

**Town and
Country
Planning Act
1990 Section
77 Flintshire
County
Council
Planning
Application by
Welsh
Development
Agency**

**THE CASE FOR
FLINTSHIRE COUNTY
COUNCIL**

**THE CASE
FOR THE
APPLICANTS**

**THE CASE
FOR THE
GROUPED
OBJECTORS**

**Clwyd
Structure
Plan First
Alteration**

**Alyn and
Deeside Local
Plan**

**Alternative
Sites**

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Land**

Green Belt

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Issues**

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Application**

**8.0 The Case for Flintshire
County Council**

The material points were:

- 8.1 The County Council was strongly supportive of the application made by the WDA, and associated itself with the evidence presented by the WDA. In order not to waste Inquiry time by duplicating evidence, FCC had limited itself to

evidence on two topics only: i) evolution of planning policy: ii) consideration of the application by the County Council.

Clwyd Structure Plan First Alteration

8.2 This was the only statutory development plan for the area (other than the old town maps which had little or no relevance) and was approved by the Secretary of State in 1991. At that time, there was no regional guidance, and no Welsh national guidance as to employment location. However, the Secretary of State, in approving the plan, did not question in any way the overall strategy of the plan, including Policy A10.

8.3 The CSPFA employment strategy was drawn up in the context of a significantly improved, and improving, local economic situation. It was thus incorrect to suggest that its strategy was outdated by subsequent economic advances in the area. It was explicitly recognised in the plan that strategic sites were a crucial element to the further economic welfare of the County (Core Document 33, paragraph 1.2.7, and Policy A2). Policy A2 referred to the need for the area of the former Alyn and Deeside District to provide a strategic site close to primary and main distributor roads, developed to a good standard, and capable of attracting a range of firms, particularly larger firms.

8.4 Strategic sites were to be provided in four of the six districts. However, it was the DDZ that was identified as not just providing for such sites but also as providing a location for major employment opportunities. Policy A10 was the only policy within the entire employment chapter of the plan to be specific to a part of a district, and it directed the local plan to define the boundaries of the DDZ. There could be no doubt that the provision of a strategic site there was a central element of the strategy of the approved Structure Plan.

8.5 Whilst CSPFA did not specifically identify land to the north of Shotwick Road, the application site lay within the geographical parameters of Policy A10. The Secretary of State could, in approving the plan, have restricted the policy to land to the south of Shotwick Road, or excluded land of high agricultural quality. He did neither. It was not correct to suggest that Policy A10 conflicted with Policy A3. If no alternative land of lower agricultural grading existed, then Policies A3B and H1 were not contravened.

Alyn and Deeside Local Plan

8.6 The ADLP was placed on deposit in the summer of 1994. A public inquiry into objections was held between October 1995 and January 1996, and the Inspector's report was issued in July 1996. The Inspector's recommendations were considered by Planning Committee on 28 November 1996 and certain modifications proposed, although the Inspector's recommendation to delete Policy Em15 and Opportunity Site 2 was not accepted.

8.7 From the Welsh Office letter dated 4 March, 1997 there could be no doubt whatsoever that the Council's position on Policy Em15 and its reasons for coming to that conclusion were fully accepted. The letter stated that "consideration has been given to proposed

modification
number 5.133 on
page 14, relating to
policy EM15,
opportunity site 2
which was the
subject of an
objection by the
Welsh Office
Agricultural
Division.

The Secretary of
State has concluded
that he does not
wish to intervene to
modify or call in
the plan in respect
of this proposed
modification.

Your Council may
proceed towards
adoption of the
Local Plan".

- 8.8 There could be no
misinterpretation as
to the support of the
Welsh Office at that
particular time. The
Secretary of State
agreed with the
Council and
effectively over-
ruled the Inspector's
recommendation
and the objection
by WOAD based
on the agricultural
quality of the land.
It was also
important to note

that there was no mention of any transport or highways objection at that time. The Council considered that this clear statement of the Welsh Office position should ordinarily have allowed the Local Plan to proceed to adoption thereby providing a basis for the determination of the present application.

