

Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/ Your ref: C3429 New Road, Rhosrobin
Ein cyf/ Our ref: qA1345967

Mr Guy Evans
Cassidy and Ashton
10 Hunters Walk
Canal Street
Chester
CH1 4EB

10 June 2019

Dear Mr Evans

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY WELSH TOWN PLANNING AND HOUSING TRUST LIMITED, MRS I
DUTTON, MR J DUTTON, MR P DAVIES AND MR D GRIFFITHS IN CONJUNCTION WITH
LIBERTY PROPERTIES
OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 189
DWELLINGS WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS AT LAND EAST
OF TAN Y BONT, MAIN ROAD, RHOSROBIN, WREXHAM
APPEAL REFERENCE: APP/HY955/A/17/3182282**

1. Consideration has been given to the original and addendum reports of the Inspector, Kay Sheffield BA (Hons) DipTP MRTPI, who held Hearings for your client's appeal against Wrexham County Borough Council's ("the Council") refusal of outline planning application P/2016/0189. The application is for "residential development of up to 189 dwellings" on land east of Tan y Bont, Main Road, Rhosrobin, Wrexham.
2. In accordance with section 79 and paragraph 3(1) of Schedule 6 to the Town and Country Planning Act ("the 1990 Act"), the appeal was recovered for determination by the Welsh Ministers. The reason for the direction is that the proposal is for a residential development of more than 150 houses on more than 6 hectares of land. 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 are within the portfolio of the Minister for Housing and Local Government and have been exercised by me as Minister.
3. In exercising their functions as part of carrying out Sustainable Development in accordance with the Well-Being of Future Generations (Wales) Act 2015 ("the WFG Act"), section 2 of the Planning (Wales) Act 2015 requires the Welsh Ministers, as a

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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public body, to ensure the development and use of land contributes towards improving the economic, social, environmental and cultural well-being of Wales. 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 WFG Act through examination of the appeal by way of a Hearing in accordance with the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003.

4. The Inspector held a Hearing on 14 February 2018 and a site visit was carried out on the same date.
5. On 18 July 2018, the Cabinet Secretary for Energy, Planning and Rural Affairs wrote to all Heads of Planning in Wales to issue a 'Call for Evidence' to explore ways the planning system can assist in increasing the delivery of new homes in sustainable locations. As a result, paragraph 6.2 of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies was dis-applied. It is now a matter for decision makers to determine the weight to be attributed to the need to increase housing land supply where a Local Planning Authority (LPA) has a shortfall in its housing land.
6. In accordance with the Town and Country Planning (Hearings Procedure) (Wales) 2003 Rules, on 31 July the First Minister issued a letter to all parties which took part in the appeal hearing giving them the opportunity to make representations or ask for the reopening of the hearing to take account of a new matter of fact.
7. A Planning Inspector, appointed by the Welsh Ministers reopened the Hearing on 21 February 2019.
8. The Inspector recommends the appeal is allowed and planning permission granted. Copies of the Inspector's original report and addendum report (IR) are enclosed. All references to paragraph numbers, unless otherwise stated, are to the addendum report.

Main Consideration

9. The main issue considered in the Inspector's addendum report is whether the lack of a five-year housing land supply is a consideration sufficient to outweigh any conflict with local and national planning policies (IR41). I agree with the Inspector that this is the main issue due to the absence of an adopted Local Development Plan (LDP).
10. In the Inspector's original report it was accepted that the proposal would constitute inappropriate development in the Green Barrier (original IR80-82) and that planning permission should not be granted for such development except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Barrier as stated in paragraph 3.70 of Planning Policy Wales (PPW) 10. However, in making the recommendation to allow the appeal, the Inspector took account of paragraph 6.2 of TAN 1 and afforded considerable weight to the need to increase housing land supply due to the absence of an adopted LDP, as part of the very exceptional circumstances in favour of the appeal (IR39).
11. The Inspector is of the view that, following the dis-application of paragraph 6.2 of TAN 1 it is now a matter for the decision maker to determine the weight which should be attributed to the need to increase housing land supply where a Council has a shortfall in housing land. However, as stated in paragraph 10 of the letter from the First Minister dated 31 July 2018, the Welsh Government considers the need to

increase housing land supply should not be given considerable weight. It disagrees with the weight afforded in the Inspector's original report to the need to increase housing land supply and with the reasoning that very exceptional circumstances exist to justify the proposed development within the Green Barrier (IR40).

