

Strategic Planning Board

Agenda

Date:	Wednesday, 12th September, 2012
Time:	10.30 am
Venue:	The Capesthorne Room - Town Hall, Macclesfield SK10 1EA

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.

Please note that members of the public are requested to check the Council's website the week the Planning/Board 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.

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

1. Apologies for Absence

To receive any apologies for absence.

2. Declarations of Interest/Pre Determination

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests and for Members to declare if they have a pre-determination in respect of any item on the agenda.

3. Minutes of the Previous Meeting (Pages 1 - 10)

To approve the minutes as a correct record.

4. Public Speaking

Please Contact: Sarah Baxter on 01270 686462
E-Mail: sarah.baxter@cheshireeast.gov.uk with any apologies or request for further information
Speakingatplanning@cheshireeast.gov.uk to arrange to speak at the meeting

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

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

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

5. **12/2685C-Outline application with some matters reserved for proposed residential development of up to 194 dwellings, site access, highway works, landscaping, open space and associated works, Land off Warmingham Lane, Middlewich for Gladman Developments Ltd (Pages 11 - 40)**

To consider the above application.

6. **12/0883C-Outline Planning Application for Proposed Residential Development of Upto 194 Dwellings, Site Access, Highway, Landscaping, Open Space and Associated Works, Land off Warmingham Lane, Middlewich for Gladman Developments Limited (Pages 41 - 44)**

To consider the above application.

7. **12/2584C-Full Planning Application for Erection of 149 Dwellings with Associated Access and Landscaping Arrangements Alongside a Newt Relocation Strategy, Land off Warmingham Lane, Middlewich for Bellway Homes (Pages 45 - 72)**

To consider the above application.

8. **12/2082M-Change of use from Use Class C1 (Hotel) to Use Class C2 (Residential Institution), Moorside Hotel, Mudhurst Lane, Disley for Stardon (Moorside) Ltd (Pages 73 - 86)**

To consider the above application.

9. **12/1445N-Application To Remove Condition 11 Of Permission 7/904/0124, Condition 7 Of Permission 7/2006/Ccc1, Condition 7 Of Permission 7/2007/Ccc7 And Condition 7 Of Permission 7/2009/CCC1, Whittakers Green Farm, Pewit Lane, Bridgemere, Cheshire for Mr F H Rushton (Pages 87 - 110)**

To consider the above application.

10. **Review of the Planning Protocol and the Public Speaking Protocol (Pages 111 - 138)**

To consider the above report.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Strategic Planning Board**
held on Wednesday, 22nd August, 2012 at The Assembly Room, Town Hall,
Macclesfield

PRESENT

Councillor H Davenport (Chairman)
Councillor D Hough (Vice-Chairman)

Councillors C G Thorley, J Hammond, Rachel Bailey, P Hoyland, J Jackson,
P Mason, B Murphy, G M Walton, S Wilkinson and J Wray

Officers

Ms S Dillon (Senior Lawyer), Mr B Haywood (Principal Planning Officer), Mr S
Irvine (Development Management and Building Control Officer), Mr N Jones
(Principal Development Officer), Mr N Turpin (Principal Planning Officer) and
Mrs E Tutton (Principal Planning Officer)

38 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors D Brown and
P Edwards.

39 DECLARATIONS OF INTEREST/PRE DETERMINATION

In the interests of openness with regard to application 12/0831M Cllr
Hammond declared that he was Chairman of the Maw Green Landfill Site
Liaison Group and Cllr Thorley declared that he was a member of that
Group.

With regard to application 12/2082M Cllr Davenport declared that he was a
member of Disley Parish Council but that he had not taken part in any
discussions with the Parish Council in respect of the application and had
not made comments on it.

40 MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 1 August 2012 were approved as a
correct record, subject to the following amendments :-

A correction to minute 28 – Declarations of Interest - Cllr Hough had
provided veterinary services to the “owner of the Land” and not “the
applicant”.

Minute 31 – Condition 32 to refer the route of the footpath, as well as the
design and surfacing.

