

Application No: 22/3818C

Location: Land East Of, CHELLS HILL, CHURCH LAWTON

Proposal: Full planning application for periodic use of land on an annual basis (up to 56 days per calendar year) for moto-cross purposes, retention of hardstanding and access, access enhancements, and associated works.

Applicant: A Boote

Expiry Date: 28-Dec-2022

SUMMARY

There would be some very minor benefits raised by the development as identified above. These benefits are given minor weight.

The site is located within the Green Belt and would be inappropriate development. The development would have an urbanising effect upon the locality and would not preserve openness. No very special circumstances have been identified and the proposal is contrary to Policies PG3 of the CELPS, and the NPPF.

The development would detract from the character and appearance of the site and have an adverse impact upon the landscape. The proposed development would conflict with Policies SE4 and SD2 of the CELPS.

The proposed development would not harm protected species/biodiversity and there would be no conflict with policies SE 3 of the CELPS, ENV2 of the SADPD or the NPPF.

The proposed development would generate noise and the proposal would cause harm to residential amenity, whilst the suggested noise mitigation measures would not be enforceable. In addition, the use of the site would cause harm to other users of the open countryside (such as the Canal and local footpath network) in terms of noise generation. As a result, the proposal would conflict with Policies SE12 of the CELPS, HOU12 and RUR6 of the SADPD and the NPPF.

The application is considered to be acceptable in terms of the flood risk implications subject to the imposition of planning conditions.

The less than substantial harm to the heritage assets would not be outweighed by the public benefits of the proposed development. The proposed development is contrary to Policy SE7 of the CELPS, and Policies HER1, HER3 and HER 4 of the SADPD and the NPPF.

The woodland on the site is classed as a priority habitat and there is insufficient information in relation to the arboricultural impacts from this proposed development. The proposed development is contrary to Policies SE3 and SE5 of the CELPS and Policy ENV6 of the SADPD.

The application has demonstrated that a safe and suitable access can be achieved and that adequate car-parking provision is provided. The proposed development complies with Policy INF3 of the SADPD.

The applicant has referred to the use of the site under permitted development. This is noted, but the increased use of the site over and above permitted development allowances would have greater impacts and the application is recommended for refusal.

RECOMMENDATION

REFUSE

REASON FOR REFERRAL

This application is referred to Southern Planning Committee as the site extends to more than 2 hectares.

PROPOSAL

This application relates to the use of land as a moto-cross circuit for up to 56 days per calendar year. The application includes the retention of the hardstanding, access enhancements and associated works.

SITE DESCRIPTION

The application site is a parcel of land located to the eastern side of Chells Hill (B5078).

The site is sloping, and land levels generally rise to the northern boundary adjacent to the Trent and Mersey Canal. The Canal in this location is located within a Conservation Area.

A watercourse is located along the southern boundary of the site and there are areas of the site which are at risk of flooding. The site includes areas of tree-cover/woodland and there are several ponds located on the site.

The site lies within the Green Belt.

RELEVANT HISTORY

20/4166C - Retrospective change of use of the site for use as a moto-cross circuit on an intermittent basis, formation of new access point and widening of existing access point from Chells Hill, formation of hardstanding area for parking, and associated works - Refused 9th December 2020 for the following reasons;

1. *The proposed development represents inappropriate development within the Green Belt, and no very special circumstances have been identified. The development would have an urbanising effect on the Green Belt, it does not preserve the openness of the Green Belt and conflicts with the aim of safeguarding the countryside from encroachment. Furthermore, the development would detract from the character and appearance of the site and have an adverse impact upon the landscape. The development is contrary to Policies PG3, SE4 and SD2 of the CELPS and PS7 of the Congleton Local Plan and the NPPF.*
2. *There are three ponds present on site, adjacent to good quality terrestrial newt habitat in the form of priority deciduous woodland. No information has been provided to identify whether Great Crested Newts are present on this site. As a result, insufficient information has been provided in relation to this material planning consideration. The proposed development is contrary to Policies SE 3 of the CELPS, NR2, NR3 and RC3 of the Congleton Local Plan and the NPPF.*
3. *Insufficient information has been provided to determine whether the proposed development would have a detrimental impact upon residential amenity due to noise generated. Furthermore, the use of the site would cause harm to other users of the open countryside (such as the Canal and local footpath network) in terms of noise generation. As a result, the proposal would comply with Policies SE7 of the CELPS, GR7 and RC3 of the CLP and the NPPF.*
4. *Part of the application site is located within Flood Zone 3 for Malkins Bank/Lawton Brook. This land is defined as having a high probability of flooding. In addition, there are concerns regarding the ordinary watercourse treatment and potential flood plain impact. Insufficient information has been provided as no Flood Risk Assessment has been submitted in support of this application and as a result the proposed development is contrary to Policies SE13 of the CELPS and the NPPF.*
5. *The development would cause less than substantial harm to the heritage assets (the Canal Conservation Area and Listed Structures) due to the urbanised appearance of the site and the noise and disturbance caused by the proposed use. This harm would not be outweighed by the public benefits of the proposed development. The proposed development is contrary to Policy SE6 of the CELPS, and Policies BH4 and BH9 of the CLP and the NPPF.*
6. *The woodland on site is listed under the Priority Habitat Inventory and contains a pond. An assessment by an ecologist as to the impact on the woodland and ponds by the use as a moto-cross circuit is required in order to assess the potential negative impact on priority habitats. Furthermore, in the absence of a tree survey or an arboricultural impact assessment there is no evidence provided to demonstrate that the impacts on the woodland have considered. The proposed development is contrary to Policies SE3 and SE5 of the CELPS and Policy NR3 of the CLP and the NPPF.*
7. *The application does not demonstrate that a safe and suitable access can be achieved or whether adequate car-parking provision is provided. The proposed development is contrary to Policy GR9 of the CLP and the NPPF.*