12. I consider the primary consideration is that the Council has neither an up-to-date Unitary Development Plan (UDP) nor an adopted Local Development Plan (LDP). The Inspector states it is therefore considered to have zero housing land supply. The Inspector states that the requirement in Planning Policy Wales (PPW) 10 that the Council must ensure that sufficient land is genuinely available or will become available to provide and maintain a five-year supply of land for housing is not met (IR42). I agree with the Inspector and consider the absence of either an up to date Unitary Development Plan (UDP) or an adopted LDP is the crucial factor in this case.
13. The Council has submitted the Deposit Wrexham Local Development Plan 2013 – 2028 (LDP) for examination, at the time of the Hearing, consultation on focussed changes to it was ongoing and there was no firm programme for its examination (IR9). The Inspector is of the view the provision of a five-year housing land supply is a matter which will be addressed by the LDP. The Council considers that sufficient land is proposed for allocation in the plan to meet the identified need for housing and maintain a five-year supply over the plan period. Whether or not the LDP is sound is a matter for the Examining Inspector for the LDP and not this appeal. However, the Inspector states that, as the LDP has not yet been examined and is unlikely to be adopted until early 2020, limited weight can be applied to it. Furthermore, the Inspector is of the view that there are certain matters in respect of housing land supply which are material to the appeal (IR43).
14. The Council's housing completion figures confirm a consistent and significant under-supply which over the period 2013 to 2018 accounts for approximately 1380 units against a proposed average LDP requirement of 517 per annum. The evidence suggests the shortfall will increase over the next year at least. Although the Council is confident it can deliver the projected housing requirements, the Inspector states, if they are to be achieved, there will need to be a significant increase in the number of completions over the remaining 9 years of the plan period. The Council is aware that unless more land is brought forward for development prior to the adoption of the LDP, there is a risk that the housing requirements will not be met. The Inspector is of the view that it is evident that there is no immediate prospect of completions from proposed allocations in the LDP and suitable sites therefore need to be brought forward for development prior to the adoption of the LDP, if the housing trajectory is to be achieved (IR44).
15. The Inspector is of the view that although in the LDP the appeal site is in open countryside and part of a Green Wedge, it is surrounded on three sides by existing built development within the settlement limit of Wrexham Town and represents a logical extension to the settlement. In the event the examination of the LDP identified a need for additional housing land the Council agreed the appeal site was a strong candidate to satisfy that need (IR45).
16. The appeal scheme would contribute up to 189 dwellings, 25% of which would be affordable. It is in a sustainable location being well related to local services and facilities and accessible by sustainable means of transport. The proposal provides a realistic opportunity to accommodate residential growth in a sustainable location. In addition the evidence confirms that it is not a speculative development, but one which would be brought forward quickly and completed within four years. The Inspector

considers the proposal would therefore make an important contribution to housing supply (IR46).

17. The Inspector acknowledges the appeal site may not be allocated for development in the Deposit LDP, however, she states there is no certainty over the final outcome of the plan and the evidence supports an urgent need to increase housing land supply. Given the underlying evidence, the Inspector is of the view the appeal site would provide residential development on land which would satisfy the requirements of the Council's Preferred Strategy (IR47).
18. The Inspector states, given the current position in respect of the Council's housing land supply, the identified need to bring sites forward for development prior to the adoption of the LDP, if the housing trajectory is to be achieved, and there being no immediate prospect of completions from proposed allocations in the LDP, she is in agreement with the parties that considerable weight should continue to be attributed to the need to increase housing land supply in the determination of the appeal. Furthermore, the Inspector considers the site could be developed with the minimum of delay and would thus make a significant contribution to housing numbers at a time when a significant increase in completions is required. The Inspector is of the opinion that the housing land supply situation constitutes very exceptional circumstances which outweigh the harm the development would cause to the Green Barrier, despite the removal of paragraph 6.2 of TAN 1 (IR48). I agree with the Inspector that the proposal will make a contribution to housing numbers at a time when a increase in completions is required, particularly due to the absence of an adopted LDP.
19. Paragraphs 89 to 104 of the Inspector's original report detail further material considerations.

