

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING AND DEVELOPMENT CONTROL COMMITTEE**

DATE: **20TH JULY 2016**

REPORT BY: **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

SUBJECT: **FULL APPLICATION – ERECTION OF 56 NO. DWELLINGS WITH ASSOCIATED ACCESS, OPEN SPACE AND INFRASTRUCTURE AT KINNERTON LANE, HIGHER KINNERTON.**

APPLICATION NUMBER: **054770**

APPLICANT: **ELAN HOMES LTD**

SITE: **KINNERTON LANE,
HIGHER KINNERTON**

APPLICATION VALID DATE: **13TH JANUARY 2016**

LOCAL MEMBERS: **COUNCILLOR P. LIGHTFOOT**

TOWN/COMMUNITY COUNCIL: **HIGHER KINNERTON COMMUNITY COUNCIL**

REASON FOR COMMITTEE: **SCALE OF THE PROPOSAL EXCEEDS THAT FOR WHICH POWERS TO DETERMINE ARE DELEGATED TO THE CHIEF OFFICER**

SITE VISIT: **YES. LOCAL COUNCILLOR HAS REQUESTED IN VIEW OF THE FACT THAT THE SITE IS OUTSIDE THE SETTLEMENT BOUNDARY**

1.00 SUMMARY

- 1.01 This is a full planning application for 56No. dwellings with onsite open space and associated infrastructure. The site is outside but adjacent to the defined settlement boundary for Higher Kinnerton. This application is therefore a departure from the adopted Flintshire Unitary Development Plan as it is outside any defined settlement boundary and is located within the open countryside.

1.02 The basis for making decisions on planning applications should be in accordance with the development plan unless other material considerations deem otherwise. In this instance it is considered the lack of a 5 year land supply is a material consideration which outweighs the fact the site is outside the settlement boundary and is a departure from the development plan. Furthermore the site is considered to be sustainable, viable and deliverable in order to come forward within the next 5 years to meet the supply.

1.03 In order to ensure that the site comes forward to meet the current shortfall a 2 year planning permission is proposed with a requirement for a phasing plan to ensure that the site is delivered in the short term.

2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-

2.01 That conditional planning permission be granted subject to the applicant entering into a Section 106 Obligation/Unilateral Undertaking to provide the following:

- a) Payment of £134,827 towards improvements to teaching accommodation to bring them in line with minimum standards at Higher Kinnerton C.P School and £184,690 towards the remodelling of music teaching accommodation to bring it in line with minimum standards at Castell Alun High School. Such sums to be paid upon the commencement of development;
- b) Provision of a play area to be equipped to a specification provided by the Council, upon sale or occupation of 50% of the development. Should the developer require the Council to adopt the POS a commuted sum of 10 years maintenance to be provided to the Council on adoption;
- c) Payment of a commuted sum of £40,000 in lieu of the shortfall of on-site play provision. This sum to be used to improve facilities at the Park Avenue Neighbourhood Play Area. Higher Kinnerton. Such sum payable on sale or occupation of 50% of the development.
- d) Affordable housing to be provided in the form of 5No. 2 bed units to be gifted to NEW homes and a further 5No. 2 bed units to be provided via a Discounted Open Market Sale scheme at 70% market value in accordance with an agreed marketing strategy and qualification policy. The 30% equity to be retained by the Council.
- e) Payment of £8000 as a contribution to the costs of the legislative requirements in respect of the advertising and public consultation exercises associated with the proposed

traffic calming measures and speed restriction amendment.
Such sum payable before commencement of development.

2.02 Conditions

1. Time commencement 2 years
2. In accordance with the approved plans
3. Phasing plan to be submitted and agreed.
4. Submission and agreement of Landscaping scheme, notwithstanding the submissions.
5. Implementation of agreed landscaping scheme.
6. Submission and agreement of Tree Constraints Plan prior to development.
7. Submission and agreement of Arboricultural Method Statement (including stump grinding) prior to development.
8. Scheme for foul, surface and land water drainage to be submitted and agreed prior to development.
9. Land contamination investigation prior to any development.
10. Remediation scheme to be submitted and agreed prior to any sites works. Implemented prior to occupation of any dwelling approved.
11. Archaeological Investigation to be undertaken and reported upon prior to the occupation of any dwelling hereby approved.
12. External finishes to be submitted and agreed.
13. Scheme for off-site highway works including alteration to road width of Kinnerton Lane, provisions of footway, extension to traffic calming scheme, improvement works to Footpath No.5 and other ancillary minor works to be submitted and agreed prior to commencement.
14. No dwelling to be occupied until Condition 10 works completed.
15. Siting layout and design of access to be submitted and agreed. No formation until agreed.
16. Access to be formed to base course and kerbed before any other works.
17. Principal site access visibility splays of 2.4m x 152m to west and 2.4m x 116m to east. Secondary access visibility splays of 2.4m x 121m to the west and 2.54m x 43m to the east. No obstructions within the splays.
18. Visibility splays to be made available during construction works.
19. Parking facilities to be provided as per approved details.
20. Front of garages to be set back a minimum of 5.5 m behind back of footway.
21. Layout, design, traffic calming, signing, surface water drainage, street lighting and construction of internal estate roads to be submitted and agreed.
22. 1.8m footway between Footpath No. 5 and eastern edge of site to be provided.
23. Scheme to prevent run off of surface water onto highway.
24. Construction traffic management plan to be submitted and agreed.

