

Highway Assessment

Proposed Residential Development

Land to the rear of Skeabost
6 Church Road
Overton



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1. Introduction

This transport assessment is in support of a planning application for a single detached dwelling. A previous application (P/2017/0202) was submitted in March 2017 but was refused 28 months later in November 2019.

This report provides a highways development control assessment of the traffic aspects of the proposal and forms supplementary information to assist in obtaining a planning permission.

2. Development proposals

The site is located on land to the rear of Skeabost, 6 Church Road Overton. Church Road is a classified highway currently subject to a 30mph speed limit.

It is proposed to erect one detached dwelling on the site.

Three car parking spaces and a turning area are to be provided for the dwelling with access on to Church Road via the existing private drive.

3. Site History

A planning application (P/2017/0202) was submitted in March 2017 but was refused 28 months later for the following reasons:

- The development would result in an unacceptable form of tandem development that is at odds with the general pattern and character of development of the area as well as giving rise to increased traffic that will prove harmful to the standard of amenity afforded to the occupiers of no. 5 Church Road and Skeabost no. 6 Church Road.

- Due to the limited width of the private drive serving the site and restricted visibility onto Church Road, the development will prove detrimental to highway safety.
- Insufficient information has been submitted to demonstrate that the loss of trees required to accommodate the development will not prove harmful to bats

The decision notice is attached as Appendix A

An application was also made at the same site for two detached houses with integral garages, in September 1993 and was granted planning permission in October 1993 - code no. OVE 21702

The decision notice is attached as Appendix B.

A previous application made at the site for 3 detached dwellings in May 1989 was also granted planning permission in August 1989. Following an application for reserved matters in 1992, the Council then stated that the original decision notice had been issued in error and refused the planning permission in March 1993.

As a consequence of this the applicants appealed to the Welsh Office. Permission was granted at Welsh Office Appeal for 3 detached dwellings with access on to Church Road via the existing private drive. The Inspectors decision was further ratified by the Secretary of State for Wales

The Welsh Office appeal decision is attached at Appendix C

4. Local assessment relevant to the application

The proposed development has a proposed access on to Church Road taken from the existing private drive adjacent to nos. 5 & 6 Church Road. Church Road is currently subject to a 30mph speed limit.

There is a footway to the west of Church Road between the A539 Overton Road and Dark Lane. Although there is a footway on the east of Church Road, it terminates at the entrance to the private drive and does not continue through to A539.

Church Road merges with School Lane some 60m south of the proposed site; both lanes are characterised by a level and straight carriageway. The road is 7.2m wide and is well lit by street lighting columns. The appeal site access is some 57m from the A539 junction with Church Road and is located between no 5 Church Road and the access to the cemetery.

The highway officer objected to the previous application due to limited width of the private drive and to poor visibility at the junction of the private drive with Church Road.

The private drive is set back 5.3m behind the carriageway edge and is approximately 3.9m width between gate posts. Beyond the gates there is a private drive roughly 3.2m wide currently but with scope to widen the drive to between 4.1m and 4.5m at various points on the drive. Although the highway officer suggested that a 4.5m width was necessary, Welsh Office guidance (Manual for Streets) clearly indicates that two standard size motor vehicles can adequately pass one another using a 4.1m width



Figure 7.1 Illustrates what various carriageway widths can accommodate.

Since it is possible to achieve a 4.1m width, two vehicles can clearly pass simultaneously and there is therefore no reason for the highway officer to object to the proposal on grounds of limited width. Adequate turning facility is being provided within the proposed site so any vehicle using the access will enter and leave the site in a forward direction.

However, I am mindful of the highway officers' recommendations for a 4.5m width to the private drive so I'd respectfully suggest that the officer considers a recent planning application (P2018/0071) at Ryecroft on Percy Road.

The application was reported to planning committee and included the following comments made by the planning officer;

"The properties are accessed off an unclassified highway subject to a 30mph speed limit. The access will be 3.2m wide which is inadequate for the simultaneous passage of two vehicles. However, given that it will only serve two dwellings I consider the risk of conflicting vehicular movements at the site access due to its width to be comparatively low and as such I do not believe the proposals pose an unacceptable risk to highway safety"

I would therefore contend that a 4.5m width is not required in this instance.

With regards to the issue of visibility. It is possible to see approximately 70m along Church Road to the north and the highway officer has accepted that visibility to the north is more than adequate for the prevailing speed of vehicular traffic.

To the south, towards the A539 junction, the highway officer expressed concerns over limited visibility. Using a setback distance of 2.4m it is accepted that visibility is below recommended standard in a southerly direction to the nearside edge of the carriageway.

However, when one uses a 2m setback visibility at the access is radically improved to the point that it is possible to see to the centre line of the highway some 28m away. The junction of Church Road and A539 is only 57m away and it is considered to be highly unlikely that any vehicle will be overtaking at this point; it is therefore reasonable to accept a relaxation to the centre line of the highway. Speed of traffic is likely to be quite low due to the proximity and the geometric layout of the Church Road junction with the A539. The likelihood of any vehicle at this point travelling above 20 mph is very low due to them having just negotiated a crossroads junction at A539/ A528/ Church Road. The recommended visibility for a 20-mph speed limit is just 25m which is achievable from a 2m setback.

The use of a 2m setback is fully supported by Welsh Office guidance Manual for Streets.

MfS2 has revised the guidance from MfS regarding the 2.0m X distance. MfS2 states at paragraph 10.5.8

“A minimum X distance of 2m may be considered in some slow speed situations when flows on the minor arm are low, but using this value will mean the front of some vehicles will protrude slightly into the running carriageway of the major arm, and many drivers will cautiously nose out into traffic. The ability of drivers and cyclists to see this overhang from a reasonable distance and to manoeuvre around it without undue difficulty should be considered”

In this case the use of the 2m distance is considered acceptable because the width of Church Road at the access position is 7.2m. Therefore, should a vehicle protrude even 0.6m into the carriageway, there would still be a residual road width of 6.6m. This may be compared with the 5.5m width required to allow two opposing HGVs to pass each other and the 4.8m width required for a car to pass an HGV as identified in figure 7.1 of MfS

In this instance the forward visibility towards an emerging vehicle is good from both directions and is in excess of the required stopping distances. The width of Church Road is clearly sufficient to allow vehicles to pass the protruding vehicle and therefore the 2m X distance should be considered acceptable. Significantly in this case, visibility to the right (the critical direction) is considerably greater than the required stopping distance and therefore an emerging vehicle is able to check the route is clear before edging into the carriageway to obtain an improved view to the left towards the A539.

The principle may be cross referenced with the TMS consultancy research into junctions with restricted lateral visibility. In effect, in circumstances where the protruding vehicle may be clearly seen and manoeuvred around safely the highway safety implications of adopting the reduced X distance may be acceptable.

MfS2 is critical of the approach of some practitioners at paragraph 3.2.1 which states that *“For some time there have been concerns expressed over designers slavishly adhering to guidance regardless of local context”*

The document goes on to state in the following paragraphs that *“Designers are expected to use their professional judgement when designing schemes and should not be over reliant on guidance. Available guidance is just that, guidance, and cannot be expected to cover the precise conditions and circumstances applying at the site under examination”*

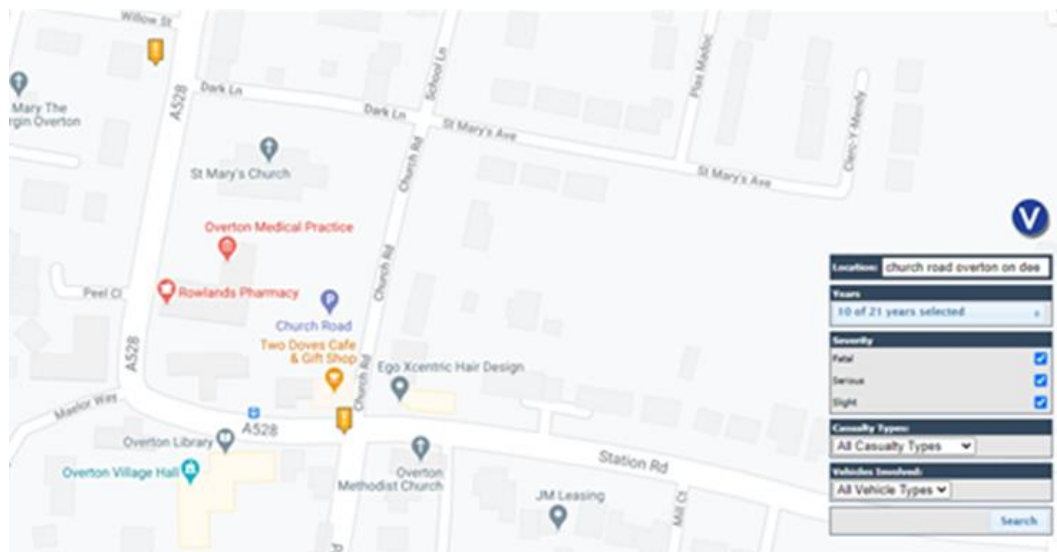
As is clear, MfS2 seeks to steer away from the slavish adherence to guidance and encourages practitioners to think about the circumstances of the case.

The advice is to undertake a detailed assessment of local context and vehicle and pedestrian collision records. If there is a problem of safety deal with it as appropriate if collision records are acceptable avoid rigorous following of standards and focus on quality of place.

Examination of the crash map accident record below indicates not a single recorded injury accident record anywhere near the site within the last 10 years. The road is therefore demonstrated to be inherently safe despite the perceived visibility issues raised by the highway officer in respect of the existing access.

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Crash map



Having demonstrated that the proposed development would not result in an unacceptable impact on the road network I can only conclude that the cumulative residual impact of the development will not be severe. Therefore I believe that the proposal would not fail the severe impact test imposed by national guidelines.