NATIONAL & LOCAL POLICY

Cheshire East Local Plan Strategy – Submission Version (CELPS)

MP1 – Presumption in Favour of Sustainable Development
PG2 – Settlement Hierarchy
PG3 – Green Belt
PG6 – Open Countryside
PG7 – Spatial Distribution of Development
SD1 - Sustainable Development in Cheshire East
SD2 - Sustainable Development Principles
SE 1 - Design
SE 2 - Efficient Use of Land
SE 3 - Biodiversity and Geodiversity
SE 5 - Trees, Hedgerows and Woodland
SE 6 – Green Infrastructure
SE 7 – The Historic Environment
SE 12 – Pollution, Land Contamination and Land Instability
SE13 – Flood Risk and Water Management
IN1 – Infrastructure
IN2 – Developer Contributions
CO1 – Sustainable Travel and Transport
EG2 – Rural Economy
SC1 – Leisure and Recreation
SC2 – Indoor and Outdoor Sports Facilities

Site Allocations and Development Policies Document

GEN1 – Design Principles
ENV1 – Ecological Network
ENV2 – Ecological Implementation
ENV3 – Landscape Character
ENV4 – River Corridors
ENV5 – Landscaping
ENV6 – Trees, Hedgerows and Woodland Implementation
ENV7 – Climate Change
ENV12 – Air Quality
ENV14 – Light Pollution
ENV15 – New Development and Existing Uses
ENV16 – Surface water Management and Flood Risk
HER1 – Heritage Assets
HER3 – Conservation Areas
HER8 - Archaeology
RUR5 – Best and Most Versatile Agricultural Land
RUR6 - Outdoor Sport, Leisure and Recreation Outside Settlement Boundaries
HOU12 – Amenity
INF1 – Cycleways, Bridleways and Footpaths
INF3 – Highways Safety and Access
INF9 – Utilities

Neighbourhood Plan

There is no Neighbourhood Plan in Betchton

National Policy

The National Planning Policy Framework establishes a presumption in favour of sustainable development.

Of relevance are paragraphs:

- 11. Presumption in favour of sustainable development.
- 84-85 Supporting a Prosperous Rural Economy
- 189-208 Conserving and enhancing the historic environment
- 137-151 Protecting Green Belt Land

CONSULTATIONS

Environment Agency: No objection subject to the imposition of a planning condition.

United Utilities: No comments received.

Canal & River Trust: Offer the following general advice;

- The towpath side of Trent & Mersey Canal passes to the north of the application site, where the canal is supported by an embankment and passes over Chels Hill Aqueduct. The C&RT records show that there is a culverted watercourse under the canal which it is presumed to link to the ponds within the development site.
- As part of the previous application, the C&RT outlined that the culvert has been blocked with mud/silt and that measures to prevent localised flooding would be welcomed to prevent localised flooding.
- The Flood Risk Note recommends protection measures for the culvert. The Trust welcomes these measures and their implementation in the event that planning permission is granted.

