

Application No: 14/4481M  
Location: LAND ADJACENT TO, 25, THE RACE, HANDFORTH  
Proposal: Erection of 4 new semi detached properties  
Applicant: Grays Inn 10  
Expiry Date: 17-Nov-2014

Date report prepared: 22 December 2014

## REASON FOR REPORT

The application was called-in by Councillor Burkhill (Handforth Ward) for the following reasons:

- Considerable local concern from residents and the Forestry Commission had been raised in respect of this site and the previous application, which was withdrawn (though it is noted that the Officer had been minded to recommend refusal in the committee report prepared for the Northern Planning Committee). A lot of local concern has been expressed again in respect of the current application.
- There were environmental concerns associated with the previous application and the current application looks very similar, if not identical.

## NOTE

The attention of members is drawn to the fact that the applicant has now appealed to the Planning Inspectorate on the grounds of non determination of the application. It has been decided that the application should still be discussed by members in order to inform the decision about whether or not the Council contest the appeal.

### Summary

- 1) the Council cannot demonstrate a 5 year supply of housing land;
- 2) the proposed is considered to be a sustainable form of development, therefore the application should be approved unless either
  - a) the adverse impacts significantly and demonstrably outweigh the benefits of the proposal or;
  - b) there are other specific policies within the NPPF that indicate development should be restricted;
- 3) the key benefit of the proposal is the provision of 4 No. dwellings, thereby contributing to the housing needs of the area;
- 4) it is considered that there are no significant or demonstrable adverse impacts that outweigh the benefits of the proposal nor are there other policies in the NPPF that should prevent the development;
- 5) the existing Open Space is outside of the application site and will be retained post development (this was not the case in the previous application);

6) given the make up, constraints and status of the application site, replanting or allowing the trees on site to re-establish themselves is not a feasible option and therefore there are no sustainable arboricultural or ecological reasons for refusal of the application;

7) the design of the proposed development is considered to be in keeping with the area and street-scene;

8) the proposed development would not significantly impact on the amenities of neighbouring residential properties;

9) the proposed development does not raise any highways safety/parking issues;

10) the consultation comments from the Flood Risk Manager are awaited.

### **SUMMARY RECOMMENDATION**

As noted, the application has been appealed on the grounds of non-determination and therefore no decision is being made on the application. However, if the application were being determined, bearing in mind the points discussed below, a recommendation of approval would be made, subject to conditions.

### **PROPOSAL**

This application seeks full planning permission for the erection of 4 No. semi-detached, two-storey dwellings; the application includes alterations to the informal parking area used by local residents.

The proposed development would provide 4 No. three bedroom dwellings, each with 2 No. parking spaces (in the form of a driveway adjacent to each property) and private rear gardens. The development also includes landscaping the existing informal parking area, which is to be retained as parking available for use by local residents. A small section of the parking area is designated as a bin storage area for use at refuse collection times.

### **SITE DESCRIPTION**

The application site is situated at the head of the cul-de-sac of The Race, which is located on a 1960s housing estate in Handforth. The railway and viaduct bound the north-western boundary of the site; beyond the south-western boundary of the site is the historic Mill Race and an area designated as Open Space in the Local Plan; beyond the north-eastern and south-eastern boundaries are residential properties on Caldry Road and The Race respectively. The site edged red (the application site) lies within an area designated as Predominantly Residential in the Local Plan; it is noted that a small area beyond the western boundary of the site-edged red (i.e. the area edged blue on the Location Plan) falls within an area designated as Existing Open Space in the Local Plan. A Government Pipeline & Storage System (GPSS) pipeline runs across the site, in a broadly east-west direction. The site comprises an area of recently felled woodland and an area of hard-standing (currently used by local residents for parking).

## RELEVANT HISTORY

14/2215M   Erection of 4 No. new semi-detached properties. Withdrawn, 31.07.2014

## NATIONAL & LOCAL POLICY

By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the application should be determined in accordance with the development plan, unless material considerations indicate otherwise.

### National Policy

#### The National Planning Policy Framework

The National Planning Policy Framework came into effect on 27 March 2012, and replaced the advice provided in Planning Policy Guidance Notes and Statements. The aim of this document is to make the planning system less complex and more accessible, to protect the environment and to promote sustainable growth.