- 8.9 In the light of the Secretary of State's letter, there seemed no impediment to the adoption of ADLP, with Policy Em15. The plan had received a Certificate of General Conformity with the Structure Plan and it was the view of Flintshire County Council that the local plan would not have complied with the Structure Plan without Policy Em15. ADLP would then have been adopted had it not been for a High Court challenge in

relation to a retail matter entirely unconnected with the application site. It was at this time (5. June 1997) that the present planning application was made to the Council. By letter dated 9 October 1997, that application was called-in by the Secretary of State for his own decision.

- 8.10 On the morning of 15 October, the Council met to resolve to adopt the local plan including Em15. In the light of the letter of 4 March, the Council was surprised to receive (by FAX) the Welsh Office letter dated 15 October, 1997 directing the Council to modify the local plan proposals so that Policy Em15 reflected the Government current policy framework. The reasons given for this direction were brief. It stated: "in addition to

consideration of the Government's policies with regard to economic development; the protection of agricultural land; and the implications of the review of trunk roads; policy EM15 should also be reconsidered having regard to Win Griffiths MP's letter of 20 June 1997 to all local planning authorities in Wales concerning green belts".

- 8.11 The Council was concerned that such a significant change of position should occur within a six month period during which there had been no apparent changes in Government planning policy, although there had been a change of Government. It was also of concern that there had been no further clarification from the Assembly on these issues despite representations to senior planning

officials and ministers of both the Welsh Office and the National Assembly. On 16 October, 1997 the Leader of Flintshire County Council wrote to the Secretary of State for Wales expressing the Council's great concern, and their difficulty in understanding the reasons for the modification direction. Neither the Welsh Office nor the Assembly had provided further clarification on the four issues raised where it was stated that the Council's policy position was at odds with Government policy, nor had there been any reference to an actual change in policy.

8.12 The nearest was a letter dated 16 October 1997 from the Welsh Office Head of Planning Division in response to the Council's letter of 10 October 1997 (Document FCC1, App10). The Welsh Office letter stated that "there have been certain changes to the planning policy context since then (14 March 1997) such as the strategic review of Welsh trunk roads with its possible implications for proposed improvements to roads in the vicinity of Shotwick Road, and the Minister's letter of 20 June asking that serious consideration be given to the designation of green belts in North-East Wales amongst other areas. These considerations led to the decision to call-in the planning application submitted by the WDA for the Shotwick Road site.

Had the Local Plan gone to final adoption with policy EM15, opportunity site 2, retained within it, it could have been viewed as prejudicing the outcome of the anticipated call-in inquiry".

- 8.13 There was no indication that there had been any changes in policy relating to agricultural land since 4 March 1997. The Council did not view the Minister's letter: regarding Green Belts as having any impact in actually changing Green Belt policy as contained in "Planning Guidance (Wales): Planning Policy" (1996). The only materially significant issue was that of the impact of the development on the trunk road system, the other reasons being make-weight. It was to be noted also that the direction then was

to modify, not delete, Policy Em15. Only subsequently, in May 1998, was it indicated that the policy should be deleted if the plan was to proceed to adoption.

- 8.14 On 20 November 1997 the Leader of the Council and the Chairman of Planningtogether with the Chief Executive and the Director of Planning and Development met the Parliamentary Under Secretary of State at the Welsh Office to express their concern at the decision to call-in the application and at the direction to modify Policy Em15 of the Local Plan. (Document FCC1, App12)

8.15 On 24 February 1998 the County Council's Planning Committee resolved to make modifications to Policy Em15 which would reflect and clarify the role and function of the site as a strategic employment site. (Document FCC1, App13.)