Historic Heritage

20. The Inspector notes the conservation of archaeological remains is a material consideration in determining an application. She also notes where nationally important archaeological remains and their settings are likely to be affected by development, there should be a presumption in favour of their physical protection in situ. The section of Wats Dyke which crosses the appeal site has been identified as one of the last unenclosed sections of the monument and, as confirmed by Cadw, the proposal would have a significant effect on its setting (Original IR89).
21. However, the Inspector is of the view the creation of a substantial landscape buffer to either side of the Dyke and the restriction of built development to the western side of the site would help protect the Scheduled Ancient Monument (SAM) in situ. Furthermore, she states the measures in the Scheduled Ancient Monument Management Plan (SAMMP) would improve the appearance and setting of the Dyke and secure its long term management. The Inspector considers these factors, together with the management of the wider landscape buffer, would help preserve the heritage asset in the longer term (Original IR90).
22. The Inspector notes it is generally accepted the effect of the development on the SAM would be successfully mitigated and compensated for via the SAMMP. The Inspector is of the view the implementation of the management plan would compensate for the damage which would be caused to the setting. The Inspector is also of the view the proposals present an opportunity to secure measures which would preserve it in the longer term, none of the measures is directly dependent on the development taking place (Original IR91-92).

23. The Inspector concludes on this matter the lack of housing land supply, together with the contribution the site would make to housing provision and its compliance with the Preferred Strategy carry significant weight in favour of the appeal. The works to ensure the long term preservation of the heritage asset are not directly dependent on the development and therefore do not add weight in favour of the proposal. Although, the Inspector also recognises that it is unlikely the benefits would come forward in the absence of the proposal (Original IR93).
24. It is noted that Paragraph 6.1.24 of PPW 10 states it will only be in exceptional circumstances that planning permission will be granted if development would result in a direct adverse impact on a scheduled monument. I am satisfied the proposal will not have a direct adverse impact on the scheduled monument in this case.

Landscape and Visual Effects

25. The Inspector notes the site has value as part of the Green Barrier and in preserving the setting of the SAM. Nonetheless, it is almost entirely surrounded by built development and the part which is adjacent to open countryside is bounded by the railway. Although the site is currently devoid of built development, the Inspector considers its edge of settlement location gives it a semi-urban character. It is also not considered to be a high quality landscape. The erection of houses on the western end of the site would extend the urban edge of Old Rhosrobin eastwards beyond Main Road. However, such an extension has already taken place on the northern boundary of the site and the proposal would not extend any further east than this existing development (Original IR94).
26. The Inspector is of the view the indicative layout and supporting evidence suggest a scheme appropriate to the local surroundings could be devised. There is no dispute the development would visually alter the site. Although the Council recognised the development would have a significant effect on the appearance of the site, it raised no objection to the proposal on grounds of landscape character or visual amenity. The Inspector has reached the same conclusion (Original IR95).

Loss of Agricultural Land

27. In previous Agricultural Land Classification (ALC) surveys about 75% of the site, including the land which would be built upon, was recorded as Grade 3a and therefore Best and Most Versatile (BMV) land. However, the submitted agricultural land classification report concluded that the site is likely to be Grade 3b land. Whilst the Council questioned the accuracy of the survey, as it claimed the correct guidelines had not been followed, the Inspector concluded that it did not provide any substantive evidence to support its claims. It is noted that the Inspector is in agreement with the Council that, although there may be conflict with Policy EC2 of the UDP, which only permits development on agricultural land of Grades 1, 2 and 3a, the dismissal of the appeal on these grounds is not justified. (Original IR96-97).

Highway Improvements

28. The development would result in increased traffic on the local highway network and the representations made by interested parties raised concerns that this would exacerbate existing traffic congestion problems. The Inspector is satisfied that the highway improvements associated with the scheme would benefit the wider community as well as residents of the site (Original IR98).

Other Similar Proposals

29. The Inspector considers there are significant differences between the other decisions on similar residential developments raised in evidence and the appeal, which must be determined on its own merits (Original IR99-101).

Concerns Raised by Local Residents

30. In addition to the matters already addressed, interested parties also raised concerns regarding the effect on local wildlife, noise, air quality, the number of affordable housing units and the ability of local services to cope with an increase in population which the proposal would bring about (Original IR102).
31. In respect of wildlife, the Inspector is satisfied from her inspection of the site, consideration of the technical reports and responses from statutory consultees that the site could be developed without adverse impact on statutorily protected species (Original IR103).
32. The Inspector is satisfied that matters of noise and air quality and flooding were addressed in the various reports which accompanied the application. The Inspector confirms the number of affordable units proposed is in compliance with the Council's policy. With regards to local services, there would be a need for additional educational facilities as a result of the development, financial provision for which is addressed in the Unilateral Undertaking. The Inspector is satisfied that there is no definitive evidence of any capacity issues with regard to local health practices or the local health board (Original IR104).
33. In the light of the evidence the Inspector confirms the overall conclusions reached in her original report remain unchanged and the Inspector continues to recommend that the appeal be allowed, subject to the conditions as set out in the Schedule to the original report.
34. In reaching her recommendation the Inspector has taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. The Inspector considers this decision is in accordance with the Act's sustainable development principle, through its contribution towards the Welsh Ministers' well-being objective of "supporting safe, cohesive and resilient communities."