2.03 If the Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as outlined above) is not completed within six months of the date of the Committee resolution, the Head of Planning be given delegated authority to REFUSE the application.

3.00 CONSULTATIONS

3.01 Local Member

Councillor P. Lightfoot

Objects to the proposals on the following grounds:

- Highway impact. – Questions whether, given the nature of the highway from which access is proposed to be derived, together with the speed of traffic using Kinnerton Lane, safe levels of visibility for vehicles exiting the site can be provided to ensure no detriment to highway safety.
- Pedestrian Safety - Considers proposed pedestrian upgrades in the form of a new footway along Kinnerton Lane area inadequate in width and encourage road crossings on Main Road at a dangerous point. Does not consider the improved footpath link to Park Avenue to be acceptable as an alternative route to school given the increased distance this represents.
- Flood Risk - Considers the site contains springs and watercourses that run through and adjacent to it, draining into existing culverts and drainage ditches. Lack of proper maintenance of these ditches and increased flow of water as a consequence of development will only serve to increase the risk of flooding downstream.

Higher Kinnerton Community Council

Objects to the proposals on the following grounds:

- Considers that visibility requirements at the proposed point of access area such as would have a detrimental impact upon the street scene at this location;
- As above, considers the pedestrian footway proposals to be inadequate;
- Considers that the assessment of traffic flows, speeds and stopping distances is flawed and insufficient information in the form of swept path analysis is provided to consider a range of traffic movements by a range of vehicle types which might reasonably be expected upon this road;

- Too much weight attached to bus services in supporting the contention as to the sustainability credentials of the village;
- The proposals represent unjustified development outside of the settlement which would not accord with national and local planning policies;
- Considers that the outline drainage strategy proposed by the applicant will not address surface water flooding concerns and will result in greater pressure upon an already inadequate drainage system;
- Considers impact upon a private water supply pipeline to Padeswood Cement works which is alleged to run across the site frontage has not been considered in making the application.

Highways DC

No objections subject to the imposition of conditions.

Public Footpath 5 abuts the site. Advises that the current rural nature of the path would not be adequate for unraised links to the village. Advises that the whole path would need to be brought up to adoption standards to a width of 2m along its length. Advises of the need for a temporary Footpath Closure Order to facilitate such improvement works.

Pollution Control Officer

Identifies that the site has the potential to be contaminated due to historical uses in part of the site. Advises of the need for a land contamination condition requiring investigation and if required, mitigation measures to be submitted and agreed.

Education - Capital Projects and Planning Unit (CPPU)

Advises that insufficient capacity would result from the proposals at the local primary school (Higher Kinnerton C.P School). Advises that the nearest Secondary School is Castell Alun High School, which has insufficient capacity and would therefore be affected by the proposals.

Public Open Spaces Manager

Advises that the requirements of LPG 13 would normally be satisfied by the provisions of 3,136 sq. metres of Public Open Space. Advises that the amenity areas adjacent to Kinnerton Lane are not considered to be suitable for POS designation.

Considers the proposed L.A.P area for play is acceptable, subject to the agreement of equipment specification and fencing,

Advises that the shortfall of 2000 Sq. metres of POS can be addressed via a commuted sum of £40,000 with such sum to be used to improve facilities at the Park Avenue Neighbourhood Play Area.

In the event that the developer wishes any areas of P.O.S to be adopted, a commuted sum for 10 years maintenance will be required.

Natural Resources Wales

Considers the ecological appraisal submitted in support of the application to be acceptable. Notes the potential for tree T1 to offer roost opportunities for bats and requests that a condition be imposed requiring further survey work if this tree is proposed to be removed.

Also requests the imposition of a condition requiring a Biosecurity Risk Assessment to be submitted and agreed to detail appropriate measures to control invasive non-native species (INNS) on site and identify measures to prevent INNS being introduced to the site during the course of development.

