

Application No: 15/3386N

Location: LAND SOUTH OF NEWCASTLE ROAD, SHAVINGTON, CREWE, CHESHIRE

Proposal: Removal of condition 30 (Number of dwellings) on previous permission 12/3114N; Outline Application for Residential Development of up to 360 Dwellings, Local Centre of up to 700 sqm (with 400 sqm being a single convenience store), Open Space, Access Roads, Cycleways, Footpaths, Structural Landscaping, and Associated Engineering Works

Applicant: Mactaggart & Mickel Homes Ltd

Expiry Date: 22-Oct-2015

## **SUMMARY**

The applicant seeks to remove condition 30 from planning permission 12/3114N which restricted the number of dwellings on site to 360 units. In turn a revised maximum limit of 456 units is proposed.

Conditions, in order to be acceptable need to adhere the 6 tests for planning conditions within the NPPF/NPPG. These tests are whether the conditions are; necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

As condition 30 was imposed for design reasons, and the Council's Urban Design Officer has subsequently advised that further dwellings could be accommodated on the site in light of the density of development approved as phase 1, amongst other reasons, it is not considered that this condition is 'necessary' in that form.

It is however, considered that the alternative proposed maximum figure of 456 units would not be acceptable on design grounds. As such, an alternative maximum figure of 415 dwellings is proposed and this should be secured by condition. This alternative figure would fall within the parameters of the density plan put forward as part of the original application and would also adhere with the design principles of the emerging Cheshire East Council Design Guide.

Given the Council's Housing Land Supply situation and because the removal of this condition would create no new issues other than design, upon those considered to be acceptable as part of application 12/3114N, it is considered that the application would adhere with the relevant Local and National Planning Policies.

As such, it is considered that the removal of Condition 30 be approved, subject to a variation to the S106 Agreement and conditions.

## **RECOMMENDATION**

**APPROVE subject to a variation to the S106 Agreement and conditions**

### **PROPOSAL:**

A variation of condition application is sought to remove Condition 30 from approved Planning Permission 12/3114N. That application sought:

*'Outline Application for Residential Development of up to 360 Dwellings, Local Centre of up to 700 sqm (with 400 sqm being a single convenience store), Open Space, Access Roads, Cycleways, Footpaths, Structural Landscaping, and Associated Engineering Works.'*

This application was approved subject to conditions, including Condition 30 below, which the applicant seeks to remove. This condition reads as follows;

#### Condition 30

*'Notwithstanding the details included within the submitted application, the maximum number of dwellings constructed within the site shall be 360.'*

The applicant proposes a revised maximum number of dwellings of 456 dwellings, an additional 96 dwellings upon those already permitted. This was clarified during the application process and a re-consultation exercise was undertaken for the purposes of clarity.

### **SITE DESCRIPTION:**

The application site falls within the Open Countryside and relates to a large (17.38 ha) triangular parcel of land that is bound on 2 sides by residential development (Stock Lane and Dig Lane) and by Newcastle Road on the other.

The site is made up of a number of fields of varying size. The larger fields occupy the western, central and southern parts of the site which is predominantly in arable use. The north-eastern part is smaller pasture fields and paddocks defined by hedgerows and fences. There are groups of hedgerow trees on the site and several isolated trees which have been identified and which can be retained.

The site straddles the boundary between Shavington-cum-Gresty and Wybunbury Parishes and is relatively level.

Outline Planning Permission was granted on the 23<sup>rd</sup> January 2014 for the erection of up to 360 dwellings.

An application (ref: 14/1160N) to vary this permission and a number of conditions was approved by Strategic Planning Board in August 2014, subject to conditions and a variation to the S106 Agreement. This variation to the legal agreement has not yet been finalised and therefore a decision has not been issued. 2 further non-material amendments have also been approved on the Reserved Matters application.

## **RELEVANT HISTORY:**

**15/4953N** - Non-material amendment (changes to highways, footpaths and plot positions) to approved application 14/3039N - Reserved matters (appearance, landscaping, layout & scale) for residential development comprising 200 dwellings (30% affordable) and creation of public open space, in relation to outline approval 12/3114N – Approved 24<sup>th</sup> November 2015

**15/3329N** - Non material amendment to approved development 14/3039N: realignment of fence to plots 12, 29, 42; minor repositioning of plot 50; plots 28, 32, 57, 121, 178 are to be handed – Approved 10<sup>th</sup> August 2015

**14/3039N** - Reserved matters (appearance, landscaping, layout & scale) for residential development comprising 200 dwellings (30% affordable) and creation of public open space, in relation to outline approval 12/3114N – Approved 11<sup>th</sup> December 2014

**14/1161N** - Variation or removal of Condition 30 of Planning Permission 12/3114N - Outline application for residential development of up to 400 dwellings, local centre of up to 700 Sq M (with 400 Sq M being a single convenience store), open space, access roads, cycleways, footpaths, structural landscaping and associated engineering works – Withdrawn 18<sup>th</sup> August 2014

