provision in the locality. In accordance with the provisions of UDP policy GDP2 and Local Planning Guidance Note 27 - Developer Contributions to Schools a planning obligation will be required in order to offset the impact of this proposed development against this identified shortfall in provision. This is reflected in my recommendation."

Following the resolution to grant planning permission on 2nd October 2017, the appellant approached the Council to raise concerns that the education contribution on the above development will make the scheme unfeasible.

The appellant then approached the Council with concerns that the requirement for such a contribution will render the scheme financially unviable. The appellant then produced and submitted a financial viability appraisal seeking to demonstrate this.

Financial Viability

The financial viability of a development proposal is accepted as a material planning consideration and must be taken into account when determining planning applications.

The appellant commissioned the services of an independent MRICS surveyor to establish the anticipated yield of the development based on the scale of each individual unit. This figure is generated based on the open market value of other similar developments in the locality.

With no planning obligations, the financial appraisal demonstrates that the proposed development would generate a profit of £61,651.24 before taxation, resulting in a potential return of just 7%. This is far below the 20% return of the Gross Development Value (GDV) that a developer will normally expect, as reported to the Planning Committee Councillors in the 5th February Committee report. A 7% return does not adequately reflect the risk involved with developing a difficult and challenging site, such as the appeal site.

The imposition of an Education financial contribution of £35,000 creates a further reduction in profit, which takes the return to below 3%.

The education contribution will therefore make the appeal scheme unfeasible.

The Planning Officer's report for 5th February Committee states *"I have no reason to question the figures used...the viability assessment has been carried out to a satisfactory standard and has employed sound data in relation to development costs and potential value generated by the sale/ rental of the development."*

The methodology, assumptions and findings of the financial viability appraisal have been independently corroborated and accepted by the Council's own surveyors. This was reported directly to Councillors of the Planning Committee at the 5th February meeting and is amplified further in the Officer's Committee report, which states:

"Given the circumstances I have sought the independent advice of the Council's Development Surveyor who has reviewed the information provided their appraisal. The general conclusion re-affirms the applicant's position. There may be some minor assumptions in terms of figures which could impact on profit, but nothing significant. Whilst past profit margins of between 12-18% have not been unheard of, the standard approaches are around the 20% mark as indicated in the appraisal."

The financial viability appraisal therefore clearly demonstrates that additional costs to viability is a significant issue and should be a material consideration in the setting of planning obligations. It is clear that viability is a material consideration on the subject site and it would be unreasonable to impose an additional burden on the development by seeking an onerous s106 contribution.

Policy Exception

Members were made fully aware of the above at the 5th February planning committee meeting (and this can be viewed via the Council's archived web-link at https://wrexham.public-i.tv/core/portal/webcast_interactive/333183/start_time/87000). Moreover, the Planning Committee were asked specifically by Officers to relax the stance for an education contribution based on the unique circumstances of the site and the proposal. However, the Council's Planning Committee, without reasoned

justification, have decided, contrary to the strength of the Planning Officer's qualified advice, to not attach weight and ignore the financial viability appraisal.

Notwithstanding the strength of evidence presented in the appellant's financial appraisal that the proposals would be unviable with the education contribution, the Council's own Education department were re-consulted following the submission of the appraisal. Following consideration of the appellant's calculation in line with the requirements of LPG Note 27 for 9 no 2 -3 bedroom flats, WBC Education's consultee response was updated, and presented in an update addendum to Committee Members at the 5th February meeting, stating:

"the level of the contribution would not make a significant contribution to the strategic aims of the Education department. In this instance the Education Department are content to follow the Planning Department's advice and waive the contribution in full on this occasion."

On this basis, it could be argued that the policy requirement for a financial contribution could have been waived in advance of the appellant submitting a financial viability appraisal, particularly at the updated education response refers to the contribution itself not being significant, without any reference to the viability appraisal.

Ultimately, the updated response of the Education department directly demonstrates that, whilst there may be a reported shortfall in local schools (as per its earlier consultee response), the lack of financial contribution of £35,000, in this instance is not significant and will therefore not result in a detrimental impact upon the capacity of local schools and existing community infrastructure. The development would therefore not be contrary to Policy GDP 2 of the adopted UDP or LPG Note 27 but, rather it is a highly justifiable and demonstrable exception to Policy GDP 2.

Other matters

The appellant is seriously concerned about the behaviour and judgement made by the Planning Committee, without reasoned justification or recourse to any evidence of its own to back up its reason for refusal. The Planning Committee has clearly voted against the qualified professional view of its planning officer, surveyor and education department on three accounts.

Furthermore, the Committee has ignored the view of the local ward Councillor (not on the Committee) who spoke in clear support of the development at the 5th February Planning Committee meeting, citing that the regeneration of this prominent site is paramount to any other planning considerations, including concerns about the lack of contribution towards local schools.

The Planning Committee's behaviour and judgement, whilst presumably within the allowable regulations of the Council's Committee procedures, have been taken without recourse to any planning, viability or educational evidence. Several Planning Committee Councillors referred to the absence of an education contribution setting an unwanted precedent in the County Borough. Committee Councillor Paul Rogers chose to cast some unjustified aspersions in stating *"Whilst the site is an eyesore, I can not concede a position of the developer 'getting away' without paying the education contribution. This could create position where the education department cherry pick developers to meet their aims"*.

