Land West of Tudor Drive, Penley (application ref: P/2026/0085)

Assessment of issues arising from Officer's Draft Report.

the Planning Consultancy

1. Introduction.

1.1. The application, ref: P/2026/0085, seeks retrospective planning permission for the continued use of a hardstanding area within the site of the former No 83 Station Hospital, Penley for the storage of raw timber, logs and woodchip arising from the Applicants tree surgery business.

1.2. The LPA have indicated that they are minded to refuse the application, the first draft reason for refusal states:

The site lies outside any recognised settlement limits and within a Special Landscape Area as set out in the Wrexham Unitary Development Plan (UDP). No evidence or justification has been submitted to demonstrate that the development in this location is appropriate. This is contrary to UDP policies PS1, EC5 and E5 which respectively direct development to within defined settlement limits, protect Special Landscape Areas from inappropriate development and only permits small-scale employment development in such locations through the conversion of existing buildings.

This report assesses the justification for the above approach before commenting briefly on the second and third draft reasons for refusal (these being addressed in detail in separate arboricultural and ecological submissions).

2. Relevant Policy Considerations

2.1. The reason for refusal relies on policies contained within the UDP, whilst this document is part of the adopted development plan and is, therefore, the starting point for considering the application, it was only intended to cover the period until 2011, it has, therefore, been time expired for 15 years during which time there have been significant changes in National policy that the development plan should reflect, but, of course, the UDP does not.

2.2. This same issue has arisen in relation to other planning applications recently since the LDP, which was intended to replace the UDP was withdrawn and the UDP reinstated. In advising Members as to the status of the UDP, the Chief Officer for Economy and Planning stated in a report to Committee (application ref: P/2023/0593) that:

Crucially, the UDP is based on outdated national planning guidance and underpinned by an evidence base that is now woefully outdated, being well over twenty years old.

In these circumstances, the weight that should be attached to the policies of the UDP is extremely limited. The question, therefore, arises as to what other policies are relevant to a consideration of the application.

2.3. Planning Policy Wales (PPW) provides guidance relevant to Wales as a whole. In referring to the use of previously developed land paragraph 3.55 states that:

Previously developed land should, wherever possible, be used in preference to

greenfield sites where it is suitable for development….It is recognised, however, that not all previously developed land is suitable for development. This may be, for example, because of its unsustainable location, the presence of protected species or valuable habitats or industrial heritage, or because it is highly contaminated.

This site clearly falls within the definition of previously developed land. Whilst adjacent areas may have blended back into the natural surroundings this site clearly has not as the concrete base across the entire area is complete and will not enable 'naturalisation'.

2.4. Dealing with the examples of circumstances where the reuse of previously developed land would not be appropriate, the following comments can be made:

2.4.1. Unsustainable location? – The application site immediately adjoins the settlement of Penley where there are a range of facilities and where new development has recently been permitted, it is inconceivable that it could reasonably be argued that Penley was a sustainable settlement, but that this site was unsustainable.

2.4.2. Presence of protected species or valuable habitats? – Whilst it is accepted that there are valuable habitats and protected species within the surroundings of the application site, these are not present on the site itself, nor is there any evidence that the activities on the site have caused harm, or are likely to cause harm, to these habitats and species.

2.4.3. Industrial heritage? – Whilst the wider Hospital site has some heritage interest, the application site itself is not of significant heritage interest (and certainly not industrial heritage).

2.4.4. Contamination? – Over and beyond the presence of a concrete slab, this site is not contaminated.

2.5. It is clear, therefore, that there is no reason why the application site should not be regarded as previously developed land that should **"wherever possible"** be used in preference to greenfield sites. It is of note that the above approach in National guidance is different to that within PS1. Where there is conflict, the National approach should always be preferred and especially so when Officers have, themselves, acknowledged that the UDP is based on outdated national planning guidance.

2.6. PPW also clearly promotes economic development with paragraph 5.4.13 stating, amongst other things that planning authorities should:

- *promote the re-use of previously developed, vacant and underused land.*

The application site falls within this definition and it is of further note that there is no distinction drawn between sites within established settlements and those in countryside locations.