Flood Risk Manager: No objection in principle but clarification is required in terms of the following issues;

- There is an ordinary watercourse located within the site boundary. Whilst appendix 5 of the Flood Risk Assessment (FRA) identifies an existing route to outfall into the River Wheelock (main river). No proposed routing plan has been submitted as part of the FRA. The developer must submit a proposed routing plan including engineering details, such as: pipe diameters, access chambers, cover levels, and invert levels. Cheshire East Council would discourage any culverting of an open watercourse unless for proposed access.
- Under application 0/4166C Canal and River Trust previously raised concerns regarding the existing culvert becoming frequently blocked with mud/silt. Given the site use, the developer must provide an on-going maintenance/inspection schedule as part of the planning application prior to approval. The developer should also be made aware, under Land Drainage Act 1991, it is their responsibility to ensure an unobstructed flow within sections of ordinary watercourse located within the site boundary.

Head of Strategic Infrastructure: No objection.

Environmental Health: No objection subject to the imposition of conditions relating to noise mitigation and contaminated land.

VIEWS OF THE TOWN COUNCIL

Betchton Parish Council: The Parish Council objects to this application because of noise intrusion to nearby residents which have been experienced and reported by residents to Cheshire East Council and because of potential highway safety issues arising from traffic entering and exiting the site on days of events.

Odd Rode Parish Council: The Parish Council objects to this application for the following reasons;

- The proposal is inappropriate development in the Green Belt and would be detrimental to the amenities of residents of Thurlwood at Rode Heath.
- The Parish Council does not believe that the site has been operating for 20 years and it is worth noting that a Negative Certificate of Existing Lawful Use for motocross on a nearby piece of land was refused in 2008 (CBC decision 08/1831).
- The report on acoustics provided by the applicant's consultant implies that there will be no disturbance to nearby residents. However, this flies in the face of reality: this Council received numerous representations from residents in Thurlwood this Summer, all complaining about the noise emanating from this site. The Council made Planning Enforcement aware of the problem, hence this application. The report on acoustics is flawed and does not provide adequate information to judge the noise nuisance of the proposed development. Sound carries further along the valley and over water and measurements should have been taken at properties by the canal at Thurlwood.
- Also, no measurements were taken on Sunday (the worse day for residents this Summer). The report makes reference to a permission granted to the west of the site (P99/0112). However, this is near to the motorway (which impacts on sound perception) and involved quad bikes (as did the second Appeal that is cited) which create very different sounds to motorbikes. If CEC is minded to grant permission, despite the many objections, it is suggested that it be for no longer than twelve months in order to allow for monitoring and assessment of the real world impact of the development. Also, that the number of riders, the hours and the days of operation be very limited.

REPRESENTATIONS

Letters of objection have been received from 18 local households raising the following points;

- Ongoing excessive, intrusive and continuous noise in garden and home (primarily at weekends and also Bank Holidays)
- The site has been used without planning permission since 2019
- Throughout lockdown there was continuous noise from the site (from mid-morning into the evening)
- The noise from the site is both unpleasant and loud
- Since the earlier application was refused in 2021, the site has continued to be used as a motocross facility in breach of the planning decision. This has been reported to both Environmental Health and Planning Enforcement.
- The noise varies depending on where the bikes are in use on the site, the type of bike and the number of bikes.
- The volume of the bikes drowns out the sound of the radio when played in the garden
- Noise has prevented residents opening windows and caused disturbance to the bedtime routine of young children
- The noise makes it impossible for residents to use their garden and enjoy their home
- The application states the site will rarely be used for a full days duration. The site is currently used for a full days duration and it is unclear how this will be monitored.

- The application states that the site will be predominantly used in Spring and Summer. This will mean twice a week during those times and implies both Saturdays and Sundays. The time when residents are most likely to use their gardens (causing the greatest impact).
- The site was attractive before the commencement of the development
- The use of the site exceeds 28 days (planning breach)
- The site breached Covid restrictions
- Disregard for Health and Safety rules
- If approved there are concerns that the site owner will disregard any further restrictions
- The noise report commissioned by the applicant is not independent. Concerns that the results can be manipulated
- Concerns that the noise mitigation measures cannot be enforced
- Strongly dispute that the site has been continuously used for moto-cross in excess of 20 years
- Proximity of the site entrance to the traffic lights under the bridge and a blind bend.
- Mud is deposited onto the highways
- Noise nuisance is detrimental to the peaceful countryside location
- Signs have been erected at the site.
- A digger has been used to form the tracks on the site
- The letters submitted in support are users of the site and they are not affected by the noise from the development.
- The applicants suggestion that the site would represent a public benefit is not accepted
- The bikes used at the time of the noise survey are not representative of those used ordinarily at the site
- Harm to the Green Belt
- Significant impact upon local wildlife
- No toilets provided on the site
- Barbeques have been held on the site – causing air quality issues
- Flooding issues on the site
- Loss of plants on the application site
- Nothing has changed since the refusal of application 20/4166C
- The supporting reports do not acknowledge the proximity of the site to Rode Heath
- The findings of the Noise Impact Assessment are flawed
- The proposed development is a blot on the landscape
- The development causes noise harm to the users of the canal
- Similar applications within the vicinity of the site have been refused
- During dry periods the use of the site generates a large amount of dust
- A length of mature hedgerow has been removed from the site
- High risk of pollution for the watercourses on the site
- There are sufficient motocross sites in the area (Holmes Chapel and Talke)
- Parked vehicles on the highway cause obstruction.
- People are travelling from outside Cheshire to visit this site
- Pets are afraid of the noise from the site
- Air pollution from the bikes using the site
- Inaccuracies contained within the planning application
- The use of the site is effecting the health and wellbeing of local residents and visitors
- A second point of access has been constructed without planning permission
- Increased vehicular movements
- The proposed development represents inappropriate development in the Green Belt
- The development has caused a noticeable scarring of the landscape. Adverse visual impact of the development.

