

PLANNING STATEMENT

APPLICANT:

Gladman Developments Limited

SITE:

Former Site of Hafod Tileries, Hafod Road/Bangor Road,
Johnstown, Wrexham, LL14 6ET

DATE:

9 March 2020

Report Drafted By	Report Checked By	Report Approved By
MH	MH	MH (revision to original issued to client)
21.02.20	26.02.20	09.03.20

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Appendix 1	Inspector's Report, the Decision Letter and the associated Unilateral Undertaking - ESC P/2013/0545 (PINSW Appeal Reference: APP/H6955/A/15/3135730).
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1. INTRODUCTION

BRIEF

- 1.1 Hourigan Connolly is instructed by Gladman Developments Limited (hereafter referred to as “the Applicant”) to prepare a Planning Statement as part of an application to vary Conditions 3, 4, 5 and 30 of Outline Planning Permission: ESC P/2013/0545, granted on appeal by the Welsh Ministers by Decision Letter dated 14 November 2016 (PINSW Appeal Reference: APP/H6955/A/15/3135730). The Outline Planning Permission relates to the former site of Hafod Tileries, Hafod Road/Bangor Road, Johnstown, Wrexham, LL14 6ET (hereafter referred to as the site) and a mixed use development including residential, retail, business and industrial uses.
- 1.2 In accordance with good practice the application follows pre-application discussions with Officers of Wrexham County Borough Council (hereafter referred to as the Council and the Local Planning Authority (LPA)). Those discussions informed the conditions to be varied and the scope of supporting information required in support of the application. The Applicant is grateful to the LPA for the input provided at the pre-application stage.
- 1.3 The aim of the application is to secure revised access arrangements for this mixed use development site with a view to the alternative access arrangements helping to bring the site forward for development.
- 1.4 It should be noted that at the time of writing the Council's Local Development Plan 2 (LDP2) is being examined by Inspectors appointed by the Welsh Ministers. Hourigan Connolly appeared at the Examination on behalf of the Applicant in relation to a range of matters. In accordance with duly made objections lodged at the Deposit Stage of the LDP2 the Council agreed (during the Examination) to remove the contribution the site would make to housing delivery over the LDP2 Plan period. That decision does not affect in any way the suitability of the site for *inter alia* housing but it is a pragmatic acknowledgement on the part of the Council that, at the time of the duly made objections and Hearing sessions, the approved development was not viable. That remains the case, but it is hoped that if this latest application is approved it will assist the Applicant in taking a step closer to being able to deliver the development.

PURPOSE

- 1.5 The purpose of this Planning Statement is as follows:
- To describe the site and surrounding area.
 - To identify any statutory or local planning-related designations affecting the site.

- To examine any relevant previous planning decisions that have been made in relation to the site.
- To describe the pre-application engagement that has taken place.
- To provide further details and justification for the proposed variation of conditions.
- To outline the documents submitted in support of the proposals.
- To consider the proposed development having regard to the provisions of the Development Plan.
- To consider any other material considerations.

2. THE SITE & SURROUNDING AREA

JOHNSTOWN

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

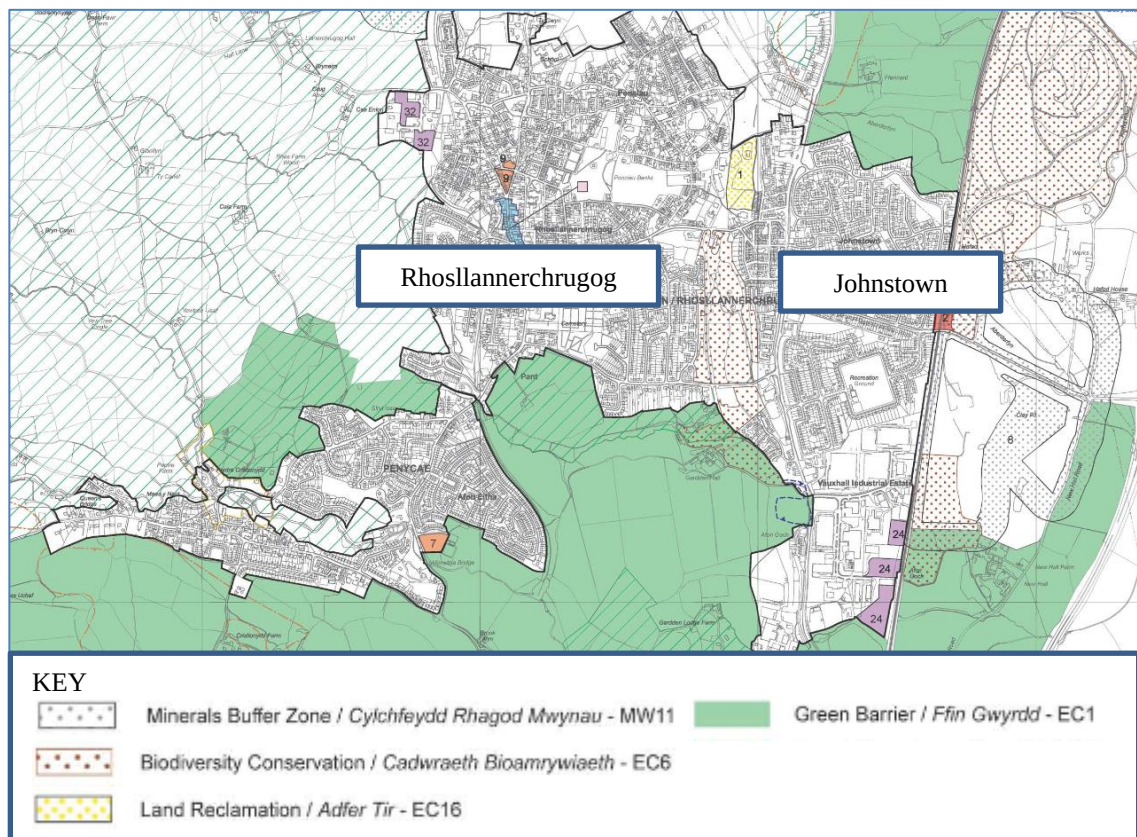


Figure 2.1: Johnstown context with Rhosllannerchrugog.

- 2.2 The UDP identifies a three settlement hierarchy comprising of a Principal Town, Urban Villages and Rural Villages (UDP, Page 9). Johnstown is identified as an 'Urban Village' which is the second tier below Wrexham as the only 'Principal Town'.
- 2.3 Johnstown is approximately 5km to the southwest of Wrexham Town Centre and is located within the western part of the County Borough.
- 2.4 According to the 2011 Census Johnstown has approximately 1,300 households which are split into three main areas, the Moreton Estate, Nant Parc and the older part of the village. The ward population at the 2011 census was 3,266.

- 2.5 There are two schools in Johnstown: Johnstown Infants School and Johnstown Junior School.
- 2.6 There are three public houses in Johnstown; the New Inn; the Moreton Inn and the Grapes.
- 2.7 There is also a Post Office, shops and takeaways.

THE SITE

- 2.8 The site comprises previously developed land extending to circa 17.34 hectares (42.84 acres) and lies to the east of Johnstown. The A483 is located approximately 320 metres to the east.
- 2.9 Planning Policy Wales – Edition 10 (PPW10) (December 2018) defines previously developed (brownfield) land on Page 38, as:

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

Excluded from the definition are:

- *land and buildings currently in use for agricultural or forestry purposes;*
- *land in built-up areas which has not been developed previously, for example parks, recreation grounds, golf courses and allotments, even though these areas may contain certain urban features such as paths, pavilions and other buildings;*
- *land where the remains of any structure or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings;*
- *land which is species rich and biodiverse and may qualify as section 7 habitat' or be identified as having nature conservation value; and*
- *previously developed land subsequently put to an amenity use.*

- 2.10 The accompanying footnotes to the definition of previously developed land set out in PPW10 states *inter alia* that the curtilage is defined as the area of land attached to a building and that all of the land within the curtilage of the site will also be defined as previously-developed. The reference in the footnotes to not all of a curtilage of a previously developed site necessarily being suitable for development are also acknowledged.

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



Figure 2.2: Site Location Denoted by Red Circle.

- 2.12 Dennis Ruabon Tillery was founded in 1878 but closed in 2008 after 130 years of manufacturing.
- 2.13 The site comprises the former Dennis Ruabon factory an industrial legacy site which has had a long association with the production of clay products (bricks and tiles) due to the large deposits of clay in the immediate vicinity.
- 2.14 The majority of the application site has remained vacant since 2008 and is mainly derelict. There is a large amount of hardstanding, former clay stock piling areas, tipped areas as well as redundant buildings. The site is traversed by two high voltage power lines carried by pylons.
- 2.15 In terms of natural features there are areas of broadleaved woodland mainly in the southern part of the site together with numerous hedgerows and trees along the boundaries of the site. The Aberderfyn Brook runs through the southern section of the site and there are also areas of standing water within the site.

THE SURROUNDING AREA

- 2.16 To the north of the site are industrial and sui generic uses comprising a concrete batching plant (including a 20KW wind turbine with a tower height of 18 metres) and a gas bottling business. Further to the north is Bonc Yr Hafod a Community Park comprising woodland situated on waste

from the former Hafod Colliery. The Park forms part of the Johnstown Special Area of Conservation (SAC) which also includes land to the west of the application site beyond which is the Chester to Shrewsbury railway line and the Johnstown urban area.

- 2.17 To the east of the site is Hafod Road beyond which is Ty Coch Farm and the A483. The A483 is a main arterial route through the Welsh Marches providing a dual carriageway link for much of its length between Chester, Wrexham and Ruabon. To the south of Ruabon and close to the village of Chirk the A483 joins the A5 which provides a link between the port of Holyhead in North Wales and London.
- 2.18 To the south of the site is Bangor Road (B2426). The northern side of Bangor Road (adjoining the application site) has a footpath providing a pedestrian link to Johnstown. Further to the south is Hafod clay quarry and landfill site which is owned and operated by Cory Environmental.
- 2.19 As noted in the Inspector's report for the appeal the site is located within acceptable walking and cycling distance of a range of shops, services and community facilities in Johnstown to meet day-to-day needs.

3. STATUTORY AND OTHER DESIGNATIONS

JOHNSTOWN SPECIAL AREA OF CONSERVATION (SAC)

- 3.1 The Johnstown SAC is important because of its population of newts and lies to the north and west of the application site. However, a small part of the SAC (which is not proposed to be developed) lies within the application site.



Fig 4.1. - Aerial Image Identifying The Johnstown SAC – Originally Taken From The Countryside Council for Wales' Web Site.

- 3.2 The application that was previously subject to appeal was accompanied by a Habitats Regulation Assessment.

TREE PRESERVATION ORDERS

- 3.3 An Arboricultural Impact Assessment by FPCR was submitted in support of the original Outline Planning Application. This has been up-dated to accompany this latest proposal. It is our understanding that there are no Tree Preservation Orders affecting the site.

PUBLIC RIGHTS OF WAY

- 3.4 Public Rights of Way are identified in Figure 6 of the Transport Assessment submitted in support of the Outline Planning Application and in Figure 4.2 below.

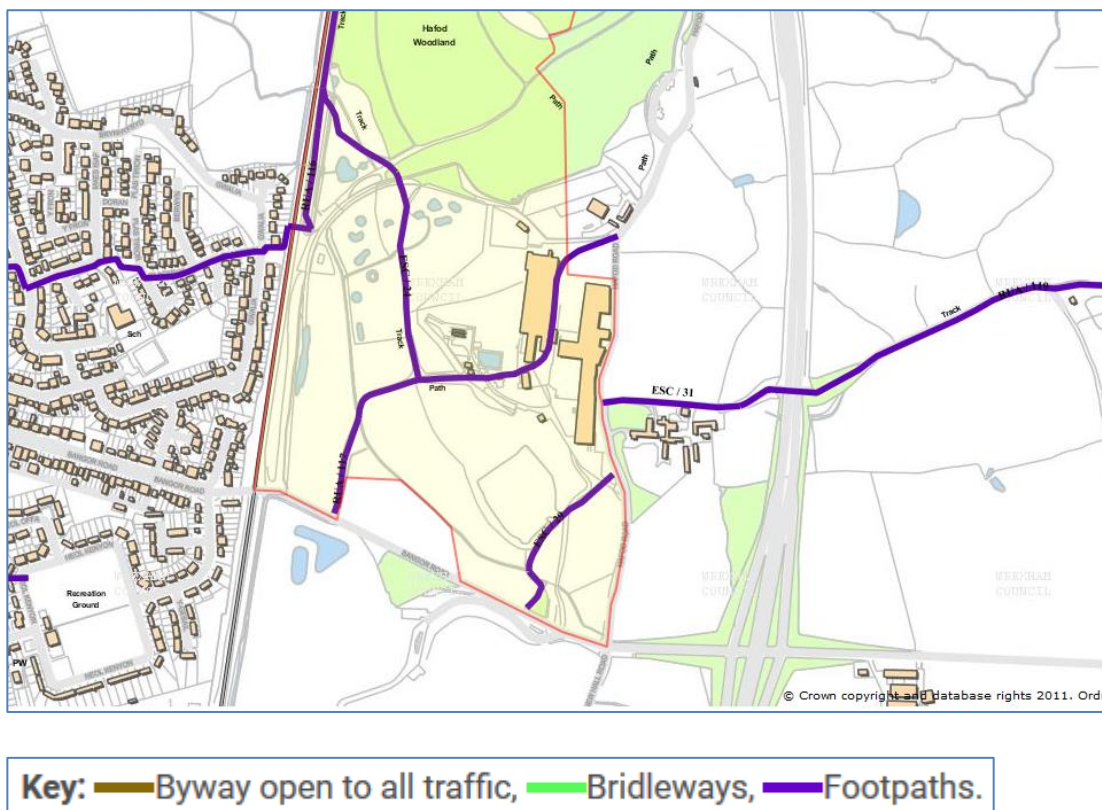


Fig. 4.2 - Application Site Public Rights of Way (Source: Wrexham County Borough Council Online Definitive Map).

FLOOD RISK

- 3.5 According to Natural Resources Wales (NRW) Development Advice Map the application site is located within Zone A and is at a low risk of fluvial flooding. However, the original outline planning application was accompanied by a Flood Consequence Assessment which considered flooding from various sources in more detail.

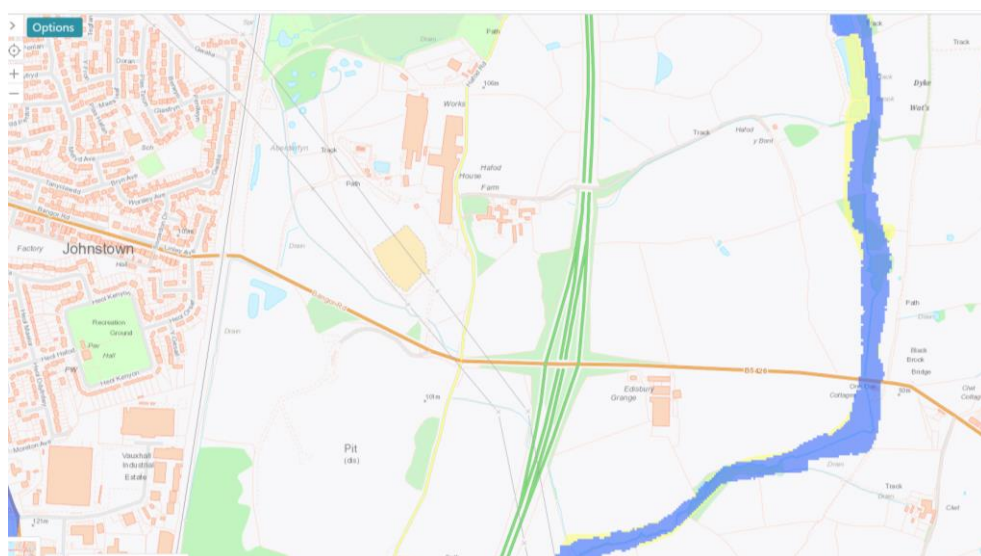


Fig. 4.2 – Extract from the NRW web site.

AIR QUALITY MANAGEMENT AREAS

- 3.6 The original outline planning application was accompanied by an Air Quality Assessment; however, it is worthy of note that neither the site nor the surrounding area falls within an Air Quality Management Area.

DESIGNATED HERITAGE ASSETS

- 3.7 The original outline planning application was accompanied by a desk based archaeological assessment. This concluded that the site contains no designated heritage assets.

4. PLANNING HISTORY

- 4.1 The only planning decision of relevance to this latest application is the extant Outline Planning Permission further details of which are given below.

**OUTLINE PLANNING PERMISSION: ESC P/2013/0545 (PINSW APPEAL
REFERENCE: APP/H6955/A/15/3135730)**

- 4.2 Outline planning permission (all matters reserved save for means of access) for redevelopment of land at Hafod Tileries for a proposed mixed use development of up to 300 (Use Class C3) residential dwellings, 465 sq. m. (Use class B1, B2 & B8) of business, industrial, storage & distribution units, 235 sqm (Use Class A1) of retail floorspace, ecological enhancements, landscape, open space, highway improvements and associated works was sought on 30 July 2013. The application was refused by Notice dated 16 June 2015. An appeal was subsequently lodged and on 1 December 2015 and this was recovered for determination by the Welsh Ministers as the proposals involved more than 150 dwellings. An Inquiry was subsequently held between 26 and 28 April 2016. Inspector Began subsequently recommended that the appeal be allowed, and outline planning permission be granted. The First Ministers accepted that recommendation and granted outline planning permission subject to the provisions of a Unilateral Undertaking dated 5 May 2016 and the 31 conditions set out in the Decision Letter dated 14 November 2016.
- 4.3 A copy of the Inspector's report, the Decision Letter and the associated Unilateral Undertaking appear at **Appendix 1** for ease of reference.

5. PRE-APPLICATION CONSULTATION

PRE-APPLICATION DISCUSSIONS

- 5.1 The proposals have been discussed in detail with various Officers at the Council on a number of occasions via electronic communication, verbally over the phone, and during meetings at the Council offices. In short, the key Officers at the Council have been kept up to date on the progression of the proposals, with the Applicants engaging with the Council throughout.

PRE-APPLICATION COMMUNITY CONSULTATION

- 5.2 There is no statutory requirement in Wales for pre application community consultation for variation of condition applications dealt with under Section 73 of the Act.

6. THE PROPOSALS

BACKGROUND

- 6.1 The aim of the application is to secure revised access arrangements for this mixed use development site with a view to the alternative access arrangements helping to bring the site forward for development. In that respect the proposals seek to change the approved roundabout junction for the site to a priority controlled junction with right turn ghost island.

THE VARIATION OF CONDITIONS

- 6.2 As set out in Chapter 1 the application seeks to vary Conditions 3, 4, 5 and 30 of Outline Planning Permission: ESC P/2013/0545, granted on appeal by the Welsh Ministers by Decision Letter dated 14 November 2016 (PINSW Appeal Reference: APP/H6955/A/15/3135730). A copy of the Inspector's report, the Decision Letter and the associated Unilateral Undertaking appear at **Appendix 1** but for ease of reference the relevant conditions are set out below and beneath each condition we set out the proposed wording for the variation.

CONDITION 3

- 6.3 Condition 3 states:

"Plans and particulars of the reserved matters referred to in conditions 1 and 2 shall be submitted in writing to the Local Planning Authority before the expiry of 5 years from the date of this permission".

- 6.4 It is proposed to vary Condition 3 as follows:

"Plans and particulars of the reserved matters referred to in conditions 1 and 2 shall be submitted in writing to the Local Planning Authority before midnight on 13 November 2021".

- 6.5 The condition is to be varied to include a specified date (not extending beyond the date set in the original outline planning permission) at the request of the LPA although it should be noted that there is an ability to extend the life of a planning permission in Wales under Section 73 of the Town & Country Planning Act.

CONDITION 4

- 6.6 Condition 4 states:

"The development hereby permitted shall be begun before the expiry of 7 years from the date of this permission or two years from the date of approval of the last reserved matters required to be approved, whichever is the later".

6.7 It is proposed to vary Condition 4 as follows:

“The development hereby permitted shall be begun before midnight on 13 November 2023 or two years from the date of approval of the last reserved matters required to be approved, whichever is the later”.

6.8 The condition is to be varied to include a specified date (not extending beyond the date set in the original outline planning permission) at the request of the LPA although it should be noted that there is an ability to extend the life of a planning permission in Wales under Section 73 of the Town & Country Planning Act.

CONDITION 5

6.9 Condition 5 states:

“The submission of all reserved matters and the implementation of the development shall be carried out in accordance with the principles as shown in the amended Masterplan Ref. 4355-P-05 Rev H (March 2015), and the design principles set out in the Design and Access Statement (June 2013) and the subsequent Addendum (June 2014)”.

6.10 It is proposed to vary Condition 5 as follows:

“The submission of all reserved matters and the implementation of the development shall be carried out in accordance with the principles as shown in the Illustrative Masterplan Ref. 4355-L-05 Rev L (14 February 2020), and the design principles set out in the Design and Access Statement (June 2013) and the subsequent Addendum (June 2014) as varied by the Design and Access Statement Further Addendum (March 2020) which accounts for the change of the junction arrangements with Bangor Road from a roundabout to a priority controlled junction with ghost island right turn lane”.

