

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY GLADMAN DEVELOPMENTS LIMITED

**AGAINST THE REFUSAL OF OUTLINE PLANNING PERMISSION BY
WREXHAM COUNTY BOROUGH COUNCIL RELATING TO LAND AT
FORMER SITE OF HAFOD TILERIES, HAFOD ROAD/BANGOR ROAD,
JOHNSTOWN, WREXHAM, LL14 6ET**

PROOF OF EVIDENCE OF THOMAS JEREMIAH MPLAN (HONS) MRTPI

PINS REFERENCE: H6955/A/15/3135730

March 2016

Report Drafted By	Report Checked By	Report Approved By
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15/02/2016	22/02/2015	

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1. INTRODUCTION

RELEVANT EXPERIENCE & QUALIFICATIONS

- 1.1 My name is Thomas Jeremiah MPlan (Hons) MRTPI.
- 1.2 I am a Chartered Town Planner and have over 10 years of professional experience in the planning and development industry.
- 1.3 My relevant experience is summarised at **Appendix 1**.
- 1.4 My Proof of Evidence has been prepared in accordance with the guidelines and standards of the Royal Town Planning Institute and is therefore produced irrespective of the identity of my client. I confirm that the opinions expressed in my Proof of Evidence are my true and professional opinions, irrespective of by whom I am instructed.
- 1.5 Whilst I had no involvement with the planning application now the subject of this appeal I am familiar with the appeal site, the surrounding environment and the wider County Borough of Wrexham.

BACKGROUND

- 1.6 Gladman Developments Limited (hereafter referred to as the Appellant) has appealed against the refusal of outline planning permission (LPA Reference: P/2013/0545) by Wrexham County Borough Council (hereafter referred to as the Council) for a proposed mixed development relating to land at the former Site of Hafod Tileries, Hafod Road/Bangor Road, Johnstown, Wrexham, LL14 6ET. The description of development given for the application is as follows:

“Redevelopment of land at Hafod Tileries for proposed mixed use development of up to 300 (use Class C3) residential dwellings, 465sqm (use class B1, B2 and B8) business, industrial & distribution units, 235sqm (use class A1) retail, ecological enhancement, landscape, open space, highway improvements and associated works.”

- 1.7 Prior to the submission of the planning application the Appellant wrote to the Council requesting an Environmental Impact Assessment (EIA) screening opinion under Regulation 5 of the Town & Country Planning (England and Wales) Regulations 1999. The Council responded on 27 July 2013 stating that after careful consideration there would be no significant environmental impacts that would justify a decision to require an EIA.

- 1.8 The application was subsequently submitted to the Council by the Appellant on 1 August 2013. The application was the subject of detailed negotiations between the Appellant and the Council's Planning Officer which resulted in additional details being submitted for consideration including revised plans and technical reports (including an Affordable Housing Report in December 2013 and Structural Survey in January 2015). Negotiations on the proposed development continued with revised plans submitted to the Council on 6 March 2015, some 18 months after the original application submission.
- 1.9 During consideration of the application the Appellant wrote to the Council no less than 9 times to confirm agreement to extend the period of time to determine the planning application (**Appendix 2**).
- 1.10 On 13 May 2015 the Council's Planning Officer issued by email a draft copy of her proposed conditions relating to the planning application (**Appendix 3**). 38 planning conditions were proposed in total.
- 1.11 On 15 May 2015 the Planning Officer issued another email to the Appellant setting out the draft Decision Notice for the application which comprised a draft planning permission and included the planning conditions previously provided on 13 May 2015 (**Appendix 3**) with one planning condition omitted. The Planning Officer advised the Appellant in that same email that she would be on leave until the following week.
- 1.12 On 20 May 2015 the Appellant wrote to the Planning Officer with comments on the proposed conditions attached to the draft Decision Notice [**CD 3.16 & CD 3.17**].
- 1.13 On 22 May 2015 the Council's Planning Officer contacted the Appellant stating that she had made her recommendation to her Manager, Mr David Williams, and that he had disagreed with the recommendation for approval that was being made. The Planning Officer advised in her email of the same day (**Appendix 4**) that she would now be withdrawing the application from the 1 June 2015 Planning Committee meeting and instead would be refusing the application under delegated powers.
- 1.14 On 16 June 2015 the Council issued its Decision Notice (**Appendix 5**) refusing the application for the following reason:

"By virtue of its unsustainable location outside of and divorced from any settlement limit as defined in the Wrexham Unitary Development Plan, the development would not represent a logical extension to the settlement limit ad (sic) would appear isolated in the rural landscape. The development would not maintain the existing settlement pattern or encourage alternative

means of travel to the car and would not accord with the character and appearance of the locality. The development therefore conflicts with Policies PS1, PS2, PS4, GDP1 and H5 of the Wrexham Unitary Development Plan."

- 1.15 The reason for refusal can broadly be broken down into the following matters:
- i. The Council allege that the appeal site is in an unsustainable location, outside and divorced from the settlement limit.
 - ii. The Council allege that the development would not represent a logical extension to the settlement limit.
 - iii. The Council allege that the development would be isolated within the rural landscape.
 - iv. The Council allege that development would not maintain the existing settlement pattern.
 - v. The Council allege that development would not encourage alternative means of transport to the private car.
 - vi. The Council allege that development would not accord within the character and appearance of the locality.
 - vii. Overall, the Council conclude that the proposals are contrary to UDP Policies PS1, PS2, PS4, GDP1 and H5.

- 1.16 The delegated report produced by the Council (**Appendix 6 [CD 5.1]**) to justify the above position was written by the same Planning Officer who only weeks earlier had issued a draft Decision Notice (**Appendix 3**) recommending approval of the proposed development.

STATEMENT OF COMMON GROUND

- 1.17 At the time of writing, a Statement of Common Ground (SoCG) between the Appellant and the Council is in the process of being agreed. The SoCG covers a range of topics, including planning policy, affordable housing, ecology and housing land supply issues, and once agreed will assist the Inquiry.

SCOPE OF EVIDENCE

- 1.18 Matters relating to the accessibility of the site are dealt with by Mr Ben Jackson in his Proof of Evidence. Matters relating to landscape and visual matters are dealt with by Ms Elizabeth Fry in her evidence.
- 1.19 My Proof of Evidence therefore focuses upon the following matters:
- The five year housing land supply position for the County Borough of Wrexham and the implications arising from the absence of a deliverable supply of dwellings.
 - The planning balance required by PPW (Para 4.2.2) which sets out 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 taking decisions on individual planning applications.
 - The planning context of the site having regard to a previous planning appeal and High Court Order relating to a neighbouring site which directly dealt with the planning position of this site.
 - The existing planning context of the site as previously developed land and an identified employment site.
 - The fall-back position of the appeal site as an employment site.
 - The relationship of the site with the settlement of Johnstown.
 - The site's compliance with the Development Plan and national planning policy.
 - Material considerations which support the proposed development.
 - The consistency of decision making by the Council.
 - A response to objections raised by third parties.
- 1.20 My evidence concludes that the Council does not have a 5 year housing land supply and that there is an inevitable need to release sites outside of the settlement boundary for housing development, a matter also acknowledged by the Council in their own technical documents as well as their comments on other planning applications and recent emerging Development Plan consultation documents. I also conclude that the site is brownfield land and should be given preference for development over Greenfield sites in accordance with national planning policy and

that the site is a suitable location in proximity to Johnstown as an appropriate mixed use site. I will also demonstrate that the site is an identified employment site in line with a High Court Order and the conclusions of a planning appeal for a neighbouring site which specifically references the appeal site.

APPEAL DRAWING DOCUMENTS

- 1.21 For the avoidance of doubt, the appeal is made in outline form with all matters reserved except for access. Therefore the appellant seeks approval of the following drawings at this stage:
- Location Plan (Drawing No. 2010-002 100 Rev A).
 - Proposed Access Arrangements (Drawing No. 1232/13 Rev B).
 - Proposed Footway/Cycleway (Drawing No. 1232/20).
 - Proposed Footway Improvement Scheme (Drawing No. 1232/18 Rev B).
- 1.22 Also accompanying the application and now for the appeal are the following drawings which are submitted for illustrative purposes:
- Development Framework Plan (Drawing No. 4355-P-04 Rev J).
 - Illustrative Masterplan (Drawing No. 4355-P-05 Rev H).
 - Illustrative Sections (Drawing No. 4355-L-003).
 - Indicative Sketch: Aerial Perspective (Drawing No. 4355-L-501).
 - Indicative sketch: Main Street (Drawing No. 4355-L-502).
 - Indicative Sketch: Secondary Street (Drawing No. 4355-L-503).
 - Indicative Sketch: Lanes (Drawing No. 4355-L-504).
 - Indicative Sketch: Parkland (Drawing No. 4355-L-505).
 - Indicative Sketch: Employment Area (Drawing No. 4355-L-506).
 - Indicative Sketch: View along Hafod Road (Drawing No. 4355-L-507).

SUMMARY OF EVIDENCE

- 1.23 The following should be read as my evidence summary:
- I dispute that the current Unitary Development Plan should be afforded “significant” weight as it considered the period 1996 to 2011 and is therefore time expired. The Council acknowledge this within various technical documents.

- The site offers a logical extension to the settlement of Johnstown when considered against the Green Barrier constraints along the remainder of the settlement limit and having regard to other material considerations summarised below. The majority of Johnstown is surrounded by Green Barrier land with the exception of the appeal site and the areas to the east of the settlement.
- The site meets with the definition¹ of previously developed (brownfield) land and should be given preference to the development of Greenfield sites in line with national planning policy.
- There is an acute need to deliver housing within the County Borough of Wrexham as it could only demonstrate a 3.1 year supply at April 2014 and is currently acknowledged as a 'zero' housing supply Authority in the absence of an up-to-date Development Plan.
- The Council does not have sufficient brownfield land to meet its housing supply requirements.
- There is an inevitable need to release sites outside of the settlement boundaries for new development and the Council's current 'LDP Preferred Strategy' (February 2016) seeks to release Greenfield land to deliver the housing requirement.
- The development will deliver a number of benefits including the effective use of brownfield land, the delivery of 20% affordable homes, the beneficial redevelopment of a derelict employment site, new employment opportunities, new retail facilities, enhanced open space above the current provision, enhanced ecological benefits, improvements to the local character and appearance, an enhanced public transport service through the extension of an existing bus service and a monetary contribution towards local education facilities.

¹ As defined in Figure 4.4 of Planning Policy Wales (8th Edition, January 2016), Page 70.

2. THE APPEAL SITE & SURROUNDING AREA

INTRODUCTION

- 2.1 The site plan accompanying the appeal (Drawing No. 100 [1:1250]) shows the extent of the site and is submitted as part of the appeal documentation. This Chapter discusses the site in the context of its location, surroundings and relationship with the adjacent settlement at Johnstown.

JOHNSTOWN

- 2.2 Johnstown is a settlement falling within the County Borough of Wrexham and forms part of the old coal mining community of Rhosllannerchrugog. Whilst Johnstown is considered a separate settlement as per the Census it does essentially merge into Rhosllannerchrugog which is located directly to the west. The two settlements are separated by only a small area of undeveloped land identified as a 'Biodiversity Conservation area as shown in the Unitary Development Plan Map extract below (Figure 2.1).

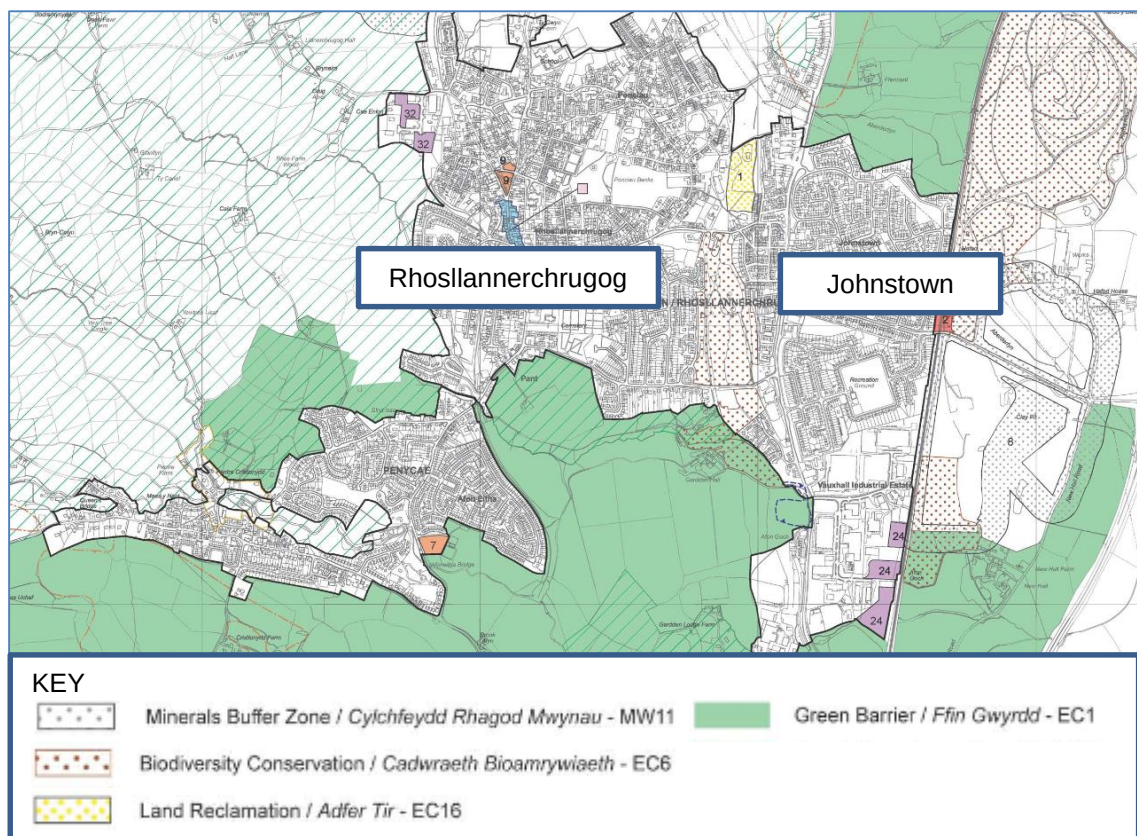


Figure 2.1: Johnstown context with Rhosllannerchrugog.

- 2.3 The UDP identifies a three settlement hierarchy comprising of a Principal Town, Urban Villages and Rural Villages (UDP, Page 9). Johnstown is identified as an 'Urban Village' which is the second tier below Wrexham as the only 'Principal Town'.
- 2.4 Johnstown is approximately 5km to the southwest of Wrexham Town Centre and is located within the western part of the County Borough.
- 2.5 According to the 2011 Census Johnstown has approximately 1,300 households which are split into three main areas, the Moreton Estate, Nant Parc and the older part of the village. The ward population at the 2011 census was 3,266.
- 2.6 There are two schools in Johnstown: Johnstown Infants School and Johnstown Junior School.
- 2.7 There are three public houses in Johnstown; the New Inn; the Moreton Inn and the Grapes.
- 2.8 There is also a Post Office, shops and takeaways.

THE SITE

- 2.9 The site comprises previously developed land extending to circa 17.34 hectares (42.84 acres) and lies to the east of Johnstown. The A483 is located approximately 320 metres to the east.
- 2.10 Planning Policy Wales defines previously developed (brownfield) land at Figure 4.4, page 70, as:

"...that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings) and associated fixed surface infrastructure. The curtilage of the development is included, as are defence buildings, and land used for mineral extraction and waste disposal where provision for restoration has not been made through development management procedures.

Excluded from the definition are:

- land and buildings currently in use for agricultural or forestry purposes;*
- land in built-up areas which has not been developed previously, for example parks, recreation grounds and allotments, even though these areas may contain certain urban features such as paths, pavilions and other buildings;*

- land where the remains of any structure or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings;
- previously developed land the nature conservation value of which could outweigh the re-use of the site; and
- previously developed land subsequently put to an amenity use."

2.11 The accompanying notes for Figure 4.4 of PPW state that the curtilage is defined as the area of land attached to a building and that all of the land within the curtilage of the site will also be defined as previously-developed.

2.12 A site location plan is shown in **Figure 2.2** below:



Figure 2.2: Site Location Denoted by Red Circle.

2.13 Dennis Ruabon Tile was founded in 1878 but closed in 2008 after 130 years of manufacturing.

- 2.14 The site comprises the former Dennis Ruabon factory an industrial legacy site which has had a long association with the production of clay products (bricks and tiles) due to the large deposits of clay in the immediate vicinity.
- 2.15 The majority of the application site has remained vacant since 2008 and is mainly derelict. There is still some small scale employment on the site which is limited to the sale of clay tiles under the name Ruabon Sales Ltd. There is a large amount of hardstanding, former clay stock piling areas, tipped areas as well as redundant buildings. The site is traversed by two high voltage power lines carried by pylons.
- 2.16 In terms of natural features there are areas of broadleaved woodland mainly in the southern part of the site together with numerous hedgerows and trees along the boundaries of the site. The Aberderfyn Brook runs through the southern section of the site and there are also areas of standing water within the site.
- 2.17 Whilst I consider that the site is classed as previously developed land, I consider it beneficial to provide a breakdown of those areas of the appeal site which currently have some form of physical development (e.g. building footprint, hardstanding etc). These areas are shown in **Figure 2.3** below.



Output : Current Area

84464.15 m² | 0.08 km² | 20.87 acres | 8.45 hectares | 909164.55 feet² | 0.03 square miles | 0.02 square nautical miles

Figure 2.3 – Previously Developed Part of the Site (Shaded Green). (Note: Output Area shown above is for the previously developed part of the site only).

THE SURROUNDING AREA

2.18 To the north of the site are industrial and sui generis uses comprising a concrete batching plant (including a 20KW wind turbine with a tower height of 18 metres) and a gas bottling business. Further to the north is Bonc Yr Hafod a Community Park comprising woodland situated on waste from the former Hafod Colliery. The Park forms part of the Johnstown Special Area of Conservation (SAC) which also includes land to the west of the application site beyond which is the Chester to Shrewsbury railway line and the Johnstown urban area.

2.19 To the east of the site is Hafod Road beyond which is Ty Coch Farm and the A483. The A483 is a main arterial route through the Welsh Marches providing a dual carriageway link for much of its length between Chester, Wrexham and Ruabon. To the south of Ruabon and close to the village of Chirk the A483 joins the A5 which provides a link between the port of Holyhead in North Wales and London.

To the south of the site is Bangor Road (B2426). The northern side of Bangor Road (adjoining the application site) has a footpath providing a pedestrian link to Johnstown. Further to the south is Hafod clay quarry and landfill site which is owned and operated by Cory Environmental.

ACCESSIBILITY

2.20 As the Transport Assessment (**CD 1.7**) and the evidence of Mr Jackson demonstrate the appeal site is located within easy walking and cycling distance of a range of shops, services and community facilities in Johnstown to meet day-to-day needs.

2.21 As Mr Jackson demonstrates the appeal site will be accessible by public transport through the provision of an extended bus service running directly to the site which will allow access to other parts of the County Borough including Wrexham Town and Ruabon Train Station.

