

# **Southern Planning Committee**

## **Agenda**

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<b>Date:</b>	<b>Wednesday, 7th March, 2012</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Council Chamber, Municipal Buildings, Earle Street, Crewe CW1 2BJ</b>

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**Members of the public are requested to check the Council's website the week the Southern Planning Committee meeting is due to take place as Officers produce updates for some or all of the applications prior to the commencement of the meeting and after the agenda has been published.**

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

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

**1. Apologies for Absence**

To receive apologies for absence.

**2. Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests and for Members to declare if they have pre-determined any item on the agenda.

**3. Minutes of Previous Meeting (Pages 1 - 6)**

To approve the minutes of the meeting held on 15 February 2012.

**4. Public Speaking**

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

Please contact Julie Zientek on 01270 686466

E-Mail: [julie.zientek@cheshireeast.gov.uk](mailto:julie.zientek@cheshireeast.gov.uk) with any apologies, requests for further information or to arrange to speak at the meeting

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

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

5. **12/0166N The Bank, Station Road, Wrenbury CW5 8EX: Demolition of Bank and Build New One Dormer Bungalow (Resubmission) for Mr T Morgan** (Pages 7 - 14)

To consider the above planning application.

6. **12/0222N Land Off Marsh Lane, Nantwich, Cheshire: Reserved Matters Application for 13 No. Detached Dwellings, Parking and Amenity Space and the Retention of Public Open Space/Children's Playground including Appearance, Landscaping, Layout, Scale and Access Following Outline Approval of P05/0121 for Elan Real Estate Ltd & British Waterways** (Pages 15 - 24)

To consider the above planning application.

7. **11/3867N Land to Rear of 157 Crewe Road, accessed via Gutterscroft, Haslington CW1 5RJ: Construction of 11 Three Storey Dwellings for Lothlorian Ltd** (Pages 25 - 36)

To consider the above planning application.

8. **11/4149N Earl of Crewe Hotel, Nantwich Road, Crewe, Cheshire CW2 6BP: Demolition of Existing Buildings and Construction of New Foodstore with Associated Car Parking and Servicing Facilities for Aldi Stores Ltd** (Pages 37 - 56)

To consider the above planning application.

9. **12/0234N Rose Hall, Aston Juxta Mondrum, Nantwich CW5 6DS: Proposed Two Storey Extension to Form Residential Annex for Mrs A McAlpine** (Pages 57 - 62)

To consider the above planning application.

10. **12/0250C Land On Oak Tree Lane, Cranage: Demolition of The Haven and New Farm, Oak Tree Lane, and Construction of Two New Replacement Dwellings on Separate Site at Oak Tree Lane for Ms Pat Davies** (Pages 63 - 70)

To consider the above planning application.

11. **12/0325N The Printworks, Crewe Road, Haslington, Crewe, Cheshire CW15RT: Proposed Replacement Dwelling for Previously Approved Residential Conversion for Nigel Hartley** (Pages 71 - 88)

To consider the above planning application.

12. **12/0384C Grove Inn, Manchester Road, Congleton CW12 1NP: Replacement of Vacant Public House with Convenience Retail Outlet Store for Seven Ten (Cheshire) Ltd** (Pages 89 - 96)

To consider the above planning application.

13. **Appeal Against Non-Determination: Land off Wyche Lane, Bunbury CW6 9PS (Application No. 11/2423N)** (Pages 97 - 116)

To consider the above planning application and to instruct the Head of Development to make representations to the Planning Inspectorate accordingly in respect of the forthcoming appeal against non-determination of the application.

**THERE ARE NO PART 2 ITEMS**

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Southern Planning Committee**  
held on Wednesday, 15th February, 2012 at Council Chamber, Municipal  
Buildings, Earle Street, Crewe CW1 2BJ

**PRESENT**

Councillor G Merry (Chairman)  
Councillor M J Weatherill (Vice-Chairman)

Councillors P Butterill, J Clowes, W S Davies, M Jones, A Kolker, D Marren,  
M A Martin, D Newton, M Sherratt and A Thwaite

**APOLOGIES**

Councillors L Gilbert, S McGrory and G Wait

**OFFICERS PRESENT**

David Malcolm (Southern Area Manager – Development Management)  
Rachel Goddard (Senior Lawyer)  
Gaynor Hawthornthwaite (Democratic Services Officer)  
Paul Jones (Democratic Services Team Manager) (for Item 8 only)

**141 DECLARATIONS OF INTEREST**

Councillor Newton declared a personal and prejudicial interest in application number 11/3899N on the grounds that he lives two doors away from the property. In accordance with the code of conduct, he withdrew from the meeting during consideration of this item.

Councillor Butterill declared a personal interest in application number 11/3899M on the grounds that she is a member of Nantwich Town Council and Nantwich Civic Society. In accordance with the code of conduct, she remained in the meeting during consideration of this item.

Councillor Weatherill declared a personal interest in application number 11/4530N on the grounds that she was a board member of Wulvern Housing two years ago. In accordance with the code of conduct, she remained in the meeting during consideration of this item.

Councillor Marren declared a personal interest in application number 11/3899N on the grounds that he was a member of Nantwich Town Council. In accordance with the code of conduct, he remained in the meeting during consideration of this item.

Councillor Merry declared a personal interest in application number 11/4396C on the grounds that she was a member of Sandbach Town Council.

Gaynor Hawthornthwaite, Democratic Services Officer, declared a personal and prejudicial interest in respect of application number 11/3548C on the grounds that she was Clerk to Warmingham Parish Council and had submitted objections to this application, on behalf of Warmingham Parish Council. In accordance with the code of conduct, she withdrew from the meeting during consideration of this item.

142        **MINUTES OF PREVIOUS MEETING**

RESOLVED – That the minutes of the meeting held on 25 January 2012 be approved as a correct record and signed by the Chairman

143        **PUBLIC SPEAKING**

RESOLVED – That the public speaking procedure be noted.

144        **11/3548C THIMSWARRA FARM, DRAGONS LANE, MOSTON, SANDBACH, CHESHIRE CW11 3QB: CHANGE OF USE OF LAND TO USE AS RESIDENTIAL CARAVAN SITE FOR ONE GYPSY FAMILY WITH TWO CARAVANS, INCLUDING LAYING OF HARDSTANDING AND ERECTION OF STABLES FOR MR DENNIS SHERIDAN**

Note: Gaynor Hawthornthwaite left the meeting prior to consideration of this item.

Note: Councillor J Wray (objector) and Mr Wright (objector) attended the meeting and addressed the Committee on this matter.

The Committee considered a report regarding the above planning application and a written update.

RESOLVED – That, contrary to the planning officer's recommendation for approval, the application be REFUSED for the following reason:

- Unsustainable location away from services contrary to GR1, H8 and HOU6.

*After the consideration of this item, Councillor Sherratt arrived to the meeting.*

145      **11/4396C ELWORTH HALL FARM, DEAN CLOSE, SANDBACH,  
CHESHIRE CW11 1YG: VARIATION OF APPROVED PLANS  
CONDITION TO ALLOW FOR SUBSTITUTION OF HOUSE TYPE ON  
PLOTS 5,12 & 20 AND HANDING OF HOUSE ON PLOT 15 FOR  
ROWLAND HOMES LTD**

Note: Mr J Keeble and Mr D Harrison (objectors) attended the meeting and addressed the Committee on this matter.

The Committee considered a report regarding the above planning application.

RESOLVED – That the application be APPROVED subject to:

(a) A Deed of Variation to reference the new permission

(b) the following conditions:

1. Standard time limit
2. Approved Plans
3. Submission / approval / implementation of detached garage details
4. Submission / approval / implementation of samples of the materials
5. Submission / approval / implementation of details of the finished floor levels
6. Submission / approval of a scheme of landscaping, boundary treatments and tree protection
7. Implementation of landscaping scheme
8. Retention and implementation of tree protection
9. Implementation of boundary treatments
10. Submission / approval / implementation of details of the surfacing for the access road and shared surfaces
11. Provision of car parking
12. Submission / approval / implementation of drainage scheme
13. Submission / approval / implementation of means of accommodating any breeding birds and roosting bats
14. Submission / approval / implementation of details of external lighting to the access road and shared surfaces
15. Submission / approval / implementation of contaminated land investigation/remediation.

146      **11/4579C 38, BROOKLANDS DRIVE, GOOSTREY CW4 8JB:  
RESUBMISSION OF APPLICATION 10/4947C - REVISED PROPOSALS  
FOR NEW FAMILY DWELLING IN EXISTING DOMESTIC CURTILAGE  
FOR MR & MRS S OCCLESTON**

Note: Mr N Williams (objector) and Mr C Bailey (on behalf of the agent) attended the meeting and addressed the Committee on this matter.

The Committee considered a report, an oral report of the site inspection and an oral update. The Southern Area Manager – Development Management, reported that the total number of objections received had increased from 7 to 8.

RESOLVED – That, contrary to the planning officer's recommendation for approval, the application be REFUSED for the following reason:

- Overdevelopment of the site
- Overbearing impact on neighbouring property contrary to GR2

147      **11/4530N SHERBORNE ROAD, CRANBORNE ROAD, ROEDEAN  
WALK, ABBEY PLACE, CREWE, CHESHIRE CW1 4LA: RESIDENTIAL  
ESTATE IMPROVEMENT WORKS OF 106 HOUSES, INCLUDING THE  
DEMOLITION (12 HOUSES), NEW BUILD (4 HOUSES), REMODELLING  
OF EXISTING PROPERTIES (90 HOUSES), NEW ACCESS ROADS,  
TRAFFIC CALMING AND OTHER ENVIRONMENTAL WORKS FOR MR  
N POWELL WULVERN HOUSE**

Note: Ms V Wright (objector) attended the meeting and addressed the Committee on this matter.

The Committee considered a report regarding the above planning application, a written update and a verbal update from the Southern Area Manager – Development Management, who reported that affordable housing was not an issue in this application.

RESOLVED – That the application be APPROVED subject to the following conditions:

1. Standard time limit 3 years
2. Materials to be submitted and approved in writing
3. Surfacing materials to be submitted and approved in writing
4. Boundary treatments to be submitted and approved in writing, including fencing along Stamp Avenue
5. Landscape to be submitted and approved in writing
6. Landscape to be completed in accordance with the approved details
7. Drainage details to be submitted and approved in writing
8. Tree protection in accordance with BS5837:2005
9. Development to proceed in accordance with the approved plans
10. A timetable for the demolition of existing buildings to be submitted and approved. All materials of demolition to be permanently removed from the site

11. No development within 3 metres of the public sewer which crosses the site
12. Details of gates to be submitted and approved in writing. Gates to be accessible by disabled people.
13. 10% Renewable energy provision to be submitted and agreed in writing

148      **11/3899N 52, PILLORY STREET, NANTWICH, CHESHIRE CW5 5BG: TO ERECT TWO STOREY EXTENSION AT REAR TO PROVIDE STAFF FACILITIES FOR THE GROUND FLOOR RETAIL UNIT AND TO CONVERT THE FIRST FLOOR INTO A SELF-CONTAINED FLAT FOR MRS V SOLAN, C/O KDP ARCHITECTS**

Note: Councillor Newton left the meeting prior to consideration of this item.

Note: Ms C Matthews (objector) and Mr G Powell (agent on behalf of the applicant) attended the meeting and addressed the Committee on this matter.

The Committee considered a report regarding the above planning application and an oral report of the site inspection by the Principal Planning Officer.

RESOLVED – That the application be APPROVED subject to:

1. Standard Time
2. Approved Plans
3. Materials to be submitted
4. Rainwater goods – colour and material to match those on existing
5. Fenestration to be set behind reveals
6. Timber windows and doors
7. Specification of mortar mix
8. Brickwork to be constructed with bonding to match the existing building.
9. Archaeology – 7 days written notice of commencement of development and provision of access to the Development Control Archaeologist to observe and record the work
- 10.No parking of cars in rear yard area.

149      **11/3867N LAND TO REAR OF 157 CREWE ROAD, ACCESSED VIA GUTTERSCROFT, HASLINGTON CW1 5RJ: CONSTRUCTION OF 11 THREE STOREY DWELLINGS FOR LOTHLORIAN LTD**

Note: Councillor R Hovey (on behalf of Haslington Parish Council), Mr Rigby (objector) and Ms S Jones (objector) attended the meeting and addressed the Committee on this matter.

The Committee considered a report regarding the above planning application and a written update.

RESOLVED – That the application be DEFERRED for clarification on revised site edged red and for re-consultation.

150        **12/0166N THE BANK, STATION ROAD, WRENBURY CW5 8EX:  
DEMOLITION OF BANK AND BUILD NEW ONE DORMER BUNGALOW  
(RESUBMISSION) FOR MR T MORGAN**

Note: Mr T R Morgan (the applicant) attended the meeting and addressed the Committee on this matter.

The Committee considered a report regarding the above planning application and a written update.

RESOLVED – That the application be DEFERRED for a Committee site inspection.

The meeting commenced at 2.00 pm and concluded at 4.40 pm

Councillor G Merry (Chairman)

Application No: 12/0166N  
Location: The Bank, STATION ROAD, WRENBURY CW5 8EX  
Proposal: Demolition of Bank and Build New One Dormer Bungalow (Resubmission)  
Applicant: Mr T Morgan  
Expiry Date: 28-Feb-2012

**SUMMARY RECOMMENDATION**

Refuse

**MAIN ISSUES**

- Principle of Development
- Impact on Character and Appearance of Streetscene /Open Countryside
- Impact on the Amenity of Neighbouring properties
- Impact on Highway Safety
- Impact on Protected Species

**REASON FOR REFERRAL**

This application was to be dealt with under the Council's scheme of delegation. However, the application has been called in by Cllr Davies, for the following reason:

*"this is a building worthy of retaining and should be able to be converted into a property. I would like Councillors on the Planning Committee to see the situation"*

The application has been deferred from the previous meeting for members to carry out a site visit.

**DESCRIPTION OF SITE AND CONTEXT**

The application site forms a small unoccupied building located within the Open Countryside as defined by the Borough of Crewe and Nantwich Replacement Local Plan Proposals Map. The building is a modest singles storey property set within a modest curtilage. The building is not in any existing use. The building is set close to the public highway and a railway line. Adjacent to the site is Wrenbury railway station and level crossing. There are residential properties opposite the site and fields to the side and rear.

**DETAILS OF PROPOSAL**

This is a full planning application for the demolition of the existing building and its replacement with a detached dormer bungalow. The building would be 9m in width, 5.6m in depth, and would be 2.8m to eaves and 6m to ridge. The scheme includes two dormer windows in both the front and rear elevations. A single garage is also proposed which would be 3m in width and 5m in depth. The dwelling would be set within a domestic curtilage of 30m in length and 16m in width.

## RELEVANT HISTORY

**11/2688N** – A planning application was withdrawn for the Change of Use from Bank/Shop to Bed-Sit with Rear Extension on 5<sup>th</sup> September 2011.

**P07/0750** – Planning permission refused for Change of Use from Bank/Shop to Dwelling, Rear Extension, Garage and Change of Use of Agricultural Land to Garden on 29<sup>th</sup> May 2008. This application was refused on the ground that the scale, form and design of the building would harm the open countryside, that the building is incapable for conversion without major reconstruction, that no Great Crested Newt Survey was submitted, that no Noise and Vibration Assessment was carried out and lack of evidence of alternative uses on the site. The application was dismissed at appeal.

**7/11205** – Planning permission was approved for change of use to ladies and childrens clothing shop on 19<sup>th</sup> July 1984.

## POLICIES

### Local Plan Policy

- NE.2 (Open Countryside)
- NE.5 (Nature Conservation)
- NE.9 (Protected Species)
- BE.1 (Amenity)
- BE.2 (Design Standards)
- BE.3 (Access and Parking)
- BE.4 (Drainage, Utilities and Resources)
- BE.5 (Infrastructure)
- RES.5 (Housing in the Open Countryside)
- TRAN.9 (Car Parking Standards)

### National Guidance

PPS1 – Delivering Sustainable Development  
PPS3 - Housing

Draft National Planning Policy Framework (2011)

## CONSULTATIONS (External to Planning)

**Environmental Health** – Insufficient information submitted with regard to noise and vibration. It is recommended that a condition be attached to any approval for a scheme to be provided which details how the proposed dwelling would be protected from noise and vibration. A condition relating to construction hours is recommended. A further informative relating to contaminated land is also advised.

**Strategic Highways Manager** – No objection subject to informatives ensuring that the access is constructed to CEC standard

**United Utilities** – No objection

**Network Rail** – No objection in principle. However advise that at no point should the sight or sight distances of the level crossing be obscured or deteriorated during the construction and operational period including the parking of vehicles, equipment and materials. A trespass proof fence of at least 1.8m in height should be provided to the railway side boundary. Drainage should not be onto Network Rail land and soakaways should not be within 10m of the boundary. Network rail would need to be consulted on any changes to ground levels, and the development should not impact upon the safe operation of the railway.

## **VIEWS OF THE PARISH COUNCIL**

None received at time of writing report

## **OTHER REPRESENTATIONS**

None received at time of writing report

## **APPLICANT'S SUPPORTING INFORMATION**

Plans, Forms, Photographs, e-mail correspondence and a Noise and Vibration Monitoring report

## **OFFICER APPRAISAL**

### **Principle of development**

This application site is located within the Open Countryside and forms a former bank building. There are no Policies within the Local Plan for the replacement of non residential buildings to residential buildings. In the absence of any such specific Policy any approval would be a departure to the Local Plan. However, it would be necessary to look at other Policies for residential development in Open Countryside locations, and any other material considerations in this instance.

Policy NE.2 is the overarching Policy for development in Open Countryside locations which only allows for appropriate development. Policy RES.5, which relates to residential development in Open Countryside locations, states that residential development will be restricted to limited infilling, or a dwelling which is required by a person engaged full time in agriculture or forestry.

No evidence has been submitted to demonstrate that the dwelling is required for a person engaged in agriculture. With regard to infilling, the policy states that this should be a small gap within an otherwise built up frontage. The existing building is a standalone building not immediately bounded on any side by residential development and therefore cannot be considered as infill development. Therefore the proposal does not satisfy Local Plan Policy for residential development in an Open Countryside location.

There is a presumption in favour of the use of brownfield land over greenfield land. The application building and its immediate curtilage is previously developed land, and is therefore brownfield land, which weighs in favour of the development. However the dwelling is not sited entirely within the curtilage of this building and requires the use of the field to the rear of the site, which is Greenfield land. In addition the residential curtilage and garage would be sited on Greenfield land.

The existing building on the site is approximately 74 cubic metres in volume. The proposed dwelling would be 226 cubic metres and the garage would be 48 cubic metres. The proposed development would have a total volume of 274m<sup>3</sup>. In the light of this the building would be more than 3.5 times greater in volume than the building which it replaces. Therefore the existing building is being replaced by something which is significantly greater. In the absence of guiding policy it is considered that this additional volume would be unacceptable in this open countryside location.

The Inspector in considering the 2007 application for extensions noted that *“Together with its proposed garden to be enclosed from the adjoining field, the new dwelling would extend its bulk, and its domestic influence and paraphernalia, as a prominent incursion into the open countryside. The new buildings would be highly visible from Station Road, particularly on the approach from the north-west, in which the field gateway together with the proposed 3m wide access to the appeal site would together open up a view, in depth, of the extension, garage and garden. The diminutive existing building itself, in contrast, has a visual impact which is both minimal and confined to the immediate road frontage”*. It is considered that these proposals would have a similar, if not greater, impact to that previously observed by an Inspector.

It is noted that Cheshire East Council also cannot demonstrate a 5 year housing land supply and, in such instances, favourable consideration should be given to suitable schemes for residential development. Whilst this is acknowledged it is considered that this scheme for one dwelling would not outweigh the harm identified.

### **Impact on the character and appearance of the streetscene and Open Countryside**

As identified above, the proposed development would be significantly larger than the development which it replaces. As such this, unjustified development, would cause significant detrimental harm on the character and appearance of the open countryside. Furthermore, the proposal requires the use Greenfield land to accommodate the dwelling itself and associated garage and curtilage. This is considered to be inappropriate development in the open countryside which would cause harm to its character and appearance.

### **Impact on the Amenity of Nearby Properties and Proposed Dwelling**

There are no properties immediate opposite to the site, however, there are residential properties within close proximity. Notwithstanding this, these properties are sited and of sufficient distance away from the application site that they would not be detrimentally impacted by the proposed development through loss of daylight, privacy, overbearing or in any other way.

The proposed dwelling is sited in very close proximity to a railway line. Therefore, consideration needs to be given to the amenity impact that may be borne on any future occupants of that property. A noise and vibration survey has been submitted to support the application. Environmental Health consider that this survey is insufficient and the report does not state as to which Noise Exposure Category of PPG 24 the site falls into and what proposed noise mitigation measures are required to protect the proposed occupants from noise. Notwithstanding this deficiency, Environmental Health have concluded that a condition can be attached to any permission for the further information to be submitted prior to the commencement of development.

### **Impact on Highway Safety**

The application proposes the construction of a new vehicular access, and off street parking and turning area. The proposals would provide off street parking for at least two vehicles, which is an acceptable off street provision. The Strategic Highways Manager has commented that they have no objection to the application provided that the access is constructed to CEC standard. Therefore, it is considered that there are no highway safety issues arising from this development.

### **Impact on Protected Species**

The application proposals have been supported by an e-mail from the Council's Nature Conservation Officer stating that no survey for Great Crested Newts would be required for an application for minor extensions to the building. This application proposes the demolition of the building. The application building is of an age, design and condition which has the potential to support habitat for bats. As the application has not been supported by a Protected Species Survey to determine the presence/absence or use of the building for bats then there is insufficient information to determine the impact that the proposals would have. In the absence of such information the scheme would be contrary to Policies NE.5 and NE.9 of the Local Plan and guidance contained within PPS9.

### **Other Matters**

The submitted plan shows an agricultural track to the north and west of the application site. Overhead photographs, and the Councils GIS, show that the junction with Station Road is actually much closer to the application site, with the track crossing the proposed residential curtilage. The development may not be able to be carried out without diverting this track. Notwithstanding this, the application has been considered on the basis of the change of use of the land to the extent shown in the application forms.

### **CONCLUSIONS AND REASON(S) FOR THE DECISION**

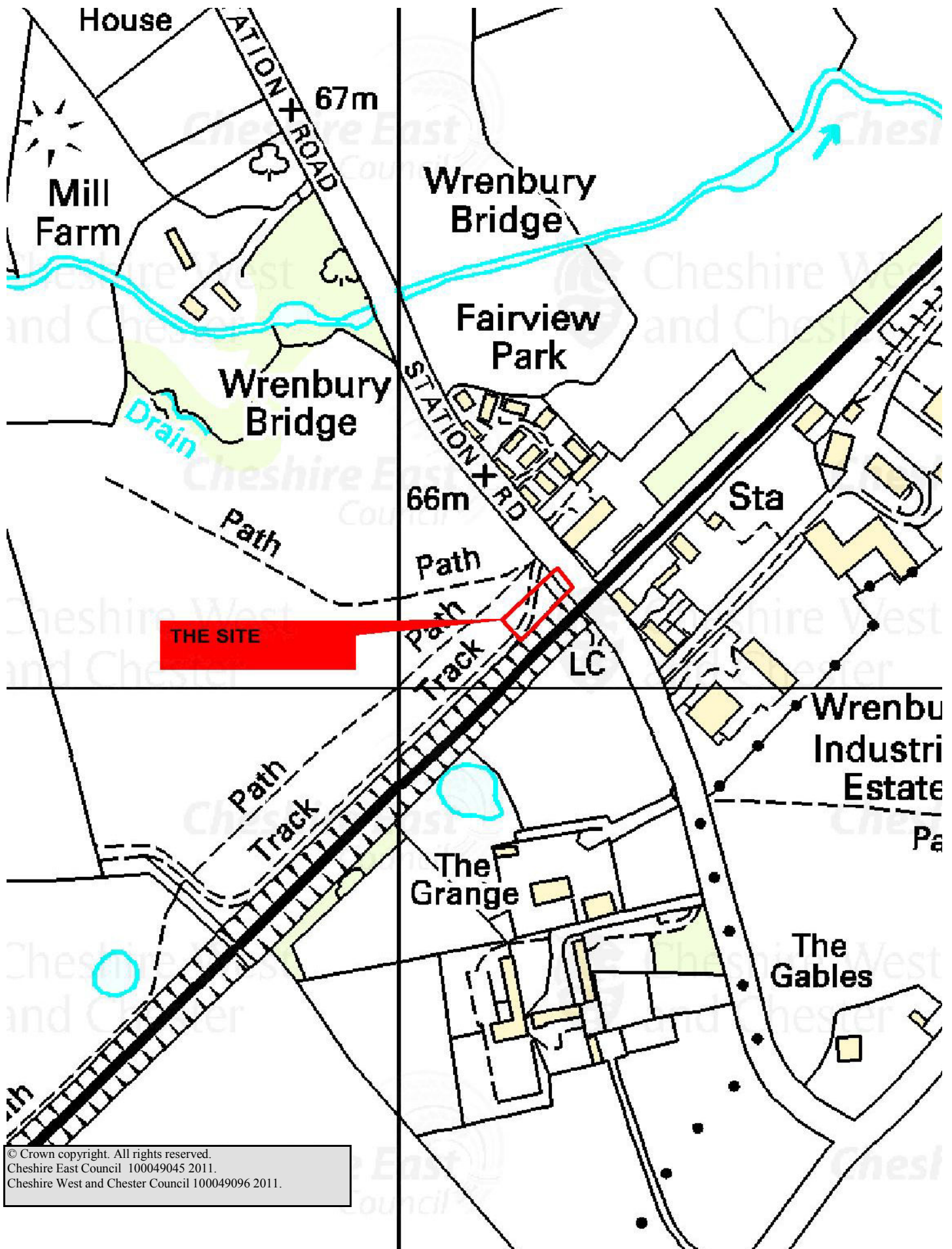
There is no Policy within the Local Plan which allows for the replacement of non residential buildings with residential properties. The development does not satisfy Local Plan Policies relating to new residential properties in Open Countryside locations. The proposed development is unacceptable in principle. Whilst the application is, in part, a brownfield site, the scale of the property in relation to the existing building and the use of a large area of Greenfield land would cause unacceptable harm on the character and appearance of the Open Countryside.

In addition the application has not been supported by a Protected Species survey with regard to bats and the proposal may therefore cause an adverse impact on Protected Species.

## **RECOMMENDATIONS**

**Refuse for following reasons:**

- 1) The proposed development includes the creation of a dwelling, garage and curtilage in this Open Countryside. In Open Countryside locations new dwellings are only permitted where they form infilling development or are associated with agriculture. The development does not fall into either of these criteria. In addition the proposed dwelling and garage would be over 3 times greater in volume to the building it replaces. It is acknowledged that part of the site is brownfield, however, the dwelling, garage, and large curtilage will require the use of Greenfield land to accommodate the proposed development. It is therefore considered that the proposed development is unacceptable in principle and would cause significant harm to the character and appearance of the Open Countryside. The proposed development would therefore be contrary to Policies NE.2 (Open Countryside), BE.2 (Design Standards) and RES.5 (Housing in the Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.**
- 2) Insufficient information has been submitted to determine the impact that the proposed development would have on protected species, namely bats, and any mitigation measures which may be required. The proposed development therefore has the potential to cause adverse harm on Protected Species. To allow the development, in the absence of this information, would be contrary to Policies NE.5 and NE.9 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within PPS9.**



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Application No: 12/0222N

Location: LAND OFF MARSH LANE, NANTWICH, CHESHIRE

Proposal: Reserved Matters Application for 13 No. Detached Dwellings, Parking and Amenity Space and the Retention of Public Open Space/Children's Playground including Appearance, Landscaping, Layout, Scale and Access Following Outline Approval of P05/0121

Applicant: Elan Real Estate Ltd & British Waterways

Expiry Date: 13-Apr-2012

#### **SUMMARY RECOMMENDATION**

**APPROVE** subject to conditions

#### **MAIN ISSUES**

- The acceptability of the Layout, Scale, Appearance and Landscaping
- Impact on adjoining residential amenities
- Impact up highway safety/parking
- The impact upon ecology
- The impact upon flooding

#### **REASON FOR REFERRAL**

This application is referred to the Southern Planning Committee as it involves a residential development of more than 10 dwellings.

#### **DESCRIPTION OF SITE AND CONTEXT**

The application site is located on the northwestern side of Marsh Lane within the Nantwich Settlement Boundary. The site is currently an undulating area of open scrub land which borders the Shropshire Union Canal to west, is enclosed on 2 sides (south and east) by a recreational open space and an equipped children's playground (which has been protected by a S106 agreement) and is bound to the north by residential properties.

#### **DETAILS OF PROPOSAL**

A Reserved Matters application has been submitted seeking permission for the erection of 13 detached dwellings.

The outline permission (P05/0121) was subject to a Section 106 Agreement which was signed in December 2011. The S106 Agreement related to playground improvements and its maintenance, the creation of a public footpath and keeping and maintenance of the Public Open Space.

A new access point is proposed through the middle of the Public Open Space.

