

Strategic Planning Board

Agenda

Date:	Wednesday, 6th May, 2009
Time:	2.00 pm
Venue:	Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

To receive apologies for absence.

2. **Code of Conduct-Declarations of Interest/Pre-Determination**

To provide an opportunity for Members and Officers to declare and personal and/or prejudicial interests and for Members to declare if they have made a pre-determination in respect of any item on the agenda.

3. **Minutes of the Previous Meeting** (Pages 1 - 4)

To approve the minutes as a correct record.

4. **Public Speaking**

For any apologies or requests for further information, or to arrange to speak at the meeting:

Contact: Rachel Graves
Tel: 01270 529742
E-Mail: Rachel.Graves@cheshireeast.gov.uk

A total period of 5 minutes is allocated for each of the planning applications for Ward Councillors who are not Members of the Strategic Planning Board.

A period of 3 minutes is allocated for each of the planning applications for the following individuals/groups:

- Members who are not Members of the Strategic Planning Board and are not the Ward Member
- The Relevant Town/Parish Council
- Local Representative Groups/Civic Society
- Objectors
- Applicants/Supporters

5. **08/1626/FUL - Proposed Foodstore Development with Associated Parking Servicing, Landscaping and New Retail Building on Wheelock Street Frontage (dual access), PACE Centre, Wheelock Street, Middlewich for Tesco Stores Ltd & Briden Investments Ltd** (Pages 5 - 30)

To consider the above application.

6. **Appeal Summaries** (Pages 31 - 52)

To note the Appeal Summaries.

7. **Update Report on Live Enforcement Notices** (Pages 53 - 60)

To consider an update report on Live Enforcement Notices.

8. **Procedure Notes for Decision Making** (Pages 61 - 66)

To consider a report on procedures for adoption as best practice in respect of the Strategic Planning Board and the two Planning Committees.

9. **Member Training in Planning** (Pages 67 - 68)

To consider a report on the progress on arrangements for further training sessions for members of the Board and the two Planning Committees.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Strategic Planning Board**
held on Wednesday, 15th April, 2009 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor Mrs H Gaddum (Chairman)
Councillor Mrs R Bailey (Vice-Chairman)

Councillors A Arnold, D Brown, P Edwards, J Hammond, Mrs M Hollins,
D Hough, J Macrae, B Moran, C Thorley, G M Walton, Wilkinson and J Wray

21 APOLOGIES FOR ABSENCE

There were no apologies for absence.

22 DECLARATIONS OF INTEREST

Councillors D Hough, P Edwards and J Wray declared that they had pre-determined application 08/1626/FUL by virtue of the fact that they had been Members of Congleton Borough Council's Planning Committee which had made the decision to approve the application against the Officer's recommendation. In accordance with the Code of Conduct they remained in the conversation and spoke in respect of the application however they did not take part in the vote.

Councillor B Moran declared a personal interest in the same application by virtue of the fact that he had had conversations with the applicant, Tesco in his capacity as Portfolio Holder for the previous Authority, Congleton Borough Council, however he had not formed a judgment on the application and in accordance with the Code of Conduct he remained in the meeting during consideration of the application.

23 MINUTES OF THE MEETING

RESOLVED

That the minutes be approved as a correct record and signed by the Chairman subject to it being noted that Councillor Mrs H Gaddum was Chairman for the meeting and that Councillor B Moran was Vice Chairman, that under Minute No.16 'Urgent Item' the word 'working' be inserted after 'five clear' and that under Minute No.18 'Planning Application Validation: Local Checklists' the words 'approve for adoption' be inserted in the last sentence of the first paragraph after 'was invited to'.

24 PUBLIC SPEAKING TIME

The Chairman informed the Committee that the Ward Councillor who had registered to speak would be allocated 5 minutes to present his case and that the person speaking on behalf of the applicant would be allocated 3 minutes to present his case.

25 08/1626/FUL-TESCO STORES LTD, WHEELOCK STREET, MIDDLEWICH

(During consideration of the following application, Councillor S Wilkinson arrived to the meeting).

08/1626/FUL-Tesco Stores Ltd, Wheelock Street, Middlesbrough

(The Ward Councillor, Councillor S McGrory and the agent for the applicant attended the meeting and spoke in respect of the application).

RESOLVED

That the application be deferred for a site visit in order to appreciate the context of the site and its surroundings. Members made a request that when they went on the visit the site be appropriately pegged out.

26 THE NEW 'FAST TRACK' HOUSEHOLDER PLANNING APPEALS

Consideration was given to a report on the number of changes to the planning appeals process which had come into force on 6 April 2009.

Concerns were raised that introducing a 'fast track' system would increase the pressure on the appeals process with an increase in appeals being lodged. Furthermore emphasis was placed on the need to ensure that any changes to the appeals process be clearly explained to Members and the public.

In addition it was noted that if Members were minded to go against an Officer's recommendation then the reasons would need to be clearly defined as to why the Committee had made the decision to go against the Officers recommendations. This was important as the reasons would be the only information allowed to be submitted under the new process. Members were informed there was still no scope to submit an appeal statement.

Members were concerned that training on this issue and other issues was a necessity for all Members on a Planning Committee. It was agreed that further training sessions to take place on a six weekly cycle lasting no more than half a day should be arranged as soon as possible particularly in respect of the issue relating to any Committee overturns. Concern was expressed that the training sessions should take place later in the day to accommodate those Members who worked.

RESOLVED

- (1) That the report be noted.
- (2) That the implications contained within the report be reported to the Northern and Southern Planning Committees.
- (3) That training sessions be arranged for all Members of the Strategic Planning Board, Northern and Southern Planning Committees to take place on a six weekly cycle lasting no more than half day.

27 APPEALS SYNOPSES AND PERFORMANCE MONITORING REPORTS

Consideration was given to the report on the procedures for the reporting of planning appeals and performance within the new Authority.

Confirmation was sought that information on appeals appeared in the public domain. This was confirmed by the Officer in attendance.

It was also suggested that information in respect of the costs should be included in the appeal summaries, including costs awarded in favour and against the Council.

RESOLVED

- (1) That the report be noted.
- (2) That the Appeal Summary format follow the format used by Macclesfield and Congleton and incorporate a specific section which identified the implications of that particular Inspector's appeal decision.
- (3) That an Appeals performance monitoring report which compares local performance against other similar Authorities and nationally be presented to the Committee on a six monthly rolling programme.

28 **DATE OF NEXT MEETING**

It was noted that the date of the next meeting would take place on Wednesday 6 May 2009.

The meeting commenced at 2.00 pm and concluded at 3.08 pm

Councillor Mrs H Gaddum (Chairman)

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Planning Reference No:	08/1626/FUL
Application Address:	PACE Centre, Wheelock Street, Middlewich
Proposal:	Proposed foodstore development with associated parking servicing, landscaping and new retail building on Wheelock Street frontage (dual access)
Applicant:	Tesco Stores Ltd & Briden Investments Ltd
Application Type:	Full
Registered:	01-Sep-2009
Grid Reference:	370093 366333
Ward:	Middlewich
Expiry Date:	01-Dec-2008
Date Report Prepared:	22-Apr-2009

SUMMARY RECOMMENDATION: REFUSE

MAIN ISSUES

- Whether the principle of retail development is acceptable and if so, whether the scale proposed is appropriate
- Whether the design and appearance of the proposed foodstore, retail units and associated development is acceptable having regard to the impact on the character and appearance of the area, including the Conservation Area
- Whether the proposal would adversely affect the setting of the listed building at 8 Southway
- Whether the proposed access and parking facilities are adequate and acceptable
- Whether the proposed loss of trees from the site is acceptable
- Whether the proposal would result in any adverse impact on protected species and if so, whether adequate mitigation can be provided
- Whether the proposal has any adverse impact on the residential amenity of nearby residents
- Whether there are any other material considerations

REASON FOR REPORT

On 24 March 2009 Congleton Borough Council's Planning Committee was minded to approve this application. In accordance with paragraph 6.1.2 of the Planning Protocol adopted in its Constitution, it resolved *That the application be DEFERRED in accordance with Minute P 177(a) of 3 May 1983 and paragraph 6.1.2 of the Borough Council's Protocol of Conduct in Relation to Planning Functions. Minded to approve the application contrary to a recommendation for refusal, the Committee deferred its determination of the application to the next meeting of the Committee in order to allow the officers to formulate appropriate conditions and to provide the Committee with any relevant further information.*

The practice of deferring applications recommended for refusal, where Members were considering granting permission, had been introduced in 1983 following a recommendation by the Local Government Ombudsman. Conditions are crucial to mitigation of harm. Together with Planning Agreements, they are the common means of making proposals acceptable which should otherwise be refused. They are an intrinsic part of an approval. Members need to know what conditions can and should be attached to a permission before they can form a view regarding acceptable or unacceptable detriment and before they can take an informed decision. However, Members will not usually have seen proposed conditions, nor received advice regarding their effectiveness, in a report which recommends refusal.

In these circumstances a deferral, so that conditions can be drafted and reported back to Committee, does not raise any presumption or legitimate expectation that a Committee has decided to approve an application in principle. The Committee's discretion is not fettered in any way. All the planning issues are to be examined afresh with impartial consideration at the further meeting, after which the Committee has a completely open choice to refuse the application or approve it subject to whatever conditions it agrees.

At the March committee, some Members may have expressed views for or against the application, some will have voted for or against the deferral. Whether conduct shows predetermination, as opposed to a mere predisposition, depends on the particular words and actions of each individual during and outside a meeting. In itself, being "minded-to" approve, subject to further information, is a mere predisposition: a Member's mind is still open to a final decision either way.

Of course, if an individual's own particular words or acts have gone beyond this general position: if, in fact or appearance, they are approaching the further report with a prejudgment and are not open to a change of inclination after hearing the Officers' advice, the public speeches and the committee debate, then they should declare a predetermination and take no part in that debate or vote.

DESCRIPTION OF SITE AND CONTEXT

The application site comprises a piece of land totalling 1.25 hectares located within Middlewich town centre. The site has frontages onto Wheelock Street, Darlington Street and Southway and contains a number of residential and commercial buildings, all of which would be demolished as part of this proposal. The site also contains a large number of trees. Vehicular access to various parts of the site is currently taken from Wheelock Street, Darlington Street and Newton Heath. The site rises up from Wheelock Street with a change in levels across the site of approximately 6m.

DETAILS OF PROPOSAL

Planning permission is being sought for the erection of a new foodstore and for associated access and parking arrangements. The foodstore would have a

gross floor area of 2646 m² and would provide a net sales area of 1700 m². The proposed store building would be sited approximately 45m back from Wheelock Street with part of the north western elevation of the building being adjacent to Darlington Street. The entrance to the store is on the eastern elevation, fronting the proposed car park, with vehicular access and egress from newly formed junctions onto Wheelock Street and Newton Heath/St Ann's Road. Pedestrian access is provided from two points off Wheelock Street and via Southway, an existing public footpath to the east of the site. The service yard for the store is proposed between the store building and a new retail building proposed to front onto Wheelock Street. This new retail building would provide an additional total floorspace of 72.5m², within two retail units. The proposed foodstore would generally be single storey with a staff area proposed at first floor level. The proposed new retail units would be part two storey, part single storey and would be of a traditional design.

A number of amendments have been made to the originally proposed scheme. These include an amendment to the north east elevation resulting in the removal of the original gable feature and its replacement with a lower, simpler elevation; a reduction in the size of the service yard and changes to the landscaping and road layout at this point, amendments to the car park layout where it adjoins Southway and amendments to the size and design of the proposed new retail units.

More recently, an indicative scheme for the creation of 'off-site' public realm improvements to the area around Southway has also been submitted. This is to try and ensure that good linkages can be made between the application site and Wheelock Street. Indicative proposals to enhance the service yard area, possibly with public art, have also been submitted.

RELEVANT HISTORY

07/0833/FUL Retail food superstore with ancillary parking plus 2 no. retail shops and offices. Withdrawn Oct 2007

08/1625/FUL Proposed foodstore development with associated parking servicing, landscaping and new retail building on Wheelock Street frontage (single access). Refused March 2009

POLICIES

Regional Spatial Strategy

DP1 – Spatial Principles

DP2 – Promote Sustainable Communities

DP3 – Promote Sustainable Economic Development

DP4 – Make the Best use of Existing Resources and Infrastructure

DP5 – Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility

DP6 – Marry Opportunity and Need

DP7 – Promote Environmental Quality

DP9 – Reduce Emissions and Adapt to Climate Change
RDF1 – Spatial Priorities
RDF2 – Rural Areas
W5 – Retail Development
RT2 – Managing Travel Demand
RT9 – Walking and Cycling
EM1 (B) – Natural Environment
EM1 (C) – Historic Environment
EM1 (D) – Trees, Woodlands and Forests
EM2 – Remediating Contaminated Land
EM3 – Green Infrastructure
EM5 – Integrated Water Management
EM10 – A Regional Approach to Waste Management
EM11 – Waste Management Principles
EM17 – Decentralised Energy Supply

Local Plan Policy

PS4 – Towns
GR1 – New Development
GR2 – Design
GR4 & GR5 – Landscaping
GR6 & GR7 – Amenity and Health
GR9 & GR10 – Accessibility, Servicing & Parking Provision
GR17 – Car Parking
GR18 – Traffic Generation
NR1 – Trees and woodlands
NR2 – Statutory Sites
NR3 – Habitats
NR4 – Non-statutory sites
BH4 – Listed Buildings
BH9 – Conservation Areas
S1 – Shopping hierarchy
DP4 – Retail Sites
DP7 & DP9 – Development Requirements

Other Material Considerations

PPS1: Delivering Sustainable Development
PPS6: Planning for Town Centres

CONSULTATIONS (External to Planning)

Highways: recommend the scheme for approval subject to conditions and informative as detailed.

- Prior to first development the applicant will provide a detailed suite of design plans for all off-site highway works for approval by the LPA.
- Prior to first development the applicant will provide a staff Travel Plan for approval by the LPA and inclusion within a S.106 Legal Agreement.