SUMMARY

2.22 In my view the appeal site comprises an unremarkable piece of previously developed land that has a close relationship with Johnstown being physically located in proximity to the settlement limit.

- 2.23 The site is mainly made up of previously developed land and those areas which are undeveloped are not considered to offer any significant or notable contribution to the local character. Those undeveloped areas would, on the whole, remain undeveloped but would benefit from significant open space enhancements.
- 2.24 An extended bus service is proposed to the site which will be delivered as part of a Section 106 Agreement as set out later in this Proof of Evidence. As the Transport Assessment (**CD 1.7**) and the evidence of Mr Jackson demonstrate the appeal site is located within easy walking and cycling distance of a range of shops, services and community facilities in Johnstown to meet day-to-day needs.
- 2.25 The brownfield appeal site is clearly suitable for redevelopment in line with the Council's preferred approach to deliver new development on brownfield sites.

3. PLANNING HISTORY

INTRODUCTION

- 3.1 At the time of the submission of the planning application the Council was (and still is) aware that Hourigan Connolly was involved with an appeal and High Court challenge in relation to an Inspector's decision relating to the concrete batching plant to the north of the application site. As part of that process Hourigan Connolly, with the assistance of Officers of the Council, inspected the statutory register of planning applications.

IMPLICATIONS

- 3.2 With specific regard to the appeal site there have been a number of planning applications and decisions associated with the site over the years. Many of these are not relevant to the appeal and I do not propose to deal with each application in my evidence in the interests of brevity. However, I consider that the following matters are material to consideration of our client's proposals.

PLANNING REFERENCE: ESC 00015

- 3.3 By Notice dated 8 May 1996 planning permission (ESC 00015) was granted for clay stock piling on land within the North West corner of the site and that now occupied by the concrete batching plant.

PLANNING REFERENCE: ESC 22453

- 3.4 By Notice dated 11 July 1994 outline planning permission was granted for industrial development and the construction of a new vehicular and pedestrian access on land extending to circa 17.6 hectares. An extract identifying the extent of the outline planning permission is set out overleaf.

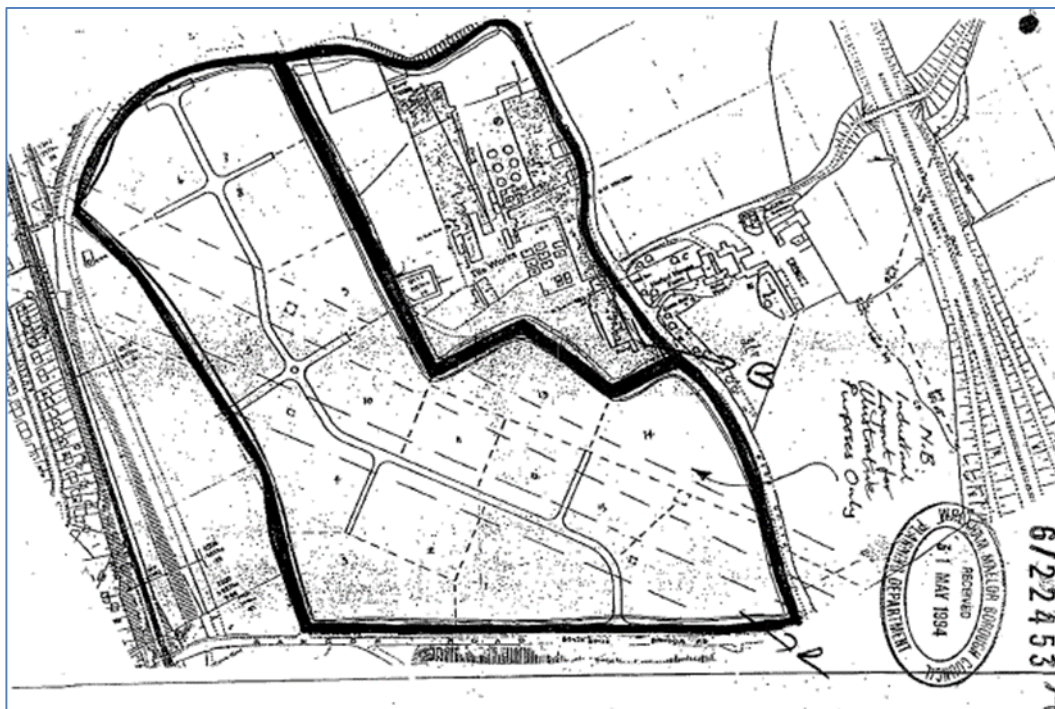


Fig 3.1 Approved Site Plan – Planning Permission ESC22453 (Not To Scale).

3.5 The Chief Planning Officer in his report to the Planning Committee identified that the site lay outside the settlement limit for Johnstown/Rhos in the then adopted and review Local Plans and was an industrial site proposal with medium term availability. The Chief Planning Officer went on to comment as follows:

“...Although the site is outside the settlement boundary in both plans I do not believe that the proposals are objectionable in view of the previous allocation and the fact that the site closely adjoins the settlement of Johnstown to the west, the tileworks to the east, the proposed tip to the south and other industrial land to the north”.

APPEAL REFERENCE: APP/H6955/A/11/2150207

3.6 This appeal related to a site to the north of the current appeal site for a concrete batching plant. Hourigan Connolly were directly involved with that appeal of which more details can be found in **Chapter 8** of this Proof of Evidence. However, the following extracts from the Inspector’s decision letter of 1 November 2012 are relevant in this case:

“6. UDP Policy PS6 sets out the approximate amount of employment land to be made available during the plan period and this is quantified in Policy E1. The requirement is made up of land with planning permission

(as at 1 April 2001) and land allocations. A 17.6 ha site adjacent to Dennis Ruabon, Hafod Road is listed at Appendix II of the plan, Land with Planning Permission, as being within the former group. Whilst sites with planning permission are not shown on the Proposals Map, I have no evidence that the appeal site is not included within this area. The explanatory text sets out that employment development will be directed to locations listed in Policy E1 and to sites with planning permission for employment use.

7. Although the site is not within a defined settlement or explicitly allocated for employment it does, through UDP Policy E1 and Appendix II, appear to be an employment area. The development which is the subject of this appeal therefore complies with UDP Policies PS1, PS6 and E1 and is appropriate for this location”.

- 3.7 For the avoidance of any doubt the planning permission referred to above by the Inspector is Planning Permission ESC22453. This appeal decision is important because it clarifies the status of the Dennis Ruabon site as an employment area.

SUMMARY

- 3.8 In summary the planning history of the site confirms that the land now the subject of our client's planning application comprises the Dennis Ruabon planning unit (Use Class B2) and is part of an employment area.
- 3.9 Moreover there can be no doubt that the planning history of the site and its physical appearance supports the fact that the site comprises previously developed land.
- 3.10 The application site has been subject to numerous planning applications and decisions but of relevance to the current proposals is a 1994 outline planning permission for redevelopment of 17.6 hectares of land for industrial development. This permission establishes that the Council held the view that the application site has a close relationship with the settlement of Johnstown.

4. STATUTORY & OTHER DESIGNATIONS

JOHNSTOWN SPECIAL AREA OF CONSERVATION

- 4.1 Special Areas of Conservation (SACs) are strictly protected sites designated under the EC Habitats Directive. Article 3 of the Habitats Directive requires the establishment of a European network of important high-quality conservation sites that will make a significant contribution to conserving the 189 habitat types and 788 species identified in Annexes I and II of the Directive (as amended).
- 4.2 The Johnstown SAC is important because of its population of newts and lies to the north and west of the application site. However a small part of the SAC (which is not proposed to be developed) lies within the appeal site.



Fig 4.1. - Aerial Image Identifying The Johnstown SAC – Source Countryside Council for Wales.

- 4.3 The application was accompanied by a Habitats Regulation Assessment which is also enclosed with this appeal.

TREE PRESERVATION ORDERS

- 4.4 An Arboricultural Impact Assessment by FPCR was submitted in support of the outline planning application and accompanies this appeal (**CD 1.10**). It is my understanding that there are no Tree Preservation Orders which affect the appeal site.

PUBLIC RIGHTS OF WAY

- 4.5 Public Rights of Way are identified in Figure 6 of the Transport Assessment and Figure 4.2 below.

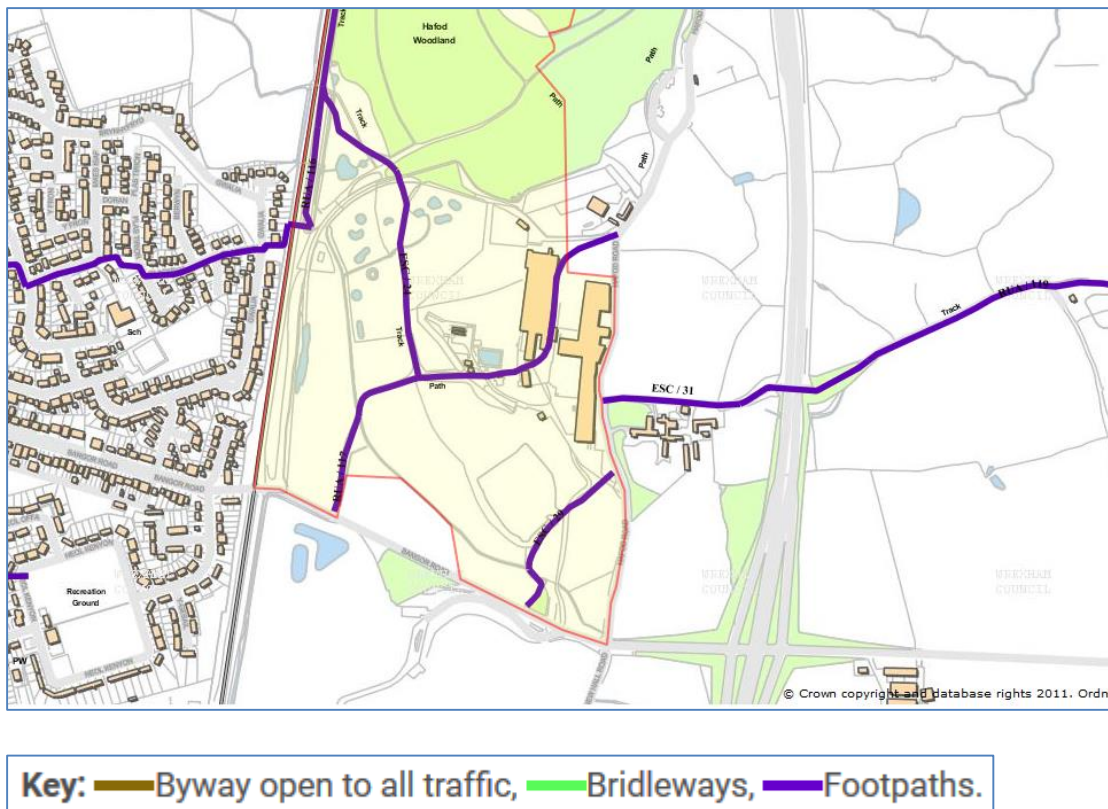


Fig. 4.2 - Appeal Site Public Rights of Way (Source: Wrexham County Borough Council Online Definitive Map).

FLOOD RISK

- 4.6 According to the Environment Agency's web site the appeal site is located within Zone A and is at a low risk of fluvial flooding. However the outline planning application was accompanied by a Flood Risk Assessment which considers flooding from various sources in more detail. The Flood Risk Assessment is also enclosed with the appeal (**CD 1.12**).

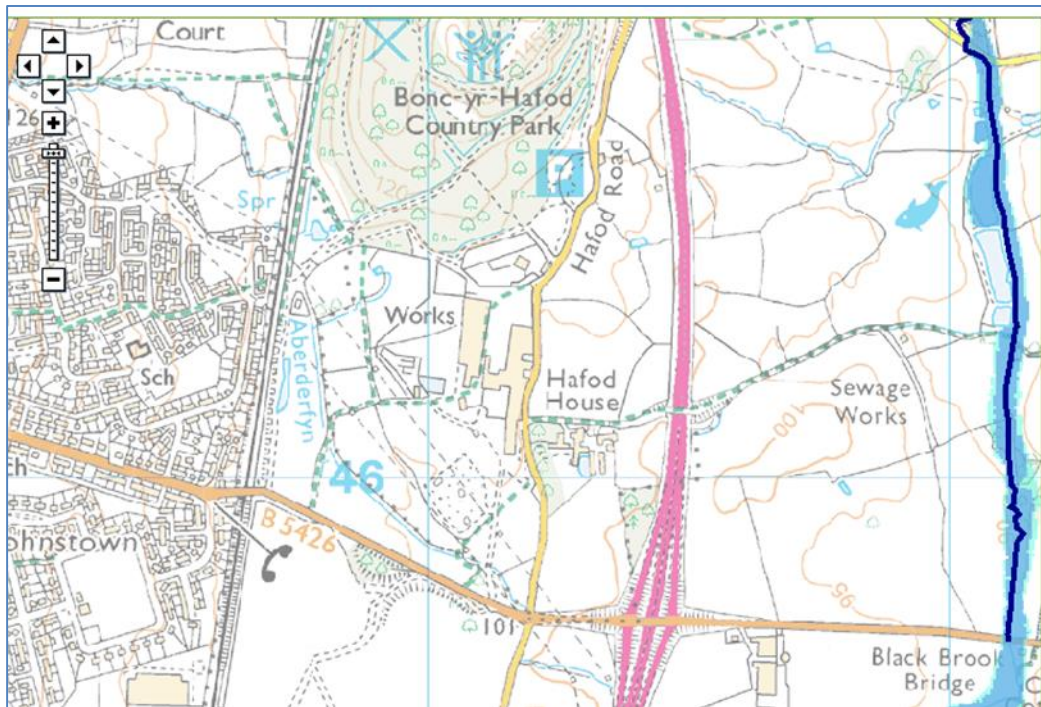


Fig. 4.2 – Extract from the Environment Agency's web site.

AIR QUALITY MANAGEMENT AREAS

- 4.7 The outline planning application was accompanied by an Air Quality Assessment and is also enclosed with the appeal documentation (**CD 1.13**), however it is worthy of note that neither the site nor the surrounding area falls within an Air Quality Management Area.

DESIGNATED HERITAGE ASSETS

- 4.8 The outline planning application was accompanied by a desk based archaeological assessment and this is enclosed with the appeal (**CD 1.15**). This concluded that the site contains no designated heritage assets.

SUMMARY

- 4.9 In summary the appeal site is primarily affected by the Johnstown SAC; however impacts are fully assessed in the Habitats Regulations Assessment and biodiversity and ecology are matters which are not in contention in the appeal but are agreed in the Statement of Common Ground.

5. THE DEVELOPMENT PLAN

INTRODUCTION

- 5.1 I set out in this Chapter the parts of the Development Plan that are relevant to the planning appeal.

THE DEVELOPMENT PLAN

- 5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that:

“Where in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.

- 5.3 The Development Plan comprises the adopted Wrexham Unitary Development Plan (UDP) and this remains the starting point for the determination of this appeal.

THE WREXHAM UNITARY DEVELOPMENT PLAN (UDP) (2005)

- 5.4 The Wrexham UDP was adopted in February 2005 and covered the Plan period 1996 – 2011. The Council's Statement of Case at Paragraph 4.4 states that they consider the UDP should be “afforded significant weight”. I do not agree that ‘significant’ weight should be applied to the UDP as it is clearly time expired and should only be afforded the relevant weight where its policies are consistent with up-to-date evidence and other material considerations including Planning Policy Wales and other national policy considerations. Indeed, the Council's own Housing Land Monitoring Statement (2015) **(CD 7.1)** acknowledges this at Paragraph 1.1 by starting with the sentence: *“In the absence of an up-to-date Unitary Development Plan and Local Development Plan...”*.
- 5.5 Notwithstanding this, and for the sake of providing detailed evidence, the policies contained within the out-of-date UDP are discussed below. A full response to the Council's reason for refusal is contained in Chapters 5 and 6.

UDP PART 1 – STRATEGIC POLICIES

POLICY PS1 – SETTLEMENT LIMITS

- 5.6 The Council reference the site as being in conflict with Policy PS1 which sets out that:

“New development for housing, employment, and community services will be directed to within defined settlement limits/employment areas.”

- 5.7 I consider that there are a number of issues with the Council applying the above policy to the proposed scheme without consideration of other material considerations for a number of reasons.

- 5.8 Firstly, the UDP is most certainly time expired and I consider that the settlement limits shown in the UDP are not up-to-date nor do they reflect the current housing situation for the Wrexham area. Indeed, an appeal decision² (**Appendix 7**) dated 20 May 2015 supports this position and states at Paragraph 35 that:

“At the hearing the Council confirmed that the bulk of available brownfield land has already come forward for development over the duration of the UDP and due to development pressures within the County, the majority of new development sites are anticipated to be on greenfield sites, with the bulk of them focussed on Wrexham and the northern part of the County.”

- 5.9 Furthermore, the Council's own LDP consultation document ‘Vision, Objectives and Strategic Growth and Spatial Options for Consultation’ (March 2015) (**Extract at Appendix 8**) states:

“The Urban Capacity Study update (2013), identifies a shortage of suitable, available and deliverable brownfield sites within the existing settlement limits. Whilst some of these brown field sites may be developed as windfall sites over the Plan period, the quantum of new homes required cannot be met without considering the need for the release of greenfield land currently located on the edge of, but outside the existing settlement limits.” (My emphasis added).

- 5.10 Clearly Policy PS1 cannot offer ‘significant’ weight if any weight at all in requiring new development to be contained within the settlement boundary when there is not sufficient land within those settlements to meet the council's housing requirements post 2011. This is more

² Appeal reference APP/H6955/A/14/2229480: Land Opposite St. Peters Close, Off Llay New Road, Rhosrobin, Wrexham, LL11 4RB

relevant when the Council is classed as a 'Zero' supply Authority (See Chapter 7) and is not even in a position to meet its own housing requirements.

5.11 Secondly, the application of Policy PS1 should not be made in isolation and should be balanced against other UDP policies, as well as national policies, national guidance and other material considerations. Specifically, Policy PS3 sets out that development should use previously developed brownfield land comprising vacant, mainly derelict or underused land (as all applicable to this appeal site) in preference to the use of greenfield land wherever possible, particularly so where greenfield land is of ecological, landscape or amenity value, or comprises agricultural land of grades 1, 2 or 3a quality (none of which apply to the appeal site).

5.12 As a point of relevance the Council's own Planning Committee discussed an application for land at Home Farm, Gresford Road, Llay, Wrexham (LPA Ref: P/2014/0905) on 5 October 2015 (**Appendix 9**). That application was recommended for approval by Planning Officers and their Planning Committee report set out the following:

- The proposal was an outline application for up to 365 dwellings and a 300sqm retail unit.
- The land was an undeveloped greenfield site outside of the settlement boundary (farmland).
- The site was identified as Grade 3a Agricultural Land. It was acknowledged by the Planning Officer that *"the development would lead to the irreversible loss of land that has an Agricultural Land Classification of grade 3a thus conflicting with Policy EC2"*.
- The Committee report emphasised that where the JHLAS shows a land supply below the 5 year requirement the need to increase supply should be **"given considerable weight"**.
- The Committee report also emphasised that **"Planning Policy Wales includes a presumption in favour of sustainable development."**
- *"The proposed retail unit will have a floor area of 300 square metres and is likely to be a local convenience store so would not accord with the policy" and "The retail development would be well located to be accessible on foot, it will be possible to provide off-street parking and space for servicing..."*.
- *"Llay currently has only limited local retail facilities and there are none in close proximity to the site. The proposed retail unit will be easily accessible on foot"*

from the development as well as dwellings on Gresford Road and the eastern side of Llay."