## **RELEVANT HISTORY**

**11/2370N** – New detached house, garage, driveway (44 Marsh Lane) – Withdrawn 15<sup>th</sup> September 2011

**P05/0121** - Outline Application for Residential Development and Retention of Existing Public Open Space/Children's Playground (Amended Plans) – Approved 9<sup>th</sup> December 2011

## **POLICIES**

### **National policy**

PPS 1 - Delivering Sustainable Development

PPS 3 - Housing

### **Local Plan Policy**

BE.1 - Amenity

BE.2 - Design Standards

BE.3 - Access and Parking

BE.4 - Drainage, Utilities and Resources

BE.5 - Infrastructure

RES.2 - Unallocated Housing Sites

RES.3 - Housing Densities

RT.2 – Equipped Children's Playgrounds

RT.3 – Provision of Recreational Open Space and Children's Playspace in New Housing developments

NE.9 - Protected Species

### **Other Material Considerations**

Supplementary Planning Document on Development on Backland and Gardens

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

**Highways** – No objections, subject to there being a minimum of two spaces per dwelling, a section 38 agreement ensuring the new access road is to adoption standards and improvements to a nearby bus stop being secured.

**British Waterways** – No comments received at time of report.

**Environmental Health** – No objections, subject to conditions in relation to hours of construction, hours of piling, lighting and an informative with regards to contaminated land.

**United Utilities** - No objections, subject to a condition that the site must be drained on a separate system.

**Countryside Rights Of Way Office (Cheshire East Council)** – No objections subject to improvements and maintenance of a footpath link

**Open Space Society** - No comments received at time of report

**Mid-Cheshire Footpath Society** - No comments received at time of report

**Ramblers Association** - No comments received at time of report

**Greenspace (Cheshire East Council)** - No comments received at time of report

**Environment Agency** - No objections

**Housing (Cheshire East Council)** – No objections, development does not trigger an affordable housing requirement (15 dwellings).

**Sustrans** – Request a 2 metre wide pedestrian/cycle link from Marsh Lane to the Canal towpath

**Shrewsbury & North Wales Branch of the Inland Waterways Association** – No objections, subject to conditions relating to the development of the footpath link and an adequate amount of mooring space.

#### **VIEWS OF THE TOWN COUNCIL:**

**Nantwich Town Council** – No objections

#### **OTHER REPRESENTATIONS**

3 letters of representation have been received. The main concerns raised relate to;

- Over-domination
- Drainage, flooding & associated health risks
- Highway's issues
- Retention and keeping the footpath clear
- Canal boat mooring
- Overdevelopment

#### **APPLICANT'S SUPPORTING INFORMATION**

Planning Statement  
Design & Access Statement  
Site Waste Management Plan  
Flood Risk Assessment  
Phase II Ground Investigation Report  
Gas Protection Assessment  
Statement of Community Involvement  
Ecology Report  
Tree Protection Plan  
Incursion Plan

Landscaping Layout  
Topographical Land Survey  
Arboricultural Development Report  
Site sections

## **OFFICER APPRAISAL**

### **Principle of Development**

As the proposed development is a reserved matters application, the principle of the development has already been established with the approval of the outline planning application (P05/0121) which included means of access to the site. As such, this application seeks approval for the subsequent detail of the application, namely the layout, landscaping, appearance and scale.

### **Layout**

The housing scheme consists of 13 detached, two-storey dwellings located on the northwestern side of Marsh Lane, Nantwich. The houses would be erected in a linear pattern, following the line of Marsh Lane. 10 of the new dwellings would be positioned towards to the rear of the site, approximately 20 to 25 metres to the southeast of the Shropshire Union Canal to the rear, and approximately 20-55 metres in from Marsh Lane. These 10 properties would face in a south easterly direction towards Marsh Lane and would front onto a proposed new access road. 3 of the new dwellings proposed would be positioned towards the front of the site approximately 22 to 33 metres in from Marsh Lane. 2 of these would back onto Marsh Lane and the third would be side on and form a corner plot on the new access road proposed.

Access to the site shall be via a new access road located opposite No.85 and No.87 Marsh Lane.

It is advised within the submitted Design & Access Statement that the layout has been arranged to take into account the shape of the site and has taken influence from the pattern, form and appearance of housing in the adjacent residential areas.

The properties on the opposite side of Marsh Lane are erected in a linear pattern following the line of the road and front onto Marsh Lane. They consist of a mixture of two-storey, semi-detached and terraced properties. To the northeast, adjacent to the site, are 2 detached, two-storey dwellings to the rear of which are a number of modern detached dwellings on Cartlake Close. As such, the immediate area is characterised by a mixture of two-storey development of different forms and patterns, therefore it is considered that the addition on 13 detached dwellings would not appear incongruous within the area.

In relation to separation distances, the development meets the appropriate distance standards with the exception of the proposed dwellings on plots 3 and 5 and 6 and 2. However, given the relationship between these proposed dwellings, these are considered acceptable in this instance. Furthermore, these separation distances only just fall short of the appropriate standards. As a result of the above reasons, it is considered that the layout of the proposed scheme is acceptable

With regards to the amenity space provided, the smallest of the rear gardens proposed measures approximately 68 metres squared, which is also considered to be acceptable.

### **Landscaping**

The land slopes down from the canal to the road but is undulating and several areas are mounded. There is a small group of trees to the northwest of the site and a belt of trees/shrubbery vegetation running close to Marsh Lane frontage including Hawthorne, Elder, Willow and Hazel which has not been managed for some time. The Council's Landscape Officer has advised that the development would require the removal of an area of trees/scrub on the Marsh Lane frontage in order to create the access and accommodate the development and trees in the northwest corner of the site. It is advised that this vegetation is not outstanding.

In relation to the impact upon neighbouring amenity, further plans showing cross sections were requested and subsequently submitted. Concerns are raised about the relationship between the development and the canal due to the sudden changes in land levels and amenity issues that would be created to the rear from the canal. Subsequent informal correspondence has been had between the developer, British Waterways and the Council and it has been agreed that British Waterways are happy to plant further screening towards the rear of the site to soften the impact of the scheme when viewed from the canal. The Landscape Officer also has concerns about the feasibility of any screen planting on the boundary between the dwelling on plot number 3 and the closest neighbour, No.44 Marsh Lane. The landscaping shall be secured via condition. As such, once conditioned, it is considered that the landscaping of the site shall be acceptable.

### **Appearance/Design**

The proposed dwellings would all be detached, two-storey dwellings and be of 4 different designs entitled; Brampton, Bunbury, Oakham and Southwold.

There are 5 Brampton style units proposed. These units have a footprint of approximately 73 metres squared, are approximately 7.2 metres tall, have dual pitched roofs, a gable on the front elevation and a half dormer, an integral garage and a ground floor bay window.

There are 3 Bunbury style units proposed. These units have a footprint of approximately 59 metres squared, are approximately 7.7 metres tall, have dual pitched roofs and central a gable on the front elevation and a mixture of detached and integral garages.

There are 3 Oakham style units proposed. These units have a footprint of approximately 96 metres squared, are approximately 8.2 metres tall, have dual pitched roofs and a half dormer and integral garage on the front elevation.

There are 2 Southwold style units proposed. These units have a footprint of approximately 64 metres squared, are approximately 8 metres tall, have dual pitched roofs and a half dormer and an integral garage on the front elevation.

Each dwelling would be two-storey in nature and would include features such as dual pitched roofs, bay windows and porches which are present on nearby properties ensuring that the houses proposed would respect the character of the immediate area.

With regards to materials, it is advised within the submitted Design and Access Statement that in order to fit in with the local character of the area, the materials to be used shall be traditional and simple. Within the submitted external finishes schedule, it is advised that all of the units shall be constructed from contrasting red bricks, a buff coloured art stone and a natural mortar finish. With regards to the roofs, all of the dwellings would have a Marley Interlocking tiles. The fenestration, bargeboards, soffits and fascias would all be finished in white uPVC fenestration. It is considered that these finishes would respect the character of the immediate area and are deemed to be acceptable.

## **Scale**

Of the surrounding dwellings, the properties on the opposite site of Marsh Lane are all two-storey in nature and approximately 7-8.5 metres tall and have footprints between 43 and 77 metres squared.

The adjacent property to the northeast, No.44 Marsh Lane is also two-storey in nature, is approximately 8-8.5 metres tall and has a footprint of approximately 194 metres squared. No.12 Cartlake Close is also two-storeys tall with a height of approximately 8.5-9 metres and a footprint of approximately 121 metres squared. This general assessment shows that the footprint sizes of the nearby dwellings range from 43 to 194 metres squared, a range within which all of the new properties proposed would fall within.

With regards to height, all of the surrounding units are two-storey in nature and have heights between 7 and 9 metres, also a range within which all of the proposed new dwellings would fall within. It should be noted that Condition 5 on the approved application P05/0121 stated that the new dwellings should be two-storeys and should not exceed 8.5 metres in height. This condition would be adhered to by this proposal.

As a result of the above assessment, it is considered that the scale of the proposed dwellings is acceptable.

## **Access**

The proposed access to the site was agreed to at the outline stage of the application; however a number of highway's conditions were proposed. These conditions (Conditions 9, 10 & 11) included; details of the access to be submitted and approved prior to the occupation of the dwellings, that acceptable visibility splays are agreed too and that the provision of parking of 1.5 vehicles per unit within the boundary of the site are achieved.

The submitted Design & Access Statement advises that the site would be served by an adoptable internal road and shared private drives. 2 car parking spaces are proposed per dwelling, which would adhere with the outline Condition 11. There is a mixture of garage types proposed both integral and external. It is advised that these garages are all set far enough back from the roads to ensure that the garage doors can be opened and closed whilst a car is parked in the driveway.

The Council's Highway's Officer, as part of this application has advised that there are no objections to the development subject to conditions relating to parking space allocations, the extent of the proposed adopted turning head and improvements to a nearby bus stop. In response to these conditions, 2 parking spaces per dwelling are proposed as part of the development; however, in order to retain such spaces, it is proposed that permitted development rights are removed. With regards to the extent of the adopted highway, it is considered that the private driveways, which at their most intensive use would be serviced by 5 dwellings is deemed to be acceptable if not adopted. In relation to the proposed improvement to a nearby bus stop, such a request at this stage of the application is deemed to be unreasonable given that this did not form part of the outline application.

As a result, subject to the removal of permitted development rights, the access of the development is considered to be acceptable.

## Amenity

The neighbours that would be most impacted by the proposed development would be No.44 Marsh Lane to the northeast of the site and No.12 Cartlake Close to the north of the site. The properties on the opposite side of Marsh Lane are all 42 metres away or more, a distance deemed to be acceptable so not to create any issues in relation to loss of privacy, loss of light or visual intrusion.

With regards to the impact upon No.44 Marsh Lane, the closest property to this neighbour would be the dwelling on plot No.3 which would be approximately 9 metres away from this dwelling at its closest point. At present, between this neighbour's property and this proposed dwelling is the neighbour's driveway and on the opposite side of the boundary an approximately 3 metre tall mound. Screen planting is proposed on this boundary between the two properties. On the relevant side elevation of the dwelling on plot No.3 there is an obscurely glazed ground floor kitchen window proposed. On the side elevation of No.44 Marsh Lane there are 4 openings. At first floor level there is a secondary bedroom window, at ground floor level there is an obscurely glazed window to a garage, a solid garage door and a secondary window to a lounge. On the rear elevation of this neighbouring property, there are 8 openings. At first floor level there is a secondary bedroom window, an obscurely glazed en-suite window and two other bedroom windows. At ground floor level there are a set of patio doors to a lounge, a set of patio doors to a dining room and a window and door to a kitchen.

Due to the relationship between the proposed dwelling on plot number 3 and this neighbouring unit, there will be no direct privacy/overlooking issues created to this side as the only opening proposed on the relevant side elevation of the closest development shall be obscurely glazed. This shall be re-affirmed via condition. Furthermore, screen planting is proposed on this boundary. As such, subject to the appropriate boundary treatment being conditioned, it is considered that the proposal would be acceptable from a privacy perspective with regards to this neighbour.

The principal windows on the dwelling on plot 4 would be approximately 31 metres away from the windows on the rear elevation of this neighbour. A distance considered large enough as to not create any privacy issues.

In relation to loss of light / overshadowing, because this proposed new dwelling would be to the southwest of this neighbouring house, and be in an elevated position, there is a potential for loss of light to be created in the late afternoons and summer evenings. Again, due to the offset siting of the proposed unit, any loss of light would be created largely to the side elevation of this neighbouring property. As the side elevation of No.44 Marsh Lane only includes either openings to a garage (which is not classified as a principal habitable room), or secondary openings to habitable rooms which would gain light from other windows, it is not considered that the impact of loss of light on this neighbour by the dwelling proposed on the closest plot would be significant.

In relation to the loss of light that could be created by the dwelling proposed on plot No.4, because the two-storey aspect of this property would be approximately 31 metres to the west, it is not considered any loss of light created by this unit on this neighbour would be significant.

With regards to visual intrusion, as above, in relation to the side elevation of this neighbouring property, because all of the openings either serve a non-habitable room or are secondary

windows, it is not considered that the visual intrusion created to this side would be significant enough as to warrant refusal of this application. There is some concern about visual intrusion however, because the relevant aspect of the proposal is single-storey in nature and could be largely screened by appropriate boundary treatment, it is not considered that the visual intrusion created to this side would be significant. The distance of the dwelling proposed on plot 4 to this neighbouring unit, is such that this dwelling would not create any visual intrusion issues

With regards to the impact upon No.12 Cartlake Close, the closest property to this neighbour would be the dwelling on plot No.4 which would be approximately 25 metres away from this neighbour. Due to this separation distance, it is not considered that the development would have a detrimental impact on the occupiers of this property by reason of loss of privacy, visual intrusion or loss of light.

In summary, it is considered that subject to the appropriate boundary treatment being conditioned, the development would adhere with Policy GR6 of the Local Plan and therefore be acceptable from an amenity perspective.

### **Ecology**

As part of the approved outline permission, an extended phase 1 habitat and tree survey was submitted. Condition 12 of P05/0121 advises that the development shall be carried out in full accordance with the recommendations of this survey in order to safeguard any protected species that may be present on the site and in order to mitigate for any loss of valuable natural habitats. As part of this submission an updated survey has been submitted.

The Council's Conservation Officer has advised that subject to conditions relating to the protection of nesting birds, the incorporation of features for breeding birds and the retention of the original condition within the outline permission requiring that the development accords with the latest extended habitat survey recommendations, he has no objection to the development.

### **Flooding/Drainage**

As part of the original application, United Utilities raised no objections to the development and no representation was received from the Environment Agency.

As part of this application, the Environment Agency have reviewed the submitted Phase 2 Ground Investigation Report and consider that *'the risks posed to controlled waters to be acceptable and have no objection to the planning permission.'*

United Utilities also have no objection to the development subject to a condition that the site must be drained on a separate system, with only foul drainage being connected into the foul sewer.

As such, subject to the implementation of this condition, the impact of the development upon flooding and drainage is deemed to be acceptable.

### **Other Matters**

In response to concerns raised by objectors not already addressed, the issues regarding the footpath have already been largely agreed at the outline application stage as part of the S106 agreement. It was agreed as part of this legal document that the developer is required to submit plans and thereafter implement a 1.5 metre wide footpath linking the Public Open Space with the adjacent towpath. Any further requests for improvements are unreasonable at this stage of the

development. This also applies to the request for adequate mooring space which in any case, would fall outside of the development site.

## **CONCLUSIONS**

The principle of the development has already been established with the approval of an outline permission which also gained approval for access. It is now subsequently considered that the scale, appearance, landscaping and layout of the scheme are also acceptable. It is considered that the development would not have a detrimental impact upon neighbouring amenity, ecology, flooding or drainage and therefore adhere with the Policies RES.2 (Unallocated Housing Sites), NE.8 (Sites of Local Importance for Nature Conservation), NE.9 (Protected Species), BE.1 (Amenity), BE.2 (Design Standards), BE.3 (Access and Parking), BE.4 (Drainage, Utilities and Resources), BE.5 (Infrastructure), RT.1 (Protection of Open Spaces with Recreational or Amenity Value) and RT.2 (Equipped Children's Playgrounds) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.

## **RECOMMENDATION:**

**APPROVE** subject to conditions

- 1. Time (Standard)**
- 2. Plans**
- 3. Materials as per application**
- 4. Hours of construction**
- 5. PD Removal (A-E)**
- 6. Obscure glazing (kitchen windows on plots 3 & 4)**
- 7. Landscaping scheme to include treatment off site to canal boundary**
- 8. Landscaping (Implementation)**
- 9. Tree protection**
- 10. Details of retaining structure**
- 11. Boundary treatment**
- 12. External Lighting**
- 13. Structural stability of canal bank in accordance with survey**
- 14. Site to be drained on a separate system**
- 15. Development in accordance with Extended Habitat survey**
- 16. Nesting birds**
- 17. Breeding birds**

## **Informative**

The applicant is advised that they have a duty to adhere to the regulations of Part IIA of the Environmental Protection Act 1990, the Town and Country Planning Act 1990 and the current Building Control Regulations with regards to contaminated land. If any unforeseen contamination is encountered during the development, the Local Planning Authority (LPA) should be informed immediately. Any investigation / remedial / protective works carried out in relation to this application shall be carried out to agreed timescales and approved by the LPA in writing. The responsibility to ensure the safe development of land affected by contamination rests primarily with the developer.



Application No: 11/3867N

Location: Land to Rear of 157 Crewe Road, accessed via Gutterscroft, HASLINGTON, CW1 5RJ

Proposal: Construction of 11 Three Storey Dwellings

Applicant: Lothlorian Ltd

Expiry Date: 19-Jan-2012

**SUMMARY RECOMMENDATION**

Approve with Conditions

**MAIN ISSUES**

Principle of Development

Design

Amenity

Highways

Ecology

**1. REASON FOR REFERRAL**

This application was deferred from the Southern Planning Committee meeting on 4<sup>th</sup> January 2012 for plans to be submitted showing the turning area within Meadow Bank; areas for refuse collection to each property; details of the road specification for Gutterscroft; and a site plan showing the context of neighbouring properties. Following the Southern Planning Committee meeting on 15<sup>th</sup> February the application was deferred for further consultation with local residents.

This consultation has been carried out and the closing date for additional comments is 27<sup>th</sup> February 2012.

**2. DESCRIPTION OF SITE AND CONTEXT**

The application site comprises a backland site to the rear of properties 153 and 157 Crewe Road, Haslington. This is accessed via a relatively unmade public right of way known as Gutterscroft which bounds the site to the south. A public footpath (Haslington PF45) also forms the western boundary leading from Gutterscroft to 'the Dingle'. Surrounding land uses are predominantly residential, with access to local amenities within Haslington. Properties within the locality are of varying types, design and age. To the north of the site is United Reformed Church which is locally listed.

**3. DETAILS OF PROPOSAL**

This is a full planning application for the provision of 11 dwellings with domestic garage accommodation. A pair of semi-detached dwellings would occupy the Crewe Road frontage close to the junction with the Dingle and vehicular access would be gained from within the site via Gutterscroft. 4No dwellings would provide a frontage to Gutterscroft with 5No dwellings forming a cul-de-sac within the site.

#### **4. RELEVANT HISTORY**

P02/1298 Demolition of Dwelling and Erection of Nine Dwellings (Refused June 2003) Refused due to the proposed site access from Crewe Road being too close to the junction of Gutterscroft and substandard levels of visibility.

P03/0049 Outline Application for 43 Dwellings (Refused March 2004) Refused due to the following reasons: failure to secure affordable housing provision. Development allowed at Appeal (APP/K0615/A/04/1147933) 15<sup>th</sup> December 2004.

P06/0498 Land off Crewe Road / Gutterscroft Haslington Crewe 17 Houses and 6 Apartments (Refused July 2006) Refused due to the following reasons: failure to secure affordable housing provision; failure to provide public open space; and design issues.  
Appeal submitted and withdrawn.

P07/1103 Demolition of the Existing Buildings and Construction of 44 Dwellings and Associated Works (Approved with conditions January 2008).

P07/1693 Reserved Matters Application for the Demolition of Existing Buildings and Construction of 44 Dwellings and Associated Works (Duplicate Application) (Withdrawn).

#### **5. POLICIES**

##### **Regional Spatial Strategy (NW)**

Policy DP7 Promote Environmental Quality  
L4 Regional Housing Provision

##### **Borough of Crewe and Nantwich Replacement Local Plan 2011**

RES4 (Housing in Villages with Settlement Boundaries)  
NE5 (Nature Conservation and Habitats)  
NE9 (Protected Species)  
BE1 (Amenity)  
BE2 (Design Standards)  
BE3 (Accessing and Parking)  
BE4 (Drainage, Utilities and Resources)  
BE5 (Infrastructure)  
TRAN9 (Car Parking Standards)

##### **Other Material Considerations**

Supplementary Planning Document 'Development on Backland and Gardens'

Cheshire East – Interim Planning Statement on Affordable Housing (2011)  
PPS1 Delivering Sustainable Development  
PPS3 Housing  
PPS9 Biodiversity and Geological Conservation  
PPG13 Transport

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

### **Highways**

The Strategic Highways Manager is satisfied with the submitted details of the turning head within Meadow Bank; areas for refuse collection at the boundary of each dwelling; and the improvement specification for the length of Gutterscroft which forms part of the application site (as edged red).

### **Environmental Health:**

Environmental Health have raised no objection to the application but request the following conditions:

(i) Restriction of hours of construction –

Monday – Friday 08:00 to 18:00 hrs

Saturday 09:00 to 14:00 hrs

Sundays and Public Holidays Nil

(ii) if pile driving is required, restriction of hours to –

Monday – Friday 08:30 – 17:30 hrs

Saturday 08:30 – 13:00 hrs

Sunday and Public Holidays Nil

(iii) Prior to its installation details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

(iv) Land contamination surveys prior to commencement of development

### **Ecology:**

The Council's ecologist has assessed the application and does not anticipate there being any significant protected species issues associated with the development. The development does however have potential to support breeding birds and any impacts would be in the local context. In order to ensure the nature conservation interests of breeding birds the following conditions are necessary:

(i) Prior to undertaking any works between 1<sup>st</sup> March and 31<sup>st</sup> August in any year, a detailed survey is required to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone to be left around the nest until breeding is complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to the Council.

Reason: To safeguard protected species in accordance with PPS9.

(ii) Prior to the commencement of development the applicant to submit detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds including house

sparrows and swifts. Such proposals to be agreed by the LPA. The proposals shall be permanently installed in accordance with approved details.

Reason: To secure an enhancement for biodiversity in accordance with PPS9.

## **7. VIEWS OF HASLINGTON PARISH COUNCIL**

Originally objected to the application but following the submission of amended plans they would like to make the following comments;

- The developer should submit a revised location plan (red line) that encloses the whole of the application area
- The reduced width of pavement for the south side of the Gutterscroft is apparently a requirement from the Highways Department, on balance the Parish Council consider it better to have a single decent footpath than two narrow ones
- The garages for plots 2 and 3 are apparently 2 cars deep so should have 3 spaces off the road, Haslington Parish Council still think that the future residents will be unhappy with the congestion outside their houses from the Gutterscroft Centre users, a long established use of the Gutterscroft road
- The developer has agreed that the Gutterscroft will be resurfaced up to the community centre gates, the section in front of the new properties will be to highway standards. This agreement needs to be contained within a Section 278 agreement, which will also address the replacement of the existing street lighting
- The Gutterscroft road needs to be kept clear and usable during the development, the boundary of the site will be enclosed in safety/security barriers and development will take place inside - propose that this is controlled via a condition or as part of a construction management plan that no construction or contractors vehicles be allowed to park on the Gutterscroft road during development, i.e. provide appropriate parking within the field being developed. This is likely to require the entrance from Crewe Road to be widened using the garden of 153 Crewe Road early in the construction process to ensure safe deliveries of plant and materials to the site
- Request a Condition to retain obscure glazing on the side elevations of house types A and C
- Request a condition on plots 5,6,7,8 removing Permitted Development Rights for the roofs, to ensure that the "velux" style roof-lights are retained in the roof and not converted to dormer windows that might increase overlooking issues for established neighbours

## **8. OTHER REPRESENTATIONS**

Neighbour objections have been received from 21 Batterbee Court, Ferndale House & Dove Cottage Gutterscroft, 9 & 3 The Dingle; and a general observation from the United Reformed Church. In summary the issues raised relate to the following:

- Height of the development will restrict morning sunlight to 21 Batterbee Court and the noise factor will impact upon the quality of life and value of the property. The loss of 2 large trees and the height of the land compared to the back garden is also a concern
- 3 storey dwellings are out of character with the area – there are none in the village
- Height of the houses will be intrusive to residents
- The size of the dwellings will overlook the rear living room of 9 The Dingle, leading to a significant reduction in privacy and devalue the property

- The plot should contain bungalows or two storey house
- The application is not specific about the width of the road
- Gutterscroft is unadopted, busy and unable to take heavy traffic i.e. construction traffic and refuse collection
- The whole of Gutterscroft should be adopted
- Only part of the road being adopted would result in a safety hazard for both pedestrians and car users alike
- Only part of the road will be adopted and this will put extra traffic on the unadopted area of Gutterscroft and incur extra costs to original residents
- There should be a double track access at the junction from Crewe Road to Gutterscroft
- The footpath should be full length and not a partial footpath
- Amount of parking provision seems to be inadequate for the amount of new traffic on the proposed site and would mean further difficulties for the original residents
- Tree removal and loss of habitat in the hedgerows is a concern – the hedgerows should be retained. They are home to many type of bird as well as hedgehogs. The hedgerow is also a considerable sound buffer and will screen the development.
- Wildlife needs further consideration
- It is not a nursery at the end of the lane it is a community centre
- There should be double track access
- Safety issues of having a partial footpath
- Problems with refuse collection created by this development
- Existing problems with refuse collection
- Traffic problems along Gutterscroft
- The street lighting along Gutterscroft needs to be upgraded

Summary of comments from United Reformed Church:

- Maintenance of the church wall which borders the site – request a 1 metre gap between the wall and any fence to be erected.
- The ground level in the development area is lower than the churchyard, therefore any excavations close to the boundary wall will have the potential to undermine and damage it. It is requested that the developer takes great care not to damage the wall whilst working close to it.
- Retention of trees is requested particularly the holly tree growing close to the boundary wall which has considerable amenity value to the churchyard

## **9. OFFICER APPRAISAL**

### **Principle of Development**

The principle of residential development has previously been accepted on this site under application reference P03/0049. The site is situated within the Haslington Settlement Boundary where the key issues in the determination of this application is whether or not the proposal accords with Local Plan policies NE9 (Protected Species), NE5 (Nature Conservation and Habitats), BE1 (Amenity), BE2 (Design Standards), BE3 (Accessing and Parking), BE4 (Drainage, Utilities and Resources), BE5 (Infrastructure) and TRAN9 (Car Parking Standards)

### **Design**

The surrounding area is comprised of a mix of housing types and styles, ranging from traditional cottages, large detached dwellings, dormer bungalows, and more modern houses. The application proposes 11 No three storey dwellings with the second floor accommodation being in the roofspace. Typically the dwellings would be 5.6 metres in height to eaves level and 9.4 metres to ridge height. As there is no set roofline, height or dwelling type within the locality, the 3 storey dwellings are considered to be acceptable in this location. The proposed dwellings would be predominantly brick, some of which would be half rendered, and would have feature heads and cills. The dwellings and associated garages would be comprised of a mix of 5 No styles which would add to the visual interest and variety when viewed in the context of the Gutterscroft streetscene. Whilst the proposed dwellings would have a distinct appearance, the site is a backland plot and it is not considered that the design proposals would be at significant odds with the surrounding pattern and form of development. The dwellings proposed along Crewe Road / Foxes Corner are more simpler in appearance and would sit comfortably with adjacent properties within the streetscene.

Some minor design amendments were requested for the more prominent units such as 10E (Foxes Corner) and 4A (junction of Gutterscroft and Meadow Bank) to introduce more visual interest to the side elevations. The revised plans are considered to be acceptable in design terms.

The layout of the development provides an active frontage to Gutterscroft, an infill plot along Crewe Road / Foxes Corner, and an internal cul-de-sac layout called 'Meadow Bank'. The public footpath (Haslington PF45) is to the west of the site and would share the boundary with the rear gardens of plots 1A, 5A, 6C, 7A and 8A. The boundary is defined by a well established hedgerow which is an attractive feature along the length of the footpath. This would provide soft screening and privacy for the development and it is considered that its retention should be secured by condition. A landscaping and hard surfacing scheme would also be required in the interests of the appearance of the development in the locality.

Having regard to the above and the imposition of relevant conditions ie retention of hedgerow, landscaping scheme and hard surfacing details, the proposal would be acceptable in design terms and would have an acceptable impact on the character and appearance of the area. The proposed development would accord with Local Plan policy BE2 (Design).

## **Amenity**

A key consideration in the determination of the application is the impact of the proposed development on neighbouring residential amenity. Firstly with regard to plots 8A and 9D these would be situated to the north of the site at the head of the proposed Meadow Bank. These properties would back onto the rear blank elevation boundary of the United Reformed Church and would have a rear garden depth of between 9 and 10 metres. In this respect there would be no amenity impacts for the existing church or future occupiers of the dwellings.