- Activities on the site will create a distraction to road users
- Adverse impact upon the rural setting of the site and urbanising effect
- As well as resulting in the loss of openness, the proposal would result in harm in spatial and visual terms. There are no very special circumstances associated with this proposed development.
- The application does not include a Heritage Statement.
- The development would have a less than substantial impact upon the surrounding heritage assets
- No Heritage or Archaeological Assessment has been undertaken

(In addition to the points of objection videos, audio clips and a log of activity on the site has been provided)

APPRAISAL

Procedural Matters

The applicant has stated that the site has been used as a moto-cross circuit in excess of 20 years. However, this would need to be proven as part of a Certificate of Lawful Use and no weight can be given to this claim.

Under Permitted Development Rights, Part 4 Class B allows the temporary use of land for any purpose for not more than 28 days in any calendar year. This would include the proposed moto-cross use; however, this would need to be temporary, and the land would need to be able to return to its lawful use outside the temporary period. As a result, any works such as ramps/mounds, car-parking, containers, signage or other ground works are not included within Permitted Development.

It is noted that Part 4 Class B for a temporary use of not more than 28 days excludes 'the holding of a market' and 'motor car and motorcycle racing including trials of speed and the practice for these activities' (for both a 14-day limit is applicable). Case Law in particular *Miles v The National Assembly for Wales and Caerphilly CBC* and previous appeal decisions indicate that there is a distinction to be drawn between motor car and motorcycle racing and practicing for these activities. In other words, racing events comprising racing and racing practice at the same venue, and other motor car and motorcycle activities. The former is restricted to 14 days whereas the latter is not restricted and can be carried out for not more than 28 days in total in any calendar year. As a result the use can be carried out for 28 days in any calendar year under Permitted Development Rights.

Green Belt

The application site lies entirely within the Green Belt. National and local policies attach great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The two essential characteristics of Green Belts are their openness and their permanence.

Green Belts serve the following five purposes: a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; c) to assist in safeguarding the countryside from encroachment; d) to preserve the setting and special character of historic towns; and e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. To achieve this, there are restrictions on the types of development which may be carried out.

These are detailed within NPPF paragraph 138 and reiterated within CELPS policy PG 3. Development within the Green Belt is inappropriate, apart from the exceptions identified within Policy PG3 (point 3) and the NPPF (paragraph 149).

Paragraph 150 then goes onto states that engineering operations and material changes in the use of land for recreation/outdoor sport are not inappropriate provided they preserve its openness and do not conflict with the purposes of including land within it.

The openness of the Green Belt has a visual as well as a spatial aspect. The aerial photographs of the site from 2010 and 2016 are shown below.

2010

2016



As can be seen the site in 2010 appeared as farmland and this is supported by the Google Street-View photos from 2009 and 2011 (see below)

2009

2011



From the aerial photograph in 2016 it appears that some moto-cross on the site was taking place, but this has now intensified further. The tracks appear much prominent on the site when the case officer visited the site, a car-park is in the process of being formed, an additional access had been formed and there was a digger on site indicating that there may have been some further engineering works on the site.

The site has a very different appearance due to the proposed use and formation of the track. The track, and car park appear have an urbanising effect on the site which adversely impacts upon the openness of the Green Belt. The additional days proposed as part of this application would intensify the use and create a further urbanising effect and harm to the openness of the site.

The site is visible from Chells Hill (B5078) and the Canal Towpath which runs along the northern boundary of the site and is located within a Conservation Area. The development represents a harmful visual intrusion and encroachment into the open countryside.