**14/1160N** - Variation or removal of Conditions 48 - 51 Inclusive of Planning Permission 12/3114N - Outline application for residential development of up to 400 dwellings, local centre of up to 700 Sq M (with 400 Sq M being a single convenience store), open space, access roads, cycleways, footpaths, structural landscaping and associated engineering works – Resolution to approve – Awaiting Deed of Variation to S106

**12/3114N** - Outline Application for Residential Development of up to 360 Dwellings, Local Centre of up to 700 sqm (with 400 sqm being a single convenience store), Open Space, Access Roads, Cycleways, Footpaths, Structural Landscaping, and Associated Engineering Works – Approved 23<sup>rd</sup> January 2014

## **Local Plan Policy**

The Development Plan for this area is the Borough of Crewe and Nantwich Adopted Replacement Local Plan 2011. The relevant Saved Policies are: -

NE.2 - Open countryside, NE.5 - Nature Conservation and Habitats, NE.9 - Protected Species, NE.20 - Flood Prevention, NE.21 - Land Fill Sites, BE.1 – Amenity, BE.2 - Design Standards, BE.3 - Access and Parking, BE.4 - Drainage, Utilities and Resources, RES.5 - Housing In The Open Countryside, RT3 – Provision of Recreational Open Space and Children’s Play Space in New Housing Developments, RT.6 - Recreational Uses on the Open Countryside, TRAN.3 – Pedestrians and TRAN.5 – Cycling

## **National Policy**

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

Of particular relevance to this application are paragraphs 17 - Core planning principles, 28 – Supporting a prosperous economy, 47-55 – Delivering a wide choice of quality homes, 56-68 - Good design, 94 and 99-104 - Flood risk

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

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

MP1 - Presumption in favour of sustainable development, PG1 - Overall Development Strategy, PG5 - Open Countryside, PG6 - Spatial Distribution of Development, SD1 - Sustainable Development in Cheshire East, SD2 - Sustainable Development Principles, IN1 – Infrastructure, IN2 - Developer contributions, SC4 - Residential Mix, SC5 - Affordable Homes, SE1 – Design, SE2 - Efficient use of land, SE3 - Biodiversity and geodiversity, SE4 - The Landscape, SE5 - Trees, Hedgerows and Woodland, SE6 - Green Infrastructure, SE9 - Energy Efficient Development, SE12 - Pollution, Land contamination and land instability, SE13 - Flood risk and water management, CO1 - Sustainable Travel and Transport and CO4 - Travel plans and transport assessments

### **CONSULTATIONS (External to Planning)**

**Head of Strategic Infrastructure (HSI)** – No objections, subject to all highways contributions required as part of the outline application being provided

**Environmental Protection** – No objections

**United Utilities** – No objections, subject to any revisions of drainage strategies being re-submitted for approval

**Flood Risk Manager (Cheshire East Council)** - No objections, subject to the inclusion of a condition seeking the prior approval of a surface water drainage scheme

**Housing (Cheshire East Council)** – No objections, subject to the provision of a 30% affordable housing provision with a 65% and 35% split between social housing and intermediate tenure

**Education (Cheshire East Council)** - No objections, subject to an increase in the financial contribution to reflect the higher number of dwellings and amendments being made to the to where the agreed monies are to be spent

**Public Rights of Way (PROW)** – No objections, subject to the approved diversion of Public Footpath 11 in the Parish of Shavington cum Gresty and Footpath No.21 (part) in the Parishes of Wybunbury and Shavington cum Gresty not changing from that approved

**Environment Agency** – No objections, subject to a number of conditions including; Limiting the surface water run-off; that the finished floor levels are set no lower than, the relevant 1 in 100 years plus climate change plus 600mm freeboard level; the prior submission of scheme to manage the risk of flooding from overland flow of surface water; the prior

submission of a buffer zone management plan and the submission of a water course corridor management scheme.

**ANSA** - Comments as per original application (12/3114N)

**Natural England** – ‘No comment’

**Wybunbury Parish Council** – Object to the proposal on the following grounds;

- Impact upon drainage and flooding
- Design – increase in density, inevitable change in house types
- Open Space – Knock-on impact?
- Original facilities proposed – Knock-on impact - Shop, allotments?