Para 14 of the NPPF states that

*At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development*

For decision-making this means approving development proposals that accord with the development plan without delay...and

*where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
- *specific policies in the Framework indicate development should be restricted.*

Para 49 of the NPPF states

*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.*

Hence, key questions that need to be considered are a) does the Council have a five year housing land supply? b) If not, are there adverse impacts that would outweigh the benefits of the proposed development or other policies in the Framework which indicate that development should be restricted? And c) is the proposed development a sustainable form of development?

## **National Planning Practice Guidance**

### **The Development Plan**

As noted above

*Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (para 2, NPPF)*

The Development Plan for Cheshire East currently comprises the saved policies from the Congleton (January 2005), Crewe and Nantwich (February 2005) and Macclesfield Local Plan (January 2004).

### **Macclesfield Local Plan – saved policies**

Since the NPPF was published, the saved policies within the Macclesfield Borough Council Local Plan are still applicable but should be weighted according to their degree of consistency with the NPPF. The saved Local Plan policies considered to be most relevant are outlined below; they are consistent with the NPPF and therefore should be given full weight:-

- NE7 (Retain and enhance existing woodlands)
- NE11 (Nature conservation)
- BE1 (General design)
- RE1 (Open space)
- RT5 and DC40 (Children's play provision and amenity space)
- H1 (Phasing policy)
- H2 (Environmental quality in housing developments)
- H5 (Windfall housing sites)
- H13 (Protecting residential areas)
- DC1 (High quality design for new build)
- DC3 (Protection of the amenities of nearby residential properties)
- DC6 (Circulation and access)
- DC8 & DC37 (Requirements for landscaping)
- DC9 (Tree protection)
- DC35 (Materials and finishes)

- DC36 (Road layouts and circulation)
- DC38 (Guidelines for space, light and privacy for housing development)
- DC41 (Infill housing development)
- DC63 (Contaminated land)

### **Cheshire East Local Plan Strategy – Submission Version (May 2014)**

The following are considered relevant material considerations as indications of the emerging strategy:-

- SP2 (Creating sustainable communities)
- SP3 (Protecting and enhancing environmental quality)
- SP4 (Reduce the need to travel/promote more sustainable modes of transport)
- MP1 (Presumption in favour of sustainable development)
- SD1 (Sustainable development in CE)
- SD2 (Sustainable development principles)
- SE1 (Design)
- SE2 (Efficient use of land)
- SE3 (Biodiversity and geodiversity)
- SE4 (Landscape)
- SE5 (Trees, hedgerows and woodland)
- SE6 (Green infrastructure)
- SE12 (Pollution, land contamination and land instability)
- SE13 (Flood risk and water management)
- SD2: (Sets out sustainable development principles)
- CO1 (Sustainable travel and transport)

### **CONSULTATIONS**

#### **The Forestry Commission**

The Forestry Commission (FC) does not support or object to planning applications and recognises decisions with regard to development are rightly the responsibility of the Local Planning Authority. The FC has confirmed that a restocking order has been issued in relation to a specific area of the application site.

#### **Government pipelines and storage system (GPSS)**

No objections have been raised to the application, subject to the developer according with the relevant pipeline easements.

#### **Environment Agency**

The Environment Agency (EA) raises no objections to the application and directs the Local Planning Authority (LPA) to standard advice available on its website. It is noted from the previous application that under the terms of the Water Resources Act 1991, and the Land Drainage Byelaws, the EAs prior written consent is required for any proposed works or

structures, in, under, over or within 8 metres of the top of the bank of the river Dean, designated as a “main river”. (NB. It is noted that there are no proposed works that are within 8m of the bank of the river Dean).

### **United Utilities**

United utilities (UU) raises no objections to the application and no conditions are recommended. UU has stated that the site should be drained on a separate system with foul water draining to the public sewer and surface water draining in the most sustainable way. UU has also requested that the developer consider the various drainage options to accord with the hierarchy outlined in Building Regulations H3.

### **Strategic Highways Manager**

The Council's Strategic Highways Manager raises no objections to the application and has stated that in assessing the application the key highways issues are as follows:

- Provision of sufficient car parking
- Ensuring that there are suitable refuse collection arrangements from the public highway.

Recommend a condition for an area to be set aside within the site for refuse collection. (NB. It is noted that an area is set aside within the site for bin storage at refuse collection times).

### **Civil Aviation Authority**

No comments received as of 22.12.2014

### **Environmental Protection**

The Environmental Protection Team is satisfied that implementation of the recommendations outlined within the Noise Assessment report submitted with the application would ensure occupants of the proposed dwellings would be protected from any undue noise from railway traffic.