The development does not preserve the openness of the Green Belt and conflicts with the aim of safeguarding the countryside from encroachment. The development is inappropriate development within the open countryside which is harmful to the Green Belt.

Accordingly, in order to consider whether very special circumstances exist to justify development within the Green Belt it will be necessary to consider if the harm caused by reason of inappropriateness is outweighed by other considerations. These are considered below.

Built Heritage

The NPPF paragraph 197 identifies that

In determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) the desirability of new development making a positive contribution to local character and distinctiveness.*

Policy SE 7 of the CELPS states that *'The character, quality and diversity of the historic environment will be conserved and enhanced. All new development should seek to avoid harm to heritage assets and make a positive contribution to the character of Cheshire East's historic and built environment, including the setting of assets and where appropriate, the wider historic environment'*. Policy HER3 of the SADPD states that development affecting the setting of a conservation area must pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

The application site lies adjacent to the Trent & Mersey Canal Conservation Area. Directly to the northern boundary is a Grade II Listed milepost on the canal and a grade II Listed Canal Bridge is located to the north-west, the aqueduct over is a non-designated heritage asset.

The boundary to the Canal Conservation Area is formed by a native hedgerow with some gaps which give views of the application site. During winter months there are greater views of the site when the hedgerow is not in leaf. The development would impact upon the heritage designations in terms of the visual appearance of the proposed development and the use in terms of the noise and disturbance that has been caused.

The case officer has liaised with the Conservation Officer who has noted that no Heritage Statement has been provided with this application. The impacts of the development would cause a less than substantial impact upon the heritage asset (towards the lower end of less than substantial) due to the change in the character of the site and use of the site (noise and disturbance).

The less than substantial harm would need to be weighed against the public benefits of the proposed development.

Archaeology

Several representations have commented upon the archaeological potential on this site.

As part of this application the Council's Archaeologist has commented that from a first examination of our records, there are no monuments currently recorded on the Historic Environment Record from within the site boundary and an examination of the historic maps has not revealed anything apart from a track crossing the site in connection with historic sand extraction. The Council's Archaeologist has stated that he is not convinced that there is huge potential for undiscovered archaeological remains.

This is not to deny that there may be heritage issues but, at present, the archaeologist suspects that these will centre on the historic built environment, setting, and Listed Structures. These are issues that the Council's Conservation Officer is best placed to advise on (or even the Canal and Rivers Trust). In these circumstances, the suggestion for a formal heritage assessment does not seem unreasonable and this would offer an opportunity to consider the supposed archaeological interest in more detail even if its primary focus was the historic built environment. This matter could be dealt with through the imposition of a planning condition.

Noise

The main impact in terms of residential amenity would be from the noise caused using the site. This would typically be a result of the revving of engines, and other engine noise associated with acceleration and deceleration.

Policy SE12 of the CELPS states that all development should be located so as not to result in a harmful or cumulative impact upon noise which would unacceptably affect the natural or built environment or detrimentally affect amenity.

Policy HOU12 of the SADPD states that development proposals must not cause unacceptable harm to the amenities of adjoining or nearby residential properties or sensitive uses in terms of environmental disturbance or pollution.

Policy RUR6 of the SADPD states that proposals for outdoor sport, leisure and recreation will be permitted provided that they meet a number of criteria including that the proposal *'does not unacceptably affect the amenity and character of the surrounding area or landscape either on its own or cumulatively'*.

In addition the NPPF states at paragraph 185 that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or wider area to impacts that could arise from the development.

The application has generated several objections relating to the noise generated from the site.

The application is supported by a Noise Assessment (NA) which identifies a number of mitigation measures to control noise from the site. The NA states that the mitigation measures may include but not be limited to the following;

- Carry out static testing and restrict the noise level for permitted machines in line with the current Auto Cycle Union regulations. There are currently no restrictions on the noise levels of machines permitted on the track.
- Limit the number of hours during which the machines are permitted to use the track. It '*may be appropriate*' to limit the permitted use to 4-5 hours per day between 11:00-18:00
- Restrict the number of machines on the track at any one time 'This would be dependent on the effectiveness of measures outlined above'

In this case the Environmental Health Officer has considered the application and states that he has no objection to the application based on noise grounds. This is subject to the mitigation measures outlined above, no more than 6 vehicles on the track at any given time and that the agreed mitigation scheme shall be maintained for the purpose originally intended throughout the use of the development.