CONDITION 30

6.11 Condition 30 states:

“No part of the development shall commence until the following highway details have been submitted and approved in writing by the Local Planning Authority:

i Detailed layout, design, drainage and construction of the proposed new roundabout and proposed priority working traffic management scheme on Bangor Road;

ii A cycleway/footway along the full frontage of the site on Bangor Road and Hafod Road;

- iii Detailed layout and design of the internal estate for the relevant phases;*
- iv Cycleway enhancements through Nant Parc estate with links to Johnstown;*
- v Speed limit amendments on Bangor Road; and*
- vi Visibility improvements at the existing Eco Ready Mix access”.*

6.12 It is proposed to vary Condition 30 as follows:

“No part of the development shall commence until the following highway details have been submitted and approved in writing by the Local Planning Authority:

- i Detailed layout, design, drainage and construction of the proposed new priority controlled junction scheme and associated works on Bangor Road as illustrated in Drawing 1232/21/B;*
- ii A cycleway/footway along the full frontage of the site on Bangor Road and Hafod Road;*
- iii Detailed layout and design of the internal estate for the relevant phases;*
- iv Cycleway enhancements through Nant Parc estate with links to Johnstown;*
- v Speed limit amendments on Bangor Road; and*
- vi Visibility improvements at the existing Eco Ready Mix access”.*

DOCUMENTS SUBMITTED IN SUPPORT OF THE PROPOSALS

6.13 In addition to this Planning Statement the following documents are submitted in support of the proposals following pre-application discussions with Officers:

- Ashley Helme Associates – Highways Technical Note 3 (this document contains Drawing 1232/21/B referred to above).
- FPCR – Arboricultural Assessment.
- FPCR – Illustrative Masterplan 4355-L-05 Rev L. Design & Access Statement Addendum (March 2020).
- FPCR – Ecology Addendum (5 March 2020).

6.14 The list of documents required to validate the application were agreed with Officers in advance and in accordance with the Paragraph 13.3.7 of the Development Management Manual (DMM) (5 May 2017) they are proportional to the changes proposed.

- 6.15 The Applicant is also aware that should the Council resolve to approve the application a Section 106 Agreement will be required.

7. LEGISLATIVE PROVISIONS

- 7.1 Section 13.3 of the DMM deals with applications to vary conditions of planning permissions. The following extracts are worthy of note (where reference is made in this Planning Statement to “the Act” this is a reference to the Town & Country Planning Act 1990 (as amended)):

“13.3.1 Section 73 of the 1990 Act allows applications to be made for planning permission without complying with conditions previously imposed on an extant planning permission. Where a Section 73 application is granted, its effect is to grant a new planning permission.

13.3.2 Section 73 applications can be broadly separated into three different application types, based on their intended purpose. These are to:

- Extend the time limit of an existing permission (commonly referred to as a ‘renewal’ application).*
- Allow ‘minor material amendments’ to planning permissions.*
- Allow the variation or removal of any other condition attached to a planning permission.*

13.3.3 The renewal of a planning permission occurs through an amendment of the time limit condition imposed on a planning permission by Section 91 or 92 of the 1990 Act.

13.3.4 A minor material amendment is one whose scale and nature results in a development which is not substantially different from that which has been approved. A Section 73 application achieves this through the amendment of the plans condition imposed on a planning permission by section 71ZA of the 1990 Act. Where this condition does not exist (for example, as the permission was granted before the 01 March 2016) a condition specifying the plans may first be inserted by making a non-material amendment using section 96A to insert the relevant condition”.

- 7.2 It should also be noted that Section 5.17 of Welsh Government Circular 016/2014 states that:

“Section 91 of the 1990 Act also allows local planning authorities to apply longer or shorter time periods than those specified in the 1990 Act if they consider it to be appropriate and they must give their reasons for doing so. Whereas section 92 allows a local planning authority to specify separate

periods, on outline permission, for different parts of a site and apply conditions accordingly. Such tools can be used where development is to be carried out in phases or uncertain economic conditions may have an effect on the ability of developers to bring forward development. The timescales should be appropriate to the size and nature of the development or works”.

ASSESSMENT AGAINST LEGISLATIVE BASIS

7.3 Clearly this is an application where the changes proposed would not result in a development which is substantially different from that which has been approved. The changes clearly comprise minor material amendments capable of falling within the provisions of Section 73 of the Act.

7.4 In terms of consideration of the application Paragraph 13.3.12 of the DMM states that:

“Sections 73(2) and (4) of the 1990 Act restrict the LPA in their determination of Section 73 applications. The effect of the provisions is to limit the LPA to considering the question of whether the conditions identified in the Section 73 application should apply as originally stated, would be acceptable if modified or it would be acceptable to remove them. The LPA cannot revisit the original permission and reconsider whether it should have been granted in the first place. However as a Section 73 application is a planning application in its own right, it is necessary to assess what material changes there may have been in terms of policy since the original permission was granted in order to ensure that all relevant material considerations have been assessed”.

7.5 The proposals are assessed against the provisions of the Development Plan and other material considerations are examined in the following chapter.

8. ASSESSMENT

INTRODUCTION

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

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

THE DEVELOPMENT PLAN

- 8.2 In this instance the Development Plan comprises the Wrexham UDP which was adopted in February 2005 and covered the Plan period 1996 – 2011. Whilst the UDP is time expired it is necessary to consider Development Plan policies but as set out in Chapter 7 it is only necessary to consider those policies that are relevant to the changes being sought through this application. In that respect the policies relating to highways, the countryside and trees and hedges are relevant.

POLICY PS2 – DEVELOPMENT & THE ENVIRONMENT

- 8.3 Policy PS2 sets out that:

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

- 8.4 Insofar as the changes sought through this application are concerned when compared to the approved access arrangements the scheme would not materially detrimentally affect any of the matters listed in Policy PS2.

POLICY GDP1 (CRITERION D) – DEVELOPMENT OBJECTIVES

- 8.5 In respect of Policy GDP1 Criterion D is relevant and in that respect the alternative access arrangements will ensure safe and convenient pedestrian and vehicular access to and from the site.

POLICY EC4 – HEDGEROWS, TREES & WOODLAND

8.6 This Policy sets out that:

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

8.7 Compared to the approved scheme the alternative access arrangements would not result in the loss or significant damage to valuable trees, important hedgerows or ancient woodland.

DEVELOPMENT PLAN SUMMARY

8.8 In summary the proposals comply with the relevant provisions of the Development Plan.

OTHER MATERIAL CONSIDERATIONS

8.9 Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned. Again, it is only necessary to consider other material considerations that are relevant to the changes being sought through this application.

8.10 In this case the following material considerations are relevant.

PLANNING POLICY WALES (EDITION 10 – DECEMBER 2018)

8.11 Planning Policy Wales (PPW) sets out the land use planning policies of the Welsh Assembly Government. PPW aligns national planning policy strategy with the objectives of the Wellbeing of Future Generations (Wales) Act 2015, which is centred around achieving sustainable development. There are no conflicts between the proposals and PPW.

TECHNICAL ADVISORY NOTES (TANs)

8.12 A series of TANs produced by the Welsh Assembly Government provide detailed guidance on a range of technical matters which can be material to the determination of planning applications. The following are relevant to this proposal.

8.13 TAN 18: Transport (2007) is relevant to this proposal however there is no conflict between the proposals and TAN 18.

OTHER HIGHWAYS RELATED DOCUMENTS

- 8.14 The Technical Note prepared by Ashley Helme Associates refers to various highways related documents. However, there is no conflict between the proposals and the documents referred to be Ashley Helme Associates.

WREXHAM LOCAL DEVELOPMENT PLAN 2 (LDP2) 2013 TO 2028

- 8.15 As noted in Chapter 1 at the time of writing the emerging LDP2 is subject to Examination and has yet to be found sound. Accordingly, limited weight should be afforded to policies contained within the emerging LDP2. In terms of policies set out in the Deposit Plan (incorporating Focused Changes and Minor Editing Changes) there is no conflict between the proposals and:

- Policy DM1: Development Management Considerations.
- Policy NE3: Trees, Woodlands and Hedgerows.
- Policy T1: Managing Transport Impacts.

OTHER MATERIAL CONSIDERATIONS SUMMARY

- 8.16 As there is no conflict between the proposals and the other material considerations identified the proposals should be determined in accordance with the provisions of the Development Plan. As it has been demonstrated that there is no conflict with the provisions of the Development Plan and that the proposals comply with relevant policies planning permission ought to be granted.

9. CONCLUSION

- 9.1 Hourigan Connolly is instructed by Gladman Developments Limited to prepare a Planning Statement as part of an application to vary Conditions 3, 4, 5 and 30 of Outline Planning Permission: ESC P/2013/0545, granted on appeal by the Welsh Ministers by Decision Letter dated 14 November 2016 (PINSW Appeal Reference: APP/H6955/A/15/3135730). The Outline Planning Permission relates to the former site of Hafod Tileries, Hafod Road/Bangor Road, Johnstown, Wrexham, LL14 6ET and a mixed use development including residential, retail, business and industrial uses.
- 9.2 In accordance with good practice the application follows pre-application discussions with Officers of Wrexham County Borough Council. Those discussions informed the conditions to be varied and the scope of supporting information required in support of the application. The Applicant is grateful to the LPA for the input provided at the pre-application stage.
- 9.3 The aim of the application is to secure revised access arrangements for this mixed use development site with a view to the alternative access arrangements helping to bring the site forward for development.
- 9.4 It should be noted that at the time of writing the Council's Local Development Plan 2 (LDP2) is being examined by Inspectors appointed by the Welsh Ministers. Hourigan Connolly appeared at the Examination on behalf of the Applicant in relation to a range of matters. In accordance with duly made objections lodged at the Deposit Stage of the LDP2 the Council agreed (during the Examination) to remove the contribution the site would make to housing delivery over the LDP2 Plan period. That decision does not affect in any way the suitability of the site for *inter alia* housing but it is a pragmatic acknowledgement on the part of the Council that, at the time of the duly made objections and Hearing sessions, the approved development was not viable. That remains the case, but it is hoped that if this latest application is approved it will assist the Applicant in taking a step closer to being able to deliver the development.
- 9.5 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that:
- “where in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise”.*
- 9.6 The proposals have been assessed against the provisions of the Development Plan in this Planning Statement and have been found to be compliant with relevant policies. Other material considerations have been identified in this Planning Statement, but none indicate that a decision, other than one in accordance with the provisions of the Development Plan, should be made. Accordingly, the Council is respectfully requested to grant planning permission for the proposed development.

Appendix 1

**Adran yr Amgylchedd a Materion Gwledig
Department for Environment and Rural Affairs**



**Llywodraeth Cymru
Welsh Government**

Ein cyf/ Our ref: qA1260278
Mr Marc Hourigan
Hourigan Connolly
7 Swan Square
15 Swan Street
Manchester
M4 5JJ

info@houriganconnolly.com

14 November 2016

Dear Mr Hourigan,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY GLADMAN DEVELOPMENTS LTD
OUTLINE PLANNING APPLICATION FOR MIXED USE DEVELOPMENT (INCLUDING
RESIDENTIAL, RETAIL, BUSINESS AND INDUSTRIAL) ON LAND AT FORMER SITE
OF HAFOD TILERIES, HAFOD ROAD AND BANGOR ROAD, JOHNSTOWN,
WREXHAM.
APPEAL REFERENCE: APP/H6955/A/15/3135730**

1. Consideration has been given to the report of the Inspector, Declan Beggan BSc (Hons) MSc DipTP DipMan MRTPI, who held an Inquiry into your client's appeal against Wrexham County Borough Council's refusal of outline planning application ESC P/2013/0545 for "Redevelopment of land at Hafod Tileries for proposed mixed use development of up to 300 (use class C3) residential dwellings, 465sqm (use class B1, B2 & B8) business, industrial, storage and distribution units, 235sqm (use class A1) retail, ecological enhancement, landscape, open space, highway improvements and associated works" on Land at the Former site of Hafod Tileries, Hafod Road and Bangor Road, Johnstown, Wrexham.

2. On 1 December 2015, in accordance with section 79 and paragraph 3(1) of Schedule 6 to the Town and Country Planning Act 1990 ("the 1990 Act"), the appeal was recovered for determination by the Welsh Ministers as the proposal relates to residential development of more than 150 houses. Under the provisions of the Government of Wales Act 2006 the power to determine applications under section 79 of the 1990 Act has been transferred to the Welsh Ministers, these functions have been exercised by the Cabinet Secretary for Environment and Rural Affairs.
3. In exercising their functions as part of carrying out Sustainable Development in accordance with the Well-Being of Future Generations (Wales) Act 2015, section 2 of the Planning (Wales) Act 2015 requires the Welsh Ministers, as a public body, to ensure the development and use of land contributes towards improving the economic, social, environmental and cultural well-being of Wales, in accordance with the Well-Being of Future Generations (Wales) Act 2015 ("the FG Act"). In order to act in this manner, the Welsh Ministers have taken into account the ways of working set out in section 4 of 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance' on the FG Act through examination of the appeal by way of a Public Inquiry in accordance with the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003.
4. The Inspector held an Inquiry on 26 – 28 April 2016. A site visit was made on 27 April 2016. The Inspector recommends the appeal is allowed and planning permission granted subject to conditions.
5. In the Inspector's view, the main considerations in this appeal are:
 - whether the proposed development complies with national and local policy designed to protect the countryside and promote sustainable development; and
 - the effect of the proposed development on the character and appearance of the area.
6. Subject to the comments at paragraphs 7 – 34 below, the Minister agrees with the Inspector's conclusions for the reasons given by him and accepts his recommendation.

Whether the proposed development complies with national and local policy designed to protect the countryside and promote sustainable development

7. The Inspector states it is a long standing planning policy position the countryside should be safeguarded from uncontrolled and sporadic development, with development primarily directed to existing settlements. The Minister agrees with the Inspector on this matter.

8. The Inspector notes the appellant accepts the proposed residential development of the site would be in conflict with policies PS1 and H5 of the Wrexham UDP due to the fact the proposed development would not be within the settlement limit of Johnstown and would not comply with any of the exceptions detailed in policy H5 of the UDP.
9. The Inspector notes the site is identified in Appendix II of the UDP as an employment allocation. However he states, irrespective of the small employment element of the proposed development being located within an employment allocation in the UDP, and therefore being acceptable in principle, the proposed development when considered in its totality is overwhelmingly residential in nature. The development of the site with a primarily large scale housing development would be contrary to policy PS1 which expressly seeks to direct residential development within defined settlement limits. The Minister agrees with the Inspector on this matter.
10. The Wrexham UDP (1996-2011) was adopted in February 2005. Paragraphs 8.1 & 8.2 of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (2015), state for those Councils where a UDP is out of date and a Local Development Plan (LDP) is not yet adopted, they will not be able to demonstrate whether or not they have a 5 year housing land supply. This means Wrexham County Borough Council has a zero housing supply figure. Paragraph 6.2 of TAN 1 advises where land supply is below the 5 year requirement 'the need to increase supply should be given considerable weight when dealing with planning applications provided the development would otherwise comply with development plan and national planning policies.' Although the Inspector considers the settlement boundaries are out of date and therefore gives policy PS1 limited weight, he concludes the pressing need for new housing, of which a significant amount would be affordable, outweighs the countryside protection policies (policies PS1 and H5) in this case. The Minister agrees the need for housing, given the lack of housing land supply, outweighs the countryside protection policies.
11. Whilst the Inspector accepts the proposed development does not accord with the development plan in so far as it relates to development outside defined settlement boundaries, nonetheless, he considers the lack of 5 year housing land supply weighs heavily in favour of the proposed development. There is a pressing need for housing, however, given the early stage the LDP, there is little prospect of a plan led solution any time soon. The Minister agrees with paragraph 140 of his report which concludes the lack of a 5 year housing land supply weighs heavily in favour of the proposed development.

12. The Inspector is satisfied with the proposal to provide 20% affordable housing as part of the scheme. Whilst such a provision falls short of the expected 25% of dwellings on such sites, the Council accepts the abnormal costs of developing the site due to contamination remediation in this case justifies a lesser contribution and the Inspector has no reason to take a different view. The Inspector considers the provision of 20% is a significant amount of affordable housing and would make an important contribution to a local identified need. The Cabinet Secretary agrees with the Inspector this provision also weighs in favour of the proposal.
13. The Inspector states, whilst the parties dispute the extent of Previously Developed Land (PDL) and the 'location' of the development relative to the development boundary, there is agreement ecology, biodiversity and archaeology interests can be safeguarded by the imposition of appropriately worded planning conditions. The Inspector is of the view, when all areas accepted as PDL by the Council are put together, it is clear the overwhelming majority of the built development relating to the proposal would be located on PDL. The Cabinet Secretary has no reason to disagree with the Inspector.
14. The Cabinet Secretary acknowledges the Inspector's comments which state if the housing need for the authority cannot be met within settlement boundaries it follows PDL outside settlements should be preferred sequentially over greenfield land outside of settlements. He considers in this case the reuse of the site which is PDL is broadly in accordance with PPW subject to the proposal benefitting from good transport links. The Inspector considers the PDL status of a significant part of the site where the majority of built development would occur puts significant weight behind the proposed development. The Cabinet Secretary has no reason to disagree with the Inspector's conclusion on this matter.
15. The Inspector considers the development of part of the site for employment related activities would accord with the site's employment allocation. Notwithstanding this point, the Inspector considers the provision of a small element of employment development as part of a large residential development would not be at odds with the aims of sustainable development in accordance with PPW, nor undermine the relevant policies of the UDP. The Cabinet Secretary agrees with the Inspector on this matter.
16. The Inspector is of the view due to the fact the proposed retail unit would be developed in conjunction with a large housing development and therefore not in isolation, and in the context of the development as a whole it would be located within a built up area rather than countryside. He considers its provision offers the possibility of easy access to a retail facility, which, in the context of the acceptability of a large residential development, would not be at odds with the aims of sustainable development in accordance with PPW, nor undermine the relevant policies of the UDP. The Cabinet Secretary has no reason to disagree with the Inspector.

17. The Inspector states the site is approximately 800m from the nearest residential area, Heol Orsaf, which marks the existing limit to the settlement along Bangor Road or, if as suggested by the Council, an average of 200m further away if a more northerly point is taken within the site. Whilst the Council argues occupants of those dwellings in the most north easterly part of the site would have to travel some 1650 m to access local amenities such as the nearest school, the Inspector considers such walking distances are not unusual as evidenced by the appellant's submitted National Travel Survey 2012. He states the vast bulk of housing within the site would be within approximately 1 mile of the majority of local facilities and he does not consider such distances would unduly put off occupants of dwellings on the site from walking. The Cabinet Secretary agrees with the Inspector's conclusion on this matter.
18. The site is crossed by a number of public rights of way and the Inspector considers these routes would offer the possibility for an alternative pedestrian route to Bangor Road, with any usage only likely to increase in the brighter drier months. With regard to cycle trips, the Council did not contest at the Inquiry the proposed development would encourage alternative means of travel to the car in the form of cycle trips to Johnstown and, based on the submitted evidence, the Inspector had no reason to take a different view. The Cabinet Secretary agrees with the Inspector's conclusion on this issue.
19. There are several bus services running from various bus stops in Johnstown within walking distance of the site. It is noted the Unilateral Undertaking (UU) will provide funding for an additional bus stop within the site. The Inspector states it would be possible to travel to and from Wrexham by bus, on a number of alternative services and on foot with an overall journey time of around 30 minutes and he does not consider this to be unreasonable. The Cabinet Secretary has no reason to disagree with the Inspector on this matter.

The effect of the proposed development on the character and appearance of the area.

20. The Inspector states, whilst the site is physically separated by the railway line and Special Area of Conservation (SAC) from Johnstown, the railway underbridge crossing on the Bangor Road provides a functional link between the built up area and the Country Park and SAC adjacent to the site. Furthermore, the pedestrian underpass links the country park adjacent to the site with the existing built up area and via other footpaths to the appeal site.

21. The Council draws attention to the spatial separation of the site from Johnstown due, in part, to the intervening SAC. However, the Inspector is of the view such a situation is not an unusual feature with regard to the character of the wider area, as evidenced by the SAC, which separates Johnstown and Rhosllanerchrugog. The Inspector concludes whilst the proposal would introduce an additional built element into the landscape, it would not materially alter the overall character of the area given the mix of built form and land which will remain undeveloped. In addition, the Inspector is of the view the development will appear no more isolated or divorced from the existing built up area than already exists between the settlements of Johnstown and the adjacent Rhosllanerchrugog. Consequently he considers the proposed development would not have any significant effects on the character of the landscape. The Cabinet Secretary has no reason to disagree with the Inspector on this issue.
22. The Cabinet Secretary acknowledges the Inspector has addressed the visual impact of the proposed development from close range and long distance viewpoints. The Inspector states there is no dispute the proposal would be visible within the landscape, however, he considers the issue to be whether the visual impact of the development is likely to have a significant adverse effect. The Inspector states the development would be visible from elevated sites such as Ruabon Road in Johnstown and Ponciau. However, due to the intervening distances involved, and the fact the proposal would be seen against a foreground of built development, the Inspector considers its effect on visual amenity would be minor and not significant.
23. The Inspector accepts the proposed employment and retail area facing onto Bangor Road will be visible from Bangor Road, however this area accounts for only 0.29ha on a site totalling 17.34ha. The Inspector is of the opinion any views of the associated structures would be transitory with the structures being sited behind the existing landscaped screen to Bangor Road with this screen being augmented with further planting, and also would be viewed against a backdrop of further landscaping which forms part of the proposed public open space. In addition, he states the topography of the area, and intervening vegetation, means there are unlikely to be any effects on the users travelling along the A483.
24. With regard to the impact of the proposal on the nearest properties to the site, the Inspector considers the partial screening effects of existing and proposed landscaping, the setback distance of those properties from Hafod Road, the limited number in close proximity, and the relatively low level nature of the development, ensures those properties closest, and any others further afield would not be unacceptably affected.
25. The Cabinet Secretary agrees with the Inspector's conclusions regarding the impact of the proposed development on the character and visual amenity of the area.