In terms of plots 10E and 11E these properties would front Crewe Road and would be sited adjacent to number 157 Crewe Road. Whilst there are a number of windows to the side elevation of 157 these do not appear to be principal windows. There is currently an existing two storey building adjacent to 157 and given the orientation of the properties and the fact that there would be no principal windows proposed to the side elevation of plot 11E it is not considered that there would be any significant amenity impacts on this property. Property number 150 Crewe

Road would be around 24 metres from plots 10 and 11E on the opposite side of the road which is a sufficient separation distance to avoid any significant amenity impacts associated with overlooking or loss of privacy. This separation distance is in excess of the standards provided in the Supplementary Planning Document 'Development on Backland and Gardens'. Property number 2 The Dingle is situated on the opposite side of the road from plot number 10E at a distance of over 20 metres. Whilst there are a number of windows to the side elevation of plot 10E, some of which would serve habitable rooms, given the separation distance and the road in-between it is not considered that this would in any adverse impacts on the amenity of number 2 The Dingle.

Turning to plots 5C, 6C and 7A these would back onto the boundary with the public footpath (Haslington PF45) and would have no direct relationship with any neighbouring properties to result in any adverse impacts associated with overlooking, loss of privacy, or loss of sunlight.

Plots 1A, 2B, 3C and 4A would front Gutterscroft and would be set back from the edge of the carriageway by 4-6 metres. On the opposite (south) side of Gutterscroft is a vacant parcel of land, with residential properties along Batterbee Court situated further beyond. Again these properties would not be sited directly opposite each other and given the separation distances and the forms of development in-between, it is not considered that there would be any significant amenity impacts on these nearby residences.

Whilst neighbour objections in relation to the height of the proposals and subsequent issues of overlooking or loss privacy to neighbouring properties 21 Batterbee Court, 3 & 9 The Dingle are noted; the report has explained that due to the position of the proposed dwellings there is no direct relationship with the aforementioned properties to result in any significant amenity impacts by reason of overlooking, loss of privacy or loss of sunlight. In particular number 21 Batterbee Court is situated offset to the southwest of the site at a distance of over 21 metres with Gutterscroft and a parcel of land situated in-between. Number 9 The Dingle is sited to the northwest of the site beyond the public footpath (Haslington PF45) with no proposed dwellings facing this property. In terms of number 3 The Dingle there are no directly facing properties within the proposal as these would back onto the rear of the United Reformed Church.

Noise impacts during construction would be controlled via a condition to restrict the hours of work and any associated pile driving activities.

With regard to the proposed dwellings, the SPD for Development on Backland and Gardens identifies that all new dwellings should have a minimum of 50sqm of private amenity space. The proposed scheme would have sufficient private amenity space to meet the above requirements.

Having regard to the above the proposed development would not be detrimental to the residential amenity afforded to surrounding properties by reason of overlooking, loss of privacy or loss of sunlight. The proposal would accord with the respective provisions of Local Plan policy BE1 (Amenity).

### **Affordable Housing**

Concern has been raised about the lack of affordable housing provision as part of this proposed development. In relation to this issue the Interim Planning Statement on Affordable Housing states that within settlements with a population of 3,000 or more the threshold above which affordable

housing should be sought is 15 dwellings or more. In this case Haslington has a population of 6,410 and as a result this development would not meet the threshold for affordable housing.

It is accepted that in this case the application site did form part of a larger site which benefitted from an approval under outline and reserved matters applications P03/0039 and P07/1103. These applications included land on the northern and southern sides of Gutterscroft and the approval related to the construction of 44 dwellings. These decisions have now expired and there is no planning consent for residential development on either parcel of land.

As the parcels of land are now in separate ownership and there is no extant planning permission, it is not considered to be reasonable to request affordable housing as part of this application when the development does not meet the threshold contained within the Interim Planning Statement on Affordable Housing.

## **Highways**

The proposed development would be accessed off Crewe Road via Gutterscroft which is currently an unadopted right of way. Neighbour objections relating to the increased use of the road are acknowledged however the Strategic Highways Manager has raised no objections to the application. The Strategic Highways Manager is satisfied with the submitted details demonstrating the turning head within Meadow Bank; the specification details for the improvement of the length of Gutterscroft forming part of the application site; and also the areas of refuse collection to the boundary of each dwelling.

The proposal would provide 200% parking provision with additional space within the site layout to accommodate parking for visitors. As such there would be no significant pressure for on-street parking along Gutterscroft or in the surrounding highway network.

In the previous application P03/0049 Gutterscroft was the main access for a wider site of 44 dwellings. In the absence of an objection from the Strategic Highways Manager the application is considered to be acceptable in highways terms and would accord with the provisions of Local Plan Policies BE.3 (Access and Parking) and TRAN.9 (Car Parking Standards).

## **Ecology**

The application site has the potential to support breeding birds including widespread BAP priority species. The proposed development however would not have a significant impact upon breeding birds other than in the local context. In order to ensure the protection of breeding birds during the development, detailed surveys will be required prior to any works being undertaken between 1<sup>st</sup> March and 31<sup>st</sup> August. A condition would also be attached to secure an enhancement scheme for breeding birds within the development. Subject to the above conditions it is considered that the proposal would be acceptable having regard to nature conservation interests and the provisions of Local Plan policies NE5 (Nature Conservation and Habitats) and NE9 (Protected Species).

## **Other Matters**

### Gutterscroft

Haslington Parish Council have requested a condition for the improvements of Gutterscroft to be carried out prior to site works commencing. This however is not considered to be reasonable, and would be conditioned to be improved prior to the development being brought into use.

Resurfacing of the community centre car park and the length of Gutterscroft is not directly related to the development proposed and would not be a reasonable requirement.

The Highways Authority have stated their intention to adopt a section of Gutterscroft and Meadow Bank, and whilst local residents may wish the Authority to adopt the entirety of Gutterscroft, this is not entirely related to the current application.

#### Loss of Green Space

The loss of green space within the village has been cited in the objection from Haslington Parish Council; however the land is not allocated as protected open space in the Borough of Crewe and Nantwich Replacement Local Plan 2011, and as such is not afforded the same level of protection. Furthermore residential development has been permitted on the site previously; therefore the principle of development is acceptable.

#### Telephone Box

Retention of the telephone box is not material to this application and is a matter for the telephone service provider.

#### Church Boundary

Maintenance of the church wall which borders the site will be a civil matter and cannot be controlled under this application.

Excavation works in close proximity to the boundary is not a material planning matter.

### **11. CONCLUSIONS**

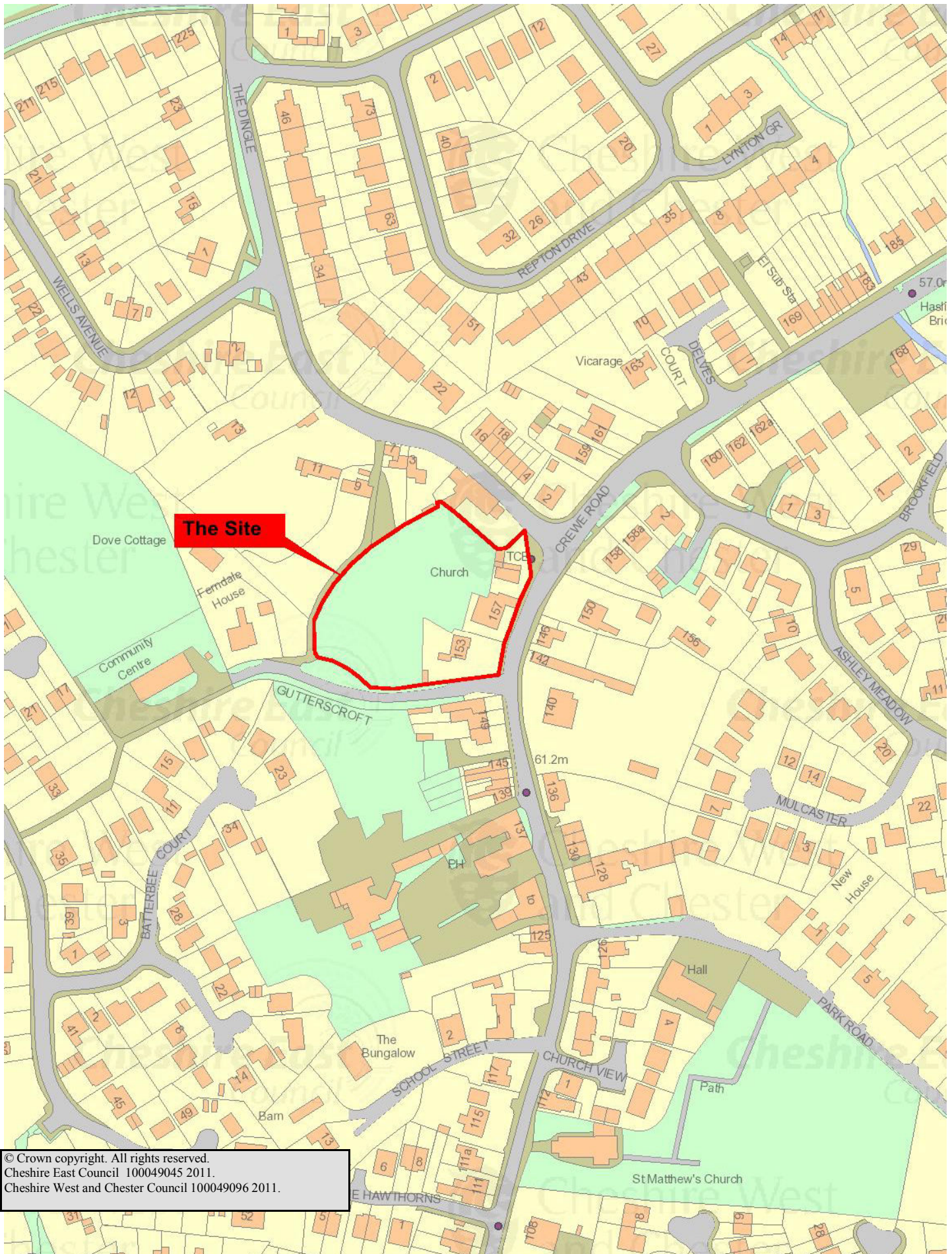
it is considered that the design and layout of the proposed development would not cause any significant harm to the character and appearance of the locality, and would have an acceptable impact on the Gutterscroft streetscene. There would be no significant impacts on the residential amenity of neighbouring properties. Subject to conditions i.e. details of the turning head, Gutterscroft improvement details, and areas for refuse collection, the proposal would be acceptable in highways terms. There would be no significant adverse impacts on nature conservation interests. Subject to the imposition of relevant conditions detailed below, the proposal would be in accordance with the relevant policies of the Development Plan and is therefore recommended for approval accordingly.

### **12. RECOMMENDATIONS**

The application is recommended for approval, subject to the following conditions:

- 1) Commencement of Development (3 years)
- 2) Approved Plans

- 3) Materials to be submitted
- 4) Details of Surfacing materials to be submitted
- 5) Detailed Landscaping Scheme to be submitted
- 6) Landscaping Scheme Implementation and maintenance
- 7) Tree / hedgerow protection measures to be submitted and retention of hedgerow to western boundary with footpath (Haslington PF45)
- 8) Details of Boundary treatments to be submitted for approval
- 9) Parking to be made available prior to occupation
- 10) Hours of construction:
  - Monday – Friday 08:00 to 18:00 hrs
  - Saturday 09:00 to 14:00 hrs
  - Sundays and Public Holidays Nil
- 11) Hours of pile driving:
  - Monday – Friday 08:30 – 17:30 hrs
  - Saturday 08:30 – 13:00 hrs
  - Sunday and Public Holidays Nil
- 12) Phase II Contaminated Land Survey prior to commencement
- 13) Gutterscroft improvements to be implemented prior to the occupation of the development
- 14) Details of drainage to be submitted
- 15) Details of any lighting
- 16) Breeding birds surveys if any works are undertaken between 1<sup>st</sup> March and 31<sup>st</sup> August in any year,
- 17) Detailed proposals of features suitable for use by breeding birds to be submitted
- 18) Construction Management Plan to be submitted and approved in writing prior to the commencement of development. Implementation in accordance with the approved plan.
- 19) Obscure glazing to the side elevation of house types A & C



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Application No: 11/4149N

Location: EARL OF CREWE HOTEL, NANTWICH ROAD, CREWE, CHESHIRE, CW2 6BP

Proposal: DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF NEW FOODSTORE WITH ASSOCIATED CAR PARKING AND SERVICING FACILITIES

Applicant: ALDI STORES LTD

Expiry Date: 07-Feb-2012

**SUMMARY RECOMMENDATION:**

**REFUSE for the following reasons**

- **Loss of Locally Listed Building**

**MAIN ISSUES:**

- **The acceptability of the development in principle.**
- **Locally Listed Building**
- **Layout, design and street scene**
- **Sustainability,**
- **Impact on neighbour amenity**
- **Landscape and Ecology**
- **Crime and Disorder**
- **Public Consultation**
- **Highway Considerations**
- **Drainage and flood risk,**

**1. REASON FOR REFERRAL**

The application has been referred to committee because it is a commercial building of over 1000 square metres in floor area.

**2. DESCRIPTION OF SITE AND CONTEXT**

The site of the proposed development lies on the south side of Nantwich Road and comprises land currently occupied by the Earl of Crewe public house, a “pay and display” car park, a range of outbuildings and vacant land formerly occupied by garaging.

The Earl of Crewe is an imposing Victorian building which fronts on to Nantwich Road and has a sizeable mature garden between its east flank and a frontage to Sherwin

Street. Within the car park there is a two storey range of outbuildings, which are boarded up and an attached single storey range formerly used as lock up garages. The public house is included on the local list of buildings of historic and architectural interest.

Land uses along Nantwich Road in the vicinity of the site are predominantly commercial, with a mix of shops, financial and professional services, hot food takeaways, restaurants, cafes and public houses. Once away from the main road the area is almost entirely residential.

### **3. DETAILS OF PROPOSAL**

Full planning permission is sought for the demolition of all the buildings within the site and the construction of a food store of 960sq.m sales area and 1,348sq.m gross internal area at ground floor level. Free customer car parking will be located to the western and southern parts of the site and a total of 85 spaces will be provided. 4 no. DDA compliant spaces, 2 no. parent and child spaces along with cycle parking facilities for customers and staff will also be provided. Servicing facilities and plant will be located to the southern elevation of the store.

Members may recall that an identical proposal submitted in 2009 was refused by Southern Planning Committee for the following reason:-

*The proposal would result in the loss of a locally listed building, the re-use of which the Local Planning Authority considers to be both physically and financially sustainable. The applicant has failed to demonstrate that there are any other reasons for the development which outweigh the need to safeguard the building and the proposal is therefore contrary to Policy BE.13 (Buildings of Local Interest) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

This application has been submitted in order to address this reason for refusal.

### **4. RELEVANT HISTORY**

P06/0868	Erection of eight terraced properties and conversion of outbuildings to three dwellings – Withdrawn
P06/1282	Erection of 7 two storey terraced properties and the conversion of barns to three residential properties. – Approved 12 <sup>th</sup> February 2007
09/1304N	Demolition of existing building and construction of new foodstore with associated parking – Withdrawn
09/4043N	Demolition of existing building and construction of new foodstore with associated parking –Refused 18 <sup>th</sup> February 2010.

### **5. POLICIES**

**North West of England Plan - Regional Spatial Strategy to 2011**

Policy DP 5	Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility
Policy DP 7	Promote Environmental Quality
Policy DP 9	Reduce Emissions and Adapt to Climate Change
Policy RDF 1	Spatial Priorities
Policy W 1	Strengthening the Regional Economy
Policy W 5	Retail Development
Policy RT 1	Integrated Transport Networks
Policy RT 2	Managing Travel Demand
Policy RT 3	Public Transport Framework
Policy RT 9	Walking and Cycling
Policy EM9	Secondary and Recycled Aggregates
Policy EM 11	Waste Management Principles
Policy EM 12	Locational Principles
Policy EM 15	A Framework For Sustainable Energy In The North West
Policy EM 16	Energy Conservation & Efficiency
Policy EM 17	Renewable Energy
Policy EM18	Decentralised Energy Supply
Policy MCR 4	South Cheshire

### **Cheshire Replacement Waste Local Plan**

Policy 11 (Development and Waste Recycling)

### **Borough of Crewe and Nantwich Replacement Local Plan 2011**

BE.1 (Amenity)  
 BE.2 (Design Standards)  
 BE.3 (Access and Parking)  
 BE.4 (Drainage, Utilities and Resources)  
 BE.5 (Infrastructure)  
 TRAN.1 (Public Transport)  
 TRAN.3 (Pedestrians)  
 TRAN.4 (Access for the Disabled)  
 TRAN.5 (Provision for Cyclists)  
 TRAN.6 (Cycle Routes)  
 TRAN.9 (Car Parking Standards)  
 S.10 (Major Shopping Proposals)  
 S.9 (Nantwich Road)

### **National policy**

PPS 1: Delivering Sustainable Development  
 PPS 4: Planning for Sustainable Economic Growth  
 PPS 25: Development and Flood Risk  
 PPG 13: Transport  
 Department for Transport – Manual for Streets

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

### **Highways Authority**

No comments received at the time of report preparation

### **United Utilities**

No comments received at the time of report preparation

### **Environmental Health**

This section recommends that the following conditions are attached to any planning permission granted:

- Hours of 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
- Should there be a requirement to undertake foundation or other piling on site it is recommended that these operations are restricted to: Monday – Friday 08:30 – 17:30 hrs; Saturday 08:30 – 13:00 hrs; Sunday and Public Holidays Nil
- Lighting details to be approved
- Hours of operation, including deliveries to the site, limited to Monday – Friday 08.00hrs - 20.00hrs; Saturday 08.00hrs - 20.00hrs; Sunday 10.00hrs - 17.00hrs
- The car park shall be closed to all vehicles (apart from staff vehicles) outside the store opening times so as to protect the amenity of the local residents.
- Revised air quality assessment to address the following outstanding points:-
  - The assessment uses 2008 monitoring data as its baseline year. This should be updated considering the most current annual data available (i.e. 2010).
  - The report should acknowledge the identified disparity between measured NO<sub>x</sub> and NO<sub>2</sub> concentrations and the projected decline associated with emission factors which form the basis of air quality modelling.
  - The report does not make reference to the number of additional trips going to be made to the site post development.
- The discussed mitigation methods for both the construction and operational phases are implemented and agreed with the local authority prior to commencing works alongside implementing the identified mitigation measures to minimise any impact on air quality alongside ensuring any dust related complaints are kept to a minimum.
- The Travel Plan implemented and focus on low carbon transport and infrastructure and monitored in terms of take up.

This section has no objection to the above application subject to the following comments with regard to contaminated land:

- The application area has a history of commercial use and therefore the land may be contaminated.
- The applicant provided a geo-environmental report which, although out of date with current guidance, reveals there to be a low risk with respect to the proposed site use. The report recommends that soil be imported for areas of landscaping.

- As such, and in accordance with PPS23, this section recommends that the following conditions, reasons and notes be attached should planning permission be granted:
  - If any unforeseen contamination is encountered during the development, the Local Planning Authority (LPA) should be informed immediately. Any investigation / remedial / protective works carried out in relation to this application shall be carried out to agreed timescales and approved by the LPA in writing.

**7. VIEWS OF THE PARISH / TOWN COUNCIL:**

N/A

**8. OTHER REPRESENTATIONS:**

**Objection**

Letters of objection have been received from the following addresses: 256 Nantwich Road, 101 Bedford Street, Crewe; 34 Gresty Terrace, 5 Wistaston Avenue; 14 Culland Street; 30 Furnival Street; 29 Barker Street; 44 Marsh Lane and 217 Bedford Street making the following points:

- Strongly object to the demolition of this historic building. Although it has been advertised for sale, without success, it should be possible to find a use for the building without resorting to demolition.
- Object to the design of the replacement building. Although it is an improvement of the previous design, with traditional pitched roofs, most of the elevation facing Nantwich Road is blank brick wall, which will ruin the historic aspect of the streetscape.
- There are already 5 supermarkets from Wells Green to the Railway station, (Spa, Co-op, Sainsbury and 2 Tesco Direct)
- Nantwich Road is already bumper to bumper with traffic all day and evening and another supermarket will mean added traffic. The side roads have a park/play area and nursery school and are already log jammed with traffic all day long (including articulated lorries) cutting down to avoid Nantwich road/deliver to Co-Op/Sainsbury).
- The proposed development is additionally not in keeping with the Victorian high street.
- The Earl has always been a local landmark.
- The building could be used for better purposes such as a restaurant or converted to residential.
- There is also a large Aldi supermarket less than 1.5 miles away which is easily accessible with ample parking.
- Why has a 3rd planning application has been submitted as 2 have already been rejected.
- Crewe is not an old town and therefore has very few buildings of historical importance - The Earl of Crewe building is one of these. It was erected in 1897 to celebrate Queen Victoria's Diamond Jubilee.
- No objection to any internal changes residents are horrified that Aldi have asked for permission to demolish this well known and loved landmark.

- Why is yet another historic building in Crewe under threat for the building of yet another supermarket?
- By all means redevelop the site and improve amenities but why not incorporate the original building in the plans.
- The Earl of Crewe is part of Crewe Heritage
- Why is history never considered in all these new ideas.
- The actions of previous Council have left Crewe impoverished of important historic buildings. The town cannot afford to lose another
- The Earl of Crewe is of unique character as one of the few remaining Victorian hotels. It is a landmark on the western gateway to the town and having been visited by Queen Victoria herself possesses great importance to the town saving a plaque designed after the visitor would be no substitute for the original structure.
- Culturally, Crewe needs this building and its surroundings. With funding promises for Crewe Station this area is bound to prosper and the potential for the building is immense. A gastro-pub or other amenity would be ideally placed there
- Environmental, the gardens with mature trees not only help wildlife but lessen the harmful pollution which is one of the drawbacks of Nantwich Road. To have green oasis in such a built up area must be envy of other towns.
- It is vitally important that this building survives to give continuity to future generations who will appreciate its remarkable properties.
- The application for this development was accompanied by a professionally produced Transport Assessment. This document contains factual errors regarding local bus services and since the availability of bus services plays such a big part of their submission these errors should be corrected.
- A large list of services are shown to be within the 400 metre threshold, and residents would challenge that list. Only routes 84 and 9 have stops within 400 metres of the proposed store. The 84 is right outside and will clearly be a valuable feeder service for the store. The 9 stops at the junction of Lunt Avenue and Ruskin Rd, the stops being around 270 metres from the store, it may be of use to people of Wistaston who do not have a car but the circuitous route means it is unlikely that anyone with access to a car would consider using it and walking the extra distance.
- Of the other services, the 39 (which is a very limited service anyway) gets no closer than the junction of Manor Way and Brookhouse Drive, the walk to the stop being a distance of 550 metres if you know the short cut through St Andrews Avenue. It is unlikely that anyone would carry shopping that far, they certainly wouldn't use it if they didn't know the short cut.
- The other services listed get no closer than the junction of Nantwich Road and Edleston Rd which is 400 metres away - but the stops are not at the junction, the nearest south/eastbound stop is 450 metres from the store and the northbound stop is 500 metres away. Traditional attitudes to bus usage in Crewe suggest that few people would carry shopping to these stops to continue their journey -what the Institute of Highways and Transportation believe happens elsewhere is not relevant.
- This is not the first time that the Council has accepted one of these professionally produced Transport Plans with exaggerated bus levels to support the case. Given these errors the Council should verify all other claims made in the document.
- There is concern about the infrastructure of the town, and any one of the following options would be better for Crewe than another ALDI supermarket :-

- For a pub chain (like Wetherspoons) to re-furbish The Earl, add an Orangerie, retain the beautiful green-space beer-garden and trees, and to market it as a Restaurant / Wedding Reception venue.
- Demolish The Earl and build 4 off tasteful shop units, to be designated non-fast food outlets (as has been done in Tarporley). The off-road parking that could also be offered would greatly add to the vibrancy of Nantwich Road as a place for shopping.
- Demolish The Earl and build a Medical Centre (a mini Eagle Bridge) to serve the high-density population around the Nantwich Road.
- Demolish the Earl and build an old people's complex (perhaps like 'Belong'). This could include a row of modern terraced cottages on the South side of Sherwin Street – these could be designated for independent living but would be within walking distance of the (Warden) facilities.
- This Application would not even be entertained in Germany.
- This application seems to be the same as the previous application which was refused because it involved the demolition of a locally listed building. This is still the case.
- Neighbours have concern about having the security of the back of the house breached, as well as privacy, due to the fact that the outbuildings are significant in size.
- Neighbours cannot see on the plans how these concerns are going to be alleviated. It will bring public noise nuisance due to car doors opening/closing, trolley noise etc on the back of the garden. Neighbours have animals and small children that are very secure in the garden at present. This will not be the case once Aldi start to build, as well as once the store is built, up and running.
- A substantial replacement that should incorporate security and noise pollution. Whilst will not be at the level it is now, it should be at least significant enough to avoid neighbours concerns, not just a flimsy fence that can be climbed over easily

## Support

245 Walthall Street; 49, 173 Ruskin Road; 38 St. Andrews Court; 23, 35, 41 St. Andrew's Ave; 16, 106, 170 174, 176, 209 Bedford Street; 4, 23 Swinnerton St; 25 Swington St; 24, 34 Furnival St; 8 Merebank Road; 10 Tynedale Avenue; 14 Brooklyn St; 29 St. Andrew Ave; 8, 12 Carlisle St; 245, 228, 229, 192a, 239, Nantwich Road; 100, 106 Ernest Street; 26 Tynedale Avenue; 3, 4, 22 Athol Avenue; 245, 290 Walthall St; 11 Sherwin St; 8, 25, 19, 33 Madeley St' 40 Bedford Gardens; 16 St. Andrews Drive; 1 Westminster Place; 20 Nelson St; 12, 20 Smallman Road; and 176 Nantwich Road, Crewe making the following points:

- The Earl of Crewe and land around is an absolute disgrace; it is a general dumping ground for all manner of rubbish and vandalism is evident on the actual buildings.
- It has been standing derelict for a long time and looks a complete eyesore especially now that the hoarding has gone completely around it.
- Householders have to look at the mess
- The Council have no intention of tidying it up.
- The proposal by Aldi to develop the site can only enhance the Nantwich Road area and would make a welcome change from the food take away shops and letting agencies.

- There is little or no choice for shopping at this part of town. With so many residential properties around this area it would reduce the need to use the already congested roads to the other supermarkets. Many residents would be able to walk to the store
- This is a Crewe site which serves a quality building and the support of the local planning department
- The Council spent millions of pounds a few years ago revamping Nantwich Road and as a result of the work, lots of businesses closed, and they would rather have a boarded up derelict place with rubbish on one side and unsightly hoardings all around than a lovely modern store with parking and shrubbery.
- This part of Crewe is far from affluent. A supermarket of the likes of Aldi is needed around the area. There is large population who could use this supermarket for their main shop thereby easing traffic congestion
- An architectural and no doubt well maintained building like Aldi will do this to a road that already has 2 supermarkets with their windows blocked out and a takeaway that is painted in green and yellow stripes. Aldi will be preferable
- It would encourage more people to use smaller businesses at this end of Nantwich Road and would provide short term parking when using them.  
(Parking
- The site currently attracts vermin and trespassers
- The proposed building takes on a similar design to the Ear of Crewe and would improve the area
- It would benefit the elderly who cannot travel to Aldi on the retail park
- With the current state of the economy as it is various shops in the area have the monopoly of prices. Aldi would give a larger choice and also the prices will be more reasonable
- When it was pub music was played very loud until early hours of the morning and in the summer windows were open and the noise could be heard in Swinnerton St.
- How it can be called a listed building is beyond residents because it was allowed to be painted a horrible colour when the original black and white building was very pleasing to the eye.
- Planners should be sympathetic to the building of a new store to match in with the surrounding area.
- There are enough pubs on Nantwich Road
- Other shops in the area would benefit
- It would create jobs
- More choice would be a positive move
- The Earl of Crewe is not an attractive building.
- The building is deteriorating and of no further use to the people of Crewe
- Many goods in Aldi are not in other supermarkets
- We cannot live in the past and must look to the future.
- The Co-Op prices are terrible and people cannot afford to shop there.
- The traffic will not be a problem because cars have been coming out of there and had no trouble.
- The new store should incorporate a post office as the existing ones on Nantwich Road have closed and pensioners have to travel into town which is inconvenient.