Dwr Cymru/Welsh Water

No adverse comments. Requests the imposition of a conditions requiring the submissions and agreement of the proposed site drainage scheme. Also notes that public sewers cross the site and requests that an advisory note prohibiting development within 6m of the foul sewer and 3m of the surface water sewer be imposed upon any subsequent grant of permission.

Clwyd Powys Archaeological Trust

Has considered the archaeological assessment report submitted with the application. Considers the assessment recommendations in respect of the further investigation of the area of a former dwelling and smithy, together with the 19th century well, to be well founded and therefore requests the imposition of conditions relating to the need for a programme of archaeological work to be undertaken, recorded, agreed, reported upon and deposited as part of the national Historic Environment Record.

Airbus

No adverse comments. Advises of the need for a crane permit should any cranes be required during the course of development.

4.00 PUBLICITY

4.01 The application has been publicised by way of the publication of a press notice, display of a site notice and neighbour notification letters. At the time of writing this report, 153No. letters have been received in response raising objections on the following grounds;

- The proposals are not compliant with planning policy;
- The site is located outside of the settlement and in open

countryside;

- The proposals will give rise to increased traffic;
- The nature of surrounding roads is such that increases in traffic will result in an adverse impact upon highway safety;
- The proposed footpath arrangements are not adequate to safeguard pedestrian safety;
- Existing drainage infrastructure is inadequate to accommodate the proposal;
- The proposals will give rise to an increased risk of surface water flooding off site;
- The proposals are an overdevelopment of the site;
- No need for the dwellings has been proven;
- The proposals are not reflective of the character of the village and would be detrimental to character and appearance of the wider landscape;
- The proposals would adversely affecting existing residential amenity as a consequence of overlooking;
- There is insufficient capacity at nearby schools to accommodate additional pupils;
- The existing community infrastructure is inadequate to accommodate the proposal; and
- Will result in adverse impacts upon amenity as a result of increased noise and disturbance.

5.00 SITE HISTORY

5.01 No previous history.

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan

Policy STR1	-	New Development
Policy STR4	-	Housing
Policy STR8	-	Built Environment
Policy STR10	-	Resources
Policy GEN1	-	General Requirements for Development
Policy GEN3	-	Development in the Open Countryside
Policy D1	-	Design Quality, Location and Layout
Policy D2	-	Design
Policy D3	-	Landscaping
Policy WB1	-	Species Protection
Policy TWH1	-	Development Affecting Trees & Woodlands
Policy TWH2	-	Protection of Hedgerows
Policy HSG4	-	New Dwellings Outside Settlement Boundaries
Policy HSG8	-	Density of Development
Policy HSG9	-	Housing Mix and Type

- Policy HSG10 - Affordable Housing within Settlement Boundaries
- Policy AC2 - Pedestrian Provision & Rights of Way
- Policy AC13 - Access and Traffic Impact
- Policy AC18 - Parking Provision & New Development
- Policy SR5 - Outdoor Playing Space & New Residential Development

Local/Supplementary Planning Guidance Notes

- LPGN 2 - Space around dwellings
- LPGN 4 - Trees and Development
- LPGN 8 - Nature Conservation and Development
- LPGN 9 - Affordable Housing
- LPGN 11 - Parking Standards
- LPGN 13 - Open Space Requirements
- SPG 23 - Developer Contributions to Education

National Planning Policy

- Planning Policy Wales (8th Edition – Jan 2016)
- Technical Advice Note 1 : Joint Housing Availability Studies
- Technical Advice Note 12 : Design
- Technical Advice Note 18 : Transport

7.00 PLANNING APPRAISAL

7.01 The site and surroundings

The site comprises a 2.9 hectare area of vacant land which abuts the settlement boundary of Higher Kinnerton but is located within the open countryside. The site is roughly triangular in shape and comparatively flat across its north – south each axis although the site falls slightly in an easterly direction. The site is rough grassland with a numbers of trees upon boundaries and within the site.

7.02 A mature hedgerow abuts Kinnerton Lane to the north. The southern boundary comprises a mixture sparse hedgerow and residential style fences abutting the private rear amenity areas of adjacent dwellings. There is no formal demarcation of the western edge of the site where is bounds Footpath No. 5. Existing dwellings abut to the east of the site.

7.03 The Proposals

This is a full planning application for the erection of 56No. dwellings, including affordable housing, public open space, access, drainage and other associated infrastructure upon a 2.91ha area of land at Kinnerton Lane, Higher Kinnerton.