Other Matters

26. The Inspector has considered the scheme in relation to its ecological impact, the structural stability of the existing buildings on the site, the availability of housing in the local area, highway safety, the impact on the nearby mineral buffer zone, as well as the impact of the proposal on public health, education and employment. He has concluded the scheme is acceptable in relation to these matters and the Minister has no reason to disagree with his conclusions in these respects.

Section 106 Unilateral Undertaking (UU)

27. A signed, dated and amended UU was submitted after the close of the Inquiry dated 5th May 2016.

28. The UU relates to the following:

- The staged payments of an educational contribution towards the costs of improving or extending Johnstown CP Primary School, with the contribution calculated in accordance with an appended matrix;
- A public transport contribution totalling £200,000 towards the costs of extending the number 6 bus service into the site for a period of 5 years; and,
- Details relating to a specification for the laying out of Open Space (informal open space and landscaping, including a children's play area) and a related management plan.

29. The Inspector is satisfied the UU meets the relevant tests. The Minister agrees the UU meets the appropriate tests set out in Community Infrastructure Levy Regulations 2010 and Circular 13/97.

Inspector's Overall Conclusions

30. Whilst the Inspector concludes the proposal would not accord with policies PS1 and H5 of the UDP which seek to contain development within settlement limits, he has afforded significant weight in favour of the proposal with regard to the Council's lack of 5 year housing supply. He has also afforded significant weight in favour of the proposal due to the reuse of PDL which forms the overwhelming majority of the built development on site. The Inspector has also given weight to the fact the proposal will provide affordable homes in the area.

31. The Inspector concludes, the proposed development when considered in its entirety would be contrary to the relevant policies of the UDP. However, he considers it would provide a suitable site for housing and other mixed uses, having regard to the principles of sustainable development as advocated in PPW, outdated planning policies which seek to control new development outside of settlement limits, lack of a 5 year supply of housing land, and the PDL nature of the site. He considers these material considerations outweigh the conflict with the UDP. The Cabinet Secretary agrees with the Inspector's overall conclusion for the reasons given by him.
32. The Inspector also concludes the proposed development would provide future occupants with adequate opportunities to travel by means other than the private car and therefore contribute to sustainable patterns of development. In this respect the proposal would not be contrary to policies PS4 and GDP1 of the UDP and the sustainability principles as espoused by PPW.
33. With regard to the visual impact of the proposed development, the Inspector concludes the development would not materially alter the overall character of the landscape given the mix of built form and undeveloped land. In addition there are existing functional linkages between the site and the nearby built up area. From a number of viewpoints the Inspector observed the visual impact of the proposed development would be of limited significance due to existing screening and topography. He does not consider the proposed development would result in any significant harm to the character of the landscape, or to the visual amenity of the area. Consequently he considers the proposal would not be contrary to Policies GDP1 a) and PS2 of the UDP, which seek to prevent unacceptable landscape and visual impacts.

Recommendation

34. The Inspector recommended the appeal be allowed subject to conditions.

FORMAL DECISION

35. The Cabinet Secretary has considered the conditions recommended by the Inspector and has assessed them against the tests contained in Welsh Government Circular 016/2014 – The Use of Planning Conditions for Development Management. The Cabinet Secretary has made changes to a number of the suggested conditions. These changes do not impact on the overall aims of the conditions recommended by the Inspector and the changes are for clarity only. In accordance with Circular 016/2014 a condition to require the submission of details of a sustainable drainage system (including foul and surface water) is considered to meet the tests set out in the Circular.

36. Subject to the comments at paragraphs 7– 34 above, the Minister agrees with the Inspector's conclusions and his reasoning behind them and accepts his recommendation. Accordingly, the Minister hereby allows this appeal and grants planning permission for "Redevelopment of land at Hafod Tileries for proposed mixed use development of up to 300 (use class C3) residential dwellings, 465sqm (use class B1, B2 & B8) business, industrial, storage and distribution units, 235sqm (use class A1) retail, ecological enhancement, landscape, open space, highway improvements and associated works" on Land at the Former site of Hafod Tileries, Hafod Road and Bangor Road, Johnstown, Wrexham subject to the conditions detailed in Annex A and the signed Section 106 Unilateral Undertaking, dated 5 May 2016.
37. In reaching this decision, the Minister has considered the duty to carry out sustainable development under section 2 of the Planning (Wales) Act 2015. The decision made is in accordance with the sustainable development principle set out in the FG Act 2015. In accordance with section 3(2) of the FG Act 2015 and the well-being objectives of the Welsh Ministers, the decision will "improve access to secure, safe, efficient and affordable homes" and provides the opportunity to develop and "support safe, cohesive and resilient communities".
38. A copy of this letter has been sent to Wrexham County Borough Council and to those persons and organisations who appeared at the Inquiry.

Yours sincerely



Teresa Davies
Head of Decisions Branch
Planning Division

Arwyddwyd o dan awdurdod Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion Gwledig, un o Weinidogion Cymru.
Signed under authority of the Cabinet Secretary for Environment and Rural Affairs, one of the Welsh Ministers.

Enc: Inspector's report, leaflet 'H' and leaflet 'HC'.

Annex A

1. Details of the appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any part of the development begins. The development shall be carried out in accordance with the details as approved for each phase of the development.
2. The first reserved matters application shall include a plan showing the site and location of all subsequent phases of development ('the Phasing Plan'). All subsequent reserved matters applications shall be submitted in accordance with the approved phasing plan.
3. Plans and particulars of the reserved matters referred to in conditions 1 and 2 shall be submitted in writing to the Local Planning Authority before the expiry of 5 years from the date of this permission.
4. The development hereby permitted shall be begun before the expiry of 7 years from the date of this permission or two years from the date of approval of the last of the reserved matters required to be approved, whichever is the later.
5. The submission of all reserved matters and the implementation of the development shall be carried out in accordance with the principles as shown in amended Masterplan Ref. 4355-P-05 Rev H (March 2015), and the design principles set out in the Design and Access Statement (June 2013) and the subsequent Addendum (June 2014).
6. The landscaping and layout reserved matters to be submitted for the approved development pursuant to the requirements of Condition 1 above shall include a scheme for all areas of open space to be provided within the development site including public amenity space and equipped children's play areas (Local Equipped Area for Play [LEAP]). The scheme shall be implemented in accordance with the approved details prior to the first occupation of any dwellings.
7. As part of the Reserved Matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out in accordance with the approved details.
8. This permission shall provide for a maximum of 300 dwellings.
9. No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The surface water scheme shall include full details of a sustainable drainage system. The scheme shall be implemented in

accordance with the approved details prior to the beneficial use of the development and retained in perpetuity.

10. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.
11. No part of any buildings shall be constructed within 3 metres either side of the centreline of the public foul sewer, and within 5 metres either side of the centreline of the public combined sewer which crosses the site.
12. Prior to first use of the retail and commercial development, suitable grease traps shall be installed, which will prevent entry into the public sewerage system of matter (cooking fats, oils and grease etc), in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter maintained in accordance with the approved details.
13. Prior to first use of the retail and commercial development, all mechanical plant and equipment shall be enclosed in sound insulating material, mounted and located to minimise the transmission of structure borne sound in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter maintained as such in accordance with the approved details.
14. Prior to commencement of development a scheme for the provision of affordable housing within the development shall be submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of Welsh Government Technical Advice Note 2 or any future guidance which replaces it. The scheme shall include:
 - i. The numbers, type, tenure and location on the development of the affordable housing provision to be made which shall consist of not less than 20% of housing units;
 - ii. The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii. The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
 - iv. The arrangements to ensure such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v. The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
15. No part of the development shall commence until an assessment of the nature and extent of contamination affecting the site has been submitted to and approved in writing by the Local Planning Authority. This scheme shall be carried out by a suitably qualified competent person and shall include a

phased investigation approach to identify the extent of contamination and any measures required to remediate the site, including post-development monitoring.

16. No part of the development shall be occupied until a Verification Report which demonstrates that any remedial works approved as part of condition no. 15 above have been satisfactorily carried out, has been submitted to and approved in writing by the Local Planning Authority.
17. No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. The programme and phasing of works on site;
 - ii. Site offices and other temporary buildings;
 - iii. The parking of vehicles of site operatives and visitors;
 - iv. Loading and unloading of plant and materials;
 - v. Storage of plant and materials used in constructing the development;
 - vi. The erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
 - vii. Wheel washing facilities;
 - viii. Measures to control the emission of dust and dirt during construction;
 - ix. A scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 - x. Construction vehicle routing and access.
18. A site specific BS5228 noise assessment shall be submitted to and approved in writing by the Local Planning Authority as part of each of the reserved matters applications in respect of the relevant phases of the development. The assessment shall include the noise output level from existing noise generating uses around the application site and consider the impact upon future nearby residential properties from the different phases of development, to include output levels from the combinations of plant used for each phase of the development. The assessment shall also include noise mitigation/attenuation measures where WHO guidelines are likely to be exceeded at noise sensitive properties in respect of both existing and proposed dwellings. The development shall be implemented in accordance with the approved details.
19. The rating level of any noise generated by reason of this development post completion shall not exceed the pre-existing background level by more than 5dB(A) at any time. The noise levels shall be determined at nearby noise sensitive premises, and measurements and assessment shall be made in accordance with BS4142:2014 Method of Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.

20. Prior to commencement of development an ecological management plan and ecological method statement shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall:

- Demonstrate how existing features of ecological interest will be protected;
- Detail the methodology of how protected species on the site will be managed and mitigated;
- Identify areas of compensation and demonstrate management in the long term; and
- Provide details of how the long term management of the site will be funded.

The recommendations as approved shall be fully implemented in accordance with timescales to be agreed in writing as part of the approved plan and method statement.

21. A minimum of 2 weeks before commencement of development, written notice of the name and contact details of an ecological Clerk of Works shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in all aspects under the supervision of the Clerk of Works as is approved.

22. An ecology compliance audit shall be carried out by a qualified ecologist, independently of the Clerk of Works appointed in connection with condition no. 21, in accordance with details to be submitted to and approved in writing by the Local Planning Authority. A copy of the completed audit reports shall be submitted to and approved in writing by the Local Planning Authority after each phase of development, and a final report submitted and approved in writing prior to the first occupation of each phase of the development.

23. Prior to demolition of any building on site, an updated Bat Roost and Bird Breeding Assessment, carried out by a qualified ecologist shall be submitted to and approved in writing by the Local Planning Authority. The report shall include an Ecological Method Statement demonstrating / identifying any measures of protection / compensation / mitigation. The demolition shall be carried out in strict accordance with the recommendations as approved.

24. Prior to first occupation of the dwellings hereby approved a scheme for the provision of street lighting shall be implemented in accordance with details submitted to and approved in writing with the Local Planning Authority.

25. No part of the development shall commence until a Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority. The Assessment shall include appropriate measures to prevent the introduction of Invasive Non Native Species (INNS) during the construction phase, and measures to control INNS as may be currently present on site. The measures and proposals shall be fully implemented in strict accordance with the approved details.

26. A detailed scheme incorporating the design, provision, implementation and maintenance of flood risk protection together with an updated Flood Consequences Assessment shall be submitted to and approved in writing by the Local Planning Authority as part of a reserved matters application. Each phase of the development shall be carried out in strict accordance with the approved details.
27. No part of the development shall commence until archaeological surveys of all buildings on the site have been submitted to and approved in writing by the Local Planning Authority. The surveys shall be carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
28. No dwelling to which this permission relates shall be sited within 18 metres of the centreline of a major hazard pipeline.
29. No part of the development shall be occupied until written confirmation has been obtained from the Hazardous Substances Authority confirming that the hazardous substances consent for the former Hafod Tileries has been formally revoked, and a copy of this confirmation has been submitted to and approved in writing by the Local Planning Authority.
30. No part of the development shall commence until the following highway details have been submitted and approved in writing by the Local Planning Authority:
- i. Detailed layout, design, drainage and construction of the proposed new roundabout and proposed priority working traffic management scheme on Bangor Road;
 - ii. A cycleway/footway along the full frontage of the site on Bangor Road and Hafod Road;
 - iii. Detailed layout and design of the internal estate for the relevant phases;
 - iv. Cycleway enhancements through Nant Parc estate with links to Johnstown;
 - v. Speed limit amendments on Bangor Road; and,
 - vi. Visibility improvements at the existing Eco Ready Mix access.

The scheme as approved shall be fully implemented prior to the beneficial use of the development.

31. Prior to the residential occupation of any phase of the development, a Travel Plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details of an annual monitoring report, which shall be submitted to the Local Planning Authority for written approval following the anniversary of the first beneficial use of the residential development, and every year up to and including the fifth anniversary.

Adroddiad

Ymchwiliad a gynhaliwyd ar 26-28/04/16
Ymweliad safle a wnaed ar 27/04/16

**gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad:

Report

Inquiry held on 26-28/04/16
Site visit made on 27/04/16

**by Declan Beggan BSc (Hons) MSc DipTP
DipMan MRTPI**

an Inspector appointed by the Welsh Ministers
Date:

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

APPEAL BY GLADMAN DEVELOPMENTS LIMITED

**LAND AT FORMER SITE OF HAFOD TILERIES, HAFOD ROAD AND BANGOR ROAD,
JOHNSTOWN, WREXHAM, LL14 2SP**

File Ref: APP/ H6955/A/15/3135730

Site address: Land At Former Site Of Hafod Tileries, Hafod Road And Bangor Road, Johnstown, Wrexham, LL14 2SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Gladman Developments Limited against the decision of Wrexham County Borough Council.
- The application Ref ESC P/2013/0545, dated 30 July 2013, was refused by notice dated 16 June 2015.
- The development proposed is the 'Redevelopment of land at Hafod Tileries for proposed mixed use development of up to 300 (use class C3) residential dwellings, 465 sqm (use class B1, B2 & B8) business, industrial, storage & distribution units, 235 sqm (use class A1) retail, ecological enhancement, landscape, open space, highway improvements and associated works'.
- The appeal was recovered for decision by the Welsh Ministers by a direction made under Section 79 and paragraph 3(1) of Schedule 6 of the Town and Country Planning Act 1990, on 21 October 2015.
- The reason given for making the direction was that the proposal is for residential development of more than 150 houses.

Summary of Recommendation: That planning permission be granted.

Procedural Matters

1. I note that the planning application form refers to the address of the site as 'Bangor Road, Johnstown, Wrexham, LL14 6ET'. As confirmed at the Inquiry with both parties, the address of the development as advertised, and stated on the Council's refusal notice, and copied into the banner heading above is more accurate, and therefore I have used this description for the purposes of this report.
2. During the opening of the Inquiry the Council drew to my attention the fact that the event date and venue, had not been advertised by way of a press notice. The Council highlighted that 77 consultees including those living in proximity to the appeal site were directly written to in regards to the arrangements for the Inquiry, in addition to similar information being contained within site notices that were posted in the locality.
3. Both parties were of the opinion that as the requirement to advertise an Inquiry event is discretionary and not mandatory, and that bearing in mind the significant level of consultation that had already occurred that no substantial prejudice had occurred to interested parties.
4. Given that there is a degree of discretion in the application of the 'The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, the high level of consultation that had occurred in regards to the advertising of the Inquiry, and the fact that some interested parties were clearly aware of the event as evidenced by the attendance at the Inquiry, I did not consider that any party would be prejudiced by proceeding with the Inquiry.
5. A draft Unilateral Undertaking (UU) submitted at the Inquiry was found to have drafting errors and lacked a signature. These have been corrected and the finalised UU submitted within the agreed set period after the closure of the Inquiry. The UU contains obligations which include the provision of an educational financial contribution, works related to the provision of open space and its transfer, and a contribution towards improvements to public transport.

The Site and Surroundings

6. The irregular shaped appeal site lies close to the eastern boundary of the settlement of Johnstown at the junction of Hafod and Bangor Roads, and extends to some 17.34 hectares. The site includes the now derelict Dennis Ruabon factory; an industrial legacy site which had a long association with the production of clay products such as bricks and tiles. The site comprises a number of buildings, associated hard standings, other structures, and tipped areas, in addition to areas of scrub vegetation. With the exception of some bunded earth areas, the site is generally level in all directions. In terms of natural features, there are areas of broadleaved woodland mainly in the southern part of the site together with numerous hedgerows and trees along the site boundaries. Aberderfyn brook runs through the southern part of the site.
7. The site is traversed by several public rights of way in addition to two high voltage power lines carried by pylons. To the immediate north of the site is a concrete batching plant known as EcoReadyMix, beyond which is Bonc Yr Hafod Community Park comprising woodland situated on waste from the former Hafod Colliery. To the east of the site on the opposite side of Hafod Road is a property known as Ty Coch Farm beyond which is the A483 Trunk Road. To the south of the site, on the opposite side of Bangor Road, is Hafod clay quarry and landfill site. The western boundary of the site is separated from Johnstown and a railway line by a Special Area of Conservation (SAC) which extends northwards into the Bonc Yr Hafod Community Park.

Planning Policy

8. The development plan for the area comprises the Wrexham Unitary Development Plan (UDP). The UDP was adopted in 2005 and covers the period 1996 -2011.
9. The proposals Map of the UDP indicates the site as being outside of the settlement limit of Johnstown and that the site, in policy terms is within the countryside. The site is also within a designated Mineral Buffer Zone.
10. The relevant policies referred to in the reason for refusal are PS1, PS2, PS4, GDP1 and H5. Policies PS1, PS2 & PS4 are strategic in nature. Policy PS1 relates to 'settlement limits' and states that new development for housing, employment and community services will be directed to within defined settlement limits/employment areas. Policy PS2 states that development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment. Policy PS4 requires development to maintain the existing settlement pattern and character, be integrated with the existing transport network to help reduce the overall need to travel, and encourage the use of alternatives to the car.
11. Policies GDP1 sets out objectives and a criterion based approach for assessing proposed development. Policy H5 restricts housing outside defined settlement limits to, amongst other things, affordable housing exception sites, infilling or those who have an essential need based on agricultural or forestry jobs.
12. A number of other policies are relevant in the consideration of the proposed development including PS3 which states that development should use Previously Developed Land (PDL) in preference to the use of greenfield land, whenever possible.

Other material development plan policies are identified in the main parties' Planning Statement of Common Ground.¹

13. The parties agree that the main sources of national policies relevant to this appeal are contained in Planning Policy Wales Edition 8 (PPW) and associated Technical Advice Notes (TANs), in particular: TAN 1: Joint Housing Land Availability Studies (2015); TAN 2: Planning and Affordable Housing (2006); TAN 4: Retailing and Town Centres (1996), TAN 5: Nature Conservation and Planning (2009); TAN 6: Planning for Sustainable Rural Communities (2010); TAN 8: Renewable Energy (2005); TAN 12: Design (2016); TAN 15: Development and Flood Risk (2004); TAN 16: Sport Recreation and Open Space (2009); TAN 18: Transport (2007) and TAN 23: Economic Development (2014).
14. PPW is the overarching national planning policy document that guides planning and development in Wales. Chapter 4 *Planning for Sustainability* places achieving development that is economically, socially and environmentally sustainable at the heart of planning decision making in Wales. The planning system provides for a presumption in favour of sustainable development when taking decisions on planning applications. Amongst other things, PPW emphasises:
 - promoting resource-efficient and climate change resilient settlement patterns that minimise land take, especially through preference for re-use of suitable previously developed land and buildings;
 - promoting development that is easily accessible by public transport, cycling and walking whilst recognising that in rural areas development might not be able to achieve all accessibility criteria in all circumstances;
 - conserving the countryside for the sake of its attributes, including landscape, and balancing that requirement against the economic, social and recreation needs of local communities;
 - locating development in the countryside within and adjoining settlements where it can best be accommodated in terms of infrastructure, access and habitat and landscape conservation;
 - providing more housing of the right type which should be well integrated with and connected to the existing pattern of settlements;
 - strictly controlling house building in the open countryside which is away from established settlements.
15. Paragraph 9.2.3 of PPW requires local planning authorities to ensure that sufficient land is genuinely available or will become available to provide a 5-year supply of housing land. TAN 1 explains that the housing supply figure will be taken from the current Joint Housing Land Availability Study (JHLAS). Paragraph 6.2 of the TAN provides that where such a study shows a supply below 5 years that the need to increase supply should be given considerable weight when dealing with development that would otherwise comply with development plan and national planning policies.
16. Paragraph 4.9.1 of PPW refers to the use of previously developed land as being preferential to the use of greenfield sites.

¹ Inquiry Documents 1 (viii) Planning Statement of Common Ground – March 2016

17. TAN1 advises that local planning authorities must ensure that sufficient land is genuinely available to provide a 5 year supply of land for housing. In accordance with paragraph 6.2, the results of the Joint Housing Land Availability Study (JHLAS) should be treated as a material consideration in determining planning applications for housing.
18. TAN 18 recognises that the location of new residential development has a significant influence on travel patterns and requires appropriate levels of access by walking, cycling and public transport for new residents and the wider community to local services. It adds that where a development proposal is assessed as having relatively poor accessibility this may be sufficient grounds to refuse planning permission.
19. Both parties have referred to the emerging Wrexham Local Development Plan (2) (2013-2028) (LDP), and associated evidence base including background and consultation papers. The plan is at an early stage of preparation and is not expected to be adopted until sometime after 2018.

The Proposal

20. The appeal application is made in outline form with all matters except for access reserved for subsequent approval.
21. The proposed scheme seeks the redevelopment of land at Hafod Tileries for a proposed mixed use development of up to 300 (use class C3) residential dwellings including a 20% affordable housing provision, 465 sqm (use class B1, B2 & B8) business, industrial & distribution units, 235 sqm (use class A1) retail, ecological enhancement, landscape, open space, highway improvements and associated works'. The indicative Masterplan shows that the dwellings will be located to the northern portion of the site, with the southern half of the site, save for an area along Bangor Road reserved for the B1,B2,B8 & A1 business and commercial uses, being used for areas of formal and informal public open space (POS) including an attenuation pond and informal play area; in addition there will be a Great Crested Newt reserve (GCN) extending to some 5.82 hectares. The proposed access to serve the site would be off Bangor Road via a new roundabout. Other works include an existing footpath along Bangor Road leading into Johnstown being widened to 2 metres, in addition to a new 3 metre wide footpath/cycleway along Hafod Road.

