

FLINTSHIRE COUNTY COUNCIL
LOCAL DEVELOPMENT PLAN
EXAMINATION
MATTER 12 HEARING STATEMENT
RELATING TO
HN1.3 – HIGHMERE DRIVE,
CONNAH'S QUAY

CLIENT:
Stewart Milne Homes (North West England) Limited

DATE:
26 April 2021

REPRESENTATION ID:
1232541

Report Drafted By	Report Checked By	Report Approved By
MH	MH	MH
20.04.21	26.04.21	26.04.21

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1. INTRODUCTION

BRIEF

- 1.1 Hourigan Connolly is instructed by Stewart Milne Homes (North West England) Limited (hereafter referred to as Stewart Milne) having regard to its land interests in the village of New Brighton and specifically land at Cae Isa which is a proposed housing allocation in the Local Development Plan (LDP) under reference HN1.10.

SCOPE

- 1.2 This Hearing Statement has been prepared in respect of Matter 12 of the LDP Examination concerning new housing development proposals.
- 1.3 This Hearing Statement relates to the proposed allocation for 150 dwellings of Site HN1.3 – land at Highmere Drive, Connah’s Quay.
- 1.4 As noted in our 29 October 2019 Deposit Flintshire LDP Stewart Milne does not object to the allocation of land at Highmere Drive, Connah’s Quay as a matter of principle rather concern is raised with regard to the inclusion of 150 dwellings from the site within the housing trajectory given that the site is being rolled forward from the adopted Unitary Development Plan (2000 – 2015), that the UDP expired 6 years ago and that an application has yet to materialise.

FORMAT

- 1.5 It is noted that the Council, landowner and developer have signed a Statement of Common Ground (SoCG) which appears in the Examination Library under reference: SOCG001 HN1.3. This Hearing Statement will therefore address matters arising from the SoCG which are of relevance to Stewart Milne’s duly made objection.
- 1.6 In Document INSP006 – Schedule of Matters, Issues & Questions the Inspectors have posed a number of questions in relation to new housing development proposals. None of the questions posed are related to our client’s duly made objection.
- 1.7 Paragraph 9.6 of Document INSP002 - Examination Guidance Notes states that:

“Essentially, the Inspectors need to know from further statements:

- *Which particular part of the LDP is unsound? (the policy/paragraph/page of the LDP)*

- *Which soundness test(s), set out in Table 27 of the LDP Manual, does it fail?*
- *Why does it fail?*
- *How can the LDP be made sound?*
- *What is the precise change/wording that is being sought?"*

1.8 This Hearing Statement aims to assist the Inspectors with the above matters.

2. THE ORIGINAL 2019 DEPOSIT LDP OBJECTION

2.1 As it extends to just one page Stewart Milne's original objection from Chapter 7 of its 29 October 2019 Deposit LDP submission is reproduced below for ease of reference:

*"Stewart Milne **OBJECTS** to the inclusions of 150 dwellings from Policy HN1 (3) - Highmere Drive, Connah's Quay within the housing trajectory. It should be noted in passing that there is no objection to the principle of developing the site.*

By way of background it is material to note that the site was allocated in the UDP (2000 – 2015) – see Policy HSG1(5) Highmere Drive but the site didn't come forward due to the owner's unwillingness to sell the site at that time. However, it is said that the owner has demonstrated a renewed commitment, supported by key background studies providing reassurance that the site is now available, viable and deliverable.

According to the Development Plans Manual Edition 3¹ allocations rolled forward from a previous plan will require careful justification for inclusion in a revised plan:

"There will need to be a substantial change in circumstances to demonstrate sites can be delivered and justify being included again. Clear evidence will be required that such sites can be delivered. The sites should be subject to the same candidate site process requirements as new sites i.e. they must be demonstrated to be sustainable and deliverable. If an LPA wishes to retain such sites but cannot evidence they will be delivered, i.e. for aspirational or regeneration purposes, they can still be allocated in the plan but not relied upon as contributing to the provision. It will not be appropriate to include such sites in the windfall allowance. They should be treated as 'bonus sites'."