- The applicants will provide a negotiated sum for the upgrade of local bus stop facilities in line with the offer in the e-mail from Waterman Boreham to Cheshire Highway Authority dated 13 - 02 - 09. This will be secured within the S.106 Agreement.

Informative

- The applicants will enter into and sign a S278 Agreement under the Highways Act 1980 with regard to all off-site highway works.

Environmental Health: suggest a number of conditions to be attached to any consent granted to cover matters such as contamination, hours of use, acoustic enclosure of equipment, hours of deliveries, use of car park, piling, hours of construction, external lighting, hours of floor floating, acoustic grade screening and attenuation in the service yard area.

County Archaeologist: initially requested trial trenching to be carried out as the site is within an Area of Archaeological Potential. This work was subsequently carried out to the satisfaction of the County Archaeologist and revealed that there is a dense distribution of post-medieval features across part of the site. These lie immediately below the topsoil and are unlikely to survive the landscaping that will accompany the creation of the site entrance. Part of the site will therefore need to be subject to a programme of excavation, recording and reporting before the main development works start. In other less archaeological sensitive parts of the site, an archaeological watching brief is suggested. Both these matters can be dealt with by condition.

Environment Agency: initially objected to the application as the submitted Flood Risk Assessment (FRA) does not comply with the requirements of PPS25. However, a revised FRA has now been submitted and the Agency now raise no objections subject the imposition of a condition requiring the development to be carried out in accordance with the revised FRA.

United Utilities: no objections to the proposal.

Public Rights of Way Unit: appears unlikely that the proposal would affect the nearby public right of way.

English Heritage: do not wish to offer any comment on this occasion and advise that the application should be determined in accordance with national and local policy guidance and on the basis of the Council's specialist conservation advice.

Cheshire Fire & Rescue: provided general comments regarding access for the fire service, water supplies and means of escape.

VIEWS OF THE PARISH / TOWN COUNCIL

Middlewich Town Council: initially commented that Wheelock Street is narrow and congested. The preferred highway layout would be a single

access off Wheelock Street with a two-way system operating between St Michaels Way and Darlington Street. It is considered to be poor planning to have two medium sized stores and two car parks adjacent to each other. It would be preferable to have just one larger store. This also makes sense for the economy of the town as two medium sized stores are not considered to be economically viable.

Additional comments received request that Members consider the planning issues of this application in accordance with their statutory responsibilities, but also take account of the wider context of potential economic regeneration of Middlewich Town Centre, through the link to the added value proposals offered by the North West Development Agency (NWDA) Investment Prospectus. Members should consider a conditional approval of the application, thus allowing all parties to continue constructive negotiations, leading to a positive conclusion that satisfies the responsibilities of the Planning Authority, the commercial needs of Tesco, but most of all to grasp this unique opportunity to create a vibrant retail heart for the town centre of Middlewich.

OTHER REPRESENTATIONS

To date, 16 letters of representation from 13 separate addresses (one via Lady Ann Winteron MP) have been received in relation to this application and the parallel application (08/1625/FUL). Three letters are in support of the application, two are from a local retailer stating that a new supermarket in the suggested location could only be a positive addition for the town. The high street currently suffers because many locals currently go out of town for their weekly shop. Many traders complain about the parking in Wheelock Street and the additional parking provided by the proposed development would surely help to alleviate this problem. Approximately 120 new houses have been constructed at The Works development and it would be a good move to bring that new community across the High Street as if we are unable to offer a good range of shopping then they will go elsewhere. Employment at a store of this size will bring new people into a very quiet town and there may be additional traffic but this is all part of the passing trade that is needed to sustain a healthy high street. May be cross over with what the new store sells and what is currently available but believe that competition will drive us all to do better. Think it is imperative that the customer access for the store should only be from Wheelock Street. A further letter of support states that this project has been ongoing for 10 years and that this is the third developer to try to get the scheme off the ground. If planning permission is not granted, understand that it would be very unlikely that Tesco would stay with the developers and if that happened, whole project would be shelved for the foreseeable future. Would be a disaster for Middlewich as it would leave boarded up properties on the main street and would lose much needed jobs that this project would bring to the town.

The remaining letters raise objections to the application. The main points of objection raised are summarised below.

- Concern about trading monopoly
- Concern about size of service vehicles that would use the Wheelock Street entrance
- Wrong place to build a store as Somerfields is already operational and if it is to offer a similar range of produce as Somerfields, is it needed?
- Concern that the new store will have an adverse impact on other businesses in the town
- Concern about the small size of the car park and the knock on impact on local streets
- Concern about the loss of large trees
- Land on the outskirts of the town far better suited to a larger and more comprehensive store
- Concern that a new foodstore of the size proposed is unlikely to bring significant volumes of trade back to Middlewich from major supermarkets in nearby towns
- Retail units constructed on Wheelock Street 2/3 years ago remain empty therefore building more would be pointless
- Town centre already heavily congested for long periods, especially on weekdays
- Other developments e.g. landfill site at Kinderton Lodge, incinerator at Midpoint 18, retail development at Booseys, retail development at Town Bridge and housing development at Jersey Way will all make the traffic situation in Middlewich much worse than it is now
- Anticipated that a number of vehicles would exit the area using Darlington Street and Newton Heath and this would lead to an unacceptable level of traffic on these quiet, residential roads
- Most shoppers will use their cars as will many staff
- Concern about impact on existing sewer system and increased risk of flooding
- Concern about light pollution associated with the development
- Only reason that some of the buildings in this area are derelict is because they are owned by the applicant
- Concern about a lack of publicity about the application
- Concern about poor turning arrangements at the St Anns Road/Nantwich Road junction

From Roger Tym & Partners (commissioned to carry out the Cheshire & Warrington Economic Alliance (CWEA) report)

Overall, of the view that this proposal represents that best opportunity for Middlewich to realise the Vision and Objectives for it identified in the Investment Prospectus (in the absence of the availability for development of the former Somerfield/Co-op store). The proposal would capitalise on a key land asset of the town, allocated for retail development, to address an identified shortfall in retail provision and unsustainable leakage.

It will address traffic issues and accessibility within and through the town by virtue of highways improvements, and will improve the layout of the centre by adding depth.

However, it remains to be demonstrated that the proposal will create effective physical and functional linkages with Wheelock Street and deliver the 'circuit' that will maximise the likelihood of shoppers remaining in the town and of their expenditure being captured by local businesses and to the benefit of the local economy. That said, are of the opinion that this could be satisfactorily resolved after the determination of the application by virtue of the proposed condition suggested by the applicants.

APPLICANT'S SUPPORTING INFORMATION

Numerous documents have been submitted in support of the application including a Planning, Design & Access Statement, a Transport Assessment, a Flood Risk Assessment, an Air Quality Assessment, a Statement of Public Consultation, a Archaeology and Cultural Heritage Assessment, an Initial Ecology Survey, a Bat Survey and a Arboricultural Survey. Full copies of these documents can be viewed on the application file.

In summary, the Planning, Design & Access Statement concludes that the site is allocated for retail development by a saved policy in the adopted Local Plan. The provision of a new foodstore on the site will significantly improve convenience goods provision in the town centre, and will reduce the outflow of shoppers to other surrounding stores and centres. The resulting clawback of shoppers and expenditure will result in a positive spin-off for existing town centre retailers. The setting of the site has been carefully considered when selecting the design for the store, the use of materials and the landscaping aspects of the scheme. This has resulted in an attractive scheme which is sympathetic to the character and appearance of the area, including the Conservation Area, whilst also providing a modern, energy efficient building appropriate for a foodstore use. The loss of existing high canopied structural trees has been minimised as far as possible, and vegetation retained where feasible and sustainable. The extensive semi-mature tree planting which is proposed will enhance the urban qualities of the site and will introduce significant soft landscaping elements within the streetscene. The scheme has also sought to ensure convenient access to the site. It promotes sustainable transport modes and also ensures easy manoeuvrability within and around the site for both customers and service vehicles.

Extensive additional information has also been submitted during the course of the application. Some of the additional information re-iterates the above, with the following additional points made.

- The scheme incorporates a number of sustainability measures, including a modern Combined Heat and Power (CHP) system, wind catchers on the roof, timber cladding panels and a glazed frontage, all of which help to reduce carbon dioxide emissions, and minimise the store's carbon footprint.
- The scheme results in a contemporary design of store which respects the character and appearance of the local area, and which contains a significant amount of new and replacement planting, landscaping and habitat provision within the site.

- The new store is intended to replace Tesco's lease of the existing Somerfield store, in order to stem the significant leakage of customers from the town who presently travel to other surrounding areas to undertake main food shopping trips. This will have a positive effect on the town centre, as it will result in increased footfall in the town and bring the benefits of spin off trade to other retailers.
- The new store will create 150-200 new jobs for the area, in an economic climate where the government has placed a high priority on job retention and creation.

The Market Towns Investment Prospectus (MTIP) commissioned by the CWEA has identified Middlewich as a town that has experienced market failure, which is inhibiting economic potential. The Tesco store represents an opportunity to facilitate the changes to address market failure.

Should the proposal proceed then Tesco will have the ability to re-assign the lease at the former Somerfield store to other retail uses, creating the 'retail circuit' envisaged by the MTIP report.

Indicative drawings have also been submitted to show how the area around Southway could be developed into an area of public space which would improve the public realm and improve links to the Tesco store. The public realm improvements would create a 'retail circuit' between the new store, the former Somerfield store and Wheelock Street. Public art would also be used on the entrance to the proposed service yard.

Concern has been expressed about the store entrance not fronting onto Wheelock Street, however there are other examples of stores that function in a similar way, which do not have entrances onto the main shopping street, but do successfully function as part of the town centre.

The scheme provides scope for transformational change sought from the MTIP report. It can also act as the catalyst for other projects within the town.

Replacement bat roosts included within the proposal would adequately compensate for loss of existing roosts while it is considered it is not necessary to provide replacement habitats on site. A suitable condition can be worded to provide mitigation off site. Furthermore, in order to address concerns over loss of trees on site, the applicant is willing to contribute to a local planting scheme to secure overall benefits.

As a consequence of these proposed measures, a list of suggested conditions is provided which could be imposed should the Committee be minded to approve the scheme.

OFFICER APPRAISAL

Principal of Development

Local Plan policy PS4 states that within the settlement zone lines there is a general presumption in favour of development provided that it is in keeping with the town's scale and character and does not conflict with other policies. Policy DP4(M1) allocates the site for general retail use. Policy DP9 states that a transport assessment is required to be prepared for the site before planning permission is granted. The site details section of the Local Plan provides information and guidance to assist in the development of all allocated sites, identifying features and policy considerations which need to be taken into account and setting out development requirements which the Council will expect to be met. However, the information provided does not comprise a formal development brief.

With regard to this site, the site details section of the Local Plan states that the site is suitable for general retail uses, but other commercial or employment uses may be considered. Off-site highways improvements and traffic management measures are required. In view of its relationship with the Conservation Area a sensitive scheme is required which links with Wheelock Street. The layout should seek to retain existing trees within the site. In view of the sensitive location of the site and likely traffic implications for the town centre, a Development Brief and Transport Assessment are required for the site. The scale of development suggested in the site details section is 3000m² of retail floorspace. Whilst the site details section is not a formal development brief for the site, in the absence of this, it is considered that it is a material consideration to be given significant weight in the determination of the application.

PPS6: Planning for Town Centres states that when considering applications for planning permission in town centres, applicants should demonstrate the need for the development, that the development is of an appropriate scale, that there are no more central sites for the development, that there are no unacceptable impacts on existing centres and that locations are accessible. However in cases such as this where the application relates to an allocated site in a town centre location, the only issues that need to be addressed are the scale of the development and its accessibility.

In terms of scale, the Local Plan indicates that the site is suitable for retail development up to 3000m² floorspace. As previously stated the total floorspace proposed is 2646m² (1700m² retail) for the foodstore and 72.5m² for the new retail units. This falls below the level stated in the Local Plan. The applicant's state that it is apparent that the existing convenience stores within Middlewich fail to provide a suitable destination where the majority of residents can undertake a main food shopping trip. This they state is due to their relatively small floorspace and limited variety, range and choice of products on offer. It is stated that the proposed store, which is larger than existing stores in the town, would be able to better compete with stores in surrounding settlements. However it will not be so large so as to attract additional shoppers from beyond the Middlewich area. They consider that the size of store proposed broadly represents the most appropriate scale of foodstore which is capable of competing with surrounding superstores, yet remains of a scale which will principally meet the needs of Middlewich.

It is considered that on the basis of the information available, the size of store proposed is of an appropriate scale for Middlewich. It would offer a larger, broader range than existing foodstores and it is considered that its presence within the town centre would help to attract shoppers to the town centre. It is considered that provided that there are adequate links with the rest of the town centre, that this in turn would enhance its vitality and viability.

In terms of accessibility, the site is located within the town centre, which is considered to be a sustainable location.

Design, Appearance & Visual Impact

Local Plan policies GR1 and GR2 relate to the design of new development and state that all development will be expected to be of a high standard, to conserve or enhance the character of the surrounding area. Matters such as height; scale; form and grouping; materials; the visual, physical and functional relationship of the proposal to neighbouring properties, the streetscene and to the locality generally all need to be considered. Additionally proposals should respect existing features and provide for hard and soft landscaping as an integral part of the scheme. PPS1 & PPS6 also promote high quality and inclusive design.

With regard to Conservation Areas, policy BH9 states that planning permission will not be granted for proposals which, in the opinion of the Council, would have a detrimental effect on the existing special architectural and historic character or appearance of a Conservation Area as a result of a number of matters including design, siting, scale, use of materials, the significant loss of important trees and intrusiveness within the setting of a Conservation Area or in relation to existing views into, out of, within or across the area.