Agreed Facts

22. The main parties have agreed separate statements of common ground dealing with planning, highways and ecology. Matters in agreement include there is not a 5 year supply of housing land in the County Borough of Wrexham, that the provision of 20% affordable housing is acceptable, in technical terms the proposed site access arrangements onto Bangor Road are suitable to serve the development, the proposed development is not likely to be detrimental to the maintenance of the favourable conservation status of the GCN population locally, nor will the scheme affect the character and integrity of the Site of Special Scientific Interest (SSSI)/SAC, that the proposed development provides a substantial amount of publicly accessible open space, and that a contribution will be required in regards to local primary school provision.

The Case for Gladman Developments Limited

The overall planning and housing context

23. The UDP from which the policies are drawn, the policies on which the Council relies to justify its refusal of the application, is time-expired. The UDP covered the period 1996-2011. It is now 5 years beyond the end of the plan period. That alone means that the UDP is not up-to-date. The Council has clearly acknowledged that fact. The Council's Housing Land Monitoring Statement 2015, explaining why the Council is not in a position to produce a joint housing land availability statement, expressly refers at its very outset to *"the absence of an up-to-date UDP"*. The Council's single witness during cross examination did not dissent from any of these propositions.
24. The housing requirement for the County Borough in the UDP for the period 1996-2011 was 5,775 dwellings. The settlement limits defined in the UDP were set in the context of providing for that housing requirement. The emerging LDP now envisages the development of 11,715 new homes to deliver a housing requirement over the period 2013-2028 of 10,615 dwellings. The requirement figure is approaching double that of the former UDP. The new requirement will involve finding capacity for 6,738 houses. The Council admit in their proof of evidence of, a *"significant"* or *"pressing"* need for additional land.
25. The Council has recognised for some time that it will have to release land outside the UDP's settlement limits if it is to meet its emerging requirement. Thus the Vision, Objectives and Strategic Growth and Spatial Options document (that is, the issues and options stage of the Local Development Plan ("the LDP")), which was consulted on in March-April 2015, states in paragraph 5.15 that *"the urban capacity study (2013) identifies a shortage of suitable, available and deliverable brownfield sites within the existing settlement limits. Whilst some of these brownfield sites may be developed as windfall sites over the plan period, the quantum of new development required cannot be met without considering the need for the release of greenfield land currently on the edge of, but outside the existing settlement limits."* The fact that current settlement limits will have to be breached to meet housing requirements is thus apparent.
26. The matter was expressed with stark clarity in the officer's report in respect of proposed housing development at Gresford Road, Llay²: *"it will not be possible to significantly increase the supply of land available for housing unless planning permission is granted to develop appropriate sites located outside of existing settlement limits. Indeed, the decreasing housing land supply in recent years suggests that the current UDP settlement boundaries are becoming a significant constraint to providing the land that is needed to meet the housing requirements of the County Borough."*

² Appendix 9 of Mr T Jeremiah's proof of evidence

27. The conclusion that the UDP settlement limits are out of date is irresistible. They must be given significantly reduced weight. That is entirely in line with paragraph 2.8.4 of PPW which states that it is for the decision-maker to determine whether policies in the adopted UDP are outdated for the purposes of determining a planning application but advises that, where such judgment is made, local planning authorities should *"give the plan decreasing weight in favour of other material considerations such as national planning policy, and the presumption in favour of sustainable development."*
28. The Preferred Strategy version of the LDP recognises in terms that, in key settlements (which form tier 2 of the settlement hierarchy) and of which Johnstown (along with its neighbour of Rhosllannerchrugog) is one, *"settlement limits may change in the Deposit Plan to include allocations (sites that can deliver 10 or more units) for new housing development in some of these areas."*

Five year housing land supply

29. The need to have a five year housing land supply is set out in paragraph 9.2.3 of PPW. This is a key planning policy requirement as paragraph 2.1 of TAN1 emphasises.
30. The position in Wrexham is straightforward. Because the UDP is out-of-date and the LDP has not been adopted, then, in accordance with paragraphs 8.1 and 8.2 of TAN1, the Council is unable to demonstrate whether it has a five year supply or not (because it has no requirement figure to which it can work). Thus Wrexham is to be treated as not having a five year supply. In practice, it is a zero supply authority (as the Housing Land Monitoring Statement 2015 makes clear). The last joint housing land availability supply figure (for 2014) was only 3.1 years' supply.
31. The fact that the UDP cannot be treated as providing an appropriate basis for a housing requirement figure for a joint housing land availability statement is another indicator that the UDP's approach to housing is out-of-date. And the fact that the Council cannot meet its five year requirement shows that settlement limits constraining the ability to do so cannot continue to command significant weight.
32. On the contrary, the position is as set out in paragraph 6.2 of TAN1 which is that the need to increase supply should be given considerable weight. The qualification found in paragraph 6.2 – *"provided that the development would otherwise comply with the development plan"* – is not to be interpreted as leading to some other conclusion on weight in such circumstances because, if there were otherwise compliance with the development plan, a proposal would be approved anyway and the weighting advice in paragraph 6.2 would then be otiose. The proviso is simply a reminder that the considerable weight to be given to the need to increase supply must be balanced against non-compliance with the development plan. That is how the matter is approached in practice in appeal decision-making (as to which, see the paragraph below). But, of course, if policies in the development plan are out-of-date, then the counter-balance to the considerable weight to be given to the need to increase supply is of diminished weight in any case.
33. Recent appeal decisions in Wrexham demonstrate very clearly the weighting to be given to the lack of a five year supply or, to put the matter the other way round, the need to increase supply:

- Rhosrobin appeal decision³ – lack of a five year supply weighed heavily in favour of the proposed development (paragraph 25 of the decision letter)
 - Gresford appeal decision⁴ – lack of a five year supply carried considerable weight (paragraph 19 of the decision letter)
 - Minera appeal decision⁵ – the lack of housing land carried significant weight (paragraph 16 of the decision letter).
34. These weightings were applied notwithstanding the conflict of the proposals in the above cases with the Green Barrier policy (Policy EC1) of the UDP (more of which later), underlining the point made in the paragraph above about the correct approach to paragraph 6.2 of TAN1.
35. No different conclusion could be reached in the present case. The lack of a five year supply/the need to increase supply carries considerable weight here. The Council accepted as much⁶.

Brownfield land issues

36. National and local policy express a strong and clear preference for the use of brownfield land. Paragraph 4.9.1 of PPW states that *"PDL should, wherever possible, be used in preference to greenfield sites, particularly those of high agricultural or ecological value."* The appeal site in this case not only lies close to the present settlement boundary of Johnstown but it is also a site which contains a substantial body of previously developed land and which housed the former Dennis Ruabon Tileries which have left a legacy of dilapidated and derelict buildings on the site together with abundant hardstanding. It is right to note that paragraph 4.9.1 requires that brownfield land should otherwise be suitable for development but that qualification is met in this case (as set out below).
37. At the local level Policy PS3 provides that *"development should use previously developed brownfield land comprising vacant, derelict or underused land in preference to the use of greenfield land, wherever possible, particularly so where greenfield land is of ecological, landscape or amenity value or comprises agricultural land of grades 1, 2 or 3a quality."* The appeal site does comprise, at least in substantial part, vacant, derelict or underused land and is four square in accordance with Policy PS3. The Council does not raise PS3 as a reason for refusal.
38. It is also of relevance that brownfield capacity in the County Borough is limited. Paragraph 3.2 of BP2: Settlement Hierarchy and Development Potential (revised February 2016)⁷ makes it clear that the majority of brownfield sites have been developed, that it is apparent that the housing requirement cannot be accommodated

³ Appendix 7 of Mr T Jeremiah's proof of evidence

⁴ Appendix 3 of Miss S Holman's proof of evidence

⁵ Appendix 4 of Miss S Holman's proof of evidence

⁶ During cross examination of the Council's planning witness S. Holman

⁷ Appendix 1 of Miss S Holman's proof of evidence

on brownfield sites alone and that greenfield allocation is inevitable "*due to the limited capacity on brownfield sites.*" Suitable and available brownfield land such as found on the appeal site is thus a premium resource. Its development would reduce the need to release less preferable greenfield land for new housing. The Council witness accepted these matters in cross examination.

39. The search sequence which is set out in paragraph 9.2.8 of PPW in respect of housing allocations in development plans provides that the starting point should be "*the re-use of previously developed land and buildings within settlements, then settlement extensions and then new development around settlements with good public transport links.*" It is plain in this case that the Council cannot meet its pressing need for additional land for housing on previously developed land within settlements. It is equally obvious that, if previously developed land within settlements cannot provide the required extra capacity, previously developed land outside settlement limits should, providing it is otherwise suitable (which the appeal site is), take sequential preference over greenfield land outside such limits.
40. Insofar as there is a difference between the parties on the extent of the appeal site which is brownfield land (assessed in accordance with the definition in figure 4.4 of PPW), it is submitted that the appellant's assessment is to be preferred to that of the Council. However, the Council witness did accept in cross examination that land to the west of the area she had shown as brownfield (that is, the land where the former LPG tanks, etc. had been) was previously developed land as was the land to the south where there was a refuse tip. The speculative observation as to the lawfulness of this use does not alter matters; whether there has been a breach of planning control or not is uncertain one way or the other. However, previously developed land is a policy construct depending on a factual state of affairs, not on issues of lawfulness. It is to be distinguished from, for example, a permitted development right which, if it were based on an existing use would depend on the lawfulness of that use. In any event, the vast majority of the proposed new housing development in this case would be built on the land (the former factory and its curtilage) which the Council considers to be brownfield.

The policy status of the appeal site in the UDP

41. The policy status of the appeal site in the UDP is an entirely separate matter from whether the appeal site is greenfield or brownfield. The former matter turns on the interpretation of the UDP; the latter matter turns on the application of the definition of previously developed land in PPW.
42. Policy PS1 of the UDP provides that "*new development for housing, employment and community services will be directed to within defined settlement limits/employment areas.*" The policy thus provides that new employment development can take place on "*employment areas*". These areas are not simply employment allocations. If that were so, the policy would have used the term employment "*allocations*" rather than employment "*areas*". Employment areas are made up of the employment allocations in the UDP and those sites with planning permission for employment as at 1st April

2001 as set out in Appendix II of the UDP. The re-determined planning appeal⁸ (the decision letter for which is dated 1st November 2012) makes it quite clear that the whole of the 17.6 ha site adjacent to Dennis Ruabon on Hafod Road which is referred to in Appendix II (table 6) of the UDP is an employment area. That is the site which was the subject of the 1994 planning permission for industrial development. The view of the Council put forward in the Council's proof of evidence that the inspector in the re-determined appeal was referring only to the existing factory and its curtilage as the employment area is simply wrong and was accepted as such when their planning witness was under cross examination. The Council has thus proceeded on the basis of a serious misunderstanding of matters. The Inspector was, as the Council now accepts, clearly referring to the whole 17.6ha site with planning permission identified in Appendix II (table 6) of the UDP. The Council accepts that the factory and its curtilage is an employment area. But so also is the rest of the appeal site as that is encompassed in the 1994 planning permission.

43. As such, development is acceptable in principle on the appeal site as a matter of planning policy. The fact that that would have to be for employment purposes does not alter the fact that the appeal site may be built on under present UDP policy. This is a material consideration which cannot therefore be ignored although its weight might be influenced by the likelihood of any employment development proposal coming forward. Moreover, the fact that the whole of the appeal site is an employment area goes to the assessment of the conformity of the employment element of the scheme with the UDP. The employment element of the appeal scheme is fully in accordance with Policy PS1: it is employment development on an employment area. This is, I stress again, an issue of whether this element of the development is in accordance with the development plan. It is not an issue about the weighting of Policy PS1. Moreover, it follows from this reasoning that Policy E5 (employment development in the countryside) is irrelevant. This was not a policy relied on by the Council in the reason for refusal although is touched on in the Council's proof of evidence. But the point here is that policy cannot sensibly apply to control employment development in an employment area. The Council witness accepted in cross examination the substance of the points made in this paragraph.
44. The response of the Council to these matters was to say that the Council disagreed with the inspector's decision and/or that it should not be given weight. That is an unconvincing line to take and simply does not reflect the Council's past approach. The Council itself signed up to the consent order⁹ which quashed the original Inspector's decision on the basis that there had been error on the part of that Inspector in concluding on the evidence available that the site under consideration (Eco-Readymix) did not have a lawful employment use. And the Council never sought to challenge the decision letter of 1st November 2012 on the re-determined appeal. So it is hard to see how the Council can now say that it disagrees with the Inspector's conclusion. The time and the opportunity to establish that disagreement has passed. Moreover, there is no reason not to give weight to the Inspector's decision letter of 1st November 2012 (which, it is to be noted, is a different matter from the weight to be

⁸ Appendix 11 of Mr T Jeremiah's proof of evidence

⁹ Appendix 10 of Mr T Jeremiah's proof of evidence

given to Policy PS1). No change of circumstances has been identified arising after that decision letter which might lead to the conclusion that it should no longer be followed. After all, the lapse of the 1994 permission in 2004 which the Council seeks to rely on long pre-dates the events of 2012 and could hardly have been unknown at that time. For better or worse, employment areas are defined in the UDP not just by reference to allocations but also by reference to sites with an employment permission at a fixed point in time.

An unsustainable location which would not encourage alternative means of travel to the car

45. The Appellant does not accept that the appeal site is unsustainable from an accessibility perspective and that it would not encourage alternative means of travel to the car. The appellant's highway evidence that the appeal site is accessible and that residents of the proposed housing will have a good opportunity to undertake walk, cycle and public transport trips should be accepted and should, unequivocally, be preferred to that of the Council's.
46. The Council's objections to the development on the score of accessibility by non-car modes appear to centre on walking distances to facilities in Johnstown and the level of service provided on the No 6 bus route, as well as the walk distances to bus stops on High Street/Ruabon Road. The ability of the appeal proposals to encourage alternative means of travel to the car in the form of cycle trips was not contested by the Council under cross examination.
47. The Council's evidence and position in relation to walking is seriously flawed. It is based on "*common sense*" as stated by their witness, but has not had any regard to any published guidance or to any empirical evidence. Common sense may have its place but it is not satisfactory for judgments to be formed and conclusions reached in the absence of regard to plainly relevant material.
48. Manual for Streets provides that walking offers the greatest potential to replace short car trips, particularly those under 2km. That important guidance is more than borne out by the empirical evidence of the National Travel Survey 2012 ("the NTS") (produced by the Department for Transport)¹⁰ which is a document which can, and should, be given significant weight. It confirms that 77% of all trips of less than a mile (1.6km) were carried out on foot. Measured against that appropriate yardstick, there is a good range of facilities within Johnstown which can be conveniently accessed on foot from the proposed housing development on the site, whether its "centroid" (use of which is a wholly conventional approach) is located in the position agreed with the highway authority or were it to be moved some 150m north in accordance with the suggestion put to the appellant's highway witness. The quality of the link along the improved footway provision on Bangor Road is not in issue. The Council's case is bald assertion based on un-informed evaluation of what amounts to a reasonable walking distance.
49. There is a further difficulty with the Council's evidence and position. That is that it does not reflect the view of those officers of the Council who might be thought to be in the best position to judge the matter. The highway authority takes no point in

¹⁰ Inquiry Documents 5 (ii)

relation to the lack of accessibility of the site in relation to walk distance (or, indeed in relation to non-car modes of travel at all). Its revised consultation response states in terms that *"a significant number of pedestrians are likely to use the proposed access road to leave the site via the roundabout and then walk along the footway adjoining B5426 Bangor Road"*. The Council's attempt under cross examination to read down the word *"significant"* in that response as a qualification attached to some (unspecified) sub-group of site pedestrians did the Council's case no credit and had all the hallmark of special pleading to argue a case. The appellant's highway witness observed under cross examination, why would the highway authority have gone to the trouble of agreeing footway improvements along Bangor Road if it had thought that there would be no significant use of the same to or from the site by pedestrians?

50. The Council had a particular concern about walking to school in Johnstown. However, the NTS reports that *"for trips to school less than 1 mile in length, walking was the most prevalent mode of travel for both primary and secondary school children, accounting for 79% and 89% of trips respectively."* The appellant's highway evidence was that all the housing on the site would fall within 1 mile of both the infants and the junior school in Johnstown with the distances to the same (accessed via Bangor Road), measured from the very last house in the top north east corner of the site, being 1,600m to the infants school and 1,450m to the junior school. The position is not materially altered were one to proceed on the basis of the Council's measurement of 1,650m to the very last house. And, to put the matter in a wider context, the NTS also confirms that the average trip length for primary school children in 2012 was 1.8 miles (2,880m). Considered in the light of evidence rather than some mercurial standard of the Council witness's own devising, the appeal site provides reasonable walk accessibility in respect of primary schools. Secondary schools are within comfortable cycling distance.
51. The nearest bus stops from the appeal site (on Heol Orsaf and Snowdon Drive) are within 800m and a reasonable walking distance on any view of matters. To characterise the hourly service provided by the No 6 bus from those stops as an unsatisfactory frequency (as the Council appeared to do) is exaggerated. The point that the last No 6 bus in the evening would leave too early for someone returning from Wrexham if working a normal day would no longer appear to be factually correct in the light of the latest communication¹¹ from the bus operator which states that there is now a service which departs Wrexham at 17:45. In any event, the point is more than offset by the ready availability of numerous other (and frequent) services from Wrexham stopping on High Street/Ruabon Road at later times. Those bus stops are within 1,200m of the appeal site, a 15 minute walk. And, as the appellant's highway witness explained, it is also important to have regard to overall journey length such that the 15 minute walk to/from these stops from/to the appeal site combined with the short bus journey to/from Wrexham (as little as 10 minutes in some cases) would make for no more than a 25-30 minute journey overall for, say, a resident of the appeal site who worked in Wrexham. Bus provision will be further enhanced by the diversion of the No 6 service into the site (an arrangement funded by an appropriate contribution in the planning obligation) with at least some prospect (thought to be reasonable by the Appellant's highways witness) of a service running

¹¹ Inquiry Documents 4 (v)

at a later time than at present. The Appellant's conclusion that the appeal site provides good opportunity for bus trips is more than justified.

52. The retail unit on the site has not been put there to bolster sustainability for fear that the development might be considered unsustainable without it. The Appellant's highway witness explained its provenance which is borne out by the documentary material (Gladman's candidate site submission and the UDP proposals map) and not challenged. The development is sustainable without such provision but the presence of a retail facility on the site will bring an added benefit in terms of convenient access to a local shop.

An illogical extension to the settlement/a failure to maintain settlement pattern?

53. The reason for refusal asserts that the development would represent an illogical extension to the settlement of Johnstown. Gladman and the witnesses it has called do not accept that this would be the case; the proposed development would represent a logical extension to Johnstown. If that be right (which it is submitted it is), no further point could be taken against the development in terms of a settlement pattern objection.
54. Before dealing with the issue of "*logic*", it might be noted to begin with that there is no reason why Johnstown should not be extended. In the existing UDP it is classed (along with Rhosllannerchrugog) as an urban village which classification stands second in the settlement hierarchy below Wrexham itself. In the Preferred Strategy it is a key settlement falling, again, in tier 2 of the settlement hierarchy. Johnstown is a sustainable location for growth.
55. Turning to "*logic*", this is a commonly employed notion when judgments are made about settlement extensions. However, the use of this term should not be allowed to obscure the fact that what is actually required (as accepted by the Council's witness) is a rounded or holistic planning judgment taking into account all material considerations.
56. Yet the abiding impression of the Council's case is that all its eggs are in the single basket of spatial separation: the housing component of the scheme would, it says, be spatially separated from Johnstown by the railway line and the SAC. True it is that, in plan form (rather than as perceived on the ground), the proposed housing development would be so separated. However, the railway line is not a fixed barrier let alone some kind of insuperable obstacle; it can be crossed by the Bangor Road underbridge which will be provided with an improved pedestrian footway which fits the requirements of the highway authority. There is also a crossing of the railway line further north (at the pedestrian underpass) which links the country park to the existing residential area (providing an example of already existing functional linkage across the railway line between Johnstown in the west and the recreational area in the east. Moreover, the spatial separation of built areas in the vicinity of the appeal site by a SAC is already a feature of the character of the area and its settlement pattern given the SAC between Johnstown and Rhosllannerchrugog.
57. It is submitted that a rounded or holistic judgment as to the appropriateness of the appeal site as a settlement extension should be informed, not just by the above, but by all the following factors (the basis of which was put to and largely accepted by the

Council's witness in cross examination) set out in the bullet point list below. Each point is accompanied by the judgment which, it is submitted, is appropriately made in respect of the same:

- The distance of the proposed housing on the appeal site to facilities in Johnstown – in this respect (as set out above) there is a good range of facilities within the settlement which can be conveniently accessed on foot within 1 mile from the proposed housing development on the site.
- The quality of the linkages to the settlement – an improved footway and cycle link is provided along Bangor Road which will (as above) meet all the requirements of the highway authority.
- The historical relationship of the appeal site to Johnstown – it is clear from the evidence that Johnstown grew to provide housing for workers at the former Hafod Tileries on the appeal site (and the former Hafod Colliery to its north); the affordable housing officer of the Council speaks of the "*strong associations*" of the appeal site "*with the town*" and considered, indeed, that the appeal site "*could be seen as forming a logical extension to the nearby town*".
- The planning history of the appeal site – it has been allocated in the past for employment use (no doubt in recognition, in part, of its proximity to Johnstown).
- The planning status of the appeal site – it is (as above) an employment area in the UDP and thus is appropriate for built development.
- The constraints to settlement expansion in other locations – Green Barrier designation rules out most of the land around Johnstown save a small area to the north rendered unsuitable by the presence of power lines.
- The greenfield or brownfield nature of the land – how much more logical could it be to build housing on suitable brownfield land in good proximity to a settlement rather than on greenfield (or even Green Barrier) land?
- The effect of development on the appeal site on the character and appearance of the area – this matter is picked up below; the Council's case on this issue is all but devoid of any substantive content.