The Environmental Protection Team raises no objections to the proposed development, subject to conditions re a) implementation of the recommendations in the Noise Impact report and post completion verification to be provided, b) details of piling (if necessary), c) submission of details to minimise dust emissions and informatives regarding contaminated land and hours of construction.

### **Heritage & Design – Forestry**

#### ***Pre-emptive tree felling & restocking notice***

As regards the pre-emptive tree felling on site and the restocking notice issued by the Forestry Commission (FC), taking account of a) information submitted in the ‘*Design & Access Statement*’ regarding garden and residential curtilage associated with number 25 The Race, b) communication received from the FC regarding the details of the restocking notice

issued and c) information received during the course of the application regarding the leasehold & title deeds of number 25 The Race, the Arboricultural Officer notes that:

*...if the land in question has been identified as a Private Residential Garden within the legal definition of the term and demonstrated by Legal Title then the Requirements for a Felling Licence do not apply...It would therefore follow that any felling carried out would not have required a felling licence within the land confirmed as residential garden and that any subsequent restocking notice served for the purpose of non compliance with such a licence for the land would not be subject to the powers under Section 17A Power of Commissioners to require a restocking notice after unauthorised felling.*

### **Tree planting proposals**

The application site (site edged red) includes some tree planting. However, most of the proposed tree planting lies within the area edged blue on the plans submitted. The Arboricultural Officer makes the following observation and comments in relation to the proposed tree planting:

1) The position of some of the trees does not comply with BS5837:2012 Trees in relation to design demolition and construction (Recommendations). With particular regard to the garden of Plot 4 there are no less than six 'high forest' trees - 3 No. Oak (QR), 2 No. Beech (FS) and 1 No. Ash (FE) – which, given their future growth potential, will present significant constraints to the use of the garden in the long term. There are a number of 'high forest' trees shown to be planted to the south of Plot 3 (again a mix of Ash, Beech and Oak), all of which will cause significant shading problems to the garden; 1 No. Ash is shown to be planted at only 5 or so metres from the rear corner of Plot 3.

2) BS5837:2012 (Section 13.1.3) states that all new planting proposals should take into account future use, layout and design of a development site, taking into account the ultimate height and spread of the proposed trees. Section 13.2.2 states that the effect of shade by new trees and the likely extent and density of the tree crown when fully grown should also be taken into account to ensure residents enjoy reasonable light. The problems related to buildings and spaces around them having low daylight and sunlight levels is well known and has been the subject of specific guidance in a range of relevant guidance documents. All the guidance points to the need to have sufficient daylight and sunlight both within and around buildings and this should be part of the site planning for development.

On the tree planting proposed, the Arboricultural Officer considers that a more appropriate tree planting scheme should be obtained, which could be secured by condition.

### **Heritage & Design – Nature Conservation**

#### **Woodland**

The Nature Conservation Officer notes that the application site includes an area of recently felled woodland; furthermore, the woodland is listed on both the National Inventory of Woodland and Trees and the Inventory of Deciduous Woodland BAP (Biodiversity Action Plan) Priority Habitat (England). Habitats of this type are included on Section 41 of the

Natural Environment and Rural Communities Act 2006 as Habitats of Principal Importance for the conservation of biodiversity in England.

The Nature Conservation Officer considers that, whilst the trees have recently been felled from the site they are likely to regenerate within a relatively short period of time (evidence of natural regeneration was present on site during his site visit). Consequently, the Nature Conservation Officer advises that the application site must, therefore, still be regarded as supporting UK priority woodland habitat, which is a material consideration for the determination of this application.

The Nature Conservation Officer considers that the tree planting proposed within the area edged blue on the plans submitted cannot be considered replacement woodland habitat and would make only a minor contribution towards compensating for what he considers to be the loss of woodland habitats and associated loss of biodiversity resulting from the proposed development.

### ***Badgers***

The Nature Conservation Officer notes that a badger sett is present on site; however, he concludes that the sett currently appears to be inactive. Consequently, provided the sett remains inactive the proposed development is unlikely to have a significant impact upon badgers. If planning consent is recommended the Nature Conservation Officer recommends a condition be attached requiring an up-dated badger survey/assessment to be undertaken and submitted to the LPA, prior to the commencement of development.

### **Heritage & Design – Landscape**

No comments received as of 22.12.2014. However, overall landscaping and arboricultural issues have been considered by the Arboricultural Officer.

### **Housing Strategy & Needs Manager**

The Housing Strategy & Needs Manager (HSNM) raises no objections to the application and confirms that, given the number of dwellings (4 No.) and the size of the site (0.2ha) no affordable housing is required as part of the development.