8.16 Following consideration of representations received to this proposed further modification a report was submitted to the Council's Planning Committee on 22 September 1998. (Document FCC1, App14) The Welsh Office response merely indicated that the proposed modification did not satisfy the direction of 15 October 1997 and again no further clarification was offered.

8.17 For the National Assembly's objection to be logical it would need to be established that there had been a material policy change within the period from March 1997 to October 1997 and that similarly there had been changes between October 1997 and the present day. The Council had already established that there had been no change in policy regarding agricultural land. Neither had there been any change in policy regarding Green Belts. The Minister's letters did not change policy but merely reminded local authorities of the need to address the Green Belt issue. The policy remained unchanged as did the criteria for establishing and identifying Green Belts. The Council considered it to be unfortunate if

Minister's letters such as these were to be seen to alter policy, as it undermined both consistency and certainty in the planning system.

- 8.18 If the Council were to assume that in the period between March and November 1997 there were seeds of change being sown in emerging revised guidance, then it could be reasonably expected that such changes would be reflected in the first revision of PGW issued in April 1999, seventeen months after the October 1997 letters of call-in and modification. Clearly there was ample time to reflect any changes in the revised guidance and the Council's case revolved around the fact that there had not been any material changes in guidance which impacted on the Shotwick Road case.

- 8.19 In the light of the prevailing situation, Planning Committee resolved on 22 September 1998 that no further action be taken on making progress towards adoption of the ADLP until such time as a decision had been made in respect of the present planning application, whereupon a further report would be submitted for consideration.
- 8.20 It was the clearly stated view of the Council's policy witness that it was likely that ADLP would be adopted once the outcome of the present application was known. Adoption could happen quite quickly and, since the UDP was at an early stage, it made sense to do so. The plan had certainly not been abandoned and hence its policies (with the exception of Em15) should be accorded significant weight. Such weight had

been given to the plan by Inspectors in the past.

- 8.21 The Council's position was that Em15 was still material, although less weighty than, say, its correlate Em3. However, FCC agreed with the WDA that Policy Em4 would then apply, which created a presumption favourable to the development.
- 8.22 Some objectors had stated that the site should have come forward through the local plan process and, indeed, that the present application could be refused on the grounds of prematurity. In fact, prior to the submission of the application in July 1997, the only route that was being pursued was that of the development plan. Moreover, at the time of the application, the development plan position seemed to be relatively clear,

and the plan would have then proceeded to adoption but for a challenge on an unrelated matter.

- 8.23 The Council had been criticised by some objectors for deciding to put the adoption process into abeyance in September 1998. However, FCC was not willing to adopt a plan without Policy Em15, nor was there any point in holding a modifications inquiry since it was known that there would be an inquiry into the present proposals in any event.
- 8.24 Within ADLP, three opportunity sites were identified (a fourth site, Broken Bank, was deleted between consultation and deposit drafts). The three Opportunity Sites were all seen as having different roles within the overall strategy, albeit that the mix of uses described as

permissible on each was generally the same. It was accepted that the distinct role of Opportunity Site 2 was not set out with sufficient clarity in the deposit version (although it was in the post-inquiry modifications), although the Council's proof at that inquiry (Document FCC1, App6, paragraph 1.3) referred to its use for "large scale inward investment projects", as did the 1995 development brief. The local plan Inspector was quite clear as to the strategic role of Opportunity Site 2, although he seemingly misunderstood it as being for a single large scale user.

8.25 It was significant that the Local Plan Inspector explicitly endorsed the strategy of the three Opportunity Sites (Core Document 36, paragraph 5.125). He did not say that the site could never be developed for the intended purpose, but only that no compelling case for its release had been made at that time. He did not recommend drawing back the boundary of the DDZ to Shotwick Road, nor did he recommend that the site should be included in a Green Belt/Barrier. His recommendation clearly left the door open for the site to be reconsidered at some future date. The Local Plan Inspector had not had the benefit of hearing expert evidence as to need, or as to the importance of advance preparation works, thus having a site ready to offer to a potential

investor, both matters covered at the present Inquiry.