Given that the UDP covered a 15 year period and that it expired over 4 years ago there has been plenty of opportunity for this site to come forward. On the basis of past performance, we consider that the prudent approach to take would be to allocate the site but make no allowance for it in the housing trajectory".

¹ At the time of the 2019 submission the Draft Version of Local Development Plans Manual 3 was referred to in our representations. The published version (March 2020) is referred to in Chapter 3).

3. LOCAL DEVELOPMENT PLANS MANUAL 3 (MARCH 2020)

3.1 Local Development Plans Manual 3 was published in March 2020. Table 18 on Page 120 is relevant to this Hearing Statement and states that:

“Rolling forward allocations - Allocations rolled forward from a previous plan will require careful justification for inclusion in a revised plan, aligning with PPW. There will need to be a substantial change in circumstances to demonstrate sites can be delivered and justify being included again. Clear evidence will be required that such sites can be delivered. The sites should be subject to the same candidate site process requirements as new sites i.e. they must be demonstrated to be sustainable and deliverable. If an LPA wishes to retain such sites but cannot evidence they will be delivered, i.e. for aspirational or regeneration purposes, they can still be allocated in the plan but not relied upon as contributing to the provision. It will not be appropriate to include such sites in the windfall allowance. They should be treated as ‘bonus sites’”.

4. FCC002

4.1 It is noted that the Council includes the Highmere Drive site in the housing trajectory (see Document FCC002 (Housing Land Supply & Delivery Background Paper 10A Updated January 2021 Appendix 3A: Allocated Sites Trajectory Updated to 2020 Base), an extract from which appears below for ease of reference:

Site & units remaining	Capacity	Built 2018 -19	Built 2019 -20	2020 -21	2021 -22	2022 -23	2023 -24	2024 -25	2025 -26	2026 -27	2027 -28	2028 -29	2029 -30	30+	
Warren Hall, Broughton	300						30	45	45	45	45	45	45		Weish Govt. site
Well St., Buckley	159					53	53	53							Clwyd Alyn- PAC Aug.2020. Est. start on site May 2021
Highmere Drive, Connah's Quay	150					30	30	30	30	30					Pre app. TA undertaken & developer interest.
Broad Oak Holding, Connah's Quay	32			32											Under construction Edwards Homes
Holywell Rd./Green Lane, Ewloe	298						28	45	45	45	45	45	45		Various pre app. Studies carried out & developer interest
Northop Rd., Flint	170					20	40	40	40	30					2 applications by developers.
North West of Garden City	1185 (1325 less 140 outside period)			90	90	150	150	120	120	120	120	120	105	140	UC-Countryside Properties 1 st phase. Rates based on delivery statements. Several developers.
Ash Lane, Hawarden	288						18	45	45	45	45	45	45		Various pre app. Studies carried out
Wrexham Rd., Abermorddu	80						20	30	30						Various pre app. Studies carried out & discussions with preferred developer
Maes Gwern, Mold	160		27	35	35	35	28								Under construction
Land at Denbigh Rd. & Gwernaffield Rd., Mold	246					40	40	40	40	43	43				Full planning application submitted Oct. 2020 (061994)
Cae Isa, A5119, New Brighton	105				25	40	40								Application submitted & appeal pending
Chester Rd., Penymynydd	181 (was186)		27	39	40	40	35								Under construction
TOTALS	3354	0	54	196	190	408	512	448	395	358	298	255	240	140	

LDP supply from Allocated sites =3354 less 54 completions =3300

Figure 4.1 – Extract From FCC002.