**Shavington Parish Council** - Object to the proposed development on the following grounds;

- Same reasons as objecting to the original application
- No justification for increase in numbers

#### **OTHER REPRESENTATIONS:**

Neighbour notification letters were sent to all adjacent occupants and a site notice was erected. A re-consultation exercise was also undertaken at a later date to clarify that the application seeks an uplift in the maximum number of dwellings sought to 456 units. In response, overall, 31 letters of consultation were received. The main areas of objection raised include;

- Principle of the increase in numbers
- Lack of sufficient justification for proposal
- Highway safety
- Flooding and drainage
- Impact upon public facilities – schools, doctors and police
- Loss of proposed open space
- Amenity – air pollution
- Lack of affordable housing
- Ecology – loss of habitat, impact upon wildlife corridor
- Design – density, house types, impact upon local character
- Application inaccuracies

#### **APPLICANT’S SUPPORTING INFORMATION:**

Supporting statement  
Hydraulic modelling report  
Arboricultural survey  
Flood Risk Assessment (FRA)  
Cover letter  
Design Quality Statement

## OFFICER APPRAISAL

### Principle of development

The site lies in the Open Countryside as designated in the Borough of Crewe and Nantwich Replacement Local Plan 2011, where policies NE.2 and RES.5 state that only development which is essential for the purposes of agriculture, forestry, outdoor recreation, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. Residential development will be restricted to agricultural workers dwellings, affordable housing and limited infilling within built up frontages.

As such, the development would be considered to be contrary to the Local Plan.

However, this application site has been allocated for housing within the Cheshire East Local Plan Strategy – Submission Version under Policy CS6. Policy CS6 advises that the development of The Shavington / Wybunbury Triangle over the Local Plan Strategy period will be achieved through the delivery of 350 houses. Planning permission has been granted on the site for 360 houses (ref: 12/3114N).

As such, the principle of residential development on this site has already been agreed.

This assessment shall consider whether a condition which restricts the number of dwellings on the site to 360 units meets the 6 tests for planning conditions within the NPPF/NPPG and whether the provision of a revised figure of 456 units is acceptable, an uplift of 96 units. These tests are whether the conditions are; necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

### Meeting the conditions tests

Condition 30 was imposed on application 12/3114N because of design reasons. Within the Officer's committee report it states that;

*'... the Council's Design Officer has concerns that when it comes to the Reserved Matters stage, the 400 unit maximum figure [the number of dwellings originally sought on this site] could lead to a more cramped scheme than is suggested by the information in the D & A statement, or may impinge upon strategic design objectives set out in the statement. It is therefore suggested that a reduction in the maximum number should be considered to ensure that the character of the development is in tune with its surroundings (a reduction in the region of 10% is considered appropriate). This could be secured by condition'*

In response, the applicant has submitted plans and documentation to demonstrate that this restriction is not 'necessary', and indeed a further 96 units could be added to the site. Necessity is one of the conditions tests that all conditions need to adhere to in order to be acceptable.

The information produced on behalf of the applicant identifies 3 testing scenarios based on a grid density analysis, the baseline of which was a grid analysis of the existing settlement, which shows the site as being largely between 5 and 10 dph with large tracts of green infrastructure. This is not surprising given its greenfield, rural character. It also shows the

blocks immediately to the north of Newcastle Road as being the highest density, in excess of 20dph and this extending northward into the village centre.

The 3 studies for the development of the site comprise: Option 1 - 360 units (approved), Option 2 - 450 units and Option 3 - in excess of 470 units.

With each density diagram, a Parameters masterplan has been drawn up, with the densities of particular densities and yield for individual parcels. It is assumed that the densities identified on all of these parameter Masterplans reflect the already permitted density for the Persimmons development (phase 1) that is currently under construction.

The Council's Urban Design Officer has advised that; *'I would agree with the suggestion that restricting the development to 360 units will now create an imbalance in the site. This is, in no small part, as a consequence of the phase 1 development, where in retrospect, the densities and yield are too high and should have been reduced commensurately as a consequence of the limiting condition attached to the outline. This in itself would have resulted in a more even distribution of density whilst still allowing variation in character within the site.'*

As a result of the above reasons, it is recommended that Condition 30 should be removed as it is not 'necessary' to restrict the number of units to 360, and therefore does not adhere to the conditions tests which all planning conditions should adhere to in order to be acceptable.

Consideration of the revised maximum numbers of units sought (456)

<b>Shavington Triangle (south of Newcastle Road) Density Assessment</b>			
DH 15-1-16			
<b>Outline Approval (360 dwellings)</b>		<b>Gross density</b>	<b>Net density</b>
a) Gross site area (from application form)	17.38ha	20.7dph	
b) Open space/landscape (DAS p54)	3.97ha		
c) Local centre (DAS p54)	0.51ha		
d) Net developable area (DAS p54 13.11ha)	12.9ha (a-b&c)		28dph

<b>Phase 1 Persimmon (200 dwgs)</b>			<b>Net density</b>
e) Net developable area (Persimmon layout drawing)	4.86ha		41.2dph

<b>Density comparison for remainder of site (Phase 2)</b>			<b>Net density</b>
f) Balance of net site area	8.04ha (d-e)		
274 (474 total)			34.1dph
256 (456 applied for)			31.9dph
230 (430 total)			28.6dph

