

J C Planning Consultants
The Genesis Centre
Birchwood Science Park
Warrington
WA3 7SN

Eich cyf . Your ref: JC/IT/R8(jcpc)
Ein cyf . Our ref: A-PP 117-98-008

Dyddiad . Date: 9 October 2006

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED):
SECTION 78 APPEAL BY REDROW HOMES (NORTH WEST) LTD
RESTORATION OF FORMER BRICKWORK & QUARRY, DEVELOPMENT OF UP
TO 300 DWELLINGS, CREATION OF OPEN SPACE, WOODLAND, AN AREA OF
HABITAT CREATION AND LANDSCAPING, CONSTRUCTION OF NEW AND
IMPROVED VEHICULAR AND PEDESTRIAN ACCESS
FORMER LANE END BRICKWORKS, CHURCH ROAD, BUCKLEY, FLINTSHIRE**

1. Consideration has been given to the report of the Inspector, Stuart B Wild MRTPI MCMI, who held a public local inquiry into the appeal under Section 78 of the Town and Country Planning Act 1990 (the 1990 Act) made by your client against the failure of the Flintshire County Council to give notice within the prescribed period of a decision on an outline application for restoration of former brickwork and quarry, development of up to 300 dwellings, creation of open space, woodland, an area of habitat creation and landscaping, construction of new and improved vehicular and pedestrian access. Consideration has also been given to the Inspector's addendum

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report dealing with the impact of the proposed development on the Special Area of Conservation.

2. On 5 June 2006 a direction was issued by the Planning Inspectorate, under powers delegated by the National Assembly for Wales, that the appeal should be determined by the National Assembly rather than by a planning inspector. On 11 July 2006 the National Assembly resolved that a committee to be known as Planning Decision Committee (2)2006/5 be established in accordance with Assembly Standing Order 17 to discharge the functions of the Assembly under Section 79 of the Town and Country Planning Act 1990 in respect of the above appeal. Accordingly, the Planning Decision Committee has considered the appeal and has resolved under Standing Order 17.16 to adopt this letter.

3. The Inspector's conclusions are set out in paragraphs 31 to 55 of his main report, a copy of which is enclosed, and those conclusions are reproduced at Annex A to this letter. His conclusions in the addendum report are set out at paragraphs 9 to 12 of that report, a copy of which is also enclosed, and those conclusions are reproduced at Annex B to this letter. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions.

4. The Planning Decision Committee (2) 2006/5 established to consider this application met on 18 July 2006 and concluded that it would be necessary to seek further information relating to the issue of the appropriate provision of affordable housing proposed for this development before it could reach a decision on the application.

5. A letter from the National Assembly for Wales Planning Division dated 18 July 2006, a copy of which is an Annex C to this letter, was sent to you seeking further information on that issue. In response to that letter, and a subsequent letter from the Assembly's Planning Division seeking further information on the development costs and their relationship to the overall financial context of the project, you submitted representations in letters dated 14 August 2006 and 25 September 2006 copies of which are at Annex D to this letter. The letters were copied to the Chief Planning Services Officer, Flintshire County Council but no further evidence was submitted on behalf of the Council.

6. The above representations have been taken into account by the Planning Decision Committee in reaching its decision on this application. For the reasons given below the Planning Decision Committee accepts the Inspector's recommendation that the appeal be allowed and planning permission be granted subject to conditions.

Inspector's conclusions

7. With regard to the Special Area of Conservation (SAC), the Conservation (Natural Habitats,&c.) Regulations 1994 (the Habitats Regulations) impose requirements on the decision making authority to assess the implications for a European site. A competent authority, in this case the National Assembly for Wales, before giving any consent for a project which is likely to have a significant effect on a European site, and which is not directly connected with the management of the site, must make an

appropriate assessment of the implications for the site in view of the site's conservation objectives and shall agree to a project only after having ascertained whether it will adversely affect the integrity of the European site.

8. The Inspector considered that the implications of the proposal on the site's conservation objectives had been fully explored in the Environmental Statement, evidence and cross examination. He also noted that the Countryside Council for Wales and the public were involved in the process and represented at the inquiry. In the circumstances the Planning Decision Committee considers itself in a position to carry out an appropriate assessment of the implications for the site in view of its conservation objectives.

9. Having carefully considered the evidence before it the Planning Decision Committee accepts the Inspector's conclusions on the impact of the proposed development on the SAC, for the reasons given by him at paragraphs 9 to 12 of his addendum report, and agree with his view that with the conditions and undertakings in place the proposal would not have any harmful effects on the conservation objectives of the SAC and so would not affect the integrity of the site. In consequence the Planning Decision Committee do not consider that a decision to grant planning permission subject to appropriate conditions, and with the submitted planning obligations in place, would be precluded by the outcome of the "appropriate assessment" under the Habitats Regulations.

10. The Planning Decision Committee also accept, subject to the comments below on the issue of the appropriate provision of affordable housing proposed for this development, the Inspector's conclusions on the other planning issues dealt with in his original report.