- The building should have been properly maintained
- The sooner it is built the better.
- The way public houses are at the moment, if it was re-opened it would shut down within 6 months.
- Resdie4tns currently travel to Aldi in Nantwich because it is quicker than going to the Crewe store because of the road system
- If this was Macclesfield or Sandbach it would have been approved by now
- We have to have growth to get this country going again.
- Can looking at an old building put food on the table and roof over people's heads and money in their pocket? The Council should take off its blinkers and look what is happening to Crewe. Let the people have jobs and respect for themselves.
- Aldi offers good quality cheap fruit and veg which have health benefits.
- Several years ago the residents in this area were blighted by the eyesore that was once the old Bedford St. School. People who were not affected and from other areas wanted the building saved and after a long period sense prevailed. It was knocked down and houses built which improved the whole area. The same seems to be happening with the Earl of Crewe. What sort of a message does this eyesore send out? Nobody will buy it because it needs flattening and a beautiful new store building on it.
- There is no traffic problem. If the traffic moved that slowly cars would be able to enter and exist with no problem.
- Cheshire East Council should listen to the residents not the do-gooders.
- It will fill a need for a medium size supermarket in this area.
- Nobody was against the previous application
- Nantwich Road is designated as a shopping area but it has too many estate agents / fast food outlets to serve the requirements of the local community.
- The new plans submitted are the best to date and would really fit in with other premises in fact a real improvement compared to some.
- Cars and brewery traffic have been suing the Earl without any problems
- The appearance of the proposed store will be quite attractive and will be an improvement on the present decrepit public house which sticks out like a sore thumb. It will certainly be a higher quality building than any commercial premises between Bedford Street and Crewe Railway Station.
- At the last planning meeting regarding the previous proposal and regardless of the views from the local residents and people living in the Nantwich Road area, their views counted for nothing!

## **9. APPLICANT'S SUPPORTING INFORMATION:**

- Transport Assessment
- Design and Access Statement
- Planning Statement
- Geo-environmental Assessment
- Marketing Report
- Building Survey Report
- Air Quality Impact Assessment
- Framework Travel Plan

- Bat Survey
- Report on Potential Uses

## **10. OFFICER APPRAISAL**

### **Principle of Development**

The site lies outside the town centres of Crewe and Nantwich, as defined in the Local Plan, where Policy S.10 states that major retail developments will be permitted only if all of a number of criteria are met. According to the supporting text major proposals for the purposes of this policy will be regarded as those with a gross floorspace of over 2500 sq. m. The proposed Aldi store would have a gross floorspace of 1407sq.m and therefore it is not necessary for the developer to demonstrate that there is a proven need for the development; a sequential approach to site identification has been followed; or that the proposal, either by itself or together with other shopping proposals or developments, will not harm the vitality or viability of another shopping centre.

Furthermore, the proposed store would be located partly within the Nantwich Road Shopping Area as defined in the local plan, although some of the parking area to the rear would lie outside this area. According to Policy S9 new retail development will be permitted on Nantwich Road (as defined on the proposals map), provided it is in accordance with policies BE.1 - BE.5.

The Local Plan policies have been saved. As a result it is concluded that the proposal is in accordance with the up-to-date development plan.

It should however be noted that PPS4, which sets out Government Planning Policy in respect of retail development has been published after the adoption of the Local Plan and is therefore a material consideration. PPS.4 sets out a number of tests which must be met in respect of retail proposals in out-of-centre locations. However, these only apply to those developments which are not in accordance with an up-to-date plan, which is not the case with the current proposal.

The proposal is therefore acceptable in principle, subject to the consideration of more detailed matters of amenity, design, access and parking, drainage and infrastructure and compliance with other relevant local plan policies.

### **Locally Listed Building.**

The existing Earl of Crewe public house is included in Appendix 5.3 of the Crewe & Nantwich Adopted Replacement Local Plan 2011 as a building of local interest. This is an important building within the street scene in this part of the Nantwich Road in Crewe.

It was built in 1897, in the year of Queen Victoria's Diamond jubilee, and is a good building of its type with symmetrical two storey bays to either side of the front elevation which terminate in jettied gables at the third / attic floor level. These display detailed plasterwork and are supported on prominent consoles. To either side of each of these gables are tall brick external chimneys stacks each with detailed brick bands which

reinforce the quality of detailing in this elevation. A third chimney of the same style can be found towards the rear.

The brick and terracotta detailing in this building is particularly good, with a continuous moulded projecting string course between ground and first floor incorporating a Tudor rose frieze detail which is also copied vertically above. The stonework surrounds to the windows and their quoins are also striking.

The height, mass and style of this fine building complements the buildings to either side and its height in particular mirrors that of others in this part of the Nantwich Road. The building and its outbuildings are, therefore, an important part of the historic character of this road and its buildings and it is for these reasons that it has been incorporated on the local list.

Policy BE13 of the Adopted Replacement Local Plan 2011 states that buildings or structures included in the non-statutory list of buildings and structures of local architectural or historic interest will be protected from inappropriate development proposals affecting the reason for their inclusion in the list.

Clearly, complete demolition of a building would be considered inappropriate development and would affect the reason for its inclusion in the list. Therefore, the Council has a clear preference for the re-use of these locally listed buildings and structures unless re-use is neither physically nor financially sustainable, or it can be clearly demonstrated that there are reasons for the development which outweigh the need to safeguard the building or structure.

As the building is included on the Local List it is also classed as an undesignated Heritage Asset as set out in PPS5. As such there is a general presumption in favour of retention and re-use as opposed to demolition and re-development.

Policy HE1 of PPS5 "Heritage Assets and Climate Change" *states that "keeping heritage assets in use avoids the consumption of building materials and energy and the generation of waste from the construction of replacement buildings."* (Para HE 1.1) Policy HE7 sets out the Policy Principles guiding the determination of applications in relation to all heritage assets. It states at para 7.2 that: *"In considering the impact of a proposal on any heritage asset, local planning authorities should take into account the particular nature of the significance of the heritage asset and the value that it holds for this and future generations..."* Policy HE8: Additional Policy principles guiding the consideration of applications for consent relating to heritage assets that are not covered by Policy HE9 states at para HE8.1 that *"The effect of an application on the significance of such a heritage asset or its setting is a material consideration in determining the application"*

The application is accompanied by a Building Survey Report, Marketing Report and Report on Potential Uses to justify the proposed demolition.

The structural report has submitted with the application concludes that the building requires considerable works internally and externally due to its age and lack of maintenance. Roofing windows and guttering require replacement, brickwork should be

re-pointed and the chimney stacks rebuilt. Internally the building requires redecoration, rewiring, new heating and plumbing and some ceilings need replastering. Some alternative uses may require sound insulation, improvements to floor loadings, thermal insulation, a lift and improved fire precautions. Further surveys of drains, timbers and lintels are also recommended.

In terms of the building survey, nothing in it seems to relate to an inherent failure of the fabric of the building that necessitates demolition. The issues mentioned in the report are predominantly what would be expected in regard to ongoing maintenance and repair associated with a building of this age and type and as a consequence of it not being used and maintained for a prolonged period. The other issues mentioned relate to the buildings upgrade to accommodate a new use, some of which may not be essential in order to secure a sympathetic re-use.

The applicant argues that the original character of the building has been changed and diminished not least by the loss of the whimsical lantern tower destroyed by fire, which was original located between the two front gables. In addition the attic floor has been painted blue and a single storey extension has been added on the western side, which further detract from its appearance. The general condition of the building has also deteriorated and is in need of maintenance.

It is not considered that these are sufficient reasons to justify the demolition of the building. The painting of the attic is a cosmetic alteration, which could easily be reversed and a more comprehensive restoration, as part of a conversion to an alternative use could deal with the missing lantern and single storey extensions.

Having reviewed all of the submitted information, it is not considered that the building is beyond economic repair. There is nothing to suggest that the building is unsafe or has major structural problems such as subsidence or major cracking to walls. The only significant structural problem which has been identified is the need for the roof to be replaced. This, like all of the other works required, can be considered routine maintenance, and in any event would probably be carried out as a matter of course as part of a conversion to an alternative use.

In essence therefore the application hinges on the issue of whether the harm caused by the loss of the heritage asset is outweighed by the findings of the Marketing and Potential Uses Reports, which conclude that there has been no meaningful interest in rejuvenating the retained building and that the only viable scheme is the demolition of existing buildings and development for retail use.

The marketing report concludes that there have not been any offers for the property on the basis of keeping the building and refurbishing it for either the licensed trade or any alternative issue. A great deal of time and effort has been wasted in aborted discussion which always conclude that the purchasers are unable to fund a refurbishment of the property and to make it a viable development opportunity. There are a number of pubs on the market at the present time in Crewe (and a letter for Lamonts has been provided to illustrate this point) which have been on the market for several years and some of which have been demolished and developed as alternative uses. There is unlikely to be any other short or medium term change unless some quango organisation with a very

large grants required the building and converted it to some public use. Given the present climate, there is an extremely low chance of this happening.

The potential uses report concludes that due to changes in drinking patterns resulting from the availability of cheap alcohol from supermarkets etc and the conditions of the general economy, pubs are continuing to close nationwide. The report states that the building is in need of significant capital expenditure on repairs. In addition, further expenditure on refurbishing the accommodation would be required before it could be brought back into a licensed use. A number of the pub operating companies are reducing the size of their retail chains. It is not considered that there is a demand from an operator for a continuation of the established licensed use.

The potential returns which could be achieved in the current market would not support redevelopment of the property for alternative commercial uses including offices or the redevelopment of the property or its site for residential use. The only viable scheme, for which a demand is identified, is the demolition of the existing building and the development of the site for retail use, particularly if it could be combined with the neighbouring property to the rear.

The findings of the marketing report are viewed with an element of scepticism, in that, given the longstanding interest of Aldi in the site, there could have been a policy of non-investment in the building and the use over several years leading up to its closure, with the intent of disposing of the site for re-development. Whilst on face value, the marketing seems to have been extensive and over a relatively long period, that could also have been undertaken with the same outcome in mind.

### **Layout, Design and Street Scene**

The proposed store has been sited at the front of the site and is orientated with the main frontage at 90 degrees to the road. Consequently the Nantwich Road frontage is formed by a long blank elevation. However, efforts have been made to add interest and detail to this elevation by wrapping the entrance around the corner and incorporating gables, brick modelling and elements of structural glazing in order to create the illusion of an active frontage.

A similarly blank elevation is presented to Sherwin Street, although the impact will be softened by proposed tree planting and again brick modelling has been introduced to the gable end.

The majority of the development along Nantwich Road, including the properties to either side of the site, is of between two and three storeys in height with a vertical emphasis and rhythm created by fenestration patterns, stops in the building line, bay windows and gables. Buildings are generally traditional in style with pitched, tiled roofs and red facing brick walls. These are features which have been replicated on the proposed store which is similar in overall height to the adjacent buildings and includes a steeply pitched roof, a vertical emphasis to the glazing and gables. Overall, therefore, it is considered that its scale, form and siting are acceptable in terms of their impact on the character and appearance of the street scene. However, it is not considered that the design of the

building is of such exceptionally high quality that it in any way compensates or provides special justification for the loss of a locally listed building.

### **Crime and Disorder.**

Large scale retail proposals often raise concerns about car-related antisocial behaviour on the car park when the supermarket is closed. Such problems have been experienced at other stores in the Borough and it is therefore suggested that in the event of approval conditions should be imposed requiring the erection of gates or other physical measures to secure the site access outside store opening hours, as well as the provision of CCTV and speed humps.

### **Public consultation**

In support of the previous application, the developer submitted a Consultation Statement. The Crewe & Nantwich Borough Council Adopted Statement of Community Involvement, which provides guidance on the production of Statements of Local Engagement states, at Paragraph 8.3, that such documents should show how applicants have involved the local community and where the proposals have been amended, as a consequence of involving the local community.

The Statement, submitted as part of the previous, identical, planning application, outlines the public consultation that has taken place and summarises those concerns and issues that were raised. The main issues appear to have been the need for the new store, loss of the historic building, car parking and access. Whilst the statement goes on to provide further justification for the proposal and reassurance that these matters are of no consequence, it does not appear that the scheme has been amended in any way to respond to public concerns.

### **Sustainability**

The new Regional Spatial Strategy places considerable emphasis on achieving sustainable development, minimising waste and energy consumption. It also advocates provision within new development of micro-generation opportunities. Policy EM 18 states that “in advance of local targets being set, new non residential developments above a threshold of 1,000m<sup>2</sup> and all residential developments comprising 10 or more units should secure at least 10% of their predicted energy requirements from decentralised and renewable or low-carbon sources, unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable.”

The applicant has previously provided a supporting statement which explains that on previous new build Aldi schemes, where there has been a planning requirement to provide 10% renewable energy, one of two solutions have been adopted. These are either an air source heat pump to provide the required 10%, or a heat recovery system, whereby the waste heat energy from the refrigeration condensers has been utilised to provide heating to the store, which is substantially in excess of the 10%. On similar sized stores to the one proposed, the predicted annual energy consumption would be in the order of 438,240kWh resulting in a 10% figure of 43,826kWh. The proposed heat

pump system would generate approximately 50,483kWh per annum, with the heat recovery providing approximately 120,000kWh per annum. The provision of these systems can be secured by planning condition and on this basis it is considered that the requirements of policy EM18 (Decentralised Energy Supply) will be met.

In accordance with the principles set out in RSS Policies EM9 (Secondary and Recycled Aggregates) and EM11 (Waste Management Principles) as well as the provisions of Policy 11 (Development and Waste Recycling) of the Waste Local Plan a statement has previously been submitted explaining that any material derived from demolition works will be reused where possible on site. The most obvious application is reclaiming aggregates for use in pedestrian and car parking areas. Waste taken from the site will be closely monitored by the site manager. A detailed Waste Management Plan can also be conditioned.

### **Air Quality**

The site is adjacent to an Air Quality Management Area which has been declared due to the levels of nitrogen dioxide in the area. A comprehensive air quality impact assessment of the proposal has been carried out and the Environmental Health Section are now satisfied that, subject to appropriate conditions to secure the submission of an updated assessment and the implementation of mitigation measures, permission can be granted without any adverse impact on air quality within the area.

### **Amenity**

The proposed store will be sited between 18 and 20m away from the properties on the opposite side of Nantwich Road and Sherwin Street, which will be sufficient to prevent any loss of light to those properties. Given the lack of glazing in the elevations fronting on to these streets, privacy is also not considered to be an issue. Distances in excess of 20m will be maintained to all of the other neighbouring dwellings.

With regard to the operation of the building the Environmental Health section have raised concerns about noise, odour and light from the premises, but are of the opinion that these can be adequately mitigated through appropriate conditions. Furthermore, compared to the existing pub use, any disturbance resulting from customer or early morning delivery activity is considered to be minimal and it is therefore considered that there are no sustainable amenity grounds for refusal.

### **Landscape and Ecology**

The proposal involves the loss of a number of mature trees from the middle of the site. However, these were to have been removed as part of the approved scheme for residential development and in view of this fall-back position and the fact that the trees are not protected by a Tree Preservation Order, it is not considered that a refusal on these grounds could be sustained. Furthermore, a number of replacement trees are proposed within the new development and these can be secured through an appropriate landscaping condition.

The application is supported by a bat survey. The Council's ecologist has commented that the consultant who undertook the bat survey is known to him and is suitably experienced to undertake work of this kind. Whilst the survey appears to have been undertaken to a high standard the site was visited too early in the season for the ecologist to perform an emergence/activity survey.

However, considering the lack of suitable bat foraging habitat and the lack of evidence recorded during the latest and previous surveys and the likelihood that there will be abundant alternative roosting places in surrounding buildings I recommend that the submitted bat survey is acceptable to assess the impacts of the proposed development upon bats.

As no evidence of bats was recorded during the survey no further action is required in respect of protected species.

### **Highways and Parking.**

The developer has submitted a Traffic Impact Assessment with the application. Although no comments had been received at the time of report preparation, the Traffic Impact Assessment and the proposal are identical to those which have been previously examined by the Strategic Highways Manager. At the time of the previous application he raised no objection in principle to the proposed development and therefore, whilst the comments of local residents are noted, it is not considered that a refusal on traffic generation grounds could be sustained. With regard to the detail of the scheme, the Strategic Highways Manager has raised a number of concerns regarding the layout of the carpark. However, it is considered that these issues can be adequately addressed through the submission of amended plans, which have now been sought from the applicant.

### **Loss of Community Facility**

Policy CF3 seeks to protect community facilities which make a positive contribution to the social or cultural life of a community, unless suitable alternative provision is made. Previous appeal decisions which have considered schemes that would result in the loss of a public house, have established that where there are other facilities within easy walking distance then there are no planning objections to the loss in principle. Appeal decisions make it clear that the consideration is whether there are alternative establishments in the local area not whether they offer exactly the same ambience / facilities as the one which has closed. Policy CF3 makes no reference to the need to market an establishment before it is lost or for any considerations regarding viability. Whereas the Council has used such a reason for refusal for other premises in villages, the same considerations do not apply to the loss of a public house in a town such as Crewe with other public houses within walking distance. It is therefore considered that the loss of this public house would not conflict with policy CF3 of the Replacement Local Plan 2011.

### **Other Matters**

A significant number of letters have been received in respect of the proposal, paragraph 27 of PPS1 states that the members of the local planning authority are elected to represent the interests of the whole community in planning matters. When determining planning applications they must take into account planning considerations only. This can include views expressed on relevant planning matters. However, the paragraph concludes that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons.

Therefore, in considering letters of representation, Members must consider the validity of the points that have been raised and not the number of letters received.

Resident's complaints about antisocial behaviour relating to the pub do not provide justification for its demolition as these are a management issue and can be address through licensing and other legislation. Furthermore, the public house could be converted to another use which would elevate these problems as well as addressing its appearance and the maintenance issue. The untidy land at the rear can also be dealt with through enforcement proceedings or the implementation of the extant residential permission.

The quality and price of Aldi products or the helpfulness of their staff are not material planning considerations.

## **11. CONCLUSIONS**

In summary it is considered that whilst retail development would be acceptable in principle, the proposal would result in the loss of a locally listed building, the re-use of which the Local Planning Authority considers to be both physically and financially sustainable. The applicant has failed to demonstrate that there are any other reasons for the development which outweigh the need to safeguard the building and the proposal.

Notwithstanding the concern about the loss of the existing building on site, the layout, massing, and design of the proposal are now considered to be acceptable and would not, in themselves, adversely affect the character and appearance of the street scene on this part of Nantwich Road. It is also considered that the developer has adequately demonstrated how the proposal will contribute to sustainable development objectives through renewable energy, energy saving design and waste minimisation and recycling.

The proposal will not exacerbate existing air quality problems on Nantwich Road and is considered to be acceptable in terms of its impact on crime and disorder, landscape and ecology, amenity of neighbouring properties, drainage and flood risk. Subject to suitable amendments it is considered that the highways and parking issues can be resolved. Furthermore, it is concluded that the developer has complied with the Statement of Community involvement. However, these are insufficient to outweigh the concerns in respect of the loss of the locally listed building.

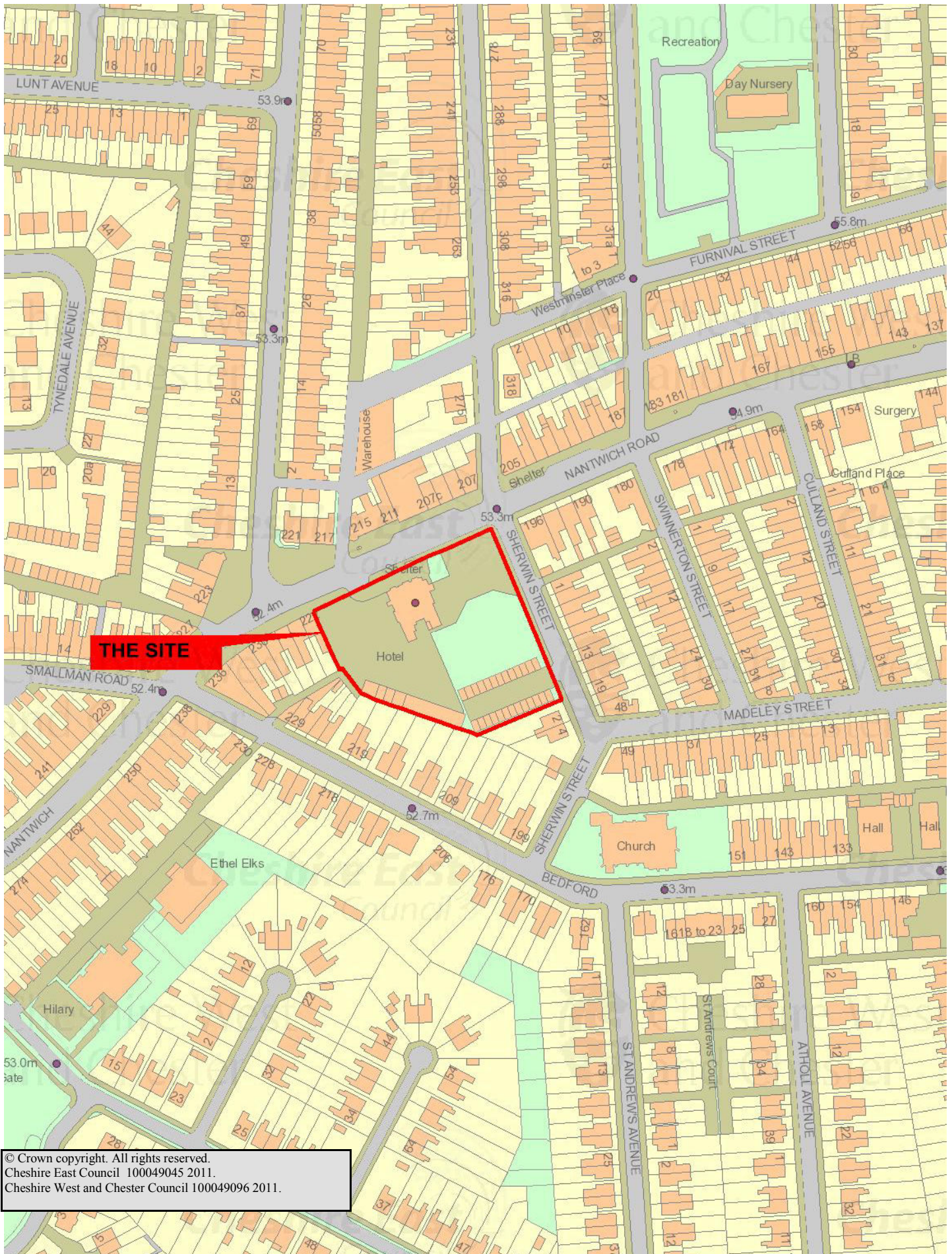
Therefore, in the light of the above, and having due regard to all other matters raised, it is concluded that the proposal is contrary to policies BE.13 (Buildings of Local Interest),

of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and accordingly it is recommended for refusal.

## **12. RECOMMENDATIONS**

**REFUSE for the following reason:-**

- 1. The proposal would result in the loss of a locally listed building, the re-use of which the Local Planning Authority considers to be both physically and financially sustainable. The applicant has failed to demonstrate that there are any other reasons for the development which outweigh the need to safeguard the building and the proposal is therefore contrary to Policy BE.13 (Buildings of Local Interest) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.**



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Application No: 12/0234N  
Location: ROSE HALL, ASTON JUXTA MONDRUM, NANTWICH, CW5 6DS  
Proposal: Proposed Two Storey Extension to form residential annex  
Applicant: Mrs A McAlpine  
Expiry Date: 08-Mar-2012

**SUMMARY RECOMMENDATION: Approve with Conditions****MAIN ISSUES**

- Principle of development
- Design and impact on the open countryside
- Amenity impact on neighbouring property
- Access and Parking

**REFERRAL**

This type of application is usually dealt with under delegated powers however this application has been called into planning committee by Councillor Michael Jones for the following reasons,

*'This is an application which appears to be in the open countryside and is causing considerable impact on access for neighbours.  
The design may also be contrary to planning rules.'*

**DESCRIPTION OF SITE AND CONTEXT**

The proposal site is a three storey former farmhouse property sited on Dairy Lane, Aston Juxta Mondrum. The proposal site is situated within the open countryside with a recent barn conversion surrounding the site to the north and east. The existing dwelling has a several single storey additions at the rear (west) of the dwelling which is surrounded by a 2m high wall.

**DETAILS OF PROPOSAL**

The applicant is seeking permission for a two storey extension to the rear of the property which is to be used as a residential annex for the applicant's housekeeper. The proposed extension to the property will be largely constructed on the existing footprint of the single storey extensions. The annex will have a kitchen, sitting room and WC at ground floor level and two bedrooms and a bathroom at first floor level.

The extension will have a length of 8.4m, a width of 4.9m and a maximum height of 6m. There appears to be an alteration to the roof of the existing single storey rear projection which will contain the kitchen.

At the time of the planning officer's site visit internal works to modernise the dwelling were taking place.

### **RELEVANT HISTORY**

No relevant planning history

### **POLICIES**

The policies from the Borough of Crewe and Nantwich Replacement Local Plan 2011 (LP) are:

#### **Local Plan Policy**

BE.1 (Amenity)  
BE.2 (Design Standards)  
RES.11 (Improvements and Alterations to existing Dwelling)  
NE.2 (Open Countryside)

#### **Other Material Considerations**

PPS1, Delivering Sustainable Development  
Extensions and Householder Development SPD

**CONSIDERATIONS (External to Planning):** None received at time of writing this report.

**VIEWS OF THE PARISH / TOWN COUNCIL:** None received at time of writing this report.

### **OTHER REPRESENTATIONS**

The occupants of Little Rose Barn (1), 2, 3, Court House (5) Rose Farm Barns; Dairy Lane have made the following comments,

- Support the re-development of Rose Hall,
- Concern that first floor windows will overlook back gardens and windows,
- Restrict sunlight hours to rear windows and gardens,
- No measurements on the plans to show the height of the extension
- Views will be restricted,
- The building will be overbearing as it is larger than existing garage buildings,
- Proposal appears to be for a new two storey dwelling within the green belt,
- There would be no objection to a single storey extension with annex which is integrated with the main house,
- Over development of the site,

- There is no right of access across the private road to the east of the site and therefore questions are raised as to how the new occupants will access the extension,
- The proposed single storey kitchen extension will be a tall single storey extension which will be imposing,
- UPVC windows would be out of character with the surrounding area – timber doors and windows should be required, and slate roofs,
- Concerns over the capacity of the existing septic tank and potential impact on the water course.

## **APPLICANT'S SUPPORTING INFORMATION**

Planning Statement

## **OFFICER APPRAISAL**

### **Principal of Development**

The principal of householder development within the open countryside is considered acceptable provided that the proposed extension appears subordinate to the original dwellinghouse and the original dwelling remains the dominant element. The proposal must also accord with Local Plan policies BE.1 (Amenity), BE.2 (Design Standards) and RES.11 (Improvements and Alterations to existing Dwellings).

### **Design and Impact on the open countryside**

The existing dwellinghouse has a collection of single storey extensions and outbuildings to the rear of the property. The proposed development seeks to remove these outbuildings and replace them with a single storey outshout and a two storey residential annex. The proposed site plan shows that the footprint of the development is fairly similar to that which already exists on site.

Policy RES.11 states that, 'in the open countryside the original dwelling must remain as the dominant element with the extension subordinate to it'. The reasoning for the policy then goes on to explain that '...the extension must not result in the creation of a dwelling that is double or more than double the size of the original dwelling.' The proposed extension will be significantly less than double the volume of the existing dwelling and therefore from a numeric aspect the proposed extensions are acceptable.

The proposed extensions and alterations are of design and nature which is in keeping with the traditional design of the proposed dwelling. The proposed two storey extension will appear as a subordinate addition to the dwellinghouse and will tidy up the rear elevation of the dwelling.

Whilst timber window frames and doors would be preferable to retain the buildings traditional character, the use of UPVC windows and doors is acceptable as this property is not listed and the site is not within a conservation area.

The proposed two storey extension is to be used as ancillary living accommodation for the applicant's housekeeper. Whilst new dwellings within the open countryside are acceptable the use of an extension for ancillary living accommodation is an acceptable use and with the addition of a condition to ensure the annex is only used as ancillary accommodation for a member of the family or someone who works for the owners of the dwellinghouse.

It is therefore considered that the proposed extension will not have a detrimental impact on the open countryside and is of a scale and mass which is acceptable in line with Local Plan policy BE.2 (Design Standards).

### **Amenity**

The proposed extensions will be sited to the rear of the site to the west. The proposed extension will be contained largely to the footprint of the existing buildings; however it will have a first floor addition.

The two storey extension (annex) will be sited to the rear of the site adjacent to the converted barns known as Rose Farm Barns. No.6 – 4 Rose Farm Barns are of a two storey nature and No.1-3 are one and a half storey in height.

There is a minimum distance of 21m between the proposed two storey extension and the rear elevation of No's 3 and 4 Rose Farm Barns. The proposed extension will have a secondary window in this elevation serving a bedroom which will face the principal windows on the rear elevation of the No's 3. The Council's Supplementary Planning Document: Extensions and Householder Development states that to protect the privacy and living conditions of neighbouring properties, a distance of 21m should be achieved between any proposed principal window and a directly opposing principal window, unless the window is fitted with obscure glazing. It is considered that although this window meets the distance, as it will serve as a secondary window to the bedroom an obscure glazed window condition would be acceptable in this instance. It is therefore considered that with the addition of an obscure glazing condition the proposed development will not have a significantly detrimental impact on the neighbours to the north by means of overlooking.