7.04 The proposed dwellings are predominantly two storey in nature, although 4No, bungalows are also proposed. The dwellings are a mixture of detached, semi-detached and mews properties, comprising:

- 13No. 2 bed units (including 4no. bungalows);
- 9No. 3 bed units;
- 23No. 4 bed units; and
- 11no. 5 bed units

7.05 The proposed layout provides for affordable housing comprising 12No. 2 bed properties. These are proposed to be made available for affordable purposes by 6No. of the units being gifted to NEW homes and the other 6No. being made available via a Discounted Open Market Sale model (70%). This proposal has been agreed with the Council's Housing Strategy Manager as an appropriate and justifiable response to affordability issues in the area.

7.06 The proposed development would be accessed from a new access point created onto Kinnerton Lane. A proposed pedestrian footway network within the site is proposed to connect into the existing footpath to the west of the site with this footpath being upgraded in width and surface. This facilitates pedestrian access from the site to Park Avenue to the south. A network of green spaces is proposed within the development creating visual links to the wider countryside context an incorporating the mature trees which exist within the site into the landscaping of the site. A formal equipped play area is proposed along with the creation of more informal areas at the eastern edge of the site. Attenuation tanks are proposed as part of the surface water drainage scheme for the site, these being subterranean in nature and located within two of the open space areas.

7.07 The Main Issues

The main issues for consideration in the determination of this application are;

- The Principle of Development;
- Housing Land Supply;
- Welsh Government Advice and National Planning Policy;
- Best & Most Versatile Agricultural Land;
- Highway impacts;
- Drainage impacts;
- Landscape and visual impact;
- Land Contamination;
- Ecology and Trees;
- Design and impact upon amenity;
- Archaeological impact;
- POS and Play provision; and
- Educational impacts

7.08 The Principle of Development

The site is located outside the settlement boundary for Higher Kinnerton in the adopted UDP. In the UDP Higher Kinnerton was identified as a category C settlement in the settlement hierarchy

initially with an indicative growth band of 0-10% although with revisions to policy HSG3 this became a ceiling of 10% growth with an additional stipulation that any additional new dwellings (within the settlement boundary should be to meet 'proven local needs'.

- 7.09 The monitoring of growth associated with policy HSG3 of the UDP ceased at 01/04/15 as the growth figures coincide with the Joint Housing Land Availability Study survey work undertaken each April, As at April 2015 Higher Kinnerton had seen an actual level of growth over the Plan period of exactly 10% (the ceiling point for a category C settlement) and no further commitments (permissions). In effect we are now entering a new plan period in terms of looking at growth and the present proposal for 56 dwellings would represent a further 9% growth.
- 7.10 In terms of the policies in the adopted UDP, policy GEN3 sets out those instances where housing development may take place outside of settlement boundaries. The range of housing development includes new rural enterprise dwellings, replacement dwellings, residential conversions, infill development and rural exceptions schemes which are on the edge of settlements where the development is wholly for affordable housing. Policy GEN3 is then supplemented by detailed policies in the Housing Chapter on each type.
- 7.11 Given that the proposal is for 56No. dwellings and does not fall within the scope of above policy framework, then the proposal is contrary to these policies in the adopted UDP and is a departure from the development plan.
- 7.12 The applicant seeks to justify the development in terms of a broader policy context, having regard to the following points:
- The Council currently not having a 5 year housing land supply.
 - The Ministerial statement by Carl Sergeant on 4th June 2014 about the need to increase the supply of housing throughout Wales in order to meet housing needs and to contribute to the economy of Wales
 - Site Sustainability and compliance with other plan policies
- 7.13 Housing Land Supply
PPW and TAN1 requires each local planning authority to maintain a 5 year supply of housing land. Welsh Government have taken the decision not to pass the Statement of Common Ground for the 2015 Joint Housing Land Availability Study onto the Planning Inspectorate. The 2015 Study will therefore be recorded as 'uncompleted' and in line with the advice in TAN1 Flintshire is '**considered not to have a 5 year supply**'. The Council is unlikely to be able to demonstrate a 5 year land supply until the LDP is adopted. This falls below the 5 year requirement.

Welsh Government Advice and National Planning Policy

7.14 Welsh Government Technical Advice Note 1 states that

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

7.15 Welsh Government Advice and National Planning Policy Planning Policy Wales Edition 7 July 2014 paragraph 4.2.4 states

“A plan led approach is the most effective way to secure sustainable development through the planning system and it is important that plans are adopted and kept regularly under review. Legislation secures a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise (see 3.1.2) Where;

- *There is no adopted development plan; or*
- *The relevant development plan policies are considered outdated or superseded; or*
- *Where there are no relevant policies.*

there is a presumption in favour of proposal in accordance with the key principles and key policy objectives of sustainable development in the planning system. In doing so, proposals should seek to balance and integrate these objectives to maximise sustainable development outcomes.”