- 5.13 The above application was subsequently refused by members of the Planning Committee against officers' advice and at the time of writing this Proof of Evidence no appeal had been lodged. However, it clearly demonstrates the Council's officers' inconsistency in applying Policy PS1 given that the Appellant's site in this case should in principle be a better site than the one highlighted above on the basis that it is brownfield land and would not result in the loss of greenfield or agricultural land.
- 5.14 It also does demonstrate that the settlement boundaries cannot be considered up-to-date as there is now a requirement to depart from Policy PS1 on the basis that the need to increase the housing supply should be afforded "*considerable weight*".
- 5.15 Therefore I consider that the application of Policy PS1 can only be given limited to no weight for the following reasons:
- The settlement boundaries contained within the UDP are not up-to-date and are based on a Plan which ended some five years ago. The Council's housing requirement for the period 1996 to 2011 was for 5,775 dwellings and the UDP settlement boundaries reflected that requirement (Paragraph 6.6, Page 31 of the Unitary Development Plan). The Council's 'Preferred Level of Growth' for the LDP Preferred Strategy sets out a requirement of 10,650 dwellings for the period 2013 to 2028 (Policy SP7: Housing Provision, Page 68 of the LDP Preferred Strategy, February 2016). The settlement boundaries as set out in the UDP do not therefore reflect the most up to date evidence for the Council's housing requirement which is almost double that of the previous plan period.
 - It is inevitable that the Council will have to release land outside of the settlement boundary for development in the absence of a five year housing land supply.
 - The Council does not have sufficient available brownfield land within settlement boundaries to deliver its current 5 year supply of land for housing let alone sufficient land to meet its emerging housing requirement. The most up-to-date evidence shows that the Council has a 3.1 year supply of land for housing.
 - The Council has admitted in previous appeals and LDP consultation documents that it will have to rely on greenfield sites outside of the settlement boundaries to deliver its housing requirement.

POLICY PS2 – DEVELOPMENT & THE ENVIRONMENT

5.16 Policy PS2 sets out that:

“Development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment.”

5.17 The Council's delegated report states:

“The residential development of this land would be materially detrimental to the landscape and would fail to accord with the character of the site or make a positive contribution to the appearance of the nearby locality.”

5.18 The existing site is previously developed (brownfield) land and made up a number of buildings and hard standing associated with the historic industrial and employment activities on the site. In accordance with Figure 4.4 of PPW the appeal proposals seek to provide the majority of new development on those areas of the site which have previously seen development. The majority of land which has either not been previously developed or where activity has blended into the landscape will be improved and made accessible to members of the public. The site in its current form can in no way be described as remarkable let alone making a positive contribution to landscape character. I consider that the site in its currently developed form offers no positive contribution to the character of the countryside or the quality of the natural environment given that it is made up of industrial and derelict buildings.

5.19 In making their assessment it is unclear how, or even if, the Council has made an assessment on the comparison with the existing site state and that of the proposals.

5.20 I do not see how the proposal would ‘*materially detrimentally affect the countryside*’ given that the site is previously developed land made up of unattractive buildings and also benefits from the employment fall-back position which is described below.

5.21 The site is an established employment site (See Chapter 5) and its redevelopment for employment uses would satisfy the provisions of Policy PS1. Indeed, employment uses are proposed as part of this redevelopment. In making their assessment of the proposals I can see no reference in the delegated officer's recommendation on the historic context of the site and the role that this plays in the local character of the area. The site is held to be an employment site as confirmed by a High Court Order (**Appendix 10**). On this basis, the redevelopment of the site for employment uses would comply with the provisions set out in Policy PS1. Therefore, in principle the site can accommodate new development for employment uses and this is a material consideration. In essence the Council's position is flawed as an employment redevelopment of

the site would also have a built form impact and the Council should have considered this fall-back position as relevant in their assessment.

5.22 Whilst the redevelopment of the site for wholly employment uses may only be hypothetical at this stage, this is still a material consideration as supported by the Courts³ which have ruled that a fall-back position need not be probable or “*even have a high chance of occurring*”.

5.23 I consider that the proposed development would enhance the local character for the following reasons:

- i. The proposed development would remove unsightly industrial and employment buildings to be replaced with a new modern development.
- ii. The proposal would enhance the existing undeveloped areas (greenfield) through improvements and making them more accessible. This accounts for approximately half of the site.
- iii. The proposal would not result in any detrimental impacts when considered against the above material matters.

5.24 In addition to this, the redevelopment of a brownfield site would have a lesser impact on the character of the local landscape (subject to design) than a Greenfield site and my previous reference to the planning application in Llay (Paragraph 5.12) is of relevance. That site was undeveloped farmland outside of a settlement boundary and consisted of best and most versatile agricultural land. Officers in that case made a recommendation of approval on the basis of having a housing land supply shortage. I consider it more sustainable in terms of agricultural impact to redevelop a brownfield site such as this appeal site where the impacts already exist rather than the release of undeveloped and high quality agricultural land which would see a permanent loss of a finite resource.

POLICY PS3 – PREVIOUSLY DEVELOPED BROWNFIELD LAND

5.25 Policy PS3 sets out that:

“Development should use previously developed brownfield land comprising vacant, derelict or underused land in preference to the use of greenfield land, wherever possible, particularly so where Greenfield land is of ecological, landscape or amenity value, or comprises agricultural land of grades 1, 2 or 3a quality.”

³ Extract from Zurich Assurance Ltd V North Lincolnshire Council (**Appendix 14**).

5.26 This Policy did not form part of the reason for refusal. For completeness however I would confirm the following points:

- i. The site is previously developed land.
- ii. The site comprises of vacant buildings.
- iii. The undeveloped land within the site will be improved and made more accessible.
- iv. The site currently offers little in terms of landscape quality or amenity.
- v. The site does not comprise of grades 1, 2 or 3a agricultural land.

5.27 The proposed development is therefore fully compliant with Policy PS3 and there is no conflict in this respect.

POLICY PS4 – EXISTING SETTLEMENT PATTERN, CHARACTER AND REDUCING THE NEED TO TRAVEL

5.28 Policy PS4 was contained within the reason for refusal and states:

“Development should maintain the existing settlement pattern and character and be integrated with the existing transport network to help reduce the overall need to travel and encourage the use of alternatives to the car.”

5.29 I rely on Mr Jackson's evidence to address matters relating to accessibility of the site and access to local services including the requirement to use alternatives to the car.

5.30 Policy PS4 states that development should “*maintain the existing settlement pattern*”. I do not consider that this policy can be considered up-to-date on the basis that maintaining settlement patterns would prevent the Council from meeting its current and emerging housing requirements. In essence, there is a need to consider the change in a settlement pattern to ensure that the most up-to-date requirements are met.

5.31 It is important to acknowledge how the settlement pattern of Johnstown has evolved over time. This will demonstrate that the settlement pattern is not just limited to how it stands today but should also consider how it has evolved over time and how it has been influenced by the appeal site. Additionally, it demonstrates that the settlement pattern is not just limited to those areas within the settlement limit but also includes those areas outside of the settlement limit which played and still play a functional and physical role in the evolution of Johnstown. Johnstown has evolved significantly since the mid 1800's mainly as a result of the employment at the Hafod

Tileries site as well as local mining/quarrying operations. **Figure 5.1** below shows a map of the appeal site and its surroundings in 1873.

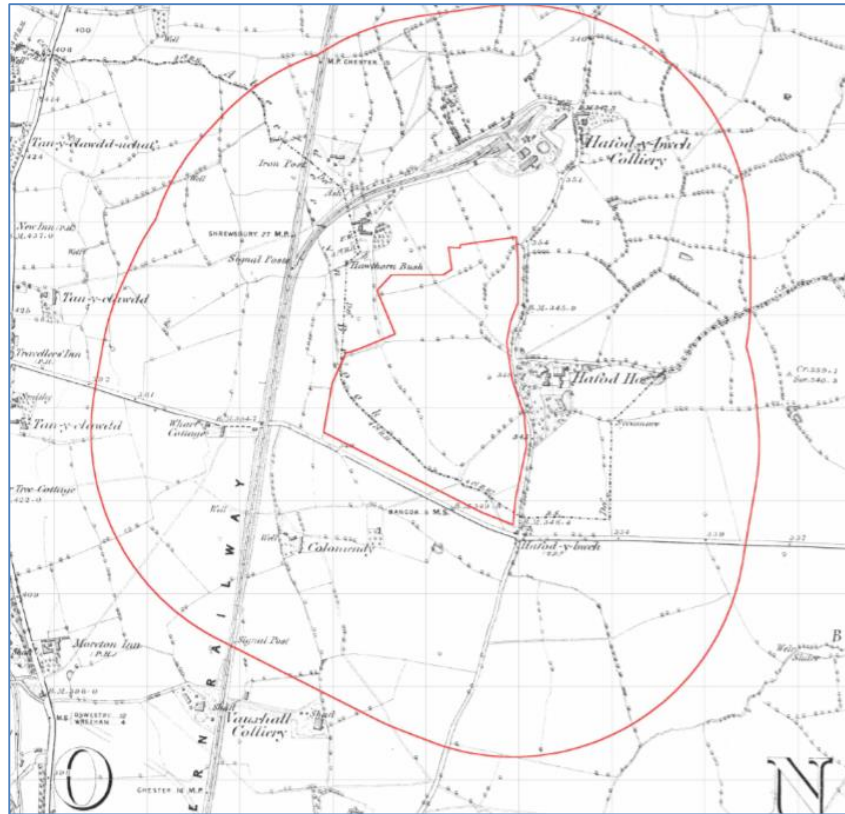


Figure 5.1 – Extract of 1873 map showing appeal site and surroundings.

5.32 As can be seen in **Figure 5.1** the site in 1873 was undeveloped as was Johnstown as an established settlement. Dennis Ruabon Tileries was founded on the site in 1878 and by 1898 Johnstown started to grow as a small settlement (**Figure 5.2** overleaf with Johnstown circled in blue).

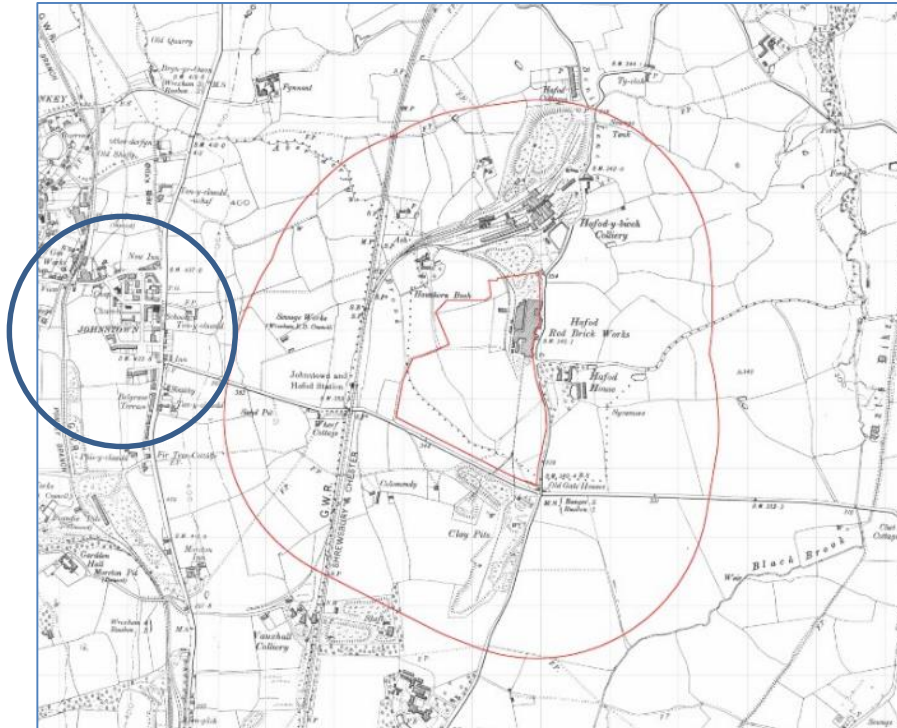


Figure 5.2 – 1898 map extract with Johnstown circled in blue.

5.33 By 1949 Johnstown started to grow with parts of the settlement extending towards the appeal site (Figure 5.3 below).

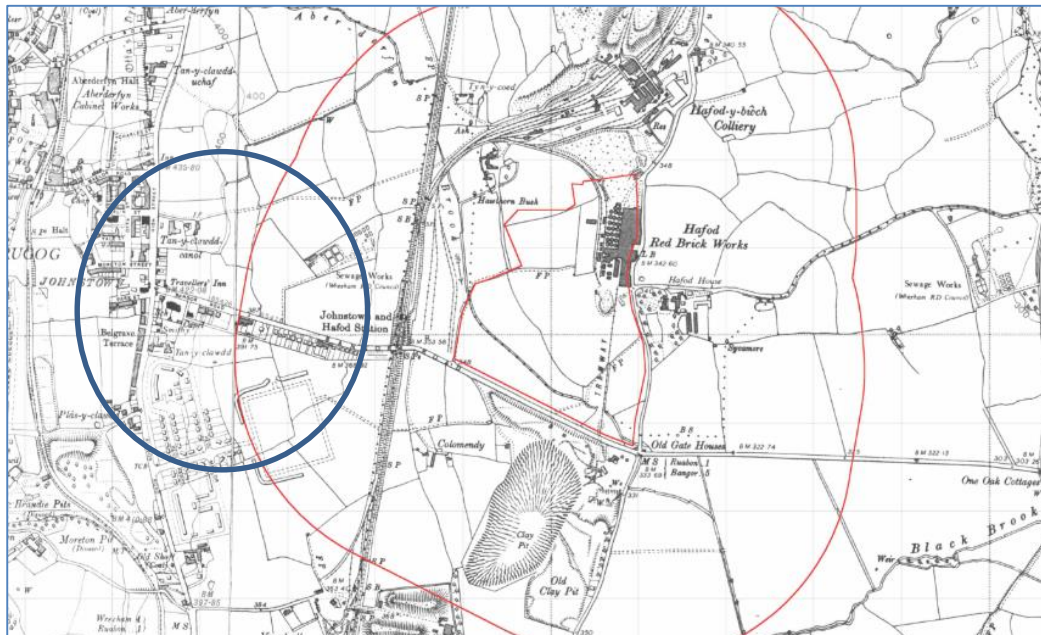


Figure 5.3 – 1949 map extract showing Johnstown in blue circle.

- 5.34 By the 1960's and 1970's Johnstown became more established and saw rapid expansion (Figures 5.4 and 5.5 below).

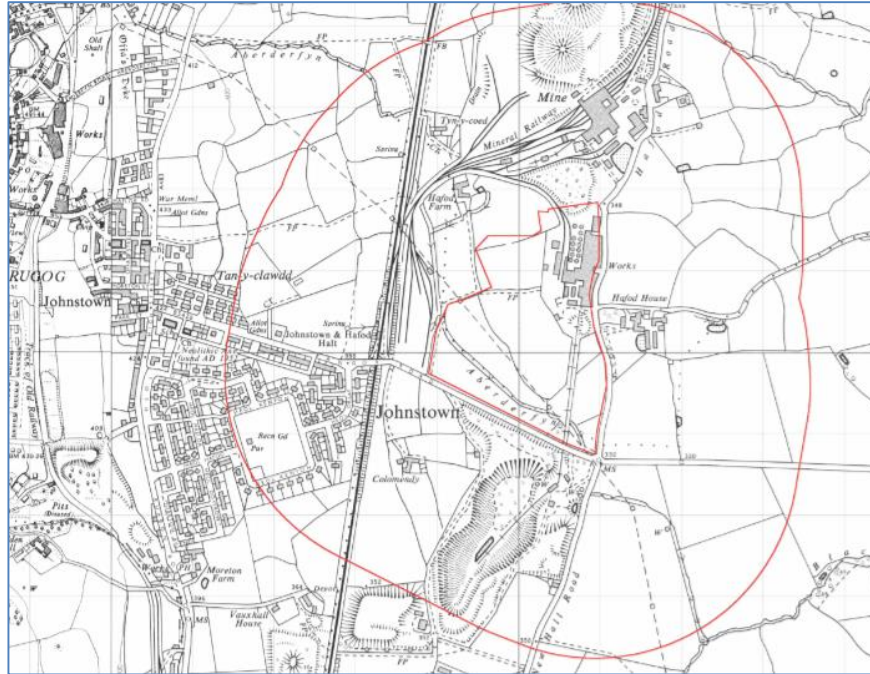


Figure 5.4 – Map extract 1964.

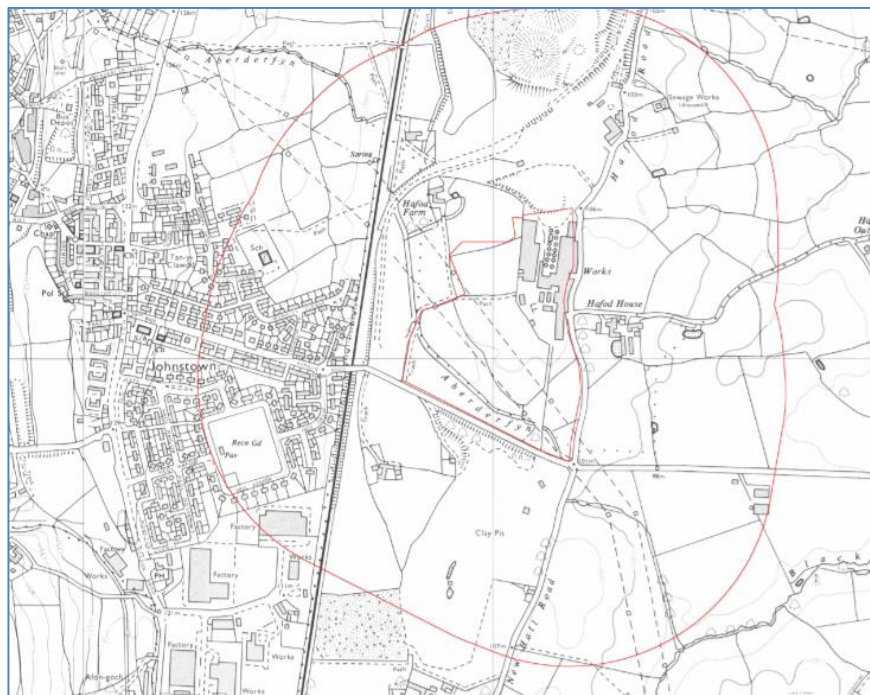


Figure 5.5 – Map extract 1977.