Despite no objection being raised by the Environmental Health Officer the proposed development would result in increased activity in the countryside that would, at times, be perceived as very noisy. The activity at the site can be heard over a wide area from nearby public footpaths and rights of way, the Trent and Mersey Canal towpath and, this would result in a harmful change to the noise environment of the area. The proposed development would harm the enjoyment of those seeking quieter rural recreational pursuits.

In terms of residential amenity, the nearest residential properties are Chells Hill Farm (134m to the north-west), properties to the north facing Sandbach Road (340m to the north) and at Shelley Close (400m to the south-east). A large proportion of the objections on noise grounds are from residents at Shelley Close (and the nearby residential streets of Low Street and Keats Drive) which is consistent with the prevailing wind direction.

As part of the letters of objection relating to noise, a number of residents refer to a Facebook post where the applicant requested bikes attend the site with silencers when the noise test was being undertaken. It is a legal requirement that all motorcycles that use the highway must be fitted with a silencer. By asking that all riders who turn up on the day of the noise assessment have their silencers fitted is just ensuring the bikes are legal for use on the highway. However, it is accepted that most off-road users often remove them, and this has potential implications for the validity of the noise assessment.

In terms of the nearby properties, the noise assessment identifies a 'substantial and moderate' impact from the use of 10 machines at two locations (AP Nurseries and Betchton Lane) and from the use of 6 machines a 'moderate' impact at one location (AP Nurseries). The assessment indicates that at all other locations there would be 'no impact or a slight impact'. The Noise

Assessment identifies that the predictions for 10 machines would be a worse case scenario and 'in reality there would not be that many machines on the track at any one time'.

The submitted Noise Assessment then considers WHO guidelines and states that a 5dB reduction to the value for living spaces may be appropriate over a 16-hour daytime period. Without the WHO correction the internal and external noise limits would be achieved at all locations for all scenarios with the exception of one location (a dwelling at the junction of Chells Hill and Sandbach Road).

Based on the above the Environmental Health Officer raises no objection to the application based on threshold of 'statutory noise nuisance'. However, it is considered that the protection of residential amenity provides a lower threshold. Local residents have raised concerns in terms of noise from the site and the 'throttle' sound associated with the use of the site is distinctive, with what some might consider to be an annoying character. The facility is likely to be at its busiest at weekends, a time when occupiers of nearby properties might expect to be at home. It is considered that there would be additional amenity harm associated with this application.

Although the Environmental Health Officer (EHO) has raised no objection on statutory noise nuisance grounds it is based on the imposition of the mitigation measures indicated above. The required mitigation measures would raise issues with planning enforcement and it is not considered the measures could be enforced given the significant surveillance which would be required. As a result it is considered that the proposed development would cause harm to the residential amenities of nearby residential properties in terms of noise and disturbance.

It should be noted that there are also other uses surrounding the site (other than residential properties) which would be affected by the noise generated by this development. Specifically, users of the canal and wider footpath network would be affected by noise from the development. This would impact upon users of the natural and built environment and cause harm.

As a result, the proposal would conflict with Policies SE12 of the CELPS, HOU12 and RUR6 of the SADPD and the NPPF.

Air Quality

Given the size of the site it is not considered that the development would cause harm in terms of the impact upon air quality. This is supported by the Environmental Health Officer who has raised no objection on these grounds.

Contaminated Land

The application area has a history of landfill site use with some areas of disturbed ground; therefore, the land may be contaminated. Given the retrospective nature of the application, there are concerns that materials may have been moved around the site, or materials may have been imported to site to form the motocross track or the areas of parking etc. These areas should be demonstrated to be suitable for their proposed use with regards to land contamination.

No information relating to land contamination has been provided in support of the planning application. The Environmental Health Officer has suggested the use of planning conditions in relation to contaminated land issues at the site.

Trees

Woodland on the application site is listed as deciduous woodland in the Priority Habitat Inventory and in the National Forestry Inventory and individual trees are noted to border the roadside boundary between and adjacent to the existing access gates. The absence of a tree survey and arboricultural impact assessment was raised as a concern in Forestry consultation comments submitted with refused application 20/4166C and was specifically referenced in reason 6 of the Decision Notice.

This application has been supported by an Extended Phase 1 Habitat Survey, but this does not provide the expected level of information in terms of impacts to trees on the site. The Phase 1 Habitat Map at Appendix A of the report confirms the presence of individual road boundary trees which are noted to be sited adjacent to a new extended area of hard standing, and areas of semi natural broad-leaved woodland through which the track is sited. The track is anticipated to incur a significant increase in use, close to and across the root protection areas of trees within the woodland. The proposed site plan does not indicate existing trees along the road where the new parking is indicated.