### **Network Rail**

Network Rail (NR) raises no objections to the application, subject to conditions to reduce the risk to the railway infrastructure from developments.

### **CE Flood Risk Manager**

Awaiting comments as of 22.12.2014

### **VIEWS OF THE PARISH / TOWN COUNCIL**

#### **Handforth Parish Council**

Handforth Parish Council opposes the application for the following reasons:-

- 1) There is insufficient car parking within the vicinity of the site and this will be worsened; access is also poor
- 2) The loss of the existing footway on part of The Race
- 3) Loss of light/privacy to homes on Caldby Road that adjoin the site
- 4) The Council is aware that properties on Caldby Road are experiencing problems with ground water; this situation could be made worse by the recent removal of the willow trees on the site
- 5) The submitted plans appear to propose to fence off an area designated in the current Local Plan as Open Space.

## **REPRESENTATIONS**

Neighbour notification letters were sent to all adjoining occupants and a site notice erected. Objections have been received from the occupants of 17 No. properties in the area, details of which can be read on file. The objections raised can be summarised as follows:

- Pre-emptive tree removal (breaking the law). Replanting/restocking order issued and should be respected so that the woodland can be restored
- Loss of environment - the woodland and the wildlife that use it; therefore detrimental impact on wildlife
- Development on open space; will result in loss of access to the Open Space (and access to the river corridor) for many residents; loss of 'incidental open space' therefore contrary to policy RT2 of the Local Plan
- The loss of trees has resulted in residents experiencing increased noise levels from the railway
- Contrary to the objective of sustainable development
- Risk of flooding (natural spring on site)
- Risk of damage to pipeline and contamination of river
- Question the claim that fly-tipping has occurred on site
- Proposed planting of silver birch trees along northern boundary of plots 1 and 2 will gradually overshadow these gardens; these trees will also drop sap and leaves on the cars parked on the parking area (recommend lower growing shrubbery plants as an alternative)
- Impact on residential amenity – loss of privacy, loss of light, impact of floodlit access road
- Land claimed to be garden/residential curtilage in the D & A Statement has never been used or cultivated as such
- Increase in traffic in the area
- Loss of car parking spaces/impact on highways safety
- Will reduce the 'gap' between Handforth and Wilmslow (an objective in the Draft Handforth Strategy is to protect this gap)
- Properties not in keeping with the area (mainly 2 bed-roomed maisonettes close to the site)

- Proposed wooden fencing not in keeping with the area and would change the character of the designated Open Space

## **APPLICANT'S SUPPORTING INFORMATION**

The applicant has submitted the following additional information, details of which can be read on file:-

- *Design and Access Statement*
- *Planning Statement*
- *Preliminary Ecological Appraisal*
- *Noise Assessment*

During the course of the application details of the leasehold of number 25 The Race has been submitted, details of which can be read on file. Also, a plan has been submitted (M2420.01D) which provides an overview of a) land ownership, b) residential curtilage/garden, c) GPSS pipeline & easement, d) Open Space, e) area to which the FC Restocking Notice applies, f) the proposed site layout and g) the site edged red and land edged blue.

## **APPRAISAL**

The key issues are considered to be as follows:-

- Housing land supply
- The principle of development & issue of sustainability
- Impact on Open Space
- Pre-emptive tree felling, restocking & arboricultural issues
- Ecological issues
- Design/impact on the character and appearance of the area & street-scene
- Impact on residential amenity
- Highways safety

### ***Housing Land Supply***

Paragraph 47 of the NPPF requires that Council's identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.

This calculation of five year housing supply has two components – the housing requirement and the supply of housing sites that will help meet it. In the absence of an adopted Local Plan the '*National Planning Practice Guidance*' indicates that information provided in the latest full assessment of housing needs should be considered as the benchmark for the housing requirement.

The current 'Housing Supply Position Statement' prepared by the Council employs the figure of 1180 homes per year as the housing requirement, this being the calculation of Objectively Assessed Housing Need used in the 'Cheshire East Local Plan Strategy - Submission Version'.

The Local Plan Inspector has now published his interim views based on the first three weeks of Examination of the 'Cheshire East Local Plan Strategy - Submission Version'. He has concluded that the Council's calculation of objectively assessed housing need is too low. He has also concluded that following six years of not meeting housing targets a 20% buffer should also be applied.