Whilst MfS and MfS2 were only drafted in 2007 and 2010 respectively, the principles espoused within them were clearly used by the inspector at the time of the Welsh Government appeal on this site back in 1994.

The following excerpts are contained within the inspectors review of the site – particular attention should be paid to paragraph 73:

Outline planning application.

68. It is accepted by the main parties that the only issue between them involves the restricted visibility to the south of the site access. [1,31] In dealing with this matter, I have first had regard to the advice in Planning Policy Guidance 13 (1988). Taking account of paragraph 2 of Appendix C of that PPG, I consider that an 'x'-distance of 2m for the access junction with Church Road is acceptable.

72. However, the advice in paragraph 6 of Appendix C to PPG 13 is that it is not always practicable to comply fully with visibility standards and all the relevant circumstances need to be assessed in reaching a decision, providing that visibility is not reduced to a level that danger is likely to be caused. In this case, I believe that there are several factors which do justify a reduction in the standard.

73. First, it must be acknowledged that there seems to be no realistic possibility of obtaining a visibility splay which conforms to PPG 13 because adjacent land owners will not co-operate. [18,33,59] This must be borne in mind with the fact that, other than the visibility issue, there is no objection to the principle of residential development of the site. [31] Second, the Council accept that visibility to the north along the side of the carriageway closest to the access junction is quite satisfactory [52,53] and this is where awareness of on-coming traffic is most important. Third, Church Road/School Lane carries low volumes of traffic, and has good alignment and forward visibility. [7,51] Fourth, as I have already mentioned, the Appellant's survey suggests that speeds in the vicinity of the site access are well below the 30 mph speed limit. Fifth, there is no history of accidents close to the site entrance. [51] Sixth, the site is for 3 dwellings which the Council estimate might generate 18 movements a day. [54] Although this may be significantly greater in percentage terms than in the case of the telephone exchange or the extant permission for 2 dwellings granted for the site and not objected to by the Highway Authority, it is in real terms a low generation of traffic which is likely to be dispersed throughout the day. Consequently, I regard the traffic implications of these previous consents, where the Council did not seek any additional visibility splay, [22] as not

74. Finally, is the matter of the degree of visibility which can actually be achieved at present and I consider that the fact that, at a 2m 'x'-distance, a car driver when looking south can see the whole of the west side of Church Road is important [Photo. 1(3), Plan D]. This means that vehicles leaving the A.539 junction can be seen and they are likely to be travelling slowly as they would have just had to stop or negotiate a right or left turn. Consequently, the stopping sight distance required for that traffic, as well as vehicles

leaving the site access, would not exceed the visibility distance. The only problem would be in the case of any vehicles overtaking on the east side of the road, but I consider this would be an unlikely occurrence so close to the junction and in such a case the emerging driver can see just over 20m along the conventional 'y'-distance or about 38m if the line is taken through the centre of the Church Road carriageway, as the Appellant suggested. [33]

75. In all the circumstances, I believe that a reduction in the normal visibility standards would not be dangerous and that the access junction is acceptable as it is.

It is clear from the inspector's decision that he saw no safety issues at the existing private drive and was minded to grant permission for 3 additional dwellings off the private drive. The current application is for just one. There has also previously been planning permission granted for 2 dwellings at the site utilising the existing access.

The previous permissions are of material significance at this site.

With regards the planning department refusal on the grounds of the development giving rise to increased traffic that will prove harmful to the standard of amenity afforded to the occupiers of no. 5 Church Road and Skeabost no. 6 Church Road. I would respectfully ask the officer to consider the following sites that have been granted planning permission in recent years by WCBC planning department

Park Road Coedpoeth

Application no. P/2018/0861 dated 09/10/2018 for the erection of 1 no. 3 bed dwelling on land to the rear of 4 Park Road Coedpoeth.

The map below gives an indication of the site location on back land behind a number of properties on Park Road and Assembly Road



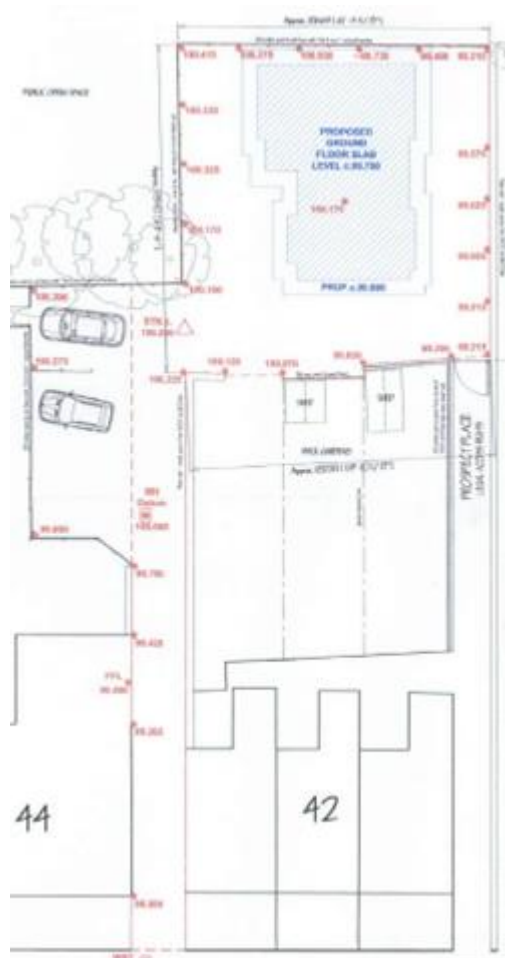
The access is taken between the gable end of no. 3 and no.4 Park Road along a private drive less than 4.1m in width and yet there were no highway objections or indeed any comments from planning about the loss of amenity to the dwellings either side of the access.

The highway officer commented that the development would generate just one additional vehicle every two hours and the risk of vehicle conflict was therefore extremely low

Heol Maelor, Coedpoeth

Application no P/2012/0053 dated 24/01/12 for the erection of 1 no. 3 bed dwelling on land to the rear of Prospect Place, Heol Maelor Coedpoeth

The map below gives an indication of the site location



The access is taken between the gable end of two properties (nos. 43 and 44 Prospect Place) on a private drive less than 4.1m in width and yet there were no highway objections or objection from planning about the loss of amenity to the dwellings wither side of the access.

Station Road Overton

Application no P/2007/1291 dated 31/10/2007 for the erection of 1 no. 3 bed dwelling on land to the rear of Eirianfa Station Road Overton - the site is just 100m from the existing application site.



This site was granted planning permission at Welsh Government appeal. The inspector made no objection to the additional use of the existing access between two existing dwellings.

5. Conclusion

Width of private drive

Whilst the private drive is only laid out to approximately 3m width currently, the land either side between the boundary hedges is owned by the applicant.

It is therefore possible to achieve a road width of 4.5 immediately behind the driveway gates adjacent to the gable end of no. 5 Church Road; and also to provide a further passing bay of 4.1m width if considered absolutely necessary. This will allow the simultaneous passage of vehicles along the private drive. It is not in our opinion necessary to provide any more than one passing bay as any conflict of vehicles along the private driveway will not impact on the highway.

This report cites a number of examples where Wrexham Council planning department have granted planning permission for a new dwelling to be served by an existing access of less than 4.1m in width.

Of significant material consideration is the fact that planning permission has twice been granted at this site previously; once for 2 dwellings and once for three dwellings – both the approved schemes were served along the existing private drive less than 4.1m in width.

Visibility

The use of a 2m X distance is fully supported by Welsh Office guidance Manual for Streets 2. At 2m setback at the access is radically improved to the point that it is possible to see to the centre line of the highway some 28m away.

Given the proximity of the A539 / Church Road junction it is highly improbable that vehicular speed will be many more than 20 mph junction; for a 20-mph speed MfS recommends splays of 25m.

Given the geometrical alignment of the A539 / Church Road it is highly unlikely that any vehicle will be overtaking at this point and it is therefore entirely reasonable to accept a relaxation of visibility to the centre line of the highway.

Visibility at 2m is therefore more than adequate for the access and this is borne out by the accident record showing not one reported injury accident within 50m of the site in the past 10 years.

Furthermore, in this case the use of the 2m distance is considered acceptable because the width of Church Road at the access position is 7.2m. Therefore, should a vehicle protrude even 0.6m into the carriageway, there would still be a residual road width of 6.6m. This may be compared with the 5.5m width required to allow two opposing HGVs to pass each other and the 4.8m width required for a car to pass an HGV as identified in figure 7.1 of MfS

In this instance the forward visibility towards an emerging vehicle is good from both directions and is in excess of the required stopping distances. The width of Church Road is clearly sufficient to allow vehicles to pass the protruding vehicle and therefore the 2m X distance should be considered acceptable. Significantly in this case, visibility to the right (the critical direction) is considerably greater than the required stopping distance and therefore an emerging vehicle is able to check the route is clear before edging into the carriageway to obtain an improved view to the left towards the A539.

Given that the Y distance in the critical northerly direction is so good it is entirely appropriate for a vehicle leaving the access to edge forward without any additional danger to the highway. From a point 1.8m back it is actually possible to see the whole off side driving line of the carriageway at the A539 junction.

There is a long history of planning applications at this site. It has previously been granted planning permission at various times for 3 detached dwellings and on another occasion 2 detached dwellings. All of these approvals were granted with access being proposed along the existing private drive. None of the approvals required improvements to visibility at the access. The fact is that this site has had 2 previous planning approvals with no visibility requirements. That is to say that the existing access has been considered to be acceptable on two previous occasions by the local council and the Welsh Government

The previous planning approvals is a significant material consideration on this current application. It may be that the highway officer was unaware of the previous planning approvals on the site as I am sure that had they been aware they would have taken them into account when making their response.