5. SOCG 001 HN1.3

- 5.1 It is noted that the Council, landowner and developer have signed a Statement of Common Ground (SoCG) which appears in the Examination Library under reference: SOCG001 HN1.3.
- 5.2 Paragraph 1.2 states that:
- “The landowner has agreed contractual terms with locally based builder and developer Edwards Homes Ltd (EHL) for the acquisition and development of the entire site”.*
- 5.3 It is unclear from the SoCG whether a contract has been exchanged or whether terms have simply been agreed, the two are not the same and have different implications. Indeed a copy of the title relating to the land was obtained from Land Registry by our client on 22 April 2021. This shows no restrictions in favour of the developer as may normally be expected where a developer is legally in control of a site (see **Appendix 1**)².
- 5.4 It is also noted that there are areas of disagreement relating to highways between the Council landowner and developer (see Section 7.1 of the SoCG relating to highways) which are yet to be resolved.
- 5.5 Furthermore ecological appraisals and species specific studies are yet to be concluded which might have an impact of the amount of land that can actually be developed (see Paragraph 8.5 and the letter from the developer attached to the SoCG).
- 5.6 The Inspectors will be aware from the Examination of the Wrexham LDP that the signing of a SoCG is not evidence in itself of delivery and indeed a number of SoCG were signed by the LPA with developers and landowners in Wrexham regarding delivery of proposed housing allocations and the development trajectories contained therein are already significantly out of date.
- 5.7 In this case and as established at the outset there is no objection at all to the allocation of the site, rather the issue is one of whether 150 dwellings should be included in the trajectory as being delivered in the Plan period.
- 5.8 The key question is whether there has been a substantial change in circumstances in line with Local Development Plans Manual 3 to justify inclusion of 150 dwellings in the trajectory. As noted above it is unclear if contracts have been exchanged and whether there is a legal obligation on the developer to submit an application within a prescribed timescale, moreover there are matters

² At the time of writing the plan referred to in the Title was not available from HM Land Registry. However, the title document produced at Appendix 1 corresponds with the index map available at HM Land Registry and the proposed allocation.

clearly not agreed between the landowner, developer and Council and specialist surveys have not yet been completed which might affect dwelling yield from the land.

- 5.9 Notwithstanding the foregoing a cautious approach needs to be taken with this site as it has been proposed for housing for some considerable time (our first encounter with it was in the Deposit Draft version of the UDP in September 2003) and whilst it was subsequently allocated in the UDP some 17.5 years have passed since 2003 and no dwellings have been delivered.

6. SOUNDNESS ASSESSMENT & AMENDMENTS SOUGHT

6.1 Paragraph 9.6 of the Examination Guidance Notes states that:

“Essentially, the Inspectors need to know from further statements:

- *Which particular part of the LDP is unsound? (the policy/paragraph/page of the LDP)*
- *Which soundness test(s), set out in Table 27 of the LDP Manual, does it fail?*
- *Why does it fail?*
- *How can the LDP be made sound?*
- *What is the precise change/wording that is being sought?”*

6.2 To assist the Inspector we comment as follows:

6.3 Inclusion of 150 dwellings in the housing trajectory from Site HN1.3 is unsound.

6.4 The relevant soundness test is Test 2 and whether the inclusion of 150 dwellings from Site HN1.3 in the trajectory is supported by robust, proportionate and credible evidence.

6.5 For the reasons already outlined in Chapter 5 we do not consider the threshold in Test 2 has been passed on the information available in SoCG 001. Moreover caution needs to be exercised with this site which as far as we are aware has been proposed for housing for in excess of 17 years without any housing being delivered.

6.6 The LDP can be made sound by allocating the site as proposed by the Council but removing 150 dwellings from the trajectory. Should these 150 dwellings materialise, they could be counted as bonus dwellings, as suggested on Page 120 Table 18 of Local Development Plans Manual 3.

Appendix 1

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 22 APR 2021 AT 15:47:37. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN HM LAND REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY HM LAND REGISTRY, WALES OFFICE.

TITLE NUMBER: CYM275914

There is no application or official search pending against this title.