There are a number of concerns regarding the design, appearance and visual impact of the proposal both in terms of the impact on the character and appearance of the Conservation Area and more generally on the character and appearance of the wider area. As noted in the site details section of the Local Plan, this is a sensitive site which requires a sensitive scheme. It is not considered that the proposed scheme adequately addresses the constraints of the site and there are particular concerns regarding the general design and appearance of the store, the position of the store within the site away from the Wheelock Street frontage and the implications that this has on the connectivity to Wheelock Street. Additionally there are concerns regarding the siting of the service yard close to Wheelock Street, the formation of a large vehicular access off Wheelock Street, the appearance of the Darlington Street frontage and the large amount of development on the site in the form of buildings and areas of hardstanding resulting in the significant loss of a large number of visually important trees. Strong objections have been received from both the Council's Conservation Officer and from the Council's Urban Design Advisor.

In its present form it is considered that the proposal would be harmful to the character and appearance of the area and it would not preserve or enhance the character and appearance of the Conservation Area. The proposal is therefore contrary to RSS policy EM1(C), Local Plan policies GR1, GR2 and BH9. With regard to the amended plans, the Council's Urban Design Advisor considers that most of the original concerns remain. Frontage development to Wheelock street is of a very weak design, the landscape area between Wheelock Street and the store frontage is now even less appropriate, no attempt made to increase the built frontage to Wheelock Street as requested, increase in wooded fringe to the eastern pathway is 'tokenistic' and the design of the store seems to have been weakened.

Whilst the views of the Urban Designer are noted, with regard to the design and appearance of the proposed new retail units fronting Wheelock Street, these are generally considered to be acceptable, subject to a number of relatively minor amendments.

The proposal for the improvement to the public realm around Southway has the potential to improve linkages to Wheelock Street, and could be of real benefit to the local area. However, it is outside the application site and includes land outside the control of the applicant, including Council owned land. This gives Officers concern as to whether such improvements could therefore be secured as part of any permission, and that any such condition would not meet the tests of government advice within Circular 11/95.

In addition, in order for this to be an effective option to maximise links and circulation it is also considered that alterations to the parking layout of the proposed store would be required. A hand drawn plan has been submitted to show how this could work, but again a question is raised as to whether it would work effectively and whether the loss of parking spaces is acceptable.

Impact on Listed Building

Local Plan policy BH4 states that planning permission for proposals affecting the setting of a listed building will only be granted where the proposal would not adversely affect the setting of the listed building. The Council's Conservation Officer notes that the proposed car park would be extremely close to the listed building and considers that the proximity of the car park, with the limited screening proposed, would have a severe and adverse impact on the setting of the listed building. It is noted that there is a proposed retaining structure and that details of this and its impact on the setting of the listed building do not appear to have been submitted with the application.

Whilst the comments of the Conservation Officer are noted, the submitted plans indicate a distance of approximately 18.5m from the listed building to the retaining structure at the edge of the proposed car park. Given this distance and given that additional landscaping is proposed along this boundary, it is not considered that the setting of the listed building would be severely compromised.

Highways

This application proposes access and egress to the site via Wheelock Street for both customers and service vehicles, with service vehicles accessing the service yard located just off the site entrance. Parking is to be provided within the site for 171 parking spaces, of which 11 are indicated as being disabled spaces and 7 as being family friendly spaces. It is not clear at this stage how the proposed car park is to be managed in terms of use and duration of stay. A Transport Assessment has been submitted in support of the application. This concludes that the site has good access to non-car modes of transport. It states that the capacity analysis of local junctions indicates that a number of these are operating at or over capacity and it is therefore proposed to carry out off site highway works as part of this proposal. It is suggested that there are no highway or transportation reasons why the proposed new foodstore should not be granted planning permission.

Local Plan policies GR9, GR10, GR17 & GR18 relate to matters of highways and parking. Additionally PPS6 requires town centre developments to be accessible.

The Highways department do not raise any objections to the proposal subject agreement and the imposition of highways related conditions. The Highways department has had extensive negotiation with Tesco's traffic consultant and they have produced sufficient evidence to demonstrate that a traffic solution is available for the proposed development. The scheme therefore is acceptable subject to conditions regarding a Travel Plan, and off-site highways works as agreed with the Highways department and upgrading of bus stop facilities. It is considered these could be dealt with via a Section 278 agreement or an Unilateral Undertaking by the applicants.

Impact on Trees

The site currently contains a large number of trees and the submission includes a landscape scheme and a comprehensive tree survey covering 132 trees. The survey grades the trees in accordance with BS 5837 and a number are afforded Grade A. It appears that the proposal would involve removal of the majority of trees from the site, with a relatively small number of trees being retained at some points within the site. Replacement planting is proposed as part of the application, this would primarily be in narrow belts along the site boundaries.

Local Plan policies GR4 & GR5 deal with landscaping and state that development will only be permitted where it respects or enhances the landscape character of an area and where landscaped areas are adequate and appropriate for the intended use. Policy NR1 states that development will not be permitted where it is apparent that there would be an adverse effect on existing healthy trees of amenity value. Policy BH9 also refers to the loss of important trees in the context of the impact of this on Conservation Area whilst Policies NR2 & NR4 relate to loss of habitat.

In this case, none of the trees on site are currently formally protected by Tree Preservation Orders. This is probably largely due to the fact that the site is allocated for retail development. However, whilst the site allocation is an important consideration, it is considered that the amount of trees to be lost as part of this proposal is unacceptable. In particular it is considered that the loss of trees along the Darlington Street frontage and along the pedestrian footpath would have a significant adverse impact on the visual amenity of the area. With regard to the revised landscape plan, taking into account the width of the planting bed and the required construction of a retaining wall, the Council's Landscape Officer is not convinced that all the trees indicated could be retained successfully without encroachment into their root protection areas and significant root damage.

Ecology

An initial ecological survey was submitted with this application and during the course of the application a bat survey has also been provided. The bat survey found some evidence of roosting bats in a number of buildings on site and a generous replacement roost in the form of a bat loft to be located above the new retail units fronting Wheelock Street has been suggested as mitigation. The Council's Nature Conservation Officer considers that these proposals are acceptable to compensate for the loss of roosting habitat. However there is concern that there would be a significant reduction in the amount of available foraging/commuting habitat following the development. Whilst the proposed landscape buffer could be improved through the use of native species and whilst bat boxes could be provided and a small pond formed, the Council's Nature Conservation Officer is not convinced that this would result in enough habitat being available to retain bats on site following the development. In any event the proposal falls a long way short of achieving overall gain for nature conservation as is required by PPS9.

The applicants have recently provided a response to the Nature Conservation Officers comments. This states that provided that the replacement roost features are adequately compensated for in the new build, the provision of additional boxes is not essential for roost mitigation. With regard to foraging habitat, the species found on site (Pipistrelle Bats) tend to forage within 3-4km of the roost site and in principle therefore, it would be acceptable to create off-site foraging areas. The Council's Nature Conservation Officer notes the comments and fully supports the provision of off site habitat improvement. However, he considers that there may be potential for other species of bats that would require foraging habitat within 1km of the site (Brown Long Eared Bats). It was agreed previously that the bat mitigation for this scheme should be based on a 'worse case scenario' due to seasonal constraints of the submitted survey. Consequently off site habitat provision should also be offered within 1km of the site unless it is established from further survey work that Brown Long Eared Bats are absent from the site.

Notwithstanding the comments relating to off site provision of habitat, no indication has been given as to how and where this would be provided. In the absence of this, it is not considered that the impact of the proposal on

protected species and their habitats has been fully resolved. Whilst this clearly needs to be weighed against the fact that this is an allocated site, at this stage, as with the loss of trees, it is considered that the loss of habitat that would result from this development is unacceptable. Again Officers, remain concerned that the conditions suggested by the applicant's agent do not satisfy the relevant tests within Circular 11/95.

The additional views of the Council's Nature Conservation Officer have been passed onto the applicants and any further response received will be reported directly to committee. Therefore it may well be the case that after further discussion with the applicants that a resolution of this matter may be forthcoming and the ecology reason for refusal could be withdrawn.

Amenity

Local Plan policy GR6 deals with amenity and health and states that any development adjoining or near to residential property will only be permitted where the proposal would not have an unduly detrimental effect on their amenity due to amongst other things, loss of privacy, loss of sunlight and daylight and traffic generation, access and parking.

Existing residential properties are located to the south east of the site on Southway, the south of the site on Newton Heath/St Ann's Road, the west of the site on Darlington Street and it is likely that some of the commercial properties on Wheelock Street to the north east contain residential uses at first floor. The closest relationship with residential properties and the proposed foodstore would be with properties on Darlington Street and Newton Heath/St Ann's Road. The closest distance between the front elevations of properties on Darlington Street to the north west elevation of the building would be approximately 11-12m. This elevation would be blank and would have an eaves height above ground level of 4.5-5m, rising to a ridge height of 7.5-8m. This would appear to be consistent with the general scale of properties along Darlington Street and whilst this distance does not meet the guidelines stated in the Council's Supplementary Planning Guidance Note 2: Provision of Private Open Space in New Residential Development, in this case it is not considered that this relationship would have an unduly detrimental effect on the amenity of the residents of Darlington Street. There is also a close relationship between a single storey property located to the south west of the site and accessed off Newton Heath. The garden of this property adjoins the boundary of the site. A large number of trees are located to the rear of the site meaning that the outlook from the rear is limited. These trees are to be retained as part of this proposal. It is therefore considered that whilst the proposed foodstore would be located within 16m of the rear of this dwelling, the impact of the building on this dwelling would be acceptable.

Another issue to be considered is the impact of the comings and goings associated with the proposed use on the amenity of nearby residents. The proposed car park would be located close to a number of residential properties. However it is considered that the proposed site layout and

landscaping together with changes in site levels means that the impact of use of the car park on residents would be acceptable.

With regard to the impact of the proposed service yard, the Council's Environmental Health section has raised no objections in principle to the proposal. However should consent be granted for the proposal, Environmental Health have requested conditions regarding hours of use and deliveries, acoustic grade screening to the car park and attenuation to be undertaken in the service yard. No objections have been received to the scheme from residents on Darlington Street or from the resident of the single storey property located to the south west of the site.

Other Matters

Existing Somerfield site

Members may be aware that Tesco have recently acquired a long term lease on the Somerfield store located to the south east of the site on the opposite side of Southway. Tesco have made two applications to the Council for new signage and for a number of alterations to the existing store. Whilst the fact that Tesco propose to operate this store does not necessarily directly affect the determination of this application, the fact that they have some involvement with the adjacent site means that this may provide an opportunity to address the constraints and concerns associated with this current application to the benefit of the wider planning of the area.

Employment Creation

It is stated that the equivalent of 118 full-time staff would be employed at the store (76 full-time & 126 part-time). Whilst this is a material consideration to be given significant weight, particularly in the current economic climate, it is not considered that this on its own outweighs other concerns relating to the proposal. As stated, there is no objection to the principle of a retail store on this site, rather objections are raised to the particular details of proposal submitted.

CWEA funding

Reference is made to the Cheshire & Warrington Economic Alliance (CWEA) and the Market Town Investment Prospectus work which was carried out by independent consultants Roger Tym & Partners. This report has identified Middlewich as a town that is under-performing for a number of reasons, and that suffers high levels of retail 'leakage' e.g. residents have to go outside the town for their main shopping provision. Problems of traffic/congestion in the town are also identified. As a consequence the report has identified that there are opportunities for Middlewich, and that some limited levels of funding may be available from the NWDA to assist in improving the area. The Tesco scheme is viewed as a potential catalyst which may assist in improving investment in the area as a whole.

While the development of the site would be a significant investment in the town, the fact it may be a catalyst to release funding from other sources is not a material consideration for the planning merits of the application.

CONCLUSIONS AND REASON(S) FOR THE DECISION

The site that is the subject of this application is allocated for retail development on the Local Plan. Therefore the principle of retail development on the site is acceptable. The scale of retail development proposed by this application is also considered acceptable. However, it is considered that this proposal fails to respect the site location and constraints in particular its relationship with the Conservation Area and the wider area, the amount of existing trees on the site and the positive contribution that these make to the visual amenity of the area and the potential of the site to offer ecological benefits. It is not accepted that an alternative scheme could not be developed that would have a more positive impact on the area, would retain more trees and would offer ecological benefits. The proposals to improve the public realm around Southway would be welcomed, and while there remain some concerns about the ability to deliver this element, Members may consider that this, coupled with the economic issues, provides sufficient benefit to overcome the reasons for refusal.

RECOMMENDATION

REFUSE for the following reasons:

- 1 The proposed development by virtue of its size, siting and design, the design and appearance of the access and service yard and the associated loss of trees would have an unacceptable impact on the Middlewich Conservation Area of which the site forms a part. The proposal would neither preserve nor enhance the character or appearance of the Conservation Area. The development is therefore contrary to RSS Policies DP7 & EM1 and Local Plan Policies GR1, GR2 & BH9.
- 2 The proposed development fails to achieve an adequate quality of design to justify approval of planning permission. In reaching this conclusion regard was had to the size, siting and design of the proposed foodstore, the design and appearance of the access and service yard and the general layout of the site. It is therefore concluded that the proposal would detract from the character and appearance of the area, within which the site is located and be contrary to development plan and national planning policies which seek to promote high quality and inclusive design. The development is therefore contrary to RSS Policy DP7 and Local Plan Policies GR1 & GR2.
- 3 The proposed development would be contrary to the interests of nature conservation since it would adversely affect the habitat of protected species (namely bats) without any satisfactory measures of mitigation. The development is therefore contrary to RSS Policy EM1 and Local Plan Policies NR2 & NR4.
- 4 The proposed development by virtue of its size and siting would result in the direct loss of existing trees which are of amenity value to the area as a whole. The development is therefore contrary to RSS Policy EM1 and Local Plan Policies NR1 & BH9.

SUGGESTED CONDITIONS

Notwithstanding the recommendation of refusal from Officers, as indicated earlier Congleton Borough Council's Planning Committee on 24 March 2009 deferred its determination of the application to the next meeting of the Committee in order to allow the officers to formulate appropriate conditions and to provide the Committee with any relevant further information. As a result a list of proposed conditions is drafted below, should Members wish to approve the application.