Hourigan Connolly
Chartered Town Planners

- 5.36 As can be seen in the map extracts the settlement of Johnstown has continuously evolved over time since the mid 1800's. There will be a continued need to consider a change in the development pattern to respond to new housing and employment requirements over time. This is no different to the historical changes in the settlement pattern since the 1800's. Any changes to the settlement pattern should however be logical and take into consideration any limitations to the settlement boundary of Johnstown (e.g. such as Green Barrier limitations).
- 5.37 As with Policy PS1 I consider that this policy (PS4) is not up-to-date and reflects the requirements of the plan period which expired in 2011. This policy currently seeks to "maintain" the settlement pattern which may have been appropriate during the previous plan period but can no longer be sustained when considered against the inevitable need to release land outside of settlements to meet housing requirements and the absence of a five year supply of housing land.
- 5.38 Looking at Johnstown as a whole the UDP identifies that it has a number of limitations which prevent the release of land outside of the settlement boundary. This essentially dictates how the settlement pattern could evolve in the future for the following reasons:
- 1) The land to the south of the settlement is identified as Green Barrier which prevents growth in that direction.
 - 2) The majority of the land to the north of the settlement is also identified as Green Barrier. There is a small area of land which is not covered by Green Barrier to the northwest of the settlement however that land accommodates electricity pylons which makes the site unsuitable for development.
 - 3) The area of land between Johnstown and Rosslannerghrugog to the west is a Biodiversity Conservation Area and in any instance its development would result in the coalescence of the two settlements.
- 5.39 These areas are identified in the UDP extract overleaf at **Figure 5.8**.

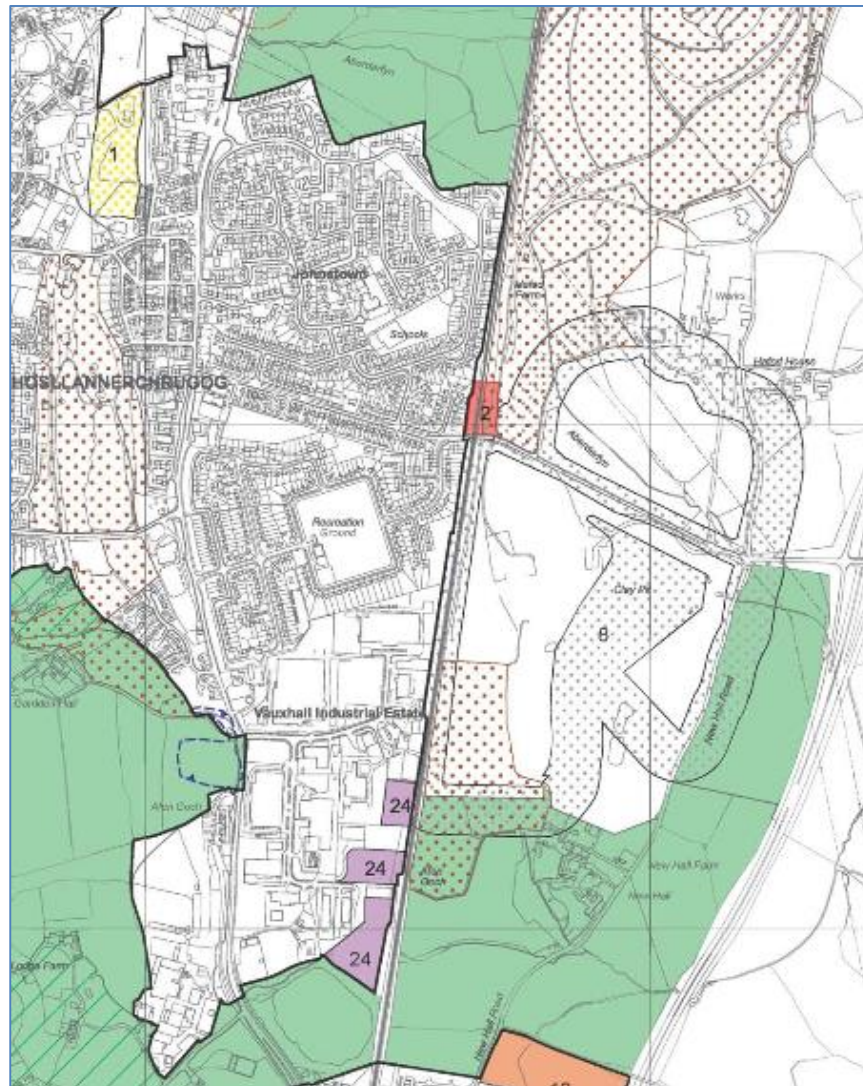


Figure 5.8 – UDP Map extract showing settlement pattern limitations

5.40 Therefore, the proposed development would not have a detrimental impact on the settlement pattern for the following reasons:

- There is a need to consider change to the settlement pattern to respond to new requirements over time.
- The settlement pattern has evolved over time and the extension of the settlement limit into the appeal site is the next logical step.
- Growth of Johnstown is restricted by Green Barrier and Biodiversity Conservation Areas around the settlement. The areas to the east of the settlement are less restrictive.

- The site is previously developed land and forms part of the settlement pattern as it has been an influence in the evolution of Johnstown as a significant local employment site.

5.41 With regard to the character of the site and the settlement character I rely on the evidence of Ms Elizabeth Fry who deals with landscape and visual matters.

POLICY PS7 – PRIORITIES FOR NEW SHOPPING AND COMMERCIAL DEVELOPMENT

5.42 Policy PS7 was not referenced within the Decision Notice as forming part of the reason for refusal but is addressed here for completeness. Policy PS7 sets out that:

“The priority areas for new shopping and commercial office development will be the defined Wrexham Town Centre and district centre shopping areas.”

5.43 Policy PS7 should also be read in conjunction with Policy S6 (see Paragraph 5.63 of this Proof).

5.44 The site is an identified employment site (see Chapter 5) and therefore in principle any commercial development is acceptable. The retail element of the proposals is for a unit of 235sqm and falls under the threshold of 300sqm as set out in Policy S6. The retail unit will serve the proposed development as a whole and also the eastern side of Johnstown where a number of properties are within walking distance.

5.45 The proposed retail and commercial elements are therefore considered to be compliant with Policy PS7.

POLICY PS11 – BIODIVERSITY & LANDSCAPE INTEREST

5.46 Matters relating to biodiversity are now agreed with the Council as set out in the Statement of Common Ground. I rely on the evidence of Ms Fry who deals with landscape impacts. The policy states:

“Encouragement will be given to proposals which improve the biodiversity value of sites and to the establishment of local nature reserves where the nature conservation and landscape interest of the land will be protected and enhanced.”

5.47 As agreed with the Council (please refer to the statement of Common Ground) the site does not impact on local nature conservation.

UDP PART 2 – SPECIFIC POLICIES

POLICY GDP1 – DEVELOPMENT OBJECTIVES

5.48 Policy GDP1 sets out the Council's Development Objectives and provides a criteria based approach in assessing proposed development. **Table 5.1** below sets out the Policy's criteria with my response.

TABLE 5.1: POLICY GDP1 RESPONSE

CRITERION	RESPONSE
a) Ensure that built development in its scale, design and layout, and in its use of materials and landscaping, accords with the character of the site and makes a positive contribution to the appearance of the nearby locality.	The existing character of the site is brownfield in nature and comprises of employment and industrial buildings as well as associated hardstanding. The site can in no way be described as making a positive contribution to the locality in terms of appearance and is considered unremarkable. The areas to the south of the site are undeveloped and will remain so as part of the proposals. These areas will however be improved in terms of appearance and will provide significant open space to land which is not considered to offer any positive visual merit. The design and layout of the proposals will be dealt with at the reserved matters application stage.
b) Take account of personal and community safety and security in the design and layout of development and public/private spaces.	The appeal is presented in outline form and the specific details of design, community safety and layout will be presented through the submission of a reserved matters application. However, the principles illustrated in the illustrative masterplan adequately take into account public safety and security at this stage.

c) Make the best use of design techniques, siting and orientation in order to conserve energy and water resources.	Details to be presented at the reserved matters stage.
d) Ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.	I rely on the evidence of Mr Ben Jackson to demonstrate the accessibility of the site. Mr Jackson's evidence demonstrates that the site offers an acceptable level of connectivity to the wider pedestrian, cycle and local highway network. The proposals also include improvements to pedestrian and cycle facilities.
e) Ensure that built development is located where it has convenient access to public transport facilities, and is well related to pedestrian and cycle routes wherever possible.	The proposed development includes a Section 106 Agreement to provide additional bus services directly to the site through the extension of an existing service. The site is close to the settlement of Johnstown which provides a number of local services and the evidence of Mr Ben Jackson demonstrates that these services are within walking distance of the appeal site. In addition, the proposals include a retail unit which will reduce the need to use private cars to access local convenience/comparison shopping.
f) Ensure the safety and amenity of the public and safeguard the environment from the adverse effects of pollution of water, land or air, hazards from industry and quarrying, and associated noise, odour or vibration arising from development.	These are matters which can be controlled by way of suitably worded planning conditions and a number of technical reports addressing this element of the Policy were submitted with the planning application. Indeed, the statutory consultee responses raised no objections in this respect subject to appropriate mitigation.

g) Secure public services (e.g. gas, water, electricity) to development at minimum public cost.	The proposed development will be privately funded and will include direct connections to public services.
h) Safeguard sites and areas of nature conservation and wildlife interest, and to provide new habitats where there is an unavoidable loss of existing habitats and areas of wildlife interest.	The site is not within a nature conservation area but is adjacent to a Special Area of Conservation (SAC). It is common ground between the Appellant and the Council that the SAC will remain safeguarded and that the proposed development would not negatively impact on local wildlife interests.
i) Ensure that development does not result in, or is subject to, flooding, soil erosion, landslides or contamination, either on or off the site.	No objections were presented by the Council in respect of the details submitted for Flood Risk or Contamination and this is supported by the documents submitted with the application and the appeal (Flood Risk Assessment (CD 1.12) dated 10 June 2013 and Site Investigation Report dated 26 June 2012).
j) Have regard to the need to safeguard those areas that possess a strong Welsh cultural and/or linguistic identity from development that could harm this identity.	The application was accompanied by a Welsh Language & Community Impact Statement which demonstrates that the proposals have significant benefits for the local community.
k) Secure the development of sustainable communities, through the promotion of the economic, social and environmental well-being of the area.	The proposed development will provide a number of benefits which includes: • Delivery of much needed housing in Wrexham against the Council's current housing position. • The delivery of 20% affordable homes.

	• Jobs and apprenticeships during construction of the development. • New employment facilities in the local area. • New retail offering choice as well as accessibility. • Enhanced publicly accessible open space. • Improvement to the local character and appearance when compared to the existing brownfield site appearance. • Improvements to local public transport (Section 106). • Improvements to local school provision (Section 106).
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POLICY GDP2 – CAPACITY OF INFRASTRUCTURE & COMMUNITY FACILITIES

5.49 Policy GDP2 sets out that:

“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.”

5.50 A Section 106 Agreement is being negotiated with the Council at the time of writing this Proof of Evidence and will be presented at the Inquiry. This will include a number of benefits which include:

- An education contribution of £588,000 towards Primary School provision.
- A public transport contribution of £200,000 for extending the number 6 bus service for five years at £40k/annum.

- The eligibility criteria and operation of an occupancy cascade to ensure the availability of affordable housing to qualifying purchasers with a local connection. (Please note that the level of affordable housing at 20% is to be delivered as part of a suitably worded planning condition and the section 106 will relate to affordable housing eligibility/occupancy matters only).

POLICY EC4 – HEDGEROWS, TREES & WOODLAND

5.51 Policy EC4 did not form part of the reason for refusal. This Policy sets out that:

“Development proposals should provide for the conservation and management of hedgerows, trees, orchards, woodland, wildlife and other natural landscape and water features, and include new planting in order to enhance the character of the landscape and townscape. Development which results in the loss or significant damage to valuable trees, important hedgerows or ancient woodland sites will not be permitted.”

5.52 I do not intend to address this Policy within my evidence as I rely on the evidence of Ms Fry in this respect who addresses landscape impacts.

POLICY EC6 – BIODIVERSITY CONSERVATION

5.53 It is common ground between the Appellant and the Council that impacts on biodiversity can be managed through suitably worded planning conditions and there are no objections in this respect.

POLICY EC11 – ARCHAEOLOGY

5.54 The application was supported by an Archaeological Desk-Based Assessment and matters relating to archaeology did not form part of the reason for refusal.

POLICY EC13 – SURFACE WATER RUN-OFF

5.55 Matters relating to surface water run-off did not form part of the reason for refusal and no objections were presented by Natural Resources Wales in this regard. Planning Conditions were recommended to address this point at the reserved matters stage.

EC14 – PROTECTION OF CONTROLLED WATERS

5.56 The proposed development would not result in any adverse impacts on controlled waters and this did not therefore form part of the reason for refusal.

POLICY H5 – HOUSING IN THE COUNTRYSIDE

5.57 Policy H5 states that:

“Outside defined settlement limits new dwellings will only be permitted where:-

- a) proposals accord with Policies H3, H4, and H8; or*
- b) proposals comprise infilling subject to Policy GDP1; or*
- c) an essential need to house a full time agricultural or forestry key worker can be established and*
 - i) the long term financial viability and functional management of the enterprise is proven; and*
 - ii) the person, due to the nature of the work, has to live on the site rather than in a nearby settlement; and*
 - iii) there are no suitable buildings nearby which could be converted into a dwelling; and*
 - iv) the new dwelling is sited adjacent to an existing building, can be landscaped, and is of a form, bulk, design and materials which reflect the locality's rural character.*

Any permission will be conditioned to limit residential occupancy to essential workers”

5.58 Policy H3 relates to conversions in the countryside. Policy H4 relates to the sub-division of buildings in the countryside. Policy H8 relates to affordable housing exception sites of no more than 5 dwellings outside of settlement boundaries. These policies are not therefore applicable to the appeal proposals.

5.59 The appellant acknowledges that there is conflict with Policy H5 in that the proposals are not for an essential need dwelling nor does it relate to policies H3, H4 or H8. Notwithstanding this, the Appellant presents evidence relating to other material considerations which is detailed in Chapters 4, 5 and 6 of this Proof of Evidence. To summarise these material considerations:

- 1) The Council cannot demonstrate a 5 year supply of housing and are considered a “zero” housing supply authority.
- 2) The Council has previously acknowledged that land outside of settlement boundaries will need to be released for housing development on the basis that the “bulk” of brownfield land has been exhausted.
- 3) The proposed developable part of the site is on brownfield land and should be prioritised over the release of Greenfield and green wedge land.

- 4) The site is an identified employment site and benefits from a fall-back position in this respect.
- 5) The site is in a sustainable and accessible location.
- 6) The proposals will deliver 20% (up to 60 units) of affordable housing.
- 7) The redevelopment will significantly improve the appearance of the local area when considered in the context of the existing site.

Policy H7 – AFFORDABLE HOUSING

5.60 Policy H7 requires that:

“Where there is a proven lack of affordable housing to meet local needs, the Council will negotiate with developers to provide an element of affordable housing in new proposals of 25 or more homes. The initial benefit of discounted prices will be retained for subsequent and future occupants through the scheme's management by a suitable local housing body with the aid of legal agreements.”

5.61 As part of the negotiations with the Council the appellant agreed to provide 20% of affordable housing on site as part of the development. When the Council supported the proposals prior to doing the U-turn, the Appellant was presented with a draft condition in respect of affordable housing (Draft Condition 16 at **CD3**, Page 54). I consider that this can be delivered through a suitably worded Condition which will be set out in the Statement of Common Ground. Specifics relating to the occupancy and eligibility criteria of the affordable homes will however be dealt with via a Section 106 Agreement.

POLICY E5 – EMPLOYMENT IN THE COUNTRYSIDE

5.62 Policy E5 states:

“Small scale employment development in the countryside will only be permitted through the conversion of an existing building where:-

- a) The proposal accords with Policy GDP1; and*
- b) The building is structurally sound and capable of conversion without extensive rebuilding tantamount to the erection of a new building; and*
- c) Any inherent characteristics of merit in the building are retained; and*

- d) The building and resulting curtilage does not constitute an undesirable intrusion into the landscape, create access problems, nor require the provision of services at public cost."*

5.63 I do not consider that Policy E5 is applicable to the proposals on the basis that the site is already an identified employment site (See Appendix 2 of the UDP). I have however included it within this Proof of Evidence as the Council refer to it within their Statement of Case. The High Court as well as the Planning Inspectorate Wales has found that the site is an identified employment site and therefore, there is no conflict with Policy E5 in respect of the employment proposals associated with the application and now this appeal. This matter is addressed in further detail in Chapter 8.

POLICY S6 – LOCAL NEED SHOPPING & POLICY S7 – RETAIL SALES IN THE CONTRYSIDE

5.64 I address both policies at the same time given the relevance of the Council's previous method of applying these policies.

5.65 Policy S6 sets out:

"Small scale shopping developments will be allowed within the settlement limits provided that:-

- a) The development is safely accessible for customers on foot;*
- b) The development does not harm residential amenity and/or does not give rise to traffic problems e.g. on-street parking that cannot be addressed;*
- c) The sales floor area of each development does not exceed 300 square metres."*

5.66 Policy S7 states:

"Retail outlets in the countryside, preferably achieved by the conversion and/or use of suitable buildings will be permitted providing:-

- a) They predominantly sell goods or produce predominantly made or grown on the premises; and*
- b) Proposals accord with Policy GDP1: and*
- c) The sales floor area does not exceed 50 square metres."*

- 5.67 In a Committee Report dated 5 October 2015 for a site at Home Farm, Llay (**Appendix 9**) Officers made a recommendation of approval for a scheme comprising of residential development for 365 dwellings and a retail unit (up to 300 square metres). The site in that instance fell outside of the settlement boundary and was identified as open countryside. The Planning Committee report addressed both Policies S6 and S7 and stated:

“Policy S7 only allows for retail outlets in the countryside where the produce sold is primarily grown or made on the site (e.g. farm shops) and limits the sales floor area to 50 square metres. The proposed retail unit will have a floor area of 300 square metres and is likely to be a local convenience store so would not accord with the policy.

Notwithstanding the above and despite the fact that Policy S6 only applies to sites within settlement limits I am of the opinion that the policy is more relevant to this proposal than policy S7. The proposed retail unit would be developed in conjunction with a large housing development and not isolation (sic). So in the context of the development as a whole it would be located within a built up area rather than in the countryside.

The retail development would be well located to be accessible on foot, it will be possible to provide off-street parking and space for servicing and I am confident it will be possible to site and design the retail unit without prejudicing residential amenity. Finally the sales area will not exceed 300 square metres. The development would therefore accord with the criteria set out in the in the Policy. The development would also of (sic) benefit to the eastern side of Llay which is currently some distance from existing convenience stores.”

- 5.68 I consider that the above statement would also apply to this appeal site given the similarities in the approach of this appeal and as endorsed by Council officers.

POLICY MW11 – MINERALS BUFFER ZONE

- 5.69 The Proposals Map extract of the UDP shows that part of the site is subject to a Minerals Buffer Zone (MBZ) where Policy MW11 of the UDP is applicable. Policy MW11 states that new sensitive non-mineral development will be resisted within MBZs. Sensitive development is defined as housing and schools in Paragraph 11.12 of the supporting text to Policy MW11.
- 5.70 Whilst Policy MW11 indicates that residential development will be resisted in MBZs the noise and air quality assessment submitted in support of the application and now this appeal show that such

uses can be accommodated on the site without detriment to amenity. In other words there are other material considerations which indicate that the proposals represent an acceptable departure from Policy MW11.