ARGRAFFIAD YW HWN O OLWG O'R GOFRESTR FEL Y'I DARPARWYD GAN GOFRESTRFA TIR EM SY'N DANGOS Y COFNODION SY'N BODOLI YN Y GOFRESTR AR 22 APR 2021 AM 15:47:37. OND SYLWER NAD YW'R OLWG O'R GOFRESTR HON YN DDERBYNIOL MEWN LLYS YN YR UN FFORDD Â CHOPI SWYDDOGOL O FEWN YSTYR ADRAN 67 O DDEDDF COFRESTRU TIR 2002. YN WAHANOL I GOPI SWYDDOGOL, EFALLAI NA FYDD YN RHOI HAWL I RYWUN GAEL INDEMNIAID GAN Y COFRESTRYDD OS YW'N DIODDEF COLLED OHERWYDD CAMGYMERIAD YNDDI. NID YW'R COFNODION A DDANGOSIR YN YSTYRIED UNRHYW GEISIADAU SY'N AROS I'W PROSESU YNG NGHOFRESTRFA TIR EM. AT DDIBENION CHWILIO, DYLLID DEFNYDDIO'R DYDDIAD UCHOD FEL Y DYDDIAD I DDECHRAU CHWILIO.

GWEINYDDIR Y TEITL HWN GAN GOFRESTRFA TIR EM SWYDDFA CYMRU.

RHIF TEITL: CYM275914

Nid oes unrhyw gais neu chwiliad swyddogol yn aros i'w brosesu yn erbyn y teitl hwn.

A: Property Register / Cofrestr Eiddo

This register describes the land and estate comprised in the title.

Mae'r gofrestr hon yn disgrifio'r tir a'r ystad a gynhwysir yn y teitl.

FLINTSHIRE/SIR Y FFLINT

1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Park Farm, Kelsterton Road, Connahs Quay, Deeside (CH5 4BL).

2 A Conveyance of the land tinted blue on the title plan dated 29 September 1971 made between (1) [REDACTED] and (2) The Council Of The Administrative County Of Flint (Purchaser) contains the following provision:-

"IT is hereby agreed and declared by and between the parties hereto that the western boundary of the land hereby conveyed shall be the centre of the hedge bounding O.S. 525 aforesaid The Purchaser shall on or before the 19th day of November 1971 remove the said hedge and replace it along the whole of the said boundary to its junction with O.S. 526 with an unclimbable and stockproof fence of a type approved by the Vendor's agent which approval shall not be unreasonably withheld."

NOTE: O.S. 525 is the land tinted blue on the title plan.

3 The land tinted pink on the title plan has the benefit of the following rights reserved by the Conveyance dated 26 November 1991 referred to in the Charges Register:-

"THERE is excepted and reserved in fee simple to the Vendors and their successors in title the owners and occupiers for the time being of all or any part of the Vendors adjoining land (shown edged green on the said plan) (hereinafter called "the Retained Land") the following rights:-

(a) The full free right and liberty at all times to carry on any development of whatever nature upon the Retained Land or any part thereof including all such land as may be adjacent or adjoining the Property hereby conveyed notwithstanding any nuisance or inconvenience whether by reason of dirt smoke noise or otherwise howsoever and whether caused to the owner or occupier of the Property hereby conveyed or any other person whomsoever and neither the Purchasers nor their

A: Property Register continued / Parhad o'r
gofrestr eiddo

successors in title the owner or owners for the time being of Cerrigllwydion Farmhouse will raise any objection or complaint in respect thereof ...

(b) The full and free right and liberty to develop the Retained Land or any part thereof as the Vendors shall think fit notwithstanding any interference with any right of light or air to the Property hereby conveyed and notwithstanding any nuisance or inconvenience whether by reason of dirt smoke noise smell or otherwise howsoever and whether caused to the owner or occupier of the Property hereby conveyed or any other person whomsoever and neither the Purchasers nor their successors in title the owner or owners for the time being of Cerrigllwydion Farmhouse will raise any objection or complaint in respect thereof ...

THERE is reserved to the Vendors and their successors in title the full and unrestricted right at any time hereafter now and from time to time to erect or permit to be erected any buildings or other erections and to alter any building or other erection now standing or hereafter to be erected on any part of the Retained Land adjoining the Property hereby conveyed in such manner as to obstruct or interfere with the passage and access of light and air to any building which is or may be erected upon any part of the land hereby conveyed and so that all privileges of light and air now or hereafter to be enjoyed over any part of the Retained Land by or in respect of the Property hereby conveyed shall be deemed to be so enjoyed by the Licence or Consent of the Vendors and not as of right ...".