7.16 Paragraph 4.2.5 states

“In taking decisions on individual planning applications it is the responsibility of the decision-maker to judge whether this is the case using all available evidence, taking into account the key principles (see 4.3) and policy objectives (see 4,4) of planning for sustainable development. In such case the local planning authority must clearly state the reasons for the decision.”

7.17 The Inspector in his appeal consideration of APP/A6835/A/14/2220730 land off Old Hall Road/Greenhill Avenue, Ewloe in March 2015 stated that

“There is a danger that the need to increase supply and lack of a 5-year housing land supply could be used to justify development in inappropriate locations.”

It is therefore key in making the planning balance therefore to consider the sustainable development 'key principles' and 'key policy objectives' set out in PPW.

7.18 Higher Kinnerton was considered by the Inspector to represent a sustainable location for development given that she recommended the allocation of land at Babylon Fields.

7.19 Higher Kinnerton is the largest category C settlement. It has a range of facilities and services including primary school, public houses, shops and village hall. It lies within easy commutable distance to the nearby settlement of Broughton which has a greater range of facilities and services and is located close to Chester. With public transport and road links to nearby settlements and employment centres, it is considered to represent a settlement which is capable of accommodating further development in a sustainable manner.

7.20 Due to the current land supply situation and the timeframe for the UDP housing strategy, in order to provide some clarity the Council has produced a Developer Guidance Note which was endorsed by the Council's Planning Strategy Group and Cabinet in June 2015. This application was submitted prior to the publication of this guidance. In brief it is set out below how the application meets the requirements;

7.21 1. Need for the development proposals

This has been argued in terms of the fact that Flintshire does not have a 5 year land supply. There has been limited growth in the settlement in terms of windfall sites. In terms of a search sequence for identifying new sites for housing development PPW paragraph 9.2.8 refers to;

- Previously developed land and buildings within settlements;
- Settlement extension; and then
- New development around settlements with good public transport links.

There are no available sites which are previously developed land and buildings within the settlement and this would be a settlement extension.

7.22 2. Full application

The application is in full and accompanied by a suite of documents to address the key issues.

7.23 3. Sustainability Appraisal

The Planning Statement, TA and an accompanying documentation have attempted to demonstrate the sustainability of the site, although not through a formal Sustainability/Strategic Environmental

Assessment. This refers to the public transport links and footpath links that are proposed to be created.

7.24 The development also provides for a mix of house types which will range from 2 – 5 bedroom houses. The choice of materials for construction and the design of the new dwellings aims to reduce the energy and decrease thermal energy loss. The scheme will provide appropriate space for the storage, disposal and collection of waste. There are a variety of types of amenity space to encourage a healthy community and to encourage an inclusive community.

7.25 4. Viability Assessment

The applicant is providing affordable housing in line with the need identified in consultation with the Council's Housing Strategy Manager, education contributions, on site open space and contributions to the improvement of off-site recreation facilities in the village. No dispute has been raised in terms of these matters and therefore no viability assessment has been submitted. The viability of the site is therefore not questioned and the applicant is not seeking to depart from the planning obligation requirements.

7.26 5. Housing Delivery Statement

The applicant is a house builder (Elan Homes) who has a track record of delivering the sites they gain planning permission for within this authority and not land banking sites. Elan Homes would exercise their option to purchase the land if permission is granted. A 2 year permission is therefore proposed. Subject to planning permission being granted in the Summer of 2016 it is their intention to start on site as soon as possible in spring/summer of 2017. Projected annual completion rates are envisioned to be 24 units per annum. The anticipated completion date of the development would be 2019.

7.27 Best & Most Versatile Agricultural Land:

The question of the Agricultural Land Classification is examined within the submitted Desk Study and Ground Investigation report as the available data suggests the site is Grade 3 land but was not clear if the development site was subgrade Grade 3a or subgrade Grade 3b agricultural land. Subgrade 3a land is classed as Best and Most Versatile agricultural land and is protected by planning policy.

7.28 The report submitted noted the wetness of the site and records numerous boggy areas of varied size across the site. A number of land drains, a spring and a drainage pit are also in evidence. Groundwater is encountered at various depths but very shallow depths. The site is therefore classed as being very wet with moderate seepages and a moderate inflow. As a consequence of the application of the consideration of wetness to the site, the report concludes that the land is Grade 3b. The site is therefore not Best and Most Versatile

agricultural land.

7.29 Highway impacts

The site is proposed to be accessed via a newly created principal access off Kinnerton Lane within the northern boundary of the site. A secondary access to serve the proposed private drive is also proposed within this boundary. Access visibility splays are proposed to be created and pedestrian footpaths across the frontage are to be provided within the rural fringe to be created in the interests of retaining frontage trees. A footpath link to the adjacent Public Right of Way No. 5 is also proposed and works to improve this PROW are also offered.