Given the Inspector's Interim view that the assessment of 1180 homes per year is too low, it is recommended that this figure is no longer used in housing supply calculations. The Inspector has not provided any definitive steer as to the correct figure to employ, but has recommended that further work on housing need should be carried out. The Council is currently considering its response to these interim views.

Any substantive increase of housing need above the figure of 1180 homes per year is likely to place the housing land supply calculation at or below five years. Consequently, at the present time, the Council is unable to robustly demonstrate a five year supply of housing land. Accordingly recommendations on planning applications will now reflect this position.

### ***Principle of development & sustainability***

Para 7 of the NPPF states that sustainable development has three dimensions: economic, social and environmental and therefore the planning system has to perform a number of roles accordingly, i.e. an economic role, a social role and an environmental role.

### ***Environmental Sustainability***

As noted above, the area designated as the application site (the site edged red) is located within a Predominantly Residential Area of Handforth, as defined in the Local Plan. It is considered that the site is located within a sustainable location and, given that the trees and associated ecological habitats have already been removed, the proposed development overall is environmentally sustainable.

### ***Social sustainability***

It is considered that the proposed dwellings would make a small social contribution to the area – i.e. provision of 4 No. dwellings, thereby contributing to the housing needs of the area.

### ***Economic sustainability***

It is considered that construction of the proposed dwellings would make a small economic contribution to the area.

Given the location of the site and the provision and construction of the 4 No. dwellings it is considered that the proposed development is a sustainable form of development.

### ***Impact on Open Space***

The area edged blue on the plans is located within an area designated as Open Space within the Local Plan. It is noted that on the previous, withdrawn, application (14/2251M) the area of Open Space was within the application site (site edged red) and it formed part of the garden

area of plot 3. The Open Space is now outside of the application site (the site edged red). No building is proposed on the area designated as Open Space; the applicant now proposes to plant trees on the area designated as Open Space (along with other trees proposed within the scheme). This tree planting may satisfy the restocking order issued by the FC, should it be pursued.

Local Plan policy RT1 states (amongst other things) that

*areas of recreational land and open space as shown on the proposals map will be protected from development...*

The reason for the policy states (amongst other things) that existing facilities form an important resource which must be retained for the benefit of the community and that open spaces are important for their amenity value and can contribute to the character of the townscape.

Para 74 of the NPPF states that existing open space should not be built on unless:-

- *an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- *the development is for alternative sports and recreation provision, the needs for which clearly outweigh the loss.*

It is claimed within the 'Design & Access Statement' and the 'Planning Statement' that the area of land that the Open Space falls within is part of the residential curtilage/garden of number 25 The Race. A copy of a plan associated with the legal title and leasehold of 25 The Race have been included in the 'Design & Access Statement' (figs 3 and 4) and, during the course of the application, a copy of the leasehold agreement has been submitted. Within one of the representations it is asserted that the land has not been cultivated as garden or used in that way. It is acknowledged that a significant area of the land that appears to constitute the residential curtilage/garden of 25 The Race (according to the Leasehold) has been populated by trees over many years and it would appear therefore that much of the area of this land has indeed not been used as garden throughout this period. However, the information pertaining to the lease and legal title of 25 The Race indicates that the area outlined in red in Fig 4 of the 'Design & Access Statement' (and indicated yellow on plan M2420.01D) is designated as garden within the leasehold/legal title of number 25 The Race. With regards to the issue of Open Space, providing the area designated as Open Space remains as Open Space post development, and is clearly delineated from the proposed garden and residential curtilage of plot 3, it is considered that the proposed development would not harm the designated Open Space and therefore would comply with policy RT1.

### ***Pre-emptive tree felling, restocking & arboricultural issues***

The land in question has recently been subject to an investigation into illegal tree felling by the Forestry Commission.

The land that is the subject of this planning application is split into two freeholds. Broadly, one that encompasses plots 1 and 2 (illustrated in orange on plan M2420.01D) and one that encompasses plots 3 and 4 (illustrated edged yellow on plan M2420.01D). The Forestry Commission considered the ownerships separately for the purpose of their investigation into illegal tree felling, as separate landowners are allowed to fell up to 5cu m of timber in a calendar quarter without a felling licence.

The FC confirmed that whilst the tree felling which occurred in the area that is under one ownership (the area illustrated orange on plan M2420.01D) appeared to have been an offence under the provisions of the Forestry Act, the volume of timber felled was below the tolerance they typically apply to be confident of securing a conviction or issuing a restocking notice. Therefore the FC concluded that they would not be taking any further action in respect of this area of land. Hence, there is no requirement for the applicant to plant trees within the area illustrated orange on plan M2420.01D.