The applicant's agent has suggested a number of conditions however as indicated within the main report there is concern regarding those suggested for securing works to the public realm, off-site ecological enhancements and off-site planting scheme – and whether they meet the tests within the government Circular 11/95.

As background, conditions need to be able to meet the six tests and must be:

1. necessary
2. relevant to planning
3. relevant to the development to be permitted
4. enforceable
5. precise
6. reasonable in all other respects

Public Realm

The suggested condition is: *The development hereby approved shall not be occupied until a public realm scheme which secures environmental improvements to the Southway pedestrian route and enhances linkages between the proposed store and the existing retail units situated adjacent and on Wheelock Street has been agreed in writing with the Local Planning Authority*

However, it is considered that the condition should be amended to read

“The development shall not commence until a public realm scheme which secures environmental improvements to the Southway pedestrian route and enhances linkages between the proposed store and the existing retail units situated adjacent and on Wheelock Street has been agreed in writing with the Local Planning Authority. The agreed scheme shall be implemented in accordance with an agreed timetable prior to the occupation of the development and retained thereafter.”

Members should however be aware that while this condition would be a valid condition, and satisfy the appropriate tests there are still questions over the legalities and practicalities of securing the area around Southway. This is because the land is not fully within the control of the applicant, and involves Council owned land on which there are also public toilets. Therefore at this

point in time there are unknown issues for assembling the land and implementing the public realm scheme.

Ecological Enhancements & Tree Planting

Conditions suggested by the applicant are:

Prior to the occupation of development, the applicant shall contribute towards an appropriate local ecological initiative which will result in overall gain in terms of ecological enhancement.

Prior to the occupation of the development, the applicant shall contribute to an appropriate scheme for the establishment and management of woodlands, or local planting scheme from which the public would derive benefit.

In both respects it is considered that these conditions are imprecise and therefore do not satisfy the required tests. There is no indication of what the *local ecological initiative* would be, or where it would be. Similarly it is unknown what the *local planting scheme from which the public would derive benefit* is, where it would be or what it would comprise. It is therefore also unknown whether it would relate to the development. Officers do not feel that they can suggest alternatives that would provide the level of assurance necessary.

Conditions

1. The development hereby approved shall commence within 3 years of the date of this permission.
2. The development hereby approved shall be carried out in total accordance with the approved plans numbered **** received by the Local Planning Authority on ****
3. No development involving the use of any facing or roofing materials shall take place until samples of the materials to be used in the construction of external surfaces of the **** hereby permitted have been submitted to and approved in writing by the Local Planning Authority.
4. The material and colour of all rainwater goods shall be ****.
5. All windows and doors in the external elevations of the proposed new retail units on Wheelock Street shall be fabricated in timber, which shall be painted or opaque stained and they shall be retained in such a form thereafter.
6. The hours of use of the proposed retail units shall be submitted to and approved in writing by the Local Planning Authority.

7. The hours of construction (and associated deliveries to the site) of the retail units hereby approved shall be restricted to 0800 to 1800 hours on Monday to Friday, 0800 to 1300 hours on Saturday, with no work at any other time including Sundays and Public Holidays.
8. No delivery vehicles associated with the activities of the store shall be on site or delivering before 0700 or after 2100.
9. Where piling of foundations is necessary this is to be undertaken between 9am – 5pm Monday to Friday and no works of this nature to be undertaken on Saturday, Sunday or Bank Holidays.
10. Should there be a requirement to undertake “floor floating” the process of mechanical smoothing of concrete to a floor area these operations are restricted to:
Monday – Friday 07:30hrs – 20:00hrs
Saturday 07:30hrs – 13:00hrs
No works on Sundays or Bank Holidays
11. A scheme for the acoustic enclosure of any fans, compressors or other equipment with the potential to create noise, to be submitted to, and approved by, the Local Planning Authority prior to the commencement of development.
12. Prior to the use of the retail store and associated car park, acoustic grade screening shall be placed along the northern boundaries of the car park as detailed within the submitted noise assessment.
13. Prior to the commencement of development, further details shall be submitted regarding the attenuation that will be undertaken in the service yard area. The approved attenuation shall be provided to the satisfaction of the Local Planning Authority prior to the use of the service yard area.
14. The approved development shall be carried out in accordance with the submitted Air Quality Assessment.
15. Prior to the commencement of development details of how the car park is to be managed shall be submitted to and approved in writing by the Local Planning Authority. Such details shall detail whether the car park will be accessible after the store is closed and how the car park will be secured/patrolled.
16. The approved development shall not be occupied until the approved access that is required for the development has been constructed in accordance with the approved plans and has been formed and graded to the specification of the Local Planning Authority, which is available from the Highway Authority, and the required visibility splays have been provided, all to the complete satisfaction of the Local Planning Authority.

17. The approved access shall not be brought into use until visibility splays have been provided at each side of the point of access in accordance with plans which have first been submitted to and approved in writing by the Local Planning Authority. . The splays shall be kept clear of any object, vegetation or other obstruction of a height exceeding 1.0m above the level of the adjacent carriageway at all times.
18. The service facilities, as indicated on the approved plan, shall be provided prior to the occupation of the building and retained at all times thereafter so as to allow service vehicles to load and unload within the site. They shall at no time be used for the parking of cars or storage of goods or materials, which would prevent them from being available for the intended use.
19. Prior to the commencement of works involving the movement of materials in bulk to or from the site, facilities shall be provided as agreed with the Local Planning Authority, to prevent the deposition of extraneous matter (mud, debris, etc) on the public highway and shall thereafter be retained and used whenever the said operations are carried out.
20. Prior to the commencement of development a method statement shall be submitted to and approved in writing by the Local Planning Authority, which outlines the method of construction, details of deliveries to the site during construction, how and where materials will be unloaded and details of where contractor's vehicles will park. The development shall then be constructed in complete accordance with the method statement.
21. The approved development shall not be occupied until space has been laid out within the site for the parking of **** cars in accordance with drawing ****. Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter, unless otherwise approved by the Local Planning Authority.
22. Parking facilities for cycles shall be provided on the site prior to the occupation of the approved development and retained at all times thereafter. Before the development is commenced, details of cycle parking facilities and a covered and secure cycle store shall be submitted to and approved in writing by the Local Planning Authority.
23. Shower, changing, locker and drying facilities shall be provided prior to the occupation of the approved development and retained at all times thereafter to provide facilities to allow staff or visitors to shower, change and store and dry their clothing, in order to encourage cycling and walking to the premises. Before commencement of the development details of the proposed facilities, including the number of

showers and lockers, shall be submitted to and approved in writing by the Local Planning Authority.

24. Prior to commencement of development, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of boundary treatments, hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.
25. The approved landscaping plan shall be completed in accordance with the following:-
 - a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
26. Prior to its installation details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
27. No development shall take place until the applicant, or his agent or successors in title, has secured the implementation of a programme of archaeological work, (to consist of a programme of excavation, recording, reporting and, if appropriate, publication) which should be carried out in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
28. No development shall commence until a desk top assessment to

identify and evaluate all potential sources and impacts of land and/or groundwater contamination affecting the site has been carried out by a suitably qualified person and submitted to the Local Planning Authority.

If following examination of the desk top assessment, the Local Planning Authority is of the opinion that there is the potential for contamination of the site by substances and/or landfill gas, in on or under the land or from sites in close proximity to the site in question, then a full investigation shall be carried out by a suitably qualified person to ascertain the nature and extent of contamination together with a detailed Method Statement which shall specify:

the precise form of any remediation works; and
arrangements for the supervision and monitoring of the remediation works, which shall require a minimum of 3 days notice to be given to the Council's Scientific Officer prior to the works commencing.

The Method Statement shall be submitted to and approved in writing by the Local Planning Authority prior to any remediation works commencing. No development shall commence until the remediation works have been completed in accordance with the approved scheme and the Local Authority has confirmed the completion in writing.

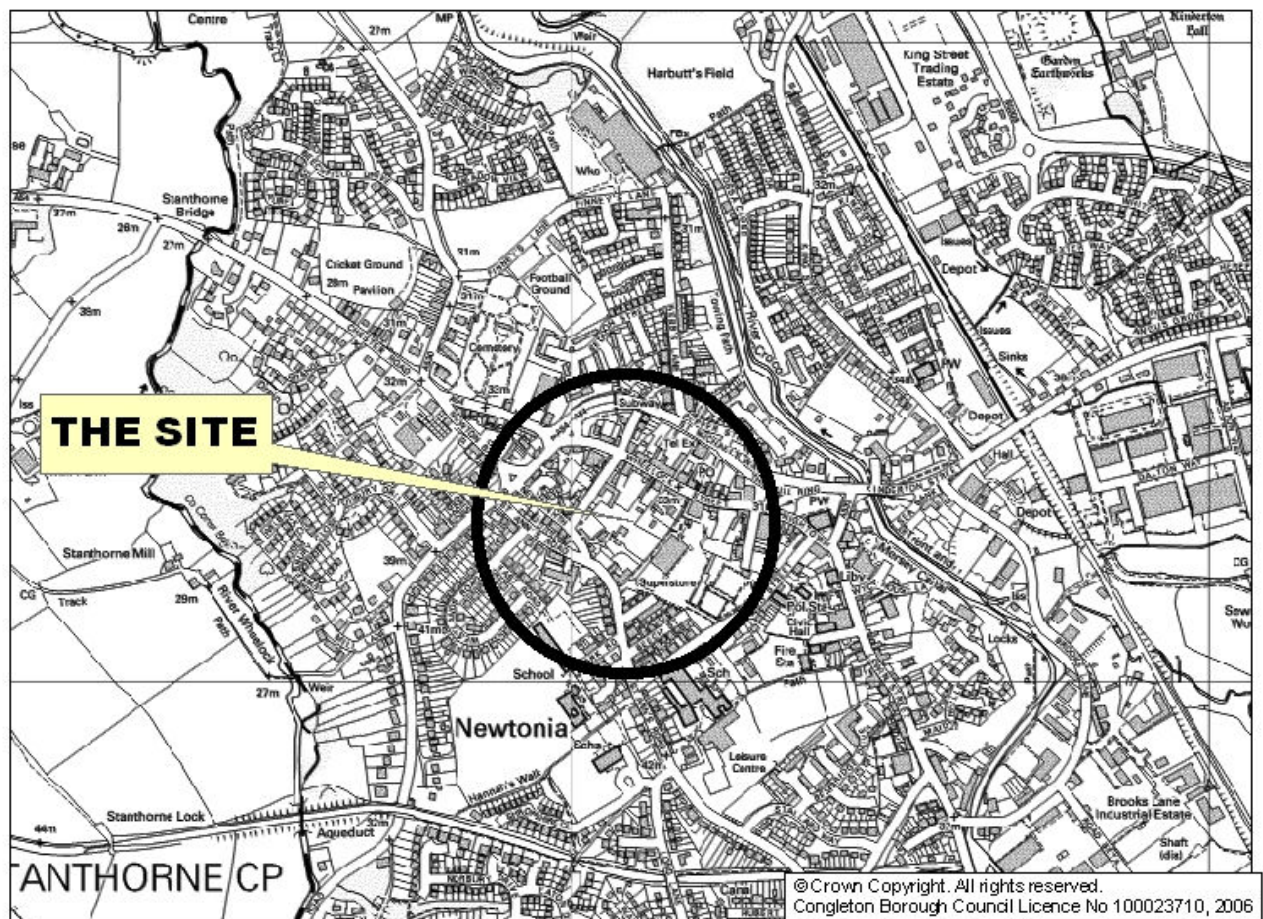
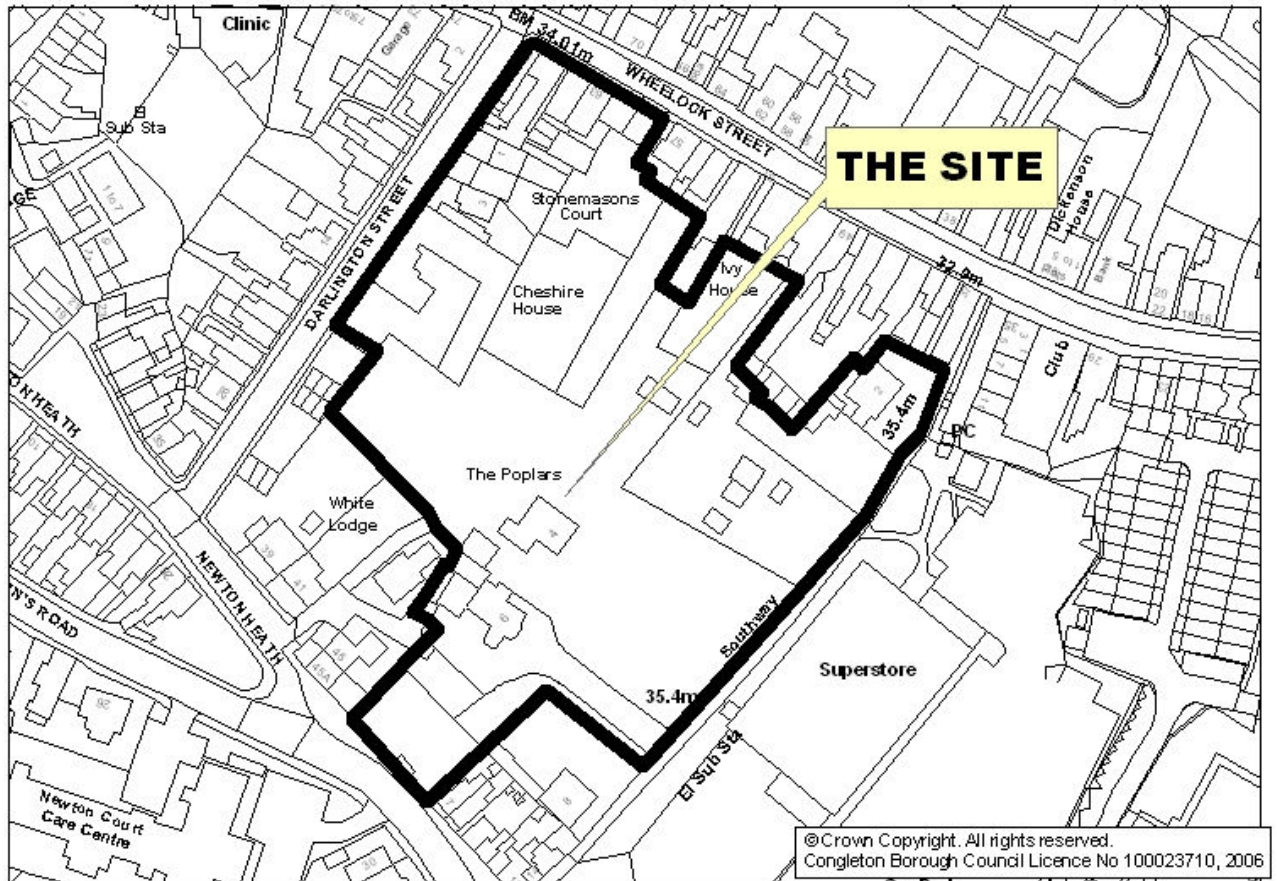
29. Prior to commencement of development detailed plans showing the location, design and materials of proposed facilities for the disposal and storage of any refuse/recyclable materials, including details of any bin stores, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be available for use prior to the development being occupied and shall be permanently retained thereafter, unless otherwise first approved in writing by the Local Planning Authority.
30. Details of the existing ground levels, proposed ground levels and the level of proposed floor slabs shall be submitted before any development on the site first commences. Details which receive the written approval of the Local Planning Authority shall be implemented in full, unless alternative details are otherwise approved in writing by the Local Planning Authority.
31. The development shall be carried out in strict accordance with the ecological report submitted with the application, including provision of any proposed details of habitat protection / creation.
32. Prior to any works taking place that involve the loss of any hedgerow, tree or shrub between 1st March and 31st August in any year, a detailed survey shall be undertaken to check for the existence of nesting birds. Where nests are found, a 4m exclusion zone shall be created around the nest until breeding is complete. Completion of

nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any works involving the removal of the hedgerow, tree or shrub take place.

33. No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species until the Local Planning Authority gives written consent to any variation.
34. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837 (Trees in Relation to Construction 2005: Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - a) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - b) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - c) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
35. The development shall be carried out in accordance with the Flood Risk Assessment submitted on ***.
36. The development shall not commence until a scheme has been submitted for the elevational treatment of the service yard has been agreed in writing with the Local Planning Authority. The agreed

scheme shall be implemented in accordance with an agreed timetable prior to the occupation of the development and retained thereafter.

37. The development shall not commence until a public realm scheme which secures environmental improvements to the Southway pedestrian route and enhances linkages between the proposed store and the existing retail units situated adjacent and on Wheelock Street has been agreed in writing with the Local Planning Authority. The agreed scheme shall be implemented in accordance with an agreed timetable prior to the occupation of the development and retained thereafter.



STRATEGIC PLANNING BOARD

APPEALS

Application No: P08/0915

Appellant: Mrs Rita Strolin

Site Address: Sunset Cottage, Homshaw Lane, Haslington, Crewe CW1 5TN

Proposal: Appeal against the refusal of planning permission by the former Crewe and Nantwich Borough Council for the demolition of outbuildings and construction of conservatory to create a kitchen, lounge and mezzanine floor over.

Level of decision: Development Control Committee

Decision: Refused

Appeal Decision: Dismissed

MAIN ISSUES

The main issue of the proposal is the effect on the character and appearance of the house and the local area. The appearance of the cottage is of a vernacular building, with exposed timber framing and decorative brick infill panels. The dwelling has low eaves height and small window openings, and is of a simple rectangular gabled form.

INSPECTOR'S REASONS

The Inspector stated that the proposed extension would bring about a fundamental change in the form of the building, creating an L-shaped plan and forming an extension which would be large enough to compete visually with the original block. Although the roof would have a lower ridge than the main roof, its span would be wider, giving it considerable mass. The three large rooflights would be highly prominent on the northern roof slope and would be out of scale with the existing domestic window openings. The extensions long southern side would wrap around the existing gable, forming an awkward junction around the existing first floor window, involving a small area of flat roof that would be visible from the front of the cottage.

The Inspector considers that the extension would not respect the scale and form of the original dwelling, and would therefore be contrary to Policy RES.11, and would not appear to be subordinate to the original dwelling within the open countryside.

The Inspector considers that the cottage and adjacent properties to the south form a loosely aligned group, with rear gardens increasing in length with the road. The spacious relationship with the road is typical of the general character of the area, and the depth and projection of the cottage. The extension would form a significant intrusion into the space between the houses and the road. The proposal is screened partially by boundary planting,

but would still be a prominent feature in the streetscene, particularly when seen from the north where the glazed rooflights would stand out against the tiled roof slope, contrary to policies RES.11 and BE.2 of the Crewe and Nantwich Replacement Local Plan 2011.

The Inspector notes that the proposed extension would not significantly breach the 45 degree guideline to the property at the 'Struan' and therefore would not unduly harm the living conditions of the residence. However, this does not outweigh the harm identified and therefore the proposed development was dismissed.

IMPLICATIONS FOR THE COUNCIL

This is a good decision for the Council as the Inspector placed a high weighting on the Extensions and Householder SPD and defined a subservient structure. The Inspector put emphasis on the design of the traditional style cottage in a prominent location and considered that the modern extension did not respect the host building.

Application No: P08/1056 and P08/1039

Appellant: Mr Richard Keen

Site Address: 5 Lea Hall Barns, Wrinehill Road, Wybunbury, Cheshire CW5 7NS

Proposal: Appeal against the refusal of planning permissions by former Crewe and Nantwich Borough Council for (a) erection of wooden shed 8' by 6' and (b) erection of greenhouse 12' 6" by 8' 5" brick base/green aluminium.

Level of decision: Delegated

Decision: Refused

Appeal Decision: Allowed

MAIN ISSUES

The main issues of the appeals are the effect of the proposals on the setting of the listed building and the character and appearance of the surrounding countryside. No. 5 Lea Hall Barns is one of a series of dwellings converted within a barn complex which is linked to Lea Hall, a Grade II* listed building.

INSPECTOR'S REASONS

The Inspector states that having regard to Section 1(5) of the Planning (Listed Building and Conservation Areas) Act 1990, the Council have regarded the barn complex as part of the listed building, and the Inspector concurs with that approach.

The Inspector states that the conversion of the barns to dwellings has led to the domestication of the buildings themselves. Although a semblance of their former agricultural origin remains, it is very clear that they are now dwellings and this has been underlined by the provision of associated garden areas with hardstandings, lawns, and post and rail fences as boundaries, also a range of domestic features, some movable, and others such as a pond more permanent in nature are found. The Inspector therefore considers that these features render the domestic use of the area delineated and do not appear as part of the surrounding countryside.

The Inspector states that the shed and greenhouse would be domestic structures of a degree of permanence, however would be contained within one of the gardens that have been formed as part of the conversion and sit along side other, similar domestic accoutrements. The Inspector considered that the shed and greenhouse would not appear incongruous in their context, thus preserving the setting of the listed building and having no particular impact on the character or appearance of the surrounding countryside. It is

therefore found that the proposals are in accordance with Local Plan Policies BE.2 and NE.2 and the appeals are allowed.

IMPLICATIONS FOR THE COUNCIL

This is a disappointing decision for the Council in relation to development within the curtilage of a converted former agricultural building. It is however a stand alone decision that whilst disappointing does not set any precedence for future applications.

Application No: P08/0016

Appellant: Mr Jason Gregory

Site Address: Ivy Farm, Waldrons Lane, Crewe, Cheshire CW1 4PT

Proposal: Appeal against the refusal of planning permission by the former Crewe and Nantwich Borough Council for the erection of an agricultural building, glasshouse, mobile home plus access and car parking in connection with organic farming business.

Level of decision: Development Control Committee

Decision: Refused

Appeal Decision: Part allowed - part dismissed

MAIN ISSUES

The main issue of the appeal whether there is an essential agricultural need for a worker to live at the farm. Ivy Farm is situated within the open countryside as designated by the Local Plan 2011, where the construction of new housing is strictly controlled to protect its intrinsic character and beauty.

INSPECTOR'S REASONS

It is proposed that hens will be kept on the farm to produce organic eggs and a range of organic produce which would be cultivated on the fields and within the glasshouse. There is no house on the farm and therefore a mobile home is proposed on the site for a worker to live in. Both the Council and the Inspector agree that the proposed glasshouse and agricultural building are acceptable subject to suitable conditions.

The Inspector notes that Policy RES.5 seeks to protect the open countryside by only allowing new housing within that which is essential. The Inspector states that the test of functional need within PPS7 seeks to establish whether it is essential for proper functioning of the enterprise for one or more workers to be readily available at most times and if so, whether that need can be met by a suitably located dwelling nearby. It is agreed that the activities which will be carried out by Mr Gregory, cumulatively exceeds the equivalent work of one full time employee. The most vulnerable aspect of the business is the possible damage and loss of produce within the glass house, where a time period of 15 minutes to address the problem is required before significant loss or damaged to the crop is incurred, and therefore there is a need for a full-time worker to be readily available at most times.

The Inspector states that it is not essential that a residential presence is required on the farm as the necessary checks could be made by someone living off site, and a farm office could be provided on site which would allow

for a rest room, and area to eat and wash during the day. Modern technology can assess essential parameters within the glass house remotely using mobile or fixed phone lines, and therefore the critical issue is whether the worker once altered can get to the glass house comfortably within 15 minutes. The Inspector states that the farm is less than a 1km from the north eastern suburb of Crewe where there is a wide range of properties available within a 5 minute drive from the farm. The time taken and the costs associated with the commute would be small. Therefore the Inspector concludes that whilst there is a functional need for a worker to be readily available at most times, it is not necessary for the worker to be on-site and can be addressed with nearby housing.

Others matters raised included the financial soundness of the enterprise, highway safety, and protected species, however the Inspector concluded that these issues do not outweigh the harm caused by the proposed mobile home. The Inspector reached a split decision on the appeal, dismissing the proposed mobile home, car parking area and access off Waldron Lane and allowing the proposed agricultural building, glasshouse, car parking and access off Chapel Lane.

IMPLICATIONS FOR THE COUNCIL

The Council's objection related to the mobile home only and the Inspector's view that an essential worker could live in Crewe and still meet the functional needs of the enterprise is consistent with the Council's approach in this case. The decision is consistent with the approach of the former Crewe and Nantwich Borough Council in considering other applications for agricultural workers dwellings elsewhere.

Application No: P08/0739

Appellant: Mrs P Brand

Site Address: The Coach House, Chester Road, Acton Nantwich, Cheshire, CW5 8LA

Proposal: Appeal against the refusal of planning permission by the former Crewe and Nantwich Borough Council for the erection of a single storey timber framed glazed conservatory.

Level of decision: Delegated

Decision: Refused

Appeal Decision: Dismissed

MAIN ISSUES

The main issue of the proposed development is the effect of the proposed development on the character and appearance of the converted coach house which is situated within the open countryside to the west of the settlement of Nantwich. The Coach house was converted and extended to residential use in 2003.

INSPECTOR'S REASONS

The Inspector considered that generally the Coach house had been converted in way that respects the form, design and character of the original, particularly to the west and south elevations which retain much of the simple original character. The proposed development would replace a slate-covered open porch canopy with larger hipped and mono-pitched roof conservatory linking the western gable of the original coach house building to one of the later extensions.

The Inspector states that the principal objective of Policies BE.2 and RES.11 of the Borough of Crewe and Nantwich Local Plan 2011 are ensuring that extensions to dwellings harmonise with the character of the parent dwelling and in this case the former use as a coach house is significant to the application policies. The Extensions and Householder SPD Para 4.10 and 4.11 provide detailed guidance in relation to alterations to converted rural buildings. The Inspector states that the proposed development would introduce a predominantly glazed structure with a hipped roof the gabled western elevation of the original part of the building. Its design, materials and proportions, particularly of fenestration and dwarf wall, would fail to integrate or harmonise with the simple character of the original coach house building which has been retained in the conversation. The proposal is therefore contrary to policies BE.2 and RES.11 of the Crewe and Nantwich Replacement LP and the objective of paragraphs 4.10 and 4.11 of the SPD,

which seek to ensure the original form of converted buildings is not compromised by inappropriate alteration.

IMPLICATIONS FOR THE COUNCIL

This is a good decision for the Council as the Inspector has highlighted the importance of design considerations and places weight on the Extensions and Householder Development SPD. This prioritises the SPD as an important consideration in determining planning applications.

Application No: P08/0820

Appellant: UBS Global Asset Management (UK) Limited

Site Address: Unit 12 Grand Junction Retail Park, Crewe, CW1 2RP

Proposal: Appeal against the refusal of planning permission by the former Crewe and Nantwich Borough Council for the creation of an additional 2230 sq m of retail floorspace at mezzanine level.

Level of decision: Development Control Committee

Decision: Refused

Appeal Decision: Dismissed

MAIN ISSUES

The main issue of the appeal is the extent to which the proposed development would be consistent with Government policies in Planning Policy Statement (PPS6): Planning for Town Centres. The Unit is located outside the town centre as defined on the Borough of Crewe and Nantwich Replacement Local Plan 2011 proposal map. Unit 12 Grand Junction Retail Park is currently trading as Focus DIY but the end user would sell comparison goods, which could be controlled by condition.

INSPECTOR'S REASONS

The Inspector states that para. 3.4 of PPS6: Planning for Town Centres sets out five tests that applicants should be required to demonstrate in respect of retail applications. Both parties agree that this application meets two of the tests, (i) that the development is of an appropriate scale and (ii) the location is accessible.

