

**WELSH GOVERNMENT**

**Statement**

**Flintshire & Wrexham Councils Local  
Development Plans**

**Matter**

**Flintshire and Wrexham LDP  
Soundness Test 3: Clarification**

**1 December 2021**

## Flintshire and Wrexham LDP Soundness Test 3: Clarification

- 1 The statement is a clarification on how the Development Plans Manual (Edition 3, March 2020) should be applied to Flintshire and Wrexham's emerging LDPs in light of phosphates, specifically viability and deliverability. It is a position statement, by the Welsh Government, on how the Manual should be applied as not all of the costs and implications regarding phosphate mitigation measures are able to be quantified at this point in time. We are **not** abandoning the approach to viability, but considering what is reasonable to achieve now, for these two plans.
- 2 The **Welsh Government is seeking to take a pragmatic view for these two plans only, at this point in time.** Guidance has to be taken into account (section 75 PCPA 2004) when considering the 'soundness' of plans. It is the Welsh Government's position that significant weight should be given to this position statement in determining both plans as it clarifies guidance, on this particular issue only.
- 3 The Planning and Compulsory Purchase Act (2004) as amended (PCPA 2004) sets out the legal framework for the preparation and examination of Local Development Plans (LDPs) in Wales. Section 64(5) explains that the purpose of the examination is to determine whether the LDP is 'sound' and whether it has complied with various procedural requirements, including the Town and Country Planning (Wales) Local Development Plan Regulations 2005 (as amended) (LDP Regs). In addition, a Habitats Regulations Assessment (HRA) is a legal requirement under the The Conservation of Habitats and Species Regulations 2017 (Habitats Regs). Local Planning Authorities (LPAs) must determine whether the policies and proposals in the plan are likely to have significant effects on the integrity of any European designated sites, such as Special Areas of Conservation (SACs).
- 4 Section 75 of the PCPA 2004 provides that any guidance prepared by the Welsh Government must be taken into account in the plan making process. The Development Plans Manual Edition 3 (March 2020) (DPM) is the current statutory guidance governing development plans in Wales. Chapter 6 of the DPM contains guidance regarding the examination process and Table 27 (page 166) contains the Tests of Soundness that form the basis of how plans are examined. Paragraph 6.27 of the DPM states that the Welsh Government will consider plans in relation to the soundness tests and any comments made will be considered as part of the examination, in conjunction with those submitted by other parties.
- 5 In January 2021, Natural Resources Wales (NRW) introduced new water quality targets for riverine SACs with regard to phosphates. For Flintshire County Council and Wrexham County Borough Council this applies to the River Dee and Bala Lake SAC, specifically the levels of phosphates entering

the riverine SAC from development proposed through their respective emerging LDPs. NRW updated this advice in May. **Both LDPs were at the examination stage when NRW's guidance notes were issued. The majority of planned hearing sessions on both LDPs were completed prior to the May update.**

- 6 The implication being that the NRW found a failure of the Flintshire and Wrexham LDPs to meet new phosphate standards and that updates to the HRA assessments were required. The Inspectors wrote to both LPAs seeking clarity of the implications of how NRW's new targets can be addressed within the LDPs. We note that both LPAs have submitted a significant amount of work on this matter comprising:
  - Revised Matters Arising Changes (MACs) policies regarding Waste Water Treatment and River Quality
  - A Dee Catchment Phosphorus Reduction Strategy (DCPRS)
  - Updated HRA Addendums
  - Statement of Common Ground with NRW
- 7 All of the above has been prepared in collaboration with the respective LPAs technical consultants and **the statutory body NRW who have confirmed that they are supportive of the proposed strategic approach to the delivery of mitigation measures is acceptable.**
- 8 On the 23 November 2021, the appointed Inspectors discussed the Matters Arising Changes (MACs) for Flintshire's LDP with the Council, including the additional technical work undertaken regarding phosphates and potential effects on the River Dee and Bala Lake SAC arising from the plan. The Council demonstrated that from their perspective the LDP has no adverse effects on the SAC.
- 9 The Inspectors raised questions regarding the tests of 'soundness', specifically Test 3: 'Will the plan deliver' (Table 27, DPM). The key issue being how phosphate mitigation could affect the viability of development, as well as the delivery of allocations. All plans have to demonstrate they meet the tests of soundness in order they can be adopted. The Inspectors quite rightly need to be reassured that there is sufficient evidence for the plan to satisfy the tests, the key point being the depth of evidence having regard to the plan-making process, rather than planning application stage.
- 10 Flintshire and Wrexham's LDPs are in a unique position as opposed to other emerging LDPs in Wales. Both plans are at the tail end of the examination process, considering the MACs for statutory consultation. Viability assessments (DVS) have been prepared and scrutinised, as well as proposed allocations, alternative sites and the settlement hierarchy/strategy through the examination process. However, mitigation measures to address the issue of phosphates have not yet been fully addressed in the current evidence, specifically viability and the delivery of allocations. **The key point being**