- 5.71 The illustrative masterplan submitted with the application and presented in this appeal does not show any sensitive development being located along the Bangor Road frontage within the MBZ and this did form part of the reason for refusal.

POLICY EC6 – NATURE CONSERVATION

- 5.72 Matters relating to ecology and nature conservation are agreed by the Appellant and the Council.

- 5.73 Policy EC6 states that:

“Development either within or close to sites of biodiversity interest will only be permitted where it can be clearly demonstrated that the need for the development outweighs the need to safeguard the intrinsic nature conservation value of the site. Where such development is permitted, damage should be kept to a minimum, and compensatory measures should be provided. Measures to improve the biodiversity value of sites and enhance their natural conservation interest and landscape quality including the establishment of local nature reserves, will be supported”.

- 5.74 A Habitats Regulation Assessment and Ecological Assessment was submitted in support of the planning application and is also enclosed with this appeal. This concludes that the proposals are acceptable and that no built development is proposed within the Johnstown SAC and that the proposals include for the creation of a substantial newt reserve as well as large areas of amenity open space. I therefore consider that the proposals are fully compliant with Policy EC6.

POLICY EC12 – FLOOD RISK

- 5.75 Policy EC12 sets out that:

“Development (including the raising of land) within defined flood plains will only be permitted if it:-

*a) would not be subject to an unacceptable risk of flooding on-site;
and/or*

*b) does not result in an unacceptable risk of flooding on or off-site;
and/or*

c) does not adversely affect flood management or maintenance scheme”

5.76 No objections were raised in respect of flood risk and this matter does not form part of the appeal evidence. For clarity, the Delegated Officer’s Report (**CD 5.1**) set out that:

“NRW are content with the outline flood risk modelling for the River Aberderfyn and have requested that a detailed and comprehensive drainage scheme is submitted as part of the reserved matters application, together with a detailed scheme for the implementation and maintenance of the flood risk protection and surface water management. Again, I consider that this condition would be justifiable to safeguard against any future problems with surface water flooding.”

POLICY CLF5 – OPEN SPACE REQUIREMENTS FROM NEW RESIDENTIAL DEVELOPMENTS.

5.77 Policy CLF5 states that:

“New development of ten dwellings or more must provide informal public open space within the site at a minimum level of 0.4 hectare per 50 dwellings, be conveniently located for users, and usable for playing field(s) and/or equipped children’s play area(s) and open amenity area(s). In exceptional circumstances, the application of these standards may be varied, in the case of small urban infill housing development, where the developer enters into a legal agreement for financial contributions towards the cost of public open space provision where:-

- a) The site is unsuitable for public open space provision; or*
- b) The development would not place significant additional pressure on public open space facilities in the vicinity of the site.”*

5.78 The proposed development includes a substantial amount of new open space which is made up of the area in the south of the appeal site. I consider that the proposed open space exceeds the requirements of the policy and is therefore acceptable.

POLICY CLF6 – INFORMAL RECREATION

5.79 Policy S6 states:

“The existing pattern of public rights of way will be protected, maintained and improved and any potential new routes will be identified and safeguarded.”

5.80 The development site includes public rights of ways which will be retained into the proposals as part of the open space. I consider that the development therefore complies with this policy in that the right of way routes will be safeguarded and improved.

POLICY T8 - PARKING

5.81 I rely on the evidence of Mr Jackson with regard to the transportation requirements. Parking matters did not however form part of the reason for refusal and these matters can be addressed at the Reserved Matters stage.

POLICY T9 – WALKING, CYCLING & HORSE RIDING ROUTES

5.82 I rely on the evidence of Mr Jackson with regard to the walking and cycling matters.

POLICY SUMMARY

5.83 I consider that the Development Plan (UDP) is out of date and only reflects the County Borough’s development requirements for the period 1996 to 2011. The UDP does not accurately reflect the current requirements for housing or employment provision and the Council have previously acknowledged that there is an inevitable need to release sites outside of the settlement boundary in order to meet its housing delivery obligations. Indeed, the Council even state that the Development Plan is not up-to-date in their Housing Land Monitoring Statement (Paragraph 1.1) **(CD 7.1)** (See my Chapter 4).

5.84 The Council considers that there is conflict with Policy PS1 (Settlement Boundaries) but this policy does not take into account the period after 2011 where the housing position in Wrexham has significantly changed and the Council have acknowledged in other planning applications and technical documents (Housing Land Monitoring statement 2015) that there is now a need to depart from this policy in order to address its housing supply needs. In essence, there is a policy vacuum in this respect. I consider that the conflict with Policy PS1 is significantly outweighed by a number of material planning considerations which include:

- The Council are seeking to release sites outside of settlement limits to meet its housing requirements. Preference should be given to brownfield sites of which there is a limited supply.
- The site is a brownfield site and should be given preference over the development of Greenfield sites.
- The site is in proximity to Johnstown. Johnstown is surrounded by Green Barrier with the exception of the eastern side on which the appeal site falls. Therefore the appeal site forms a logical extension to Johnstown as part of the evolution of the settlement pattern.
- The site is identified as an employment site and redevelopment on the site would not adversely affect the settlement pattern in respect of built form.

5.85 Other relevant material considerations also include the benefits that the development would offer which are summarised as:

- The delivery of 20% affordable homes.
- The beneficial redevelopment of a derelict employment site.
- New employment opportunities.
- New retail facilities.
- Enhanced open space above the current provision.
- Enhanced ecological benefits.
- Improvements to the local character and appearance when considered against the existing site position.

5.86 I consider that the site is suitable for redevelopment given its historical employment use and the mixed use proposal which forms this appeal is considered to make the best use of a previously developed site which would not adversely impact on the settlement pattern when considered in this context. In addition, it is noteworthy that the Council saw no conflict with Policy PS1 in the application for Home Farm, Llay (**Appendix 9**) which was a Greenfield site outside of the settlement boundary as previously mentioned in my evidence, indeed the policy was not referred to at all in that application's Planning Committee Report. The appeal proposals are not only consistent with the Council's approach when determining development proposals but would actually be preferable for development when considered against the brownfield/greenfield weighting.

- 5.87 I acknowledge that there is conflict with Policy H5 (Housing). However, in the absence of a deliverable five year housing supply I consider that this appeal presents sufficient evidence to depart from Policy H5 given that the Council acknowledge that there is insufficient brownfield land within the settlement boundaries in the Wrexham administrative area to meet its own housing needs. Again, this is acknowledged by the Council as already stated.

6. PLANNING POLICY WALES & TECHNICAL ADVICE NOTES

PLANNING POLICY WALES (PPW)

- 6.1 Planning policy Wales (PPW) (Edition 8, January 2016) sets out the main policy objectives and principles which underpin the planning system in Wales and should therefore be afforded significant weight.
- 6.2 One of the core principles of PPW is found at Chapter 4 (Planning for Sustainability), Paragraph 4.2.2:

“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.”*
- (Emphasis contained in PPW)**

- 6.3 Paragraph 4.2.4 sets out that:

*“A plan-led approach is the most effective way to secure sustainable development through the planning system and it is important that plans are adopted and kept regularly under review. **Legislation secures a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise** (see 3.1.2). 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 (see 4.3) and key policy objectives (see 4.4) of sustainable development in the planning system. In doing so, proposals should seek

to maximise the contribution to meeting the local well-being objectives.”

(My emphasis added)

6.4 Section 4.3 sets out the Sustainable Development Principles and states that:

“In order to achieve this principle we expect all those involved in the planning system to adhere to:

- *putting people, and their quality of life now and in the future, at the centre of decision-making;*
- *engagement and involvement, ensuring that everyone has the chance to obtain information, see how decisions are made and take part in decision-making;*
- *Taking a long term perspective to safeguard the interests of future generations, whilst at the same time meeting needs of people today;*
- *respect for environmental limits, so that resources are not irrecoverably depleted or the environment irreversibly damaged. This means, for example, mitigating climate change, protecting and enhancing biodiversity, minimising harmful emissions, and promoting sustainable use of natural resources;*
- *tackling climate change by reducing the greenhouse gas emissions that cause climate change and ensuring that places are resilient to the consequences of climate change;*
- *applying the precautionary principle. Cost-effective measures to prevent possibly serious environmental damage should not be postponed just because of scientific uncertainty about how serious the risk is;*
- *using scientific knowledge to aid decision-making, and trying to work out in advance what knowledge will be needed so that appropriate research can be undertaken;*
- *while preventing pollution as far as possible, ensuring that the polluter pays for damage resulting from pollution. In general the Welsh Government will seek to ensure that costs are met by those whose actions incur them;*

- *applying the proximity principle, especially in managing waste and pollution. This means solving problems locally rather than passing them on to other places or to future generations;*
- *taking account of the full range of costs and benefits over the lifetime of a development, including those which cannot be easily valued in money terms when making plans and decisions and taking account of timing, risks and uncertainties. This also includes recognition of the climate a development is likely to experience over its intended lifetime; and*
- *working in collaboration with others to ensure that information and knowledge is shared to deliver outcomes with wider benefits.”*

6.5 Section 4.4 relates to the sustainability objectives which are broken down into the following headlines:

- A prosperous Wales.
- A resilient Wales.
- A healthier Wales.
- A more equal Wales.
- A Wales of cohesive communities.
- A Wales of vibrant culture and thriving Welsh language.
- A globally responsible Wales.
- Planning for climate change.

6.6 Paragraph 4.9.1 states that:

“Previously developed (or brownfield) land should, wherever possible be used in preference to greenfield sites, particularly those of high agricultural or ecological value.”

6.7 Paragraph 4.9.2 goes on:

“Many previously developed sites in built-up areas may be considered suitable for development because their re-use will promote sustainability objectives. This includes sites:

- ***In and around existing settlements where there is vacant or under-used land, commercial property or housing;***
- *In suburban areas close to public transport nodes which might support more intensive use for housing or mixed use;*
- ***Which secure land for urban extensions, and;***
- ***Which facilitate the regeneration of existing communities.”***
(My emphasis added)

6.8 Paragraph 3.1.2 (Making and Enforcing Planning Decisions) states:

*“In line with the **presumption in favour of sustainable development** (see 4.2) applications for planning permission, or for the renewal of planning permission, **should be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise. Material considerations could include current circumstances**, policies in an emerging development plan, and planning policies of the Welsh Government. **All applications should be considered in relation to up to date policies.”** (My emphasis added)*

6.9 Paragraph 3.1.3 supports the above:

“Factors to be taken into account in making planning decisions (Material Considerations) must be planning matters; that is, they must be relevant to the regulation of the development and use of land in the public interest, towards the goal of sustainability.”

6.10 Another core principle in regard to housing can be found in Chapter 9 (Housing), Paragraph 9.2.3 which states:

*“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.”*
(Emphasis contained within PPW).

6.11 The above is reiterated at Paragraph 9.1.1 which states:

“The Welsh Government will seek to ensure that;

- *Previously developed land is used in preference to greenfield sites;*
- *New housing and residential environments are well designed, meeting national standards for the sustainability of new homes and making a significant contribution to promoting community regeneration and improving the quality of life; and 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 in the development.” (My emphasis added)*

6.12 I address the appeal proposals in the context of PPW in Chapter 9.

PLANNING POLICY WALES OVERVIEW

6.13 An overview of the themes set out in PPW that support the appeal are provided below:

- The planning system provides for a presumption in favour of sustainable development (Para 4.2.2 & Para 4.2.4) – The appeal proposals are in a sustainable location and make use of previously developed land.
- Where 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 (Para 4.2.4) – In this instance the Council does not have an up-to-date plan and Paragraph 4.2.4 is therefore triggered.
- Previously developed (or brownfield) land should, wherever possible be used in preference to Greenfield sites, particularly those of high agricultural or ecological value (Para 4.9.1) – The site is brownfield land by definition and should therefore be used in preference to Greenfield sites. The Council have acknowledged that there is a need to release Greenfield and agricultural sites to meet their housing requirements and the appeal site should be seen as a priority in this respect.
- Many previously developed sites in built-up areas may be considered suitable for development because their re-use will promote sustainability objectives. This includes sites in and around existing settlements where there is vacant or under-used land,

commercial property or housing; In suburban areas close to public transport nodes which might support more intensive use for housing or mixed use; which secure land for urban extensions, and which facilitate the regeneration of existing communities (Para 4.9.2)– The appeal site is compliant with PPW in this respect as it is mainly vacant and underused land; the site is adjacent to an existing settlement; the site is accessible by public transport; the proposal will form an acceptable urban extension and regenerate a derelict site.

- All applications should be considered in relation to up to date policies (Para 3.1.2) – The Council do not have an up-to-date plan and the presumption in favour of sustainable development should be applied.
- 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 (Para 9.2.3) – The Council are unable to demonstrate a 5-year supply of land for housing and in the absence of an up-to-date Development Plan are deemed to have no supply at this time.
- 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 in the development (Para 9.1.1) – The site is on the edge of a settlement and will enhance the local character and appearance as well as improve local biodiversity.

TECHNICAL ADVICE NOTES

Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (2015)

6.14 Paragraphs 8.1 and 8.2 of TAN 1 state:

“8.1 It is recognised that for a temporary period some local planning authorities will not have an adopted LDP, but may have an adopted Unitary Development Plan (UDP). Local planning authorities in this position may use their adopted UDP as the basis for calculating their housing land supply, using the residual method, provided that the UDP is still within the plan period at the base date of the JHLAS.

“8.2 Therefore local planning authorities that do not have either an adopted LDP or UDP will be unable to demonstrate whether or not they have a 5-year housing land supply and effectively will be considered not to have a 5-year supply. Those LPAs without an

adopted development plan will be unable to produce a JHLAS until an adopted LDP is in place. However, as mentioned in paragraph 3.3 above, local planning authorities without an adopted LDP should continue to carry out an objective assessment of their housing land supply on an annual basis in preparation for their LDP.” (My emphasis added).

6.15 The Council acknowledge that they do not have an up-to-date Development Plan and therefore Paragraph 8.2 is triggered. In this respect the Council have not produced a JHLAS for 2015 but instead have presented a Housing Land Monitoring Statement in preparation for the new Development Plan intended for adoption in 2018. The Council is therefore currently considered to not have a 5-year housing supply.

6.16 Paragraph 3.3 states that:

*“Local planning authorities without an up-to-date JHLAS (see section 8 below), should nevertheless carry out an objective assessment of their housing land supply on an annual basis in preparation for their LDP. **This assessment will not be subject to the formal JHLAS process or carry the same weight for planning purposes as a formal study.**” (My emphasis added)*

6.17 Paragraph 5.1 sets out that:

“Housing land supply needs to be soundly based on meeting identified housing requirements based on appropriate household projections and local evidence (including Local Housing Market Assessments), which requires an adopted LDP to be in place (as required by Part 6 of the Planning and Compulsory Purchase Act 2004).”

6.18 Paragraph 6.2 is of significant relevance in this appeal and sets out that:

“The housing land supply figure should also be treated as a material consideration in determining planning applications for housing. Where the current study shows a land supply below the 5-year requirement or where the local planning authority has been unable to undertake a study (see 8.2 below), the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies.”

6.19 The general theme of TAN1 is that local authorities are required to maintain a record of an up-to-date 5-year supply of housing land. However, in the absence of an up-to-date Development Plan a local authority will be considered to not have a 5-year supply.

6.20 Where a local authority cannot demonstrate a 5-year supply of housing sites then Paragraph 6.2 of TAN1 states that the need to increase supply should be given “considerable” weight when dealing with planning applications provided that the development would otherwise comply with the development plan. However, as per the requirements of PPW, development proposals should be considered in relation to up-to-date policies.

6.21 Therefore, in the absence of a 5-year supply of housing sites and an up-to-date Development Plan, the presumption in favour of sustainable development should apply.

Technical Advice Note (TAN) 2: Planning and Affordable Housing (2006)

6.22 TAN 2 provides advice on the approach in providing affordable housing through Development Plan policies, technical evidence and the requirements for planning applications.

6.23 The level of affordable housing proposed in the development is agreed at 20% of total housing provision (on-site provision) with the Council and on this basis I do not intend to present evidence to address this particular matter further.

6.24 I do however address the affordable housing requirement against total completions in Chapter 9.

Technical Advice Note (TAN) 4: Retailing and Town Centres (1996)

6.25 TAN4 sets out the retail guidance in the preparation of Development Plans and the consideration of planning applications. The advice sets out that planning applications for retail development of over 2,500sqm requires an Impact Assessment which is not applicable in this case.

6.26 As Tan 4 generally offers guidance for larger retail units than that proposed it is considered to have limited weight in this instance.

Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009)

6.27 TAN5 provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation. Chapter 2 sets out the key principles of planning for nature conservation, Chapter 3 provides advice about the preparation and review of Development Plans, Chapter 4 addresses nature conservation in development control procedures, Chapter 5 deals with the conservation of internationally and nationally designated sites and habitats and Chapter 6 deals with the conservation of protected and priority species.

Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010)

6.28 TAN 6 addresses how the planning system plays a role in supporting the delivery of sustainable rural communities in respect of:

- Sustainable rural economies.
- Sustainable rural housing.
- Sustainable rural services.
- Sustainable agriculture.

6.29 Section 2.2 states:

“Development plans should set out the spatial vision for rural communities. This should be based on a sound understanding of the functional linkages within the area and the potential for improving the sustainability of the existing settlement pattern. Many rural communities can accommodate development, particularly to meet local needs. New development can help to generate wealth to support local services, ensuring that communities are sustainable in the long term. A key question for the planning authority, when identifying sites in the development plan or determining planning applications, is whether the proposed development enhances or decreases the sustainability of the community. In particular, planning authorities should support developments that would help to achieve a better balance between housing and employment, encouraging people to live and work in the same locality.”

Technical Advice Note (TAN) 8: Renewable Energy (2005)

6.30 TAN 8 relates to land use planning considerations of renewable energy.

6.31 Paragraph 1.6 deals with energy efficiency in new development:

“As well as developing new sources of renewable energy which are essential to meeting the targets set by energy policy, the Assembly Government is fully committed to promoting energy efficiency and energy conservation. The land use planning system is one of a number of mechanisms which can help deliver improved energy efficiency and local planning authorities are expected to consider matters of energy efficiency when considering planning policy and applications.”

Technical Advice Note (TAN) 12: Design (2014)

- 6.32 The purpose of this TAN is to equip all those involved in the design of development with advice on:
- How 'promoting sustainability through good design' and 'planning for sustainable buildings' may be facilitated through the planning system; and
 - The preparation and validation of mandatory design and access statements.

- 6.33 The TAN does not provide exhaustive text on good design, other TANs and guidance such as Manual for Streets, may also cover design issues relevant to specific topics or types of development.

Technical Advice Note (TAN) 15: Development and Flood Risk (2004)

- 6.34 The general approach of PPW, supported by TAN 15, is to advise caution in respect of new development in areas at high risk of flooding by setting out a precautionary framework to guide planning decisions. The overarching aim of the precautionary framework as relevant in this instance is to direct new development away from those areas which are at high risk of flooding.
- 6.35 Section 8 deals with surface water run-off from new development and discusses how the aim for new development should be not to create additional run-off when compared with the undeveloped situation. Paragraph 8.4 discusses Sustainable Urban Drainage Systems (SuDs) to manage surface water run-off.