The Cheshire Town Centre Study 2006 – 2021 identifies that Crewe requires in the short-term (by 2011) between 12,430 sq m and 17,743 sq m net floorspace, and in the medium term (by 2016) between 28,800 sq m and 41,143 sq m floorspace. The existing floorspace of the town centre is 76,487 sq m. The appellant argues that there remains a significant need for additional floorspace with a capacity of some £43 million in 2009 and £112.5m by 2014. The Council reviewed the figures contained in the study and found that the surplus capacity would not be as indicated in the study and would be closer to £57.8m in 2014 which could be reduced to £17.6m by special forms of trading (catalogue/internet/mail order). The Inspector notes that the level now suggested by the Council would be very different to £144m capacity by 2016 figure suggested in the study, and therefore significantly reduced the amount of floorspace required.

The Inspector also notes that there is a resolution to grant planning permission for a town centre redevelopment scheme (Modus), which would deliver some 20,688 sq m net addition of comparison floorspace, and although planning permission is yet to be issued for the Modus scheme, Modus are still committed to the redevelopment. However it should be noted that the Modus scheme does have outline planning permission. The Inspector states that there are a significant number of shops vacant in the town centre and notes that the appellant could operate from a store of the size of the current Focus and therefore concludes that there is not a quantitative need for the development.

In respect to qualitative need the Inspector states that it is not disputed that floorspace suitable for bulky goods sales is required in Crewe, and that the increase in size of the unit for use for sale of comparison goods would increase choice of type of floorspace, however the Inspector states that this does not outweigh concerns about the quantitative need for the floorspace.

The Inspector states that PPS6 advocates locating new retail development in town centres first, then edge of centre and then out of centre. The Focus unit is not within 300m of the town centre boundary, and is therefore an out of centre site. The Inspector states that whilst Modus may not be the end developer of the redevelopment of the town centre, and may open in the medium term rather than the short the councils active participation in the development suggests a good likelihood that the development will occur. Therefore the Inspector considers that it would be a sequentially better retail location than the appeal site.

The existing town centre has 37 vacant shops amounting to 7,380 sq m of floorspace, and the vacancies have increased over the years. LP policy S.1 seeks to help promote vitality and viability of the town centre by concentrating shopping provision within it. The Inspector considers that the development would not promote the vitality or viability of the town centre and would enhance the offer of the Grand Retail Junction Park where car parking is free. The Inspector considers that the addition of the mezzanine floorspace could make the development of the allocated town centre site, in a sequentially better location less likely to happen.

The Inspector therefore states that the proposal would not be consistent with Government policies in Planning Policy Statement (PPS6): Planning for Town Centres and the appeal was dismissed.

IMPLICATIONS FOR THE COUNCIL

This is a good decision for the Council in that it re-enforces the town centre retailing policies and specifically enables the Council to resist out of town centre retailing that would compromise the approved Modus town centre redevelopment scheme.

Application No: P08/1124

Appellant: Mr Michael Glover

Site Address: Lake View, Waybutt Lane, Balterley, Crewe, Cheshire Cw2 5QA

Proposal: Single storey rear extension for a 7 x 4.3m swimming pool

Level of decision: Delegated

Decision: Refused

Appeal Decision: Dismissed

MAIN ISSUES

The main issue of the appeal is the whether the proposed development represents inappropriate development in the Green Belt and, if it does, whether there are any very special circumstances sufficient to outweigh the harm to the Green Belt and any other harm.

INSPECTOR'S REASONS

The Bungalow on the appeal site has recently been erected following a planning permission granted in 2005 for a replacement log cabin. The dwelling as originally built extended to approximately 100 sq m which is considerably larger than the log cabin. The curtilage of the property as originally approved in 2005 has subsequently been extended and the bungalow enlarged by the construction of a detached garage and a conservatory with a further increase in floor space brought about by the conversion of the loft area into living accommodation.

It is considered by the Inspector that the additional living space created in the loft area does not create an increase in building bulk to the property and therefore would have a negligible impact on the openness and character of the Green Belt. Nevertheless the Inspector considers that the appeal proposal would represent a significant and substantial increase, and in terms of strict control of development in the Green Belt an extension of the replacement building of this size could not be regarded as limited and even more so in relation to the small log cabin it replaced. Adding the proposed extension to the other extensions would result in a building significantly larger and disproportionate to the size of the original dwelling contrary to LP policy NE1 and PPG2.

The Inspector notes that Policy RES.11 requires extension in the Green Belt and open countryside to be subservient to the original dwelling. However in

respect of visual impact the Inspector considers that the proposed link extension would be of a scale which appear subordinate to the existing dwelling and not in conflict with policy RES.11.

Nevertheless the Inspector considers that the extension would have a particularly undesirable impact in that it would significantly reduce the open area between the existing dwelling and the garage. Seen from the north east the proposed extension would block attractive views through the gap between the two structures that comprise a backdrop of the trees alongside the fishing lake. This aspect would be replaced with a more consolidated form of built development which would be damaging to the openness of the Green Belt and the character and appearance of the rural scene, contrary to Local Plan Policy BE.2. As no special circumstances have been found to justify allowing inappropriate development in the Green Belt the Inspector dismissed the appeal.

IMPLICATIONS FOR THE COUNCIL

This is a good decision for the Council, highlighting the importance of the protection of the openness of the Green Belt. The decision re-enforces the Policies contained within the Borough of Crewe and Nantwich Replacement Local Plan 2011.

Application No: 08/00011E

Appellant: Mrs Lesley Wheetman

Site Address: Lindow End Smithy, Edge View Lane, Shorley, Alderley Edge, SK9 7SU

Details: The appeal was against an enforcement notice which alleged an unauthorised change of use of land from industrial to the siting of caravans, greenhouses, sheds, meter housing and other domestic paraphernalia. The notice required the removal of the caravans, sheds and associated service connections and paraphernalia.

Date of Enforcement Notice: 7 March 2008

Appeal Decision: The appeal was dismissed and the enforcement notice upheld, subject to several variations. (9 December 2008).

MAIN ISSUES

The site lies within the North Cheshire Green Belt and was formerly occupied by a smithy building that has since been demolished. There is a list of planning / enforcement history on the site.

The Inspector agreed with the Council that the 3 residential caravans on the land had been there for less than 10 years prior to the issuing of the enforcement notice and therefore that the material change of use was not immune from enforcement action. The appeal on ground (d) therefore failed.

The Inspector concluded that only the removal of the caravans and associated operational development would remedy the breach of planning control in the North Cheshire Green Belt and therefore the requirements of the notice to remove them was upheld. The Inspector concluded that several of the small sheds and the greenhouse were not associated with the material change of use and therefore the requirement to remove these structures from the land was removed from the notice.

IMPLICATIONS FOR THE COUNCIL

The decision re-affirms the Council's approach to strict control over development in the Green Belt in line with local plan policy and national guidance.

Application No: 06/00495E

Appellant: Mr Lee Brown

Site Address: Lode Hill, Altrincham Road, Styal, Wilmslow

Details: The appeal was against an enforcement notice which alleged that there had been an unauthorised material change of use of land at the site by virtue of the expansion of land used for airport car parking on the site and the laying of associated areas of hardstanding.

Appeal Decision: The appeal was allowed in part following a correction and variation of the enforcement notice (essentially the use for commercial car parking was allowed but the requirement to remove the hardstanding on which the cars have been parking was upheld)

MAIN ISSUES

This was an appeal against an enforcement notice which alleged that there had been an unauthorised material change of use of land at the site by virtue of the expansion of land used for airport car parking on the site. A smaller area of land on the site had been in use for commercial car parking for more than ten years, and the Council took the view that the smaller area of land was immune from enforcement action. The expansion of the airport car parking use at the site appeared from various sources of evidence to have occurred in 2005. The site lies in the Green Belt and Styal Conservation Area. The Council considered that the expansion of operations constituted a harmful material change of use by intensification, and hence those areas of the site and associated hardstanding were the subject of an enforcement notice, requiring the cessation of the use on those areas and the removal of the hardstanding.

The notice was appealed on grounds (b), (d), (f) and (g). A ground (c) appeal was also introduced on the first day of the Inquiry.

The appeal in ground (b) related to a technical matter and the Inspector varied the notice in accordance with both parties' agreement at the Inquiry.

Appeal on Ground C

This was a fundamental issue. Ground (c) is an appeal on the basis that there has not been a breach of planning control. In this case the Inspector concluded that the increase in airport car parking on the site was essentially 'more of the same' on the same planning unit and did not involve a change in the *character of the use of the land*. Having reached this conclusion, in the light of existing case law, the Inspector was then bound to conclude that there was no material change of use of the land and therefore no breach of

planning control. The appeal on ground (c) was therefore allowed and the requirement to cease the car parking use was deleted from the notice

Appeal on Ground D

The Inspector agreed with the Council that the laying of hardstanding at the constituted operational development. From the evidence put forward at the Inquiry, the Inspector concluded that the works had not been substantially completed 4 years prior to the date of the enforcement notice and were not immune from enforcement action. The appeal on ground (d) failed and the Inspector upheld the requirement of the notice to remove the hardstanding.

Appeal on Grounds F and G

The Inspector concluded that the requirements of the notice to remove the hardstanding and re-seed with grass were reasonable and the time periods given for compliance (4 months) were also acceptable. The appeal on grounds (f) and (g) therefore failed.

IMPLICATIONS FOR THE COUNCIL

Identifying a material change of use by intensification is far from a clear-cut issue, and each case must be assessed on its merits. What constitutes a change in the character of the use of the land is open to interpretation and in this case the appellant successfully argued that there was no change in character. In terms of airport car parking specifically, this case highlights how a use may spread across a planning unit once a lawful use has been established; this must be taken into account when monitoring and considering enforcement action for any other unauthorised commercial parking use to prevent lawful uses being gained by stealth.

However, the decision upholds the requirement to remove the hardstanding and re-seed with grass, and this is being pursued by officers for compliance.

Application No: 08/1132P

Appellant: Mr N Guest

Site Address: The Old Vicarage, Sandle Bridge Lane, Marthall, Knutsford, WA16 8SX

Proposal: Appeal against the refusal of planning permission by Macclesfield Borough Council for the conversion of an outbuilding to ancillary accommodation, incorporating a first floor extension.

Level of decision: Delegated

Decision: Refused 24/10/08

Appeal Decision: Appeal dismissed: 05/03/09

MAIN ISSUES

The coach house is a single storey outbuilding of traditional appearance, situated within the Green Belt. The key issues related to the impact of the proposals on the character and appearance of the building and the visual amenities of the Green Belt.

INSPECTOR'S REASONS

The Council raised no objections to the principle of the conversion of the coach house for domestic purposes. It was contended however that the raising of the central gable by 1m would have formed an incongruous and over-dominant element, not in keeping with the architectural vernacular of the existing building.

The proposal was also deemed to have been out of keeping with the existing surrounding buildings. Whilst not materially impacting on the openness of the Green Belt, the proposed extension would have nevertheless materially harmed the visual amenities of the Green Belt.

The Inspector concurred with the Council's view that the proposals would have caused material harm to the character and appearance of the building in question and its setting. Such development would have conflicted with Local Plan Policies DC1, DC2, GC1 and GC12 and national guidance in the form of Planning Policy Guidance Note 2: Green Belts. Therefore the appeal was dismissed.

IMPLICATIONS FOR THE COUNCIL

The appeal decision reflects and reinforces the Council's policies relating to the importance of sympathetically designed extensions to buildings, that are in keeping with the existing vernacular and setting.

Application No: 08/1358P

Appellant: Prestbury Bowling Club

Site Address: Prestbury Bowling Club, Behind Village Hall, Macclesfield Road, Prestbury.

Proposal: Erection of eight 6m high floodlights.

Level of decision: Delegated

Decision: Refused: 05/06/08

Appeal Decision: Appeal dismissed: 24/03/09

MAIN ISSUES

The key issue is the extent of the effect that the proposed floodlights have on the character and appearance of the area which has been designated as a conservation area.

INSPECTOR'S REASONS

The Inspector considers that issue of recreational benefits should be balanced against other impacts. In general the proposal is supported by PPG17 and the need to improve sports facilities, and also in part Local Plan Policy DC64 whereby the benefits of floodlighting sports facilities are carefully balanced by the visual impact and the effect that the intensification of the use of the site would have on residents.

The Inspector considers that the degree of disturbance and loss of amenity is sufficient enough to warrant the rejection of the proposal as it does not comply with Local Plan Policies DC3 and DC64.

IMPLICATIONS FOR THE COUNCIL

The importance of the design of development within the Prestbury Conservation area has been highlighted. Any potential gain of the development was considered to be limited due to the potential harm of the development.

Application Number: 08/0006/FUL

Appellant: Mr P Shaw

Site Address: Land adjacent to 19 Springbank, Scholar Green.

Proposal: Erection of a two storey detached dwelling house.

Level of Decision: Delegated

Recommendation: Refuse 17th June 2008

Decision: Refuse 23rd June 2008

Appeal Decision: Dismissed 11th February 2009

MAIN ISSUES

Whether the development would be inappropriate in the Green Belt and whether any harm is outweighed by other considerations, that amount to very special circumstances necessary to justify the development.

INSPECTOR'S REASONS

The scale of the development would be sufficient to be harmful to the openness of the Green Belt and would conflict with PPG2. Very special circumstances have not been demonstrated in order to outweigh the harm that would be caused by the development.

IMPLICATIONS FOR THE COUNCIL

None.

Application Number: 08/0187/FUL

Appellant: Mrs E Tully

Site Address: Allotment Wood, Oak Tree Lane, Cranage, Middlewich.

Proposal: Construction of single storey garage/store in agarden.

Level of Decision: Delegated

Recommendation: Refuse 22nd April 2008

Decision: Refuse 25th April 2008

Appeal Decision: Dismissed 10th February 2009

MAIN ISSUES

Whether the development would be inappropriate within the Open Countryside and be in keeping with the character of the dwellinghouse.