There is an 18m distance between the proposed rear elevation of the extension and the rear elevation of the property known as 'Little Rose Barn'. Both properties have principal windows facing each other, however due to the orientation of the barn to the rear elevation of the proposed extension no direct overlooking will occur. It is therefore considered that the proposed extension will not have a significantly detrimental impact on the amenity of the adjacent neighbours by means of overlooking. Therefore it is not considered necessary to require obscure glazing to the first floor rear windows.

Whilst it is acknowledged that the impact of a two storey extension will have some increased impact on views of the adjacent neighbours, protecting views is not a material planning consideration. However the impact the building may have on loss of light or overbearing impact is. The proposed extension will be 6m in

height, and it is considered that the impact of the building will be limited when seen in the context of the three storey dwelling, and the intervening garage. Although the light to the rear elevation of the barns may be reduced slightly due to the south aspect it is unlikely that this would significantly detrimental to substantiate a reason for refusal.

The proposed single storey element of the proposal is to the south of the site and will have a limited impact on the amenity of the adjacent neighbours due to its single nature. The proposed development is considered to be of a size and position which is acceptable and in accordance with local plan policy BE.1 (Amenity).

### **Access and Parking**

The proposed extension (annex) will be accessed off the existing driveway to the north of the site; there is sufficient space within the curtilage of the property to park several cars and therefore in the absence of any comments from the Highway Authority it is considered that the proposed development is acceptable and will not have a detrimental impact on highway safety.

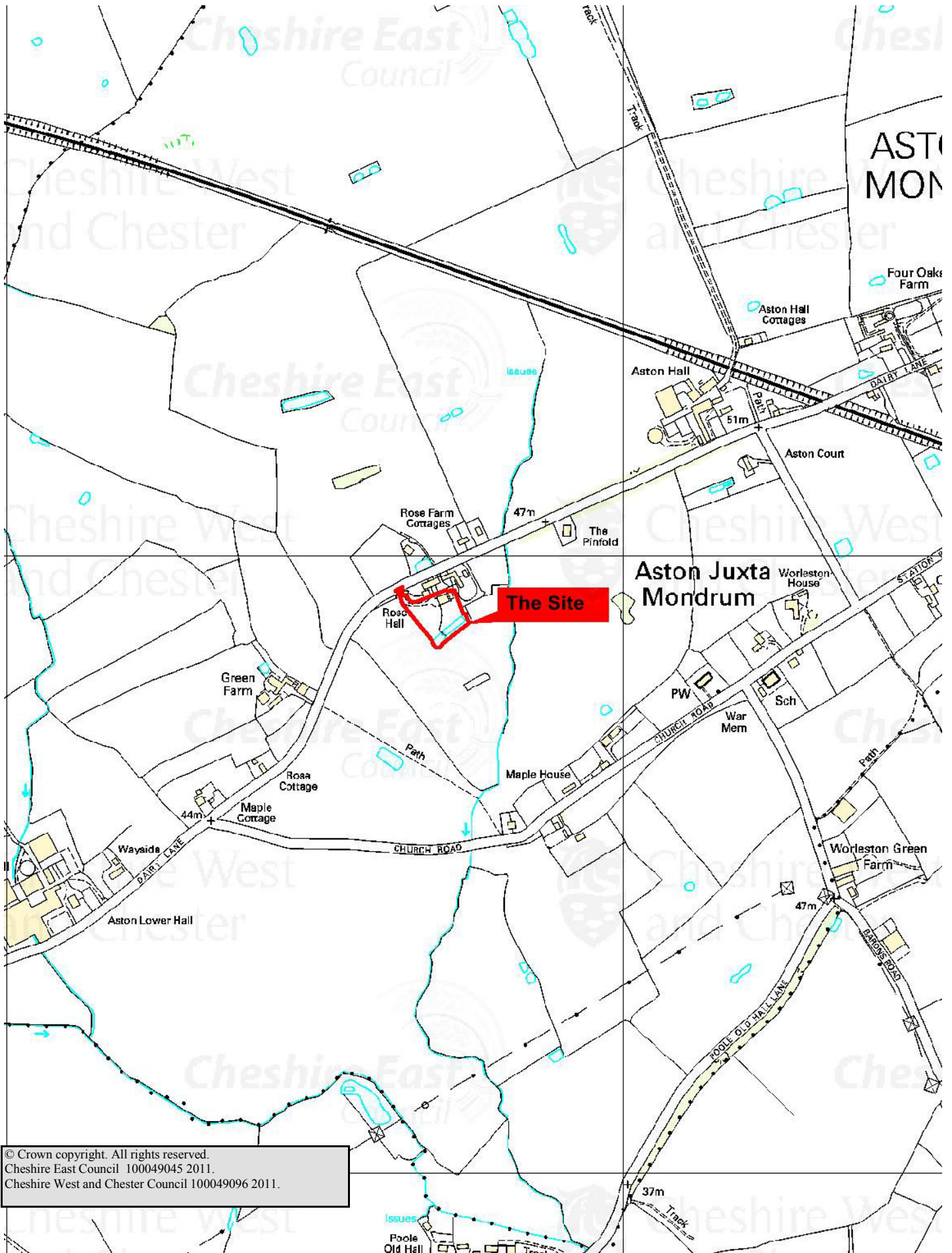
Within the objections raised, the issue of the use of a private access to the west of the site is raised. The application site does not include the access to the rear and therefore does not form part of this permission. Furthermore, any issue raised with regards to the potential unauthorised use of the private access is a private civil legal matter and not a material planning consideration.

### **CONCLUSIONS AND REASON(S) FOR THE DECISION**

It is considered that the proposed development is of size and position which is in-keeping with the host dwelling, and the surrounding area. The proposed development will not have a significantly negative impact on the adjacent neighbours and is therefore considered to be acceptable and in accordance with the relevant policies of the Local Plan.

### **Conditions**

- 1. Standard Time**
- 2. Materials to match existing dwelling**
- 3. Obscure glazed window to first floor north elevation**
- 4. Annex to remain ancillary to main dwelling for use of family members, friends or staff only and not used a holiday let, separate dwelling or for a business use**
- 5. Approved plans**



Application No: 12/0250C

Location: LAND ON OAK TREE LANE, CRANAGE

Proposal: Demolition of The Haven and New Farm, Oak Tree Lane, and Construction of two new replacement dwellings on seperate site at Oak Tree Lane

Applicant: MS PAT DAVIES

Expiry Date: 13-Mar-2012

**SUMMARY RECOMMENDATION: Approve subject to conditions.**

**MAIN ISSUES:**

**Principle of the Development**

**Housing Land Supply**

**Affordable Housing**

**Amenity of Neighbouring Properties**

**Highway Safety**

**Ecology**

**Landscape and Trees**

**Open Space Provision**

**Flooding**

**REASON FOR REFERRAL**

The application has been referred to Southern Planning Committee because it is a departure from the development plan.

**DESCRIPTION AND SITE CONTEXT**

The application site comprises a parcel of land to the south west of New Farm, New Farm itself and The Haven which is situated on the eastern side of the M6 motorway. All elements of the application site are within the open countryside as designated in the adopted local plan.

New Farm is sited on the western side of the motorway and The Haven is to the east. Both properties are approximately 13m from the edge of the motorway and are the subject of the former Congleton Borough Council, Local Air Quality Management Final Action Plan August 2007 (Area 1).

The site proposed for the relocation of the dwellings is at the western end of the field adjacent to New Farm, in close proximity to the existing access onto Middlewich Road.

**DETAILS OF PROPOSAL**

The proposal seeks full planning permission for the demolition of The Haven and New Farm and the erection of two replacement dwellings, on a separate parcel of land. The reason for the need to move the dwellings is their close proximity to the M6 motorway and the resultant detriment to the living conditions of the occupiers due to air, noise and light pollution.

The replacement for New Farm would be a 4 bedroom dwelling, contained on a similar sized footprint and of a similar design to the existing farmhouse. The replacement for The Haven would also be on a similar sized footprint, but instead of being a true bungalow as the existing dwelling, would have 2 bedrooms in the roof. Both dwellings would be constructed of red brick with grey slate roofing. Access for each new dwelling would be taken from Oak Tree Lane, a road that now only serves the existing farmhouse and terminates where it meets the M6.

### **RELEVANT HISTORY**

10/3426C     2010   Approval for extension and alteration (The Haven)

### **POLICIES**

#### **National Guidance**

PPS1 Delivering Sustainable Development

PPS3 Housing

PPS9 Biodiversity and Geological Conservation

PPG13 Transport

PPS23 Planning and Pollution Control

PPG24 Planning and Noise

#### **Regional Spatial Strategy**

DP1 Spatial Principles

DP2 Promote Sustainable Communities

DP4 Making the Best Use of Existing Resources and Infrastructure

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

DP7 Promote Environmental Quality

DP9 Reduce Emissions and Adapt to Climate Change

RDF1 Spatial Priorities

RDF2 Rural Areas

L2 Understanding Housing Markets

L4 Regional Housing Provision

L5 Affordable Housing

RT2 Managing Travel Demand

RT9 Walking and Cycling

EM1 Integrated Enhancement and Protection of the Region's Environmental Assets

#### **Congleton Local Plan 2005**

The site is not allocated in the Local Plan but the following policies apply:

PS8 Open Countryside

H6 Residential Development in Open Countryside & Green Belt

GR1 New Development

GR2 Design

GR4 Landscaping

GR6 Amenity and Health  
GR7 Pollution  
GR9 Accessibility, Servicing and Parking Provision  
NR1 Trees and Woodlands  
NR2 Statutory Sites  
NR3 Habitats

SPG2 Provision of Private Open Space in New Residential Developments  
SPD14 Trees and Development

## **CONSIDERATIONS (External to Planning)**

### **Environmental Protection:**

Recommend the following:

The hours of 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

No development shall commence until a scheme for protecting the proposed dwellings from traffic noise [and vibration] has been submitted to and approved by the Local Planning Authority due to the close proximity of the M6; all works which form part of the scheme shall be completed before any of the dwellings are occupied.

At present both New Farm and The Haven are within an Air Quality Management Area. This section would therefore fully support the relocation of both dwellings further away from the M6 Motorway.

In order to determine the application however, an air quality impact assessment will be required to ensure that the proposed new location is not above statutory limit values for key pollutants.

### **United Utilities**

No objections.

### **Highways:**

No objections.

### **Jodrell Bank**

Recommend the inclusion of electromagnetic screening measures in the design of the building, in which case they would not oppose the application.

## **VIEWS OF TOWN COUNCIL**

No Objection

Comments; Conditions, As 'The Haven' was originally built as an agricultural holding linked to New Farm, the same should apply in the future. Pleased it has gone west of M6 and holds its own septic tank

### OTHER REPRESENTATIONS

None received at the time of report writing.

### OFFICER APPRAISAL

#### Principle of Development

The site lies within the Open Countryside as designated in the Congleton Borough Local Plan First Review, where Policies PS8 and H6 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
- For other uses appropriate to a rural area

will be permitted.

The proposed development would not fall within any of the categories of exception to the restrictive policy, relating to development within the Open Countryside. As a result, it constitutes a 'departure' from the development plan. As such there is a presumption against the proposal, under the provisions of sec.38(6) of the Planning and Compulsory Purchase Act 2004. This states that planning applications and appeals must be determined:

*"in accordance with the plan unless material considerations indicate otherwise".*

The issue in question is whether there are material considerations associated with this proposal, which are sufficient to outweigh the policy objection.

#### Written Ministerial Statement: Planning for Growth (23<sup>rd</sup> March 2011)

The Minister of State for Decentralisation issued this statement on 23<sup>rd</sup> March 2011 and advice from the Chief Planner, Steve Quartermain states that it is capable of being regarded as a material consideration. Inter alia it includes the following:

*"When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate **housing**, economic and other forms of sustainable development. Where relevant – and consistent with their statutory obligations – they should therefore:*

- (i) Consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after recent recession;*
- (ii) Take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing;*
- (iii) Consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased customer choice, more viable*

- communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity);*
- (iv) Be sensitive to the fact that local economies are subject to change and so take a positive approach to development where new economic data suggest that prior assessments of needs are no longer up-to-date;*
- (v) Ensure that they do not impose unnecessary burdens on development.*

The Government has also stated that there should be a presumption in favour of sustainable development.

This states inter alia that:

*“There is a presumption in favour of sustainable development at the heart of the planning system, which should be central to the approach taken to both plan-making and decision-taking. Local planning authorities should plan positively for new development, and approve all individual proposals wherever possible.”*

PPS23 (Planning & Pollution Control) states that air quality can be a material consideration in determining a planning application. In this case the two dwellings in question are within Air Quality Management Area 1 of the former Congleton Borough Council, Local Air Quality Management Final Action Plan August 2007. As such the air quality at these properties is considered to be poor and given that traffic on the M6 has increased markedly over the years, it is not considered that the situation will change significantly for the better. It is therefore considered that allowing the replacement of these dwellings further away from the motorway, would resolve the issue of the poor air quality suffered by the occupants. There are no other properties in such a position in the area and as such approval of this application should not be seen as setting a precedent for the replacement of dwellings on a site different from the existing.

Environmental Health have requested that an air quality assessment is submitted for the new site, prior to determination. This information has been requested and members will be given an update prior to committee.

Having regard to noise, the noise levels this close to the M6 are clearly significant and not conducive to the peaceful enjoyment of a residential property. As such it is considered that moving these two dwellings would result in improved living conditions for the occupants.

Light pollution is another issue due to the traffic headlights shining into the properties during the night causing further levels of disturbance.

Overall it is considered that the issues of air quality, noise and light pollution are sufficient to outweigh the policy objection to the proposal.

### **Design, Scale and Siting**

The proposal for New Farm would result in a dwelling very similar to the existing farmhouse, which is of a simple two storey design. The application form states that it would be constructed in red brick with a grey slate roof and this is considered to be appropriate.

The dwelling to replace The Haven would effectively be 1.5 storey with rooms in the roof and would also be constructed in red brick with a grey slate roof, and would appear appropriate on the proposed site in combination with the other building.

The dwellings would be sited adjacent to a line of trees that would provide screening from the west and additional landscaping would ensure that they did not appear as incongruous elements in this rural location. The landscaping should be secured by condition.

As these would be new dwellings in the open countryside, and as such are an exception to what normally be permitted within the open countryside, it is considered that permitted development rights should be removed in order to control the size of the proposed dwellings and their impact on the openness of the countryside.

### **Amenity**

The new dwellings would be sited in such a way that there would be no overlooking or privacy issues for either property. In addition, both would have more than adequate residential amenity space. There would be no impacts on any nearby properties as they are a considerable distance away.

### **Highways**

The Strategic Highways Manager has no objection to the application in highway safety terms. The access to the site from Middlewich Road has good levels of visibility in both directions and both dwellings would have adequate parking provision. The proposal is therefore considered to be acceptable in terms of highway safety.

### **Landscape and Trees**

There is a line of trees on the western boundary of the site that would provide some screening for the dwellings. It is set lower than the Middlewich Road, that runs alongside, so the dwellings would therefore be less visible.

In order to ensure that the landscaping of the site is appropriate, it is considered that conditions should be imposed requiring the submission and implementation of a comprehensive landscaping scheme. In order to ensure the protection of the trees on the western boundary, a tree protection condition should be imposed. In addition, boundary treatments should be controlled by condition to ensure that they are appropriate to this rural location.

The sites subject of this application contain one dwelling on the eastern side of the motorway and one dwelling and several outbuildings on the western side. The proposal is contrary to local plan policies, and is only recommended for approval due to very special circumstances, namely the living conditions of the occupants. Moving the dwellings to the new position would create additional built development in the open countryside, and it is considered that in order to mitigate against any impact that this may have, all the existing buildings and any associated hardstanding, should be removed. This should take place within 3 months of the first occupation of the either of the proposed new dwellings. It is therefore recommended that a condition is imposed to ensure that this takes place.

### **Other Matters**

Cranage Parish Council have stated that they would like to see an agricultural occupation condition applied to the replacement for The Haven. The Local Planning Authority has no information on record that proves that this was a requirement imposed when permission was originally granted for this dwelling. As such it would not be reasonable for a condition of this type to be imposed.

The Design and Access Statement refers to the relocation of the barns on the site. However this does not form part of this application.

### **CONCLUSIONS AND REASONS FOR THE DECISION**

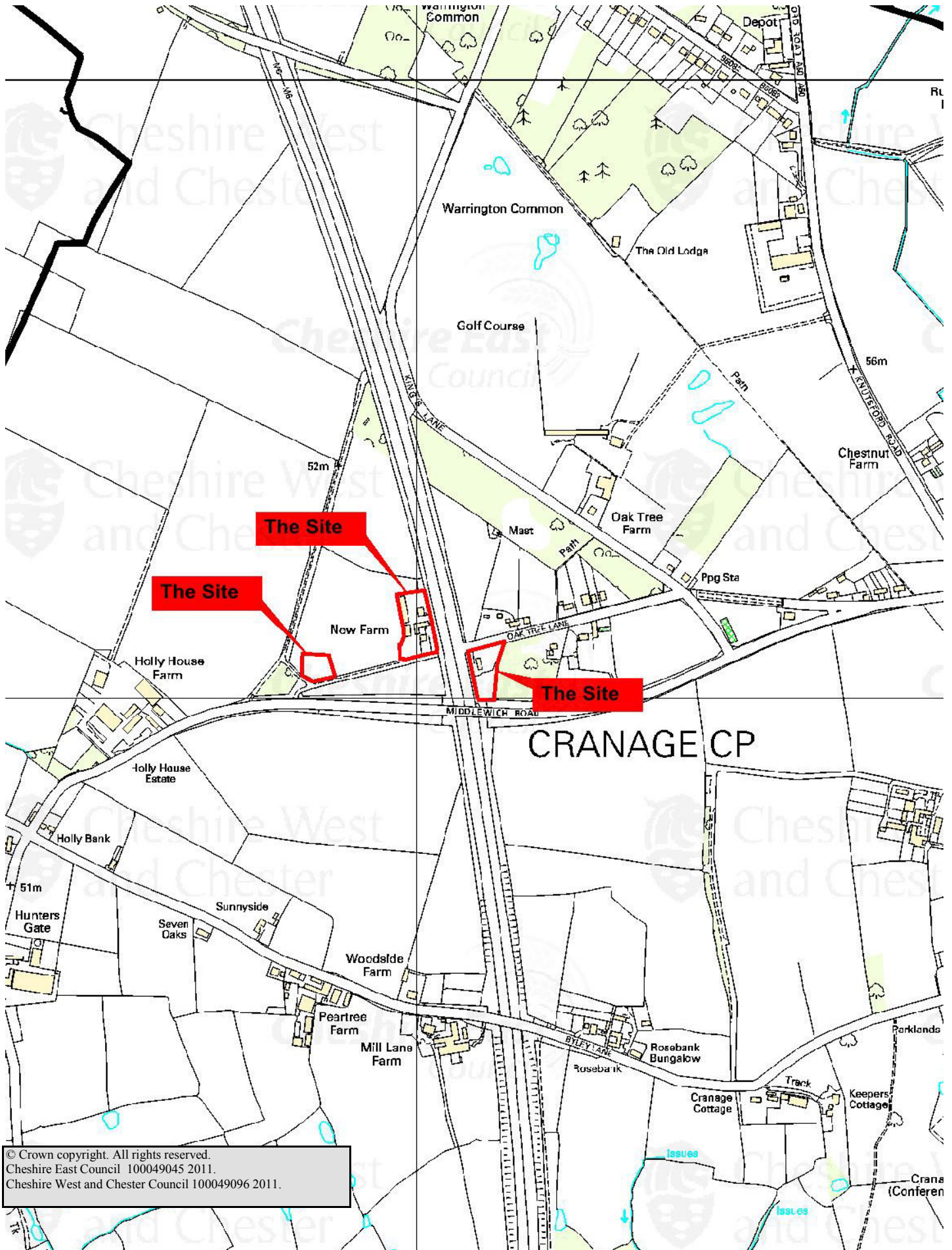
The proposal for two replacement dwellings, in a different position from those existing is contrary to Policies PS8 and H6 of the adopted local plan. However, it has been demonstrated that there are material considerations, namely air quality noise and light pollution that outweigh these policy objections.

The development is acceptable in design, amenity and landscaping terms, subject to the recommended conditions.

The proposal is therefore recommended for approval.

**RECOMMENDATION:** Approve subject to the following conditions:

1. Time limit.
2. Compliance with the approved plans.
3. Submission of materials for approval.
4. Submission and implementation of a tree protection scheme.
5. Submission of landscaping scheme.
6. Implementation of landscaping scheme
7. Submission and implementation of boundary treatment scheme.
8. Hours of construction (including deliveries) limited to 0800 to 1800 Monday to Friday, 0800 to 1400 Saturday with no working on Sundays or Bank Holidays.
9. Submission of details of the method, timing and duration of any pile driving operations.
10. Submission and implementation of a scheme for protection from traffic noise and vibration.
11. Protection measures for breeding birds.
12. Submission and implementation of a scheme of boundary treatments.
13. Use of electromagnetic screening measures to protect the Jodrell Bank Radio Telescope.
14. Removal of permitted development rights
15. Removal of all existing buildings and associated hardstanding within 3 months of the first occupation of either of the proposed dwellings.



Application No: 12/0325N

Location: The Printworks, CREWE ROAD, HASLINGTON, CREWE, CHESHIRE, CW15RT

Proposal: Proposed replacement dwelling for previously approved residential conversion

Applicant: Nigel Hartley

Expiry Date: 16-Mar-2012

**SUMMARY RECOMMENDATION:**

- **Approve subject to conditions**

**MAIN ISSUES**

- **Principles of Development**
- **Amenity**
- **Highways**
- **Protected Species**
- **Design**
- **Trees and Landscape**

**1. REFERRAL**

The proposal has been referred to Southern Planning Committee because it constitutes a new dwelling the Open Countryside, as defined in the Crewe and Nantwich Replacement Local Plan and is therefore a departure from the statutory Development Plan.

**2. SITE DESCRIPTION AND DETAILS OF PROPOSAL**

The application site comprises a cleared site formerly associated with no. 204 Crewe Road, Haslington, a large detached dwelling and coach house fronting Crewe. The dwelling and application site share a vehicular access from Crewe Road which subdivides within the curtilage of the property. The site was formerly occupied by a commercial building, which was located to the rear of no. 204, approximately 105m back from Crewe Road. This has recently been demolished and foundations laid for a new building. Two brickwork panels of approximately 2m x 2m have also recently been constructed at either side of the site.

The boundaries within the site are defined by established planting predominantly with trees throughout the site, although a significant number of trees have been removed as part of the recent works. The site falls within the open countryside as designated in the Local Plan.

The surrounding area is characterised by residential properties set within large gardens. The site is within Open Countryside, as defined in the local plan, albeit only a short distance outside the Haslington Settlement Boundary.

Planning permission was granted on appeal for the conversion the recently demolished commercial unit into a separate dwelling unit. (Application P07/1401 refers). The proposal included a porch extension to the south elevation, two additional windows to the west elevation and amendments to existing openings within the elevations. A revised proposal which included more extensive alterations to the building was subsequently granted planning permission in 2010, under application reference 10/4295N.

Following commencement of development, two 2m x 2m panels were cut out of the brickwork to either end of the building and rebuilt, following which the remainder of the original building was demolished and all that remains on site are the two recently reconstructed panels at each end of the building. It is the applicant's intention to rebuild the remainder of the building to form a dwelling, identical in external appearance to the previously approved conversion.

The applicant was under the misapprehension that the reconstruction of 2 panels constituted "repair and maintenance" of the original building, and that because these were retained, whilst the remainder of the building was demolished and reconstructed, the proposal would still represent a conversion of the original building. However, the legal position in such circumstances, confirmed in the courts in *Hadfield v SOS 19/6/1996*, is that any planning permission is thereby lost and a fresh permission is needed for any reconstruction. This application, therefore, is for a new dwelling to replace the building which has been demolished.

### **3. PREVIOUS RELEVANT DECISIONS**

P06/1145	Conversion of Existing Office Block to One Dwelling. Refused 29 <sup>th</sup> November 2006.
P07/1401	Conversion of Existing Workshop/Offices (B1) to form Single Dwelling – Appeal Allowed
10/4295N	Conversion of Printworks to a Residential Building with Minor Extensions – Approved 23 <sup>rd</sup> December 2010

### **4. PLANNING POLICIES**

The development plan includes the North West of England Plan Regional Spatial Strategy 2021 (RSS) and the Borough of Crewe and Nantwich Replacement Local Plan 2011 (LP).

The relevant development plan policies are:

#### **Regional Spatial Strategy**

- DP1 (Spatial Principles)
- DP2 (Promote Sustainable Communities)

DP4 (Make the Best use of Existing Resources and Infrastructure)  
DP5 (Manage Travel Demand)  
DP7 (Promote Environmental Quality)  
DP8 (Mainstreaming Rural Issues)  
DP9 (Reduce Emissions and Adapt to Climate Change)  
RDF2 (Rural Areas)  
L5 (Affordable Housing)  
MCR4 (South Cheshire)

### **Cheshire Replacement Waste Local Plan**

Policy 11A (Development and Waste Recycling)

### **Borough of Crewe and Nantwich Replacement Local Plan 2011**

BE.1 (Amenity)  
BE.2 (Design Standards)  
BE.3 (Access and Parking)  
BE.4 (Drainage, Utilities and Resources)  
BE.6 (Development on Potentially Contaminated Land)  
TRAN.9 (Car Parking Standards)  
NE.2 (Open Countryside)  
NE.5 (Nature Conservation and Habitats)  
NE.9 (Protected Species)  
RES.5 (Housing in the Open Countryside)

### **Other Material Considerations**

PPS1 (Delivering Sustainable Development)  
PPS3 (Housing)  
PPS7 (Sustainable Development in Rural Areas)  
PPS9 (Biodiversity and Geological Conservation)  
PPG13 (Transport)

## **5. OBSERVATIONS OF CONSULTTEES**

### **Highways**

No objection

### **Environmental Health**

Make the following comments.

- The hours of 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
- Should there be a requirement to undertake foundation or other piling on site it is recommended that these operations are restricted to:
  - Monday – Friday 08:30 – 17:30 hrs

- Saturday 09.00 – 13:00 hrs
  - Sunday and Public Holidays Nil
- The application area has a history of printworks use and therefore the land may be contaminated.
- The application is for a new residential property which is a sensitive end use and could be affected by any contamination present.
- Information relating to contaminated land was submitted under previous application number 10/4295N and the condition was discharged.
- As such, and in accordance with PPS23, this section recommends that the following conditions, reasons and notes be attached should planning permission be granted:
  - Should any adverse ground conditions be encountered during excavation works, all work in that area should cease and this section be contacted for advice.

## **6. VIEWS OF THE PARISH / TOWN COUNCIL:**

Following discussion at a full meeting of Haslington Parish Council on 6th February 2012, it was confirmed that the Parish Council objects to the proposed development of a dwelling in the open countryside, as contrary to policy NE.2. Further the Parish Council agreed to leave the matter as a Planning Officer decision and not request a call in of the application to the Southern Planning Committee.

## **7. OTHER REPRESENTATIONS:**

None received at the time of report preparation.

## **8. APPLICANT'S SUPPORTING INFORMATION:**

- Design and Access Statement.
- Covering letter
- Tree Survey.

## **9. OFFICER APPRAISAL**

### **Policy Position**

The main issue in the consideration of this case is the acceptability, in principle, of the proposed development. Due to the extent of the rebuilding, the development is no longer a conversion scheme, and effectively now is tantamount to the erection of a new dwelling within the Open Countryside.

Policy RES.5 and NE.2 of the local plan state that in the open countryside. new dwellings will be restricted to those that, involve the infilling of a small gap with one or two dwellings in an otherwise built up frontage or are required for a person engaged full time in agriculture or forestry.

Given that the proposed dwelling is located to the rear of the site, set back from the site frontage, and the distances to the adjoining properties, it is not considered that the development constitutes infill development of a small gap in an otherwise built up frontage, which would accord with Policy NE.2. As the proposed dwelling is not intended

for agricultural workers the development is, therefore, contrary to policy and represents a departure from the Development Plan.

Consequently, there is a presumption against the proposal, under the provisions of sec.38(6) of the Planning and Compulsory Purchase Act 2004 which states that planning applications and appeals must be determined “*in accordance with the plan unless material considerations indicate otherwise*”. The application turns, therefore, on whether there are any other material considerations, of sufficient magnitude to outweigh the Development Plan presumption against the development.

