
Archwiliad Cynllun Datblygu Lleol Cyngor Sir y Fflint 2015-2030
Flintshire County Council Local Development Plan 2015-2030
Examination

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10th December 2021

Dear Mr Roberts

Inspectors' initial findings on phosphates work

Introduction

1. At the hearing held on 23 November, at which the MACs and phosphates issue were discussed, we said that we would write to you to set out our concerns and suggestions as to how these might be addressed. On 1 December Welsh Government (WG) released a statement clarifying the application of soundness test 3 for the Flintshire and Wrexham LDPs in the light of NRW's phosphate guidance. We have taken the statement into account in writing this letter.
2. First of all we wish to thank you and your team for the large amount of meticulous work that was carried out in advance of the hearing, not only to prepare the Matters Arising Changes (MACs) schedule, but also in response to NRW's stringent advice on development affecting phosphorus sensitive river SACs.
3. The latter did not emerge until May of this year. This placed you in the difficult position of having to assess the situation; collect evidence; and establish the foundations of a strategy; all under substantial time pressure. The strategy is the first of its kind and could assist every LDP review which follows but the absence of forerunners has made your task all the more challenging.

Considerations and concerns arising from phosphates work

4. NRW's guidance has resulted in two essential requirements for us to consider in our examination of the LDP. These are (i) to ensure that the phosphorus sensitive River Dee and Bala Lake SAC is protected from any adverse effects from new development, whilst (ii) having a high degree of certainty that allocated sites will be delivered.

(i) Protection of SAC from phosphorus

5. The main focus of the phosphates work carried out by the Councils and their consultants has been on (i). Policy EN15 has thus been strengthened and will only permit development which has no adverse effect on the integrity of the River Dee and Bala Lake SAC. In particular, development creating waste water discharges will have to demonstrate no increase in phosphorus levels in the SAC. The HRA addendum therefore concludes that, subject to the revised Policy EN15 and the strategic approach to phosphorous reduction set out in the Dee Catchment Phosphorus Reduction Strategy (DCPRS), the LDP will have no adverse effect on the integrity of any European sites. As Policy EN15 will be a safeguard, preventing development where the strategy is at too early a stage to be relied on, we have no reason to disagree with this position. Consequently, we find that the LDP complies with legal and regulatory procedural requirements including the HRA. It therefore meets the preparation requirements set out in the Development Plans Manual¹.

(ii) Delivery of allocated sites

6. We note that in Flintshire the three Wastewater Treatment Works (WwTW) at Mold, Buckley and Hope feed into the SAC through the River Alyn which has a Poor status for phosphorus². The waste water from four of the housing allocations, which would provide 550 units, would be treated at these.
7. Our concerns with delivery arise from two factors, the first of these being the timing of elements of the DCPRS and the production of essential supplementary documents. In our view, and taking account of the replies to questions asked at the hearing, the milestones set out in Table 5.1 of the DCPRS are overambitious and not realistically achievable.
8. The approach to a developer contribution scheme is described in detail³ and it is clear much thought has been given to its format. A lot of work will be required, however, to finalise the package of mitigation measures and to cost it. In order to be robust and reliable, the scheme should be the subject of a consultation exercise. We do not consider it likely, therefore, that the developer contributions mechanism, will be finalised as forecast. The table states that this step will be necessary before applications for development are determined.
9. Timing in itself is not, however, a fatal issue. There is a healthy housing trajectory; not all of the county or allocations are affected; and site by site negotiations could be carried out in the absence of supplementary guidance.
10. The second factor, and the one which we are concerned could have a serious negative impact, is the cost of mitigation measures on the viability of sites. In order for development to be permitted on the four sites, mitigation measures must be in place to minimise their phosphorus loading to the sewerage system, existing watercourses and the SAC catchment⁴. The DCPHS⁵ sets out an extensive list of intervention measures; developers are listed amongst the delivery partners against the majority of these. There are also references to the Category 1 measures being delivered by Dwr Cymru, subject to extra developer funds being made available⁶.
11. The measures themselves include surface water separation, enhancements to WwTW, SuDS and provision of wetlands. The DCPRS states that the costs of mitigation set out in the developer contribution scheme will include the implementation of measures; the staff resource; compensation to land owners; land acquisition costs (if required); monitoring; and the long term maintenance and management of mitigation⁷. The cost of mitigation will be apportioned according to how much phosphorus the proposal generates. It seems to us that these costs, in

¹ Table 27, page 165

² Figure 3.4, page 16

³ DCPRS 5.1, page 100

⁴ DCPRS para 4.4.6, page 70

⁵ DCPRS Table 4.6, page 67

⁶ DCPRS para 4.4.18, page 74

⁷ DCPRS para 5.1,34 page 104

terms of financial contributions and, potentially, land take, are likely to be significant. Our major concern is, therefore, that the necessary mitigation costs will seriously affect the viability of sites. This could reduce or prevent the provision of affordable housing. Indeed it could prevent the development of sites within the plan period.