INSPECTOR'S REASONS

The development would not be sympathetic to the character, appearance, or form of the site and surrounding area in terms of its height, scale, materials, design, or relationship to the existing house.

IMPLICATIONS FOR THE COUNCIL

None.

Application Number: 08/0646/FUL

Appellant: Mr G Henshall

Site Address: 7 Jodrell Bank Cottages, Holmes Chapel Road,
Holmes Chapel

Proposal: Two storey side and rear extension

Level of Decision: Delegated

Recommendation: Refuse 29th May 2008

Decision: Refuse 30th May 2008

Appeal Decision: Allowed 28th January 2009

MAIN ISSUES

Whether a 50% increase upon the volume of the original property would be disproportionate and result in a detrimental effect upon the character of a property located within the Open Countryside and whether any harm is outweighed by other considerations, that amount to very special circumstances necessary to justify the development.

INSPECTOR'S REASONS

Despite having an increase in volume considerably greater than the 30% which is defined as a modest extension, the proposed development would not have a significant detrimental effect upon the character or identity of the dwellinghouse by reason of its siting and existing screening and the extension is justified by the need to provide more practical and comfortable accommodation at the very small existing dwelling.

IMPLICATIONS FOR THE COUNCIL

None.

Application Number:	08/1075/FUL
Appellant:	Mr Robert Scott
Site Address:	1 Langley Close, Sandbach
Proposal:	Removal of boundary hedge and erection of brick built wall
Level of Decision:	Delegated
Recommendation:	Refuse 26 th August 2008
Decision:	Refuse 28 th August 2008
Appeal Decision:	Allowed 25 th March 2009

MAIN ISSUES

Whether a brick built wall of the proposed height and scale would appear dominant and intrusive within the street scene and be detrimental to the visual amenity of the wider area.

INSPECTOR'S REASONS

The proposal would not represent an unacceptable feature in the street scene given that other boundary types including walls and fences existed on the modern residential estate. In addition it was considered that the appellants intention to introduce a landscaping scheme would minimise the proposals visual impact. It is noted that no landscaping scheme was submitted with the original planning application.

Whilst the council suggested the standard landscaping condition should the inspector be minded to allow the appeal, such condition was considered overly prescriptive and attached a simpler condition to the permission.

IMPLICATIONS FOR THE COUNCIL

None



STRATEGIC PLANNING BOARD

Date of meeting: 6 May 2009
Report of: David Snelson (Principal Planning Officer)
Cheshire East Borough Council
Title: Update Report on Live Enforcement Notices

1.0 Purpose of Report

- 1.1 At the meeting of the Strategic Planning Board of the 4 March 2009 members requested that an update report be produced to outline the status of all existing live enforcement notices for Cheshire East.

2.0 Decision Required

- 2.1 To note the contents of Table 1 setting out details of live enforcement notices and to agree the frequency and format of future reporting on enforcement matters.

3.0 Financial Implications

- 3.1 To be considered in respect of any action on each case listed.

4.0 Legal Implications

- 4.1 To be considered in respect of any action on each case listed.

5.0 Risk Assessment

- 5.1 To be considered in respect of any action on each case listed.

6.0 Background

- 6.1 Enforcement Protocol
At the meeting of the Strategic Planning Board of the 4 March 2009 members considered the Draft Enforcement Protocol for Cheshire East. The Strategic Planning Board resolved to adopt the Protocol from the 1 April 2009 subject to certain amendments and delegated the authority to approve these amendments to officers in consultation with the Chair. Accordingly the Protocol has subsequently been adopted.

6.2 Table 1 Content

Table 1 lists breaches of planning control which have reached a stage where an enforcement or other type of notice has been issued. There are many other investigations which are ongoing and which may result in formal action or may be resolved through negotiation. There are also numerous investigations which have been carried out where no breach of planning control has been established. Table 1 lists the enforcement notices in the areas of the former District Councils together with minerals and waste planning enforcement notices. Whilst produced for information only officers will take any questions or provide further clarification at the meeting.

6.3 It is recommended that the format of Table 1 be agreed and that updates are brought back to the Board every 6 months.

7.0 Reasons for Recommendation

7.1 To advise the Strategic Planning Board of the inherited enforcement cases and for the Board to consider future reporting arrangements.

For further information:

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Table 1: Planning Enforcement - Cheshire East Borough Council

Site Address	Breach	Type of Notice	Current Status
Former Borough of Macclesfield			
Land at Carr Lane, Chorley	Steel structure clad in blue corrugated sheeting	Enforcement notice	Enforcement Notice served. Appeal dismissed. High Court challenge to appeal decision dismissed. Planning Permission 02/2280P granted subject to conditions by NAPC on 8/1/03 for retention of building with new facing and roofing materials. Appeal against imposition of conditions in relation to the timing of implementation upheld 17/10/03. Legal proceedings against non compliance with Enforcement Notice deferred to allow for implementation of planning permission 02/2280P. Planning permission expired on 08/01/2008. Legal proceedings now being considered.
Land at Carr Lane, Chorley	(1) Hardstanding (2) Use of land for stationing of caravan and Portacabins for residential and non agricultural storage	Enforcement notice	Enforcement Notice served. Appeal dismissed. No compliance. Prosecution commenced but withdrawn due to legal advice regarding nature of respondents defence. External legal advice received and considered, decision required as to whether commence further legal proceedings
Lindow End Smithy, Edge View Lane, Chorley	Erection of building	Enforcement notice	Enforcement Notice served. Appeal dismissed. Building collapsed and so only slab remains. Full compliance still required, but awaiting compliance with a subsequent Enforcement Notice required beforehand (see 08/00011E)
Styal Moss Nursery, Moss Lane, Styal	Unauthorised use of land for airport parking	Enforcement notice	Enforcement Notice served. Appeal lodged 12/10/2006. Public Local Inquiry commenced 20 November 2007, but adjourned until 12 and 13 February 2008. Appeal dismissed 10/03/08. Awaiting compliance with Enforcement Notice , but High Court Challenge lodged by Appellant. Awaiting outcome of High Court case.
Lode Hill, Altrincham Road, Styal, Wilmslow	Unauthorised use of land for commercial parking (airport parking)	Enforcement notice	Enforcement Notice served. Appeal lodged 12/02/08. Appeal part allowed and part dismissed (use allowed to continue, but hardstanding to be removed. Awaiting compliance.
Lindow End Smithy, Edge View Lane, Chorley, Alderley Edge	Change of use of land from industrial to residential including the siting of residential caravans, greenhouses, shed, meter housing and other domestic paraphernalia	Enforcement notice	Enforcement Notice served. Appeal lodged 08/04/08. Appeal Dismissed 07/01/09, Notice upheld. Awaiting compliance.
Croker Farm	Unauthorised building	Enforcement notice	Continued non-compliance with Enforcement Notice. Two prosecutions for non-compliance. On each occasion owner fined £250 and ordered to pay £250 costs to MBC. Planning application to retain as replacement dwelling refused 12/12/01. Appeal lodged and dismissed. Considering further prosecution.

Deans Farm, Congleton Road, Gawsworth	Formation of hardstanding and storage of caravans	Enforcement notice	Caravans removed several years ago but hardstanding remained. Planning Application 03/2268P for barn conversion which incorporated hardstanding into garden areas was approved subject to a section 106 agreement. The section 106 agreement was never signed and the application was therefore remitted back to the Planning Sub-Committee on 10 May 2006 which subsequently refused the application. Further planning application submitted January 2007 but withdrawn March 2007 Decision required as to whether to pursue removal of hardstanding through legal proceedings.
1 Putty Row, Macclesfield Road, Eaton	Erection of front porch, boundary wall, railings and gates	Enforcement notice	Enforcement Notice served. No appeal. Partial compliance with Notice. Porch not removed. Decision required as to whether to pursue removal of porch through legal proceedings.
Hollands nursery, Maley Pole Farm, Congleton Road, Gawsworth	Breach of planning condition that required removal of building	Breach of Condition Notice	Breach of Condition Notice served (no right of appeal). Not complied with. Legal Department instructed to commence prosecution, but property was about to change hands which made prosecution no longer possible. Sale was never completed and therefore decision required as to whether to pursue removal of building through legal proceedings.
Robins Cob, Fanshawe Lane, Henbury	Unauthorised detached garage and extension to dwelling	2 x Enforcement notices	Two Enforcement Notices Served (Notice A - Garage and Notice B - Extensions). Appeals Lodged against both Notices. Inspector upheld Notice A and quashed Notice B. Time for compliance with Notice A extended to 12 months. Awaiting compliance with Notice A, but protected bats found roosting in garage which is causing delay with demolition of the garage
Jarmans Farm	Unauthorised boundary wall	Enforcement notice	Enforcement Notice served. Appeal lodged. Appeal dismissed. No compliance, but liaison with applicant has resulted in planning application for modified version of wall being submitted 20 March 2007. Refused 11 May 2007. Further negotiations ongoing in relation to acceptable modifications before further planning application submitted
3 Georges Road West, Poynton	Unauthorised erection of two storey side extension	Enforcement notice	Enforcement Notice served. Appeal lodged 3/12/2007. Appeal dismissed 31/03/08. Notice not complied with. Legal action being pursued.
Land at Swanscoe Lane, Higher Hurdsfield, Macclesfield	Unauthorised erection of two buildings and an area of hardstanding	Enforcement notice	Enforcement Notice served. Appeal lodged 27/05/2008. Appeal decision awaited
Stable Cottage, Mereside Road, Mere	Unauthorised single storey link extension	Enforcement notice	Enforcement Notice served. Appeal lodged. Appeal dismissed. No compliance. Prosecution was being considered, but documented medical advice was submitted which rendered legal proceedings inappropriate. Property sold January 2009, so pursuing compliance with new owner.
Crabtree Farm, Crabtree Lane, High Legh	Unauthorised change of use of land, formation of ménage and erection of buildings	Enforcement notice	Enforcement Notice served. Appeal lodged 20/04/2007. Appeal dismissed and Notice upheld 05/03/08 in relation to buildings and hardstanding. Appeal allowed and planning permission granted for change of use of land and ménage. Planning permission 08/1575P granted on 9/10/08 for a modified version of one of the buildings and part of the hardstanding. No compliance with Notice. Liaising with owner regarding compliance.
Breach Cottage, Breach House Lane, Mobberley	Construction of an unauthorised building	Enforcement notice	Enforcement Notice served. Appeal lodged 05/12/07. Appeal dismissed and Notice upheld in relation to the building that was the subject of the Enforcement Notice, however planning permission granted for the building as it existed as the time of the Public Inquiry (the building was reduced in

			size shortly before Public Inquiry). The Council is challenging the appeal decision in the High Court. Awaiting outcome of court proceedings.
Maple Farm, Paddock Hill, Mobberley	Construction of an unauthorised building	Enforcement notice	Enforcement Notice served. Appeal lodged 21/12/07. Appeal dismissed 08/01/09. Awaiting compliance.
1 Pear tree Cottage, Paddock Hill, Mobberley	Construction of unauthorised building	Enforcement notice	Enforcement Notice served. Appeal lodged 28/12/2007. Appeal allowed 05/01/2009. Notice quashed. Case closed
Stockin Moss Field, Chelford Road, Mathall	Unauthorised erection of building	Enforcement notice	Enforcement Notice served. Appeal lodged 25/05/2007. Appeal dismissed 27/03/08. Notice complied with. Case closed
Mere End Cottage, Mereside Road, Mere, Knutsford	Unauthorised erection of dwellinghouse and detached garage	Enforcement notice	Enforcement Notice served. Appeal lodged 29/04/08. Public Inquiry to be held 10/02/09. Appeal Decision awaited.
Former Borough of Crewe and Nantwich			
Land off Groby Road, Crewe	Unauthorised skip hire	Enforcement notice	Lawful Use application for use of site for operation of skip hire (Ref P04/1614) was refused 31 st March 05. Correspondence from owner regarding the submission of a further Lawful Use application. Then in December 07 an appeal against the refusal of the lawful use application was received. Appeal Inquiry was scheduled for 23 rd September 2008 but the appeal has been withdrawn. An application for lawful use in respect of a smaller area has been received and is under consideration
Plum Tree Moorings, Nantwich Road, Wrenbury Heath	Unauthorised change of use to permanent moorings and unauthorised engineering works – construction of retaining wall	Enforcement notice	Appeal made against Notice. Appeal hearing held 28 th June 2006. Appeal dismissed and Notice upheld. 12 months given within which to comply with the Notice. Correspondence with the Planning Inspectorate for clarification on decision. Meeting held on 6/11/7 with owner and agent but British Waterways did not attend so a letter sent to BW asking for comments. BW replied that they fully supported the requirements of the Enforcement Notice. Legal in communication with owner's solicitor. Recent visit by enforcement officer to investigate whether the notice is being complied with.
39 Welsh Row, Nantwich	Unauthorised alterations to a listed building	Enforcement notice	Appeal made against Notice. Inspector dismissed Appeal and upheld Notice. 2 months given within which to comply with the Notice. Site visit on 20 th December 2007 shows notice not complied with. Matter passed to Legal Services. Legal in dialogue with the owner. Date for compliance extended to 6 th February 2009. The site was inspected on the 12 th March 2009 and the Notice was complied with. Accordingly the Notice has subsequently been withdrawn.
4 Bridge House Farm, Baddington Lane, Nantwich	Unauthorised extension	Enforcement notice	Appeal lodged. Planning Inspector upheld the notice and extended the date for compliance to 23 rd February 2008. Planning permission granted for a smaller extension to be implemented within 1 year therefore, applicant has until 7 th march 2009 to implement the permission. Enforcement notice remains effective should the planning permission not be implemented. Owner has erected scaffolding and informed enforcement team that demolition of the external part of the extension is due to start within a week
Land off Waldrons Lane, Coppenhall,	Unauthorised engineering	Enforcement notice	Planning application was submitted and refused at October meeting.