### **Material Considerations**

According to the covering letter submitted with the application it is the applicant's case that:

*“The initial phase of development under the direction of the project manager was to remove the building (apart from two panels of brickwork) and to pour new foundations. It was at this point that the Council became aware of the approach being taken to the development and indicated that, in their view, the original building had been demolished and that a new planning permission would be required since it was no longer possible to convert the original building.*

*Had the Applicants had any idea that the approach to the development that was being adopted by their project manager might in any way threaten their permission, then, of course, they would never have allowed it to proceed, but they understandably relied upon the advice of their project manager who had been instructed because of his expertise in such matters.....the Applicants have been placed in a potentially catastrophic position by virtue of the decisions and actions of their previous advisors. If no replacement dwelling was permitted on the application site, then, potentially, the Applicant's would lose everything that they have already invested in the site and would be left without the family home that they have been working hard to realise for nearly two years; virtually all of their life savings would be lost..”*

Ministerial advice relating to the extent to which personal pleading may be a material consideration is mainly to be found in “The Planning System: General Principles”, which accompanies Planning Policy Statement 1 (April 2005). Para. 21 states that exceptionally the personal circumstances of an occupier, personal hardship, or the difficulties of businesses which are of value to the welfare of the local community, may be material to the consideration of a planning application. It is noted that in such circumstances a permission may be made subject to a condition that it is personal to the applicant. However, the guidance warns that such arguments will seldom outweigh more general planning considerations, which would include the strong presumption against new residential development in the open countryside.

The applicants go on to argue that:

*“Notwithstanding the fact that the description on the approval referred to the development as a “conversion”, a close examination of exactly what was approved reveals that it was in fact tantamount to the construction of a new dwelling. A comparison of the original building with that which was approved pursuant to 10/4295N reveals that the two main elevations (north and south) would have been*

*entirely new because they both incorporated substantial areas of wall forward of the original building line and, where the building line did correspond, the replacement of walls with glazing or the insertion of significant new doors and openings. The shorter east and west elevations could have been retained to a greater extent although the construction of the chimney stack would have involved some demolition; the roof structure would have been entirely new and of a fundamentally different design.....Had every part of the original structure been retained that it was possible to retain, then just 13.3% of the final 'building envelope' would have been 'original', the remainder would, of necessity, have been entirely new. Furthermore, the remaining 13.3% was also to be rendered which would have removed any significance that its retention might, otherwise, have been said to have. It is on the above basis that we conclude that the permission was, in effect for the construction of a new dwelling."*

*The above approach was also acknowledged to a significant extent within the officer's report relating to the above application where it was noted that the proposals involved major reconstruction, but that this was considered to be justified in these 'exceptional' circumstances.*

*Given that the approval was in effect for a new dwelling the very small variation in terms of what could conceivably have been retained from the original building is of no material significance and, therefore, conclude that the original permission can still be implemented. ....The above background must be seen as a material consideration of some significant weight weighing in favour of the grant of planning permission; this was never intended to be a conversion in the normal way of things and what is now proposed is not materially different to that which was granted permission; it would be wrong to place undue weight on the word "conversion" rather than the actual details of the approval."*

The legal position is that if a planning permission exists for development, and it has not lapsed because of non-implementation within the statutory time limits the rights conveyed by that permission may be lost if, inter alia, collapse or demolition of an old building being converted for a new use occurs, where retention of the old structure was the justification for the permission. In such cases, as shown in *North Norfolk DC v Long & SOS 10/11/1982*, there is no permission for any reconstruction. The commonest scenario is where barns are being converted to residential or other accommodation. The approach taken in the *North Norfolk* case was confirmed by the case of *Hadfield v SOS & Another 19/6/1996* where permission had been granted for a barn conversion, but it was found that substantial rebuilding was necessary. Here an inspector had concluded that a building re-erected in these circumstances was a new building not covered by the terms of the previous consent. The High Court upheld this approach.

Whilst, in cases of partial collapse / demolition there may be room for debate as to whether the amount of demolition/reconstruction could be held to be within the ambit of the original permission and its accompanying plans, in most cases, local authorities and The Planning Inspectorate are inescapably led to the conclusion that what has or is to be erected is tantamount to a new dwelling in the countryside and permission should be refused on policy grounds.

Planning Officers have examined the approved plans and are of the opinion that the approved conversion could have been implemented whilst retaining the entirety of

both gable walls, and two thirds of the rear wall, although it is acknowledged that the front wall would have needed to be rebuilt and the need for an entirely new roof structure can be debated. Therefore, the applicant's claim that it was possible to retain only 13.3% of the original building envelope is called into question and Planning Officers are of the view that the actual percentage which could have been retained is significantly higher. Notwithstanding this point, however, it is clear that the 2 brick panels which remain on site are significantly less than 13.3% of the original building. Furthermore, these 2 panels were themselves rebuilt immediately prior to the rest of the building being demolished and therefore none of the original building now remains on site.

Therefore, in this case, planning officers are firmly of the opinion that, the proposal is tantamount to a new dwelling in the countryside, which is contrary to policy and little weight should therefore be afforded to the applicants arguments in respect of the previous approval, as set out above, as a material consideration.

With regard to planning policy the applicants, argue that the proposal is not an opportunistic isolated dwelling in the open countryside, and that policy RES.5 in the Local Plan which restricts development in the Open Countryside needs to be considered and balanced against other material policy considerations. They state:

*"It is clearly a consideration of significant weight that that application site is previously developed land; it is not a greenfield site (to this extent it may be very clearly contrasted with the adjacent site on which planning permission was recently refused – ref: 11/4228N). National policy in PPS1 and PPS3 repeatedly emphasises the importance of making efficient use of previously developed land and the application site is one such opportunity. Furthermore, as a result of the work that has thus far been undertaken on the site, it is undeniable that the site is now in a seriously degraded condition and, unless permission is granted for its redevelopment, it is difficult to see how the visual problem that the site now represents can be addressed."*

It is acknowledged that because the building concerned was a former commercial building, and not an agricultural building, or domestic outbuilding, both its footprint and curtilage do constitute a previously developed brownfield site as defined in PPS3. It is also acknowledged that Government planning policy prioritises the use of brownfield sites for development over and above Greenfield sites. The site is currently unsightly due to the partially completed building work which has taken place. However residential redevelopment is not the only why in which it could be restored. The site could conceivably be landscaped and incorporated into an adjoining dwelling as additional garden or paddock land. Nevertheless, the fact that this is a brownfield site is considered to be a very important material consideration to which considerable weight should be attached.

The applicants also draw attention to the Ministerial Statement on Planning for Growth (and now repeated in the Draft NPPF) makes clear the principle that: *The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.*

It goes on to say that *“when deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. Where relevant - and consistent with their statutory obligations - they should therefore, inter alia,*

- consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession;*
- take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing;*
- consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity);*
- ensure that they do not impose unnecessary burdens on development”*

Officers acknowledge that the proposal will help to maintain a flexible and responsive supply of land for housing, which is specifically identified above as a “key sector”. The proposal will also create jobs and economic growth in the construction industry and all the associated supply networks. The Secretary of State for Communities and Local Government has made it clear that he will take the principles in this statement into account when determining applications that come before him for decision. In particular he will attach significant weight to the need to secure economic growth and employment.

With regard to the issue of whether the development *“would compromise the key sustainable development principles set out in national planning policy”*. The applicant points out that *“this issue has already been addressed in the 2008 appeal decision relating to this site where the Inspector observed that the site was reasonably well related physically to the village as part of a continuous ribbon of development, that Haslington had a reasonable range of shops and services and that the bus route provides a frequent service. When these considerations are taken alongside the reuse of a previously developed site, it is clear that the proposal is for sustainable development and, therefore, the Government approach is to say ‘yes’ to this proposal.”* It is agreed that this is another important material consideration.

The applicants also point out that Cheshire East has less than a five year supply of housing land and in accordance with paragraph 71 of PPS3 “suitable” residential applications, therefore, should be considered favourably. The applicant argues that this principle should apply as much to proposals for single dwellings, such as this, as it does to larger proposals of a more strategic nature. The previously approved conversion scheme will have been taken into account when the current housing land supply figures were calculated and the loss of the previous permission will have exacerbated, albeit by a very small amount in percentage terms, the current undersupply of housing. If permission were granted for this application, that reduction in housing land supply could be avoided. The question, therefore, is whether this application is suitable in all other respects, which in this case would include Amenity, Highways, Protected Species, Design and Trees and Landscape.

The design of the proposed dwelling is identical to the conversion which was approved in December 2010 (10/4295N). In comparison with the original building on

the site, the footprint of the property is virtually identical to that, which was originally on the site, and the ridge height is and the external appearance is also identical. The proposal would therefore have no greater detrimental impact on the character and appearance of the open countryside than the building, which previously stood on the site. The test of any proposal must relate to whether it would result in material harm to an interest of acknowledged importance, which is protected by Local Plan policies. Furthermore, there can be no harm associated with the visual impact of the proposed dwelling because it merely replicates that which the Council have relatively recently considered and found to be acceptable on this site.

Indeed, given that the result would be a dwelling on the site which is identical to that which would, otherwise, have resulted from the implementation of the previous permission. It therefore follows that there is no harm arising from the proposal and, consequently, no harm to the environment that would justify the refusal of planning permission. This is an important material consideration in favour of the scheme.

The applicant has also argued that there are a number of aspects of the current proposal which provide real opportunities for an improved development as compared to that which would have been possible through the route of conversion. By its nature, a conversion inevitably embodies a number of constraints to incorporating all of the 'green technology' features that the Applicants ideally wishes to include. By contrast, and as a positive consequence of complete rebuilding a complete package of green technology can be incorporated into a new dwelling resulting in a far more energy efficient property. In particular, the proposals would incorporate the following:

- Ground source/air source heat pump.
- Heat recovery ventilation
- Photovoltaic panels
- Solar thermal
- Upgraded insulation
- Underfloor heating
- Rainwater harvesting.

The proposal, therefore, will produce a 'state of the art' energy efficient property, both in terms of efficient operation and the use/generation of energy from renewable sources and the applicants consider that this is another factor in favour of the grant of planning permission.

The applicant has also referred to a number of similar appeal cases. The first concerns a building at Hambrook in Bristol which was destroyed by fire such that only approximately 10% could have been retained. The Appellant demolished the whole structure. The Inspector took into account that, if the residential use of the site had been extinguished, it had not been done so intentionally and the appellants intention had at all times been to establish a family home. The manner in which the bungalow had been destroyed and demolished were material considerations. The inspector identified that the proposal conflicted with the development plan policy unless there were "very special circumstances" (para 21). The Inspector acknowledged that the Appellant was not aware of the possible planning consequences of demolishing all of the building. He observed that the consequences of the site having a nil use would be "catastrophic" and would cause "substantial hardship". Reference was made to the principle that fairness is a yardstick against which development proposals can be

measured and that in this case the circumstances amounted to exceptional circumstances outweighing the harm to policy and the Green Belt.

This case differs from that at The Printworks, because the property in question was severely damaged by fire and the residential use of the site had not been extinguish intentionally. At The Paintworks, the building was sound and was deliberately demolished and rebuilt in phases under the misapprehension that this still constituted conversion. However, it should be noted that the Inspector attached weight to the intention to establish a family home, and the hardship which would be caused as a result of the loss. In this respect it is comparable to the current application.

The second case referred to by the applicant concerns a site at Pennington, Leigh, where planning permission was given to convert a barn to 2 dwellings. Subsequent reports concluded that there were serious structural problems with the building. However, this was not the case at The Printworks, which was considered to be structurally sound in an engineer's report submitted with the original conversion application. The Inspector concluded that the implementation of the original permission always would have amounted to major reconstruction and this factor was a "very important circumstance" in determining the appeal. The Inspector concluded that "fairness should be seen to underpin the decision making process" and that in the circumstances it was neither fair nor reasonable to prevent the development from being completed (para.15). Consequently the very special circumstances outweighed Green Belt policy. As stated above, at the current applicant has contended that the original permission for the conversion of The Printworks gave consent for major reconstruction but this point is contested by Planning Officers. Consequently it is considered that the case at Pennington is not comparable in this respect and little weight should be afforded to the Inspectors comments in this instance.

Proposals to replace a dwelling reduced to a shell by a fire in circumstances where there were no development plan policies allowing for replacement at Crosthwaite in Kendal were also considered at Appeal. In this case the Inspector observed that when the requirement for replacement arises from an accident, such as a fire, then there are strong personal reasons for allowing rebuilding, even though in this case 11 years had elapsed since the fire. This, together with the high standard of design of the proposal justified the granting of planning permission. It is not considered that this case is comparable given that the requirement for replacement arose from an accident, whereas at The Printworks, the demolition was intentional.

The final case quoted by the applicant relates to a site at Upton on Severn where approval was granted for restoration, improvement and extension of a former cottage. In the course of the works the cottage was "negligently demolished by the building contractor". The Inspector concluded that circumstances had changed only because of an "unfortunate mishap" (para 11). The building had been purchased in order to provide a home, but the proposal would not cause any harm to interests of acknowledged importance and no visual harm to the countryside. Consequently, although it was a departure from the development plan, the special circumstances justified the grant of permission.

This case is more directly comparable to the current application in that it was the negligence of the contractor managing the project that was the cause of the demolition. It is of particular note that the Inspector attached considerable weight to

the absence of harm from the re-building application, as that is the principal material consideration in favour of the proposal at The Printworks, as set out above.

The applicant concludes that:

*It is clear that in each case referred to, and notwithstanding strong policy reasons dictating against the principle of new development (which are not as pressing in this case), that the Inspectors have recognised that it would not be reasonable, or fair, if the planning system operated in a manner which deprived the owners in each of the cases of the permissions that they had, unfortunately, lost through no fault of their own. It is clear, therefore, that there is always the potential for special circumstances to outweigh planning policy principles that may suggest an alternative approach. We consider that this is an extraordinarily unfortunate situation, the circumstances are very exceptional and there is no reason why the planning permission should not be granted in order to, in effect, reinstate that which it was always intended should be on the site.*

It is acknowledged that the Inspectors in the cited cases have set aside policy and have attached greater weight to the individual material considerations in each case. It is also noted that the concept of “fairness” has featured heavily in their reasoning, but, as the applicant points out, these cases relate to where permissions had been lost through no fault of the applicant. In the case of The Printworks, the building was not lost as a result of an accidental and unavoidable event such as fire or structural collapse, as was the case in the first three examples above, it was demolished due to the negligence of the project manager. However, it could be argued that the applicants had placed their trust in the project manager, and that consequently, despite the deliberate demolition they could not be held responsible for the fact that the permission had been lost. In this respect the proposal is comparable to the fourth example, which was also allowed by the Inspector. It is also noted that in all of the above cases the Inspectors gave weight to the personal circumstances of the applicants in terms of financial hardship and the loss of family homes which would be incurred as a result of any refusal of planning permission. The most significant point arising from the Appeal decisions, however, is that relating to the absence of harm arising from reinstating a building, identical in appearance to one which was always intended to be on the site. This is an important material consideration, which applies to the proposal currently under consideration.

Planning Officers have also identified a number of other cases where similar issues have been considered by Inspectors. The first, dated 26 July 2004, relates to a development in the Stockport Green Belt whereby planning permission had been granted for the conversion of an existing barn to a dwelling. When works began on the building they did not comply in all respects with the planning approval, and at the request of the Council work ceased on the property. The roof had been removed from the building and much of the rear wall. The Council was of the opinion therefore that the planning permission could not be implemented and what the appellants were proposing was tantamount to a new dwelling in the Green Belt. The Inspector opined that the appellant was seeking to provide a dwelling practically identical to that previously permitted and that the only material difference was that more reconstruction work would be required. The end result would still be a modest three bedroom cottage, built in stone and with a stone flagged roof and retaining some characteristic features of the original barn.

The appeal turned on whether the new scheme would constitute inappropriate development in the Green Belt and if so whether there were any very special circumstances which warranted an exception to the severely restrictive Green Belt Policies.

The Inspector acknowledged that the proposal as it stood did not accord with the requirements of PPG2 i.e. it would not be properly associated with agriculture or forestry nor would it be essential for outdoor sport, recreation or a cemetery or any other predominantly open use, nor could the development be classed as infilling as it did not lie within an existing village boundary or within an area where there was a ribbon form of development. Therefore, he opined that the scheme would constitute inappropriate development within the Green Belt. However he then turned to consider whether or not there were very special circumstances which would override the strong policy objections.

He considered the relevance of the extant planning permission and whether, if permitted to continue, the ultimate development would be significantly different to that approved. He concluded that it would not because materials were to be re-used, it would be built in stone and have a stone flagged roof and retain some of the characteristic features of the original barn. The Inspector concluded that all of those matters constituted sufficiently special circumstances to warrant an exception to the severely restrictive Green Belt Policies.

A further appeal decision, whereby similarities may be drawn with this proposal relates to a site which lies in the North Cheshire Green Belt within the administrative area of the former Macclesfield Borough Council.

Planning permission had been refused for the conversion of the barn to residential accommodation in 1992. However, in 1993 planning permission was granted for the conversion. A subsequent application was approved to make alterations and additions to the barn.

When work commenced on the development, parts of the east wall collapsed. The applicant was advised by her agent that the end gable walls would have to be removed and rebuilt on the existing foundations. The Local Authority was of the opinion that these works would require a further planning approval. An application was subsequently withdrawn and work restarted on the building. Consequently an enforcement notice was issued together with a stop notice in 1994. The withdrawn application was re-submitted and an appeal was lodged against the enforcement notice. At appeal the enforcement notice was upheld and the Section 78 appeal was dismissed.

An amended application was submitted, this too was refused and dismissed at appeal. A further application was submitted and refused, a subsequent appeal was withdrawn.

In 2000 the Local Planning Authority resolved to use its powers to enter the site and undertake works of demolition in default. The applicant brought proceedings of judicial review against this decision claiming that demolition would be unlawful under the Human Rights Act 1998 and was an unjustified deprivation of property contrary to Article 1 of the First Protocol to the convention. Permission was initially refused by the High Court but subsequently granted by the Court of Appeal. Whilst the judicial review

was pending a further application for the retention of the buildings was submitted. Although the Council considered the proposal to be inappropriate development in the Green Belt it resolved to approve the application, subject to it being referred to the Secretary of State as a possible call-in, on the basis of very special circumstances, these were identified as being:

- i) That planning permission had originally been granted for the conversion and change of use of a barn for residential use. There was therefore no objection to the use of the site for a dwelling.
- i) There had been some technical breaches of policy and guidance in respect of the criteria for the re-use of the buildings in the countryside as set out in the development plan and government advice. The structural report accompanying the application had not been as comprehensive as would now be expected and to which appropriate planning conditions might have been attached. The likelihood of a similar situation arising had therefore been significantly reduced.
- ii) The principle of development on this site carried the support of the Parish Council and the local community.
- iii) The building is a possession as defined by the Human Rights Act 1998. The applicant is entitled to the peaceful enjoyment of that possession. If planning permission were further refused then having regard to the history of this site including potential demolition of the building, there is a risk that the applicant's Human Rights would be breached.

In deciding this application the Secretary of State upheld the very special circumstances. Members should note, however, that the development had already been carried out and the property was occupied; therefore in carrying out works to demolish the property the Local Planning Authority would have been depriving the occupiers of their home. This is not the same situation as that now under consideration. The Secretary of State also made the distinction between the monetary loss, which he did not consider sufficient to justify granting planning permission and the loss of a home, which he did.

In a further Appeal Decision from the Macclesfield area, which was also located in the Green Belt the Inspector determined that the resulting building would not be materially different in size, position or appearance from the conversion. The building was found to form part of a traditional group of buildings with the adjacent farmhouse at a nearby road junction and there would be material harm if the integrity of the farmstead was lost. In addition, the landscaping proposed would also make a modest but positive contribution to the character and appearance of the area. A structural survey and advice from the Council's Building Control Officer indicated that the building was capable for conversion without major or complete rebuilding. Based on the above the inspector concluded that although a new dwelling had been created, its impact on the area was an improvement and sufficient to outweigh the harm to the green belt from inappropriate development.

In a similar case in the former Borough of Vale Royal, an enforcement notice required the demolition and removal of materials for an unauthorised rebuilding of a former barn which had permission for conversion to a dwelling. Upon commencement of work the building became unstable and most of it had to be demolished. Permission to erect a new dwelling was refused and this was also appealed. The site lay within the Green Belt. Major rebuilding work involving more than 50% of the structure would be required and thus failed a local plan policy. Rebuilding was not justified on the

basis that a barn had once existed on the site. The appellant had expended £165,000 to date but this did not constitute a very special circumstance to outweigh harm to openness. Either rebuilding or new-build constituted inappropriate development and permission was refused.

The issue in question, therefore, is whether, in the light of the case law described above, the circumstances set out in the applicant's supporting statement are sufficiently exceptional to justify a departure from development plan policy.

Whilst the current application site at The Printworks does not lie within the Green Belt, it does lie within the Open Countryside where there is a presumption against inappropriate development. The proposal is similar to the appeal cases in that it does not comply with any of the criteria for acceptable residential development in the Open Countryside as detailed in Local Plan policy. The new dwelling would also be identical in external appearance to the previously approved conversion. However, it differs to the above case in that a comprehensive structural report was submitted with the initial application.

The most important point to be drawn from the Stockport and two Macclesfield decisions quoted above is that in all three examples the Inspectors granted permission because the proposed dwellings were identical replicas of previously permitted development. No harm arose. This would also be case at The Printworks. Another key aspect in which previous decisions assist the applicant is that the Inspector took the applicant's personal circumstances into account. However, as can be seen from the Vale Royal case, other Inspectors have taken a different approach and held to the strictly policy based view, that the rebuilding constitutes inappropriate development. These decisions, therefore, are not binding precedents. They merely indicate an approach which another Inspector might take if a decision to refuse this application went to Appeal.

A further exceptional and material consideration in this case is the actions of the previous project manager. If it is accepted that this was the cause and that all reasonable steps had been taken by the applicant to appoint a competent and suitably qualified person to that role, it could be viewed as unreasonable to withhold the permission when the collapse was due to exceptional circumstances outside the applicant's control. The appeal decisions quoted by the applicant illustrate that the principle of fairness is embodied within the planning process. The decision process should not take away rights to development unnecessarily, especially where the circumstances have arisen through no fault of the owner.

In accordance with advice contained within PPS1, the personal circumstances and financial hardship of the owner are also material considerations which must be taken into account. Other important material considerations in this case include the fact that the application site is a brownfield site, sustainably located to the facilities and services of Haslington. Government policy, especially in the light of the land supply situation, indicates that a positive approach should be adopted to proposals in these circumstances. The proposal is identical to that which was recently approved on the site and the new build approach enables a far more comprehensive approach to green technology to be employed which will result in a state of the art energy efficient property.

## **Amenity**

The nearest neighbouring property is over 75m from the building in question and therefore the proposed dwelling would not be harmful to neighbouring amenities with regard to noise, disturbance, overlooking or overshadowing. Sufficient private amenity has been provided for the proposed dwelling.

### **Highways**

In view of the existing approval and in the absence of any objection from the Strategic Highways' Manager, it is not considered that a refusal on highways grounds could be sustained.

### **Protected Species**

Given that the existing building on site has been demolished and all the necessary vegetation removal has taken place, it is not considered that any protected species issues are raised in respect of this proposal. Furthermore, no ecological concerns were identified at the time of the previous approval.

### **Design**

As stated above, the proposed dwelling is identical in appearance to the previously approved conversion scheme, the design of which was considered to be acceptable. The building is set back from the road and is well screened from public view by existing trees within the site. It will also be viewed within the context of the suburban and ribbon development, which characterises this part of Haslington.

### **Trees and Landscape**

The site is surrounded by a number of mature trees. The Councils Landscape Officer has examined the application and commented that the siting of the proposed dwelling is the same as that previously approved under 10/4295N. The only apparent difference to the site layout is the addition of a proposed parking area to the north of the building. In addition, a number of trees which were present at the time of determination of the previous application have been removed from the site. The trees in question were not widely visible to public view.

Taking into account the earlier approval, subject to tree protection and landscape conditions, the proposal is considered to comply with the relevant local plan policies.

### **Other Matters**

A number of freestanding solar panels and a substantial amount of engineering works, in terms of raising of land levels have taken place within the site boundary. These works require planning permission and are not included as part of the application currently under consideration. The applicant has advised that further applications will be submitted for these works once a determination on the principle of the new dwelling has been made.

## **10. CONCLUSION**

It is concluded that the proposed development does not represent the conversion of an existing building or meet the criteria for infill development in the Open Countryside. It is, therefore, contrary to Policy and represents a departure from the development plan. Nevertheless, Section 70 of the Town and Country Planning Act 1990 requires Local Authorities to have regard to “any other material considerations”, which allows them to exercise their own planning judgment as to whether the facts of any particular application (for example the personal circumstance of the applicant, the actions of the project manager and any harm arising from the finished appearance of the building) amount to a sufficiently strong reason to permit a deviation from Local Plan Policy.

In strict policy terms the current proposal is contrary to relevant policies and to permit it would be a departure from those policies. However, after considering the individual circumstances of this case, weighing in the balance the appeal decisions quoted, Members must consider whether the determination of this application should be in line with the normal restrictive policies which control new residential development within the open countryside, or whether the material considerations put forward by the applicant are sufficiently strong to override these policies.

In terms of material considerations, the applicant has argued that under the previous approval only 13.3% of the original building would have been retained, and that in effect permission had been granted for a new dwelling. Consequently the amount of demolition and rebuilding proposed could be carried out within the ambit of the original permission and the conversion could still be implemented. Planning Officers are of the view that the actual percentage which could have been retained is significantly higher. Notwithstanding this point, however, it is clear that the 2 brick panels which remain on site are significantly less than 13.3% of the original building. Furthermore, these 2 panels were themselves rebuilt immediately prior to the rest of the building being demolished and therefore none of the original building now remains on site. Therefore, in this case, planning officers are firmly of the opinion that, the proposal is tantamount to a new dwelling in the countryside, which is contrary to policy and little weight should therefore be afforded to the applicants arguments in respect of the previous approval, as set out above, as a material consideration.

However, there are a number of material considerations which weigh in favour of the proposal. Most importantly, the majority of Appeal Decisions which have considered similar cases support the view that as the completed development would be identical in terms of appearance to the previously approved conversion, no “harm” would result from the development.

Furthermore, in this case, there are other material considerations, in terms of the actions of the project manager, which were largely outside the applicant’s control and could not have been predicted, which have led to the demolition of the building through no fault of the applicant. It is also noted that the concept of “fairness” has featured heavily in Appeal Inspectors reasoning, where it has been held that the applicant lost their original consent through no fault of their own.

In accordance with advice contained within PPS1, the personal circumstances and financial hardship of the owner are also material considerations which must be taken into account and have been afforded considerable weight by previous Inspectors at appeal.

Other important material considerations in this case include the fact that the application site is a brownfield site, sustainably located to the facilities and services of Haslington. The new build approach enables a far more comprehensive approach to sustainability and green technology to be employed which will result in a state of the art energy efficient property. Recent Government guidance in the form of the Ministerial Statement on Planning for Growth (and now repeated in the Draft NPPF) states that there should be a presumption in favour of sustainable development, particularly where proposals would create economic growth and employment, and help to maintain a flexible and responsive supply of land for housing. It goes on to state that Local Planning Authorities should ensure that they do not impose unnecessary burdens on development.

Furthermore, Cheshire East has less than a five year supply of housing land and in accordance with paragraph 71 of PPS3 "suitable" residential applications, therefore, should be considered favourably. The previously approved conversion scheme will have been taken into account when the current housing land supply figures were calculated and the loss of the previous permission will have exacerbated, albeit by a very small amount in percentage terms, the current undersupply of housing. If permission were granted for this application, that reduction in housing land supply could be avoided.

The application is acceptable in terms of Amenity, Highways, Protected Species, Design and Trees and Landscape and therefore, with the exception of the conflict with policy in principle, it is considered to be suitable in all other respects.