Minute 34 – The resolution to refer to “Bollington Cross Youth project” and not “Bolington Youth Cross Project”.

41 PUBLIC SPEAKING

RESOLVED

That the public speaking procedure be noted.

42 12/0831N-OUTLINE PLANNING PERMISSION FOR THE ERECTION OF 165 DWELLINGS ON LAND TO THE NORTH AND SOUTH OF MAW GREEN ROAD, CREWE. ACCESS IS PROPOSED VIA A NEW ROUNDABOUT OFF MAW GREEN ROAD, LAND TO THE NORTH AND SOUTH OF MAW GREEN ROAD, COPPENHALL, CREWE FOR RICHBOROUGH ESTATES

Consideration was given to the above application.

(Cllr D Newton, the Ward Councillor; Mr G Fellows, an objector; Mr P Downes and Mr J Parker, agents for the applicant, attended the meeting and spoke in respect of the application).

RESOLVED

That for the reasons set out in report and the Officer's update to the Board, the Board grant delegated powers to the Development and Building Control Manager to approve subject to:

Consultation with and no objection from Environmental Health and Cheshire Brine and Subsidence Compensation Board and subject to the completion of a Section 106 Legal Agreement to Secure: -

- 10% affordable housing (20 dwellings), on a tenure split of 75% intermediate tenure and 25% rented, (either social rented dwellings let at target rents or affordable rented dwellings let at no more than 80% of market rents)
- Provision of affordable housing prior to 80% occupation of the open market housing
- Transfer of any rented / shared ownership affordable units to a Registered Provider
- Affordable house scheme to be submitted at reserved matters
- Affordable homes to be let or sold to people who are in housing need and have a local connection. (The local connection criteria used in the agreement to match the Councils allocations policy.)
- Public Open Space scheme to be submitted at reserved matters
- Provision of play area / five-a-side pitch
- Provision of detailed specification for play area to incorporate :

- *8 pieces of play equipment should be provided.*
- *5 a side pitch (600sqm)*
- *NEAP (2,620sqm)*
- *Durable retaining walls – concrete or brick*
- *porous wet pour safer surfacing.*
- *concrete steps to the bank*
- *the slide to be set in concrete*
- *Two bins with one being provided on each level.*
- *Metal bow top railings are required; pedestrian access gates in the same style but a contrasting colour to the railings.*
- *Gate to be outward opening, with rubber caps on the clapping side and have a mechanical self-closing mechanism.*
- *NEAP to provide seating; bicycle parking and appropriate signage.*
- Provision for a management company to maintain the on-site amenity space / play area / ancillary areas, ponds, woodland planting / nature conservation areas / other open space.
- Provision of open space by 50% occupation and transfer to management company by 75% occupation.
- The above areas to be made available for use by the general public except where this would conflict with the approved ecological mitigation /management plan.
- Management plan for landscaping /public open space/ wildlife mitigation areas in perpetuity to be submitted at reserved matters
- Education Contribution of £292, 850.
- Commuted sum of £1500 to barn owl group
- Highways Contributions: -
 - Maw Green Road Signage Scheme – £20,000 (on occupation of 50th dwelling)
 - Crewe Green Roundabout – £60,000 – (on occupation of 50th dwelling)
 - Sydney Road bridge - £ 1,082,000 – (£50k be paid on commencement with remainder on occupation of the 50th dwelling)
 - Public Transport Contribution - £12,000– (on occupation of 50th dwelling)

And the following conditions :-

1. Standard Outline (18 month time limit for commencement of development)
2. Submission of reserved matters
3. Plans
4. No approval for indicative layout
5. Breeding Bird Survey for works in nesting season
6. Bat, barn owl and bird boxes
7. Design and layout of open space/Nature conservation area
8. Design of proposed ponds