200 (400 total)			24.9 dph
160 (360 total)			19.9 dph

The information above highlights that option 3 of 274 units (474 in total), would result in a net density for the remaining part of the site that, according to the Council's Urban Design Officer, would be circa 34dph, which, based on the outline density parameters in the DAS [Design and Access Statement] (p 55), where much of the remaining developable area was identified as being of low density of 20-32dph, would exceed levels considered appropriate for this site, especially as it is not village centre and was until recently set within countryside. The Council's Urban Design Officer has advised that *'The inherent character of the site and its surroundings, would be compromised and harmed by development of this number of dwellings and at these densities.'*

Option 2 (the option proposed as part of this application), is just 20 units below that for Option 3, and as stated above, much of this remaining area is located in the low density zone, as set out in the outline DAS. Around the edges of the site, the development parcels range from 30 dph in the north eastern and southern corners through to 35 dph along the western and parts of the south eastern boundary.

Having regard to the character of the site, formerly as farmland and the density of the housing on the edges of the site, the Council's Urban Design Officer has advised that *'this figure seems high in successfully integrating with the surrounding area and reflecting the site's character'*. The Council's Urban Design Officer has stated that he *'...would also argue this is at odds with creating a diminishing density within the southern part of the site as indicated in the density parameter drawing in the DAS (the 35dph parcels exceed the density range advocated for low density in the DAS).'*

Pages 8 and 9 of the Cheshire East Council Draft Design Guide consider the issue of residential amenity and pay particular regard to the issue of relationship between existing and new development, advocating lower density, larger and more generous gardens and enhanced separation distances and the provision of buffer planting. The Council's Urban Design Officer has advised that this would be difficult to achieve at densities of 35dph, which affects most of the site boundary with existing housing.

In addition to reducing density in relation to boundaries, previously it was identified that, as part of creating a development with varied character, there was the opportunity to reduce density in proximity to areas of open space within the site. This is particularly the case around the village green and the southern linear park in the south western part of the site. It was also identified that a more varied housing mix could be achieved by providing areas of lower density, larger housing that would prove attractive in Shavington.

The upshot of all this is that the figure of 256 units (456 in total) leads to higher density along the south eastern and western parcels of the site, areas that were identified for low density in the outline parameters. For this reason, the Council's Urban Design Officer believes the 456 number being sought is overly optimistic and would also lead to a form of development that would not relate positively to neighbouring properties and the general character of the area, that after all was previously farmland/countryside. It is further advised that this would also lead to a density that does not sufficiently fade toward the rural edge to the south. For these

reasons, the Council’s Urban Design Officer does not feel this number of dwellings is

<b>Shavington East - Outline approval</b>		<b>Gross density</b>	<b>Net density</b>
a) Gross site area (application form)	12.02ha	22.9dph	
b) Open space / landscape (DAS p54)	2.99ha		
d) Net Developable Area (DAS p54)	9.03ha (a-b)		30.45dph

appropriate.

The table above identifies housing numbers and respective densities between the approved remaining figure of 160 units and the number being applied for, 256 units. These, in the view of the Council’s Urban Design Officer, give a more realistic density of development that would help to address the issues identified in the preceding paragraphs.

As a comparison, the below compares an approved residential development at Shavington East, approved around the same time and which recently benefitted from approval of reserved matters. The sites are similar in that they were both rural/farmland prior to being developed and are on the edges of the settlement, albeit Shavington East has a more direct relationship to the wider countryside.

<b>Land South of Newcasetle Road - Outline approval (360 dwellings)</b>		<b>Gross density</b>	<b>Net density</b>
a) Gross site area (application form)	17.38ha	20.7dph	
b) Open space / landscape (DAS p54)	3.37ha		
c) Local Centre (DAS p54)	0.51ha		
d) Net Developable Area (DAS p54)	12.9ha (a-b&c)		28dph

Bearing in mind the higher net density for Shavington East, if that were to be applied to the entire net developable area for Shavington Triangle, it would result in a total development of circa. 393 units. If that figure were to be applied to the remaining developable area (i.e. the site excluding phase 1) then the number of units on the remaining land would be 245 (445 in total).

The Council’s Urban Design Officer has advised that this assessment illustrates that option 3 is not appropriate to the character of the site or its surroundings and would lead to an excessive and inappropriate form of development in this edge of village context. However, the analysis also identifies that, as a consequence of the excessive density of phase 1, the restriction to 360 would lead to an imbalanced development with too great a contrast between phase 1 and the remainder of the site. The Council’s Urban Design Officer has advised that this would not properly exploit the opportunities presented by the site and would lead to distinctive issues that would affect the success of the development in design terms (too low a density could highlight the issues around phase 1 and lead to street scenes with too much space between buildings in certain parts of the site).