7.30 The consultation process associated with the application has resulted in concerns being raised in respect of visibility at the proposed point of access, adequacy of the carriageway and footpaths adjacent to the site and the appropriateness of proposals to upgrade Footpath No. 5. The proposals have been the subject of consideration, negotiation and subsequent amendment following discussions with colleagues within Highways DC.

7.31 It is considered that the provision of a footway of a width of 1.5m from the site through the junction adjacent to the Royal Oak Public House and onto main Road, in conjunction with the proposed improvement to Footpath No.5 are acceptable to demonstrate that adequate pedestrian links can be provided to link the site with other facilities within the village. These matters are proposed to be conditioned in terms of their provision.

7.32 Highway traffic calming measures are also proposed to be extended along Main Road and the 30m.p.h restriction along Kinnerton Lane extended. These matters will be required to be secured via statutory processes to which the applicant has indicated a willingness to meet the £8000 cost. This will be secured via S.106 agreement.

7.33 I am advised that the proposed visibility splays are adequate to serve both access points and is conditioned accordingly. Other conditions in relation to the details of the access and highway formation are requested to be imposed and a construction traffic management plan will also be required. Accordingly, no objection is raised on highway safety grounds.

7.34 Drainage Issues

Concerns have been expressed in relation to the existing surface water drainage system upon the site and within the surrounding landscape and the impact of the proposals upon this system. In addition, reference has been made to ground water flows across the site and the presence of a spring within the site itself. The site is crossed by both a public surface water sewer and a public foul water sewer in the area to the eastern edge of the site.

- 7.35 The application is accompanied by a drainage layout proposal in response to these issues. I do not give weight to this drawing as, for amongst other reasons set out elsewhere in this report, there is a concern in relation to this drainage scheme and the impact upon trees. This in itself would not amount to a basis for refusal as the Tree Officer advises me that he considers the issue can be addressed via condition.
- 7.36 In response to consultation, neither Dwr Cymru/Welsh Water (DCWW) nor Natural Resources Wales (NRW) have raised any objection to the proposals. DCWW advice is consistent with my view in terms of the weight to attach to the proposed drainage layout in that, notwithstanding this drawing, they request a condition be imposed which requires the submission and agreement of a comprehensive drainage scheme for the site.
- 7.37 NRW references the fact that the site is located within Flood Zone A upon the Development Advice Map. It is also noted that the creation of hard surfaced areas can give rise to an increased potential for increased off site flooding due to a reduction in the amount of permeable surface available for water to naturally drain away. The proposals indicate that surface water will be stored within the site in subterranean storage tanks and is proposed to be released at a rate equivalent to the greenfield run-off rate to an existing drainage ditch on the southern boundary of the site which ultimately outfalls to a brook to the north east of the site.
- 7.38 This proposal is not objected to by NRW but in view of the fact that infiltration rates in the area are poor, advises that the proposed scheme of surface water drainage should be condition to be submitted and approved prior to the commencement of development. This advice is consistent with the advice of DCWW.
- 7.39 In view of the fact that I am advised by DCWW and NRW that subject to conditions requiring the final agreement of the precise details of the proposals being imposed, no objection is raised.
- 7.40 Landscape and visual impact
The site is presently vacant agricultural land within the open countryside, It is therefore important to assess the landscape and visual impact of the proposals. The application is accompanied by a Landscape and Visual Impact Assessment. This concludes that the overall impact of the proposed development would be categorised as moderate adverse and identifies individual areas within which there would be impacts of a minor adverse significance. These impacts are principally restricted to the views from private dwellings towards the site.
- 7.41 Whilst an overall impact of moderate adverse significance is identified,

the site must be viewed in the context of the edge of urban form location which it abuts. The resultant developed frontage is softened by the green fringe proposed and will appear as a frontage with existing built form to either side. I am therefore satisfied that the proposal will appear as separate from the wider landscape and will integrate into the setting of the village.

7.42 Land Contamination

The north western area of the site was historically occupied by a smithy. This gives rise to the potential for historical land contamination to have occurred. The application is accompanied by a desk study and ground investigation study which highlights the potential for such contamination. I am advised in consultation with the Council's Pollution Control officer that the potential for contamination is such that a site investigation should be carried out, the methodology of which should be agreed in advance, and if any contamination is identified, a scheme for remediation should be provided to detail the measures by which the contamination is to be addressed. I propose to condition accordingly.