Increased traffic

The report cites three occasions in recent years that WCBC have granted planning permission for a new dwelling to be served off an existing driveway of limited width between two dwellings, with no objections made in respect of the additional traffic causing amenity issues.

This site has previously had permission for use of the private drive by as many as three additional dwellings with no concerns raised in respect of neighbouring amenity issues. This is a significant material consideration when assessing the application

All highway issues have been addressed and it is therefore considered that this application site should be considered perfectly acceptable; particularly given the significant material consideration of the previously consented planning permissions cited within the report.

APPENDIX A

In pursuance of its powers under the Acts and Orders referred to below, the County Borough Council as Local Planning Authority, hereby determines your application in accordance with the particulars and plans comprising the application

8
Expiry Date:
05/05/2017
Decision Notice
Sent:
18/11/2019
Grid Reference:
E 337462.38
N 341751.35



Applicant	MRS Y OLENIUK	Code No	OVE P /2017 /0202
Agent	T A C P MR DAVID MORRIS PEMBROKE HOUSE ELLICE WAY WREXHAM TECHNOLOGY PARK WREXHAM LL13 7YT	Date Received	10/03/2017
		Decision Date	15/11/2019

Town and Country Planning Act, 1990

Location of application

LAND TO THE REAR OF SKEABOST, 6, CHURCH ROAD, OVERTON, WREXHAM, LL13 0EN

Description of application

OUTLINE APPLICATION FOR THE ERECTION OF A SINGLE DWELLING AND DETACHED GARAGE

In reaching this decision the Council has had regard to the relevant policies in the Wrexham Unitary Development Plan which are as follows:-

EC6	Biodiversity Conservation
GDP1	Development objectives
H2	Residential development within settlements
T8	Parking

Particulars of decision that Outline Planning Permission be REFUSED

Reason(s)

1. The development would result in an unacceptable form of tandem development that is at odds with the general pattern and character of development of the area as well as giving rise to increased traffic that will prove harmful to the standard of amenity afforded to the occupiers of no. 5

Applicant	MRS Y OLENIUK	Code No	OVE P /2017 /0202
Agent	T A C P MR DAVID MORRIS PEMBROKE HOUSE ELLICE WAY WREXHAM TECHNOLOGY PARK WREXHAM LL13 7YT	Date Received	10/03/2017
		Decision Date	15/11/2019

Church Road and Skeabost, no.6 Church Road. The proposals therefore conflict with policy GDP1(a) and (f) of the Wrexham Unitary Development Plan.

2. Due to the limited width of the private drive serving the site and restricted visibility onto Church Road, the development will prove detrimental to highway safety, thus conflicting with policy GDP1(d) of the Wrexham Unitary Development Plan.

3. Insufficient information has been submitted to demonstrate that the loss of trees required to accommodate the development will not prove harmful to bats. In the absence of this information the proposals conflict with policy EC6 of the Wrexham Unitary Development Plan.



Officer Appointed for this purpose
Chief Officer Planning & Regulatory

Refer to Statement of Applicant's Rights and General Information on our planning web site at:-
http://www.wrexham.gov.uk/english/planning_portal/publications/info_sheets.htm



APPENDIX B

CYNGOR BWRDEISDREF

Wreccsam Maelor

Wrexham Maelor

BOROUGH COUNCIL

 THE GUILDHALL,
 WREXHAM,
 CLWYD,
 LL11 1AY.

01.11.
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41760
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In pursuance of its powers under the Acts and Orders referred to below, the Borough Council, as District Planning Authority, hereby determines your application in accordance with the particulars and plans comprising the application.

Applicant

B.G. Sylvester

Code Number [OVE 21702]

Agent

 C.V. Sylvester,
 11 Pinewood Crescent,
 Holcombe Brook,
 Bury.
 Lancs. BLO 9XE

Date received [6th September 1993]

Decision date [11th October 1993]

Town and Country Planning Act 1990
 Town and Country Planning General Development Orders 1988

Grant of Outline Planning Permission

LOCATION AND DESCRIPTION OF DEVELOPMENT

LAND OFF SCHOOL LANE, OVERTON-ON-DEE

ERECTION OF TWO DETACHED HOUSES WITH INTEGRAL GARAGES

PARTICULARS OF DECISION

OUTLINE PERMISSION GRANTED

- 01 The approval of the Council shall be obtained to the following reserved matters before any development is commenced, viz:
- the design of the building(s),
 - the external appearance of the building(s),
 - the means of access to the building(s), and,
 - the landscaping of the site.
- 02 Application for approval of the matters referred to in condition 1 above shall be made within 3 years of the date of this permission.
- 03 The development to which this permission relates shall begin within 5 years of the date of permission or 2 years of the final approval of the reserved matters, whichever is the later.

REASON(S)

- 01 To comply with Article 5(2) of the Town and Country Planning General Development Order 1988.
- 02 and 3. To comply with Section 92 of the Town and Country Planning Act, 1990.

Officer appointed for this purpose
 Refer to the Statement of Applicant's Rights and General Information enclosed.

APPENDIX C

Y Swyddfa Gymreig Parc Cathays Caerdydd CF1 3NQ	 Telex 488228 Switchboard 0222 825111 GTN Code 1208 Minicom 823299 Direct Line 0222 82 Fax: GP2-0222 823294; GP3-0222 823236	Welsh Office Cathays Park Cardiff CF1 3NQ
		W.O. APPEAL DECISION OVE 16904
Mr B Silvester Lea Hall Cottage Wybunbury Nantwich Cheshire CW5 7NS	Echi Cyl/Your ref	
	Sin Cyl/Our ref PP016-98-001 & PP016-99-005 (formerly APP16-30 and 65)	
	3 November 1994	

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 78
 APPEALS BY MR C V SILVESTER
 SITE AT LAND OFF SCHOOL LANE, OVERTON-ON-DEE, CLWYD

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr D N Wilks BSc(Hons) DipEM MRTPI MINGt FRSA, who held a local inquiry into your client's appeals against:-

- A. the refusal of Wrexham Maelor Borough Council to grant outline planning permission for three detached dwellings, and
- B. the failure of the same Council to determine an application for the approval of reserved matters for the erection of three detached dwellings,

both relating to land off School Lane/ Church Road, Overton-on-Dee, Clwyd.

2. The Inspector's conclusions are set out at paragraphs 62 to 86 of his report, a copy of which is enclosed, and these are reproduced as Annex A to this letter. He has recommended that Appeal A is allowed, subject to conditions. With regard to Appeal B he has made no recommendation as to the validity of the application and appeal, as legal issues are involved. However, on the assumption that the application is valid and a decision on the appeal is required he has recommended that the Appeal B is allowed, subject to conditions.

Reserved Matters Application (Appeal B)

3. The Secretary of State is of the opinion that the two appeals before him are mutually exclusive as they have arisen as a result of a single application for planning permission. Thus, where jurisdiction has been accepted for both appeals, he is obliged to decide whether the grant of planning permission dated 31 July 1989 or the refusal of planning permission dated 8 March 1993 comprises the proper planning decision of the local planning authority. The Secretary of State has considered the case law referred to by the parties.

Having regard to the comments of Lord Denning in *Co-operative Retail Services Ltd - V - Taff Ely Borough Council* at 39P & CR p 238, the Secretary of State considers that the notification was the result of a clerical error in circumstances where the Chief Planning Officer had no authority to issue a determination and he concludes that the notification dated 31 July 1989 did not comprise a grant of planning permission that was authorised by the Authority. He has also had regard to the findings of the Inspector as to the events that took place after the committee resolution of 31 July 1989. In particular he notes that the committee's recommendation of 31 July 1989 required ratification by the Borough Council. In these circumstances the Secretary of State concludes that there is no appeal in relation to the reserved matters application (Appeal B) in respect of which to exercise his jurisdiction and therefore he will deal with the appeal against the refusal of outline planning permission (Appeal A).

4. In reaching his conclusion the Secretary of State has taken account of your client's representations that the Council was estopped from saying that the grant of permission dated 31 July 1989 was not a valid permission. He considers that *Western Fish Products - V - Penwith DC* (1978) 38P & CR7 is authority for the proposition that other than exceptionally a public authority cannot be estopped from exercising its duties and powers. He does not consider that the circumstances of this case would comprise such an exception and therefore does not agree that the local planning authority is estopped from denying the validity of the planning permission.

Outline Planning Application (Appeal A)

5. The Secretary of State agrees with the Inspector's conclusions on the planning merits of the appeal and accepts his recommendation. Therefore, for the reasons given by the Inspector, the Secretary of State allows the appeal and hereby grants outline planning permission for three detached dwellings on land off Church Road, Overton on Dee, Clwyd, in accordance with the application dated 29 May 1989, subject to the conditions contained at Annex B to this letter.

6. A further letter will be sent to you in connection with your client's claim for an award of costs against Wrexham Maelor Borough Council.

7. This letter, copies of which have been sent to the Director of Administration and Legal Services, Wrexham Maelor Borough Council and the Director of Legal Services, Clwyd County Council, does not contain any approval or consent under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully



MRS C R JONES
Authorised by the
Secretary of State
to sign in that behalf

ENCL: "H" and "HC"

ANNEX B TO WELSH OFFICE
LETTER DATED 3 November 1994
REF: PP016-98-001 &
PP016-99-005 (formerly
APP16-65 & APP16-30)

CONDITIONS ATTACHED TO THE OUTLINE PLANNING PERMISSION FOR
THREE DETACHED DWELLINGS ON LAND OFF CHURCH ROAD, OVERTON,
CLWYD, GRANTED IN THE SECRETARY OF STATE'S LETTER DATED
3 NOVEMBER 1994

1. a. Approval of the details of the design, external appearance and landscaping of the site (hereinafter called 'the reserved matters' shall be obtained from the local planning authority;
- b. application for the approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this letter.
2. The development hereby permitted shall be begun either before the expiration of 5 years from the date of this letter, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
3. The proposed private drive shall have a minimum carriageway width of 4.1m and shall be surfaced in impervious material prior to occupation of any of the dwellings hereby approved.
4. The existing entrance gates at Church Road shall be fixed and retained in an open position in accordance with a scheme to be submitted to and approved by the local planning authority.
5. The landscaping scheme submitted in accordance with condition 1.a. of this permission shall indicate the precise location and species of existing trees and trees proposed to be planted on the land and shall include retention of the existing trees along the south boundary of the site.

TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPENSATION ACT 1991

WREXHAM MAELOR BOROUGH COUNCIL

Appeals by Mr C V Silvester under section 78
of the 1990 Act against a refusal of planning
permission and the non-determination of an
application for 'reserved matters' in respect
of land off School Lane/Church Road, Overton.

Inspector: D N Wilks BSc(Hons) DipEM MRTPI MIMgt FRSA
Dates of inquiry: 28 - 30 June 1994.
File References : APP 16-30 and APP 16-65.

Welsh Office
Cathays Park
CARDIFF CF1 1YX

To the Right Honourable John Redwood MP
Secretary of State for Wales.

Date : 18 AUG 1994

Sir

I have the honour to report that on 28 - 30 June 1994 I held an inquiry at the Guildhall, Wrexham and made an accompanied site visit in connection with 2 appeals made under section 78 of the Town and Country Planning Act 1990.

1. The appeals were made by Mr C V Silvester against :

- (1) the decision of Wrexham Maelor Borough Council to refuse to grant outline planning permission for 3 detached dwellings [APP 16-65].

The reason for refusal was:-

' The Council consider that to allow the proposed housing development deriving access from the private drive with restricted visibility at its junction with School Lane would create conditions prejudicial to the free and safe flow of traffic and pedestrians on the public highway.'

- (2) the failure of the same Council to determine an application for approval of reserved matters for the erection of 3 detached dwellings [APP 16-30].

Both applications relate to the same area of land off School Lane/Church Road, Overton-on-Dee, Clwyd.

2. This report includes an introduction to the unusual nature of the appeals, a description of the site and surroundings, the planning history of the appeal site applications and appeals, the gist of the legal and planning representations made at the inquiry, and my conclusions and recommendations. A list of appearances, documents, plans and photographs is attached.

3. At the inquiry an application was made by the Appellant for an award of costs against the Borough Council and this is the subject of a separate report.

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INTRODUCTION

4. The outline application which is the subject of appeal APP 16-65 was originally submitted to the Borough Council in May 1989 (LPA reference OVE16904) and on 1 August 1989 a decision notice was issued approving the application. The Council say that this notice was issued in error and so there was no valid outline consent for the site. Eventually, on 8 March 1993, a fresh decision notice was issued by the Council refusing the application and it is this decision that is the subject of appeal against the refusal of planning permission.

5. In the Appellant's opinion, the 1 August 1989 approval notice was valid and in July 1992 he submitted a reserved matters application. This application was not registered by the Council but returned to him as, in their view, there was no outline approval, so the reserved matters application was invalid and could not be entertained. It is this application which is the subject of the appeal in respect of a non-determination (APP 16-30).

SITE AND SURROUNDINGS

6. The site is located within the village of Overton-on-Dee and comprises a flat, backland grass enclosure of about 0.16ha lying to the east of Church Road and School Lane. To the north of the site, beyond a cemetery access path, are the rear gardens of semi-detached, local authority estate houses at 11 and 12 School Lane and 1 - 11 St Mary's Avenue, with a cemetery to the east of the latter properties. To the south and south-east of the site are the rear gardens of modern terraced dwellings at 1 - 7 Hammer Close and a detached house known as 'The Bramblings', which front on to the A.539 road. To the west of the site is the rear garden and the outbuildings of a semi-detached 2 storey dwelling at 5 Church Road [Note: some documents refer to this property as No. 4 but it is shown as No. 5 on the Ordnance Survey maps and this has been used throughout this report]. Plan A shows the site and its surroundings and also the boundary of the Overton Conservation Area.

7. Church Road, which merges with and continues to the north as School Lane, has a straight and level carriageway, with street lighting, and a 30 mph speed limit in force. The carriageway is about 7.2m wide with a footway on its western side opposite the appeal site entrance. There is also a footway on its eastern side extending from the north to terminate in front of the entrance to 5 Church Road. The junction of the track to the appeal site is located some 60m north of the junction of Church Road with the A.539 road, and lies between the side access for 5 Church Road and the cemetery entrance. It extends east from Church Road for some 30m to the north-west corner of the site.

8. Adjacent to the carriageway in front of 5 Church Road is a 0.9m garden wall which splays back where the footway commences to 1.0m high gate pillars which are set back from the carriageway edge by the width of the footway (2.1m). The entrance to the appeal site is set further back and has been combined with that of the cemetery to form a tarmac 'apron', some 3.1m in depth, lying between the back of the footway and ornamental gates set between stone pillars. At the north and south ends of the 'apron', low stone walls, about 0.7m high, extend between the gate pillars and 1.0m pillars at the back of the footway. The composition formed by the 2 entrances is included within the Conservation Area. Photo. 1(2) shows the entrances viewed from Church Road.

HISTORY OF PLANNING APPLICATIONS AND THE APPEALS

9. Between 1970 and April 1985 there were several outline applications for the erection of a telephone exchange on the site, but the project never proceeded. In November 1985 approval was given to alter the existing access in conjunction with that to the cemetery and this work was carried out. This involved relocation of the gates and pillars and re-alignment of the adjacent walls.

10. On 29 May 1989, the Appellant submitted an outline application for 3 detached dwellings which included details of access and the siting of the dwellings [Doc. 3 and Plan B]. Matters of design, appearance and landscaping were reserved for subsequent approval. The access proposed was as existing. In response to consultations and publicity, there was no objection from the Community Council, the County Surveyor, or the County Director of Planning, but several objections from local residents on grounds of highway safety and loss of amenity [Doc. 4(A)].

11. The application was considered by the Council's Development Committee on 31 July 1989 where the officers made 2 recommendations [Doc. 5]. The first was that a section 52 Agreement be entered into with the applicant in order to obtain adequate visibility at the junction of the site's private drive and School Lane. The second recommendation was that conditional planning permission be granted upon completion of the section 52 Agreement.

12. The County Surveyor's formal consultation response which had raised no objection to the proposal was not sent until after the meeting, on 1 September 1989, and makes no mention of seeking any section 52 Agreement to obtain a visibility splay. However, the Borough Council say this matter had arisen prior to the committee meeting as a result of informal oral discussions with a County Council officer about the application, as a subsequent letter to the County Surveyor dated 26 September 1989 implies [Doc. 4(B)].

13. The officer recommendations were accepted by the Development Committee and on 27 September 1989 the following resolution was approved by the full Council:

'That the Council enters into an Agreement with the applicant in respect of the development specified below under section 52 of the Town & Country Planning Act 1971 requiring adequate visibility to be provided and maintained at the junction of the private drive and School Lane to the satisfaction of the Highway Authority and that permission be granted on completion of the Agreement subject to the following conditions which are imposed for the reasons indicated.' [Doc. 6]

14. A decision notice dated 31 July 1989 approving the application was issued on 1 August 1989 [Doc. 7], without completion of the section 52 Agreement. The Council say this was done in error and at the time they were unaware of the mistake. They contend that is indicated by the fact that on 7 August 1989 [Doc. 8] the Chief Planning Officer wrote to the applicant informing him of the Committee's resolution made on 31 July and that a draft Agreement would be prepared by the County Council. On 30 January 1990 a draft Agreement was received by the Borough from the County Council [Doc. 9] which showed a visibility splay which included land belonging to 4 and 5 Church Road. This was sent to the Appellant on 30 May.

15. On 9 April 1991, the Chief Planning Officer informed the Director of Legal Services that the decision notice had been issued in error and an opinion on the validity of the notice was requested. On 22 April, the Director of Legal Services replied that he considered the notice was invalid. This opinion was communicated to Mr C Silvester by the Council on 24 April 1991 [Doc. 10]. It was also mentioned that it might be possible to relax the visibility splay requirement to some extent so that only one adjacent property was affected and this approach was agreed by the County Highway Authority in a letter to the Council of 30 April 1991. In a memorandum of 14 May 1991, the Chief Planning Officer sought liaison between his Council's legal department and the County Highway Authority in preparing a revised draft section 52 Agreement to reflect the reduced vision splay requirement. The Council say this was done with a view to helping the applicant negotiate and complete the Agreement, following which a valid consent could then be issued by the Council.

16. An application on behalf of Mr Silvester for approval of reserved matters was sent to the Council on 29 July 1992 [Doc. 11 and Plan C]. This was returned on 30 July with a letter from the Chief Planning Officer explaining that the Council were unable to accept it. Mr Silvester sought legal advice and the application was re-submitted on 31 July by his Solicitor with a letter [Doc. 12] submitting that the application was valid, but again it was returned by the Council.

17. Mr Silvester made a complaint about this matter to the Commissioner for Local Administration in Wales in November 1992 on the basis that the Council had refused to determine the reserved matters because they considered there was no valid outline consent, whereas such a consent had been issued on 1 August 1989. The Local Commissioner stated that he could not investigate the complaint as the question of validity of the outline permission was a matter for the Courts and if a valid consent did exist then there was a right of appeal to the Secretary of State against non-determination of the reserved matters [Doc. 13]. The appeal against the alleged non-determination of the reserved matters application was lodged in January 1993 [Doc. 14].