Alternative Sites

8.26 It had never been any part of the case for Shotwick Road that there was any numerical shortfall in employment land availability: The case was always a qualitative one. It was still the Council's contention that the site remained the only one in North-East Wales capable of meeting the Structure Plan requirement for a site for large-scale inward investment projects. None of the other sites mentioned at Inquiry could meet that requirement.

8.27 Currently there were 3 sites of over 40 hectares allocated for employment development in Flintshire:

- (i) North of
Shotwick
Road
- (ii) Opportunity
Site 1,
Garden City -
125 ha. (79
ha. net)
- (iii) Warren Hall,
Broughton -
79 ha. (29 ha.
net).

Of these sites only the Shotwick Road site could realistically be regarded as fulfilling the role of a large site for strategic investment enquiries and meeting the requirements of PGW. Opportunity Site 1, Garden City had fragmented ownership, there were uncertainties over the future intentions of the MoD and the ability to satisfactorily access the site to the trunk road. It was also close to established housing. Warren Hall was allocated as a high quality site for B1 uses only and had a

net developable
area of
approximately 18ha
only.

- 8.28 The only other site of over 40 ha. in North East Wales was the former Firestone site on Wrexham Industrial Estate, totalling some 46 ha. Whilst accepting that it could accommodate a large user, it must be borne in mind that the last major investment in North East Wales was Toyota, who required a site of some 52ha. Only the Shotwick Road site was currently capable of accommodating such a large land user, even when the fact that over half the area would be set aside for buffer landscaping and to create a wildlife habitat was taken into account.

8.29 At the time ADLP was proceeding towards adoption the then-current version of PGW (1996) specifically identified Flintshire as a suitable location for large-scale inward investment. There were no material changes in the 1999 version. Similarly the economic strategy underlying CSPFA was carried forward in the draft 2nd Alteration Flintshire Edition (particularly Policies EMP2 and EMP9) and in emerging Regional Planning Guidance for North Wales. There was a current and compelling economic requirement to release the application site for development given the need to sustain the Flintshire and sub-regional economy. In the absence of a readily - available site, large investment projects, with the potential for spin-off developments

would be lost. The Council considered that there were exceptional circumstances of strong economic justification for the proposed development that over-rode other considerations and which warranted the exceptional release of the land for development of the scale proposed.

Agricultural Land

8.30 It was not disputed that the site was classified as Grade 2, and was best and most versatile land which planning policy would normally seek to protect (eg Policy A1 of ADLP). The allocation of the site in the local plan had been subject to an objection by WOAD (as it then was), but the Welsh Office letter of 4 March 1997 (see paragraph 8.7 above) had clearly not sustained that objection. In view of the over-riding

need for the development, and the lack of suitable alternative sites the Council took the view that a departure from the normal policy of protecting such land was justified, and that Policy H1 of the Structure Plan would be satisfied.

Green Belt

8.31 Rather than Green Belt, Flintshire and its predecessor local authorities had adopted green barrier policies as the appropriate planning tool to control development in areas where pressure was great. The broad areas of green barrier were set out in CSPFA with more precise boundaries being defined in the Alyn and Deeside and Delyn Local Plans. The CSPFA indicate an area to the east of the built up edge of the A550/494 corridor up to the Cheshire

boundary. This was more precisely defined in the proposals map of the Alyn and Deeside Local Plan.

- 8.32 Neither the CSPFA nor the Alyn and Deeside Local Plan included land west of the A550/494 within the green barrier designation as the land was neither under the severity of pressures experienced in other areas, nor was it land which, if developed, would lead to the coalescence of Deeside and Chester. This principle had clearly been recognised by the formal approval of the Structure Plan and in the advanced stage of the Alyn and Deeside Local Plan preparation.