12. The lack of clarity with regard to timing and viability shortcomings create an environment of considerable uncertainty. We cannot, therefore, be satisfied that development would be viable and that the allocated sites within the sensitive SAC catchment would be delivered.

Potential to address concerns

13. The amount of detail in the DCPRS and the high level of understanding of the issue give us confidence that it will provide a robust and reliable basis for a strategy which, eventually, will align the protection of the SAC from phosphates with the delivery of LDP allocations. In the meantime, the quandary for the LDP examination is the extent of the problem and thus the possible effect on the plan's delivery of housing.
14. We are aware that there are approximately 550 units anticipated to come forward from the four affected allocations and that this amounts to 7% of the LDP's total housing requirement. In the first instance we wish the Council to confirm that this is the case. We would also request answers to the following questions, the aim of which is to ascertain the potential overall impact on housing supply.
- Does the updated housing balance sheet rely on any unimplemented or pending (ie not yet issued) permissions for housing development in the affected area?
 - If so, do these depend on reserved matters applications, or are they subject to the finalisation of S106 agreements etc before the issue of a planning permission? If such cases exist, the need for an HRA should be reconsidered in the light of NRW's guidance.
 - What proportion of the remaining 111 windfall units (as at 2020) are anticipated to be located within the affected area? Is it likely that sufficient windfalls would come forward within the unaffected remainder of the county to compensate for these?
 - Housing allocations HN1.5 and HN1.11 are noted in the deposit LDP as having planning permission and being under construction. Are they now complete? If not, are they both covered by full planning permission and thus capable of being completed without further applications?
 - In addition, is there potential for bringing forward into the plan period the 140 units at Northern Gateway which are currently estimated for delivery after 2030?
15. Once we have this information, we will be able to identify the likely shortfall in housing delivery as a result of the phosphates constraints and consider the implications for the LDP.
16. Possible additional sources of funding within NRW and from other stakeholders are identified in the DCPRS. At this stage there is no indication of overall mitigation costs; how likely alternative funding is to come forward; and, if so, on what scale. Consequently, we can only place limited weight on the potential for alternative funding streams to ease the burden on developers of mitigation costs to any material extent.
17. We understand, however, that planning applications have been submitted for all four sites⁸ suggesting that avenues for discussion could be in place now. In the wake of NRW's guidance, and in order to progress sites, it will be necessary for developers, in consultation with Dwr Cymru, NRW and the Council to determine the mitigation measures which would be needed, the likely costs in terms of finance and land take, and a timetable for the delivery firstly of mitigation measures and secondly of the residential development itself. Additional information on these matters for each of the four affected allocations would establish whether there is clarity on the potential to develop the sites. Such information would, however, have to be provided to us within the next few weeks if we were to be able to take it into consideration.

⁸ Draft MACs and IMACs document, Appendix 3a, page 95

18. The DCPRS refers to the provision of wetland and reed beds on Council-owned land as a mitigation initiative which is being investigated; the Council also mentioned this at the hearing. As above, further information on this might reassure us on the delivery of some development on the affected sites during the plan period. The questions we have about this include:
- How likely is it to come forward and, if so, when?
 - What would be its mitigation effect in terms of the nutrient budget?
 - Would it provide for any reduction of measures on the four affected allocations?

Conclusion

19. As we said at the hearing, the phosphates issue has arisen at an unfortunate time for the Flintshire LDP. In association with NRW, Dwr Cymru, Wrexham Council and its consultants, the Council has done its utmost to find solutions against the background of challenging timetables and in an unfamiliar field. The novel nature of the matter will continue to present difficulties until sufficient, tried and tested experience has been gathered to dispel some of the uncertainty around it. The importance of, and difficulties arising from, this complicated matter cannot be underestimated but the need to have an adopted LDP in place remains of paramount importance.

Next steps

20. We would be pleased to have the Council's response to this letter by Friday 17 December including, as a first step, clarification of the number of affected units as requested above in paragraph 14. If you consider that you can help us further by supplying additional information along the lines described in paragraphs 17 and 18, a timetable outlining by when you could do this should be submitted as part of your response.
21. Please do not hesitate to contact us if you have any questions.

Yours sincerely

Siân Worden and Claire MacFarlane
Inspectors