Crewe	works – track and parking		Planning Compliance Officer has notified Legal that the Notice has not been complied with. A 2 nd planning application was submitted and refused at Committee on 2 nd April. Notice not complied with. A planning application for access track was submitted May 2008 and approved on 22 nd July 2008 to be implemented within 3 years. The permission also deals with ecology. Enforcement notice remains effective should the permission not be implemented.
Haycroft Farm, Peckforton Hall Lane, Spurstow	Unauthorised operational development and engineering works	Enforcement notice	Appeal lodged to be dealt with by written representations. Decision from Inspector received 9 th July 2008 and appeal was dismissed and notice upheld. The Enforcement Notice is currently being complied with.
Land at Swallow Farm, Elton Lane, Winterley	Unauthorised siting of mobile home unit and wooden structure	Enforcement notice	A Planning application has been submitted for residential occupation on site and the application refused at September Committee meeting. Enforcement Officer is in communication with the applicant who confirms that following lengthy negotiations with the Highways Authority the form of a realistic application has been agreed and he will be submitting that further application imminently.
Oakhanger Equestrian Centre	Unauthorised repairs/adaptions to motor vehicles	Enforcement notice	Appeal lodged to be dealt with by written representation. Appeal dismissed and notice upheld. Further complaints regarding noise disturbance have been received although recent site visits have not revealed any evidence of the notice being breached. This remains under investigation.
Land at Wybunbury Lane, Stapeley	Unauthorised engineering works and siting of 3 caravans	Temporary stop notice	Temporary Stop Notice expired
Land at Wybunbury Lane, Stapeley	Unauthorised engineering works, change of use from agricultural to residential and siting of 3 caravans.	Stop notice	
Land at Wybunbury Lane, Stapeley	Unauthorised engineering works, change of use from agricultural to residential and siting of 3 caravans.	Enforcement notice	Appeal lodged and to be conjoined to and heard with the Planning Appeal at a Public Inquiry to be held 28 th to 30 th April 2009.
54 Barthomley Crescent, Crewe	Untidy land	Section 215 notice	Notice has been complied with
Former Borough of Congleton			
Horseshoe Farm, Warmingham Lane, Warmingham	Unauthorised change of use from keeping horses to a mixed use for the keeping of horses/stationing of caravans/mobile homes and associated works and structures	Enforcement notice	The enforcement appeal was dismissed and planning permission granted with conditions, the site is currently being monitored for compliance with those conditions and is being monitored in relation to allegations of further unauthorised works.
Oakotis Heath Road, Sandbach	Unauthorised stationing of caravans and unauthorised creation of hard standing.	Enforcement notice	Enforcement Notices were issued against both breaches of planning control and the period for compliance has now lapsed. Further action is therefore now anticipated, this will take the form of prosecution in the Magistrates Court in the first instance.

Owls Hoot, Blackden Lane, Goostrey	Unauthorised erection of a dwelling, double garage and boundary wall, gate piers and gates.	Enforcement notice	Separate enforcement notices have been issued in relation to the dwelling, garage and wall each notice requires demolition of the structure detailed. An appeal has been lodged against only that Notice which relates to the dwelling which is due to be heard at an information hearing on 30 June 2009.
Ye Old Kings Arms, Congleton	Unauthorised works to a listed building	N/A	The property is a grade II listed building and the exterior of the premises has been painted without the necessary listed building consent, i.e the plaster in fill panels and the timber. Criminal investigations are currently under way and two people have so far been interviewed under caution with a third likely. Remedial works to the building are currently being explored but these must ensure that the integrity of the building is not further compromised. The Council has the option to instigate prosecution proceedings and/or issue a listed building enforcement notice.
56 Crewe Road, Alsager	Take-away premises operating outside its permitted hours	Enforcement Notice	Enforcement notice has been issued and is currently the subject of an appeal.
30 Lime Close, Sandbach	Unauthorised erection of a front dormer window	Enforcement notice	the notice was appealed and the appeal dismissed. Currently awaiting compliance with the Notice. If its requirements are not met, e.g. remove the dormer or implement an alternative planning approval prosecution proceedings/works in default will be considered.
4 Model Cottages, Cranage	unauthorised change of use of residential premises to a mixed residential and commercial use	Enforcement notice	The Notice was appealed and the appeal was heard at a Public Inquiry in 2008. The appeal was dismissed, however, the appellant has now applied for judicial review. The matter is currently with the appeal courts and we are awaiting a decision on whether or not the judge will allow leave to appeal the Inspectors decision
24 Astbury Lane Ends	Unauthorised first floor conservatory	Enforcement notice	Unauthorised first floor conservatory refused planning permission and an enforcement notice was issued, both the refusal of planning permission and the enforcement notice were appealed, both of which were dismissed. The conservatory is due to be dismantled in April.
The Mere Inn, Crewe Road, Alsager	Unauthorised erection of a building used as a smoking shelter	Enforcement notice	Planning permission was granted for the erection of a structure to be used as a smoking shelter however, a totally different building has been erected. An enforcement notice has been issued requiring its removal but this is currently the subject of an appeal.
13 Hazel Grove, Alsager	Unauthorised fence in excess of 1 metre adjacent to highway	Enforcement notice	A retrospective planning application was refused for the retention of a fence is excess of 1 metre high adjacent to a highway. An enforcement notice has been issued and it is currently the subject of an appeal.
28 Kendal Court, Congleton Borough Council	property which has been allowed to fall into a state of disrepair so much so that it is considered to have an adverse impact on the visual amenity of the area.	S215 notice	A S215 (Untidy Site) Notice has been issued and was due for compliance by the end of February 2009. If its requirements have not been met the Council has the option to prosecute and/or carry out the works in default.
4 Nidderdale Close, Congleton	Unauthorised raised decking	Enforcement notice	Retrospective planning permission has been refused for raised decking and an enforcement notice has been issued. Both the refusal of planning permission and the enforcement notice are the subject of appeals.

Former Cheshire County Council Waste and Minerals Enforcement

Land at Halith Cottage, Higher Poynton	Importation and Deposit of Waste	Enforcement notice	EN served and appealed by Ms Preston. Planning Inspectorate upheld Notice, but Ms Preston has failed to comply with steps of EN for removal of waste. Prosecution is next.
Whittakers Green Farm Composting Site	Unauthorised waste transfer station	Enforcement notice	Appeal has been lodged with Planning Inspectorate, but no notification from the Inspectorate as of yet.

STRATEGIC PLANNING BOARD

Date of meeting: 6 May 2009
Report of: Philippa Lowe
Development Management
Title: Procedure notes for decision making

1.0 Purpose of Report

- 1.1 To consider procedures for adoption as best practice in respect of the Strategic Planning Board and the two Planning Committees as follows:

APPENDIX A

- The reference of matters to the Strategic Planning Board relating to:
 - a significant departure from policy which a Planning Committee is minded to approve
 - any other matters which have strategic implications by reason of their scale, nature or location

APPENDIX B

- The procedure if Members wish to make a decision contrary to an officer recommendation.

2.0 Decision Required

- 2.1 To agree to adopt the procedures as best practice.

3.0 Financial Implications

- 3.1 To reduce the risk of appeals, costs applications and legal challenges.

4.0 Legal Implications

- 4.1 To provide a fair and transparent decision-making process in accordance with the Constitution and best practice.

5.0 Risk Assessment

- 5.1 To mitigate against the potential for appeals, costs and legal challenges.

6.0 Background and Options

- 6.1 There were variation in the practices between the four former authorities and the procedure is therefore necessary in order to promote a consistent and transparent approach across the Strategic Planning Board and the Planning Committees.
- 6.2 The Board also need to consider whether they wish this same procedure to be followed for those applications involving a significant departure from policy which a Planning Committee is minded to approve and which are referred to the Board for decision under the Council's Scheme of Delegation.
- 6.3 It is recommended that the procedures be reviewed after 12 months when it is expected that Members and Officers will have had opportunity to assess the implementation of the procedures and consider whether amendments are required.

7.0 Reasons for Recommendation

- 7.1 To ensure consistency and transparency across the Strategic Planning Board and the Planning Committees dealing with the determination of planning applications and other matters as part of Cheshire East.

For further information:

Portfolio Holder: Councillor Jamie Macrae
Officer: Philippa Lowe
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APPENDIX A



Reference to Strategic Planning Board Terms of Reference

1. Applications involving a significant departure from policy which a Planning Committee is minded to approve
2. Any other matters which have strategic implications by reason of their scale, nature or location

1. What is a significant departure?

The key issue to be considered is whether planning policy would be undermined by the proposal. This may need to be considered on a case basis but the final decision rests with the Lead Development Management Officer giving their professional opinion. Some examples are set out below.

Examples NOT significant

Only a small corner of a large retail redevelopment scheme falls outside the town centre boundary. The proposal in totality would not undermine development plan objectives to locate new retail development in the town centre.

Where there is a loss of recreation land contrary to policy but this represents a small unusable corner of a large site.

Examples that WOULD be significant

Inappropriate development in the Green Belt and where buildings to be created would be more than 1000 square meters or have a significant impact on the openness of the Green Belt.

2. What are matters which have strategic implications by reason of scale, nature or location?

Proposals that have a wider effect beyond that of the immediate local area.

They will include all matters requiring consultation with the as defined by the Town and County Planning (Consultation) (England) Direction 2009 (Annex 1). For details of the full document see:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/circularconsultationdirect.pdf>

In other cases proposals will be assessed on a case by case basis.

Examples where the effect may have strategic implications are:

- A proposal that requires a Transport Assessment as defined by Planning Policy Guidance 13, Transport, and where there would be a large number of traffic movements that would have an impact on the local transport network and have implications for emissions
- A high level of prominence in the existing landscape in particular in the Green Belt, Green Gap, open countryside, and areas of high quality landscape designated in the development plan
- A harmful effect on areas of ecological, historical or archaeological importance
- A location close to a neighbouring authority where there would be a significant impact beyond Cheshire East and that authority has objected
- Provision of essential regional infrastructure or resources eg energy, waste and water facilities, or mineral extraction.

APPENDIX B

GUIDANCE NOTE: DECISIONS CONTRARY TO AN OFFICER RECOMMENDATION



PROCEDURE TO BE FOLLOWED PRIOR TO A MOTION BEING PUT TO THE VOTE

Note:

In any of these cases it may be necessary for a short adjournment to allow officers to confer in order to provide advice to Members on issues such as appeals, cost implications, legal challenges, or for a detailed minute to be recorded by the Clerk.

Approval to Refusal	<ul style="list-style-type: none">• To provide the justification and/or technical or supporting evidence to demonstrate harm• To weigh any identified harm against other material considerations that favour the proposal• To frame the reason(s) for refusal and the relevant planning policies in support of the reason(s)• To allow officers the opportunity to respond and to provide any necessary advice in respect of potential appeals, costs applications or legal challenges• To ensure that there is a good minute of the Committee's reasoning and sufficient justification to support the Council's case should the application be subject to an appeal or a legal challenge
Additional Reason(s) for Refusal	<ul style="list-style-type: none">• To provide the justification and/or technical or supporting evidence to demonstrate harm• To weigh any identified harm against other material considerations that favour the proposal

	<ul style="list-style-type: none"> • To frame the reason(s) for refusal and the relevant planning policies in support of the reason(s) • To allow officers the opportunity to respond and to provide any necessary advice in respect of potential appeals, costs applications or legal challenges • To ensure that there is a good minute of the Committee's reasoning and sufficient justification to support the Council's case should the application be subject to an appeal or a legal challenge
Refusal to Approval	<ul style="list-style-type: none"> • To provide the justification and evidence and to frame a full reason for approval supported by the relevant planning policies • To allow officers the opportunity to respond and to provide any necessary advice in respect of a potential appeal (against a condition) or legal challenge • To frame the conditions, reasons for conditions and relevant planning policies in support of the conditions, and full reasons for approval with relevant planning policies • To ensure that there is a good minute of the Committee's reasoning and sufficient justification to support the Council's case should the decision be subject to an appeal or legal challenge
Additional conditions	<ul style="list-style-type: none"> • To frame the conditions, reasons for conditions and relevant planning policies in support of the conditions • To allow officers the opportunity to respond and to provide any necessary advice in respect of a potential appeal (against a condition) or legal challenge • To ensure that there is a good minute of the Committee's reasoning and sufficient justification to support the Council's case should the decision be subject to an appeal or legal challenge

STRATEGIC PLANNING BOARD

Date of meeting: 6 May 2009
Report of: John Knight (Head of Planning & Policy)
Title: Member Training in Planning

1.0 Purpose of Report

- 1.1 To report progress on arrangements for further training sessions for members of the Board and the two Planning Committees.

2.0 Decision Requested

- 2.1 To agree to the training proposals.

3.0 Financial Implications

- 3.1 Training will be delivered in-house by officers or with some external support.

4.0 Legal Implications

- 4.1 To keep members up-to-date with changes in procedures, cases and practice and to ensure decisions on planning are made on the latest information and advice.

5.0 Risk Assessment

- 5.1 To mitigate against the potential for appeals, costs and legal challenges.

6.0 Background and Options

- 6.1 The Board has previously agreed that a programme of half-day training sessions be arranged over the coming year at approximately 5-6 week intervals. The first session will be held on 11 May at 2.00pm - 5.00pm, details to be confirmed. The proposed topic is 'Decision Making' which will cover the Council's arrangements for making planning decisions together with an update on the Development Plan policy situation and material planning applications. The other dates and venues for the training sessions are still being finalised and it is hoped to provide these at the Board meeting. In terms of topics, it is suggested that the second session to be held in June cover planning enforcement as well as decision making and policy for minerals and waste planning applications. Both these topics were on the original list agreed by the Board and both subjects would be topical and relevant at this time.

7.0 Reasons for Recommendation

- 7.1 To ensure members of the Board and the Planning Committees are kept up to date with changes in procedures, cases and practice and to ensure planning decisions are made on the basis of the latest information and advice.

For further information:

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