The Council's Urban Design Officer has advised that *'However, the assessment also highlights the issues presented by the proposed upper number of 256 units, not least that the conceptual masterplan does not properly reflect the relationship to existing properties or to achieve greater fading of density within the southern part of the site, or in conjunction with key area of open space and landscape within the body of the site. In this respect it does not adequately reflect the edge of village character of the site. For these reasons the maximum figure of 256 units (456 in total) would depart from principles of the emerging design guide and therefore could not be supported.'*

Having had regard to the comparable site of Shavington East, The Council's Urban Design Officer has advised that *'...there is design justification to increase the overall yield of the site to similar gross and net densities, which would take the development beyond 400 units. The first table above identifies a number between 400 and 430 (total) based on net densities for the remainder of the site between 24.9 and 28.6 dph. This sits mid-range within the density range for the lower density area on the outline density parameter plan (p 55 of the DAS), which the remainder of the site largely occupies.'*

Notwithstanding a maximum number being specified, the Council's Urban Design Officer would expect the final number to be determined by the detailed layout design at ARM and this should be made clear by a note on the decision. There should also be a requirement for a detailed design code to be prepared to ensure that the quality of development is delivered and to address the issues highlighted above.

As a result of the above reasons, the alternative number of dwellings sought which is a maximum of 456 units would not be acceptable.

Following further conversations with the Council's Urban Design Officer, he has advised that a revised maximum figure of 415 dwellings, which would result in a density of 26.5dph, would be more appropriate. This figure of 415 would fall within the parameters of the density plan put forwards as part of the original application and would also adhere with the design principles of the emerging Cheshire East Council Design Guide.

As such, the principle of the removal of Condition 30 from 12/3114N is accepted, subject to the imposition of a further condition that the maximum number of dwellings that are permitted on the site are limited to 415 dwellings.

### **Other material considerations**

Notwithstanding the above, consideration needs to be given to other matters that need to be considered if this condition were to be removed and a revised number of dwellings approved.

### Housing Land Supply

Paragraph 47 of the National Planning Policy Framework 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.

The calculation of Five Year Housing supply has two components – the housing requirement – and then 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.

Taking account of the suggested rate of economic growth and following the methodology of the NPPG, the new calculation suggests that need for housing stands at 36,000 homes over the period 2010 – 2030. Although yet to be fully examined this equates to some 1800 dwellings per year.

The 5 year supply target would amount to 9,000 dwellings without the addition of any buffer or allowance for backlog. The scale of the shortfall at this level will reinforce the suggestion that the Council should employ a buffer of 20% in its calculations – to take account 'persistent under delivery' of housing plus an allowance for the backlog.

While the definitive methodology for buffers and backlog will be resolved via the development plan process this would amount to an identified deliverable supply of around 11,300 dwellings.

This total exceeds the total deliverable supply that the Council is currently able to identify – and accordingly it remains unable to demonstrate a 5 year supply of housing land.

This is a material consideration in support of the removal of this condition and an uplift in the number of dwellings sought by 96 units.

### Flooding and Drainage

As part of application 12/3114N, a Flood Risk Assessment (FRA) was received.

The findings of the report can be summarised as follows:

- The proposed residential development on Land South of Newcastle Road, Shavington and Wybunbury has been assessed with regards to flood risk.
- Hydraulic modelling has indicated the flood plain resulting from the 1 in 100 year + cc and 1 in 1000 year rainfall events.
- It has been illustrated that the development will not increase flood risk elsewhere.
- The measures proposed to deal with the effects and risks are appropriate.
- The exception test is not required for this assessment as the majority of the development site is located within Flood Zone 1. A small area adjacent to the water course is located within Flood Zone 2, and the development has a vulnerability classification of "more vulnerable". Areas within Flood Zone 3 are not proposed for development.
- Other origins of flooding have also been assessed and it has been found that there will be no increase in risk of flooding from land, groundwater or sewers as a result of this development.
- There are no anticipated negative impacts associated with the proposed development. Positive social, economic and environmental impacts will result from the proposed development provided mitigation measures outlined in Section 5 are adhered to.
- The Environment Agency have provided approval in principle to this report.
- The proposed on site drainage system will be suitable to attenuate flows up to and including the 1 in 100 year + 30% rainfall event.

- Space has been created within the development concept to provide areas for the storage and treatment of surface water.
- The discharge rates through the existing outfall culvert will not be increased by the proposals.
- The onsite sewers will be offered to United Utilities for adoption under a Section 104 agreement.

In response to this assessment, United Utilities and the Environment Agency considered the report and raised no objections subject to the imposition of appropriate planning conditions.

As part of this application, the Environment Agency and United Utilities have once again raised no objections, subject to conditions. The Council's Floor Risk Manager has advised that they have no objections in principle subject to it being conditioned that;

*'No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the use of the building commencing.'*

This matter is largely covered by the proposed Condition 5. As such, it is proposed that the wording of this condition be amended to reflect the above should the application be approved.