The FC also concluded that the volume of timber felled in the area that includes plots 3 and 4 (an area under a different ownership, illustrated edged yellow on plan M2420.01D) again indicated an offence under the Forestry Act, but in this area the volume of timber felled was sufficient for the FC to have concluded that further action was warranted. It has been confirmed that the FC has issued a restocking notice. The area of land that the restocking order relates to is identified in Fig 10 of the *'Design & Access Statement'* and highlighted on plan M2420.01D edged green. It is noted on p.19 of *'Design & Access Statement'* that the applicant intends appealing against the restocking notice; it has been confirmed that an appeal has been submitted. One of the key reasons for appealing against the restocking notice is that the area of land to which the restocking notice relates is considered to be residential curtilage/garden. As noted above, the Council's Arboricultural Officer has confirmed that if the land in question is designated as garden in the legal title then a felling licence would not have been required for felling the trees; consequently the restocking notice issued by the FC would not be subject to the powers under Section 17A Power of Commissioners to require the restocking notice after unauthorised felling. The outcome of this appeal cannot be presumed. However, it appears that the FC will not be able to require the applicant to comply with the restocking notice, given the status of the land, and therefore there would be no requirement for the applicant to plant trees on this area of land.

It is noted that a felling licence is not required for tree felling immediately required for development authorised under the Town and Country Planning Act 1990 and therefore any planning permission takes precedence over re-stocking.

As noted, there is an oil pipeline that crosses the site that has an associated easement. Generally, trees cannot be planted within 6m of the pipeline and for some species the distance is 10m.

Hence, in summary, with reference to plan M2420.01D: a) the FC does not require the owner of the land illustrated in orange to plant trees on any of this land; b) trees cannot be planted in the area of the GPSS pipeline; c) the restocking notice (the 'hatched' area on the plan) lies totally within the area designated as residential curtilage/garden of number 25 The Race in

the leasehold (edged yellow on the plan), as such, it is understood that the FC will not be able to enforce the restocking notice. Consequently, there is no compelling requirement for either a) allowing the trees that have been felled to regenerate themselves or b) planting new trees. The Arboricultural Officer has some concerns about the tree planting proposed in respect of species, layout and relationship with properties. However, this matter could be addressed with an amended tree planting plan. Hence, there are no sustainable arboricultural reasons for refusing the application.

### ***Ecological issues***

As stated previously, the application site includes an area of recently felled woodland. The woodland at this site is listed on both the National Inventory of Woodland and Trees and the inventory of Deciduous Woodland BAP Priority Habitat (England). Habitats of this type are included on section 41 of the Natural Environment and Rural Communities Act 2006 as Habitats of Principal Importance for the conservation of biodiversity in England.

Reviewing paragraph 84, page 30 of ODPM circular 06/2005 (Biodiversity) this states that habitats subject to a Biodiversity Action Plan (BAP) can be a material consideration. This circular is still extant. However, to complicate things, the UK Biodiversity Action plan does not strictly exist anymore; however, all of the species and habitat that were listed are now listed as “Habitats of Principal Importance for the conservation of biodiversity in England” under section 41 of the Natural Environment and Rural communities Act 2006. Section 40 of this Act places a duty on local authorities to have regard to the conservation of biodiversity when carrying out normal functions.

In answer to the question of whether UK BAP habitats are still a material consideration Natural England responded with the following:

*Previous planning policy (and some supporting guidance which is still current), refers to UK BAP species as being a material consideration in the planning process. Equally many local plans refer to BAP priority habitats and species. Both remain as material considerations in the planning process but such habitats and species are now described as Species and Habitats of Principal Importance for Conservation in England, or simply priority habitats and priority species. The list of habitats and species remains unchanged and is still derived from Section 41 list of the Natural Environmental and Rural Communities (NERC) Act 2006. As was previously the case when it was a BAP priority species hen harrier continues to be regarded as a priority species although it does not appear on the Section 41 list. So the same species and habitats are of material consideration for planning purposes as previously was the case, they are just referenced using different terminology.*

Relevant Macclesfield Local Plan policies are: NE7 (Woodlands), NE11 (Nature Conservation), NE12 & NE13 (Protection of designated sites – this does not strictly apply as the woodland was never designated however the site would qualify as a Local Wildlife Site by virtue of it being on the UK BAP habitat inventory). In addition, the UK BAP section 41 habitats are listed in paragraph 3 of Policy SE3 in the Cheshire East Local Plan Strategy Submission Version.