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8.34 The Local Plan Inspector also stated that the green barrier was intended to serve a strategic function, with similar purposes to the West Cheshire Green Belt, and he did not regard this site as fulfilling any of the purposes of the green barrier as

outlined in the Council's case. He concluded that the site formed part of a flat, estuarine landscape of the Dee, characterised by extensive and well established industrial development at Deeside Park and Shotton Steel Works/Papermill. The villages in Cheshire were on higher ground, reflecting their historical development above the former waterline and were separated from each other by the current extent of the Cheshire Green Belt. The Inspector did not consider that it was necessary to retain the site undeveloped in order to safeguard their separate identities or protect their appearance or character.

8.35 The Inspector in paragraph 5.127 of his report (Core Document 36) considered that "the guidance set out in the brief regarding separation distances and the width of the landscaped buffer zone represents a firm basis for the protection of the amenities of the adjacent settlements in Cheshire. The brief emphasised that the 150m strip was a minimum and that its width may need to be wider in certain situations. I would expect such situations to be identified (as part of any requisite mitigation measures) in the EA exercise undertaken prior to the development of the site". The development proposal put forward by the WDA made proper provision to safeguard the amenities of the adjacent settlements in Cheshire. The S106 Agreement met the substance

of the County Council's concerns about off-site landscaping.

- 8.36 Flintshire County Council had considered the green belt/green barrier issue in the preparation of its strategic issues paper of the emerging Unitary Development Plan. The Council's view was that green barriers were perfectly adequate to deal with pressures of development and that their greater flexibility by being bound into the Development Plan process was more suited to Flintshire's needs. The Council's position was clearly set out in the Pre Deposit Consultation Draft UDP (Core Document 45).

8.37 Flintshire County Council had consistently kept NAW informed of its position on the Green Belt issue and correspondence had been exchanged. Despite its concern regarding this particular site, NAW had not given any indication that it was unhappy with the approach that Flintshire was adopting. Even more significantly, NAW's comments on Flintshire's Pre-deposit Consultation Draft UDP were that "The consideration given to the potential for Green Belt designation and the decision to continue to rely on the designation of Green Barriers is noted". If NAW were concerned as to the approach being adopted it could reasonably have been expected that the Assembly would have objected, or at the very least have expressed

reservations.

- 8.38 With regard to adjoining local authorities in North-Wales it was significant that neither Denbighshire County Council nor Wrexham County Borough Council intended to introduce Green Belts, but preferred to exercise appropriate control through green barrier policy.
- 8.39 Flintshire County Council's view was that green barriers were the appropriate mechanism to control development in areas of greatest pressure and where there was a danger of settlements coalescing. In any event the site in question would not meet the strategic criteria necessary for it to be included in either a Green Belt or a green barrier. The Pre-Deposit Consultation Draft

of the Flintshire Unitary Development Plan set out the Council's reasons for favouring green barriers as opposed to Green Belts in paragraphs 4.18 and 4.19 and in Appendix 2 to Core Document 45.

Transport Issues

- 8.40 The position of the application site alongside the A550/A494 corridor with the closest links to the M56 motorway of any area in North Wales obviously gave it a distinct advantage in road access over any other site in North Wales. This particular corridor was a strategic gateway route providing a link not only between Flintshire, the north-west of England, and North Wales but also being part of the European route linking Ireland, the UK and Mainland Europe.

8.41 It was perfectly obvious therefore that, whether or not the Shotwick Road site was, developed, the infrastructure in this key location must be adequate to provide for the required movement of traffic. The issues raised by the Transport Directorate revealed a tension between its own view and NAW's economic and transport policies and the locational requirements for major inward investment sites as set out in PGW. This was far from a satisfactory position and one which would be totally unacceptable not only to Flintshire but to all the other Local Authorities in North-Wales.