2.7. The rural economy is addressed at para 5.6 of PPW, at para 5.6.2 it is stated that:

Planning authorities should plan positively to meet rural employment needs....By supporting the development of a broad range of employment opportunities in rural areas planning authorities can increase economic prosperity and help address the effects of rural decline or depopulation where it occurs. Greater opportunity can support and strengthen the future well-being and sustainability of rural communities.

The applicant runs a successful, locally based, tree surgery business employing five local people on a permanent basis (but can employ up to 15 people at busy times after storms etc), a yard such as that on the application site is a vital part of the business and, if planning permission was to be refused, not only would the opportunities for growing the business in the future be harmed, but the immediate impact would be to cause serious harm to the existing business, which is entirely the opposite of the National approach to rural employment.

2.8. Future Wales, alongside the UDP but considerably more up to date, is also part of the development plan. On page 17 it is stated that where a development plan has lapsed the National policies assume significant weight in the decision-making process.

2.9. Policies 4 and 5 of Future Wales set out a strategy to support rural communities and the rural economy, consistent with the approach of PPW.

2.10. Reference can also be made to paras 3.1.1 – 3.1.4 of TAN 6. Once again, this guidance is very supportive of encouraging rural enterprise.

2.11. It is clear that whatever the original justification for Policy PS1, it no longer reflects the approach of national policy to the reuse of previously developed land in locations such as that of the application site and the promotion of rural employment opportunities. The application proposal should be considered to be entirely in line with relevant National policy and this should weigh heavily in favour of planning permission being granted.

3. UDP Policies

3.1. Without prejudice to the conclusions reached above, the policies relied upon in the draft reason for refusal (PS1, EC5 and E5) are commented upon as follows.

3.2. PS1 – This Policy indicates that new development will be directed towards sites within defined settlement boundaries, it is not clear how this Policy sits alongside PS3 which states that, wherever, possible development should use previously developed brownfield land comprising vacant derelict or underused land in preference to the use of greenfield sites. Paragraph 1.1 of the UDP indicates that:

Only those developments which the Council realistically expects to be completed by 2011 are included in the Plan.

It is clear that the UDP was never expected to provide a framework for development beyond 2011 and that is another reason why it should be afforded little or no weight in contrast to the National policy with which the application proposal is, clearly, in accordance.

3.3. EC5 – This controls development within Special Landscape Areas, it does not preclude development, but, rather, indicates that:

development other than for agriculture, small scale farm based and other rural enterprise, and essential operational development by utility service providers will be strictly controlled.

The draft report indicates that the application proposal is not compliant with this Policy because it does not fit in any of the categories of activity which are acceptable in the Special Landscape Areas, there are several points that can be made with regard to this approach:

3.3.1. The Policy wording does not preclude other uses, it merely indicates that they will be strictly controlled, the Policy has, therefore, been misinterpreted. Even on this basis, conditions imposing strict control on the application proposal would comply with the Policy.

3.3.2. It is stated within the draft report that the proposal does not comply with the category of 'rural enterprise' because this is defined in TAN 6. Significant caution should be exercised in applying a definition from one document to similar wording in another document, especially when, in this case, TAN 6 was published several years after the UDP was adopted. However, the references in TAN 6 are concerned with the approach to essential workers dwellings and, therefore, it would be wrong to assume that it would necessarily be appropriate to apply the same definition to very different policy considerations.

3.3.3. However, even the definition in TAN 6 (para 4.3.2) is not an exclusive list, the stated uses are "included" within the Policy, that means that there is also scope for others to be included. Furthermore, the definition also includes "land management activities" which the draft report has not mentioned; the application proposal could be said to fall within this category because it is concerned with managing trees.

3.4. Notwithstanding the above, the objective of EC5 is to control development by requiring a high standard of design with special attention being paid to minimising its visual impact. When commenting on Policy PS4 (not a policy with which the proposal is said to be in conflict), the draft states:

*Whilst the site is detached from the existing settlement limit of Penley [*the red line area immediately abuts the settlement limit*] and separated by an existing woodland, it would not be unusual to find a timber storage area within a rural location and within a wooded area*. *The storage of timber in its own right, subject to the overall amount would not necessarily have a negative impact upon the pattern of a settlement or its*

character.