### Public Open Space (POS)

As part of application 12/3114N, it was concluded that there would be a requirement for the provision of 6,000sqm of shared recreational open space and 8,000sqm of shared children's play space (14,000sqm total). In addition, there was a requirement to provide a Neighbourhood Equipped Area for Play (NEAP), a Multi Use Games Area (MUGA), an outdoor gym, an area of allotments and 2 areas of community woodland. It was also agreed that the management of the green spaces would be secured via a management company.

All of the above, including the detail, was secured via a S106 Agreement.

As part of the first reserved matters application received (ref: 14/3039N), an area of Public Open Space of 16.74 acres (67,644sqm) was secured.

It was advised as part of this reserved matters application that the NEAP, x2 MUGA's, allotment, 2 community orchards and the location of the outdoor gym would fall outside of the red edge of this first reserved matters application.

As such, a variation of the S106 to ensure that the outstanding POS requirements are secured will be required.

### Affordable Housing

As part of the original outline application, it was agreed that the applicant would provide a 30% on-site housing provision with a 35-65% split between intermediate tenure and rented dwellings. This was secured via the associated S106 Agreement. Therefore, irrespective of

the actual site unit numbers, 30% of the overall new houses on site will be affordable, as defined by the legal agreement

As part of the first Reserved Matters application covering part of the site only, 60 affordable houses were secured for a scheme of 200 units (30%).

As a 30% requirement remains in place, secured by the S106 for all future phases / Reserved Matters which come forward, no objections are raised.

### Amenity

The siting of the proposed additional dwellings would not come any closer to neighbouring properties than the parameters agreed at outline stage. The applicant intends to basically provide smaller units and / or smaller plots on site to accommodate a greater number. As such, it is not considered that the proposal would create any new amenity issues in relation to loss of privacy, light or visual intrusion.

The Council's Environmental Protection team have also raised no new objections.

### Public Rights of Way

The development site includes the alignment of Public Footpath No. 11 in the Parish of Shavington cum Gresty / Hough Public Footpath No. 21 (part) in the Parishes of Wybunbury and Shavington cum Gresty, as recorded on the Definitive Map and Statement, the legal record of Public Rights of Way.

A Diversion Order was made on 30<sup>th</sup> October 2014 in relation to these Public Footpaths in order to reflect the layout for which planning permission was granted.

The Council's PROW Officer has advised that the proposed Variation of Condition must therefore not affect the diverted line of the Public Footpaths, as described and shown in the Order "*Town and Country Planning Act 1990 s257, The Cheshire East Borough Council (Hough Public Footpath No. 21 (Part) (in the Parishes of Wybunbury and Shavington cum Gresty and public Footpath no. 11 Parish of Shavington cum Gresty) Public Path Diversion Order 2014*".

As advised, the general block layout of the overall site remains unchanged from the 2012 application. As such, the Public Footpath arrangements remain unaffected by the proposed application.

### Ecology

As part of the original outline application the Council's Nature Conservation Officer advised that the potential residual adverse impacts associated with the scheme included the loss of; hedgerows, semi-improved grassland, common toad terrestrial habitat, breeding bird and potential barn owl foraging habitat.

It was concluded that these impacts would be off-set by means of a commuted sum secured by means of a section 106 agreement. The commuted sum would be used to deliver habitat

creations within the Meres and Mosses Natural Improvement Area (NIA) which is located to the immediately to the south of the proposed development site.

The applicant offered an appropriate commuted sum and consequently any proposed impacts were considered to be mitigated against.

The proposed application does not alter this position subject to the S106 Agreement being amended to reflect the updated position.

### Highway Safety

In the original outline application 12/3114N the Transport Assessment (TA) submitted with the application assessed a development of 450 dwellings.

The highway comments submitted on the outline application concluded that there were no objections to the development subject to a number of financial contributions to improve the local infrastructure that the site traffic would impact upon.

Given that the development impact has been previously assessed and the proposed revised maximum increase in the dwellings now sought would be just 6 more, the Council's Head of Strategic Infrastructure (HSI) has advised that there is no reason to object to the removal of Condition 30 subject to all of the highway contributions required on the outline application being provided.

The S106 Agreement will need to be updated to reflect the proposed changes.

### Trees and Hedgerows

Concerns were raised in the Forestry Comments on the previous application as to whether the number of dwellings would be achievable on this site. The Council's Tree Officer has advised that given the previous application (12/3114N) was assessed for a development of 450 dwellings, he has no significant concerns from an Arboricultural perspective.

The previous outline approval included conditions for the retention of Important Hedgerows and the submission of a Tree Protection Plan.

Given the layout may be subject to amendments at Reserved Matters stage and that existing trees and hedgerows may be affected, the Council's Tree Officer has advised that he would seek a condition that for each of the subsequent phases of development that come forward, the Reserved Matters application should be accompanied by a detailed Arboricultural Implication Study. This is to ensure that consideration be given to the appropriate design of the development to ensure the sustainable long term retention of trees.