Additional information and the issue of affordable housing

11. Your letter dated 25 September 2006 enclosed financial appraisals relating to the provision of 15%, 20% and 30% affordable housing. You stated that these appraisals demonstrated that the provision of 15% affordable housing would result in a positive land value whereas with 30% there would be a negative land value. While the financial appraisal showed a marginal positive land value with the provision of 20% affordable housing you also considered that that this level of provision was not financially viable. In your view the negative value associated with the 30% would clearly not encourage the site owner to sell to your client in which case the site's restoration/long term management would depend on an alternative development package that would be acceptable to Flintshire County Council. With the provision of 15% affordable housing you considered that the restoration scheme would give a reasonable positive land value which would make it worth while for the site owner to dispose of the site thereby enabling restoration to be achieved.

12. Since the closure of the inquiry two "housing" Technical Advice Notes (TAN 1: Joint Housing Land Availability Studies and TAN 2: Planning and Affordable Housing) together with an associated Ministerial Interim Planning Policy Statement 01/2006 Housing (MIPPS) were published in June 2006 to provide guidance on the steps to support the delivery of affordable housing through the planning system. The requirements on local planning authorities include establishing an authority wide

target in their local development plan for the number of affordable homes to be provided and identifying the expected contributions that site thresholds or a combination of thresholds and site specific targets will make to meeting this target. The revised version of MIPPS states that the target for affordable housing should take account of the anticipated levels of finance available for affordable housing, including public subsidy, and the level of developer contribution that can reasonably be sought. When setting site-capacity thresholds and site specific targets local planning authorities are required to balance the need for affordable housing against site viability. Those requirements have now to be taken forward by the local planning authority. However, the Planning Decision Committee considers that the information available at the inquiry and that subsequently submitted on behalf of your client is a sufficient basis for it to reach a decision on this appeal.

13. The Planning Decision Committee have had regard to the guidance of MIPPS which states that a community's need for affordable housing is a material planning consideration and also an essential element in contributing to community regeneration and strengthening social inclusion. The Committee have therefore placed significant weight on the need to achieve an appropriate element of affordable housing but in doing so has borne in mind the advice of TAN 2 (June 2006) regarding the need to balance the need for affordable housing against site viability.

14. The Committee have noted that there is agreement between the parties that affordable housing should be included within this scheme but that there has been disagreement as to the level of provision. The Council resolved that 30% should be provided on the basis of the wording of Policy HSG10 in the emerging Flintshire Unitary Development Plan (UDP) and the housing needs assessment document. However, for the reasons given by the Inspector at paragraphs 38 and 39 of his original report the Committee agree with his conclusion on the housing needs assessment and also accept that little weight can be given to the precise wording of the UDP at its present stage and that in any event the policy does refer to negotiations with developers to provide 30% affordable housing. The Inspector in his conclusions took account of the advice in paragraph 9.2.15 of PPW that that a uniform quota for affordable housing should not be imposed on development regardless of market and site conditions. Although Chapter 9 of PPW was cancelled by MIPPS, the Planning Decision Committee does not consider that the replacement advice referred to in paragraph 12 above materially affects his conclusions on this point.

15. At the inquiry it was argued on behalf of your client that taking into account abnormal site costs of about £11.59 million an increase of affordable housing provision from 15% to 30% would result in a revenue loss of £1.28 million which would render the project unviable. The Inspector noted that this evidence was uncontested and concluded that he had no grounds to question your client's view that an increase in affordable housing from 15% to 30% would render the scheme unviable. Having regard to the financial appraisals submitted on behalf of your client the Planning Decision Committee consider that, given the development land values likely to be realised in association with affordable housing provision of 20% and 30%, being respectively £15,146 and a negative figure of £528,854, the proposed restoration based scheme would be unlikely to proceed with affordable housing provision at those levels. It is not disputed that this is a difficult site with associated

major development costs and, in the light of the financial appraisals which are unchallenged by the Council, the Planning Decision Committee consider that your client's view of the viability of the scheme is acceptable.

Environmental Information

16. The Planning Decision Committee have taken into consideration the environmental information as defined by the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 in reaching its decision on this application.

Other post inquiry representations

17. The Planning Decision Committee have had regard to other representations submitted after the inquiry closed but do not consider that any new evidence or new matter of fact was raised which would materially affect their decision on the application.

Conditions and planning obligations

18. The Inspector recommended that planning permission be granted subject to the conditions at Appendix 1 to his main report. Subject to minor amendments, including that to condition 26 at Appendix 1 to reflect that the requirement for a licence under Regulation 44 of the Habitats Regulations applies regardless of whether the protected species are within a SAC, the Planning Decision Committee considers that these conditions should be imposed for the reasons given by the Inspector. The Planning Decision Committee also considers that the matters covered by the completed Section 106 Agreement and the Unilateral Undertaking, appended to the Inspector's report at Documents 7 and 8, are necessary to make the development acceptable in planning terms.

FORMAL DECISION

19. Subject to the above comments the Planning Decision Committee agrees with the Inspector's conclusions and accepts his recommendation. Therefore, the Planning Decision Committee allows your client's appeal and hereby grants outline planning permission in respect of planning application reference RMH/037558 dated 21 April 2004 for restoration of former brickwork and quarry, development of up to 300 dwellings, creation of open space, woodland, an area of habitat creation and landscaping, construction of new and improved vehicular and pedestrian access subject to the conditions at Annex E to this letter.

20. This letter a copy of which has been sent to the Chief Planning Services Officer, Flintshire County Council and to those persons who appeared at the inquiry does not convey any approval or consent which may be required under any enactment, bye

law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully

Carwyn Jones AM

Chair, Planning Decision Committee (2)2006/5

Enc; Leaflets "H" and "HC"