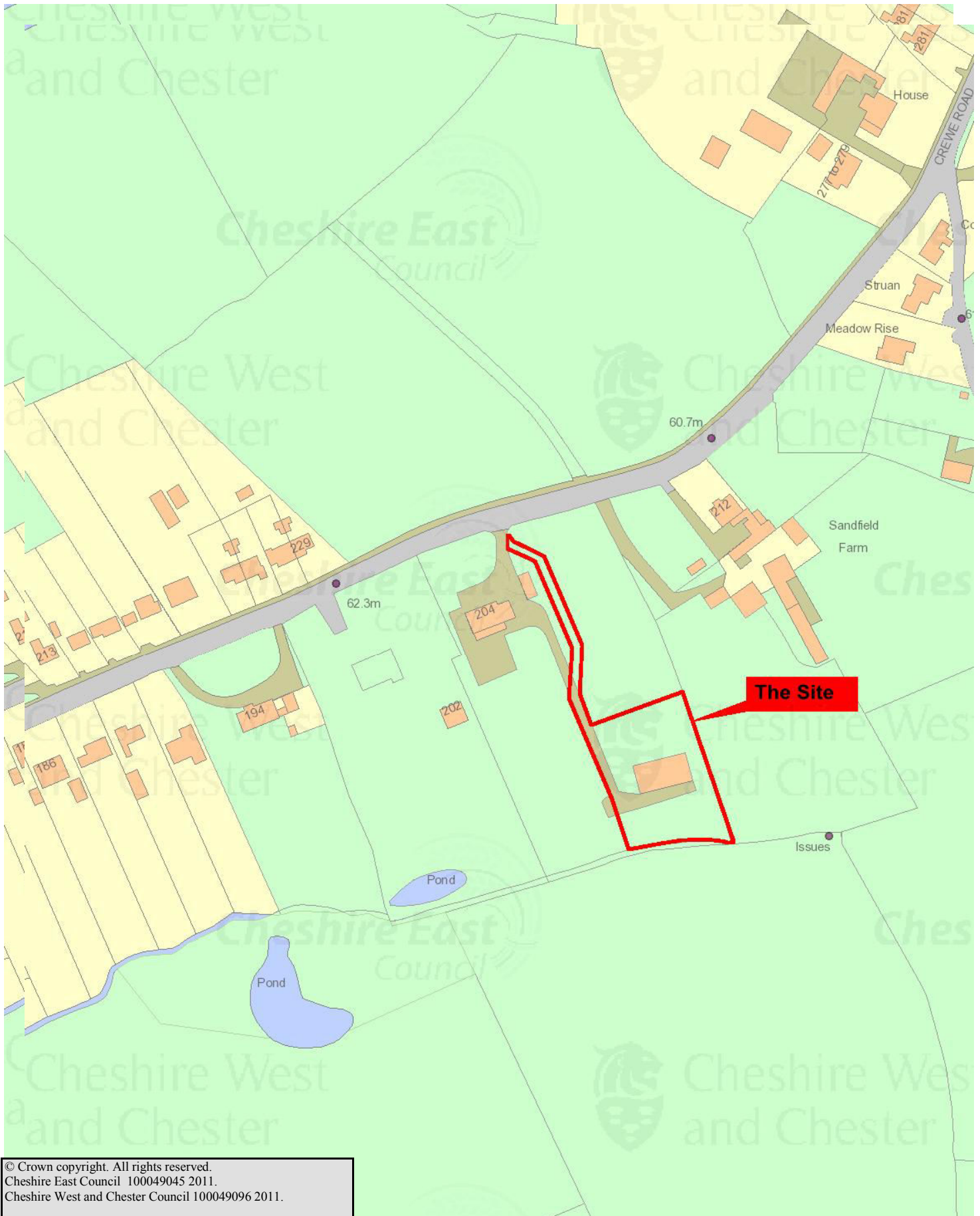
In the light of the above it is considered that, on balance, in this case, the material considerations are sufficient to outweigh the provisions of the development plan policy and therefore planning permission should be granted.

## **11.RECOMMENDATIONS**

### **APPROVE subject to conditions:-**

#### **Conditions**

- 1 Standard**
  - 2 Reference to plans.**
  - 3 Materials including surfacing**
  - 4 Boundary treatment**
  - 5 Landscaping**
  - 6 Landscape implementation**
  - 7 Removal of permitted development rights for extensions, alterations, outbuildings and gates / walls / fences / satellite dishes etc.**
  - 8 Contaminated land**
  - 9 Construction Hours**
  - 10 Pile Driving**
  - 11 Tree Protection**
  - 12 Implementation of Tree Protection**
-



Application No: 12/0384C

Location: Grove Inn, MANCHESTER ROAD, CONGLETON, CW12 1NP

Proposal: Replacement of Vacant Public House with Convenience Retail Outlet store

Applicant: Seven Ten (Cheshire) Ltd

Expiry Date: 22-Mar-2012

**SUMMARY RECOMMENDATION:** Refuse due to insufficient information

**MAIN ISSUES:**

- Principle of the development
- Design
- Highway Safety
- Amenity

**REASON FOR REFERRAL**

This application is before the Southern Planning Committee as it has been called in by Councillor G Baxendale on the grounds of : *Highways issues not attended to, over intensification of the site and inappropriate development of convenience store next to ambulance station.*

**DESCRIPTION AND SITE CONTEXT**

The application site comprises the Grove Inn public house, and the associated beer garden and parking, located on the traffic island bounded by Macclesfield Road and Manchester Road. Congleton Ambulance Station is to the north and there are residential properties to the east and west, with an existing convenience store also to the west.

The site is designated as being within the settlement zone line of Congleton in the adopted local plan.

**DETAILS OF PROPOSAL**

Full planning permission is sought for the erection of a convenience store on the site of the existing Grove Inn public house. The store would be of a more or less triangular shape. It would have 213sqm of floor space on the ground floor, with store, cold store, staff room and office above.

The main entrance would be from the rear, next to the car park, with a secondary entrance on the front corner of the building. A variety of materials are proposed for the construction including extensive glazing, glazed blockwork, steel mesh panels and zinc cladding.

## **RELEVANT HISTORY**

12/0381C 2012 Prior determination for demolition of existing building

08/0536/FUL 2008 Approval for retention of smoking shelter

33208/3 2001 Approval for new patio doors and landing

5371/3 1977 Approval for alterations

## **POLICIES**

### **National Guidance**

PPS1 Delivering Sustainable Development  
PPS4 Planning for Sustainable Economic Growth  
PPS9 Biological & Geological Conservation  
PPG13 Transport  
PPS23 Planning and Pollution Control  
PPG24 Planning and Noise

### **Regional Spatial Strategy**

DP1 Spatial Principles  
DP2 Promote Sustainable Communities  
DP3 Promote Sustainable Economic Development  
DP4 Making the Best Use of Existing Resources and Infrastructure  
DP5 Manage Travel Demand: Reduce the Need to Travel, and Increase Accessibility  
DP6 Marry Opportunity and Need  
DP7 Promote Environmental Quality  
DP9 Reduce Emissions and Adapt to Climate Change  
RDF1 Spatial Priorities  
W5 Retail Development  
RT2 Managing Travel Demand  
RT9 Walking and Cycling  
EM1 Integrated Enhancement and Protection of the Region's Environmental Assets

### **Congleton Local Plan 2005**

PS5 Towns  
GR1 General Criteria for Development  
GR2 Design  
GR4 & GR5 Landscaping  
GR6 & GR7 Amenity & Health  
GR9 & GR10 Accessibility, Servicing and Parking Provision  
GR17 Car Parking  
GR18 Traffic Generation  
GR19 Infrastructure

BH9  
S2

Conservation Areas  
Shopping and Commercial Development Outside Town Centres

## **OTHER MATERIAL CONSIDERATIONS**

### **Written Ministerial Statement: Planning for Growth (23<sup>rd</sup> March 2011)**

The Minister of State for Decentralisation issued this statement on 23<sup>rd</sup> March 2011 and advice from the Chief Planner, Steve Quartermain states that it is capable of being regarded as a material consideration. Inter alia it includes the following:

*“When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, **economic** and other forms of sustainable development. Where relevant – and consistent with their statutory obligations – they should therefore:*

- (i) consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after recent recession;*
- (ii) take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing;*
- (iii) consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased customer choice, more viable communities and more robust local economies(which may, where relevant, include matters such as job creation and business productivity);*
- (iv) be sensitive to the fact that local economies are subject to change and so take a positive approach to development where new economic data suggest that prior assessments of needs are no longer up-to-date;*
- (v) ensure that they do not impose unnecessary burdens on development.*

The Government has also stated that there should be a presumption in favour of sustainable development, this states inter alia that: *“There is a presumption in favour of sustainable development at the heart of the planning system, which should be central to the approach taken to both plan-making and decision-taking. Local planning authorities should plan positively for new development, and approve all individual proposals wherever possible.”*

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

### **Highways:**

Due to the proposed location of this development and the arrangements for access – in particular that for pedestrians - it is necessary that full and thorough information is provided so that the Strategic Highways Manager can make an accurate assessment of likely traffic issues and highway safety. There have been significant pre-application discussions in which the S.H.M. has expressed his concerns over pedestrian access to this development.

The proposal to add two new PUFFIN crossings to accommodate pedestrian movements is crucial to the development however the location of the two crossings must remain under debate as the proposed locations do not necessarily align with the considerations of the S.H.M.

In addition Road Safety Audits should be provided for both new installations, and in particular for the PUFFIN crossing proposed for the eastern frontage of the site which should be re-positioned to the south of the bus stop lay-by – after the lay-by has been moved to the north. The Traffic Statement also mentions the potential to 'link' the proposed crossings which the S.H.M. would require.

The traffic statement does not mention the operation of the existing PELICAN crossing which currently serves the existing shop and how that will interact with the two new crossings or indeed whether it is recommended that it be removed. The S.H.M. considers that this crossing should be upgraded to a PUFFIN crossing if assessment would allow it to remain in conjunction with and linked to the new crossings. The down side to this is that there would be two PUFFIN crossings in close proximity to and affecting both legs of the gyratory and this in itself may cause congestion which should be examined in the Traffic Statement.

A delivery management plan will be required to address the likely issue of access for articulated delivery vehicles so that there can be a control in place for that management need.

There is therefore a lack of information and a need for additional information together with an amended plan to show the revised positions for the bus-stop and PUFFIN crossing on the eastern frontage. As a result the Strategic Highways Manager can not support this application and requires that the above related information be addressed by the applicant.

If the application remains in its current form the S.H.M. would consider the recommendation of refusal on lack of information however he is mindful that a potential solution may be available.

**Environmental Protection:**

None received at the time of report writing.

**VIEWS OF TOWN/PARISH COUNCIL**

None received at the time of report writing.

**OTHER REPRESENTATIONS**

At the time of report writing, representations have been received relating to this application. 7 against and 2 in favour.

The representations express the following concerns expressed the following concerns:

**Design**

- Building is twice the size of the existing one
- Not in keeping with the surrounding area
- The metal bollards will look unpleasant and commercial/city like
- The structure would be an eyesore and an abomination

**Retail Issues**

- There are enough similar facilities nearby such as Barn Road
- Store is not designed to serve the local community but to make profit at its expense
- The existing store serves the area adequately already

### **Amenity**

- Additional traffic and noise from people using the store
- Loss of light to homes
- Noise pollution
- General disruption

### **Highways**

- Highway safety, in particular for school children and the elderly crossing to the store
- Inadequate parking provision leading to dangerous on-street parking
- There are already many near misses on the nearby roads
- Would increase traffic on already busy roads
- The site is unsuitable as it is effectively on a roundabout
- Traffic delays caused by the Puffin crossings
- Danger from delivery vehicles

### **Other Matters**

- Litter generation
- Loss of pleasant views

The representations in favour of the proposal, including one from the local MP, put forward the following arguments in its favour:

- It will save the elderly and disabled having to go further afield to shop
- Good to have such a store close by
- Safer crossing areas
- Will provide a more comprehensive range of products

## **KEY ISSUES**

### **Principle of the Development**

PPS4: Planning for Sustainable Economic Growth, states that the Government's aim is to *"promote the vitality and viability of town and other centres as important places for communities. To do this the Government wants:*

- *New economic growth and development of main town centre uses to be focused in existing centres, with the aim of offering a wide range of services to communities in an attractive and safe environment and remedying deficiencies in provision in areas with poor access to facilities*
- *Competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping, leisure, tourism and local services in town centres, which allow genuine choice to meet the needs of the entire community (particularly socially excluded groups)*
- *The historic, archaeological and architectural heritage of centres to be conserved and, where appropriate, enhanced to provide a sense of place and a focus for the community and for civic activity*

Policy EC10 of this PPS states that:

*Local Planning Authorities should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably.*

*All planning applications for economic development should be assessed against the following impact considerations:*

- Whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change*
- The accessibility of the proposal by a choice of means of transport including walking, cycling, public transport and the car, the effect on local travel levels and congestion (especially to the trunk road network) after public transport and traffic management measures have been secured*
- Whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions*
- The impact on economic and physical regeneration in the area including the impact on deprived areas and social inclusion objectives*
- The impact on local employment*

Local Plan policy PS4 states that within the settlement zone lines there is a general presumption in favour of development provided that it is in keeping with the town's scale and character and does not conflict with other policies.

Policy S2 states that new shopping or commercial development within the settlement zone line of a town, of an appropriate scale intended to serve the needs of a locally resident community, will be permitted, provided it accords with other relevant policies in the adopted local plan.

The Cheshire Retail Study Update (WYG, April 2011) concludes that in Congleton, there appears to be an undersupply of convenience goods floor space.

In terms of accessibility, the site is located in close proximity to residential properties, which is considered to be a sustainable location.

The development is in accordance with the requirements of Policies PS4 and S2 , and therefore are acceptable in principle. In addition it should be noted that the existing building could undergo a change of use to retail without the need for planning permission.

### **Design, Appearance and Visual Impact**

Local Plan policies GR1 and GR2 relate to the design of new development and state that all development will be expected to be of a high standard, to conserve or enhance the character of the surrounding area. Matters such as height, scale, form and grouping, materials, the visual, physical and functional relationship of the proposal to neighbouring properties, the streetscene and to the locality generally need to be considered. Additionally proposals should respect existing features and provide for hard and soft landscaping as an integral part of the scheme. PPS1 & PPS4 also promote high quality and inclusive design.

The design consists of a modern triangular building constructed from a variety of materials, which would have a contemporary appearance. It would be different from the surrounding development, however given the prominent position of the site, it is considered that the bold design would provide a landmark building that would give a positive contribution to the character of the area.

The proposal is therefore considered to be in compliance with Policies GR1 and GR2 of the adopted local plan and the advice given in PPS1 and PPS4.

### **Amenity**

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

The proposed store would be in excess of 20m away from the nearest residential properties. It is therefore considered that there would be no significant adverse impact on the residential amenities of these properties.

### **Highways**

A Transport Assessment has been submitted with the application, which has been assessed by the Strategic Highways Manager. His detailed comments have been included above, and they conclude that there is a need for additional and amended material to be submitted. This includes the location of the proposed Puffin crossings and road safety audits relating to them. In addition a delivery management plan is required to address the issue of deliveries, and in particular, articulated lorries.

The proposal has therefore failed to demonstrate that it would be satisfactory in highway safety terms, contrary to the requirements of Policy GR9 of the adopted local plan.

## **CONCLUSIONS**

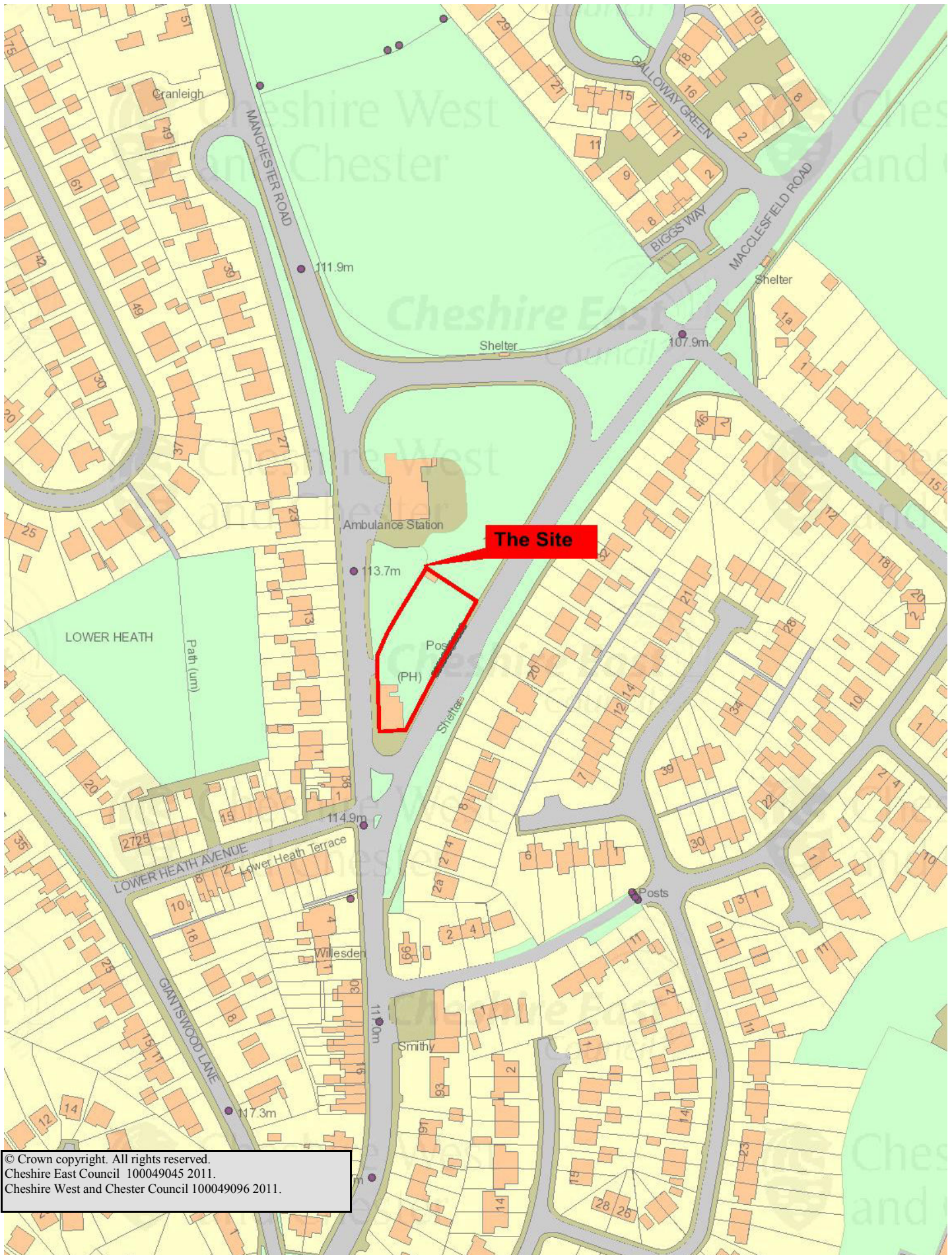
It is considered that the principle of retail development on the site is acceptable. The scale of retail development proposed by this application is also considered acceptable. The design of the proposed convenience store would make a positive contribution to the area. The relationship between the development and surrounding residents is considered to be acceptable.

There is insufficient information to demonstrate that the proposal would not have an adverse impact on highway safety and it is therefore recommended for refusal.

## **RECOMMENDATION:**

### **Refuse:**

1. Insufficient information has been submitted with the application relating to the existing Pelican crossing, the proposed Puffin crossings, a revised position for the bus-stop and the management of deliveries to the store, in order to assess adequately the impact of the proposed development having regard to highway safety. In the absence of this information, it has not been possible to demonstrate that the proposal would comply with Development Plan policies and other material considerations.



Application No: 11/2423N

Location: LAND OFF WYCHE LANE, BUNBURY, CW6 9PS

Proposal: Variation of Condition 2 Relating to Adherence To Approved Plans To Allow Position Of Access To Land At Rear To Be Amended, And Removal of Condition 17 Restricting Use Of Access To Maintenance Vehicles Only

Applicant: MUIR GROUP HOUSING ASSOCIATION

Expiry Date: 30-Aug-2011

**SUMMARY RECOMMENDATION:**

**That the Committee endorse the view that the application would have been APPROVED subject to a Deed of Variation to the existing Section 106 Agreement to reference the new permission and conditions.**

**MAIN ISSUES**

- **Appropriateness of Condition 17**
  - *Background*
  - *Government Advice*
  - *Necessary*
  - *Relevant to Planning*
  - *Relevant to the development to be permitted;*
  - *Enforceable;*
  - *Precise*
  - *Reasonable in all other respects*
- **Acceptability of Proposed Amendments to Approved Plans**
  - *Background*
  - *Visual Impact*
  - *Amenity*
  - *Highway Safety*

**REFERRAL**

The application has been called into committee by Councillor Michael Jones because he had already requested that 11/2575N (now withdrawn) be called in. As such he has called in this application on the grounds of clarification and to determine whether the proposed changes are within the planning permission. There exists extensive concern in Bunbury that these amendments to planning are an attempt to procure further development beyond the current 10 dwellings. Although this would appear not to be the case, he feels, in the public's interest a full open examination should occur so that we can maintain public confidence in the planning procedures at CEC.

This application was submitted on 27<sup>th</sup> June 2011 and, following the subsequent public consultation period, generated a significant amount of objections from neighbours of the site. Since the closure of the consultation period on 26<sup>th</sup> August 2011, Planning Officers have been attempting to facilitate a meeting between the owner of the land to the rear and the applicants in order to attempt to establish a mutually agreeable solution. However, officers have been unsuccessful in bringing all the parties to the table. Consequently, the applicant's, who wish to make a start on site in the near future, have appealed against non-determination of the application. In such cases the matter is taken out of the hands of the Local Planning Authority and the determination is made by the Secretary of State.

Therefore the purpose of this report is merely to seek the committee's resolution as to what its decision would have been had it been able to determine the application, and this will form part of the Authority's Statement of Case on the appeal. It is generally accepted that failure to do this, with the case for the Authority relying on officer level views, will result in less weight being given to the Authority's case, and there may be possible costs implications.

(N.B. A second identical application was submitted (12/0459N refers) on 2<sup>nd</sup> February 2012. This is currently on public consultation and is anticipated to come before Southern Planning Committee at its next meeting. The applicant has indicated that if the second application is successful they would be willing to withdraw the present appeal against non-determination. A further application (12/0457N) has also been submitted to extend the time limit for implementation of the original consent (P07/0867) which expires on 31<sup>st</sup> March 2012.)

## **1. SITE DESCRIPTION AND DETAILS OF PROPOSAL**

Full planning permission was granted in March 2009 for an affordable housing development of ten houses along the frontage of the former football field, situated between the village centre and the area of Higher Bunbury to the east.

The scheme comprises 3 pairs of semi-detached dwellings fronting onto the road and a single larger detached dwelling at 90 degrees to the road. A further block of 3 mews houses is located to the rear of the site. A parking court has been provided in the centre of the site, with areas of open space to the rear corners. Vehicle access to the parking court is from a single T junction midway along the site frontage.

The permission was subject to a number of conditions including the following:

*2. This permission shall refer to drawing no.'s 0340-07A, 0340-08A, 0340/401 (excluding block plan), 0340/400B and 0340-10,*

*Reason: For the avoidance of doubt and to comply with Policy BE.2 (Design Standards) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

and

*17. The use of the access gate at the land to rear of site shall be restricted to vehicles being used in connection with the maintenance of that land only and for no other purpose.*

*Reason:- To protect the character and appearance of the open countryside and the amenity of neighbouring occupiers in accordance with Policies NE.2 (Open Countryside) and BE.1 (Amenity) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

This application seeks consent for a variation of condition 2 relating to adherence to approved plans to allow position of access to land at the rear to be amended and the removal of condition 17 which restricts use of the said access to maintenance vehicles only.

## **2. PREVIOUS RELEVANT DECISIONS**

7/12804	(1986)	Outline planning application for speculative housing development - refused and appeal dismissed – 1986
P04/0594	(2004)	Outline Application for Housing for Affordable Use – Refused
P04/0545	(2004)	10 Two Storey Houses – Refused. Appeal dismissed 6 <sup>th</sup> June 2006.
P07/0867	(2009)	10 Affordable Houses - Approved
11/2575N	(2011)	Variation of condition 2 and 17 of planning permission 07/0867 – Withdrawn

## **3. PLANNING POLICIES**

### **National Policy**

PPS 1 Delivering Sustainable Development  
PPS 3 Housing  
PPS7 Sustainable Development in Rural Areas

### **Local Plan Policy**

### **Other Material Considerations**

Circular 11/95 Use of Conditions in Planning Permission

## **4. OBSERVATIONS OF CONSULTEES**

None received at the time of report preparation.

## **5. VIEWS OF THE PARISH / TOWN COUNCIL:**

Bunbury Parish Council supports the above planning application. The Parish Council requests that conditions are added to any approval restricting the surface of the proposed accessway to Toptrek or an alternative agricultural surface.

## **6. OTHER REPRESENTATIONS:**

Letters of objection have been received from Inyanga, Dorward, Whitegates, Ivy Cottage, Redcliffe, Sunnyside, The Summit, Isle O'Tycin, Lynton, Edinbane Cottage, Long Acre, Aisling, Fern Cottage, Ludford Ginger and The Brambles, Wyche Lane; 4 The Acreage; Hillview, Whitchurch Road; 17 Darkie Meadow; 1 The Hawthornes, The Chantry House and Vergers Cottage, Wyche Road; The Croft and Ericeira, Bunbury Lane, making the following points:

### **Site History**

- Specific conditions had been laid down in planning application P07/0867 by an Appeal Court judge, specifically to limit the development of the field behind Wyche Lane to that development approved in P07/0867.
- Muir Group gave specific assurances at a public meeting concerning no further development of the remainder of the field as clause 2 and clause 17 of the original application would stop this from happening
- This and the strip of land to be transferred to the Parish Council was to be the village's security blanket. .
- Muir Group has started on site.
- There have been extensive changes to the site plans.
- The assurance given by Muir at the public meeting and the decisions of an Appeal Court judge both appear to be being ignored or brushed under the carpet by Muir
- The Borough Council is surely there to respect and comply with the law and respond to the promise made to the population it is there to defend.
- The land was subject to an appeal by Muir Housing Association against the refusal of its original application to build 10 houses on the land in Wyche Lane. The Inspector concluded in paragraph 23 of her decision as follows:"I have found that even though the level of need is so compelling as to outweigh in principle the harm arising from development of this site, the proposal as it stands is acceptable because the layout of the rear access road and parking areas. On this ground alone, the appeal fails (Paragraphs 13 and 14 give the reasoning)
- Permission was subsequently given to build the 10 houses when a new application was made but access to the rear of the houses had to be restricted to agricultural access only and the piece of land which was no longer to be developed by Muir would be gifted to the Bunbury Parish Council
- What is the point of having Planning Inspectorates and spending enormous amounts of state money to hold such inquiries then to have the Council override the Inspectors Decision by agreeing to an application to have conditions overturned.

- The proposal will enlarge the entrance to the land which is to be given to the parish Council to 4.5m and also to provide a road and drainage to the land at the rear which is totally unnecessary. This being all agricultural land which the Inspector deemed should not be built on in the future.
- The Inspector at the appeal stated "At the enquiry it was confirmed that the Appellant no longer intended to pursue a second phase. Even so the layout of the scheme to the rear of the houses, in terms of access road and parking areas, still reflects that earlier intention with the result that the access to the rear field has been designed to a higher standard that would normally be associated with a simple field access." To me this suggests that she was not happy with Muir's stated intention not to try to develop the remainder of the field. The Inspector went on to say in paragraph 14 of her report that "The fact that the layout of this scheme would be compatible with further residential development is therefore of great concern to me since it would make the land to the rear more attractive to potential developers.
- When permission was eventually granted the access to the rear of houses was to be restricted to agricultural access only so that the field could be dealt with on an agricultural basis and a strip of land immediately behind the houses should be gifted / sold to Bunbury Parish Council for the benefit of the local community.
- Now quite out of the blue, Muir have returned seeking to vary the original planning application by stating in their application "Condition 17 as constituted may have the effect of constraining unnecessarily some future possible lawful use (whether or not planning permission is necessary) of the land edged blue and the adjacent accommodation land to which it in turn gives access". The land edged blue refers to the land to be passed to the Parish Council
- From the application it can be seen that it was submitted after a meeting was held between Muir and Council officers where the principle of the application was agreed. Since when have Council officers been given permission to go along with over ruling the decision of one of her Majesty's Inspectors. If they now have this sort of power what is the point of having the Planning Inspectorate.
- Why does the access road now need to be brought up to highway standard and widened to 4.5m as the land being passed to the Parish Council will not be developed and the agricultural land to the rear of that only needs an access wide enough to accommodate agricultural vehicles and the standard of the road surface needs only be hardcore with a top dressing with no services. This is what the Inspector feared would happen.
- The only reason for wanting these 2 conditions removing would be to allow further development of the land behind the already approved development. These conditions were put in place when the application was finally approved in order to protect this land from over developed. The Council should not be allowed to remove these conditions, which were approved by the planning inspector in March 2009.
- The variation re-introduces the explicit extendibility of the layout in the future in relation to development of the fields at the rear and is thereby completely contrary to the ruling given by the Inspector.
- The later/final Planning Application only subsequently received approval on the grounds that the inspectors concerns to ensure that no further development took place to the rear of these new dwellings were addressed by a) gift to the community of a buffer strip immediately to the rear of this development to prevent

further future development and b) access through the current development up to (but no through) this buffer strip being restricted to agricultural use presumably at best an unmade narrow width farm track / gate without any services (lighting, drainage etc.) . The buffer strip has not value whatsoever if it has a significant public right of way right through it to the land at the rear.