7.43 Ecology and Trees

The site is distinctive for the number of trees within and upon its boundaries. The proposals retain the majority of trees and seek to make an amenity area feature of the stand of Scots Pine trees to the eastern end of the site. The proposals have been the subject of consultation with the Council's Tree Officer who has advised that those concerns he has in respect of the detail of proposed tree works and potential impacts arising from contamination investigation/remediation works and drainage works are such that can be considered as part of the submission and agreement of details pursuant to conditions in respect of each issue.

7.44 Furthermore, and notwithstanding the submitted details, I am advised that revised Tree Constraints Plans and Arboricultural Method Statements will be required to address matters such as the construction of hard surfacing areas within Root Protection Areas. These matters can be adequately addressed via condition and I propose to add conditions to this effect.

7.45 Design and impact upon amenity

The proposed design and layout of this scheme has been the subject of negotiation and discussion over the course of both pre-application discussion and consideration of the application.

7.46 The scheme has evolved to respond to the site characteristics and delivers a design where the form and dwellings reflect both the design of the residential areas and buildings in the locality, and provide for a mixture of house types. The scheme has sought to provide a greater variety of house types, improvements to street scenes and seek to retain existing natural features and routeways to provide a natural

focal point at the key location at the entrance to the site and maintain a green, rural character to the site frontage in this location.

7.47 Furthermore, the proposal seeks to deliver improvements to the adjacent Footpath No.5 in the interests in providing enhanced routes for pedestrians to link into the wider footpath network and to offer an alternative route to school for school pupils and their parents.

7.48 The wider area is characterised by a mixture of property types, styles and ages with a variety of arrangements of built form but has no overall dominant local vernacular. The applicant has sought to recognise this within the proposal and seeks to create a development which sits well in its locality but delivers a strong sense of identity. The layout takes full account of the existing dwellings adjacent to the site by maintaining adequate separation distances, in line with Council guidance standards on space about dwellings and overlooking to secure privacy and amenity as well as respecting the private gardens of adjacent houses.

7.49 Accordingly and notwithstanding representations made, I consider the proposals provide an adequate and appropriate response to the design issues raised in connection with the consideration of this application.

7.50 Archaeological Impacts

Consultation has identified that there is archaeological interest in the site as a result of the fact that the fields surrounding Higher Kinnerton are relatively undeveloped from the post medieval enclosure. In addition there is interest on the site of the smithy and associated holding. The application is accompanied by an archaeological assessment which has been the subject of consultation with Clwyd Powys Archaeological Trust who have advised that they are in agreement with the conclusions of the report and therefore request the imposition of a condition requiring a programme of archaeological work.

7.51 POS and Public Open Space Requirements

The Public Open Spaces Manager advises that it is appropriate to apply the requirements of Local Planning Guidance Note 13: Open Space Requirements in connection with this proposal.

7.52 I am advised that the proposed L.A.P area for play and recreation is acceptable, subject to the detailed specification of the equipping and landscaping of the area being agreed. Accordingly I propose to impose a condition requiring the submission of scheme to equip the area of open space provided within the site.

7.53 I am advised that the shortfall in space on site can be satisfied in the form of commuted sum. The sum required is £40,000 and this sum is proposed to be utilised in upgrading the existing play and recreation

facilities at Park Avenue Neighbourhood Play Area. The sum will be required, via legal agreement, to be paid upon 50% sale or occupation of the approved dwellings.

- 7.54 The infrastructure and monetary contributions that can be required from the a planning application through a S.106 agreement have to be assessed under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and Welsh Office Circular 13/97 'Planning Obligations'.
- 7.55 It is unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, if the obligation does not meet all of the following Regulation 122 tests;
1. be necessary to make the development acceptable in planning terms;
 2. be directly related to the development; and
 3. be fairly and reasonably related in scale and kind to the development.
- 7.56 While the Authority does not yet have a charging schedule in place, the CIL Regulations puts limitations on the use of planning obligations. These limitations restrict the number of obligations for the funding or provision of an infrastructure project/type of infrastructure. From April 2015 if there have been 5 or more S.106 obligations relating to an infrastructure project/type of infrastructure since 2010 then no further obligations for that infrastructure project/type of infrastructure can be considered in determining an application.
- 7.57 The consultation has established that the sum requested should be used in connection with a project to upgrade facilities at the nearby Park Avenue Neighbourhood Play Area. In accordance with the requirements of the Community Infrastructure Levy Regulations (CIL) 2010, this sum, when pooled would not exceed 5 contributions towards a single project.
- 7.58 I am satisfied, on the application of the tests set out in S.122 of the CIL Regulations and as detailed above, that such a contribution would satisfy these requirements. I am also satisfied that the sum is sought for a specific identified project and as such, would not be caught by the S.123 prohibition with the CIL Regulations.
- 7.59 Educational Infrastructure Implications
It has been suggested by third party responses to consultation that the settlement does not have sufficient capacity within the existing infrastructure to accommodate the proposed development of a further 56No. dwellings. Specifically cited is the lack of capacity at local schools.