Technical Advice Note (TAN) 16: Sport, Recreation and Open Space (2009)

- 6.36 TAN16 advises on the role of the planning system in making provision for sport and recreational facilities and informal open spaces, as well as protecting existing facilities and open spaces in urban and rural areas in Wales.
- 6.37 Open space provision is made within the appeal submissions and these will be specified in more detail at the reserved matter stage.

Technical Advice Note (TAN) 18: Transport (2007)

- 6.38 Section 2 discusses the integration between land use planning and transport. The TAN sets out the Assembly government's approach to sustainable development as the overarching framework within which strategies and policies are developed. The strategy both aims to secure the provision of transport infrastructure and services, which improve accessibility, build a stronger economy, improve road safety and foster more sustainable communities. This includes:

- Integration of transport and land use planning;
- Integration between different types of transport;
- Integration of transport policy with policies for the environment, education, social justice, health, economic development and wealth creation.

The TAN's main themes relate to the following:

- Location of development.
- Parking.
- Design of development.
- Walking and cycling.
- Public transport.
- Planning for transport infrastructure.
- Assessing impacts and managing implementation.

6.39 Matters relating to accessibility are contested in this appeal and I rely on the evidence of Mr Ben Jackson in that regard.

Technical Advice Note (TAN) 23: Economic Development (2014)

6.40 Section 1.2 of TAN23 sets out the high level planning objectives in respect of economic development:

"Planning and the Market

1.2.1 The economic benefits associated with development may be geographically spread out far beyond the area where the development is located. As a consequence it is essential that the planning system recognises, and gives due weight to, the economic benefits associated with new development.

1.2.2 PPW advises that planning for economic land uses should aim to provide the land that the market requires, unless there are good reasons to the contrary. Where markets work well, this will help maximise economic efficiency and growth.

1.2.3 Market failures can result in situations where market forces undermine environmental and social objectives to an unacceptable degree. The planning system should work to correct or mitigate these failures.

1.2.4 Such instances can be widespread and PPW highlights corrections in many places. Among other things, the policy advises that planning should guide development so that it benefits disadvantaged communities, concentrates people-intensive activities in town centres and aligns jobs with housing and infrastructure. Market forces on their own do not necessarily deliver these sustainable objectives.

Planning Considerations

1.2.5 Local planning authorities should recognise market signals and have regard to the need to guide economic development to the most appropriate locations, rather than prevent or discourage such development.

1.2.6 In line with these principles, there will be instances where the planning system may not provide the land the market demands, and in the places where the market demands it. Some proposed developments or sites may be resisted by planning authorities – for example because they would have unacceptable environmental impacts, divert demand from town centres or would go against agreed spatial strategies. In these circumstances, so far as possible planning authorities (and planning applicants) are encouraged to look for alternative sites which offer the same, or very similar, advantages.

1.2.7 PPW establishes the principle of a sequential test in relation to town centre related uses which have direct relevance to economic land uses. Accordingly when identifying land for economic uses in development plans, or when determining applications, local planning authorities should seek to replicate this approach. Local planning authorities should apply judgement depending on the nature of the economic use and its applicability to a particular location. They should give first preference to sites within the boundaries of settlements (including planned new settlements and urban extensions). As a second preference, they should consider edge-of-settlement sites. As a third preference, they should consider Technical Advice Note 23: Economic Development identifying land in the open countryside. Land may be identified in less preferable

locations if the resulting benefits outweigh any adverse impacts of the development. In assessing these benefits, authorities should have regard to the considerations set out in subsequent sections of this TAN (section 2.1.5) i.e. jobs accommodated, alternatives, and special merit. If land supply within settlements is already sufficient to meet demand, then generally it will be wrong to identify sites in the countryside. However, if developments in sequentially inferior locations deliver additional economic benefits, as outlined below (section 2.1); then these need to be factored into the decision making process and could result in allocations which do not conform to the sequential assessment. Any alternatives considered need not be in the same local authority area."

- 6.41 The proposed development includes employment uses on a site identified as an employment site and there is no requirement to undertake a sequential test as the principle for such uses is already established. With regard to both the proposed employment use and retail use the Council raised no objection to these uses being unsuitable on the site in land use terms when considering the planning application. It is therefore assumed that the Council do not consider there to be any conflict with TAN23.

SUMMARY

- 6.42 The proposed development complies with the general themes of the Technical Advice Notes. The Council did not raise any conflict with the TANs.
- 6.43 With regard to TAN1 it is clear that in the absence of a 5-year supply of housing land considerable weight should be applied to the presumption in favour of sustainable development. In essence, the planning balance should be applied to the assessment of planning applications that fall outside of settlement limits. In this instance the benefits of the proposal simply outweigh the harmful impacts of the development. Indeed, it is difficult to establish what significant harmful impacts are created given the benefits that the proposed development would deliver.
- 6.44 Matters relating to affordable housing (TAN2) are agreed with the Council.
- 6.45 There is no conflict with TAN4 (Retailing & Town Centres) given that the threshold for the proposed retail unit falls below the need for a retail impact assessment.
- 6.46 Matters relating to nature conservation (TAN5) are agreed with the Council and do not form part of the reason for refusal.

- 6.47 The site is considered to be in a sustainable location and residents would not rely solely on the use of the private car to access services and facilities. The proposed development will help generate income into the local economy as well as create new employment opportunities which will encourage people to live and work in the same area. The development would not therefore conflict with TAN6 (Planning for Sustainable Rural communities).
- 6.48 Matters relating to renewable energy (TAN8) and Design (TAN12) will be considered in more detail at the reserved matters stage and can be controlled by way of suitably worded conditions.
- 6.49 Matters relating to flood risk (TAN 15) have been addressed as part of the submission documents and there is no objection in this respect.
- 6.50 The application includes more than sufficient space for open space and recreation as part of the development and this did not form part of the reason for refusal (TAN16).
- 6.51 Matters relating to transport are in dispute and I rely on the evidence of Mr Ben Jackson to address the impacts of the development having regard to TAN 18 (Transport).
- 6.52 The proposed development will include many benefits including economic benefits during the construction phase and once the development is complete. This includes:
- Provision of new employment opportunities.
 - Generation of economic benefits such as
 - construction spend;
 - construction jobs;
 - the generation of income for the Council through an uplift in Council Tax revenues;
 - attracting and providing new homes for economically active people; and
 - an increase in new households which will increase spending in the local economy.
- 6.53 In essence, the proposed development will accord with the objectives of TAN23.
- 6.54 To summarise, the appeal proposals have considered the requirements of the Technical Advice Notes and there are no technical reasons within the TANs that seek to resist the proposed development.

7. OTHER MATERIAL CONSIDERATIONS – WREXHAM COUNCIL HOUSING LAND SUPPLY & AVAILABILITY OF SITES

- 7.1 In addition to national policy and advice the following local material considerations are relevant to this appeal.

WREXHAM COUNCIL HOUSING LAND MONITORING STATEMENT 2015 (HLMS)

- 7.2 The Council's HLMS (**CD 7.1**) is dated April 2015 and states in its introduction at Paragraph 1.1 that:

"In the absence of an up-to-date Unitary Development Plan (UDP) and adopted Local Development Plan (LDP), in accordance with latest Welsh Government Guidance on Joint Housing Land Availability Studies (JHLAS), TAN1, January 2015, there is no requirement for a Local Authority to produce a JHLAS and the authority is considered to have a zero land supply. However, in order to inform the level of housing provision required in the forthcoming LDP, it is still necessary to monitor the housing land supply within the County Borough along with the number of completions."

- 7.3 The Council acknowledge that they do not have an up-to-date Development Plan and in accordance with TAN1 are considered to be an Authority with "zero land supply". The remainder of the HLMS sets out the Council's identified housing land supply which it monitors in preparation of the emerging Development Plan due for adoption in 2018. The following points are of note:

- 160 dwellings on large sites were completed between April 2014 and April 2015.
- 75 dwellings were completed on smaller sites in the same period.
- The Council's five year housing land supply on large sites equates to 899 units.

- 7.4 The HLMS does not provide details of what the five year supply is in number of years but I understand this to be 3.1 years at April 2014 as set out in Council's delegated Planning report (**Appendix 6**) and the most recent Joint Housing Land Availability Study (published January 2015). Notwithstanding this, in the absence of an up-to-date plan the identified housing land

supply has no material weight as the Council is automatically considered to have no housing land supply.

WREXHAM COUNTY BOROUGH COUNCIL JOINT HOUSING LAND AVAILABILITY STUDY (2014) (JHLAS)

- 7.5 The Council acknowledge it is a “zero” housing supply Authority and therefore the details contained within the JHLAS is academic in respect of assessing the housing supply. Notwithstanding this it was identified that at April 2014 the Council had a 3.1 year supply.

EMERGING LOCAL DEVELOPMENT PLAN CONSULTATION DOCUMENT: VISION, OBJECTIVES AND STRATEGIC GROWTH AND SPATIAL OPTIONS

- 7.6 In March 2015 the Council consulted on this key LDP document for six weeks. The spatial option for growth section stated:

*“Alongside deciding on the actual level of growth needed over the Plan period, the LDP must also put forward a clear Spatial Strategy identifying where this growth should be located. It is therefore necessary to translate the projected level of growth into broad geographical locations. The Council has identified three broad Spatial growth options for new development in the County Borough. Each option is underpinned by the aim of maximising appropriate and deliverable brownfield land. **However providing for all of Wrexham’s development requirements over the Plan period will also require new land for development outside of existing settlement limits to be released.**” (My emphasis added)*

- 7.7 Johnstown is identified as being a “key settlement focus” and is identified in two of the three growth options⁴ (CD 7.3). The UDP identifies a three settlement hierarchy comprising of a Principal Town, Urban Villages and Rural Villages (UDP, Page 9). Johnstown is identified as an ‘Urban Village’ which is the second tier below Wrexham as the only ‘Principal Town’.

LOCAL DEVELOPMENT PLAN – PREFERRED STRATEGY (FEBRUARY 2016)

- 7.8 On 12th February 2016 the Council started its consultation on its ‘Preferred Strategy’ (CD 7.4) for the new LDP following the consultation of the ‘Vision, Objectives and Strategic Growth and Spatial

⁴ Identified in Option 2 and 3. Option 1 relates to development around Wrexham Town only.

options' document. Johnstown is identified as a Tier 2 settlement where the Preferred Strategy seeks to direct a proportion of new development.

7.9 Section 2.4 identifies a number of key points of which the following are relevant in this case:

- There is a lack of brownfield capacity to accommodate projected household growth in the County Borough.
- Significant population and household growth is predicted over the plan period but the capacity of some settlements may be constrained.
- Most of the settlements in the County Borough are surrounded by Green Barrier and Special Landscape Areas, which also tend to include the Best and Most Versatile Agricultural Land (BMVL).

7.10 Section 5.6 states that:

"As well as assessing options for Key Strategic Sites (KSS) allocations it has also been necessary to a review (sic) and amend the boundary of the current Green Wedge (Green barrier) designation on land surrounding Wrexham Town to enable the release of the KSS' for mixed use housing and community facilities."

7.11 Whilst the above refers to Wrexham it should be noted that the appeal site is not a greenfield site nor is it in Green Wedge. Section 5.1 states:

"Our own evidence base demonstrates that we have a limited supply of deliverable brownfield sites remaining within existing settlement limits across the Borough and this is a diminishing resource. It will be necessary therefore to bring forward greenfield sites on land adjoining existing settlements in the most sustainable locations to address the identified housing and employment land needs over the plan period. This will be the case regardless of the levels of growth"

7.12 The same section also states:

"A summary of the options presented to Key Stakeholders is provided in Table 2. Each option will involve the loss of the Best and Most Versatile (BMV) agricultural land as well as mineral resources. This was made explicit during the stakeholder consultation."

7.13 Section 6.6 (Housing) reiterates that “the Preferred Strategy recognises that there is a limited supply of brownfield land within the County Borough”. It goes on to say:

“The Local Housing Market Assessment (March 2015) (127) has identified a need for 157 affordable units per annum for both social and intermediate rent tenures. The overall housing requirement will help deliver some of this need via the planning system and other delivery mechanisms, including Council initiatives such as the affordable housing project and bringing empty properties back in to use, will help address any shortfall. The strategy makes provision for an element of affordable housing delivery to be provided via the planning system to partially meet the identified evidenced need.”

7.14 The Council’s preferred policies are still very much at the consultation stage and I do not consider that they offer any material weight at this time in the consideration of planning applications.

7.15 I also note that the Preferred Strategy includes a number of sites within its Site Register which are in or around Johnstown and I address these in more detail in Chapter 9 of my Proof of Evidence.

7.16 The appeal site is identified within the Preferred Strategy Site Register as RHO09CS as shown in **Figure 7.1** below (full details in **Appendix 12**).

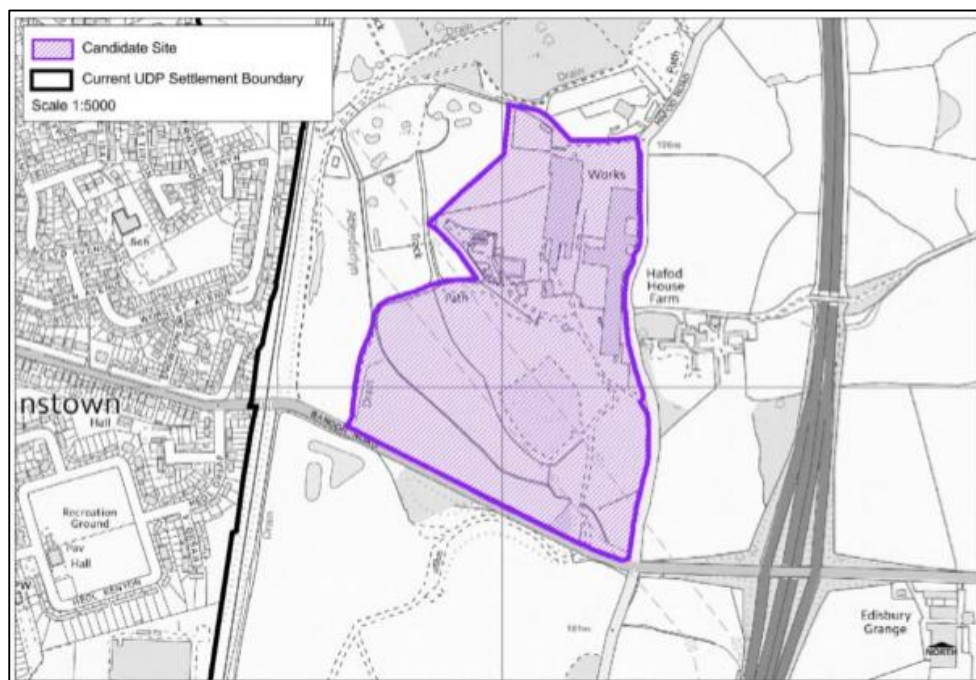


Fig 7.1- Appeal site as shown in the Council’s Preferred Strategy Site Register

7.17 The Council's accompanying comments for the site state:

"The site complies with the Council's Preferred Strategy, however there are site constraints that are unlikely to be overcome to allow the site to be developed".

7.18 Whilst somewhat vague, the above statement identifies that the site complies with the Council's Preferred Strategy. With regard to site constraints I do not interpret the Council's reason for refusal as taking issue with the deliverability of the site. Indeed the majority of technical issues relating to the site have been agreed with the Council as part of the planning application process. Therefore, there are no identified constraints associated with the site which would prevent it from being delivered (at least in part) within the next 5 years.

SUMMARY

7.19 There is currently a lack of available housing land within the housing market area for Wrexham and this is acknowledged by the Council. The Council also recognises that it cannot have a housing land supply in the absence of an up-to-date Development Plan. In addition, there is insufficient brownfield land available to deliver the much needed housing and the Council are now seeking to release Greenfield and agricultural land in order to meet its housing requirements. In the absence of a 5 year housing land supply and also the limited amount of brownfield land available I consider that Policy PS1 is out-of-date as it reflects the settlement boundary requirements from 1996 to 2011 and there is now a shift in material circumstances which means that the housing requirement cannot be delivered within settlement limits. Policy PS1 therefore has very limited weight.

8. OTHER MATERIAL CONSIDERATIONS – RELEVANT APPEALS & COURT DECISIONS

- 8.1 As set out in the Appellant's Statement of Case at paragraph 3.1 the appeal site has been the subject of significant planning history that is relevant to this appeal. Despite the Council being aware of this they made no reference to this within their delegated planning report. Indeed, the Council were aware of the planning history which includes a High Court Order as well as a planning appeal when considering the planning application now the subject of this appeal.
- 8.2 Accordingly I set out below the relevant planning history for the site.

HIGH COURT CONSENT ORDER – EcoREADY MIX

- 8.3 The current land use of the site is identified as an employment site as confirmed in a High Court Order dated 23 May 2012 (High Court Order CO/12114/2011). The High Court Order was in respect of a site immediately adjacent to the site identified as the Eco-Readymix site (to the north of the appeal site). **Figure 8.1** below shows an extract of that site's location as taken from the Council's Committee Report in respect of the Eco-Readymix site.

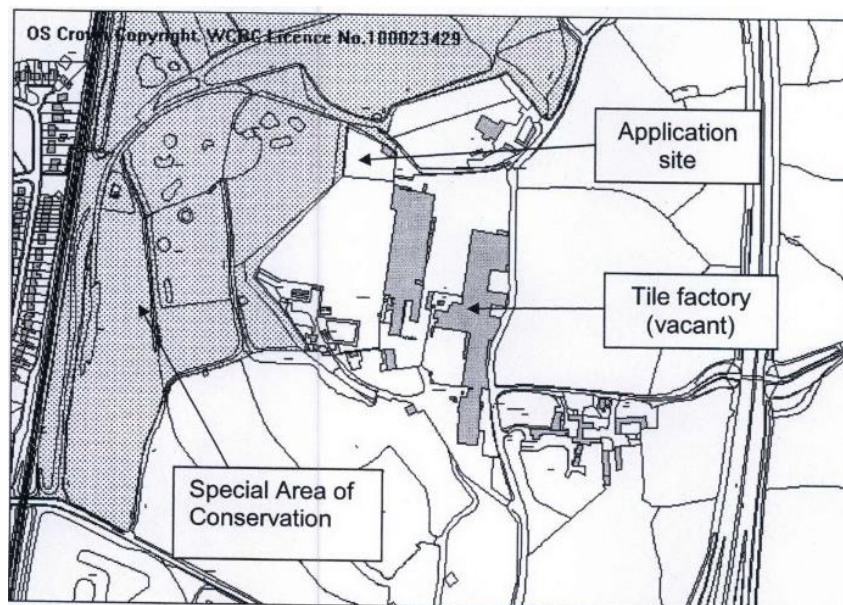


Fig 8.1: Eco-Readymix site context with the appeal site.