The Planning Committee were clearly advised by the Planning Officer at the 5th February meeting that this would not set any precedent, as every application and site would be assessed on its own merits and set of individual circumstances. This would enable the Council to assess and Council full control over the future provision of education contribution in determining every application on its own merits and circumstances.

There seems to be little awareness and understanding of viability testing shown by the Planning Committee and, in this case, it appears like a very politically focussed decision has been made with little tolerance or fairness afforded to the appellant, who has borne significant costs and delays as a result on a scheme that is clearly marginally viable, but yet which would deliver sustainable development.

Costs

On the above basis, the appellant would ask the Planning Inspector to respectfully review the Council's handling of the application and to assess whether a fair and reasonable decision has been taken, given the strength of the appellant's evidence, the strength of the Officer's recommendation, compared with the rather weak and unjustified judgement and decision taken by the Planning Committee on 5th February 2018.

The appellant would also ask the Inspector to seriously consider the awarding of costs against the Council in this instance, in line with the guidance contained in The Development Management Manual, Section 12 Annex: Award of Costs. This is something that the Planning Officer has specifically stated to the appellant and forwarded the guidance on, noting that costs could be applicable in this particular case.

7. Conclusions

This appeal is submitted by the Appellant, Steggles Property Limited against the decision of Wrexham County Borough Council to refuse a full planning application ref. P/2017/0319 on 5th February 2018 for the demolition of existing structure and erection of 9 No. affordable homes apartments with associated parking and access at Engedi Chapel, High Street, Byrmbro, Wrexham, LL11 5BL.

The application proposals provide a form of development that makes efficient re-use of a brownfield site in a sustainable location, and is wholly appropriate to the application site and its location. In the absence of a five year housing land supply, and the time expired status of the UDP, The presumption in favour of sustainable development should clearly be applied. The proposal accords with the sustainable development objectives and policy for site selection for residential development as set out in the Welsh Government planning policy and the adopted development plan.

The proposed development would have no adverse impact on the surrounding character of the area, or on the amenity or privacy of neighbouring properties, and it meets local highways and parking standards.

The appellant considers that absence of a financial contribution towards any shortfall in education provision would not have a detrimental impact upon existing community infrastructure or the capacity of local schools.

The appellant has provided strong evidence in the form of a robust and independent financial viability appraisal to demonstrate that the appeal scheme will be unviable if

payment of a £35,000 education contribution was required. In the circumstances, the appeal proposal is shown beyond doubt to be a justifiable exception to Policy GDP2 of the adopted Wrexham UDP

Significant weight should be attached to the scheme's financial constraints and this should be factored against the benefits of the proposals.

In view of the above and for the reasons set out within this statement the appellant would respectfully request that the Planning Inspector allows this planning appeal and grants full planning permission for the proposal, without submission of an education or any other financial contribution, subject to appropriate planning conditions, which he or she may deem necessary.

Appendix 1

List of plans and documents submitted with the appeal:

<u>Plan/ Document</u>	<u>Reference</u>
<u>Plans:</u>	
Existing Site Plan	16-08-100-P4 Site Plan as Existing
Proposed Site Plan	16-08-101-P6 Site Plan as Proposed
Proposed Ground Floor Plan	16-08-102-P8 Ground Floor Plan as Proposed
Proposed First Floor Plan	16-08-103-P7 First Floor Plan as Proposed
Proposed Second Floor Plan	16-08-104-P7 Second Floor Plan as Proposed
Proposed Elevations 1 of 2	16-08-106-P11 Elevations as Proposed Sheet 1 of 2
Proposed Elevations 2 of 2	16-08-107-P10 Elevations as Proposed Sheet 2 of 2
Massing & Impact Scenes	16-08-108-P7 Massing and Impact
<u>Documents:</u>	
Application Form	
Appeal Forms	Appeal Form
Bat Report	1649 002R Bat Report
Consultation Responses	Archaeological - Consultation Response
	Building Conservation - Consultation Response
	Education - Consultation Response
	Highways - Consultation Response
	Natural Resources Wales - Consultation Response
	Ramblers - Consultation Response
	Welsh Water - Consultation Response
Planning Statement	16-08 Planning Statement
Design & Access Statement	2015.01603-das-issue-v2.0-30.11.2017
Financial Viability Appraisal	English Methodist Chapel, High Street, Brymbo - Viability Appraisal
Planning Committee Report - 2nd October 2017	Planning Committee Report - 2nd October 2017
Planning Committee Report - 2nd October 2017 (Addendum)	Planning Committee Report - 2nd October 2017 (Addendum)
Planning Committee Report - 5th February 2018	Planning Committee Report - 5th February 2018
Planning Committee Report- 5th February 2018 (Addendum)	Planning Committee Report- 5th February 2018 (Addendum)
Planning Decision Notice	Planning Decision Notice
Planning Receipt Letter	Planning Receipt Letter
WCBC Email 4 th December 2017	Email Correspondence from WCBC - 4th December 2017
WCBC Email 6 th November 2017	Email Correspondence to WCBC - 6th November 2017
WCBC Letter S106 16 th Oct 2017	Engedi Planning S106 Letter