- 7.60 Members will be aware that applications of this type are the subject of consultation with the Capital Projects and Planning Unit within the Local Education Authority. This consultation has established, having regard to SPG23 : Developer Contributions to Education, the development would give rise to the need for contribution requirements at both primary school and secondary school level as there would be insufficient capacity within the schools both currently and following this development (if approved).
- 7.61 Such capacity would not be available at the nearest primary school (Higher Kinnerton C.P). The current capacity of the school stands at 201. There are presently 189 pupils attending the school. Accordingly the school has only a 5.97% surplus of spaces, which equates to 12 spaces for additional pupils. The proposals would give rise to an additional 13 pupils. This would erode the remaining capacity. Accordingly, upon the application of the guidance, a sum of £134,827 would be sought for educational purposes as a consequence of this development.
- 7.62 Capacity is also not available at the nearest high school (Castell Alun). The current capacity of the school stands at 1240. There are presently 1380 pupils attending the school. The proposals would give rise to an additional 10 pupils. Accordingly, upon the application of the SPG23 guidance, a sum of £184,690 would be sought for educational purposes as a consequence of this development.
- 7.63 Members will recall from recent discussions in respect of this school and the implications of the effects of the CIL Regulations upon the ability of the Local Planning Authority to seek contributions via S.106 Agreements in respect of educational infrastructure in respect of this school. The considerations relating to this issue in respect of CIL are as those set out above.
- 7.64 The Planning Authority has secured 1 obligation towards Higher Kinnerton C.P School since April 2010 namely;

Reference No.	Site Address	Contribution Amount
048676	Land at Babylon Fields, Higher Kinnerton	£10,500

7.65 The Planning Authority has secured 5 obligations towards Castell Alun High School since April 2010 namely;

Reference No.	Site Address	Contribution Amount
048186	Land at Bridge Farm, Fagl Lane, Hope	£31,500
048313	Land at Wood lane Farm, Penyffordd	£139,607
048676	Land at Babylon Fields, Higher Kinnerton	£21,000
048471	Land at Cymau Lane, Abermorddu	£24,500
048892	Land at the Former White Lion Public House, Penymynydd	£52,500

7.66 I am advised that since the advent of the provisions of the CIL Regulations, The Director of Lifelong Learning has identified separate projects in respect of educational needs at both schools which are distinct and separate to the project to which the above listed obligations relate.

7.67 At Higher Kinnerton C.P School I am advised that the sum sought will be used as a contribution towards a project to improve the standards of teaching accommodation to bring such facilities up to the minimum standard required to deliver the National Curriculum.

7.68 At Castell Alyn High School I am advised that the sum sought will be used as a contribution towards a project to remodelling of music teaching accommodation at the school to bring such facilities up to the minimum standard required to deliver the National Curriculum.

7.69 I am satisfied, on the application of the tests set out in S.122 of the CIL Regulations and as detailed above, that such a contribution would satisfy these requirements. I am also satisfied that the sum is sought for a specific identified project and as such, would not be caught by the S.123 prohibition with the CIL Regulations.

8.00 CONCLUSION

- 8.01 The basis for making decisions on planning applications should be in accordance with the development plan unless other material considerations deem otherwise. In this instance it is considered the need for a 5 year land supply is a material consideration which outweighs the fact the site is outside the settlement boundary and is a departure from the development plan. Furthermore the site is considered to be sustainable, viable and deliverable in order to come forward within the next 5 years to meet the supply. In addition, whilst the site would not accord with UDP policies (by virtue of its open countryside location) it does accord with the broad thrust of national policies and guidance as set out in PPW.
- 8.02 In order to ensure that the site comes forward to meet the current shortfall a 2 year planning permission is proposed with a requirement for a phasing plan to ensure that the site is delivered in the short term.
- 8.03 Although this application is a departure from the development plan and has been advertised as such, it would not need to be referred to Welsh Government under The Town and Country (Notification) (Wales) Direction 2012. The Direction requires local planning authorities to refer applications for 'significant residential development' where they are minded to grant planning permission for residential development of more than 150 residential units, or residential development on more than 6 hectares of land, which is not in accordance with one or more provisions of the development plan in force. The application does not fall within this definition.
- 8.04 Other Considerations
The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.
- 8.05 The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.
- 8.06 The Council has had due regard to its public sector equality duty under the Equality Act 2010.
- 8.07 The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents

National & Local Planning Policy

Responses to Consultation

Responses to Publicity

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