Having regard to this statement, it does not appear that there is conflict with the objectives of EC5 in any event. The yard area is not visible within the wider surrounding area, views are restricted to its very immediate environs.

3.5. Policy E5 – The draft report indicates that the proposal does not comply with this policy because it does not involve the conversion of an existing building. Whilst it is accepted that E5 could be interpreted in this fashion, it could equally be said that it only applies to proposals involving buildings whilst proposals not involving buildings are considered outside of the policy on their merits (which in this case would be National policy guidance which has already been commented upon), the Policy is poorly worded. However, it defies logic to suggest that the objective of the Policy is to restrict permission for appropriate uses on previously developed land when a building is not required; there is nothing within National policy guidance to support such an approach.

3.6. Indeed, the explanation to the Policy states at para 7.11 that the objectives of the Policy are to avoid a loss of visual quality and landscape character and to avoid harm to agriculture, nothing within the draft report suggests such an impact in relation to the application proposal, indeed, the only comment is that in relation to Policy PS4 (referred to above) where it is acknowledged that there is no harmful impact on character.

3.7. Paragraph 7.11 goes on to recognise that there is a need to provide employment in rural areas and it is noted that small businesses can operate from low-cost accommodation thereby providing employment for local rural communities, the application proposal would meet this objective.

4. **Conclusions – first reason for refusal.**

4.1. The approach of the draft report relies upon alleged conflict with UDP policies, however, it is clear that in relation to each of the three policies relied upon there are flaws in the approach adopted, no part of the report identifies any evidence of significant harm arising from the proposal.

4.2. It is clear, however, that the policies are "woefully outdated" and do not comply with up to date National policy, they should not, therefore, be afforded significant weight on any basis.

4.3. By contrast, the National policy to which reference has been made is clearly of significant weight, and it is clear that this is supportive of proposals such as the application proposal.

4.4. The weight to be attached to National policy clearly outweighs the UDP policies especially in the manner in which the policies have been applied in the draft report. The principle of development on this site should, therefore, be considered acceptable.

5. **The second and third reasons for refusal.**

5.1. Given that the application is one that seeks retrospective permission for an activity that has been operating for the past six years, if the use was one that actually caused harm either to the surrounding woodland or to the ecology of the area, then there would be evidence to justify refusal on these grounds. However, neither reason for refusal points to any such evidence, they are both based on assertion as to what may have happened, or what might happen in the future. Para 9.4.6. of the Development Management Manual states that:

Generally, greater weight is attached to issues supported by evidence rather than solely by assertion.

In this case, as noted above, assertion should be afforded even less weight than usual because the application is retrospective; there should be no need to rely on assertion. As further support for this principle, para 9.7.17. of the Manual indicates that in preparing reports, Members should be able to make "evidence based" decisions.

5.2. Both draft reasons for refusal make reference to insufficient information having been submitted. However, the application is now supported by a detailed arboricultural impact assessment and an ecological appraisal.

5.3. The arboricultural impact assessment observes that the proposal does not require the removal of any trees, and that the condition of the surrounding woodland is influenced by structural instability as a result of the site's previous development, ash dieback, and a prolonged lack of management. The report also concludes that the proposal would not give rise to unacceptable biosecurity risks, especially if a Biosecurity Management Plan was put in place (a suggested draft of which has been submitted).

5.4. The ecological report, including the accompanying Green Infrastructure Statement, concludes that the application site itself has negligible potential for biodiversity and that the habitats within the wider area surrounding the application site will not be affected by the continuance of the commercial activities. The appraisal recommends a series of biodiversity improvements (that can be the subject of conditions) and in overall terms the proposal would result in Net Biodiversity Benefit.

5.5. It is clear, therefore, that there is no justification for an objection to the proposal either in relation to arboricultural or ecological considerations.

6. **Overall conclusions.**

6.1. The proposal is supported by policy in PPW which provides the relevant policy context against which the principle of the development should be assessed.

6.2. The proposal does not, and has not, resulted in material harm either to arboricultural or ecological interests, with appropriate mitigation the proposal can deliver Net Biodiversity Benefit.

6.3. For the above reasons planning permission should, therefore, be granted, subject to the imposition of appropriate conditions.