18. A site meeting was held with Mr Silvester's Highway consultant on 10 February 1993 and following this the Chief Planning Officer informed the County Highway Authority that it seemed very unlikely that the required Agreement could be concluded due to the unwillingness of the adjacent property owner to allow a splay restriction over his land. The original outline application was then reported back to the Borough Council's Planning Committee on 8 March 1993 [Doc. 15] when permission was refused [Doc. 16]. The appeal against that refusal was lodged in August 1993 [Doc. 17].

19. With regard to the reserved matters appeal, the Borough Council wrote to the Planning Inspectorate on 3 February 1993 [Doc. 18] expressing doubts over whether it was appropriate for the Secretary of State to consider the appeal where there were considered to be no substantive planning matters and the legal issues would be best resolved in the Courts. Mr Brian Silvester replied to the submission in that letter on 14 February [Doc. 19] indicating that the Council should have applied to the Courts several years ago if they felt the outline approval should be quashed and that the Local Ombudsman had advised the Appellant to appeal against the non-determination of the reserved matters. On 17 March 1993 the Planning Inspectorate informed the parties that the Secretary of State had decided to accept jurisdiction of the appeal [Doc. 20]. On 24 March 1993 the Borough Council requested further clarification of the reasoning leading to acceptance of the appeal [Doc. 21] and this was provided by the Planning Inspectorate on 19 April 1993 [Doc. 22].

20. On 26 April 1993, the Council wrote to the Planning Inspectorate [Doc. 23] saying that they were seeking Counsel's opinion and on 7 July 1993 they informed the Inspectorate that this had been received [Doc. 24]. Counsel's conclusions were outlined and the Council asked if, in view of those conclusions, the Inspectorate still proposed to accept the appeal. The letter was copied to Mr B Silvester who wrote to the Inspectorate on 9 July 1993 expressing his views on the Council's legal points [Doc. 25]. The Inspectorate replied to Mr Silvester on 20 July [Doc. 26] and on 23 July 1993 they replied to the Council setting out their consideration of certain legal matters and stating that it was still intended

to proceed with the appeal [Doc. 27]. Comment on the correspondence in the context of an appeal and the possibility of an alternative access for the site was made by the Borough Council's Director of Legal Services in an internal memorandum to the Chief Planning Officer and Chief Executive dated 2 August 1993 [Doc. 28].

21. On 18 April 1994 the Borough Council requested that since both appeals raised significant legal questions, they should be determined by the Secretary of State rather than an Inspector. This request was declined in a letter from the Inspectorate dated 21 June 1994. However, following the public inquiry into the appeals, the parties were informed by a letter from the Planning Inspectorate dated 15 July 1994 that it had now been decided that the appeals should be recovered for determination by the Secretary of State.

22. During the period of the dispute over the validity of the 1989 outline permission for 3 dwellings, the Appellant has made other applications to develop the appeal site for 2 detached dwellings. The first application was approved by Wrexham Maelor Borough Council in October 1993 [Doc. 29] and a letter was sent to Mr C Silvester by the Council on 19 October 1993 [Doc. 30] stating that no additional land outside the private drive would be required to provide access or visibility. The second application was approved on 24 May 1994 [Doc. 31].

THE APPEALS

CASE FOR THE APPELLANT.

The main points were:

Legal issues and submissions.

23. The outline permission dated 31 July 1989 was and is legal and binding, despite the Council's claims of it having been issued by mistake. In the case of *CRS Ltd v Taif Ely* (COA 1979) [Doc. 32], Lord Ormrod stated :-

"If a planning permission is valid on its face it can and must be acted on until it is declared to be void by a competent court. Such orders can be said to be voidable, but the option to avoid lies with the court, not with the parties."

In the same case Lord Denning said:-

"When such a mistake is brought to the attention of the Court by the Attorney General or anyone else with a sufficient interest, the Court can and should declare the grant to be void and of no effect."

The appellant has repeatedly pointed out to the Council this fact that it is for the Courts to decide about validity and the Planning Inspectorate also repeated it in their letter to the Council of 23 July 1993 [Doc. 27]. A similar point was previously made by his Solicitor when the reserved matters application was re-submitted on 31 July 1992 following the refusal of the Council to accept it [Doc. 12]. This letter set out the view that if the Council felt their decision was invalid then they should have applied to the High Court for it to be quashed under Order 53 of the Rules of the Supreme Court. However, it is a requirement that such an application should be made promptly and the Council's decision was made some years ago, so it was not now open for the Council to challenge the validity of the outline permission.

24. To support their case that a permission could be shown to be unauthorised if there was a contrary resolution of the Authority, the Council had quoted remarks made by Sir Douglas Frank in the Taff Ely case when it was in the High Court, in their letter to the Planning Inspectorate of 7 July 1993 [Doc. 24]. However, this judgement had been overturned by the Court of Appeal and upheld by the House of Lords, so those remarks can be ignored. In the same letter and subsequently the Council have accepted that it is the notification rather than any resolution which constitutes the grant of permission, as shown in the Pearce Homes case (R v West Oxfordshire D C ex parte Pearce Homes : QBD 1985) [Doc. 33]. Also, as established in Miller-Mead v MHLG (2 QB 196 : 1963), the wording of a resolution should not be used to alter the wording of a notification.

25. The Council claim their case is similar to that of Norfolk C C v SSE (QBD 1973) [Doc. 34], but this is not so for several reasons. First, in that instance the committee resolved to refuse the application but an approval was sent out. Second, in this case the Council did not inform Mr Silvester about their mistake for over 20 months. Third, in the Norfolk case the officer who sent out the notification did not have delegated power to decide the application, whereas in this case the Chief Planning officer had the real or ostensible authority to send out the notice. This is similar to a reported case of Camden L B C v SSE [Doc. 35].

26. With regard to other cases referred to by the Council it should be noted that in the Pearce Homes case [Doc. 33] it was a letter and not a decision notice which was involved and in the Taff Ely case the Council did not have the power to make the decision as that lay with a joint-Authority.

27. On 19 April 1993 the Planning Inspectorate wrote to the Council [Doc. 22] stating that the Secretary of State would continue to exercise jurisdiction over the appeal APP 16-30 as he considered that the courts must ultimately be the arbiter of any challenge to the validity of the grant of planning permission. The Appellant supports this view and, as previously stated, the Council should have followed that

course of action if they felt the original outline permission was invalid.

28. The Appellant has always taken the view that since the outline permission was valid there was no need to sign a section 52 Agreement. Accordingly, he had tried to sell the land but when a prospective developer approached the Council they gave a contrary view. In an attempt to resolve matters amicably, the Appellant then decided to try and negotiate a visibility splay with others, rather than to take legal action against the Council.

29. There must also be doubts about the Council's procedures in relation to requiring the section 52 Agreement with the outline permission for a number of reasons. First, there is no written record of a request from the Highway Authority for such an Agreement, only the contention of the Council that a verbal request had been made. On the contrary, the official response to the Council's consultation, although submitted after the date of the committee, was to raise no objection to the proposal. Second, the Committee resolution refers to an Agreement with the Appellant only, whereas in fact other parties were involved who owned land outside his control. Third, the application actually included access proposals and they were not reserved for later approval, so should have been decided on merit rather than seeking to alter the nature of the application, as noted in the Encyclopedia of Planning Law, page 2-3288 [Doc. 36]. Fourth, the original aim of the Council to require a visibility splay involving land over 2 adjacent properties has since been reduced, indicating uncertainty about the actual provision necessary. Fifth, in subsequent approvals of 2 dwellings on the appeal site no such Agreement or improved visibility has been sought at all. Finally, the draft Agreement referred to School Lane rather than Church Road so would have been null and void.

30. In relation to the question of estoppel, there have been many developers interested in the site but they have not purchased because the Council have told them there is no valid permission. The issue of the permission should have estopped them from making such statements. Consequently, the appellant has suffered financial hardship, especially bearing in mind that during the period from July 1989 to April 1991 the Council did not notify the appellant of the alleged mistake and it only materialised due to enquiries from a prospective purchaser. From April 1991 the Council have sought to avoid the legal problem they have caused and to unfairly place the onus on the appellant to resolve the matter.

Outline planning application.

31. The Council have accepted the principle of residential development on the appeal site and the only matter in dispute is the alleged lack of visibility to the south from the site access along Church Road.

32. A radar speed check and traffic count has been undertaken for the Appellant [Doc. 45] which illustrates the low speed of vehicles to the south which has been measured at well below the speed limit, being 13.5 mph near the main road junction and 23.5 mph at a point 30m south of the site (adjusted 85 percentile wet weather speeds), although there is some doubt as to the precise locations of the checks. It also gave some indication of the low volume of traffic along Church Road, which was about 43 vph (one-way) during the count.

33. It has not been possible to obtain the agreement of the adjacent property owner to reserve the visibility splay of at least 30m 'y'-distance sought by the Council and in such circumstances a more flexible approach than that contained in Planning Policy Guidance 13 (1988), Appendix C, is appropriate. For example, a design guide issued by Cheshire County Council [Doc. 44] allows for the 'y'-distance to be measured to the centre of the road rather than along its edge. If this is done then a distance of some 38m can be viewed to the centre line and almost 60m as far as the junction with the A539 [Plan D] at a set-back 'x'-distance of 2m.

34. Factors which favour a relaxation along the lines suggested include the probability that there is little likelihood of vehicles overtaking along Church Road to the south of the site access; the low speed and volume of traffic; the fact that the width of the site access combined with the cemetery entrance enables vehicles to manoeuvre to obtain a good position for visibility [Plan E]; and that the Clwyd County Council's Design Guide for residential roads and footpaths allows for reduced visibility standards in Conservation Areas. A reduced standard has been applied to modern developments nearby, such as at the rear of 'The Quinta' allowed on appeal [Doc. 46], Old School Mews, and St Mary's Court north of Dark Lane.

35. In addition, it is not accepted that the safety factor accorded to an access serving 3 dwellings would be materially different to that allowed for in the cases of the telephone exchange or the 2 dwellings approved on the appeal site.