Conditions and Unilateral Undertaking

35. I have considered the conditions set out at the Annex to the Inspector's report and, subject to minor changes, agree they are necessary and reasonable and meet the tests in Welsh Government Circular 016/2014, "The Use of Planning Conditions for Development Management".
36. I am satisfied the obligations in the UU, dated 6 February 2018, meet the appropriate tests in Section 122(2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97, "Planning Obligations". As such I have given weight to the UU in the determination of this appeal (IR108).

FORMAL DECISION

37. It is recognised that the appeal site lies outside the defined settlement boundary and the proposal does comprise inappropriate development within the Green Barrier. PPW 10 states inappropriate development should not be granted planning

permission except in very exceptional circumstances where other considerations clearly outweigh the harm, which such development would do to the green wedge.

38. It is considered the appeal site, whilst located outside the settlement boundary, is in a sustainable location in terms of access to services, amenities and public transport. The Inspector has not been presented with evidence of any capacity issues with regards to the local health services and the Unilateral Undertaking makes provision for a financial contribution for additional primary school places.
39. It is acknowledged that the application is made in outline, however, the indicative layout and submitted details, with the imposition of conditions to provide control over detailed design considerations, is capable of delivering a scheme which addresses the national sustainable placemaking outcomes. The scheme makes provision for a pedestrian and cycle way across the site, which would connect with existing highway infrastructure and other settlements, access to open space and equipped children's play areas. This would meet the National Sustainable Placemaking Outcome to 'Facilitate Accessible and Healthy Environments' (PPW 10, Figure 4, page 20).
40. It is considered the proposed development of up to 189 dwellings, of which 25% would comprise affordable units, would make a contribution towards housing land supply in the area, which has not been adequately addressed due to the absence of an up to date UDP (1996 to 2011) or an adopted LDP. Whilst the development would comprise inappropriate development in a green wedge, I am satisfied, in this case, when all the above factors are taken into account, in their totality, they constitute the very exceptional circumstances necessary to outweigh any harm to the green wedge. I am also satisfied there are no other matters which weigh against the appeal.
41. In exercise of the power referred to in paragraph 2 of this decision letter, I hereby allow this appeal and grant planning permission for the "outline application for residential development of up to 189 dwellings with all matters reserved except for access" on Land East of Tan y Bont, Main Road, Rhosrobin, Wrexham (Ref: P/2016/0189) subject to the conditions in the schedule below and the accompanying signed Unilateral Agreement.

42. In reaching this decision, I have considered the duty to carry out sustainable development under section 2 of the Planning (Wales) Act 2015. The decision made accords with the sustainable development principle set out in the WFG Act 2015 and the well-being objectives of the Welsh Ministers in that it contributes to the objective to 'build resilient communities, culture and language' and contributes to 'driving sustainable growth'.

43. A copy of this letter has been sent to Wrexham County Borough Council and to those persons and organisations who appeared at the Hearing.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive style with a large initial 'J'.

Julie James AC/AM

Y Gweinidog Tai a Llywodraeth Leol

Minister for Housing and Local Government

Schedule of Conditions

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 development begins and the development shall be carried out as approved.
2. Any application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
3. The development shall begin either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. This planning permission provides for a maximum of 189 dwellings.
5. The access into the site shall be laid out in accordance with drawing No. 074-01/GA-02 prior to the occupation of any dwelling erected on the site under the terms of this planning permission.
6. Construction work shall not begin until a scheme for protecting the proposed dwellings from noise from the A483 trunk road has been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any dwelling on the site is occupied. The work shall be carried out in accordance with the approved details.
7. No development shall take place until a timetable for the implementation of the measures specified in the Total Heritage Scheduled Ancient Monument Management Plan reference: ROS/16/002 and dated January 2017 has been submitted to and approved in writing by the local planning authority. Thereafter the measures set out in the Management Plan shall be implemented in accordance with the approved timetable.
8. No development shall commence until a scheme for the disposal of surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving ground water and/or surface waters;
 - ii) specify the responsibilities of each party for the implementation of the Sustainable Urban Drainage Scheme, together with a timetable for that implementation; and
 - iii) provide a timescale for implementation, management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The scheme shall be implemented in accordance with the approved details.