As submitted the proposal does not confirm the presence of existing trees on the site adjacent to the access and Chells Hill, nor does it confirm the position of any trees close to the track or which may require removal or be impacted by increased use of the track as ground becomes increasingly compacted and eroded around tree stems and roots. The application needs to clarify what the impacts of the proposal are likely to be and what if any tree losses, erosion of priority habitat woodland would be likely to occur. The application must demonstrate accordance with Local Plan Policy SE 5 which requires that all developments ensure the sustainable management of trees, woodlands and hedgerows including the provision of new planting within new development to retain and improve canopy cover, enable climate adaptation resilience, and support biodiversity.

In the absence of an appraisal specific to the impact of trees on the site, there is insufficient information to determine what tree losses are likely to arise, what the longer-term impacts to priority habitat woodland on the site would be, and whether adequate levels of mitigation are being proposed. As a result, the development is contrary to Policies SE3 and SE5 of the CELPS and Policy ENV6 of the SADPD.

Landscape

As noted above the site is located adjacent to the canal towpath which is well used and has a rural character. There are views of the site from the canal towpath and these views would be greater during the winter months when the boundary hedgerow is not in leaf.

The site is also visible from Chells Hill (B5078).

The use of the site has resulted in mud tracks within the former grass field, these have created an urban feel to the site. The use of the site will also create a visual distraction from the users of the Canal Towpath and the B5078.

The proposed development is contrary to Policy SE4 of the CELPS which states that all development should conserve the landscape character and quality where possible.

Highways

Chells Hill which is a B-class road and passes under a canal bridge which narrows the carriageway width to single car use. Traffic signals are in place enabling shuttle running for north and south traffic movements, and the site access is approximately 40m south of the signals.

The application proposes a single point of access to the car/trailer parking area, the width of access would be 7m with 6m radii which is a suitable design for the use proposed.

The visibility splays provided at the access (2.4m x 59m to the north and 2.4m x 120m to the south) are consistent with the measured 85%ile approach speeds. There are 6 vans/trailer spaces provided and 4 car parking spaces with a turning area provided at the end of the car park. It is the applicants view that the vehicle parking spaces provided is adequate to serve the demand on site, this is based on current vehicle parking surveys using the site.

The Head of Strategic Transport states that the revised access arrangement is an improvement compared to the existing site access and meets current design standards. The supporting information has indicated that there will not be a material intensification in vehicle parking demand and that the proposed number of parking spaces is sufficient for the use. There are no specific parking standards for the use proposed and given the supporting parking information it is considered that adequate parking is being provided. As a result, the Strategic Transport Manager has raised no objection to this application.

The application is acceptable in terms of the highway implications and car-parking provision. The proposed development is contrary to Policy INF3 of the SADPD.

Ecology

Priority Habitat

The ecology report identifies observed and potential negative impacts to the priority woodland and pond habitats on site as a result of the site's use for moto-cross purposes. The report makes recommendations for measures to mitigate the impacts as follows;

- To define the track area adjacent to the protected habitats using chestnut style fencing. This would ensure that the informal tracks within the woodland, around the ponds and adjacent to the river are no longer used. Club members would need to be made aware of the importance of the habitats on site.
- Temporary barriers attached to the base of the chestnut fencing are used to prevent runoff into the ponds and river.
- The restoration of any damaged areas of the site.

The Councils Ecologist has stated that these measures are acceptable to mitigate the impact upon the priority habitats on site.

Great Crested Newts (GCN)

The submitted Phase1 Habitat Survey report found the ponds on site to be suitable for GCN and the site itself to be composed in places of good terrestrial GCN habitat. However, the eDNA survey of the onsite waterbodies returned a negative result, and the site is not considered to be well

connected to other ponds off site. As such it is not considered likely that the proposals would have a direct, negative impact on GCN.

Breeding Birds

Breeding birds could be safeguarded by the imposition of a standard planning condition.

Schedule 9 Species

Himalayan Balsam is present on the site. Under the terms of the Wildlife and Countryside act 1981 it is an offence to cause this species to grow in the wild. Disturbance of soil on the site may result in increased growth of Himalayan balsam on the site. If the applicant intends to move any soil or waste off site, under the terms of the Environmental Protection Act 1990 any part of the plant or any material contaminated with Himalayan balsam must be disposed of at a landfill site licensed to accept it and the operator should be made aware of the nature of the waste.

Flood Risk

Part of the application site is located within Flood Zone 3 for Malkins Bank/Lawton Brook. This land is defined as having a high probability of flooding.