8.42 The Shotwick Road site, and Deeside in general, had distinct advantages over any other site in North Wales in terms of existing and potential links to different modes of transport. The main North Wales railway line passed through Deeside and the site could be accessed from the Wrexham-Bidston line. Port facilities existed at Mostyn and the site was the closest in North Wales to both Manchester and Liverpool airports. Flintshire was developing its cycle network and the national cycle route passed through the Deeside Development Zone. In addition, the County Council had safeguarded the route of the former Shotton-Mickle Trafford railway line as part of the Chester-Deeside Transport system. This was to consist of a guided bus route with the pedestrian and

cycle route alongside. No other site in North Wales could offer such a combination of alternative modes of transport.

- 8.43 The area was therefore capable of meeting the Government's aspirations of encouraging alternative modes of transport to a considerable degree. The County Council's view was that development of the site met the aims of transportation objectives contained within planning guidance and other transport policies emanating from the Assembly. In supporting the application the County Council was providing the opportunity to meet the Government's objectives through the juxtaposition of housing, employment and transport.

8.44 The issue was clearly not that the site did not meet the objectives of PGW, but that there had been a failure to progress the necessary improvements to the infrastructure. The identification of this site and others close to the trunk road corridor had been public knowledge since 1991 when the consultation draft of the Alyn and Deeside Local Plan was first published. At no time during the extensive consultation period with the Welsh Office had there ever been any adverse comment raising highways as an objection until the letter of 16 October 1997.

8.45 Policy T2 of the Local Plan referred to road schemes which were anticipated to be constructed during the Plan period. The preamble in the Transport Chapter referred to the A494/A550 and A55 trunk roads passing through the Plan area and forming part of the national network of long distance roads. The Plan referred to the Welsh Office's programme for trunk road improvement which recognised that the traffic on cross-border trunk road had exceeded the recommended traffic flow and that the road would need to be improved if it was to continue to be a very important route between North Wales and North West England.

The Planning Application

8.46 The outline application, allocated Flintshire County Council's reference number 97/8/5/0638, was submitted on 5 June 1997 and referred to "Proposed Business and Industrial Development (Classes 131, B2 and BS) of the Town and Country Planning (Use Classes) Order, 1987, including the erection of buildings, raising the level of part of the site, associated building, engineering and other operations and landscaping; and the creation of a nature reserve with vehicular access and car park". The application was accompanied by an Environmental Statement in accordance with the Town and Country Planning (Assessment of Environmental Effects) Regulations, 1988, and was advertised

on site and in the local press on 2 July 1997.

- 8.47 The advertisements also made reference to the fact that the proposed development did not accord with the provisions of the development plan in force in the area. It was considered to be a "departure application" in that a small part of the site fell within the Connah's Quay-Shotton Town Map designation of "White Land", and as part of the site extended beyond the area of the Deeside Development Zone. Whilst the indicative drawings accompanying the application indicated that this portion of the site was to be used for purposes other than employment it was considered that as it was comprised within part of the site of the outline application it was technically a 'departure' from the

plan.

- 8.48 By letter dated 9 October 1997 the Secretary of State for Wales directed that the proposed development raised planning issues of more than local importance and should be determined by himself.
- 8.49 The planning application was reported to Planning Committee on 5 October 1999 (Appendix 3 of Document FCC1, App 29) when it was resolved that a Statement of Case be submitted to reflect the contents of the Committee report and to support the proposed development subject to the completion of a Section 106 Agreement on off-site landscaping, and to appropriate conditions. The Council was now satisfied as to the S106 point subject

to the draft agreement tabled at Inquiry being completed (Document INQ6). Conditions had also been discussed at the Inquiry.

- 8.50 The Council was satisfied that matters of detail relating to the proposed development had been addressed as far as was possible in the context of an outline application. The Environmental Statement, including such information forwarded in response to the Welsh Office request, referred to aspects of the development which were perceived to provide difficulties and suggested mitigation where this was appropriate and considered necessary. Whereas there were still valid objections to the development on grounds of detail it was considered that these were capable of being

satisfactorily
addressed in
subsequent reserved
matters applications
should an outline
planning
permission be
granted.

Source

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