36. The Council have expressed concern about child safety along the stretch of Church Road approaching the appeal site from the south where there is no footway and restricted visibility. They suggest there is a need for visibility height of 0.6m, as set out in paragraph 5 of Appendix C to PPG 13, but it should be noted that the section 52 Agreement originally sought by the Council only referred to a clearance height of 1.05m and 0.6m was not mentioned. In any event, most children come to school by bus or with their parents and there is no evidence that they use the road rather than the available footways.

Reserved matters application.

37. Although the Borough Council have expressed concern about the impact of the proposed details on the Overton Conservation Area, it should be noted that they did not advertise the application, nor ask for design details at the outline application stage as indicated in paragraph 10.37 preceding proposal E16 of the Local Plan [Doc. 53]. Also, the County Council's Director of Architecture & Planning has raised no objection to the appeals proposals [Doc. 49].

38. The proposed details are in accord with paragraph 1.12 of the draft Planning Policy Guidance 15 [Doc. 50] in terms of design, without seeking to copy what is already in the locality, and the Council do not seem to have taken account of the sort of advice underpinning the draft PPG about designation of a Conservation Area and identifying its character. The Council also do not seem to appreciate that, apart from its entrance, the site is some distance from the edge of the Conservation Area and is largely screened from it by trees and buildings, so does not affect its setting to any significant extent.

39. The design of the proposed dwellings is similar in scale and detailing to many other properties in Overton. For example, Springfield Park has similar house types, including long sloping roofs; there are hipped roofs on several buildings, including St Mary's Avenue and a new building on the corner of Willow Street which is in the Conservation Area; and many properties have dormer windows. It follows that the scale and design of the dwellings are not out of character with the general locality or the Conservation Area. Annex A of Planning Policy Guidance 1, paragraphs A3 and A4, [Doc. 51] points out that aesthetic judgements can be subjective and taste should not be imposed by Authorities, with some diversity in design being desirable rather than just mimicry of existing buildings. Such sentiments apply in this case.

CASE FOR THE BOROUGH COUNCIL.

The main points were:

Legal issues and submissions.

40. The Council accept that the decision notice on outline application OVE 16904 dated 31 July 1989 was issued, but this was despatched in error, as the wording of the Committee resolution of the meeting to consider the application clearly shows. The Council have since revised their administrative procedures to prevent recurrence of such an error.

41. The evidence of the Chief Planning Officer, whose signature is on the decision notice, is that since there were third party objections and an oral objection from the County Highways Department to the outline application he had no delegated powers to determine that application himself or change the decision of the Committee, as the Council's scheme of delegation of powers to officers shows [Doc. 37]. The fact his signature appears on the notice is merely in his role as an authorised signatory on behalf of the Council and not in terms of use of any delegated powers to determine an application.

42. In addition, the power to enter into a section 52 Agreement lay with the full Council and not the Planning Committee. Consequently, the Committee decision to grant outline consent subject to completion of such an Agreement was subject to ratification by the Council meeting in September 1989.

43. Notwithstanding that no decision had actually been taken to approve the application, the notice was issued on the day following the Committee meeting and it is accepted this administrative error did not come to light for some time. The fact that the Council were unaware of this error is shown in a letter sent to the Appellant on 7 August 1989 advising him of the Committee's resolution and stating that once a draft copy of the Agreement was available he would be contacted again [Doc. 8]. Also, a letter from the Council dated 21 July requesting an extension of time until 20 September to consider the application had been agreed and returned by the Appellant, being received by the Council on 31 July 1989 [Doc. 38]. It is understood that following receipt of the Council's letter of 7 August the Appellant entered into negotiations with adjacent property owners seeking agreement on the provision of a visibility splay and he did not at that time challenge the need for a section 52 Agreement.

44. On 30 May 1990 the draft section 52 Agreement was sent to the appellant [Doc. 39] by the Council and reminder letters issued on 5 July 1990, 12 September 1990 and 28 December 1990 [Doc. 40]. There was no response. Eventually, as a result of discussions with prospective purchasers of the appeal site who assumed it had a planning permission, the Council realised that a mistake had occurred and informed the appellant of this on 24 April 1991 [Doc. 10].

45. It is appreciated that under normal circumstances it is the actual notification of a decision which must be referred to in interpreting whether and, if so what, planning permission has been granted, as held in the Pearce Homes case [Doc. 33, page 524] and Norfolk C C v SSE [Doc. 34, page 1404]. However, notwithstanding that principle, in this case the whole point is that there was no resolution to justify a permission and it is proper to take account of the local authority's resolution where there is notification of a purported permission which was issued without authority, as

indicated in the Norfolk C C case [Doc. 34, page 1404], the Pearce Homes case [Doc. 33, page 525, and the case of Co-operative Retail Services v Taff Ely B C [Doc. 32, pages 238 and 240].

46. Although the Norfolk CC case was about a decision to refuse, rather than approve, the Council submit that their resolution was, in both letter and spirit, confined to entering into an Agreement and that permission should only be granted on completion of that Agreement. The Agreement was never completed so there was no grant of planning permission. If that is not accepted then in the alternative there was no determination of the application or, arguably, there was a grant of permission which was subject to a 'condition precedent' (the Section 52 Agreement) which was never met. The fact that the resolution and the decision notice are so completely different must mean it is right to examine the resolution.

47. As a consequence, the notification which was sent out to the Appellant was obviously despatched in error and without authority, so the purported permission is ultra vires, void and of no effect. This conclusion is supported in the comparison of judgments in the Taff Ely case in the Court of Appeal [Doc. 32, pages 238, 246 and 251], and the speech of Lord Wilberforce in the House of Lords [Doc. 41, page 4].

48. Having regard to the remark of Lord Ormrod in the Co-operative Retail Services case [Doc. 32, page 246] about a permission being void and voidable, it is appreciated that it could be suggested that the permission could be acted upon until it is declared void in the Courts, but this is inconsistent with the remarks elsewhere in that case made by Lord Denning [Doc. 32, page 238] and Lord Browne [Doc. 32, page 251], as if a permission is void it has no effect. It also conflicts with the remarks of Lord Widgery and Lord Wilberforce in the Norfolk CC and Co-operative Retail Services cases already mentioned, so the remark of Lord Ormrod stands alone. In this case, the purported grant of permission was and is void, as opposed to voidable, and cannot be said to be valid until declared otherwise as the Appellant has suggested.

49. Even if the notification could be said to have amounted to a representation to the Appellant, there was no reliance by him such as to give rise to an argument of estoppel, as indicated in the Norfolk C C case [Doc. 34, page 1405 F] and in Western Fish Products v Penwith D C [Doc. 42]. The appellant has suffered no detriment, as he knew from an early stage that a section 52 Agreement was required by reason of the letters from the Council. He sent no letter to object to the Agreement and made no comment when the draft Agreement and further letters were sent to him. He also undertook negotiations with adjoining property owners, as requested by the Council, over a considerable period. The evidence of Mr Benshaw confirms that discussions had taken place with his parents, as does his Solicitor's letter to the Appellant in

June 1992 [Doc. 43], and Council letters to the Highway Authority indicate that they assumed such discussions were ongoing.

50. It is clear that since there was no grant of outline planning permission, then the Council were quite correct in returning the 'application' for reserved matters as there could be no such 'application'. It follows there is also no jurisdiction for the appeal to be entertained. Alternatively, the appeal APP 16-30 might be dismissed on legal grounds or be considered as being against a failure to give notice of a decision or against a refusal to grant planning permission (there having been no grant).

Outline planning application.

51. The Borough Council's view, supported by the County Highway Authority, is that visibility at the junction of the private drive to the appeal site with Church Road is seriously restricted to the south, and would be detrimental to highway safety and free flow of traffic. It is accepted that Church Road is straight and level, with traffic volumes which are not high. Also, there have been no accidents in the immediate vicinity of the site entrance, although in the past 10 years there have been 2 minor accidents at the St Mary's Avenue/Dark Lane junctions to the north and 10 minor and 2 serious accidents at the main road cross-roads to the south.

52. With regard to visibility at the junction of the private drive with Church Road, at 2m 'x'-distance there is well over 70m 'y'-distance to the north. However, there is only 8m to the south over land in the control of the Appellant or Highway Authority at a height of 1.05m. If land to the south owned by others is included then the 'y'-distance increases to some 20m. The radar survey undertaken for the Appellant is difficult to interpret and could not be clarified by the Appellant himself, so the Council have used estimates of vehicle speed of 30 mph when travelling south and 20 mph travelling north.

53. At these speeds, Appendix C of Planning Policy Guidance 13 [Doc. 47] requires a 'y'-distance of 70m to the north and 33m to the south, so the visibility to the south is seriously sub-standard. In addition, there is a requirement that where small children are involved, as is the case since St Mary's Primary School is nearby, then visibility should be available at a height of 0.6m, whereas the existing boundary enclosures of 4 and 5 Church Road are about 0.95m in height.

54. It is accepted that approval has been given in the past for a telephone exchange, but it is submitted that the traffic generation would have been significantly less [Doc. 48] than with 3 dwellings, probably being at most 8 vehicle movements per day compared with around 18 movements. Similarly, the 1993 and 1994 approvals for 2 dwellings would generate fewer

movements.

55. The Highway Authority would be willing to reduce the southern 'y'-distance to 30m [Plan F], but even then this would include frontage land belonging to 4 and 5 Church Road. It is clear from past negotiations and the evidence of Mr Henshaw that this land cannot be brought under the control of the Appellant.

Reserved matters application.

56. It is emphasised that the appeal does not really relate to a 'non-determination' as such. The Council refused to accept the reserved matters application as it was invalid because, in their view, no outline permission existed. Consequently the application was returned to the Appellant and no formal consideration was given to the submitted details. It is only in relation to the appeal that the merits have been assessed.