9. No development shall commence until a scheme for the provision of foul sewerage infrastructure has been submitted to and agreed in writing by the local planning authority. The scheme shall include details of and be informed by a Hydraulic

Modelling Assessment. No dwelling hereby permitted shall be occupied until the foul sewerage infrastructure has been provided in full and in accordance with the scheme as approved.

10. No development shall commence 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 Construction Method Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt from construction works;
 - vi) measures to prevent damage to Wat's Dyke Scheduled Ancient Monument during the construction period;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - viii) hours of working.
11. No development shall commence until a detailed Arboricultural Method Statement has been submitted to and agreed in writing by the local planning authority. The development shall only take place in strict accordance with the Arboricultural Method Statement which shall include:
 - i) a specification for tree protective fencing and ground protection measures in accordance with British Standard 5837:2012;
 - ii) a Tree Protection plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones and location of protective fencing and ground protection measures accurately plotted;
 - iii) a full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zones, including any related sections and method for avoiding damage to retained trees;
 - iv) details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
 - v) details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the local planning authority;
 - vi) details of all proposed tree works, including felling and pruning.
12. No development shall commence until a scheme detailing the provision of a footway/cycleway link across the site from Main Road to the junction of Plas Acton Road with Blue Bell Lane and a timetable for its completion has been submitted to and agreed in writing by the local planning authority. The footway/cycleway link shall be completed in accordance with the approved details.
13. Notwithstanding the requirements of condition 1, the submission of the reserved matters shall include a scheme for all areas of open space and greenspace to be provided as part of the development, including public amenity space and equipped children's play areas together with a timetable for their provision. The development shall be implemented in accordance with the approved details.
14. No development shall take place until a long term Landscape Management Plan for the identified areas of public open space and maintained land (as referenced on the

indicative masterplan/development framework drawing number Ref: C3429-PO1C) has been submitted to and approved in writing by the local planning authority. The management plan shall provide: details and measures to ensure the long term protection of the open land; the timing of the implementation of the plan; management responsibilities; maintenance schedules and procedures for the replacement of failed planting for all landscaped areas other than private gardens. The approved scheme shall be implemented prior to the occupation of any of the properties hereby approved.

15. No development shall take place until a programme of archaeological works has been submitted to and approved in writing by the local planning authority. The programme shall include a written scheme of investigation and a timetable for the investigation. The works shall be undertaken in accordance with the approved programme. A written report recording any archaeological works undertaken on the site shall be submitted to the local planning authority within three months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing by the local planning authority.
16. No development shall take place until a scheme detailing the provision of a traffic controlled junction at the Llay New Road junction with Plas Acton Road has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the first dwelling hereby approved.
17. Notwithstanding the requirements of condition 1, full details of the timings and phasing of the development shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the details as approved.
18. The development shall be carried out in accordance with the recommendations contained in Section 7 of the Ecological Assessment 2016 (TEP Report Ref: 4731.01.001).

Notification of initiation of development and display of notice

You must comply with your duties in section 71ZB (notification of initiation of development and display of notice: Wales) of the Town and Country Planning Act 1990. The duties include the following:

Notice of initiation of development

Before beginning any development to which this planning permission relates, notice must be given to the local planning authority in the form set out in Schedule 5A to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 or in a form substantially to the like effect. The form sets out the details which must be given to the local planning authority to comply with this duty.

Display of notice

The person carrying out development to which this planning permission relates must display at or near the place where the development is being carried out, at all times when it is being carried out, a notice of this planning permission in the form set out in Schedule 5B to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 or in a form substantially to the like effect. The form sets out the details the person carrying out development must display to comply with this duty.

The person carrying out development must ensure the notice is:

- (a) firmly affixed and displayed in a prominent place at or near the place where the development is being carried out;
- (b) legible and easily visible to the public without having to enter the site; and
- (c) printed on durable material. The person carrying out development should take reasonable steps to protect the notice (against it being removed, obscured or defaced) and, if need be, replace it.