The application is supported by a Flood Risk Assessment. Although the Flood Risk Officer has raised a number of points of clarification relating to a routing plan (including engineering details, such as: pipe diameters, access chambers, cover levels, and invert levels), the application does not propose an alteration to the existing outfall route to the River Weaver. As a result, a refusal on these grounds cannot be sustained.

In terms of the point relating to the measures to protect the culvert from becoming blocked (as raised by the Canal and River Trust), an on-going maintenance/inspection schedule for the culvert within the site could be controlled via the imposition of a planning condition.

No objection has been raised to the application by the Environment Agency and the application is considered to be acceptable in terms of its flood risk implications.

Benefits

It is noted that the site would provide some limited benefits through some very small employment and leisure/recreation benefits as demonstrated in the letters of representation received. This would need to be weighed in the planning balance.

CONCLUSION/PLANNING BALANCE

There would be some very minor benefits raised by the development as identified above. These benefits are given minor weight.

The site is located within the Green Belt and would be inappropriate development. The development would have an urbanising effect upon the locality and would not preserve openness. No very special circumstances have been identified and the proposal is contrary to Policies PG3 of the CELPS, and the NPPF.

The development would detract from the character and appearance of the site and have an adverse impact upon the landscape. The proposed development would conflict with Policies SE4 and SD2 of the CELPS.

The proposed development would not harm protected species/biodiversity and there would be no conflict with policies SE 3 of the CELPS, ENV2 of the SADPD or the NPPF.

The proposed development would generate noise and the proposal would cause harm to residential amenity, whilst the suggested noise mitigation measures would not be enforceable. In addition, the use of the site would cause harm to other users of the open countryside (such as the Canal and local footpath network) in terms of noise generation. As a result, the proposal would conflict with Policies SE12 of the CELPS, HOU12 and RUR6 of the SADPD and the NPPF.

The application is considered to be acceptable in terms of the flood risk implications subject to the imposition of planning conditions.

The less than substantial harm to the heritage assets would not be outweighed by the public benefits of the proposed development. The proposed development is contrary to Policy SE7 of the CELPS, and Policies HER1, HER3 and HER 4 of the SADPD and the NPPF.

The woodland on the site is classed as a priority habitat and there is insufficient information in relation to the arboricultural impacts from this proposed development. The proposed development is contrary to Policies SE3 and SE5 of the CELPS and Policy ENV6 of the SADPD.

The application has demonstrated that a safe and suitable access can be achieved and that adequate car-parking provision is provided. The proposed development complies with Policy INF3 of the SADPD.

The applicant has referred to the use of the site under permitted development. This is noted, but the increased use of the site over and above permitted development allowances would have greater impacts and the application is recommended for refusal as set out below.

RECOMMENDATION:

REFUSE for the following reasons;

- 1. The proposed development represents inappropriate development within the Green Belt, and no very special circumstances have been identified. The development would have an urbanising effect on the Green Belt, it does not preserve the openness of the Green Belt and conflicts with the aim of safeguarding the countryside from encroachment. Furthermore, the development would detract from the character and appearance of the site and have an adverse impact upon the landscape. The development is contrary to Policies PG3, SE4 and SD2 of the Cheshire East Local Plan Strategy and the NPPF.**
- 2. The proposal would have a detrimental impact upon residential amenity due to noise and disturbance generated, whilst the suggested mitigation measures are not considered to be enforceable. Furthermore, the use of the site would cause harm to other users of the open countryside (such as the Canal and local footpath network) in terms of noise**

generation. As a result, the proposal would conflict with Policies SE7 of the Cheshire East Local Plan Strategy, HOU12 and RUR6 of the Site Allocations and Development Policies Document and the NPPF.

3. The development would cause less than substantial harm to the heritage assets (the Canal Conservation Area and Listed Structures) due to the urbanised appearance of the site and the noise and disturbance caused by the proposed use. This harm would not be outweighed by the public benefits of the proposed development. The proposed development is contrary to Policy SE7 of the Cheshire East Local Plan Strategy, and Policies HER1, HER3 and HER4 of the Site Allocations and Development Policies Document and the NPPF.
4. The woodland on site is listed under the Priority Habitat Inventory. In the absence of a tree survey or an arboricultural impact assessment there is no evidence provided to demonstrate that the impacts on the woodland or roadside trees have considered or could be retained. The proposed development is contrary to Policies SE3 and SE5 of the CELPS, Policy ENV6 of the Site Allocations and Development Policies Document and the NPPF.

In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Planning has delegated authority to do so in consultation with the Chair of the Southern Planning Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