58. Ultimately it is the appellant's case that the issue is one of whether there would be planning harm; there would be none in this case.

An isolated development in a rural landscape which would not accord with the character and appearance of the area?

59. The appeal site is not isolated in terms of accessibility by non-car modes of transport for reasons already given.

60. The appeal site does not lie in a rural landscape. The Council backed away from this in evidence and referred to a semi-rural landscape although, in truth, the Council had not done any character assessment at all. The appeal site is influenced by: the existing buildings of the former Hafod Tileries; the employment uses to its immediate north; the landfill site to its south; the settlement edge of Johnstown to its west; the nursing home to its east; and the none-too-distant A483 further to the east. It is hardly pristine open countryside in landscape and visual terms, whatever its policy status. The present character of the appeal site and its more immediate surroundings is mixed. The development proposed would not be out of character, as explained by the appellant's landscape architect. The significant green infrastructure proposed as part of the appeal scheme would, in fact, have a beneficial effect.

61. Widening the focus of the character assessment somewhat, in terms of existing, documented material, the appeal site lies within area 7c (Rhosllannerchrugog – Rhostyllen – Ruabon – Pen y Cae) as set out in the Wrexham LANDMAP Supplementary Planning Guidance (March 2007) (“the SPG”)¹². The SPG is nowhere referenced by the Council. The overall summary of character area 7c in the SPG is that it is “*closely-built*”. The emphasis here is on built form, not on rurality. The appellant points out the obvious contrast between the overall summary in the SPG of area 7c (“*closely built*”) and the overall summary in the same document of the next character area to the east (13a – Welsh Maelor) – “*attractive undulating lowland farmland*”. In regards to the suggestion that a key characteristic of visual character identified in relation to area 7c in the SPG is ‘undulating farmland’, it would be difficult to choose a more inappropriate characterisation of the appeal site. Again, the proposed development would, it is argued, not be out of character with area 7c but would lead to improvement in character.
62. As for matters of appearance, the LVIA¹³ submitted with the application and the updated assessment¹⁴ submitted by the appellant’s landscape architect are an appropriate, structured assessment of visual matters from a representative selection of viewpoints. No challenge has ever been made to the LVIA’s visual analysis (or indeed its landscape analysis). The Council provides no visual assessment in their proof of evidence. The Council’s delegated officer report that accompanied their assessment of the application is similarly lacking in any detail. The currency in which the Council’s evidence and the delegated report deal is unvarnished assertion rather than considered analysis. The claim by the Council that houses would appear out of context and isolated on the appeal site is not supportable. On the other hand the appellant’s landscape evidence has demonstrated very clearly that from those longer distance views which allow an appreciation of the appeal site in its wider setting, the proposed housing development on it would not be seen in isolation but would appear in the context of the existing built form of Johnstown. Closer range visibility is, as has also been demonstrated by the appellant, very restricted and contained within a limited visual envelope. And where close range views would be more readily available, the replacement of dilapidated buildings and associated untidy hardstanding with well-designed new houses would represent a visual improvement. New houses along the eastern margin of the site softened by appropriate planting would replace the abrupt hard edge formed by the present dilapidated industrial buildings and achieve a much better transition between the site and the more open land to the east.
63. The hypothetical scenarios (a site cleared of buildings or a light industrial development) put to the appellant’s landscape witness in cross examination are nothing to the point (as there are no proposals for the same before the inquiry) and, for good measure, also misconceived in being based on a comparative merits assessment rather than the proper approach of considering whether the appeal proposals are acceptable in their own right.

¹² Appendix 12 of Mrs E Fry’s proof of evidence

¹³ Inquiry Documents, Core Documents Folder 1, CD 1.6

¹⁴ Mrs Fry’s proof of evidence

Weighting of UDP policies and accordance of the development with them

64. Policy PS1 has already been set out above. The development does not comply with this policy in that it proposes housing development outside the settlement limits of Johnstown. However, for reasons already explained, those settlement limits are out of date and can only command significantly reduced weight. Correspondingly, the requirement of this policy that development be confined to settlement limits is also subject to the same diminished weight.
65. Policy PS2 provides that *"development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment."* For reasons already advanced, the development does not conflict with this policy. It does not detrimentally affect countryside or landscape/townscape character but improves the same. Similarly, open space is enhanced. There is no detrimental effect on the natural environment.
66. Policy PS3 has been set out above. The development complies with this policy.
67. Policy PS4 provides that *"development should maintain the existing settlement pattern and character and be integrated with the existing transport network to help reduce the overall need to travel and encourage the use of alternatives to the car."* As an appropriate extension to the settlement of Johnstown (for the reasons set out above), the development does not conflict with the requirement of this policy to maintain the existing settlement pattern and character. As has also been shown above, the development will be integrated with the existing transport network and will both help to reduce the overall need to travel and encourage the use of alternatives to the car.
68. Policy GDP1, so far as relied upon by the Council provides that *"all new development should:-*
- a) Ensure that built development in its scale, design and layout, and in its use of materials and landscaping, accords with the character of the site and makes positive contribution to the appearance of the nearby locality ...*
 - d) Ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.*
 - e) Ensure that built development is located where it has convenient access transport facilities, and is well related to pedestrian and cycle routes wherever possible."*
69. The development complies with criterion a) of the policy. It will accord with the character of the site, with its mix of urban and natural influences, and will make a positive contribution to the appearance of the nearby locality in removing buildings in a poor state of repair, unattractive hardstanding and the general detritus of a former industrial site. The development also complies with criterion d) of the policy. It will ensure safe and convenient pedestrian and vehicular access to and from the site. Finally, the development complies with criterion e) of the policy. The appeal site has convenient access to public transport facilities and is well related to pedestrian and cycle routes.

70. Policy H5 deals with housing in the countryside and provides that, outside defined settlement limits, new dwellings will only be permitted in certain limited circumstances. Those circumstances are not applicable here. The appellant has never shied away from the fact that the development conflicts with this policy (if housing development on an employment area were to be treated as housing in the countryside). However, the position which obtains here is the same as with Policy PS1. Settlement limits are out of date and can be given only significantly reduced weight. Correspondingly, the requirement of this policy that development be confined to settlement limits is also subject to the same diminished weight.
71. Policy E5 (employment development in the countryside) is not a policy which formed part of the Council's reason for refusal. It is, in any event, irrelevant for reasons already set out.
72. Policy S7 relating to retail outlets in the countryside was not deployed by the Council in its reason for refusal against the A1 component of the development although it is touched on briefly in the Council's evidence. The Council however confirmed that the Council was not relying on the same in cross examination. In any event, a more appropriate policy yardstick in this case for the retail element of the proposal (albeit this element is not within settlement limits) is Policy S6 dealing with local need shopping. The reasoning put forward by the planning officer in the committee report for the Gresford Road, Llay proposal¹⁵ is applicable in the present case also: *"despite the fact that policy S6 only applies to sites within settlement limits, I am of the opinion that the policy is more relevant to this proposal than policy S7. The proposed retail unit would be developed in conjunction with a large housing development and not in isolation. So in the context of the development as a whole it would be located within a built up area rather than in the countryside."* Approached on this basis, there is no conflict with Policy S6 in the present case.
73. The Council seek to rely on two recent appeal decisions¹⁶ in Wrexham for the proposition that significant weight should be given to the UDP and the policies in it. However, quite apart from the fact that those cases represented decisions on their own merits, they each had a crucially different feature (shared also with the Rhosrobin appeal decision). The cases were ones where the Green Barrier policy (Policy EC1) of the UDP was engaged. Such cases are a world away from the present. The Green Barrier is all but equivalent (save in respect of its long term permanence) to a Green Belt. Subject to strictly controlled exceptions, built development is inappropriate in a Green Barrier. Openness (in the sense of absence of built development) is at the heart of the policy. Substantial weighting attaches to any harmful impact. Very exceptional circumstances must be shown in order for inappropriate development to be permitted. The present case does not involve a Green Barrier. The housing development proposed is not even on greenfield land let alone a Green Barrier. It is one of the merits of the present proposal that it could potentially avoid the need for Green Barrier release.

¹⁵ Appendix 9 of Mr T Jeremiah's proof of evidence

¹⁶ Appendices 3 & 4 of Miss S Holman's proof of evidence

74. It is also to be noted that neither the Gresford appeal decision nor the Minera appeal decision relied on by the Council had anything to say about the weight of Policy PS1 or Policy H5 or, indeed, on the more general question of whether settlement limits were out of date.
75. In any case, there are powerful material considerations which point to a decision otherwise than in accordance with Policies PS1 and H5. Amongst these are: the absence of a five year supply and the contribution of the appeal proposals to remedying the deficiency in providing market housing which is required now; the equally significant benefit of the delivery of much needed affordable housing; the re-use of brownfield land; and the beneficial improvements to the character and appearance of the site.

Planning Policy Wales

76. Paragraph 4.2.4 of PPW is engaged in this case in that (for reasons already explained), relevant development plan policies should be considered outdated or superseded. In these circumstances there is a presumption in favour of proposals in accordance with the key principles and key policy objectives of sustainable development in the planning system. The proposals in this case are in accordance with the key principles and key policy objectives of sustainable development for all the reasons set out in appellant's evidence.
77. The proposals are thus sustainable and enjoy the benefit of the presumption in favour of sustainable development embodied in PPW.

The benefits of the proposals

78. The contribution of the proposals to remedying the deficiency in the supply of market housing is a benefit which (as explained above) is entitled to considerable weight.
79. The benefit of the proposals in providing much-needed affordable housing is likewise a factor of significant weight. This is plainly not a matter which goes to mitigation (in that it does not address an issue created by the scheme but a pre-existing need) and the weight attached to the benefit is not to be reduced on the basis that market housing development should in any event make provision for an affordable contribution. The importance of a 20% (60 units) affordable housing contribution in this case is underscored by the evidence contained in BP2: Settlement Hierarchy and Development Potential which highlights that the Cefn Mawr/Rhos sub-area does not have sufficient viability to provide affordable housing and that the broad potential affordable housing viability threshold here is 0%. Further factors emphasising the importance of the contribution in this case are: an annual shortfall in Wrexham of 157 units per annum; the particular need in Johnstown which has a high demand for social housing as evidenced by the Council's waiting lists; and the full and unequivocal support offered to the proposal at all stages by the Council's affordable housing officer¹⁷. The provision of affordable housing will enable people with existing

¹⁷ Inquiry Documents, Core Documents Folder 3, CD 4.1 & CD 4.2

connections to the area to stay within the community and provide others with the opportunity to live there.

80. The proposals are also beneficial in providing an additional retail and employment facility. These will benefit all in the area, not just scheme residents, and result in the creation of part time and full time employment opportunities for local people.
81. To the social benefits addressed above are to be added economic benefits, none of which is in issue for the Council. The proposals will result in construction spend and associated employment creation, will generate expenditure in the local economy by future residents (which will help sustain shops, services and facilities) and will realise extra council tax revenue for the local authority.
82. The footway and cycleway improvement will be of benefit to all users and not just scheme residents. So also is the case with the further bus added to the No 6 service. The improvement of existing rights of way within the site will be of benefit to all network users.
83. Environmental benefits are achieved in the form of an improvement in the character and appearance of the area, the redevelopment of a site which makes no positive contribution at present and a significant increase in green infrastructure and publicly accessible open space. The addition of a significant area of managed great crested newt habitat will provide an ecological and biodiversity improvement.

Overall conclusions

84. The limited conflict of the proposals with the development plan is with policies (PS1 and H5) which are out of date and subject to significantly reduced weight. There are in any event powerful material considerations which indicate that a decision otherwise than in accordance with those policies is appropriate. The scheme benefits are considerable and the planning balance clearly points to consent being given. The development enjoys the benefit of the presumption in favour of sustainable development. The Council's reason for refusal is unsubstantiated.
85. Accordingly, it is respectfully submitted that the appeal should be allowed and that the recommendation to the Welsh Ministers should be that planning permission should be granted.

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86. It is the Council's case that in the circumstances the reason for refusal as aforesaid are justified and reasonable, and as such the Inspector is respectfully requested to recommend within his report to the Welsh Ministers that the Appeal be dismissed.

Issues

87. At the outset of the Inquiry the following issues were identified:
 - (i) Does the Development provide a suitable site for housing and mixed use having regard to sustainability, development plan policies, settlement limits and land supply for housing ?

- (ii) Whether future occupancy of the proposed development would be provided with adequate opportunity to travel by means other than private car so contributing to a sustainable pattern of development.
 - (iii) What is the effect of the Development upon the character and appearance of the area ?
88. In respect of the above issues other matters upon which additional information was required included:
- (a) Site Planning History and extent of previously developed land;
 - (b) Weight to be given to the UDP and LDP;
 - (c) Sustainability of the site, National Planning Policies and 5 year land supply;
 - (d) Sustainability in terms of walking / cycling distances and proper public transport;
 - (e) The character of the area and how the proposal would affect the same.
89. All the above issues are clearly interrelated and within the submissions that follow the above main issues are addressed individually with reference as appropriate to the specific information referred to above.

Does the Development provide a suitable site for housing and mixed use having regard to sustainability, development plan policies, settlement limits and land supply for housing ?

90. This first issue can be further sub-divided as follows:

Nature of the Site

90. Despite in numerous sections within the proofs submitted on behalf of the Appellant the appeal site being referred to as brownfield site, it is clear only part of the area is brownfield with the remainder being greenfield land with established hedgerows, trees and other vegetation. In this regard attention is drawn to the plan at paragraph 1.2 in Ms Holman's proof of evidence as qualified by her answers in cross examination that accepted the area to the North East of the Dennis Ruabon works as being brownfield. Other than the refuse tip the remainder of the site is greenfield.
91. The Council's evidence defined 'Successional Habitat' as land reclaimed over time and the appellant's planning witness confirmed that other than the brownfield area as discussed above the remainder was "physically greenfield due to regeneration". This was the proper and only reasonable concession bearing in mind the exclusion of "land where the remains of any structure or activity have blended into the landscape over time, so that they can reasonably be considered part of the natural surroundings" from the definition of brownfield (PPW Figure 4.4).
92. During the course of the Inquiry there was evidence presented as regards the square area of land that can be seen in the aerial photo [at appendix 13 figure 11 to the

proof of evidence¹⁸ of the appellant's landscape witness] referred to during the Inquiry as "the refuse tip". The Council's witness recalled it having been "ever changing" over time and not being in that form in 2013 whereas the appellant's planning witness produced a google earth image from 2009 which showed the feature on the ground at that stage and alluded to an earlier 2006 image (not presented in evidence showing the same thing). It is clear however there is no evidence of any established lawful use in planning terms.

93. Furthermore, when consideration is given to the planning history (as detailed below) there is a significant area of greenfield within the Appeal Site.

Site Planning History

94. There is no real dispute as regards the site planning history being (in relation to the extent of the Appeal Site) as follows:
- (i) Outline permission Ref ESC 22453 was granted on the 8th November 1999 and subsequently renewed;
 - (ii) The renewed permission expired in 2004.
 - (ii) The site was not included in the most recent Employment Land Review but was included within Appendix II of the UDP as being land with planning permission as at 1st April 2001.

The Weight to be placed upon Development Plan Policies

95. In relation to this aspect of the case the following submissions are advanced:
- (i) The Appellant accepts that Policies PS2 and PS4 are not outdated and as such significant weight can and should be placed upon them within the context of this Appeal;
 - (iii) Despite what is submitted on behalf of the Appellant in relation to weight to be given to the 2005 Unitary Development plan, and the fact that paragraph 2.8.4 of PPW advises development plan policies be given decreasing weight when they are outdated and superseded there is still a need to establish settlement boundaries;
 - (iv) That proposition was accepted by the appellant's planning witness in cross examination. His criticism is that PS1 was out dated due to the absence of available land within established settlements;
 - (iv) The appellant's planning witness also properly accepted in cross examination that PS1 directs housing to allocated settlements and employment to allocated employment land;
 - (v) Further, the use of settlement limits as a tool within the armoury of planned development is appropriate. Not to do so would amount to as (set out by the Council's witness and accepted by the appellant's planning witness) permitting 'urban sprawl';
 - (vi) The Appellant concedes conflict with Policy H5 and simply seeks to rely upon

¹⁸ Mrs Fry's proof of evidence

- zero housing supply in terms of land;
- (vi) Accordingly, whilst it is conceded that the Council is in a zero land supply position as regards allocation of housing land, that in itself is not a sufficiently material consideration to outweigh in the case of conflict with other policies as detailed above and below, and does not justify taking no account whatsoever or placing little weight upon Policy PS1;
 - (viii) It is noted that the Appellant refers to a permission in relation to Home Farm, Gresford Road, Llay, Wrexham¹⁹ by way of precedent as to departure from PS1 and H5. As can be seen from perusal of page 96 of appendix 9 of the statement²⁰ of the appellant's planning witness, this decision can be clearly distinguished as that site, unlike the appeal site is not divorced from the settlement boundary (see further below); and,
 - (ix) Further, the Appellant avers that the reference in the Appeal Ref APP/H6955A/11/215207 to a 17.6 ha site adjacent to Dennis Ruabon is the current appeal site, and further as a result of the Inspector's finding of it being designated employment land is thus within the ambit of PS1. To the extent that the land referred to by the Inspector is the appeal site, the Council planning witness agreed in cross examination, but made the valid point that due to the length of time since a valid permission was granted (being 22 years ago) this purported allocation should be given little if any weight. It is submitted that this is further echoed by the answer given by the appellant's planning witness who stated the land was "physically greenfield due to regeneration".

Settlement Pattern

96. In terms of settlement pattern, the appellant seeks to argue that the logical extension is onto this site. It is submitted that this is flawed for the following reasons:-
- (i) As is set out at pages 27 – 30 of the appellant's planning witnesses' proof of evidence²¹ by reference to Ordnance Survey Maps the Appeal Site has always, prior even to the settlement of Johnstown ever being established, been separated by the railway line.
 - (ii) Further, in addition to the long existing railway line that creates the settlement boundary further significant additional separation in the form of the Special Area of Conservation "SAC" exists. That designation, being a European designation, renders it highly unlikely (as accepted by the Appellant's witnesses) that the space between the railway and the rear of the Appeal Site (which for reasons set out above in the main is greenfield) would ever be developed.
 - (iii) In the circumstances such an extension over the railway line and beyond the SAC would not, and could not, maintain the existing settlement pattern.

¹⁹ Appendix 9 of Mr T Jeremiah's proof of evidence

²⁰ Appendix 9 of Mr T Jeremiah's proof of evidence

²¹ Mr T Jeremiah's proof of evidence

- (iv) It would create something best akin to a small divorced and isolated village, which for the reasons as set out below would not be sustainable in terms of preferred means of access.

The effect of the Development upon the character and appearance of the area.

Character of the Site.

97. The Appeal site falls within Landscape Character area 7c²². The key visual characteristics being defined and described as “the lower slopes of Ruabon Mountain consisting of undulating farmland with residential and industrial development”.
98. Despite this definition the appellant’s landscape witness stated that at present the appeal site was “out of character”. It is unclear upon what basis that opinion was formed in the light of the key visual characteristics as aforesaid clearly including ‘industrial development’ and is submitted cannot be an accurate consideration of the current character of the site.
99. During cross examination the appellant’s landscape witness accepted that:
- (i) The Site is physically separated by the railway and SAC from Johnstown with the proposed development predominantly towards the Hafod Road end;
 - (ii) access to the proposed development to be (other than in emergency) from the Bangor Road end through the greenfield site onto the development (as is indicated by the master plan drawing).
100. Whilst it is conceded that paragraph 13.1 of the Council’s planning witness proof of evidence²³ is absent the detail of site visits and assessments, the Welsh Ministers are respectfully requested to:
- (i) accept the Council’s planning witness’s oral evidence (under cross examination) to have attended the appeal site and viewed the same on foot and by car to carry out a visual assessment and;
 - (ii) that this evidence by way of conclusions as set out in paragraph 13.1 of that evidence are based upon those assessments.
101. Contrary to what is asserted by the Appellant’s landscape evidence, in the circumstances, and for the above reasons as fully set out in paragraph 13.1 of the Council’s planning witness, it is submitted that the development as proposed would be detrimental to the character and appearance of the area and accordingly be in conflict with PS2 and GDP1a.

Whether future occupancy of the proposed development would be provided with adequate opportunity to travel by means other than private car so contributing to a sustainable pattern of development.