NOTE: Copy plan filed under WA615988.

- 4 The land tinted pink on the title plan has the benefit of the following rights reserved by the Transfer dated 1 July 1994 referred to in the Charges Register:-

"There are reserved out of the Property for the benefit of the Retained Land the rights set out in the Fourth Schedule

THE FOURTH SCHEDULE

RIGHTS RESERVED

1. A full right of way for all purposes at all times with or without vehicles or animals over and along all roads footways pavements to be laid over the Property within the Perpetuity Period
2. A full right of way for all purposes and at all times with or without vehicles or animals over and along a 5.5 metre roadway with two footpaths having a width of 1.8 metres connecting to the roadways footways and pavements referred to in Clause 1 of this Schedule and giving access to and egress from the Retained Land such roadway and footpaths to be constructed during the perpetuity period between the points marked A B and C D on Plan No. 2.
3. The right (in common with all others now entitled or who may be granted the like rights) for the passage and running of water soil gas electricity and fuel oil in by through and into all sewer drains soakaways channels pipes watercourses wires cables and mains now or during the Perpetuity Period passing un under over and along the Property
4. The right at all times hereafter upon reasonable notice to enter upon so much as may be necessary of the Property with workmen and all necessary equipment and machinery for the purposes of constructing the roadway and footpaths referred to in Clause 2 of this Schedule and of maintaining the same until it shall be adopted as maintainable at public expense and of laying making connections into inspecting maintaining repairing renewing and cleansing any pipes sewers cables and conduits provided that the Vendor shall make good all damage occasioned by the exercise of such rights and shall restore the surface of the said land to its former condition forthwith after such exercise."

A: Property Register continued / Parhad o'r gofrestr eiddo

NOTE 1: The Retained Land referred to forms part of the land in this title

NOTE 2: The points A, B, C and D referred to are reproduced on the title plan.

- 5 (28.02.2012) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.
- 6 (24.08.2015) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.
- 7 (24.08.2015) The land has the benefit of any legal easements reserved by the Transfer dated 21 August 2015 referred to in the Charges Register but is subject to any rights that are granted by the said deed and affect the registered land.
- 8 (24.08.2015) The Transfer dated 21 August 2015 referred to above contains a provision as to boundary structures.
- 9 (23.05.2018) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered CYM742721 in green on the title plan dated 18 May 2018 made between (1) [REDACTED] and (2) [REDACTED] but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under CYM742721.

B: Proprietorship Register / Cofrestr Perchnogaeth

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Mae'r gofrestr hon yn nodi'r math o deitl ac yn enwi'r perchennog. Mae'n cynnwys unrhyw gofnodion sy'n effeithio ar yr hawl i waredu.

Title absolute/Teitl llwyr

- 1 (03.10.2019) PROPRIETOR: [REDACTED]
- 2 (03.10.2019) RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.

C: Charges Register / Cofrestr Arwystlon

This register contains any charges and other matters that affect the land.

Mae'r gofrestr hon yn cynnwys unrhyw arwystlon a materion eraill sy'n effeithio ar y tir.

- 1 The land tinted pink on the title plan is subject to the following rights granted by a Transfer of land lying to the east of the land in this title dated 1 July 1994 made between (1) [REDACTED] (Vendors) and (2) Anwyl Construction Company Limited (Purchaser):-

"The Property is transferred together with the rights set out in the

Title number / Rhif teitl CYM275914

C: Charges Register continued / Parhad o'r
gofrestr arwystlon

Third Schedule

THE THIRD SCHEDULE

RIGHTS GRANTED

Full and free right of access on to the Retained Land for the purposes of connecting such land drains as may be necessary to the new drain to be provided by the Purchaser on the Property."

NOTE: The Retained Land referred to forms part of the land in this title.

- 2 (24.08.2015) A Transfer of the land edged and numbered CYM658003 in green on the title plan dated 21 August 2015 made between (1) [REDACTED] contains restrictive covenants by the Transferor.

NOTE: Copy filed under CYM658003.

End of register / Diwedd y gofrestr