**some mitigation measures/approaches are known, some can be costed, but others cannot be costed, at this point in time.**

- 11 The Welsh Government is **not** dis-applying soundness Test 3, or issues of viability and deliverability in the case of Flintshire and Wrexham's LDPs, indeed, much evidence has already covered these points. **The Welsh Government is clarifying how soundness Test 3, specifically viability and deliverability, for Flintshire and Wrexham's LDPs only, should be considered in light of the uncertainty of costs and approaches for phosphate mitigation measures.**
- 12 The **DCPRS seeks to demonstrate that at the plan-making level** their respective LDP does not have an adverse effect on the River Dee and Lake Bala SAC, thereby enabling the plan to be adopted. It sets out two categories of mitigation measures, some deliverable by the Council, some by the development industry and some by statutory providers, for example Welsh Water.
- 13 Depending on the approach followed to mitigate phosphates entering the riverine SAC will result in different costs, land-take, potentially site layouts and ultimately whether sites can be delivered. At present, both plans are supported by a viability study undertaken by the DVS. The Welsh Government understands there is some degree of flexibility in both models and this should be explained by both Councils to demonstrate the broad financial headroom currently available, i.e. embedded contingency costs.
- 14 It could be the case that on/off-site mitigation through a reed bed approach could offer a solution. However, issues regarding the area of land required in relation to the development proposed, where and how this could be purchased and at what cost incur numerous unknown values. Would land be purchased at agricultural values, or much higher residential values? The range of these values would have significant impacts on viability and are currently unknown. Alternatively, appropriate land in public ownership may be available at a nominal value, having minimal impact on viability. With extremely limited evidence currently available on this point and its highly significant impact on financial viability modelling, **the Welsh Government considers it is not appropriate to attempt to scope this approach, at this point in time for these two plans.** For other plans where increased knowledge and data will be available, a broad assessment should be undertaken and factored into viability modelling. This should also include an allowance for maintenance costs as well as the ability to utilise SUDs, bearing in mind they are primarily to absorb run-off water, not waste water.
- 15 Sites/allocations promoted in both LDPs are often supported by layout/concept or masterplans, the identification of various land uses, all linked to a financial appraisal. It would be extremely difficult to adjust such modelling on the basis of what mitigation requirements may, may not need to

be incorporated now as this knowledge is currently evolving and not yet able to be finalised. Again, other plans following should be in a position to take account of this approach.

- 16 With regard to Asset Management Plans (AMPs) Welsh Water predicate the degree and focus of future investment (in part) on adopted LDPs. If a large concentration of proposed development waste water flows into a single treatment plant, as is the case in Wrexham, this would provide a strong rationale for future investment in infrastructure. Where there is no adopted LDP, the opposite could prevail, delaying investment in future infrastructure and delaying development.
- 17 In summary, the Welsh Government is not advocating that Test 3, specifically viability and deliverability are ignored for these two plans regarding phosphate mitigation measures. However, **given the advanced stage reached by both plans in their progression to adoption, the Welsh Government recognises there are limits at this point on what can be achieved due to the uncertain cost and timing of potential solutions.** Both plans have a flexibility allowance in the viability modelling, as well as a policy to ensure the avoidance of adverse effects. The Welsh Government is of the opinion that the fine grain detail cannot be achieved now, or is not necessary for these two plans at such an advanced stage of preparation. There is sufficient policy content to avoid adverse effects, along with agreement by NRW.
- 18 **The Welsh Government is clear that the position set out above only applies to Flintshire and Wrexham's LDPs.** For those LPAs submitting LDPs for examination in the future, relevant mitigation measures/approaches should be costed and included in viability assessments, shaping affordable housing policies section 106 monies being sought ensuring development remains viable and deliverable. Collaboration with the Home Builders Federation (HBF) would be advantageous to achieve consensus on costs, as per the Viability Study Group (DPM, paras 5.93 – 5.97).

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