57. The site is adjacent to and visible from within the Overton Conservation Area from points along School Lane near the Church and is located at the rear of cottage scale frontage development. The large dwelling types proposed would be out of scale and character with the Conservation Area. Also, their half-hipped roofs, extended roof pitch, dormer windows and timber cladding constitute features alien to the general form of surrounding development.

58. For the foregoing reasons, the scale and detailed design of the proposal would be contrary to the provisions of the development plan, in particular policy G4 of the Clwyd Structure Plan First Alteration [Doc. 52], proposal E.16 of the adopted Wrexham Maelor Local Plan [Doc. 53], and proposal S.4 in the draft Local Plan Review [Doc. 54] which is at a pre-modification stage. Structure Plan policy G4 seeks to control development and protect views affecting the setting of a Conservation Area; Local Plan proposal E.16 controls design in Conservation Areas; and Local Plan Review proposal S.4 relates to the design of new development and seeks to ensure it is not detrimental to existing townscape. The proposed details would also be in conflict with the advice in Planning Policy Guidance 1, Annex A, paragraph A4 [Doc. 51] relating to sensitive areas, and that on good design in Planning Policy Guidance 3 (Wales), paragraphs 4 - 6 [Doc. 55].

CASES FOR INTERESTED PERSONS.

The main points were:

59. Mr P Henshaw. He owns the property at 5 Church Road adjacent to the appeal site entrance. The tenant of that property is concerned about possible overlooking from the

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dwellings. He recalls the Appellant approaching his father and mother when they lived in the house in connection with obtaining land for a visibility splay. His father had discussed the matter but had never agreed to sign any Agreement prior to his death in December 1991. His mother was also approached but refused to have anything to do with the matter. She died in October 1992. Mr Henshaw had discussed the request for a splay with his own Solicitor, but had been advised not to sign any Agreement and was still not willing to do so.

60. Mrs Y A Barber: Her case, as expressed at the inquiry and in a subsequent letter dated 30 June 1994, is that the dwellings would be too close to her narrow rear garden. She would look out onto a blank wall on plot 3 which would dominate and block out her aspect. She is also concerned about the safety of children passing the site entrance on the way to school.

61. Mrs D Lee : Objects to the proximity of the dwellings to her rear garden and seeks protection for the existing trees along the southern boundary of the site.

CONCLUSIONS OF INSPECTOR

(Note: The sources of the facts and other material used in my conclusions are contained in brackets)

Legal matters.

62. I find the following background facts :

(a) The outline application for 3 dwellings, including details of access and siting, was submitted on 29 May 1989. It was considered by Committee on 31 July 1989 which recommended that the Council entered into a section 52 Agreement with the applicant and that conditional planning permission be granted on completion of the Agreement. [10,11]

(b) The Committee's recommendation was approved by a full meeting of the Borough Council on 27 September 1989. [13]

(c) The power to enter into a section 52 Agreement lay with the full Council and not with the Planning Committee. [42]

(d) A decision notice of approval for the outline application was issued to Mr C Silvester by the Council on 1 August 1989, without completion of the section 52 Agreement. [14]

(e) The decision notice issued on the 1 August 1989 was signed by the Chief Planning Officer as an authorised signatory for the Borough Council and not under any delegated powers to determine certain applications. Since the outline application had been the subject of objections, his delegated powers could not, in any event, have been properly applied. [41]

(f) A letter was sent to Mr Silvester by the Council on 7 August 1989 informing him of the Committee's resolution of the 31 July 1989. [14]

(g) The Council did not recognise that a decision notice had been issued for some 20 months after August 1989, until enquiries by a prospective purchaser of the site made them aware of this. The Chief Planning Officer informed the Director of Legal Services of the situation on 9 April 1991. [14,15,25,30,43,44]

(h) The Council wrote to Mr Silvester on 24 April 1991 informing him that the decision notice did not represent the resolution made by the committee. [15,44]

(i) A draft section 52 Agreement was sent to Mr Silvester on 30 May 1990 with 'reminder' letters sent up to the end of that year by the Council. It is known that Mr Silvester had discussions with adjacent landowners to try and obtain a reservation of the required visibility splay. The duration and frequency of these discussions is uncertain, but took place at least for a period prior to December 1991 and through 1992 until February 1993 when it was decided no Agreement could be concluded. [14,18,28,33,43,44,49,59]

(j) An application for approval of reserved matters in respect of the approval issued on 1 August 1989 was sent to the Council on 29 July 1992 but was not accepted and returned to Mr Silvester's agent. It was re-submitted on 31 July 1992, but again returned by the Council. [16]

(k) The original outline application was reported back to the Council's Planning Committee for re-consideration on 8 March 1993 and a notice refusing planning permission was issued. [18]

63. I note the Appellant's concern about the manner in which the Council dealt with the 1989 outline application, which actually included access details, [10] and the proposed section 52 Agreement, [29] as well as the matter of estoppel. [30,49] However, it is my opinion that these concerns do not affect the determination of the planning merits of the appeals before the Secretary of State.

64. With regard to the outline application itself, the decision against which an appeal has been made is the refusal of consent made in March 1993. [4] If there is any invalidity in that decision then I believe that the powers of the Secretary of State under section 79(1) to deal with the application as if it had been made to him in the first place could be applied.

65. However, with regard to the reserved matters appeal, the Appellant has relied on the 1989 decision notice being a valid outline permission by submitting his reserved matters application within the 3 years prescribed period from the date of that notice. [5] Those reserved matters cannot, in themselves, constitute a planning application for the purposes of the 1990 Act, but only the submission of matters reserved by the outline permission of 1989. It follows that there cannot be a valid 'application' for reserved matters without a valid outline consent in 1989.

66. In my opinion, it is clear that there was no actual resolution to approve the outline proposal in 1989. The recommendation to the Planning Committee and the resolution eventually approved by the full Council refers to permission being granted on completion of a section 52 Agreement. No such Agreement has ever been completed. [11,13,18,46]

67. I believe that the fact that there was no authority from the council for a permission, together with the evidence of the Council's actions subsequent to the date of the decision notice, shows that its issue was a mistake. [14,15,40,43,44] However, the question remains as to whether the decision notification still constitutes a valid outline planning permission on which the Appellant was entitled to rely, as without it the application for reserved matters must be invalid. Although I have reported the submissions of the parties on this matter, since its resolution involves purely legal considerations I intend to make no recommendation with regard to the status of appeal APP 16-30.

Outline planning application.

68. It is accepted by the main parties that the only issue between them involves the restricted visibility to the south of the site access. [1,31] In dealing with this matter, I have first had regard to the advice in Planning Policy Guidance 13 (1988). Taking account of paragraph 2 of Appendix C of that PPG, I consider that an 'x'-distance of 2m for the access junction with Church Road is acceptable.

69. The Council and some residents suggest there is a potential safety problem for young children passing along Church Road in front of the site access, especially on their way to school. [53,60,Doc.4(a)] Although the pedestrian 2.4m 'triangle' and 0.6m height visibility advised in paragraph 5 of PPG 13 (Appendix C) can easily be achieved to the north, there is an obstruction to the south of a 0.7m wall and pillar alongside the drive to 5 Church Road [8] which marginally intrudes into the splay and would reduce the side view along the footway from the required 2.4m 'y'-distance beyond the vehicle to about 1.5m.

70. During my pre-inquiry site visit I did notice a few children using the eastern side of this part of Church Road, but they were accompanied by adults. Outside school arrival and departure hours I would expect the footway on the opposite side of the road to be used in the main and the amount of pedestrian movement in the locality seemed very light during my visits to the area. Also, the height of the obstructing wall is generally below that of a young child of walking age, as indicated in paragraph 3.58 of DoE/DoT Design Bulletin 32, even though it exceeds the 0.6m advisory standard, and it must be assumed that pedestrian safety was taken into account in 1985 when the whole entrance area was re-aligned. [9] It is my conclusion that the degree of risk to pedestrian safety is not sufficient to warrant rejection of the proposal.

71. Turning to the access visibility in relation to vehicles and with regard to the 'y'-distance, it is unfortunate that although the Appellant had commissioned a speed survey its findings were not clear in relation to the precise locations of the radar checks. [32,52] However, it does show that 85

percentile speeds near the site access are well below the speed limit and the Council's highways witness was prepared to use an estimate of 20 mph for vehicles heading north which he equated with a 'y'-distance of 33m on Table A of Appendix C of PPG 13. [32,52,53] In fact, the distance shown on the original draft section 52 Agreement plan [Doc.9] and that which the Council now say they are prepared to accept is 30m. [55] In my view, since the highest wet weather speed in the Appellant's survey was 23.5 mph, then this should be rounded up to 25 mph and the Table A 'y'-distance of 45m is appropriate.

72. However, the advice in paragraph 6 of Appendix C to PPG 13 is that it is not always practicable to comply fully with visibility standards and all the relevant circumstances need to be assessed in reaching a decision, providing that visibility is not reduced to a level that danger is likely to be caused. In this case, I believe that there are several factors which do justify a reduction in the standard.

73. First, it must be acknowledged that there seems to be no realistic possibility of obtaining a visibility splay which conforms to PPG 13 because adjacent land owners will not co-operate. [18,33,59] This must be borne in mind with the fact that, other than the visibility issue, there is no objection to the principle of residential development of the site. [31] Second, the Council accept that visibility to the north along the side of the carriageway closest to the access junction is quite satisfactory [52,53] and this is where awareness of on-coming traffic is most important. Third, Church Road/School Lane carries low volumes of traffic, and has good alignment and forward visibility. [7,51] Fourth, as I have already mentioned, the Appellant's survey suggests that speeds in the vicinity of the site access are well below the 30 mph speed limit. Fifth, there is no history of accidents close to the site entrance. [51] Sixth, the site is for 3 dwellings which the Council estimate might generate 18 movements a day. [54] Although this may be significantly greater in percentage terms than in the case of the telephone exchange or the extant permission for 2 dwellings granted for the site and not objected to by the Highway Authority, it is in real terms a low generation of traffic which is likely to be dispersed throughout the day. Consequently, I regard the traffic implications of these previous consents, where the Council did not seek any additional visibility splay, [22] as not substantially different to the appeal proposal.