Para 117 of the NPPF states that, *“to minimise impacts on biodiversity and geodiversity, planning policies should...(amongst other things)... promote the preservation, restoration and re-creation of priority habitats...*

Para 118 of the NPPF states that...*When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity...*

As noted above, the Council's Nature Conservation Officer considers that, whilst the trees have recently been felled from the site they could potentially regenerate within a relatively short period of time. Consequently, the Council's Ecologist has advised that the application site must therefore still be regarded as supporting UK priority woodland habitat, which is a material consideration for the determination of this application. However, the Council's Arboricultural Officer notes that trees that lie within residential gardens cannot be designated as BAP Priority Habitat.

Bearing in mind the situation discussed above, i.e. a) the lack of a compelling argument that will result in the restocking notice being enforced and b) there being no compelling reasons for allowing the trees that were felled on site to re-establish themselves or to plant trees in the areas outside the restocking area and c) the fact that trees within gardens cannot be designated as BAP Priority Habitat, it is considered that, although the loss of woodland habitat and associated biodiversity is regrettable, there are now no sustainable reasons for refusing the application on ecological grounds.

### ***Design/impact on the character and appearance of the area & street-scene***

The proposed dwellings are two-storey, semi-detached dwellings each with 3 No. bedrooms, gardens and a hard-standing driveway for parking 2 No. cars. The materials proposed are red brick walls, grey roof tiles, upvc windows, steel composite doors and tarmac hard-standing.

As regards layout, plots 1 and 2 are perpendicular to the rear of the properties that front onto Caldly Road. Plots 3 and 4 are situated at the end of the line of properties on The Race, set back behind the existing build line of those properties. The railway line is raised up on a viaduct approx. 22m to the west of the dwelling on plot 3. The viaduct is the final approach into the Station at Handforth where the trains will be slowing down. To the south/south-west of plots 3 & 4 there is woodland.

The majority of buildings in the area are two-storey built in red brick with tiled roofs. The design, size, scale and materials of the proposed development are considered to be acceptable within the context of the character and appearance of the area and street-scene.

### ***Impact on residential amenity***

There is a distance of approx. 15m between the rear elevations of the properties on Caldly Road and the side elevation of the proposed dwelling on plot 1. The only windows on the proposed northern side elevation of the dwelling on plot 1 serve a landing at first-floor level and a small secondary lounge window at ground-floor level. A boundary fence is proposed along the boundary between these properties. Hence, the distance between habitable room windows on the rear elevations of properties on Caldly Road and the side elevation of the proposed dwelling on plot 1 accords with the distance standards in policy DC38.

As noted, the proposed dwellings on plots 3 and 4 are set back from the existing build line of the properties on The Race. The distance between the overlapping part of the side elevation of the proposed dwelling on plot 4 and the side elevation of numbers 25 and 27 The Race is approx. 6.5m. No habitable room windows are affected.

It is considered overall that the proposed new dwellings comply with the required space, light and privacy standards outlined in policy DC38. The future occupiers of the proposed dwellings will have amenities in accordance with the requirements for privacy distances, outlook and access to local services.

It is noted that the size of the garden area proposed for the dwelling on plot 3 is not as large as the garden areas proposed for the other dwellings. However, the area of land edged blue adjacent to the western boundary of the garden of plot 3 is to be retained as Open Space without any development on the land and trees are to be planted within the area; as such, this open space beyond the western boundary will result in the outdoor space being perceived as being larger than it actually is.

Within this context it is considered that the size of the garden proposed for plot 3 would not be a sufficient reason for refusal of the application. The layout of the proposed development complies with the criteria set out in Local Plan policies DC38 and DC41.

### ***Highways safety***

The applicant proposes that the development will provide two car parking spaces for each of the proposed four dwellings, which complies with the parking standards outlined in the '*CE Local Plan Strategy – Submission Version*'.

Part of the site (the existing hard-standing area) is currently used informally by local residents for off-street parking, reducing on-street parking demand. The plans provided indicate that an area of the site will be retained for this purpose, with some remodelling and minor landscaping. While the remodelling may result in a small reduction in the number of practical available spaces on the site, it is noted that the site is in private ownership and there is no obligation for the applicant to provide an area for public parking. Therefore, the Strategic Highways Manager has no objection to the remodelling of this area as the result is that some off-street car parking provision is retained.