²² Appendix 12 of Mrs Fry’s proof of evidence

²³ Miss S Holman’s proof of evidence

102. The evidence presented by Council in regards to the public rights of ways (PROW) being unsuitable is made out by virtue fact they were presented to her in cross examination as “not primary” pedestrian routes. Difficulties of terrain, inability to improve due to SAC and SSSI designation were accepted by the appellant’s highway witness as was the very real issue that the shortest route by way of PROW was dependent upon an un-official link between paths 24 and 27. As conceded by the appellant’s highway witness this could be terminated at any time and in any event was not suitable at night.
103. In relation to the travel distances, the appellant’s highway witness accepted in cross examination that the assessment as depicted at appendix H to his proof²⁴ is based upon a location to the southern end of the site and to go to the North Western end of the site would add another circa (by his own evidence) 400 metres travel distance. In addition moving the location to the centre of the residential element of the site he estimated added another 150 metres to the figures at paragraph 4.4.5 of his proof of evidence.
104. The Council contend that the distances were further, but even applying the appellant’s highways witness’s figures it is submitted that the site is at best borderline when compared with the data relied upon by the Appellant (Dft National Travel Survey²⁵ - of 77% of all trips less than 1.6km on foot) i.e. adding another on average 200m (being the true mid-point figure) places each journey at the upper end of being likely to be undertaken on foot.
105. The nearest school is 1650m away based on the Council’s own evidence or 1600m away if the evidence of the appellant’s highways witness is accepted. The data relied upon by the appellant’s highway witness refers to trips of <1 mile (Page 15 Dft NTS). It is worthy of note that the same survey data indicates that for longer trips 82% use the car as the preferred means of transport to get children to school.
106. Although it is accepted cycling is an option it is submitted that it is not open to all, and would not be suitable for taking children to school and the weekly shop.
107. In terms of public transport the evidence indicates the nearest bus stop being Heol Orsaf which is 800m away (taken from the southernmost point). The bus route / service to that stop is service / route number 6. That service only operates Monday to Friday with the last bus leaving Wrexham 16.45pm. That would not allow sufficient time for workers to make use of that service. The next bus route requires a 1200m walk to the nearest bus stop.
108. Whilst it is conceded, that there is a proposal to extend route/service number 6, into

²⁴ Appendix H of Mr B Jackson’s proof of evidence

²⁵ Inquiry Documents 5 (ii)

the site, that would only reduce the walking distance to the nearest bus stop, and be a Monday to Friday service during the daytime hours. The same problem as referred to above still arises at all other times.

109. Although implied by the appellant's highway witness that the frequency of service / route 6 may be increased there is no evidence to that effect before the inquiry.
110. In terms of rail travel it was accepted by Mr Jackson that as the nearest train station is 3km from the site in Ruabon, it is too far to walk. Whilst within cycling distance it is submitted, that option is not available to all. In relation to travel by bus the same submissions as set out above are repeated.
111. It is submitted all this points towards the site not being sustainable in terms of the element of reducing the need to travel within the context of PS4, and also GDP1(d) in terms of safe and convenient pedestrian access to and from the appeal site, and GDP1(e) in terms of being located within convenient access to public transport facilities, and being well related to pedestrian and cycle route wherever possible.

Other Matters

112. Under the heading 'background' within appellant's planning witness's proof of evidence, at paragraph 1.13²⁶, it was suggested that the Council's planning case officer for the application had come to a conclusion, made a recommendation and it was her line manager who disagreed with the recommendation. During cross examination the appellant's planning witness accepted that he could not provide any first hand evidence as he was not involved at that stage. Conversely the Council's planning witness was involved from the beginning and when cross examined on the point gave clear and concise evidence as to what occurred.
113. Although, it is submitted it has no relevance to the merits upon which the appeal will be determined, for the avoidance of doubt, the Council relies upon the Council's planning witness evidence both oral and written as to the true position being as follows:-
- (i) As a result of a number of concerns of both technical and principle matters being raised by the Council in its first response to the Appellant (dated 2 December 2013 – see appendix 12, proof of evidence of the Council's planning witness²⁷) the Appellant at a subsequent meeting requested the opportunity to address the technical matters and to provide additional information to make it a more robust case to support the acceptability of the development in principle.
 - (ii) The Appellant continued to request further extensions of the deadline for determination and the Council continued to work with the Appellant until such time as in 2015 when all technical matters had been addressed.
 - (iii) At no time was confirmation or an indication that permission was forthcoming

²⁶ Mr T Jeremiah's proof of evidence

²⁷ Miss S Holman

made.

- (iv) Due to the number of conditions required to address technical matters at the Appellant's request, the Council produced a draft list of conditions for discussion. This was never intended to be a draft decision notice and was issued simply in that format as the conditions were generated by codes fed into the Council's system which by default produced a draft decision notice.
- (v) As is further evidenced from the email at appendix 4 to the proof of the appellant's planning witness²⁸ from the case officer to the appellant, it is clear the Council did not confirm recommendation was for approval. The Council simply stated a recommendation has been made to the Development Control Manager, and goes on to confirm the Development Control Manager's view, and thus that permission would be refused.

Conclusion

114. For all the reasons as set out above it is submitted that, despite what is said on behalf of the Appellant, the refusal of planning permission was appropriate in the circumstances of this case and the Welsh Ministers are respectfully requested to dismiss the appeal.

Other interested parties or persons appearing at the Inquiry

115. Mr J Droog, a community councillor representing Esclusham Community Council spoke at the Inquiry in support of the Council's decision. In broad terms his objections and concerns, are summarised as follows:

- If the appeal is allowed, it will negatively impact on adjacent businesses who are likely to receive complaints due to the proximity of the proposed dwellings;
- The loss of an employment related site will limit further job creation;
- It will place additional pressure on already scarce local services, particularly medical and educational services;
- The proposed development would lie in close proximity to a site of conservation and a site of special scientific interest (SSSI) where GCN's are found. The proposal could potentially generate negative impacts on the ecology of the surrounding area;
- The proposed positioning of amenity areas under power lines is questionable in terms of safety due to these being the areas where children will play; and,
- The proposal is not supported. For the reasons identified the Community Council requests in the strongest terms that the appeal is not upheld.

Written Representations

116. In response to the appeal publicity, 2 letters of objection were received from Cllr D Bithell a Wrexham County Borough Councillor, and from the Esclusham Community

²⁸ Mr T Jeremiah

Council. The letter of objection from the Esclusham Community Council has been incorporated into the points raised at paragraph 115 above. The letter of objection from Cllr Bithell is summarised as follows,

- The proposal would be located outside of the settlement limit and would appear as an isolated and unsustainable location for development;
- Local road network, and sustainable walking and cycling links to the nearest community facilities and services, are poor;
- Raises concerns about the potential impact on local infrastructure with particular regard to the road network and the capacity of local schools and other community facilities to deal with the impacts of a development of the scale proposed; and,
- Supports the Council in their refusal of the proposed development.

117. Other written representations that have been taken into account are those from local residents submitted to the Council at the application stage which are on the case file. The concerns raised broadly reflect the comments of the Community Council and County Councillor as indicated in the preceding two paragraphs.

118. Responses received from consultees and other organisations at the application stage have also been taken into account. As detailed on the Council's planning officer delegated report²⁹, there were no objections to the proposal from the Council's highways and public protection sections, nor from Natural Resources Wales, the Health and Safety Executive, Welsh Water Utilities or Network Rail. In addition there were no objections from, the Council's affordable housing officer, tree section, the Clwyd Powys Archaeological Trust, the North Wales Minerals & Waste Planning Service and the National Grid.

Conditions and Obligations

Conditions

119. During the Inquiry the main parties presented a draft list of suggested conditions³⁰, which contained agreed conditions, and one condition which was not agreed. At the Inquiry the conditions were discussed in the light of Circular 16/2014³¹. That list forms the basis of the schedule set out in Annex A to this report.

120. The first would require the submission of those matters reserved for a later application, that is, appearance, landscaping, layout and scale. Condition 2 requires the first reserved matters application to include a phasing plan. Conditions 3 and 4 relate to time limits and require the submission of reserved matters within 5 years and that the development be commenced within 7 years. Condition 5 requires any reserved matters to be carried out in general conformity with the principles as shown

²⁹ Inquiry Documents, Core Documents Folder 3, CD 5.1

³⁰ Inquiry Documents 4 (vii)

³¹ Circular 16/2014: *The Use of Planning Conditions for Development Management*

on the amended submitted masterplan for the site and the design principles as set out in the Design and Access Statement. Condition 6 requires any landscaping details to also include all areas of public open space and the equipped children's play areas, and the submission of a landscape management plan.

121. Condition 7 sets a maximum limit of dwellings on the site to 300. Conditions 8, 9, 10, 11 & 12 relate to drainage matters. Condition 13 relates to details for the sound insulation for plant and machinery related to the proposed retail and employment buildings. Condition 14 relates to the provision of 20% affordable housing on the site. Conditions 15 & 16 relate to the remediation and verification of contamination issues related to the site.
122. Condition 17 requires the submission of details relating to a construction method statement and covers such matters as phasing of works, site offices, parking of vehicles, storage of plant and machinery, wheel washing facilities, recycling of demolition waste and the routing of construction vehicles
123. Conditions 18 & 19 requires the submission of details relating to noise and any required mitigation. Condition 20, 21 and 22 relate to ecology matters, with 20 requiring the submission of an ecological management plan, 21 that development be carried out under the supervision of an ecological clerk of works, whilst 22 requires the submission of an ecological compliance report prior to the first occupation of each phase. Condition 23 relates to the submission of an updated bat roost and bird breeding assessment.
124. Condition 24 relates to provision of street lighting related to the development. Condition 25 requires the submission of a 'biosecurity risk assessment' to prevent the introduction of invasive non-native species during construction, and measures to control any such species that may already be present.
125. Condition 26 relates to flood risk and submission of an updated flood consequences assessment, whilst condition 27 relates to the archaeological surveying of all pre and post 1950 buildings on the site. Condition 28 requires no dwelling to be sited within 18 metres of a major hazard pipeline that crosses the site.
126. Condition 29 requires confirmation that the hazardous substances consent for the former Hafod Tileries has been formally revoked. Condition 30 relates to highway matters and requires the submission of details relating to such matters as the new roundabout, traffic management, cycleway/footway along Bangor and Hafod Roads, internal estate roads, cycleway enhancements through Nant Parc estate, speed limit amendments to Bangor Road, and visibility improvements at the existing Eco Ready Mix access. Condition 31 relates to the submission of a travel plan for each phase of the site, and would include details such as an annual monitoring report for the first five years.
127. Condition 32 requires the submission of a sewage network scheme to accommodate foul discharges from the development, with no part of the development being occupied until the approved scheme has been fully implemented.

Obligations

128. An unsigned and undated draft Unilateral Undertaking (UU) was discussed at the Inquiry; it was agreed between the parties that the appellant be given a further period after the close of the Inquiry to sign and date the UU, in addition to amending a number of minor typographical errors. A duly signed, dated and amended UU was submitted as agreed. The UU relates to the following:

- the staged payments of an educational contribution towards the costs of improving or extending Johnstown CP Primary School, with the contribution calculated in accordance with an appended matrix;
- a public transport contribution totalling £200,000 towards the costs of extending the number 6 bus service into the site for a period of 5 years; and,
- details relating to the open space works specification, and a related management plan.

Conclusions

[The numbers in parentheses refers to the foregoing paragraphs]

129. These conclusions are based on the evidence submitted and given at the Inquiry and the written representations summarised above, and my findings at the accompanied and unaccompanied inspections of the site and surroundings. I consider that the main considerations upon which this decision should be based are:

- i. Whether the proposed development complies with national and local policy designed to protect the countryside and promote sustainable development; and,*
- ii. The effect of the proposed development on the character and appearance of the area.*

Whether the proposed development complies with national and local policy designed to protect the countryside and promote sustainable development

Settlement boundaries

130. It is a long standing planning policy position that the countryside should be safeguarded from uncontrolled and sporadic development, with development primarily directed to existing settlements. However, other appropriate locations outside settlements cannot be discounted and these have to be weighed against national advice supporting sustainable development as detailed in PPW.

131. The development plan for the area comprises the Wrexham UDP adopted in 2005 and covers the period 1996 -2011. It is the relevant plan against which this application should be determined, unless material considerations indicate otherwise. In regards to the issue of settlement boundaries, the Council's refusal reason cites in particular policies PS1 and H5. [8, 10]

132. Policy PS1 of the UDP is strategic in nature and seeks to direct new development for housing, employment and community services to within defined settlement limits/employment areas. [10]

133. As accepted by the appellant at the Inquiry, it is clear that the residential development of the site would be in conflict with policy PS1 due to the fact that the site would not be within the settlement limit of Johnstown. However the policy also refers to new development such as employment being directed to within defined employment areas. The site is identified in Appendix II of the UDP as an employment allocation. The particular planning permission that related to the allocation has long since expired. In a recent appeal decision³² relating to land to north of the appeal site, the appellant drew attention to an Inspector's reference to the land comprising the appeal site as being an employment area as identified in the UDP. The Inspector in that decision took the view that although the site the subject of that appeal was not within a defined settlement or explicitly allocated for employment it did, through Policy E1 of the UDP and Appendix II, appear to be an employment area, and therefore the development the subject of that appeal was compliant with UDP Policy PS1 and was deemed appropriate. [42]
134. The Council did not seek to challenge the Inspector's findings in the previous appeal decision, and there has been no change in circumstances in the interim; to my mind I would concur with the findings of the previous Inspector in regards to the site being an employment area, however the planning permission that relates to the allocation in the UDP has long since expired, and therefore the weight attached to the employment allocation is significantly diminished.
135. However, irrespective of the small employment element of the development being located within an employment allocation in the UDP, and therefore being acceptable in principle, the proposed development when considered in its totality is overwhelmingly residential in nature. The development of the site with a primarily large scale housing development would run contrary to policy PS1 which expressly seeks to direct residential development to within defined settlement limits.
136. Paragraph 4.2.4 of PPW refers to the fact that where the relevant development plan policies are considered out dated there will a presumption in favour of development subject to meeting the objectives of sustainable development. It has been accepted by the Council that there is pressing need for additional dwellings, that it cannot demonstrate a five year land supply of housing and that the current settlement limits will have to be breached to meet future housing requirement. Whilst the proposed development is contrary policy PS1, nonetheless, to my mind, the settlement boundaries it seeks to maintain, for the grounds referred to above, are out of date and were drawn in response to a housing target set out in the now out of time UDP; for that reason they, and policy PS1 carry limited weight in the determination of this appeal. The settlement limits were defined in the light of a different housing requirement and the Council acknowledges that they will have to be re-drawn to accommodate existing needs. The appellant accepts the proposed development conflicts with Policy H5 of the UDP which seeks to limit new housing outside of defined settlement limits to amongst other things, affordable housing, and where there is a proven need for such a development, to house a key worker. [10, 64, 70]

³² Appendix 11 of Mr T Jeremiah's proof of evidence

137. However, in regards to Policies PS1 and H5, the pressing need for new housing, of which a significant amount is to be affordable, outweighs the countryside protection policies in this case.

Housing Land Supply

138. Paragraphs 8.1 & 8.2 of TAN 1, state that for those Councils where a UDP is out of date and a LDP is not yet adopted then those Councils will not be able to demonstrate whether or not they have a 5 year housing land supply; in practice this means that Wrexham has a zero housing supply figure. [30]
139. TAN 1 advises that where land supply is below the 5 year requirement 'the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies'. [29]
140. Whilst I accept that the proposed development does not accord with the development plan in so far as it relates to development outside defined settlement boundaries, nonetheless, the lack of 5 year housing land supply weighs heavily in favour of the proposed development. There is a pressing need for housing, however given the early stage the LDP is at, there is little prospect of a plan led solution any time soon.
141. In addition the proposed development would provide 60 affordable units; this equates to 20% of the total housing to be provided. Such a provision falls short of the expected 25% of dwellings on such sites, however the Council accepts that the abnormal costs of developing the site due to contamination remediation in this case justifies a lesser contribution; I have no reason to take a different view. To my mind the provision of 60 units is a significant amount of affordable housing and would make an important contribution to a local identified need as evidenced by the Council's Affordable Housing Officer; this provision also weighs in favour of the proposal. [22]
142. Furthermore the Council accept that within the emerging LDP 'Preferred Strategy' that new land outside of existing settlement limits will be required for development. The appeal site has been included on a site register which identifies all sites that have been submitted by interested parties for consideration, however the Council confirmed at the Inquiry that the appeal site is not deemed to comply with the Council's Preferred Strategy, and that there are site constraints that are unlikely to be overcome to allow the site to be developed. Both parties accept that due to the LDP being at an early stage of preparation, and it not expected to be adopted until sometime after 2018, then it can be afforded little weight in this process.
143. Nonetheless, the emerging LDP does highlight the need to provide for 11,715 new homes to deliver a housing requirement over the plan period of 10,650³³ new homes. It also recognises that, a proportion of those dwellings will need to be on greenfield sites on the edge of existing settlements. Compared to the overall requirement, the proposed development of 300 dwellings on this site would not be prejudicial to the emerging LDP. Further, to my mind, it would be consistent with the overall approach

³³ Paragraph 7.1 of Miss S Holman's proof of evidence

to housing provision in regards to meeting the need for new homes on sites on the edge of existing settlements (I shall return to this issue in more detail later in the report).

Previously Developed Land

144. Paragraph 4.9.1 of PPW advises that PDL should, wherever possible, be used in preference to green field sites. However, it also recognises that not all PDL is suitable for development, due to factors such as, its location, the presence of protected species, valuable habitats or industrial heritage, or because it is highly contaminated. Whilst the parties dispute the extent of PDL, and, the 'location' of the development relative to the development boundary as previously discussed, there is agreement³⁴ that ecology, biodiversity and archaeology interests can be safeguarded by the imposition of appropriately worded planning conditions.
145. Strategic policy PS3 of the UDP states that development should use previously developed brownfield land comprising vacant, derelict or underused land in preference to the use of greenfield land, wherever possible.
146. The parties dispute the extent of PDL that makes up the appeal site. However at the Inquiry the Council accepted that a block of land to the west of the site where former LPG tanks and associated hard standing was located was PDL. In addition the Council accepted that an area to the south of the site described as the 'refuse tip' did have some form of waste on it and was also PDL, although they did question the lawfulness of the portion. Whilst the Council did question the lawfulness of the refuse tip site, what is known is the aerial photograph of the site from 2009 clearly indicates this area devoid of any landscaped features unlike the surrounding areas. When both these blocks of land are included with the extent of land the Council had already accepted as PDL, it is clear that the overwhelming majority of the built development relating to the proposal would be located on PDL. [36,37,38,39,40, 94, 95]
147. PPW at para 9.2.8 sets out a search sequence for the allocation of housing sites in development plans with the preference being for the re-use of PDL within settlements, then settlement extensions, and then new development around settlements with good public transport links. The Council confirmed that it cannot meet the pressing need for additional land for housing on PDL within settlements. To my mind if such a need cannot be met within settlements it follows, that PDL outside settlements should be preferred sequentially over greenfield land outside of settlements. In this case the reuse of the site which is PDL is broadly in accordance with PPW subject to the proposal benefitting from good transport links; an issue I shall return to later in the report. The PDL status of a significant part of the site where the majority of built development would occur puts significant weight behind the proposed development.
148. Albeit for some small scale employment on the site related to the sale of clay tiles, the site has remained vacant and derelict since 2008 when the Dennis Ruabon Tile

³⁴ Inquiry Documents 1 (viii) Statement of Common Ground paras 11.19 & 11.21

business closed. I am not aware that the Council sought from the appellant during the course of the application or appeal process a marketing and feasibility report into the potential for the reuse of the PDL land for employment purposes. What is known is that the buildings on the site are generally in poor condition as evidenced by the buildings condition survey report that accompanied the planning application and by my own observations on the site. In addition it is accepted by the Council, due to the site's historical use, that it suffers from contamination. To my mind, bearing these factors in mind it is likely it is always going to be a challenge to find a beneficial, non-residential use for the site. [6]

149. The Council argue the proposed employment development would run contrary to UDP Policies PS1, PS3, GDP1 and E5. However, I have previously found that the site is an employment area as allocated and referred to in the UDP, the development of a small part of the site for employment related activities would comply with these policies and would be appropriate for the location. However, even if the site was not referred to as an employment area in the UDP, to my mind, the provision of a small element of employment development as part of a large residential development would not be at odds with the aims of sustainable development as espoused by PPW, nor undermine the relevant policies of the UDP. [10]
150. The Council maintain the proposed retail element of the scheme would run contrary to UDP policies particularly S7 which refers to retail sales in the countryside. However, the proposed retail unit would be developed in conjunction with a large housing development and therefore not in isolation, and that in the context of the development as a whole it would be located within a built up area rather than countryside. I accept the Appellant's view that the proposed development is still sustainable without the provision of the retail unit, nonetheless its provision does offer the possibility of easy access to a retail facility, which in the context of the acceptability of a large residential development would not be at odds with the aims of sustainable development as espoused by PPW, nor undermine the relevant policies of the UDP. [72]

Opportunities to travel by means other than the private car, so contributing to sustainable patterns of development

151. Policy PS4 of the UDP seeks, amongst others, that development integrates with the existing transport network to help reduce the overall need to travel and encourages the use of alternatives to the car; such an approach is reinforced in policy GDP1 of the UDP and PPW. [10, 14]
152. The site is approximately 800 m from the nearest residential area, Heol Orsaf, which marks the existing limit to the settlement along Bangor Road; or if as suggested by the Council, an average of 200 m further away if a more northerly point is taken within the site. There is an existing footway along Bangor Road, which links the site into the centre of the village some 1.6 km, or 1 mile away. In order to improve the site's connection to everyday services the existing Bangor Road footway bordering the southern boundary of the site is to be widened to 2 metres along its length upto the railway bridge which lies next to Heol Orsaf; under the bridge the footpath would be widened to 2 metres. In addition a 3 metre wide shared footway/cycleway would be provided along the site frontage at Hafod Road. Johnstown has a good range of

facilities within about 1 mile of the site. During my site visit I observed a number of people walking, cycling and jogging along the stretch of Bangor Road adjacent to the site.