- 8.4 The High Court challenge was in respect of an Inspector's decision to dismiss an appeal following a decision made by Wrexham Council with regard to a retrospective change of use from a stocking area to a mortar and concrete batching plant (Council Planning Ref: P/2010/0902). The Council

had refused the application on the basis that the site fell outside of a settlement boundary and at the time was not considered to be an employment site. The reason given by the Council was as follows:

“The site lies outside a settlement limit in the Wrexham UDP and as such is in an area where there is a general presumption against new industrial development. The development is therefore considered to be contrary to policy PS1 of the Wrexham Unitary Development Plan.”

8.5 Hourigan Connolly were subsequently instructed during the appeal proceedings on behalf of that applicant (Appeal ref: APP/H6955/A/11/2150207) which was dismissed on 7 November 2011 as *“Overall the development undermines the strategic role of PS1 and the UDP and the directed uptake of underused permitted employment site by utilising a site which is not allocated within the plan.”*

8.6 Based on the advice of Hourigan Connolly the applicant in that case sought a legal opinion in respect of the Inspector’s decision and the matter was subsequently challenged in the High Court. The Welsh Ministers subsequently submitted to judgement and the Court consequently issued an Order on 23 May 2012 quashing the decision and requiring the Welsh Ministers to reconsider the appeal. Specifically the Order stated:

“The First Defendant (Welsh Ministers) has carefully considered the said decision in the light of the Details of Claim attached to the Claim Form and the evidence served in support of the claim. The First Defendant concedes that the said decision should be quashed on the ground that the Inspector erred in law in? concluding that the appeal site did not have a lawful employment use of the evidence before him at the time the decision was taken.”

8.7 The appeal was therefore reconsidered by a Planning Inspector appointed by the Welsh Ministers which is detailed below.

PLANNING APPEAL – RUABON TILERY

8.8 On 1 November 2012 the Planning Inspectorate issued a fresh decision (**Appendix 11**) for the adjacent mortar and concrete batching plant as required by the above High Court Order. In that decision the Inspector set out in Paragraph 4 that:

“The development is a concrete mixing plant on a site adjacent to the largely disused tile factory. The site was granted planning permission for

a storage use in connection with that factory in 1976. The link between the appeal site and the adjacent tilery was then significantly reduced by a subsequent planning permission which extended the range of items to be stored there beyond products made at the factory. Storage, classified as B8, is within the business use class and can be reasonably construed as an employment use. The site has, therefore, previously been used legitimately for employment."

8.9 The above is an important part of the decision as it directly references this appeal site which is identified as an employment use.

8.10 Paragraph 6 goes onto say:

"UDP Policy PS6 sets out the approximate amount of employment land to be made available during the plan period and this is quantified in Policy E1. The requirement is made up of land with planning permission (as at 1 April 2001) and land allocations. A 17.6 ha site adjacent to Dennis Ruabon, Hafod Road is listed at Appendix II of the plan, Land with Planning Permission, as being within the former group. Whilst sites with planning permission are not shown on the Proposals Map, I have no evidence that the appeal site is not included within this area."

8.11 Paragraph 7 then states:

"Although the site is not within a defined settlement or explicitly allocated for employment it does, through UDP Policy E1 and Appendix II, appear to be an employment area. The development which is the subject of this appeal therefore complies with UDP Policies PS1, PS6 and E1 and is appropriate for this location."

8.12 Again, the above identifies that that previous appeal site and also this appeal site are identified as employment land and such uses would fall within the scope of UDP Policy PS1. Notwithstanding this, the Council are seeking to dispute this established point as their Statement of Case sets out in Paragraph 4.3 that:

"The Council will demonstrate that the appeal site should not be considered as a major employment site and this will be dealt with in detail as part of the Council's Proof of Evidence."

8.13 It is established that the site is an employment site and thus such uses comply with Policy PS1.

- 8.14 Whilst this appeal is a mix of residential, employment and retail uses I consider that the principle of redeveloping employment sites for alternative uses are acceptable where the employment uses are redundant and the site's redevelopment will introduce significant new benefits. This was the position of the Council for the former Brother Industries site in Wrexham (Planning ref: P/2012/0760). Planning officers recommended approval of that application and it was subsequently refused by the Council's Planning Committee. However, the reason refusal related to insufficient infrastructure provision rather than the principle of the new residential use. Whilst the Brother site fell within the settlement boundary it is offered as an example with regard to the principle of the reuse of employment sites for alternative uses. Additionally, I am not aware of any employment policy within the UDP that restricts the redevelopment of employment sites for alternative uses.
- 8.15 The Council have not raised any objections to the redevelopment of the site for the proposed uses and the Appellant has not been advised by the Council at any point that the site should be retained for employment uses only. The reason for refusal relates to settlement limits/pattern, sustainability and character impacts only. Indeed, the site has generally been vacant since 2008 and the buildings on the site are in a poor state of repair. The buildings on the site are not considered to be suitable let alone marketable for employment uses given that they are now in a state of dereliction. There are still some very minor employment operations on the site for the sale of clay products and this is associated with the former use of the site as a clay tile manufacturer. However, the appeal proposals include new employment opportunities in the form of 465sqm of employment space for use classes B1, B2 and B8. This will offer more employment opportunities for around 35 people when compared to the employment opportunities currently offered on the site (circa 10 people including part time positions).
- 8.16 In essence, the site is a brownfield employment site which is now redundant and its redevelopment for the uses described in the appeal would offer greater benefits than the site offers in its current state.

HIGH COURT AND APPEAL SUMMARY

- 8.17 Despite the Council not acknowledging the site's identification as an employment location, the High Court and the Planning Inspectorate have concluded this matter by identifying the appeal site as being an employment site. This is a material consideration as it demonstrates that as an employment use, the site would be compliant with Policy PS1.

9. OTHER MATERIAL CONSIDERATIONS – THE APPELLANT’S EVIDENCE

- 9.1 The Appellant’s Statement of Case sets out in Chapter 7 a breakdown of the reason for refusal of which the main points are addressed as follows:

THE COUNCIL ALLEGE THAT THE APPEAL SITE IS IN AN UNSUSTAINABLE LOCATION, OUTSIDE AND DIVORCED FROM THE SETTLEMENT LIMIT

- 9.2 With regard to the site being outside of the settlement limit I reiterate the point that the Council have acknowledged that they have insufficient brownfield land available to deliver their required five year housing land supply. This is clearly set out within documents I have referred to previously in my evidence.
- 9.3 PPW states that all applications should be considered in relation to up to date policies (PPW Paragraph 3.1.2). Policy PS1 is given by the Council for this particular reason for refusal and I do not consider that the Policy should be afforded any weight as it reflects the planning requirements for the period 1996 to 2011 and cannot therefore be considered up-to-date. This is reinforced by the fact that the Council have also acknowledged that the UDP is not up-to-date as stated in their Housing Land Monitoring Statement [CD 7.1].
- 9.4 Paragraph 4.2.4 of PPW is therefore triggered and sets out that:

*“A plan-led approach is the most effective way to secure sustainable development through the planning system and it is important that plans are adopted and kept regularly under review. **Legislation secures a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise (see 3.1.2). 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 (see 4.3) and key policy objectives (see 4.4) of sustainable development in the planning system. In doing so,

proposals should seek to maximise the contribution to meeting the local well-being objectives.” (My emphasis added)

- 9.5 The Council does not have an adopted Development Plan and policies contained within the UDP, especially Policy PS1 are considered outdated. On this basis there is a presumption in favour of sustainable development.
- 9.6 The Key Principles set out in Section 4.3 of PPW are set out below in **Table 9.1** with a response:

Table 9.1 – Response to Section 4.3 of PPW (Key Principles)	
Key Principles	Hourigan Connolly Response
<i>Putting people, and their quality of life now and in the future, at the centre of decision-making.</i>	Put quite simply Wrexham does not have sufficient land within existing settlement limits to deliver against their housing requirement for its current needs and future requirements. There is also a need to deliver affordable housing within the local settlements in proximity to the appeal site. The proposed development accords with this principle in that the development will contribute not only to the current and future housing needs but also the provision of employment uses to further promote employment opportunities in the local area.
<i>Engagement and involvement, ensuring that everyone has the chance to obtain information, see how decisions are made and take part in decision-making.</i>	The application has been the subject of consultation and there has been an opportunity for third parties to provide their comments. The Appellant has considered the views raised by both statutory and non-statutory respondents and has provided responses where appropriate.
<i>Taking a long term perspective to safeguard the interests of future generations, whilst at the same time meeting needs of people today.</i>	The development seeks to reuse brownfield land and provide housing, employment and retail uses without the need to release greenfield sites as currently proposed by the Council. The re-use of land accords with this

	principle by both safeguarding agricultural land (a finite resource) whilst delivering for the housing and employment needs of future generations.
<i>Respect for environmental limits, so that resources are not irrecoverably depleted or the environment irreversibly damaged. This means, for example, mitigating climate change, protecting and enhancing biodiversity, minimising harmful emissions, and promoting sustainable use of natural resources.</i>	The proposed development complies with this key principle in that it includes the re-use of brownfield land and provides an opportunity to deliver more carbon friendly/lower emission uses through design and layout as well delivering improvements to local habitat and enhancing bio-diversity.
<i>Tackling climate change by reducing the greenhouse gas emissions that cause climate change and ensuring that places are resilient to the consequences of climate change.</i>	The specific details can be agreed at the reserved matters stage through appropriate design and layout. However the development will seek to address matters relating to climate change.
<i>Applying the precautionary principle. Cost-effective measures to prevent possibly serious environmental damage should not be postponed just because of scientific uncertainty about how serious the risk is.</i>	The planning application was accompanied by a suite of technical documents to demonstrate the Appellant's position in respect of preventing significant environmental damage. There were no technical objections from statutory consultees in respect of damage to the site, the local and wider environment or impacts on nearby ecologically sensitive areas.
<i>Using scientific knowledge to aid decision-making, and trying to work out in advance what knowledge will be needed so that appropriate research can be undertaken.</i>	As above.
<i>While preventing pollution as far as possible, ensuring that the polluter pays for damage resulting from pollution. In general the Welsh</i>	The Appellant agrees to this principle and will seek to limit pollution as far as possible during and after the delivery of the site.

<i>Government will seek to ensure that costs are met by those whose actions incur them.</i>	
<i>Applying the proximity principle, especially in managing waste and pollution. This means solving problems locally rather than passing them on to other places or to future generations.</i>	Whilst waste and pollution are not considered to form part of the reason for refusal I consider that the reuse of the brownfield site will allow more housing for local people in an area where there is a need for more affordable housing and where brownfield sites within the settlement limit are scarce. This is solving a problem locally without the loss of greenfield land and also without requiring local people to move elsewhere to find a home.
<i>Taking account of the full range of costs and benefits over the lifetime of a development, including those which cannot be easily valued in money terms when making plans and decisions and taking account of timing, risks and uncertainties. This also includes recognition of the climate a development is likely to experience over its intended lifetime.</i>	I consider that the weighting of the development is favourable when considered against the current site position (vacant and derelict employment land) as already set out in this PoE.
<i>Working in collaboration with others to ensure that information and knowledge is shared to deliver outcomes with wider benefits.</i>	The Appellant worked closely with the Planning Officer to develop a scheme which was acceptable in principle and offered wider benefits such as housing, affordable housing, and employment opportunities (during and after construction). Indeed requests were made on a number of occasions for further information which the Appellant agreed to. This led to the Planning Officer issuing a draft Decision Notice to approve the development [CD 3.16].

- 9.7 As can be seen from the previous table (**Table 9.1**) the proposed development accords with all of the PPW Key Principles and therefore the presumption in favour of sustainable development is met.
- 9.8 I have also considered the Key Objectives set out in PPW (Section 4.4) and I consider that in principle the development will be compliant subject to the details presented at the reserved matters stage when considered against the details submitted within this appeal. To summarise, the Key Objectives are set out as:
- A prosperous Wales.
 - A resilient Wales.
 - A healthier Wales.
 - A more equal Wales.
 - A Wales of cohesive communities.
 - A Wales of vibrant culture and thriving Welsh language.
 - A globally responsible Wales.
 - Planning for climate change.
- 9.9 Notwithstanding the above matters, I consider it illogical that the Council is prepared to release Greenfield sites, Green Wedge (Green Barrier) land and agricultural land for development outside of settlement boundaries as part of their LDP Preferred Strategy; yet consider this vacant and available brownfield site for development in proximity to a Tier 2 settlement as being unsuitable for the reason of being outside of the settlement boundary. This would appear to be contrary to PPW which states that previously developed land should be used in preference to Greenfield sites.
- 9.10 I also note that the Preferred Strategy includes a number of sites within its Site Register which are in or around Johnstown. I appreciate that the site register is not a final list of sites that are deemed suitable for development by the Council nor have any been tested in a public forum as part of the Development Plan process. However, it does provide a snapshot of the Council's assessment process in identifying suitable sites for new housing development.
- 9.11 The appeal site is identified within the Preferred Strategy Site Register as RHO09CS as shown in **Figure 9.1** below (full details in **Appendix 12**).

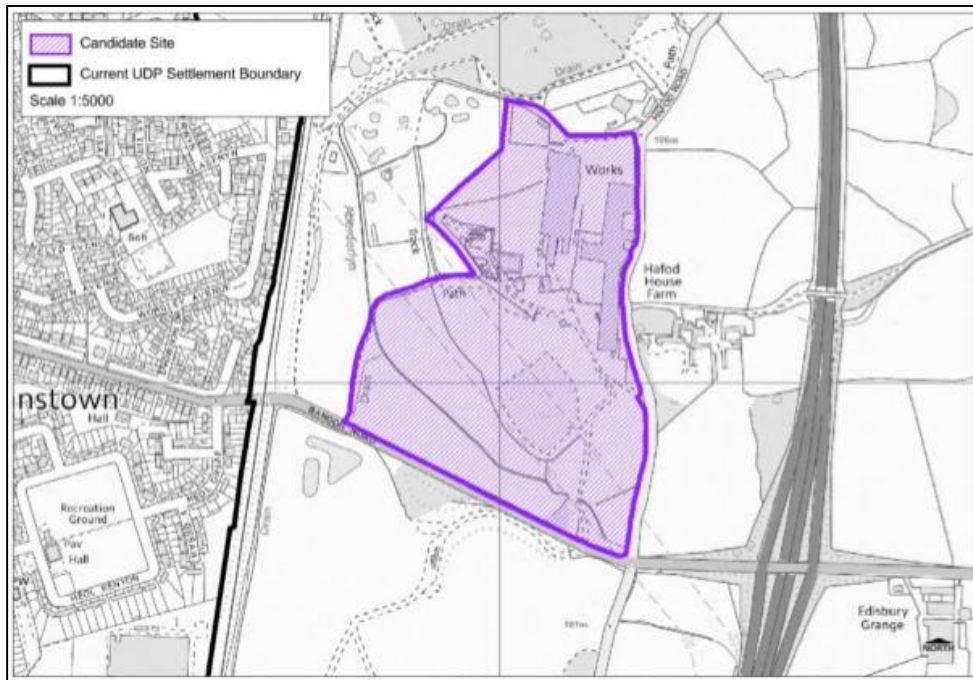


Fig 9.1: Appeal site as shown in the Council's Preferred Strategy Site Register

9.12 The Council's accompanying comments for the site state:

"The site complies with the Council's Preferred Strategy, however there are site constraints that are unlikely to be overcome to allow the site to be developed".

9.13 The Council acknowledge that the site complies with their preferred strategy (releasing sites outside of settlement limits) and therefore their position must be that the site could be a logical extension to the settlement limit. The above comment does not identify what the "site constraints" are although I assume that this relates to the Council's position regarding the current appeal. However, the technical details associated with the site (such as ecology, flood risk, access etc) have all been agreed with the Council and no issues have been raised by the Council which would indicate that the site has any constraints that prevent it from coming forward for development. Therefore not only does the site comply with the Council's preferred strategy but there are no identified site constraints that would prevent the site from coming forward for development.

9.14 Notwithstanding this, other sites around Johnstown are provided within the Preferred Strategy Site Register with an example given overleaf in **Figure 9.2**. The site is located in the northern part of the settlement (referenced as site RHO01OS) (Full details in **Appendix 11**).

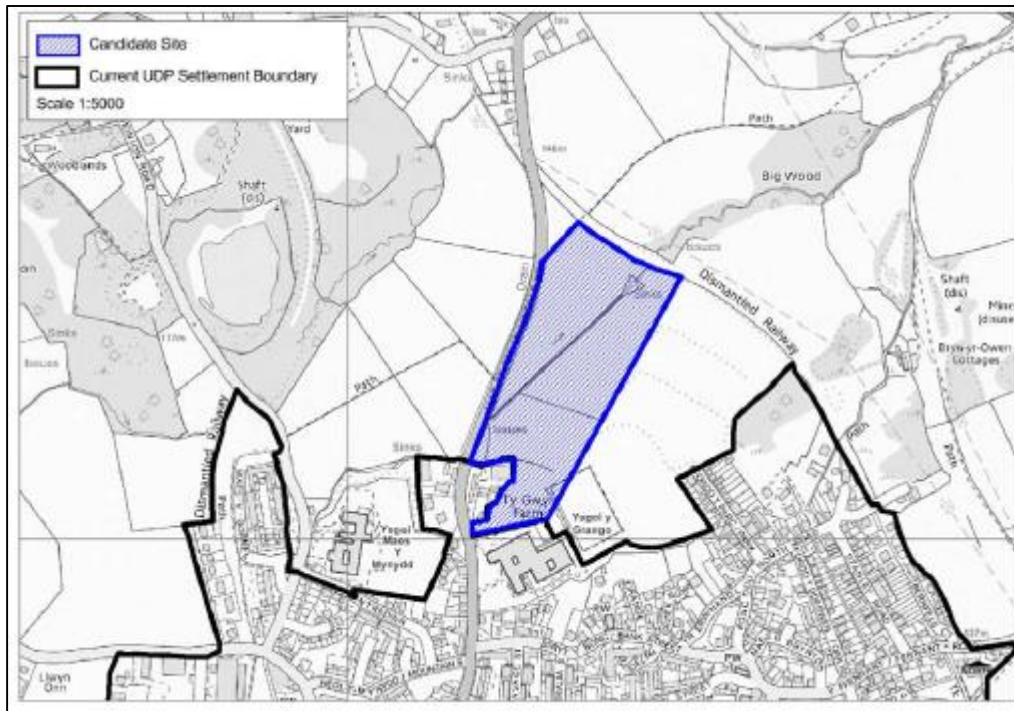


Fig 9.2: Preferred Strategy Site Register site ref RHO010S

9.15 The above site is given the following comment by the Council:

“The site complies with the Council’s Preferred Strategy and may have potential to contribute to meeting future growth demands within the County Borough.”

9.16 The difference between the above site and the appeal site in terms of the Council’s comments is that they do not identify the above site as having constraints which would prevent it from being brought forward for development. This despite the fact that the site above is identified as Greenfield, agricultural and outside of the settlement boundary. At face value this implies that the Council’s current position is that the site shown above is more preferable for development than the appeal site.