Refuse collection at developments should be made possible within a reasonable distance of the nearest refuse vehicle access point and within a reasonable distance of dwellings. The Strategic Highways Manager has recommended that a condition be attached to any permission requiring an area to be set aside within the site for the purpose of refuse collection. The site plan shows that an area has been designated for this purpose.

Bearing the above factors in mind, it is concluded that there are no highway issues to warrant refusal of the application.

### **OTHER MATERIAL CONSIDERATIONS**

As the proposed area to be used for car parking spaces for residents is located on private land, the land may need to be dedicated as public highway in a separate legal agreement outside the scope of this planning application. This would ensure that the spaces are available for residents to continue to use.

## **RESPONSE TO OBJECTIONS**

Most of the objections raised have been addressed within various sections of the report above. A few issues that have not been addressed will be dealt with here. Thus, a) although residents may now experience increased noise levels due to the removal of trees on the site, this is not a reason to require trees to be planted on the site; b) the issue of flooding has not been addressed, as yet, as comments are awaited from CE Flood Risk Manager; c) the reference to fly-tipping is not a significant issue in the determination of the application; d) it is considered that the 'gap' between Handforth and Wilmslow will not be significantly eroded due to the proposed development – the railway line itself acts as a buffer.

## **PLANNING BALANCE, CONCLUSIONS AND REASON(S) FOR THE RECOMMENDATION**

In summary, key issues are: 1) the Council cannot demonstrate a 5 year supply of housing land and the proposed is considered to be a sustainable form of development, therefore the application should be approved unless either a) the adverse impacts significantly and demonstrably outweigh the benefits of the proposal or b) there are other specific policies within the NPPF that indicate development should be restricted; 2) it is considered that the key benefit of the proposal is the provision of 4 No. dwellings; it is also considered that there are no significant and demonstrable adverse impacts that outweigh the benefits of the proposal nor are there other policies in the NPPF that should prevent the development proceeding; 3) the existing Open Space is outside of the application site and will be retained post development (this was not the case in the previous application); 4) given the make up, constraints and status of the application site – i.e. i) an area in one ownership where the FC couldn't take any action in respect of the pre-emptive tree felling that occurred and there is no requirement for trees to be planted in this area, ii) the constraint of the GPSS pipeline and the fact that trees cannot be planted within the easement of the pipeline, iii) the residential curtilage/garden status of the area of land to which the FC restocking notice applies (which doesn't appear to have been known at the time of the previous application) – replanting or allowing the trees that were on site to re-establish themselves is not a feasible option and therefore there are no sustainable arboricultural or ecological reasons for refusal of the application; 5) the design, size, scale, layout and materials of the proposed development are considered to be in keeping with the area and street-scene; 6) there is no significant impact on the amenities of neighbouring residential properties; 7) the proposed development does not raise any highways safety/parking issues (the potential loss of some of the existing informal parking spaces is acknowledged, but ultimately the land owner does not have to provide the land for such parking purposes); 8) the consultation comments from the Flood Risk Manager are awaited and it is intended that an up-date will be possible by the time of the committee meeting.

As noted at the outset, the application has been appealed on the grounds of non-determination and therefore no decision is being made on the application. However, if the application were being determined, bearing in mind the points discussed above, a

recommendation of approval would be made, subject to conditions. The discussion at committee is to inform the action the Council takes in respect of the appeal.

### **Conditions**

Regardless of the position the Council adopts in relation to the appeal, the following conditions would be recommended to the Inspectorate, should the Inspectorate allow the appeal:

- Development within 3 years
- Development in accordance with plans
- Samples of materials for external surfaces to be submitted/approved
- Landscaping, boundary treatment and tree planting details to be submitted/approved
- Landscaping, boundary treatment and tree planting details to be implemented as approved
- Tree protection details to be submitted/approved
- Trees shown to be retained to be retained
- Details of any tree pruning/felling (if necessary) to be submitted/approved
- Details of piling (if used) to be submitted/approved
- Dust control details to be submitted/approved
- An up-dated Badger survey to be submitted/approved
- All measures to reduce noise in the Noise Assessment Report to be implemented and verification of such to be submitted to the LPA post development completion

### **Informatives**

- The applicant's attention is drawn to the recommendations of United Utilities
- The applicant's attention is drawn to the recommendations of Network Rail
- The applicant's attention is drawn to the lawful requirements re contaminated land
- The applicant is advised to undertake all noise generative activities between the following hours: 0800-1800 Mon to Fri, 0900-1400 Sat, with no works of Sundays or Bank Holidays.
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