It is advised that subsequent Reserved matters applications shall be supported by an Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with Sections 5 and 6 of *BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations*.

In addition, the original conditions shall be re-attached.

## Education

As part of the Outline Planning Permission 12/3114N, a financial agreement to offset the impact of 360 dwellings upon the local education capacity was agreed.

No specific figure was quoted within the S106 agreement. The sums were to be calculated and provided on the occupation of the 101<sup>st</sup> dwelling or within 1 year of the first occupation of any dwelling comprised within the development.

None of these triggers have yet been met and as such, to date no provision provided.

Once the trigger points are reached, the Council will seek the sum based on a set formula, the calculation of which will be determined following the relevant Reserved Matters application.

Using the latest formula, for 415 dwellings, the overall revised Education provision required would be £855,229.96.

The Council's Education Officer also seeks to amend where the proposed monies are to be spent. This will be secured as an update to the S106 Agreement subject to the alternative destination being CIL compliant.

## **Levy (CIL) Regulations**

In order to comply with the Community Infrastructure Levy (CIL) Regulations 2010 it is now necessary for planning applications with legal agreements to consider the issue of whether the requirements within the S106 satisfy the following:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

The development would result in no change to the agreed requirements of the S106 Agreement. More specifically, there will remain;

- A 30% on-site affordable housing provision
- An education provision based on a defined formula per unit of development
- A bus stop contribution and strategic transport contributions are fixed to; £215,000, £85,000 and £230,000 respectively
- A fixed off-site ecology sum of £50,000

It is considered that these contributions are fair and reasonable to the development.

## **Planning Balance**

The applicant seeks to remove condition 30 from planning permission 12/3114N which restricted the number of dwellings on site to 360 units. In turn a revised maximum limit of 456 units is proposed.

Conditions, in order to be acceptable need to adhere the 6 tests for planning conditions within the NPPF/NPPG. These tests are whether the conditions are; necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

As condition 30 was imposed for design reasons, and the Council's Urban Design Officer has subsequently advised that further dwellings could be accommodated on the site in light of the density of development approved as phase 1, amongst other reasons, it is no longer considered that this condition is 'necessary'.

It is however, considered that the alternative proposed maximum figure of 456 units would not be acceptable on design grounds. As such, an alternative maximum figure of 415 dwellings is proposed and this should be secured by condition. This alternative figure would fall within the parameters of the density plan put forwards as part of the original application and would also adhere with the design principles of the emerging Cheshire East Council Design Guide.

Given the Council's Housing Land Supply situation and because the removal of this condition would create no new issues other than design, upon those considered to be acceptable as part of application 12/3114N, it is considered that the application would adhere with the relevant Local and National Planning Policies.

As such, it is considered that the removal of Condition 30 be approved, subject to a variation to the S106 Agreement and conditions.

## **RECOMMENDATION**

**APPROVE subject to conditions and completion of a Deed of Variation to a Section 106 Agreement on application 12/3114N to secure;**

1. Changes to reflect the latest relevant plans, revised application number and any other relevant minor changes to the text.
2. Changes to the Education provision

### **And conditions;**

1. Submission of Reserved Matters for each phase
2. Next Reserved Matters (Phase 2) by 23<sup>rd</sup> January 2017 and remainder of all Reserved Matters applications within 10 years of this date
3. Plans
4. No approval for indicative layout
5. Submission / approval and implementation of a scheme to manage the risk of flooding from overland flow of surface water unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
6. The development shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) and the mitigation measures detailed within the FRA unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
7. Submission / approval and implementation of a scheme is agreed to protect the watercourses and ponds on site and to provide a 5 metre wide undeveloped buffer zone around them

measured from top of bank unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application

8. The proposed river channel and corridor shall be constructed in accordance with a scheme to include the following features:
  - Detailed designs of new watercourse corridor within the site, which is fully integrated as part of overall scheme design, in such as way as to positively contribute to the nature conservation, landscape and amenity value of the site
  - Plans showing the extent and layout of the undeveloped buffer zone between the new development and the stream.
  - This undeveloped buffer zone shall be a minimum of 5 metres wide measured from bank top. This zone shall be without structure and domestic gardens
  - Details of planting schemes
  - Details demonstrating how the buffer zone will be protected during development and managed/maintained over the long term

Unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application

9. Reserved matters to make provision for houses to face waterfronts and footpaths of Cherry Brook corridor and the footpath between Newcastle Road and Stock Lane across the site unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
10. The site shall be drained on a total separate system, with only foul drainage connected into the public foul sewerage system. Surface water should discharge to soakaway and or watercourse. No surface water will be allowed to discharge in to the public sewerage system
11. Submission / approval and implementation of details of Sustainable Drainage Systems (SuDS) unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
12. The hours of demolition / construction of the development (and associated deliveries to the site) shall be restricted to: Monday – Friday 08:00 to 18:00 hrs; Saturday 09:00 to 14:00 hrs; Sundays and Public Holidays Nil
13. All Piling operations shall be undertaken using best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties. All piling operations shall be restricted to: Monday – Friday 09:00 – 17:30 hrs; Saturday 09:00 – 13:00 hrs; Sunday and Public Holidays Nil
14. Submission approval and implementation of a piling method statement unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
15. Submission / approval and implementation of details of location, height, design, and luminance of any proposed lighting unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
16. Noise levels from any services plant shall be designed to be 10dB below the existing background noise level at the nearest residential property
17. Submission / approval and implementation of noise mitigation measures for properties adversely affected by road traffic noise from Newcastle Road to provide for;
  - the internal noise levels defined within the “good” standard within BS8233:1999.
  - provisions for ventilation that will not compromise the acoustic performance of any proposals whilst meeting building regulation requirements.

Unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application

18. Submission / approval and implementation of dust mitigation during development unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
19. Submission / approval of revised Air Quality assessment to take into consideration Nantwich Road and mitigation against any impact unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
20. Submission / approval of updated archaeological report unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
21. At least 10% of predicted energy requirements from decentralised and renewable or low-carbon sources, unless it can be demonstrated that this is not feasible or viable unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
22. Provision / approval of sustainable design strategy / plan with reserved matters unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
23. Submission / approval of construction details for access / roads unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
24. Provision of access / roads
25. Provision of visibility splays of 2.0m x 43m in both directions at each of the access points
26. Submission / approval and implementation of parking detail unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
27. Submission / approval of updated contaminated land report unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
28. Development to be in accordance with principles set out in Design and Access Statement
29. Submission of Statement Design principles with reserved matters to take into account, the Master Plan, the Parameters Plan and Phasing Plan and to include the principles for:
  - determining the design, form, heights and general arrangement of external architectural features of buildings including the roofs, chimneys, porches and fenestration;
  - determining the hierarchy for roads and public spaces;
  - determining the colour, texture and quality of external materials and facings for the walls and roofing of buildings and structures;
  - the design of the public realm to include the colour, texture and quality of surfacing of footpaths, cycleways, streets, parking areas, courtyards and other shared surfaces;
  - the design and layout of street furniture and level of external illumination;
  - the laying out of the green infrastructure including the access, location and general arrangements of the multi use games area, the children's play areas and allotments;
  - sustainable design including the incorporation of decentralised and renewable or low carbon energy resources as an integral part of the development
  - ensuring that there is appropriate access to buildings and public spaces for the disabled and physically impaired.

Unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application

30. Submission / approval and implementation of boundary treatment unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
31. Submission / approval and implementation of materials unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
32. Submission / approval of landscaping unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
33. Implementation of landscaping
34. Important hedgerows and trees to be retained and to be incorporated within reserved matters layouts unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
35. Submission / approval of tree and hedgerow protection measures unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
36. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the Approved Protection Scheme.
37. Replacement hedge / tree planting unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
38. Reserved Matters to include details of bin storage unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
39. Breeding Bird Survey for works in nesting season unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
40. Provision of bird and bat boxes unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
41. Retention and enhancement of the on-site ponds
42. Submission / approval and implementation of Construction management plan unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
43. Retention of no.90 Stock Lane
44. Any future reserved matters application to be supported by a survey and mitigation proposals
45. Provision and implementation of Travel Plan unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
46. Provision of new footway to Newcastle Road prior to first occupation
47. No 3-storey development
48. No development shall commence until a drainage scheme for the land at rear of Dig Lane has been submitted to and approved in writing by the LPA unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
49. The Reserved Matters shall make provision for a wildlife corridor connecting 2 existing ponds and creating 2 more ponds and coppice at rear of Dig Lane planted with native trees and shrubs. Area fenced off with Cheshire Railings running full length of Dig Lane with 2 access

- gates for maintenance unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
50. The Reserved Matters shall make provision for bungalows backing on to the existing bungalows in Stock Lane Unless such details have already been approved in writing in respect of the relevant part of the site pursuant to a formal discharge of conditions application
  51. Each of the subsequent phases of development that come forward, the Reserved Matters application should be accompanied by a detailed Arboricultural Implication Study
  52. Each subsequent Reserved matters applications shall be supported by an Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with Sections 5 and 6 of *BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations*.
  53. Maximum number of dwellings permitted is 415

In order to give proper effect to the Board's intentions and without changing the substance of the decision, authority is delegated to the Head of Planning (Regulation), in consultation with the Chair (or in his absence the Vice Chair) of the Strategic Planning Board, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.

Should this application be the subject of an appeal, authority shall be delegated to the Head of Planning (Regulation), in consultation with the Chairman of the Strategic Planning Board, to enter into a deed of variation of the agreed and signed S106 Agreement to secure:-

1. Relevant changes to reflect the latest relevant plans, revised application number and any other relevant minor changes to the text.
2. Changes to Education provision