- The stated boundary fence and existing field gate within it to which this proposed through route leads were not there when this development application finally received approval in 2009. They were erected afterwards – presumably speculatively.
- What possible lawful use can the applicant argue that would need a significant vehicle access but not planning approval as it seems unlikely there could be any
- Granting this variation would also be contrary to the clear intent of the approved Bunbury village Design Statement to “Have regard for the individual identities of the four Bunbury’s, in particular the remaining open space between higher and Lower Bunbury acknowledged as extremely important in retaining their separate identities – a defining characteristic of the settlement.” Approval of this variation application would explicitly destroy the historic green corridor between the two distinctive identities of the settlements of Lower and higher Bunbury – fundamentally changing the character of the village
- Their original submission was clearly unacceptable even upon appeal to the Secretary of State and north has changed. How can there now be any intent to undermine the outcome of the Public Inquiry, particularly by means of a low key variation application.
- Muir Group is reneging on their previous agreement not to develop the land and to gift it to the parish in a must underhand manner.
- Furthermore it was universally understood that access from the new development would only be into and not right through the buffer strip –
- Why can the existing agricultural access not be retained, as this would appear to be possible without any significant detriment to the layout of the development? It has been adequate as it is for decades – if retained it would be very similar to the existing access on the same side of the lane some 400m or so to the east.
- Removal of Condition 17 is contrary to the decisions and agreement already reached and the planning authority should retain full control over further use of the land edged blue to ensure that the developers do what has already been agreed. Regarding Condition 2, the variation needs clarification. What is the access along the westerly boundary? Appropriate conditions should be imposed to cover its use and maintenance. If as a matter of practicality more general access is needed this could be allowed in the same position as on the original plan and to the original dimensions and standard of construction. The right of way should not be constructed in a manner that it could be adopted as a road in the future.
- The proposed 4.45m right of way in the centre of the development is too big and out of all proportion for what is required for what in all events is still agricultural land and should be restricted to the original plan.
- This planning application only finally gained approval following a public enquiry and after being referred to an appeal court judge. Clauses 2 and 17 that the Muir Group are now seeking to have removed give assurances to the residents of Wyche Lane and the broader Bunbury village community that there will be no further development of the fields behind the planned housing development.

- As part of gaining acceptance, the Muir Group Housing Association agreed to gift a strip of land to the Parish Council in order to satisfy the concerns of the Inspector that there would be no further development beyond the 10 houses proposed. It appears that the Muir Group are now attempting to renege on their promises.
- Residents object to the removal of essential restrictions (as deemed by a senior planning inspector following a public enquiry) to restrict potential further development in a sensitive, rural location.
- The proposed 4.5 metre right-of-way and access gateway in the centre is too big and out of proportion for requirements and surrounding roads and ways. (However, it is perhaps noteworthy that a 4.5 metre access-way would permit entry by construction vehicles to the fields behind). Existing agricultural access should be sufficient as it has been to date for farming and recreational uses.
- This is unacceptable conduct of the Muir Group Housing Association (MGHA). Promises made and assurances given in public consultation are now being withdrawn by this action.
- Furthermore, condition 15 of the original permission has not been complied with as the hedge was removed in June for the construction of the road. The hedge had not been previously netted to stop birds nesting.
- Initial planning permission granted by an appeal court judge specifically limited the right of access to an agricultural access and the proposed variation contravenes that original approval. If the land directly behind the proposed housing is to be managed by the Parish Council for the local community there is absolutely no need for the access to be greater in width than an agricultural gate and of no greater construction than an agricultural road. It certainly does not need to be of highway standard in either construction or width. It was an application that contained access to a higher standard than agricultural standard that was rejected in 2006 and only subsequently granted after that access had been amended to agricultural status. Therefore this condition should stand.
- Residents are deeply suspicious of the need to vary the original application of the land is to remain for Parish community use and a field beyond that.
- This proposed variation reintroduces future development of the fields at the rear of the ten dwellings. The whole purpose of the buffer strip and access restricted to agricultural use was to limit future development in the field beyond; to change that now would make a mockery of previous rulings.
- If Muir consider themselves to be in a cleft stick that is of their own making and is not of itself a reason to seek a variation some 5 years after their open meeting with residents of Bunbury Village to the very carefully defined conditions of the Inspector who considered their Appeal against the Planning Committee's original decision.
- There is an apparent lack of good faith on their part in seeking a potential for the breaking of undertakings given to the Village by them at that open meeting and, on my limited understanding the rears they give for seeking the variations are not themselves one usually considered relevant for planning considerations
- Contract and land law in the first instance should define the mature and extent of any easement giving rights of access in favour of one parcel of land over another, not planning law save to the extent that, on planning grounds, it may be necessary to impose conditions on the Applicants land which may prevent a

development taking place unless the owner of the adjoining dominant land relaxes or releases any right of access in favour of that land, a matter which will not directly affect the Local Planning Authority when it imposes planning conditions.

- If the Planning Committee considers that there should be any variation of the Inspectors decision the condition as to any access in favour of the land to the rear should presumably mean the width of any access should also be limited to that necessary for the agricultural user.
- The statements “Muir has no intention of developing any further homes on any part of the site at Wyche Lane”, and “the land shaded green, yellow and orange to be gifted to the parish Council” do not reassure local residents in any way whatsoever. It is not Muir's current intentions that concern residents.
- The gifted strip has no value at all in restricting development of the land behind if the proposed Amendment to include a highway width vehicular public right of way through it is accepted (not shown on the original Planning Approval).
- Residents accept that Muir did secure an option on the whole of the field as stated but it is not now the case that Muir neither own nor have any control over the land to the rear of the intended gifted strip. It is the intentions of these other landowners and / or option holders that concern residents
- Muir could sell on the option to purchase the land to another developer. Are the new option holders then going to be bound by these promises?
- If Muir is still seeking to withdraw from this option entirely why can they not enter into an option agreement with the parish Council for the whole of the field to be gifted rather than just the shaded area? Alternatively why can Muir not retain the existing agricultural entrance to the field off Wyche Lane with a farm track along the boundary which appears feasible if space is not taken up with a right of way through the middle of the development?
- The variation seeks to change the width of the track into the field from 3m to 4.5m, to comply with the provisions of Section 38 of the Highways Act 1980. The Act states that there must be a 4.5m wide road with a 2m curb and path on each side for the roadway with full use. This would be an 8.5m wide road into a field. However, if the road is restricted use, only one of the curbs or paths can be reduced to 1m, which would be a total width of 7.5m road into a field .The retained land was to be a ransomed strip and donated to the Parish Council as a public relations exercise. This retained land with a 3m access track through it would provide total confidence to the people of Bunbury that the field could not be developed. The retained land with a 4.5m (or is it 8.5m) roadway running through it was useless for the purpose that it was offered in the first place i.e. a ransom strip.

### **Highway Safety / Infrastructure**

- Overdevelopment of site leading to dangerous levels of traffic on narrow country lane with no pavement
- Over the years Wyche Lane has been a quiet and peaceful land to live on. However, the land is very dangerous for a person with limited mobility with too many cars and lorries moving along it even without the new development opposite. When the new buildings are built and all those new people have cars it will make things much worse. Elderly people will be scared to leave their gardens

- If the changes applied for lead to further development behind the new buildings and all those people have cars it will make Wyche Lane a death trap for people with limited mobility. They would be able to walk to the shop. Will the Council provide them with a free taxi.
- The traffic situation between the site of P07/0867 and the village is already not good with a further 20 vehicles from this development using the road possibly twice or three times daily it will be bad and if the variation is allowed to pass and further houses are built then it will be intolerable bearing in mind that the road is single track in places with no footpath for pedestrians.
- The infrastructure of the village is not capable of either handling the further traffic or indeed providing access to such a development. The primary school would not be able to handle the additional influx of children that a major development would create.
- Bunbury has already been overdeveloped and yet more houses will spoil this once pretty village still further.
- Another concern for people living in Wyche Road is that this small lane will be used as a short cut by those wishing to join the A51 at Alraham. Wyche Road is very narrow and has no pavements. There is concern for small children living on the lane
- Bunbury School is full to capacity. Muir Group should be building extra classrooms to accommodate more pupils

### **Neighbour Amenity**

- The new houses should be at the same level as the existing bungalows and not where they can look over the hedge
- Comments on Muir Letter of 9<sup>th</sup> September 2011
- 

### **7. APPLICANT'S SUPPORTING INFORMATION:**

- Covering letter

### **8. OFFICER APPRAISAL**

#### **Main Issues**

The previous approval established the acceptability in principle of 10 affordable dwellings on this site. The scheme which was granted planning permission can still be implemented and therefore this proposal does not represent an opportunity to revisit the principle of residential development on this site.

The main issues in the consideration of this application, therefore, are, firstly, the appropriateness of condition 17 which restricts use of the access to land at the rear to maintenance vehicles only, and, secondly, the acceptability in terms of highway safety, amenity and visual impact, of the proposed amendment to the approved plans to allow the said access to be repositioned.

#### **Appropriateness of Condition 17**

## **Background**

In 2004 the applicants applied for planning permission for 10 affordable houses on the site (application P04/0545 refers.) The proposed site layout (see drawing 0340-11 in key plans bundle) involved frontage development, with a 5.5m wide access road to adaptable standards, running at 90 degrees to Wyche Lane, from the access point midway along the frontage, to the back of the site. An access road / parking area, stretched across the majority of the width of the rear boundary. This was because, at the time, a second phase of development was proposed on land to the south of the application site. However, the application was refused on the grounds that:

*The proposals would seriously diminish the physical gap which exists between the village centre and Higher Bunbury, detrimental to the distinctive character of the village, by reason of their scale, layout and design. The proposals would therefore result in demonstrable harm to the character of the settlement, in conflict with Policies BE.2 (Design Standards) and RES.8 (Affordable Housing in Rural Areas) of the Adopted Crewe and Nantwich Local Plan, and Policy RES.9 ((Affordable Housing in Rural Areas Outside Settlement Boundaries) of the Replacement Local Plan 2011 (Second Deposit Draft) as amended by the Proposed Modifications document."*

The applicant's Appealed against the decision and the Appeal was subsequently dismissed on 6<sup>th</sup> June 2006. The Inspector commented that:

*"It is also material, in my view that the original intention was to develop a second phase of eight dwellings on part of the field to the rear of the appeal site. At the Inquiry, it was confirmed that the Appellant no longer intends to pursue this second phase. Even so, the layout of the scheme to the rear of the houses, in terms of the access road and parking areas still reflects that earlier intention with the result that the access to the rear field has been designed to a higher standard than would normally be associated with a simple field access. This is a sensitive location in a village which has a history of strong development interest. Also, it is reasonable to expect that, in time, the proposed houses would come to be accepted as part of the built up area. The fact that the layout of this scheme would be compatible with further residential development is therefore of great concern to me since it would make the land to the rear more attractive to potential developers. At the same time, since the issues associated with achieving an acceptable access from Wyche Lane would have been overcome, such pressure for development would be more difficult to resist."*

The Inspector concluded that the evidence shows that the need for affordable housing in Bunbury is significant, is long standing and has provided exceeding difficult to address. On the other hand, development in the location would be harmful to Wyche Lane and would erode the gap between Higher and Lower Bunbury, threatening this important characteristic of the settlement. However any other rural exception site around Bunbury would likely to raise similar difficult matters because, by definition, they would be outside the settlement boundary. In principle, therefore, she considered that the need for affordable housing should prevail in this instance.

However she continued to have strong reservations as to the layout of the rear access road and parking area. These aspects of the scheme would reflect the original intention to develop the land to the rear for housing. In the circumstances, she considered that they would be highly likely to expose this land to considerable developer interest, making further erosion of the gap more difficult to resist. She recognised that the Council would be under no obligation to permit such development but by the same token, she considered that since this proposal is put forward as an exception to normal planning controls, it should be designed as such. Whilst access to the field would be required, the form in which it was proposed is not essential to allow the development to proceed so that the harm associated with it would not be outweighed by the identified housing need. In conclusion, she found that, even though the level of need was so compelling as to outweigh in principle, the harm arising from development on this site, the proposal as it stood was unacceptable because of the layout of the rear access road and parking areas. On this ground alone, the appeal failed and planning permission was refused.

The applicants submitted a revised scheme, in 2007 (P07/0867 refers) which went a considerable way towards addressing the previous Inspectors concerns (see drawing no. 0340-400 in key plans bundle). It comprised 3 pairs of semi-detached dwellings fronting onto the road and a single larger detached dwelling at 90 degrees to the road. A further block of 3 mews houses is located to the rear of the site. Vehicle access is from Wyche Lane into a parking court at the centre of the site and areas of open space have been provided to the rear corners of the site. As a result rear gardens and landscaped areas adjoin the field to the rear and with the exception of a narrow access gate, for maintenance purposes, no access roads or hardstanding were adjacent to this boundary.

The land immediately to the south of the application site, which had been acquired by the applicant, and was initially intended for use as part of a phase 2 development, (see land edged blue on location plan in key plans bundle) was to be gifted to the Parish Council for community use.

Planning Officers were satisfied that this had overcome the Inspector's previous concerns as set out above. However, Crewe and Nantwich Borough Council Planning Committee Members wished to have greater reassurance over the future use of the land to the rear and at their meeting to consider the application, resolved to approve subject to an additional condition, the access to the land at the rear, shown on the site layout plan was to be used for maintenance purposes only.

When the applicants acquired the site, they also took out an option to purchase further land, beyond the land edged blue, to the south of the application site (known as "the Retained Land" and edged green on the location plan in the key plans bundle). This was originally intended to be used, along with the blue edged land, as a phase 2 development. This option has less than 2-years left to run and the applicant has made it clear that they have no intention to take-up this Option and acquire this land and no plans, be they immediate or long term, to develop any further housing at Wyche Lane over and above the planned 10 affordable houses.

However, when the applicant acquired the application site from the then owners they were insistent that the access road was built to good standard without any access restrictions. As such the Contract (TP1) stated that the applicant must provide an access road *“to the satisfaction of the Local Highways Authority or to an adoptable standard”*, and provide *“a right of way at all times for all purposes in connection with the occupation of the Retained Land”*. Planning Condition 17, which restricted the access to maintenance uses only is at odds with the *“all uses”* obligation and as such the applicants have had to seek the removal of this Condition.

### **Government Advice**

Advice on the use of conditions can be found in “Circular 11/95: Use of Conditions in Planning Permission”. According to the Circular,

*“Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14-42. In brief, these explain that conditions should be:*

- i. necessary;*
- ii. relevant to planning;*
- iii. relevant to the development to be permitted;*
- iv. enforceable;*
- v. precise; and*
- vi. reasonable in all other respects.”*

The Circular continues by stating at para.15 that *“the same principles, of course, must be applied in dealing with applications for the removal of a condition under section 73 or section 73A: a condition should not be retained unless there are sound and clear-cut reasons for doing so.”*

Therefore, in order to determine whether the conditions serve a useful purpose it is necessary to examine it in the light of these tests.

### **Necessary**

In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification.

It is clear from the history of the site that Planning Committee Members imposed the condition to prevent further development on land to the rear. The question is therefore, whether, without the condition, the Council would have refused the application on the grounds that it could potentially result in further development of land to the rear.

It is a fundamental planning principle that planning permission for an otherwise acceptable development, cannot be refused on the grounds that it may be the pre-cursor to a less desirable planning application.

This question has been considered by previous Appeal Inspectors on a number of occasions. In one remarkably similar case falling within the administrative district of Kerrier Borough Council, a housing development was proposed on the edge of a village. The local planning authority were prepared to grant permission if the applicant was prepared to enter into an agreement preventing any further development of his land adjoining. This he refused to do and the development was refused. At appeal the local planning authority argued that the agreement was necessary in order to prevent a precedent being set. An Inspector reasoned that the council had accepted that development of this land was acceptable on its own. It was inequitable if planning permission were denied because of unwillingness to enter into an agreement. He could understand the Council's concern over precedent but reliance should be placed on powers it already enjoyed.

In another case from Bracknell Forest Borough Council 46 houses were proposed on hospital land within a built-up area. One of the objections was that to allow the appeal would "open the floodgates" to more housing with access to a residential road. An inspector observed that the site could be developed in isolation. It was not for him to prescribe any ceiling for future development or set any numerical restraint in terms of highway capacity etc. Any future applications would have to be evaluated on the basis of its own merits.

In Hereford City it was proposed to develop the site of another former hospital. The site was located beyond the edge of Hereford and the local authority feared that a precedent would be set for the development of further open land between the city and the appeal site. An inspector retorted that the council had sufficient powers to prevent the spread of development.

Therefore, even if condition 17 were removed, the development of the land to the rear would still require a further planning permission before any development could take place. The Council would have the opportunity to assess any such application on its own individual merits in the light of the planning policies in place at that time.

Furthermore, the imposition / retention of condition 17 cannot prevent the submission of further applications for development of the land to the rear. Any such application would also constitute a variation / removal of conditions 17 and any permission granted pursuant to the application would override the provisions of the said condition.

Consequently, the condition serves no useful purpose in preventing further development of the land to the rear and planning permission could not have been refused if that condition were not imposed. In the absence of any other special and precise justification, having regard to the provisions of Circular 11/95, it is concluded that the condition is unnecessary and should be removed.

***Relevant to Planning***

Given that the reason for the imposition of the condition was to ensure that the Local Planning Authority could retain control over the use of the land to the rear, the condition is considered to be relevant to planning, as it is intended to meet broader planning objectives.

***Relevant to the development to be permitted;***

According to paragraph 25, of Circular 11/95 to meet this test, the need for the condition must be created by the new development. It must not be imposed to deal with an existing problem. Given that the condition in question has been written specifically to restrict access through the new development only, it is considered to meet this objective.

***Enforceable;***

It would be easy to determine whether or not the access was being used by vehicles not associated with the maintenance of the land and therefore the condition is considered to be enforceable.

***Precise***

The condition is specific and clear in its requirements and it is therefore considered to be in accordance with the precision test.

***Reasonable in all other respects***

According to paragraph 35 of Circular 11 / 95 “*a condition may be unreasonable because it is unduly restrictive*”, for example where it would put a severe limitation on the freedom of owners to use their land for any lawful purpose. Restricting the use of the access to maintenance vehicles prevents its use in connection with agriculture which is the lawful use of the retained land. It would also prevent the Parish Council from using the access in connection with the community use of the blue edged land for any purpose other than maintenance and it is therefore considered to be unreasonable.

**Acceptability of Proposed Amendments to Approved Plans**

***Background***

As stated above Contract (TP1) also required that the applicant must provide an access road “*to the satisfaction of the Local Highways Authority or to an adoptable standard*”. The exact location of the access road was left open but the position of the access gate to the retained land was specified (point B on the location plan).

The applicant’s intention was to negotiate with the land owner an agreed access road to the back land tying-in with the existing planning permission. However the land ownership had changed and the new owner, was adamant that all conditions within the TP1 must be adhered to. The owner has threatened an injunction to stop the development until the applicants provide evidence that all of his rights were not affected.

The applicants state that they have worked closely with the Parish Council to come up with a proposal that met with their approval, allowed all the TP1 obligations to be addressed and allowed the Parish Council the maximum usage of the retained land.

The applicants have taken legal advice that the access road should be at 4.5m to ensure that there would be no possibility of the retained land seeking action against the “*all uses*” clause of the TP1. The applicants also argue that an access road of this width will also allow better access arrangements to the land being gifted to the Parish allowing for better on-going management of this amenity area.

Muir state that ideally they would have provided this access road from the existing access gate (as per the planning permission) running in a straight line to the retained land. However this proposal would need the permission of owner of the retained land to alter the position of the access gate to the retained land, (Point B) and this would not have been forthcoming. The alternative was to provide a dog legged or angled road between the two gates; this would have significantly reduced the usable space of the amenity land to be gifted to the Parish. The proposal, in Muir’s opinion, provides the optimum solution to provide good and clear access across our land, the amenity land to be gifted to the Parish and to the retained land.

The applicants state that their proposal to pave this access road relates purely down to a desire to minimise on-going maintenance costs that will have to included in the Service Charge charged to their residents. As Muir has the obligation to maintain this access road any temporary surface will increase on-going costs, which will have to be transferred to their residents, affecting the affordability of the scheme. The initial capital cost of a paved road can be capitalised and not charged to the residents. The applicant’s argue that a paved access road will also aid in the on-going management of the amenity land.

### ***Visual Impact***

It is acknowledged that, the original position of the proposed access from the development would have resulted in a winding track across the Parish Council land, given the access gate to the retained land at Point B is fixed, and the owner of the retained land is unwilling to enter into negotiation to relocate it. It is also acknowledged that this would limit the usability of the Parish Council and would have also increased the length of the track and thereby its visual impact on the character and appearance of the open countryside.

Residents have raised concern about the width of the access track. As shown on the proposed plans, this would be 4.5m and not 8.5m as some residents have suggested. The track would not involve the construction of pavements or footways as some objectors have suggested. Although at 4.5m wide the access will be wider than the average farm track. However, the straighter route will reduce its overall impact on the character and appearance of the open countryside. Furthermore, it would appear that resident’s principal concern with a track of this width is that it may give rise to further development, rather than the visual impact of the proposal. However, as has been stated above, the application cannot be refused on these grounds.

The track would be surfaced with “Toptrek”, a recycled material made from a mixture of tarmac and other waste materials ground up and screened to a particular size from 10mm down to dust. It has been used by organisations such as Natural England and The Peak District National Park Authority in a variety of sensitive and rural locations, where a paved surface is required, which has a less urban and harsh appearance than tarmac. This would help to minimise the visual impact of the track and can be secured through condition. Subject to compliance with such a condition the proposal is considered to be acceptable in visual impact terms.

### ***Amenity***

The existing access route from Wyche Lane, through the site to the land to the rear, is somewhat tortuous, involving two 90 degree turns and passing through the parking court of the development. The straighter access route will allow large agricultural and maintenance vehicles to pass more easily through the development, with less potential for conflict with parked cars or disturbance to the amenity of the prospective residents.

In terms of residential amenity of neighbouring dwellings, the track will be sited further from the existing dwellings fronting Wyche Lane to the east of the site, than as approved. This will result in an improvement in their residential amenity. It will be located closer to the property known as The Grange, to the west of the site, but a separation distance of over 60m will be maintained, and therefore no adverse effect on the living conditions of its occupants is anticipated.

### ***Highway Safety***

Any proposal for a change of use of the land to the rear would require a further planning application and would need to be considered on its own merits at the time. This would include a consideration of traffic generation. The proposed change to the access arrangements to the rear of the site, will not in itself, increase traffic generation to or from the site. The straighter access through the site will also generate a minor improvement in highway safety within the site. Therefore, whilst resident's comments about traffic and highway safety on Wyche Lane are noted, it is not considered that a refusal on highway safety grounds could be sustained, particularly in the absence of any objection from the Highways Department.

The proposal to relocate the access to the land to the rear is therefore considered to be acceptable and in accordance with the relevant local plan policies.

## **9. CONCLUSIONS**

Full planning permission was granted in March 2009 for an affordable housing development of ten houses along the frontage of the former football field, situated between the village centre and the area of Higher Bunbury to the east. The scheme comprises 3 pairs of semi-detached dwellings fronting onto the road and a single larger detached dwelling at 90 degrees to the road. A further block of 3 mews houses is located to the rear of the site. A parking court has been provided in the centre of the site, with areas of open space to the rear corners. Vehicle access to the parking court is from

a single T junction midway along the site frontage. The permission was subject to a number of conditions

This application seeks consent for a variation of condition 2 relating to adherence to approved plans to allow position of access to land at the rear to be amended and the removal of condition 17 which restricts use of the said access to maintenance vehicles only.

Planning Officers have carefully considered condition 17, and are of the opinion that it does not meet the Circular 11/95 Tests. Firstly, it is unreasonable as it restricts access for the owner of the land behind. It is also unreasonable because it would restrict use of the access for other perfectly legitimate activities e.g. agriculture. Secondly, it is unnecessary, as it was added to prevent development of the land at the rear for further housing. However, such development would, require planning permission in its own right and would need to be judged on its merits at the time. Furthermore, even if the condition were retained, an application for further housing could still be made and approved, it would merely constitute removal of the condition as well as permission for housing, as part of the same application / permission. It is therefore recommended that Members raise no objection to the removal of this condition.

With regard to the variation of condition 2, the relocation of the access to the land at the rear is considered to be appropriate and reasonable, as it will make it easier for agricultural vehicles to pass through the development. This will be of benefit to residents of the new properties, in terms of amenity, and the convenience of the Parish Council and the owner of the remaining land to the rear in terms of convenience and ease of access to their land. Although at 4.5m wide the access will be wider than the average farm track. However, the straighter route will reduce its overall impact on the character and appearance of the open countryside. Furthermore, it is considered that the proposed "Top-trek" surfacing will be help to ensure that it remains agricultural in appearance and in keeping with the rural character of the surrounding area. The proposal will have no greater impact on residential amenity or highway safety than the approved scheme.

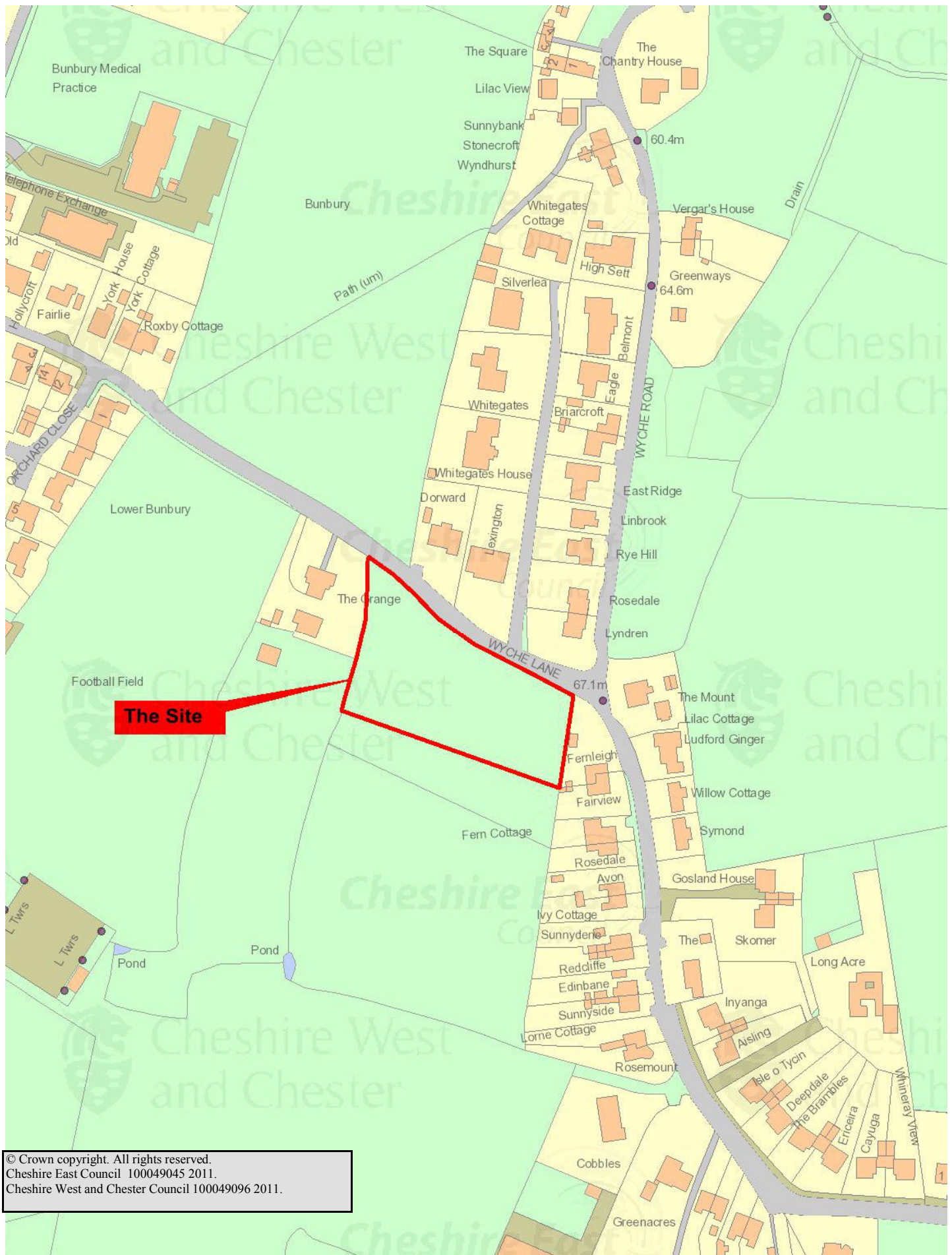
It is therefore recommended that the Committee endorse the view that the application would have been approved subject to a Deed of Variation to the existing Section 106 Agreement as set out below, and instruct the Head of Development to make representations to the Planning Inspectorate accordingly in respect of the forthcoming Appeal against no determination.

## **10. RECOMMENDATIONS**

**That the Committee endorse the view that the application would have been APPROVED subject to the following:**

- **A Deed of Variation to the existing Section 106 Agreement to reference the new permission**
- **The following conditions:**
  - 1. Standard Time Limit**
  - 2. Amended plans**

3. **Materials**
4. **Remove permitted development rights – extensions and ancillary buildings**
5. **Access to be constructed to sub-base level prior to first occupation**
6. **Landscaping scheme to be submitted**
7. **Implementation / maintenance of landscaping**
8. **Boundary treatment to be submitted and implemented**
9. **Full drainage details to be submitted and implemented.**
10. **Obscure glass to first floor window in east gable of unit 1.**
11. **Scheme of tree protection to be submitted and agreed**
12. **No lighting of fires / storage of materials etc. in protected area**
13. **Specification for paths / drives etc. under trees to be submitted and agreed**
14. **Implementation of wildlife mitigation measures.**
15. **Hedgerow removal to take place outside bird nesting season**
16. **Details of finished floor levels to be submitted and agreed**
17. **Track to be surfaced using “Top-trek” or a similar material – details to be submitted and agreed.**



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