9.17 Turning to a more established position from the Council I note an application in Ruabon on land adjacent to the A483 (Planning Application Ref: P/2014/0021 (Committee Report at **Appendix 13**) for the following described development:

“Outline application for mixed use development comprising commercial (class A1 foodstore with petrol filling station and associated car parking and classes A3 / B1/ C1), extra-care (class C2), residential (class C3) with

associated vehicular access off the A539 and B5606 and other related improvements. All matters reserved except means of access.”

- 9.18 An extract of the site’s location plan as presented in the Committee Report to Council (dated 30 March 2015) is shown in **Figure 9.3** below.

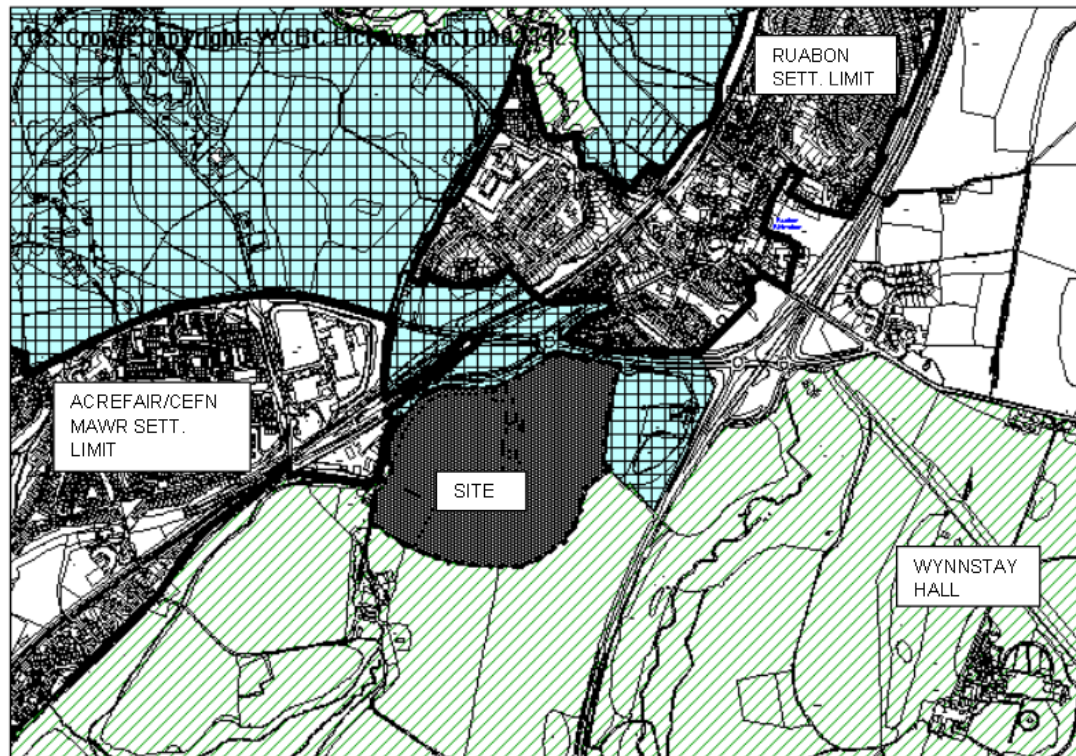


Figure 9.3: Site adjacent to the A483 (Planning reference P/2014/0021)

- 9.19 The above application was recommended for approval by Council Officers and was granted permission by Planning Committee Members on 30 March 2015. The application site was described by the Council as consisting of 25 hectares (61.8 acres) of agricultural land. Whilst the site is undeveloped agricultural land it did have extensive planning history which included unimplemented planning permission for employment uses (whereas this appeal site is an already developed employment site).
- 9.20 As can be seen from **Figure 6.3** above the site currently forms a separation gap between the two settlements of Ruabon and Acrefair/Cefn Mawr. The granting of permission for development on this site essentially closes this gap between the two settlements. In making their recommendation, the Case Officer’s report states:

“Ordinarily I would recommend that a planning application be refused for proposals that represent such a clear and (given the number of dwellings

*proposed) significant departure from UDP policies. However the Council is only required to determine planning applications in accordance with an adopted development plan **unless material considerations indicate otherwise**. Applications should also be considered in relation to up to date policies. Planning Policy Wales (paragraph 9.2.3) requires local planning authorities to ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of land for housing.*

Members will be aware that the most recently published Joint Housing Land Availability Study (JHLAS) (2014) found that Wrexham has a housing land supply of 3.1 years. Dwellings proposed on sites allocated for housing in the UDP and/or already benefitting from planning permission have already been taken into account by the most recent JHLAS.

The recently updated Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (2015) advises that the results of the JHLAS should be treated as a material consideration in determining planning applications for housing. However, it further states that where local planning authorities do not have an adopted Local Development Plan (LDP) or where their UDP is out of date, they will not be able to produce a JHLAS and they will have no 5 year housing land supply.

*Where the JHLAS shows a land supply below the 5 year requirement, TAN1 (paragraph 6.2) advises that the need to increase supply should be **given considerable weight** when dealing with planning applications, provided that the development would otherwise comply with national planning policies. Planning Policy Wales includes **a presumption in favour of sustainable development.**" (Emphasis is as shown in the **Officer's Committee Recommendation Report**)*

- 9.21 The above approach endorsed by the Council is essentially what I consider to be the approach that should have been applied in the consideration of this current appeal. Indeed, up until 22 May 2015 this was also the view of the Case Officer at the Council who supported the proposed development and had drafted a decision notice to reflect this **(CD 3.16)**. I also consider that the appeal site is more in conformity to PPW as it involved the reuse of previously developed land unlike the above application reference which is currently agricultural land.

THE COUNCIL ALLEGE THAT THE DEVELOPMENT WOULD NOT REPRESENT A LOGICAL EXTENSION TO THE SETTLEMENT LIMIT

- 9.22 Johnstown is extremely constrained when it comes to proposed urban extensions as the majority of the settlement is bound by Green Barrier to the north and south whilst the west is protected by a Biodiversity Conservation Area. The only area around the settlement which is not subjected to stringent protection is the area to the east of the settlement which is where the appeal site lies. Therefore any logical extension to the settlement limit could only take place at the appeal site.
- 9.23 I also reiterate the point that the site is identified within the Council's Preferred Strategy Site Register as being compliant with the Council's preferred approach (the release of sites outside of settlement limits to meet housing requirements). This must therefore mean that the Council considers that the site is within an area that could form a logical extension to the settlement limit.
- 9.24 In the Case Officer's delegated planning report no mention of the site being brownfield land with existing built form on it is made other than a passing comment by the Council's Affordable Housing Officer as a consultee. The fact that the site is brownfield land is a fundamental material planning consideration and should be given additional weight over Greenfield sites. The Council's current preferred approach in progressing the LDP 2 is to release Greenfield and agricultural land to meet their housing requirements. However, bringing this appeal site forward for development should take preference over the release of Greenfield land for development and could assist the Council in limiting the amount of Greenfield land that is released around Johnstown or other settlements.
- 9.25 This is supported by Policy PS3, which I consider should be given more material weight than Policy PS1, that states:
- "Development should use previously developed brownfield land comprising vacant, derelict or underused land in preference to the use of greenfield land, wherever possible, particularly so where Greenfield land is of ecological, landscape or amenity value, or comprises agricultural land of grades 1, 2 or 3a quality."*
- 9.26 The redevelopment of the site would also have limited landscape impacts as presented in the evidence of Ms Elizabeth Fry who also deals with the relationship of the site to the settlement in landscape and visual terms. The site is previously developed land and the majority of the proposed development will occupy those areas of the site which have previously been built on. It makes logical sense to extend settlement limits into previously developed land than releasing Greenfield sites within the Green Barrier for development.

- 9.27 The Council considers that the site is divorced from the settlement limit which I dispute. The site has historically served a functional relationship with Johnstown providing employment opportunities to local residents. And, as per the evidence presented by Mr Ben Jackson, the appeal site is in proximity to Johnstown and the settlement can be accessed by means other than the private car.
- 9.28 I therefore consider that the proposed development is considered to be a logical extension of the settlement limit as it is not subjected to Green Barrier limitations like the majority of the settlement limit is, the site is accessible to Johnstown by foot/cycle and the site has historically served Johnstown as part of the settlement.

THE COUNCIL ALLEGE THAT THE DEVELOPMENT WOULD BE ISOLATED WITHIN THE RURAL LANDSCAPE

- 9.29 Based on the evidence of Mr Jackson and Ms Fry I do not consider that the site can be described as isolated. To say the site is isolated implies that it is remote and has no relationship with Johnstown which is not the case. As per the evidence of Mr Ben Jackson and Ms Elizabeth Fry on which I rely, the site has an existing relationship with Johnstown in terms of accessibility and the general landscape character of the area.

THE COUNCIL ALLEGE THAT DEVELOPMENT WOULD NOT MAINTAIN THE EXISTING SETTLEMENT PATTERN

- 9.30 Again, the Council has failed to recognise the previously-developed status of the appeal site (which is given preference in PPW and supported by the Council's own Policy PS3) and the historic association of the site as a major employer in the locality.
- 9.31 The site is recognised as an employment location and benefits from a fall-back position in this respect. The appeal site would not affect the settlement pattern as it has always played an active (physical and functional) role as part of Johnstown despite being outside of the settlement limit. Additionally, no significant new developable footprint would be created when considered against the existing settlement pattern inclusive of this site.
- 9.32 I do not consider that proposed development would have any adverse impact on the existing settlement pattern as explained in my evidence from Paragraph 5.28.

THE COUNCIL ALLEGE THAT DEVELOPMENT WOULD NOT ENCOURAGE ALTERNATIVE MEANS OF TRANSPORT TO THE PRIVATE CAR

9.33 I rely on the evidence of Mr Jackson who deals with the accessibility of the site.

THE COUNCIL ALLEGE THAT DEVELOPMENT WOULD NOT ACCORD WITH THE CHARACTER AND APPEARANCE OF THE LOCALITY

9.34 I rely on the evidence of Ms Elizabeth fry who deals with visual and landscape impacts.

9.35 As highlighted in the Appellant's Statement of Case the Council claims within their delegated report that that the development would "*fail to accord with the character of the site*". The Council also claim within the delegated report that the development would not "*make a positive contribution to the appearance of the nearby locality*".

9.36 I consider it a significant material consideration that the site is previously developed land and that the context of the site in its current form should be given considerable weight.

9.37 Put quite simply the character of the site is made up of industrial/employment buildings which due to the passage of time have become dilapidated and offer no positive contribution to the site's character or the nearby landscape. I reiterate the point that the Case Officer made no mention of the site being previously developed within her delegated report which should have been an important consideration. At face value the Council seem to imply that they have a preference that the existing site presents more benefits to the local character and appearance than the proposed redevelopment of the site. I cannot agree with this approach as this is clearly not the case.

9.38 I consider that the proposed development would have significant benefits in terms of improving the local character and appearance when viewed in the above context.

9.39 Whilst the site is classed as previously developed land, approximately 50% of the site will comprise of publicly accessible open space where access is currently limited to the public rights of way. These areas are currently made up of undeveloped parts of the site or areas and are in no way remarkable nor do they make a positive contribution to the local area. These areas will however be enhanced as public open space which in turn will make a positive contribution to the local character of the area.

HOUSING SUPPLY

9.40 As the Council is considered a 'zero' housing land supply Authority, the advice contained in TAN1 (Housing) sets out that the Council "*should nevertheless carry out an objective assessment of*

their housing land supply on an annual basis in preparation for their LDP. This assessment will not be subject to the formal JHLAS process or carry the same weight for planning purposes as a formal study”.

9.41 Paragraph 5.1 of TAN 1 sets out that:

“Housing land supply needs to be soundly based on meeting identified housing requirements based on appropriate household projections and local evidence (including Local Housing Market Assessments), which requires an adopted LDP to be in place (as required by Part 6 of the Planning and Compulsory Purchase Act 2004).”

9.42 The Council has not sought to present a case that they have a 5-year housing land supply and this is not a matter in dispute.

9.43 I do not therefore interrogate the housing land supply position as part of my evidence although I do consider that the lack of a 5-year housing land supply is a significant material consideration for this appeal as per the requirements of PPW.

AFFORDABLE HOUSING

9.44 The Council's Local Housing Market Assessment (March 2015) has identified that there is an annual shortfall of 157 affordable homes per annum. Whilst the LHMA states that this figure is a “snapshot” and should not be used as a “definitive measure” (Page 75, Paragraph 6.61) **(APPENDIX 15)** it does demonstrate that there is currently a need to provide further affordable housing within the Country Borough of Wrexham.

9.45 It is clear when comparing the current affordable shortfall to the total housing completions since 2010 (as shown in **Figure 9.4** below) that the Council is required to deliver more affordable housing. Indeed, the Council's Affordable Housing Officer provided comments on the planning application that:

“Johnstown has a high demand on the Council's social housing waiting list for 1, 2 and 3 bed accommodation. Permission is sought for 300 units on this site.”

Year	Number of Homes Completed On		
	Large Sites	Small Sites	Total Completions
2007	750	198	948
2008	490	116	606
2009	296	157	453
2010	138	105	243
2011	210	95	305
2012	356	77	433
2013	175	64	239
2014	151	64	215
2015	160	75	235

Figure 9.4: Extract of Housing Completions in Wrexham County Borough. Source: Wrexham Council Housing Land Monitoring Statement 2015

9.46 In essence, the Council has seen lower housing completions since 2007 (which was 948 units in 2007 compared to 236 units in 2015) which in turn means a reduction in the provision of affordable housing delivery.

9.47 The Council normally expects 25% affordable housing as part of housing developments of more than 25 units. In this instance it has been agreed with the Council to provide 20% affordable housing units which would be delivered on this site which equates to 60 affordable homes should 300 dwellings be delivered. This is a significant amount of affordable housing and would make an important contribution to a local identified need. The reduced amount of housing reflects the costs associated with the brownfield nature of the site and the contamination remediation that will be required and these matters were agreed with the Council's Affordable Housing Officer.

SECTION 106 AGREEMENT BENEFITS

9.48 The appeal will be accompanied by a Section 106 Agreement which addresses the following matters:

- An education contribution of £588,000 towards Primary School provision.
- A public transport contribution of £200,000 for extending the number 6 bus service for five years at £40k/annum.
- The eligibility criteria and operation of an occupancy cascade to ensure the availability of affordable housing to qualifying purchasers with a local connection.

10. CONCLUSION

- 10.1 My evidence aims to assist the Inquiry with regard to the Planning Policy position of the site and also the housing land supply position in the County Borough of Wrexham.
- 10.2 My evidence demonstrates that the Council does not have sufficient brownfield land to meet its housing requirements and that there is now a need to release sites outside of settlement boundaries established in the 1996 to 2011 Unitary Development Plan. This is also the position of the Council who set out in their emerging LDP 'Preferred Approach' that there is a need to release Greenfield sites outside of settlement limits to deliver housing within the housing market area.
- 10.3 The Council is a 'Zero' housing land supply Authority in the absence of an up-to-date Development Plan or replacement Development Plan. Notwithstanding this, the Council's most up to date Joint Housing Land Availability Study was given a base date of April 2014 and set out that the Council could only identify 3.1 years of housing land. The Council has subsequently stated in other Planning Applications and technical documents that the 'bulk' of brownfield land has now been exhausted.
- 10.4 The site presents a brownfield location which is an identified employment site and as such employment uses on the site would therefore be compliant with UDP Policy PS1. The site is however vacant and the buildings on site are now outdated and in a poor state of repair. The site currently offers little in terms of a positive contribution to the local character and appearance. In fact, I consider the existing site to be an eyesore which makes a negative contribution to the local area.
- 10.5 The proposed development would see a brownfield site redeveloped and this approach should be given priority over the release of Greenfield or agricultural sites. It is material that the Council acknowledges the need to release sites outside of settlement limits to deliver their housing requirement and is set out in the Council's LDP2 'Preferred Approach'.
- 10.6 I consider that Policy PS1 (Settlement Boundaries) cannot be considered up to date for the purposes of assessing planning applications outside of settlement boundaries for a number of reasons:
- 1) The Policy related to the period 1996-2011 and is therefore out of date.
 - 2) The Council do not have sufficient available land to deliver its housing requirements.

- 3) The Council consider there is now a need to release sites outside of the settlement boundaries in order to deliver its housing requirements. Policy PS1 does not reflect this material change in circumstances since the expiration of the Development Plan.

10.7 I acknowledge that there is conflict with Policy H5 (Housing in the Countryside) but that there are material considerations which override this in this instance:

- 1) The Council cannot demonstrate a 5 year supply of housing and are considered a “zero” housing supply authority.
- 2) The Council have previously acknowledged that land outside of settlement boundaries will need to be released for housing development on the basis that the “bulk” of brownfield land has been exhausted.
- 3) The proposed developable part of the site is on brownfield land and should be prioritised over the release of Greenfield and green wedge land.
- 4) The site is an identified employment site and benefits from a fall-back position in this respect.

10.8 The proposed development will also deliver a number of benefits which are material considerations as follows:

- The redevelopment of a brownfield site in proximity to a Tier 2 (urban village) settlement which should be given preference over the release of Greenfield sites.
- The redevelopment of a site which offers no positive contribution to the local character.
- The provision of up to 300 dwellings in a housing market area that can currently only identify 3.1 years of housing land supply and is classed as a ‘zero’ supply Authority.
- New employment development will be created on the site not only during the construction phase but also through the provision of new employment space.
- New local retail convenience. Not only will this help to serve existing and new residents but it will also result in the creation of part time and full time employment opportunities for local people.
- Enhanced and new publicly accessible open space.
- The retention and improvement of public rights of ways.

- Up to 60 affordable dwellings (20%) for a local need. The provision of affordable housing will enable people with existing connections to stay within the community and also give people from outside of Johnstown the opportunity to live in the village. Hosting these households will make a positive contribution towards maintaining a sustainable, mixed and inclusive community.
- Improvements to local education facilities and capacity through an education contribution of £588,000 towards Primary School provision.
- Additional public transport links through a contribution of £200,000 for extending a local bus service into the appeal site.
- The socio-economic impacts will generate direct economic benefits including construction spend, creation of construction jobs, housing for new residents which will contribute further to the local economy and the generation of additional income to the Council through Council Tax revenues.
- There will also be social impacts through the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.

10.9 In my opinion the proposed development makes effective use of land which should be prioritised for development over undeveloped Greenfield sites and is in a sustainable location. My evidence demonstrates that the site is a suitable site for redevelopment and where there is conflict with Policy that there are overriding material considerations which support the proposals.

10.10 The site is available for development now and I understand that there is already interest from one developer in bringing the site forward in part in the next five years. There is no impediment in bringing the site forward for development which will assist the Council in meeting its housing requirement when the emerging LDP is adopted in 2018. I consider that up to 120 dwellings could be delivered in the next five years after reserved matters and outstanding conditions are discharged (considered against the delivery of 40 to 50 dwellings per annum). I expect development to commence around 18 months after the approval of the outline matters which includes details of access. The employment proposals could also commence at the same time.

10.11 The Inspector is therefore respectfully requested to afford significant weight to the matters raised in my evidence which includes the deficient housing land supply position in the County Borough, the site as a logical extension to the settlement, the site as previously developed (brownfield) land as well as all other matters raised.

10.12 The above points should be treated as my Summary Proof of Evidence.