153. Whilst the Council argue that occupants of those dwellings in the most north easterly part of the site would have to travel some 1650 m to access local amenities such the nearest school, nonetheless such walking distances are not unusual as evidenced by the appellant's submitted National Travel Survey 2012 (NTA)³⁵. In addition Manual for Streets (MfS)³⁶ advocates that walking offers the greatest potential to replace short car trips, particularly those under 2km. The vast bulk of housing within the site would be within approximately 1 mile of the majority of local facilities. Bearing in mind, the advice as contained within these documents, and having walked from the site to a number of the local facilities, with those walk times broadly corresponding with the appellant's submitted TA, I do not consider such distances would unduly put off occupants of dwellings on the site from walking. [48]
154. The site is crossed by a number of public rights of way some of which traverse Hafod SSSI and Johnstown Newt Site SAC. I appreciate the Council's concerns in regards to fact that these footpaths could not be upgraded underfoot, nor be enhanced with lighting for winter or night time use, due to being located in environmentally sensitive areas, and that they may not be accessible for those with mobility impairment, parents with buggies, or meet the definition of a 'safe route to school'. Nonetheless, these routes, would offer the possibility for an alternative pedestrian route to Bangor Road, with any usage only likely to increase in the brighter dryer months.
155. The Council did not contest at the Inquiry that the proposed development would encourage alternative means of travel to the car in the form of cycle trips to Johnstown; based on the submitted evidence I have no reason to take a different view. [46,105]
156. The nearest bus stops to the site on Heol Orsaf and Snowden Drive are within 800 m of the site, which to my mind is a reasonable walking distance, with the overwhelmingly majority of the rest of the built part of the site still within approximately 1600 m. The No. 6 bus which serves these stops, currently runs an hourly service on Monday-Friday to Wrexham from 7.27 am until 17.44. The opposite hourly journey from Wrexham starts at 7.45, with the last bus leaving at 17.14. The appellant was able to provide at the Inquiry evidence, in the form of an email³⁷ from the No.6 bus operator that states the service has been extended, with the last bus now leaving Wrexham at 17.45. The proposed development would provide for the extension of the No.6 bus service into the site for 5 years as detailed in the UU. In addition a new bus stop would be provided within the site. [51]
157. The No. 6 service only runs during week days and not in the evening, nonetheless, that service, does run hourly from relatively early in the morning and would be able to pick people up from Wrexham upto 17.45 which is highly likely to allow those

³⁵ Inquiry Documents 5(ii)

³⁶ Paragraph 2.3.2.3 of Mr B Jackson's proof of evidence

³⁷ Inquiry Documents 5 (v)

working an ordinary working day the chance to avail of the service. I accept that the lack of later evening and weekend services is not ideal; however, those residents on the site who would need to access a bus could avail of a number of the alternative services which call roughly 1200 m or 15 minute walk from the site along Ruabon Road. When this 15 minute walk is added to a typical journey time from Wrexham of 10-14 minutes, an overall journey time around 30 minutes, to my mind is not unreasonable.

The effect of the proposed development on the character and appearance of the area.

Character

158. The appellant's original submission with the planning application included a Landscape and Visual Impact Assessment (LVIA); this was complemented with an updated landscape assessment that formed part of the appeal submissions. The Council have not disputed that the methodology used in the LVIA was in accordance with best practice. In my assessment of this main issue I have taken the LVIA into account along with the other information available to me, including my inspection of the site, and the various vantage points within the immediate and wider area. The LVIA and appeal documentation is supported by text, photographs and photomontages that provide a useful indication as to how the proposed development would be seen from the chosen viewpoints. The LVIA provides an indication of the potential landscape and visual impacts of the proposed development. I observed the site from a number of vantage points in the surrounding landscape including those selected for the LVIA. [62]
159. As detailed within the LVIA, the site falls with LANDMAP landscape character area 7c (Rhosllannerchrugog-Rhostyllen-Ruabon-Penycae). The Council's adopted LPG relating to the area states a key visual characteristic is described as the 'lower slopes of Ruabon Mountain consisting of undulating farmland, with residential and industrial development'. [61]
160. Whilst the site is physically separated by the railway line and SAC from Johnstown, the railway underbridge crossing on Bangor Road provides a functional link between the built up area and the country park and SAC adjacent to the site. Further, the pedestrian underpass links the country park adjacent to the site with the existing built up area and via other footpaths to the appeal site. The Council draw attention to the spatial separation of the site from Johnstown due in part to the intervening SAC, however, such a situation is not an unusual feature in regards to the character of the wider area as evidenced by the SAC that separates Johnstown and Rhosllannerchrugog.
161. The existing buildings on the site can be seen at close range from Hafod Road, in mid-range views from Ruabon Road and further afield such as at Ponciau on higher ground to the west. The proposed development would be visible within the landscape and therefore will cause a degree of change. However, visibility does not necessarily result in harm to landscape character, and the local topography and existing landscaping would screen the built part of the development from most of the identified vantage points. I accept that dwellings would be seen along Hafod Road however, the bulk of the site frontage to this road already has the existing dilapidated

industrial buildings or large expanses of hard standing. Medium and distant viewpoints of any dwellings on the site would be limited, and in the main be seen in the context of the existing built form of Johnstown. To my mind the proposed development would not be at odds with the LANDMAP visual characteristic for the area i.e. an area consisting of undulating farmland, with residential and industrial development.

162. Furthermore, adjacent to the site there is built development or PDL to the north, east and west in the form of industrial units, the Hafod House Residential Home, and a landfill site; development of one sort or the other is a feature of the locality. Clearly the proposal would introduce an additional built element into the landscape, but that additional built form would not materially alter its overall character given the mix of built form to that which will remain undeveloped. In addition the site would be enhanced with further planting, and appear no more isolated or divorced from the existing built up area than already exists between the settlements of Johnstown and the adjacent Rhosllannerchrugog. Consequently the proposed development would not have any significant effects on the character of the landscape.

Visual Impact

163. The application site lies at the junction of Bangor and Hafod Roads. Views into the site from Bangor road are heavily restricted due to existing boundary vegetation in the form of trees and hedges. The existing industrial buildings and large expanses of hard standing are built tight to Hafod Road making them very obvious features. In visual terms the existing buildings, due to their dilapidated and generally vacant state, have a negative impact on the area. The majority of buildings on the site are bland and utilitarian in nature, whilst the large expanses of hard standing separating them are bleak and featureless.
164. The application is in outline with all matters reserved for later determination, except for access. The indicative master plan submitted with the application along with the layout as detailed on the submitted Design and Access Statement³⁸ indicate in broad terms a scheme comprising of a mixture of two and a half storey and two storey dwellings located in the approximate area where the existing buildings and hard standings are currently located; this area accounts for approximately 7 hectares of the site. In design terms the new dwellings would reflect features in the locality such as the use of brick, render and tiles. The southern half of the site fronting onto Bangor Road will in broad terms will be devoid of built form, save for the access road leading into the site, the proposed retail and employment units, and an equipped children's play area. This area would include green infrastructure in the form of an attenuation pond, structure planting and public open space (POS), in addition there would be a Great Crested Newt Reserve; this area accounts for approximately 9.5 hectares.
165. There is no dispute that the proposal would be visible within the landscape. However, to my mind the issue is whether that visibility is likely to have a significant adverse effect. The LVIA refers to the visual receptors as including those who live or travel in the area, users of public rights of way in the locality, and people engaged in outdoor

³⁸ Inquiry Documents, 1, (ii) Core Documents Folder 1, 1.5

recreation at the nearby Hafod Country Park. From a number of the viewpoints I observed the visual impact of the development would be of limited significance due to screening by local topography and existing trees and hedges. However, close public viewpoints do include the public rights of way that cross the site and along Hafod Road. From within the site, walkers using the PROW will experience views of the proposal at very close range in addition to those travelling along Hafod Road, whilst users of the Hafod Country Park are also likely to experience views. However these views are unlikely to be sustained over long periods due to local topography and screening effects of the existing vegetation, and as such their effect on visual amenity would be minor and not significant.

166. Further afield, I observed the proposed development would be visible from elevated sites such as Ruabon Road in Johnstown, and Ponciau. However, due to the intervening distances involved, and the fact that the proposal would be seen against a foreground of built development, its effect on visual amenity would be minor and not significant. The existing large buildings on the site which draw the eye of the observer would be replaced with relatively low level structures, which from more distant viewpoints will lessen any visual impacts of the development on the site when compared with that which already exists. [62]
167. I accept that the proposed employment and retail area facing onto Bangor Road will be visible from Bangor Road but this area accounts for only 0.29 ha on a site totalling 17.34 ha. In addition any views of the associated structures would be transitory with the structures being sited behind the existing landscaped screen to Bangor Road with this screen being augmented with further planting, and also would be viewed against a backdrop of further landscaping that forms part of the proposed POS. In visual terms the overwhelming majority of the southern portion of the site that currently has no built form on it will be retained and enhanced with additional planting.
168. In regards to the wider area around the appeal site, a short to distance to the east along Bangor Road, can be found the A483, a major arterial route that links Wrexham and North Wales to Mid-Wales and beyond. The topography of the area, and intervening vegetation means there are unlikely to be any effects on the users travelling along the A483.
169. The nearest properties to the site would be the Hafod Residential Care Home and Hafod House which are located on the opposite side of Hafod Road. I accept that from these residential properties the development would be visible. However, based on the submitted evidence, the partial screening effects of existing and proposed landscaping, the setback distance of those properties from Hafod Road, the limited number in close proximity, and the relatively low level nature of the development, I do not consider those properties closest, nor any others further afield would be unacceptably affected.

Other Matters

170. Third parties raise concerns in regards to the effect of the proposed development on the adjacent SSSI site, and on the GCN population contained within the SAC, however, the agreed ecological statement of common ground submitted by the parties concluded that subject to appropriate mitigation measures there would be no adverse impacts on ecological interests; I have no reason to take a different view. In

addition the proposed development would provide for a GCN reserve extending to some 5.82 hectares. [117]

171. It is argued the existing buildings on the site should be retained, however, the appellant's submitted survey report makes it clear they are generally in a poor state of repair and unviable for future use. Reference is made to none of the dwellings being made available for first time buyers or for rent, however, 60 of the units are to be provided as affordable dwellings. [117]
172. Concerns have been raised about highway safety in regards to the use of the proposed roundabout that allows access onto Bangor Road, however the Highway Authority has raised no objections in this regard; I see no reason to take a different view. Safety concerns have been raised in regards to the proposed public open space being located under the existing high voltage power lines that cross the site, however such an occurrence is not that uncommon. In addition, it should be noted that National Grid, raised no objections in regards to safety. 116, 117]
173. The Council's Public Protection Section has not raised any objections to the proposed development with regard to the potential for odours emanating from the Hafod Landfill site. I have no empirical evidence to lead me to disagree with the Council that whilst some odour may be experienced on occasion, such occurrences are unlikely to be significant or sustained. [118]
174. The Council's Education Section raised no objections to the proposed development subject to the provision of a commuted sum payment; such a provision is allowed for in the submitted UU. In addition, I am not aware that the Local Health Board raised any objections to the proposed development based on capacity issues related to the provision of health services. [117]
175. The Council has not highlighted any pressing need for the retention of the site for employment use. The majority of the employment land has lain vacant since 2008 when Ruabon Hafod Tileries closed, with much in a poor state of repair. I have no substantive evidence to indicate that the whole of the site should be retained for employment purposes, nor that its loss would be unduly detrimental to employment interests locally or further afield. [115]
176. Concerns have been raised that due to the proximity of the proposed dwellings to existing business there is likely to be complaints, due to the operations of these businesses not being compatible with residential use. However I am satisfied that this matter could be adequately regulated by the Council's suggested condition No. 18 which requires the appellant to submit a noise assessment with particular regard to noise from existing uses around the site and mitigation measures incorporated for properties found to be noise sensitive. [115]
177. Part of the site does fall within the Hafod Clay Pit mineral zone as defined by Policy MW11 of the UDP where there is a presumption against sensitive development in such an area. However, the buffer zone only extends into the site due to a former entitlement to work the mineral on the land to the north of Bangor Road; this land has since been designated a SAC and been subject a modification order. I would agree with the Council that the amenity of any dwellings within the site would not be unduly impacted upon due to their separation distance from the landfill site.

Conditions and Obligations

178. In the event that Welsh Ministers decide to allow the appeal, I agree that the conditions set out in Annex A would be necessary and reasonable for the reasons set out above and would satisfy all the tests set out in Circular 16/2014 , *The Use of Planning Conditions for Development Management*. In the interest of precision I have broken the suggested condition 6 into 2 separate conditions; in addition I have reworded slightly a number of conditions. The appellant does not agree that the Council's proposed condition No. 32 relating to foul drainage is required and argues matters of foul sewage are comprehensively addressed in other primary legislation and therefore any condition would be unnecessary, irrelevant to planning and unreasonable. The appellant cites case law³⁹, reference to Circular 16/14, and a recent appeal decision, all of which support their stance that such a condition is not reasonable. I concur with this view that the condition is neither reasonable, nor necessary, nonetheless it is included in Annex A should the Welsh Ministers deem it necessary. [119-127]
179. I consider that the obligations are necessary, are related to the proposed development, and related in scale and kind, and therefore meet the appropriate tests set out in Section 122(2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97. Accordingly UU should be afforded weight in the determination of the appeal. [128]

Overall conclusions

180. The proposed development would not accord with Policies PS1 and H5 of the UDP which seek to contain development within settlement limits. However, the Council accept these settlement limits will have to be breached to meet future housing need. I have afforded significant weight in favour of the proposal in regards to the Council's lack of a 5 year housing land supply. In addition I have also afforded significant weight in favour of the proposal's reuse of PDL which forms the overwhelming majority of proposed built development on the site. In addition the proposal would provide 60 much needed affordable homes. For these reasons, even though the proposed development when considered in its entirety would be contrary to the relevant policies of the UDP, I consider it would provide a suitable site for housing and other mixed uses having regard to the principles of sustainable development as advocated in PPW, outdated planning policies that seek to control new development outside of settlement limits, lack of a 5 year supply of housing land, and the PDL nature of the site.
181. In addition, the current settlement boundaries were drawn in response to meet the housing target set out in the now out of time UDP. Given the early stage of the LDP, there is no prospect of a plan led solution any time soon.
182. I have also concluded that the proposed development would provide future occupants with adequate opportunities to travel by means other than the private car and therefore contribute to sustainable patterns of development. The proposed footway/cycleway enhancements, when combined with the extension of the No. 6 bus

³⁹ Inquiry Documents 5 (vi)

service allow the site to be sufficiently well connected to Johnstown in terms of everyday services and amenities. In this respect the proposal would not be contrary to Policies PS4 and GDP1 of the UDP, and the sustainability principles as espoused by PPW.

183. I have highlighted the fact that the proposal will introduce an additional built element into the landscape, but that additional built form would not materially alter the overall character of the landscape given the mix of the proposed built form and that which shall remain undeveloped. In addition there are existing functional linkages between the site and the nearby built up area. From a number of viewpoints I observed the visual impact of the proposed development would be of limited significance due to existing screening and topography. In addition 'green infrastructure' on the site will be augmented, whilst existing large derelict buildings which can be seen from a distance will be replaced with a generally low level development. For the reasons highlighted in this report I do not consider the proposed development would result in any significant harm to the character of the landscape, or to the visual amenity of the area. Consequently the proposal would not be contrary to Policies GDP1 a) and PS2 of the UDP which seek to prevent unacceptable landscape and visual impacts.

Recommendation

184. I therefore recommend that planning permission be granted subject to the conditions attached as Annex A to this report.

Declan Beggan

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Alan Evans of Counsel instructed by Mr Chris Still of Gladman Developments Limited

He called

Mrs Elizabeth Fry	Landscape Architect
Mr Ben Jackson BEng (Hons) MSc MCIHT	Director Ashley Helme Associates Ltd
Mr Tom Jeremiah MPlan (Hons) MRTPI	Associate Hourigan Connolly

FOR THE LOCAL PLANNING AUTHORITY:

Mr Trefor Lloyd of Counsel instructed by Aled Rowlands of Wrexham County Borough Council

He called

Miss Sharon Holman LLB Dip LP, MSc LMRTPI	Planning Case Officer
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THIRD PARTIES

Mr John Droog	A community councillor representing Esclusham Community Council
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Mr Andrew Cain	Reporter Wrexham Leader
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INQUIRY DOCUMENTS

1. Appellant's supporting documents:
 - i. Grounds of appeal and a bundle of supporting documents
 - ii. Core Documents Folder 1 CD1.1-CD1.10
 - iii. Core Documents Folder 2 CD1.11-CD1.20
 - iv. Core Documents Folder 3 CD2.1-CD6.1
 - v. Core Documents Folder 4 CD7.1- CD7.4
 - vi. Statement of Case
 - vii. Proofs of Evidence from Mr Jeremiah, Mr Jackson & Mrs Fry
 - viii. Statement of Common Ground
 - ix. Ecology Statement of Common Ground
 - x. Highways Statement of Common Ground

- xi. Written opening remarks of Mr Evans
- xii. Written closing submissions of Mr Evans
- 2. Council's supporting documents:
 - i. Appeal questionnaire and bundle of supporting documents
 - ii. Statement of Case
 - iii. Proof of Evidence from Miss Holman including suggested list of conditions
 - iv. Letter from Miss Holman of 20 April 2016 regarding an update to the Site Register related to the Wrexham Local Development Plan (2013-2028)
 - v. Written closing submissions of Mr Lloyd
- 3. Appeal Representations:
 - i. Letter of objection from Esclusham Community Council
 - ii. Letter of objection from Cllr D Bithell, Wrexham County Borough Councillor
- 4. Documents submitted during the course of the Inquiry:
 - i. Appeal notification letter and list of those notified received from the Council
 - ii. National Travel Survey: 2012 published by the Department of Transport received from the Appellant
 - iii. Information extrapolated from the Candidate Site Submission Database on Wednesday 27 April 2016 received from the Council
 - iv. Copies of planning policies from the UDP received from the Council
 - v. Series of email correspondence dated 27 April 2016 between Dean Fisher of Gladman Developments Limited and Stephen Bryce, General Manager of GHA Coaches
 - vi. Note on why no foul drainage condition is necessary submitted by Appellant
 - vii. List of conditions the parties are in agreement and disagreement over.
- 5. Documents submitted after the close of the Inquiry:
 - i. Executed Planning Obligation submitted by Gladman Developments Limited

ANNEX A – Recommended Conditions

- 1) Details of the appearance, landscaping of the site, layout and scale, (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any part of the development begins. The development shall be carried out in accordance with the details as approved for each phase of the development.
- 2) The first reserved matters application shall include a plan showing the site and location of all subsequent phases of development (‘the Phasing Plan’). All subsequent reserved matters applications shall be submitted in accordance with the approved phasing plan unless otherwise agreed in writing by the local planning authority.
- 3) Plans and particulars of the first reserved matters referred to in conditions 1 and 2 shall be submitted in writing to the Local Planning Authority before the expiry of 5 years from the date of this permission. The development shall only be carried out in strict conformity with such details as are thereby approved.
- 4) The development hereby permitted shall be begun before the expiry of 7 years from the date of this permission or two years from the date of approval of the last of the reserved matters required to be approved, whichever is the later.
- 5) The submission of all reserved matters and the implementation of the development shall be carried out in general conformity with the principles as shown in amended Masterplan Ref. 4355-P-05 Rev H (March 2015), and the design principles set out in the Design and Access Statement (June 2013) and the subsequent Addendum (June 2014).
- 6) The landscaping and layout reserved matters to be submitted for the approved development pursuant to the requirements of Condition 1 above shall include a scheme for all areas of open space to be provided within the development site including public amenity space and equipped children’s play areas (LEAP). The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwellings.
- 7) As part of the Reserved Matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscape management plan shall be carried out in accordance with the approved details.
- 8) This permission shall provide for a maximum of 300 dwellings.
- 9) Prior to the commencement of the development hereby permitted, a detailed scheme for the provision of a surface water drainage system for the development and a timetable for its implementation shall be submitted to, and approved in writing by, the Local Planning Authority. The approved surface water drainage scheme shall be implemented, managed and maintained in accordance with the approved scheme.

- 10) No part of the development shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with condition no. 09. The sustainable drainage scheme shall be managed and maintained thereafter in strict accordance with the agreed management and maintenance plan.
- 11) No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.
- 12) No part of any buildings shall be constructed within 3 metres either side of the centreline of the public foul sewer, and within 5 metres either side of the centreline of the public combined sewer which crosses the site.
- 13) Prior to first use of the retail and commercial development suitable grease traps shall be provided in order to prevent entry into the public sewerage system of matter (cooking fats, oils and grease etc), likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.
- 14) All mechanical plant and equipment shall be enclosed in sound insulating material, mounted and located to minimise the transmission of structure borne sound in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority before the retail use hereby permitted is open for trading and prior to occupation of the commercial employment uses hereby permitted and thereafter maintained as such.
- 15) Prior to commencement of development in the relevant phase of the development a scheme for the provision of affordable housing within the development shall be submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of Welsh Government Technical Advice Note 2 or any future guidance that replaces it. The scheme shall include:
 - i. The numbers, type, tenure and location on the development of the affordable housing provision to be made which shall consist of not less than 20% of housing units;
 - ii. The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii. The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
 - iv. The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v. The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 16) No part of the development shall commence until a scheme to deal with potential contamination at the site has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include a phased investigation approach to

identify the extent of contamination and any measures required to remediate the site, including post-development monitoring.