74. Finally, is the matter of the degree of visibility which can actually be achieved at present and I consider that the fact that, at a 2m 'x'-distance, a car driver when looking south can see the whole of the west side of Church Road is important [Photo. 1(3), Plan D]. This means that vehicles leaving the A.539 junction can be seen and they are likely to be travelling slowly as they would have just had to stop or negotiate a right or left turn. Consequently, the stopping sight distance required for that traffic, as well as vehicles

leaving the site access, would not exceed the visibility distance. The only problem would be in the case of any vehicles overtaking on the east side of the road, but I consider this would be an unlikely occurrence so close to the junction and in such a case the emerging driver can see just over 20m along the conventional 'y'-distance or about 38m if the line is taken through the centre of the Church Road carriageway, as the Appellant suggested. [33]

75. In all the circumstances, I believe that a reduction in the normal visibility standards would not be dangerous and that the access junction is acceptable as it is.

76. At the inquiry, local residents expressed concern about the siting of the dwellings and landscaping matters, [59-61] although the Council raised no objection to the siting when considering the original 1989 application [Doc.5] or in dealing with the current appeal. According to the submitted plans, the side of the plot 2 dwelling would be 2.3m from the rear gardens boundary of 1 - 3 Hanmer Close and about 12.3m from the actual houses. The side of the plot 3 house would be 5m from the rear boundary of 5 - 7 Hanmer Close and some 14m from the dwellings. [Plans B and C] I would make it clear that the siting is, of course, the same on both the outline and reserved matters proposals so the residents' objections apply to both, and also that if the 1989 outline consent is found to be valid then the siting has already been approved, as it was not a reserved matter.

77. The proposed dwellings are orientated to face west-east and there are no first floor side windows directly facing Hanmer Close. The boundary between the appeal site and Hanmer Close already has substantial hedgerow trees along much of its length and further landscaping would assist screening and privacy. The proposed dwellings are to the north of Hanmer Close and, apart from some possible loss of winter sunshine into certain of the gardens, would not cause loss of daylight or significant loss of sunlight, in my opinion. The rear of the dwellings for plots 1 and 2 are in excess of 32m away from the rear of the dwellings at 4 and 5 Church Road, with the view partly obscured by trees and outbuildings and I consider they are sufficiently remote not to cause undue loss of privacy to those dwellings. Given the distances of the proposed dwellings from nearby properties, their orientation and the scope for additional boundary planting, it is my conclusion that the proposal would not be harmful to the privacy and amenity of existing dwellings in the area.

78. I shall recommend that outline planning permission is granted for the 3 dwellings, subject to the 'standard' outline conditions and a requirement that the drive to the site is suitably surfaced and sufficiently wide for 2-way residential traffic, as indicated in Figure 81 of Design Bulletin 32. At the inquiry, the Council suggested a condition to require details of open space treatment and other tree and shrub planting details, but I believe this is subsumed in the status

of landscaping as a 'reserved matter'. However, I do believe that it would be appropriate to require that any landscaping scheme should allow for retention of existing boundary trees and further boundary planting to contribute to the privacy of nearby properties. A condition is also needed to ensure the Church Road entrance gates are kept open to avoid vehicles straddling the footway.

Reserved matters application.

79. The Council's objections concentrate on the alleged impact of the dwellings on the nearby Conservation Area and conflict with development plan policies, [57,58] but I find their concerns are largely unfounded. In my opinion, School Lane provides a clear demarcation line between the rather uniform character of the 20 century development to the east and the quite different traditional informal village form and layout to the west, where buildings are mainly constructed of brick and slate. This is reflected in the fact that School Lane also forms the Conservation Area boundary, until that line curves around the rear of 1 - 5 Church Road which constitute a small enclave of properties related to the old established buildings around the A.539 junction. [Plan A]

80. I consider that in terms of its location and surroundings the appeal site is clearly an intrinsic part of the area east of School Lane and has no obvious connection with the character or appearance of the Conservation Area. In particular, there is a local authority style housing estate to the north of the site, with rendered house walls and tiled, hipped roofs, and to the south and south-east are modern brick dwellings with concrete tiled roofs.

81. Although the site is visually enclosed by existing development to a considerable extent, I accept that there is a view into it from a short section of Church Road when passing the church-yard. However, this is not part of an important approach or vista into or out of the Conservation Area which contributes to its special character. In fact, the vista across the site at present is of little merit, being partially closed in the foreground by the side of the Council house at 12 Church Road and the fruit trees and large tin shed at the rear of 5 Church Road and terminated by the bland modern roofscape of the rear of Hammer Close and properties further east. Also, when looking in the direction of the appeal site, the eye is drawn to the foreground where the ornamental cemetery entrance is situated.

82. Overton does not seem to be an area where the Conservation Area buildings and materials have significantly influenced extensions to the original village. Even so, the detailed design elements of the proposed dwellings which have been criticised by the Council are in fact already featured on many old and modern properties in Overton, as the Appellant has pointed out. Apart from the examples he has quoted, [39]

I noted during my site visit that modern development at Mill Court has timber grid cladding, as do old buildings in the Conservation Area such as the Post Office and the White Horse public house, and significant numbers of old properties feature dormer windows, as does the recent St Mary's Court entrance. Also, the length and slope of roof pitches vary substantially on both old and new buildings.

83. With regard to the development plan, I note that the County Council Director of Architecture & Planning has no objection to the proposal in conservation terms, [37] so it can be assumed that he does not feel policy G4 of the Structure Plan is compromised and, as I have indicated, I do not consider that the Conservation Area setting or views are affected. Proposal E16 of the adopted Local Plan concerns development within Conservation Areas so does not apply to the body of the appeal site. The other policies in the emerging Local Plan and in Government guidance refer to good design which is in scale and character with its surroundings.

84. I can see no objection to the overall design of the proposed dwellings, in itself, nor do I find that their scale would be visually dominant or intrusive in relation to the 2 storey height and mass of 2 - 5 Church Road. I also consider that their plot spacing and detailing are not out of accord with the existing locality which already offers a range of different house types, styles and spacing.

85. In any event, I am in no doubt that although the setting of the development itself is pleasant, it is not of a particularly sensitive character, and I find the advice in the last sentence of paragraph A3 of PPG 1 (Annex A) is applicable in this case.

86. It is my conclusion that the application for reserved matters should be approved subject to the statutory time limit and certain other conditions, as follows. First, no details of the external facing materials have been given and this is necessary in the interests of the visual amenity of the locality. Second, the landscaping scheme specification does not state the species to be planted or those existing trees to be retained or the height of the screen wall, and these requirements need to be incorporated into a condition, together with a period for maintenance. The wall and fencing should be erected before the dwellings are occupied to provide privacy. The Council mentioned a condition to ensure the existing entrance gates are kept open, but this would not relate to any of the reserved matters so I do not consider it could be properly imposed. Such a condition has been suggested for the outline proposal.

(b) On the assumption that the application is valid and a decision on the appeal is required, I recommend that the appeal is allowed and approval given to the details submitted by the application dated 29 July 1992 in respect of the matters of design, external appearance and landscaping of buildings which were reserved by the outline planning permission dated 31 July 1989 for 3 detached dwellings on land off Church Road/School Lane, Overton, subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 2 years from the date of this letter.
2. samples of the external facing and roof materials shall be submitted to and approved by the local planning authority before development commences.
3. details of the species of trees and shrubs proposed to be planted and existing trees to be retained in accordance with the scheme shown on drawing L/88/3 (block plan), together with the height, materials and positions of the screen wall and any fences, shall be submitted to and agreed by the local planning authority before development commences.
4. the approved landscaping scheme shall be carried out in the first planting season following occupation of the dwellings or completion of the development, whichever is the sooner, and any trees or shrubs which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
5. any fencing or wall approved as part of the landscaping scheme for any plot shall be provided prior to the occupation of the dwelling erected on the plot.

I have the honour to be
Sir
Your obedient Servant

D N WILKS
Inspector

CYNGOR BWRDEISDREF

Wreccsam Maelor**Wrexham Maelor**

BOROUGH COUNCIL

THE GUILDHALL,
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In pursuance of its powers under the Acts and Orders referred to below, the Borough Council, as District Planning Authority, hereby determines your application in accordance with the particulars and plans comprising the application.

Applicant Colin Silvester

Code Number OVE 16904

Agent Colin Silvester,
11, Pinewood Crescent,
Holcombe Brook
Bury,
Lancs., BL0 9XE

Date received 31st May 1989

Decision date 1st March 1993

Town and Country Planning Act 1990
Town and Country Planning General Development Orders 1988

Refusal of Outline Planning Permission

LOCATION AND DESCRIPTION OF DEVELOPMENT

SITE OFF SCHOOL LANE, OVERTON

ERECTION OF 3 DETACHED DWELLINGS

W.C. APPEAL
See APPEAL
DECISION
ALLOWED
3/11/94

PARTICULARS OF DECISION

OUTLINE PERMISSION REFUSED FOR THE REASON(S) STATED BELOW

- 01 The Council considers that to allow the proposed housing development deriving access from the private drive with restricted visibility at its junction with School Lane would create conditions prejudicial to the free and safe flow of traffic and pedestrians on the public highway.

Officer appointed for this purpose

Refer to the Statement of Applicant's Rights and General Information enclosed..