- 17) No part of the development shall be occupied until a Verification Report which demonstrates that the remedial works approved as part of condition no. 16 above have been satisfactorily carried out, has been submitted to and approved in writing by the Local Planning Authority.
- 18) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 1. The programme and phasing of works on site;
 2. Site offices and other temporary buildings;
 3. The parking of vehicles of site operatives and visitors;
 4. Loading and unloading of plant and materials;
 5. Storage of plant and materials used in constructing the development;
 6. The erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
 7. Wheel washing facilities;
 8. Measures to control the emission of dust and dirt during construction;
 9. A scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 10. Construction vehicle routing and access.
- 19) A site specific BS5228 noise assessment shall be submitted to and approved in writing by the Local Planning Authority as part of each of the reserved matters applications in respect of the relevant phases of the development. The assessment shall include the noise output level from existing noise generating uses around the application site and consider the impact upon future nearby residential properties from the different phases of development, to include output levels from the combinations of plant used for each phase of the development. Noise mitigation/attenuation measures shall be proposed where WHO guidelines are likely to be exceeded at noise sensitive properties in respect of both existing and proposed dwellings. The mitigation measures as approved shall be fully implemented as part of the development.
- 20) The rating level of any noise generated by reason of this development post completion shall not exceed the pre-existing background level by more than 5dB(A) at any time. The noise levels shall be determined at nearby noise sensitive premises, and measurements and assessment shall be made in accordance with BS4142:2014 Method of Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.
- 21) An ecological management plan and ecological method statement shall be submitted to and approved in writing by the Local Planning Authority, as part of the reserved matters application. This information shall demonstrate how existing features of ecological interest will be protected, how the development site will be cleared of Great Crested Newts, identify areas of compensation and demonstrate management in the long term, and how this will be funded. The recommendations as approved shall be

- fully implemented in accordance with timescales to be agreed in writing as part of the approved plan.
- 22) A minimum of 2 weeks before commencement of development, written notice of the name and contact details of an ecological Clerk of Works shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in all aspects under the supervision of the Clerk of Works as is approved.
- 23) An ecology compliance audit shall be carried out by a qualified ecologist, independently of the Clerk of Works appointed in connection with condition no. 22, in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. A copy of the completed audit reports should be submitted to and approved in writing by the Local Planning Authority after each phase of development, and a final report submitted and approved in writing prior to the first occupation of each phase of the development.
- 24) Prior to demolition of any building on site, an updated Bat Roost and Bird Breeding Assessment, as carried out by a qualified ecologist shall be submitted to and approved in writing by the Local Planning Authority. The report shall include an Ecological Method Statement demonstrating / identifying any measures of protection / compensation / mitigation. The demolition shall be carried out in strict accordance with the recommendations as approved.
- 25) Prior to the first occupation a scheme for the provision of street lighting shall be implemented in accordance with a scheme submitted and approved in writing with the Local Planning Authority.
- 26) No part of the development shall commence until a Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority. The Assessment shall include appropriate measures to prevent the introduction of Invasive Non Native Species (INNS) during the construction phase, and measures to control INNS as may be currently present on site. The measures and proposals shall be fully implemented in strict accordance with the details as are approved.
- 27) A detailed scheme incorporating the design, provision, implementation and maintenance of flood risk protection together with an updated Flood Consequences Assessment shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters application. Each phase of the development shall be carried out in strict accordance with the details as are approved.
- 28) No part of the development shall commence until Level 3 and 4 (English Heritage) archaeological surveys of all buildings on the site both pre and post 1950 have been submitted to and approved in writing by the Local Planning Authority. The survey shall be carried out in accordance with the standards laid down by the Institute for Archaeologists and MoRPHe (2006).
- 29) No dwelling to which this permission relates shall be sited within 18 metres of the centreline of the major hazard pipeline re:1890 – Rhostyllen to Acrefair.
- 30) No part of the development shall be occupied until written confirmation has been obtained from the Hazardous Substances Authority confirming that the hazardous

substances consent for the former Hafod Tileries has been formally revoked, and a copy of this confirmation has been submitted to and approved in writing by the Local Planning Authority.

- 31) No part of the development shall commence until a Method of Construction Statement has been submitted and approved in writing by the Local Planning Authority, to include details:
- i. Detailed layout, design, drainage and construction of the proposed new roundabout and proposed priority working traffic management scheme on Bangor Road;
 - ii. A cycleway/footway along the full frontage of the site on Bangor Road and Hafod Road;
 - iii. Detailed layout and design of the internal estate for the relevant phases;
 - iv. Cycleway enchantments through Nant Parc estate with links to Johnstown;
 - v. Speed limit amendments on Bangor; and,
 - vi. Visibility improvements at the existing Eco Ready Mix access.

The scheme as is approved shall be fully implemented prior to the first use of the development.

- 32) Prior to the occupation of each phase pf the development, a travel Plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. The plan shall consider the requirements of the Active Travel Bill and public transport infrastructure provision across the site. The plan shall also include the detail of an annual monitoring report, which shall be submitted to the Local Planning Authority for written approval following the anniversary of the first use of the development, and every year up to and including the fifth anniversary.
- 33) No part of the development shall commence until a sewage scheme to satisfactorily accommodate the foul discharges from the development has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the water system has been fully implemented and brought into use in accordance with the approved scheme.

Dated

5th May

2016

JOHN SHEARER PATON (1)
RUABON SALES LIMITED (2)
HSBC BANK PLC (3)
GLADMAN DEVELOPMENTS LIMITED (4)

and

GLADMAN DEVELOPMENTS LIMITED (4)
Planning obligation by deed of undertaking under the Town and Country
Planning Act 1990 section 106

relating to

Land lying to the north of Bangor Road
and land at Hafod Road
Ruabon
Wrexham



Gladman House
Alexandria Way
Congleton Business Park
Congleton, Cheshire
CW12 1LB
Tel: 01260 288800
Fax: 01260 288861

THIS UNILATERAL UNDERTAKING is given the *5th* day of *may* 2016
BY:

- 1) JOHN SHEARER PATON of the Clock House Main Road Betley Crewe Cheshire CW3 9BH ('the First Owner')
- 2) RUABON SALES LIMITED (company registration number 6464193) care of Additions Group Queen Insurance Buildings 7 Queen Avenue Liverpool L2 4TZ ("the Second Owner")
- 3) HSBC BANK PLC (company registration number 14259) 40-41-42 of Mortgage Service Centre PO Box 6308 Coventry CV3 9LB ("the Mortgagee")

TO:

- 4) WREXHAM COUNTY BOROUGH COUNCIL of 16 Lord Street Wrexham LL11 1LG ('the Council')

WITH THE CONSENT OF:

- 5) GLADMAN DEVELOPMENTS LIMITED (company registration number 3341567) whose registered office is at Gladman House Alexandria Way Congleton Business Park Congleton CW12 1LB ("the Promoter")

RECITALS

- 1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2) The Council is also the local highway authority and the education authority for the area in which the Site is situated.
- 3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- 4) Part of the Site is subject to a mortgage dated 15 June 2010 between the Second Owner (1) and the Mortgagee (2) ("the Mortgage")

- 5) The Mortgagee is mortgagee pursuant to the Mortgage in respect of title WA825898
- 6) The Promoter submitted the Application to the Council on 30 July 2013 and has no interest in the Site.
- 7) The Council resolved on 16 June 2015 to refuse planning permission in respect of the Application and the Promoter has submitted the Appeal for determination by the Welsh Ministers.
- 8) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates in the event that Planning Permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES as follows:

1. Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

- 1.1.1 'the 1980 Act' means the Highways Act 1980
- 1.1.2 'the 1990 Act' means the Town and Country Planning Act 1990 (as amended)
- 1.1.3 'the Appeal' means the appeal to the Welsh Ministers following the refusal of the Application by the Council given appeal reference APP/H5955/A/15/3135730
- 1.1.4 'the Application' means the application for outline planning permission for the Development dated 30 July 2013 submitted to the Council and allocated reference number ESC/P/2013/0545
- 1.1.5 'Bedroom' means a room in a Dwelling designed as a bedroom or study/bedroom and
 - 1 Bedroomed Unit means a Dwelling with one Bedroom
 - 2 Bedroomed Unit means a Dwelling with two Bedrooms
 - 3 Bedroomed Unit means a Dwelling with three Bedrooms
 - 4 Bedroomed Unit means a Dwelling with four or more Bedrooms
- 1.1.6 'Charging Schedule' means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations
- 1.1.7 'CIL Date' means the date upon which the first Charging Schedule comes into effect in the area in which the Development is situated

- 1.1.8 'CIL Liability' means the amount imposed as 'CIL' (as that acronym is defined in the CIL Regulations) including where applicable the combined CIL for each Phase of Development
- 1.1.9 'CIL Regulations' means the Community Infrastructure Levy Regulations 2010 (as amended)
- 1.1.10 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence Development' shall be construed accordingly
- 1.1.11 'the Composition of the Development' means the aggregate number of Dwellings comprised in the Development and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling
- 1.1.12 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect
- 1.1.13 'Decision Letter' means the decision letter issued by the Planning Inspector or the Welsh Ministers confirming whether or not the Appeal is allowed
- 1.1.14 'the Development' means the development of the Site with redevelopment of land at Haford Tileries for proposed mixed use development of up to 300 (Use Class C3) residential dwellings 465 sqm (Use Class B1, B2 and B8) business, industrial and distribution units, 235 sqm (Use Class A1) retail, ecological enhancement, landscape, open space, highway improvements and associated works pursuant to the Planning Permission
- 1.1.15 'a Dwelling' means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly
- 1.1.16 'the Education Contribution' means the sum calculated by applying the Matrix to the Composition of the Development payable towards the costs of improving or extending Johnstown Primary School Bangor Road Johnstown
- 1.1.17 'the Index' means the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation

- 1.1.18 'Infrastructure' has the meaning ascribed in Section 216(2) of the Planning Act 2008
- 1.1.19 'Interest' means interest at 5% above the base lending rate of National Westminster Bank plc from time to time
- 1.1.20 'Management Company' means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space
- 1.1.21 'Management Plan' means a scheme to be submitted to and approved in writing by the Council, which identifies:
- (i) the future management and maintenance requirements of the Open Space
 - (ii) the proposed ongoing maintenance operations for the Open Space, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space
 - (iii) the proposed means of funding the ongoing maintenance and management of the Open Space in accordance with the Management Plan by the Owner and where one is formed pursuant to the provisions of this deed the Management Company
 - (iv) a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan
- 1.1.22 'the Matrix' means the formula

$$£(A \times W) + (B \times X) + (C \times Y) + (D \times Z)$$
when
A means the number of 1 Bedroomed Units
B means the number of 2 Bedroomed Units
C means the number of 3 Bedroomed Units
D means the number of 4 or more Bedroomed Units
and
W X Y and Z are as set out in Appendix 1
- 1.1.23 'to Occupy' means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupation' and 'Occupied' shall be construed accordingly

- 1.1.24 'the Open Space means the informal open space and landscaping including the Play Area and ecological management area for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification
- 1.1.25 'the Open Space Works Specification' means a specification for the laying out of the Open Space to be agreed in writing between the Owner and the Council before the Commencement of Development
- 1.1.26 'Owner' means the First Owner and the Second Owner together
- 1.1.27 'Party' means any of the parties to the deed
- 1.1.28 'Phase of Development' means a phase of development which shall be in accordance with the planning conditions to which the Planning Permission is subject
- 1.1.29 'Planning Inspector' means the inspector appointed to preside over the public inquiry in relation to the Appeal
- 1.1.30 'the Play Area' means a local equipped area for play for use by the general public to be provided on the Site in accordance with the Planning Permission
- 1.1.31 'the Plan' means the plan attached to this deed
- 1.1.32 'the Planning Permission' means any planning permission issued by the Planning Inspector or the Welsh Ministers in determining the Appeal
- 1.1.33 'the Public Transport Contribution' means the sum of £200,000 (two hundred thousand pounds) payable in accordance with paragraph 2.5 of Schedule 2 towards the costs of extending the number 6 bus service into the Site for a period of 5 (five) years
- 1.1.34 'Relevant Agreement' means an agreement to secure planning obligations under section 106 of the 1990 Act and which relates to planning permission granted for development where such agreement has been entered into on or after 6 April 2010 and 'Relevant Agreements shall be construed accordingly
- 1.1.35 'Relevant Date' means the date prescribed by paragraph (b) of the definition of 'relevant determination' in Regulation 123(4) of the CIL Regulations in respect of a determination of an application for planning permission being 6 April 2015 or any other date as may be prescribed in Regulation 123(4) of the CIL Regulations
- 1.1.36 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1
- 1.1.37 'Welsh Ministers' means the Welsh Ministers for the time being entitled to exercise the powers in Wales given under sections 77 and 78 of the 1990 Act by Section 319B of the 1990 Act

1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2. Legal basis

- 2.1 This deed is made pursuant to the 1990 Act section 106 Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011
- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority

3. Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission, and
- 3.1.2 the Commencement of Development

save for the provisions of clause 6, Provisions of Immediate Effect, and save in respect of any obligations in this deed expressly requiring compliance prior to the Commencement of Development, which shall come into effect immediately upon completion of this deed.

3.2 CIL Regulations

3.2.1 If in determining the Appeal the Welsh Ministers or the Planning Inspector expressly states in the Decision Letter that any Planning Obligation contained in this deed:

3.2.1.1 is not a material planning consideration; or

3.2.1.2 can be given no or little weight in determining the Appeal; or

3.2.1.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations; or

3.2.1.4 requires funding or provision towards a project or towards a type of Infrastructure where the Council [and /or the County Council] [has/have] following the Relevant Date entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of Infrastructure

then subject to clause 9.2 of this Deed such Planning Obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the Decision Letter

3.2.2 In the event that the Welsh Ministers or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been approved by the Council and has come into effect any contribution payable under the terms of this deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable

3.3 Duration

3.3.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without

the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

- 3.3.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.4 Other development

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

3.5 Non-enforcement

- 3.5.1 This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees.
- 3.5.2 The obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services

4. Owner's covenants

- 4.1 The Owner covenants with the Council as set out in Schedule 2.

5. The Mortgagee

- 5.1 The Mortgagee acknowledges and declares (to the extent only of that part of the Site that is subject to the Mortgage) that:
- 5.1.1 this deed has been entered into by the Owner with its consent, and
- 5.1.2 the Site shall be bound by the obligations contained in this deed.
- 5.2 Any mortgagee shall be liable only for any breach of the provisions of this deed during such period as he is a mortgagee in possession of the Site

6. Provisions of immediate effect

- 6.1 On completion of this deed the Promoter shall (if requested) pay to the Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £100
- 6.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999
- 6.3 The Owner agrees with the Council to give the Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

7. Notices

- 7.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 7.2 The address for any notice or other written communication shall be within the United Kingdom.
- 7.3 A notice or communication shall be served or given:
 - 7.3.1 on the Owner at the addresses shown above, or such other address as shall be notified in writing to the Council from time to time, marked for the attention of John Shearer Paton, and
 - 7.3.2 on the Promoter at its registered office from time to time, or such other address as shall be notified in writing to the Council from time to time, marked for the attention of David Gladman.
 - 7.3.3 on the Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of the chief legal officer
 - 7.3.4 on the Mortgagee at the address set out above or such other address as shall be notified in writing to the Council from time to time

8. Local land charge

This deed shall be registerable as a local land charge

9. Jurisdiction and legal effect

- 9.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

SCHEDULE 2

The Owner's Covenants with the Council

1. Progress of development

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development and
- 1.2 upon Occupation of any part of the Development

2. Payment of contributions

- 2.1 The Owner shall pay the Education Contribution to the Council in the following instalments:
 - 2.1.1 33% prior to the first Occupation of any of the Dwellings
 - 2.1.2 33% prior to the first Occupation of 33% of the Dwellings; and
 - 2.1.3 the balance prior to the first Occupation of 66% of the Dwellings
- 2.2 The Owner shall not Occupy nor permit the Occupation of any of the Dwellings until the payment referred to at paragraph 2.1.1 above has been made
- 2.3 The Owner shall not Occupy nor permit the Occupation of more than 33% of the Dwellings until the payment referred to at paragraph 2.1.2 above has been made
- 2.4 The Owner shall not Occupy nor permit the Occupation of more than 66% of the Dwellings until the payment referred to at paragraph 2.1.3 above has been made
- 2.5 The Owner shall pay the Public Transport Contribution to the Council in the following instalments:
 - 2.5.1 20% prior to the first Occupation of the 120th Dwelling
 - 2.5.2 20% on the first anniversary of the date of the payment made pursuant to paragraph 2.5.1 above
 - 2.5.3 20% on the second anniversary of the date of the payment made pursuant to paragraph 2.5.1 above

- 2.5.4 20% on the third anniversary of the date of the payment made pursuant to paragraph 2.5.1 above
- 2.5.5 20% on the fourth anniversary of the date of the payment made pursuant to paragraph 2.5.1 above
- 2.6 The Owner shall not Occupy nor permit to the Occupation of the 120th Dwelling until the payment referred to at paragraph 2.5.1 above has been made
- 3. Open space transfer and works**
- 3.1 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification and the Management Plan
- 3.2 Prior to Commencement of Development to submit to the Council evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space
- 3.3 Not to permit or allow the Occupation of more than seventy-five percent 75% of the Dwellings on any Phase of Development until any Open Space to be located on that Phase of Development has been provided and/or constructed (as appropriate) in complete accordance with the Open Space Works Specification
- 3.4 Not to permit the Occupation of more than ninety-five percent (95%) of the Dwellings that form part of the Development until the Open Space has been transferred to the Management Company in accordance with the details approved by the Council under the Management Plan and on the terms set out in Schedule 3
- 3.5 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.5 (i) and 3.5 (ii) of Schedule 2

- 3.6 Not to amend the Management Plan without the Council's written consent
- 3.7 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing

SCHEDULE 3

Provisions relating to the transfer of the Open Space

The transfer of the Open Space to the Management Company shall:

- i. be a transfer of the entire freehold interest of the Open Space
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space
- vii. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Council together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Residential Dwellings which adjoin the Open Space
- x. not require consideration in excess of one pound (£1)
- xi. contain a covenant for the benefit of the Council to manage and maintain the Open Space in accordance with the approved Management Plan

APPENDIX 1

Matrix

Education Multiplier

1 Bed	2 Bed	3 Bed	4+ Bed
W = £0.00	X = £1,960	Y = £1,960	Z = £2,352

SIGNED AS A DEED by
JOHN SHEARER PATON
In the presence of;

Witness name: *Claire Morris*
CLARE MORRIS
Witness address: *GERMANS*
EXCHANGE STATION
TITHEBARN ST
.....
..... LIVERPOOL
Occupation: *SOLICITOR*

German
SIGNED AS A DEED by
a director of
RUABON SALES LIMITED in the presence of; *Claire Morris*
CLARE MORRIS
GERMANS
EXCHANGE STATION
TITHEBARN ST.
LIVERPOOL
L2 2QP
SOLICITOR.
.....
Director
.....
.....
Director/Secretary

IN WITNESS WHEREOF this document which is intended to take effect as a deed has
been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day
and year first above written.

SIGNED AND DELIVERED

by

Lisa Maria Rodgers



Attorney of
HSBC Bank plc

in the presence of: *A. Braddock*

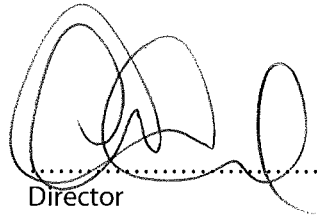
Witness: *ANNETTE JUNE BRADDOCK*

Address: **HSBC Bank plc**
SHEFFIELD SECURITIES
PROCESSING CENTRE

Occupation **BANK OFFICIAL**

EXECUTED as a deed by
GLADMAN DEVELOPMENTS LIMITED
acting by

a director


.....
Director

in the presence of:

Signature of Witness

Rachel Goddard

Name of Witness

Address of Witness

Occupation of Witness

Solicitor

Name <u>RACHEL GODDARD</u>
Gladman Legal Department
Gladman House Alexandria Way
Congleton Cheshire CW12 1LB

BY THIS POWER OF ATTORNEY given the fifteenth day of December two thousand and fifteen HSBC Bank plc ('the Bank') incorporated in England with registered number 14259 and having its Registered Office at 8 Canada Square, London E14 5HQ appoints **LISA MARIA RODGERS** to be the attorney of the Bank in the name of the Bank and on its behalf to do or execute as the act and deed of the Bank or otherwise to execute any deed or sign any document:

1. required to discharge, release, surrender, convey, re-convey, transfer, re-transfer, assign, re-assign, postpone or defer or otherwise regulate the priority of, firstly, any mortgage, charge, standard security or other security vested in the Bank of any heritable or moveable or real or personal property comprised therein and, secondly, any bond, guarantee, undertaking or indemnity or any other similar engagement in favour of the Bank, and thirdly, any indebtedness secured by any of the foregoing;
2. required to convey assign or transfer any heritable or moveable or real or personal property pursuant to any powers contained in any mortgage or charge held by the Bank;
3. required to create, grant, release or vary or to confirm or consent to the creation, granting, release or variation of any right, privilege, estate or interest in any heritable or moveable or real or personal property the subject of any mortgage, charge, standard security or other security vested in the Bank;
4. being a bond, guarantee, undertaking or indemnity or any other similar engagement by the Bank;

and generally for all or any of these purposes to act as the Bank's attorney and declares that each of the powers granted by this Power shall be read separately and in no way to be limited by reference to any other of such powers.

This Power of Attorney will expire twelve months from the date hereof unless previously revoked by the Bank.

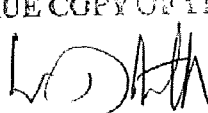
IN WITNESS WHEREOF HSBC Bank plc has caused its common seal to be affixed to this deed the day and year first above written.

The COMMON SEAL of HSBC BANK plc was hereunto affixed in the presence of:

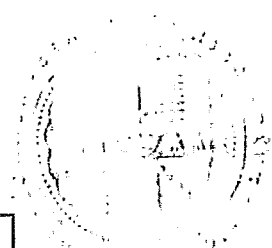

.....
Authorised Signatory


.....
Authorised Counter Signatory

WE CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL



HSBC Bank plc



032227