9. Submission and implementation of revised ecological mitigation proposals in support of reserved matters application.
10. Updated protected species survey prior to commencement
11. If, during development, contamination not previously identified is found to be present at the site then no further shall be carried out until the developer has submitted a remediation strategy
12. Removal of permitted development rights
13. The development shall only be carried out in accordance with the approved Flood Risk Assessment (FRA), ref. BMW/2011/FRA Rev. D, dated 17/05/2012
14. Limit on the surface water run-off generated by the proposed development, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
15. Provision of a scheme to manage the risk of overland flow of surface water during extreme rainfall events.
16. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.
17. Overland flow to be contained within the site, such that new buildings are not affected.
18. Reserved matters to make provision for houses to face waterfronts and footpaths
19. Reserved matters to make provision for green open spaces adjacent to any watercourses and ponds on site and provision and management of a 5 metre wide undeveloped buffer zone alongside the watercourse and ponds
20. Submission / approval and implementation of details of Sustainable Drainage Systems (SuDS).
21. This site must be drained on a total separate system, with only foul drainage connected into the public foul sewerage system. Surface water should discharge to soakaway and or watercourse. No surface water will be allowed to discharge in to the public sewerage system.
22. Only clean surface water from roofs and paved areas should be discharged to any surface water soakaway.
23. Submission of a scheme to limit the surface water run-off generated by the proposed development,
24. Submission of a scheme to manage the risk of flooding from overland flow of surface water, has been submitted to and approved in writing by the Local Planning Authority.
25. 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
26. Should there be a requirement to undertake foundation or other piling on site, then a method statement which shall be submitted and approved.
27. Should there be a requirement to undertake “floor floating” (the process of mechanical smoothing of concrete to a floor area) the Local Authority Environmental Health Service should be informed of the details

of the location, days / hours of work, and contact details of a responsible person prior to the onset of the work.

28. Floor floating operations should be restricted to within the following days / hours Monday – Friday 08:00 – 18:00hrs; Saturday 09:00 – 14:00hrs; Sunday and Public Holidays Nil
29. Prior to its installation details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. This shall include any proposed lighting of the 5-a-side football pitch marked on the site plan.
30. A full and detailed noise mitigation scheme for protecting the proposed dwellings noise to be submitted and agreed.
31. The developer shall agree with the Local Planning Authority an Environmental Management Plan (EMP) with respect to the Construction phase of the development. The EMP shall identify all potential dust sources and outline suitable mitigation.
32. Programme of archaeological mitigation which should consist of a targeted watching brief during relevant operations (initial topsoil strip followed by the excavation of foundation trenches if required) in a 20m wide strip alongside the street frontage
33. At least 10% of predicted energy requirements from decentralised and renewable or low-carbon sources, unless it can be demonstrated that this is not feasible or viable.
34. Submission of boundary treatment
35. Submission of materials
36. Submission of landscaping, to include provision for tree planting to the rear of the existing properties on Sydney Road
37. Implementation of landscaping
38. Important hedgerows and trees to be retained and to be incorporated within reserved matters layout
39. Submission of tree and hedgerow protection measures
40. Implementation of tree and hedgerow protection measures
41. Replacement hedge planting
42. Reserved Matters to include details of bin storage.
43. Prior to first occupation provision of off-site highways works including:
 - Grobby Road Zebra Crossing; Groby Road 1.5m footway; Maw Green Road Zebra Crossing; Maw Green Road narrowing and footway; Maw Green Road Roundabout; Site Access
44. Replacement hedge planting
45. Implementation of reptile mitigation
46. Implementation of gas protection measures
47. Implementation of contaminated land mitigation
48. No more than 50 units to be occupied until the new roundabout at Maw Green Road/Elm Drive/ Groby Road junction has been completed and brought into use
49. Construction Management Plan, including no parking of contractor's vehicles on Maw Green Road
50. Reserved Matters to make provision for any bungalows to be located adjacent to existing properties on Sydney Road

51. Installation of Traffic lights at the bridge over Maw Green Road before occupation of 50th House

In order to give proper effect to the Board's intentions and without changing the substance of the decision, authority is delegated to DMBCM, in consultation with the Chair of SPB, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.

(The meeting was adjourned at 12.45pm until 1.30pm)

- 43 **12/2082M-CHANGE OF USE FROM USE CLASS C1 (HOTEL) TO USE CLASS C2 (RESIDENTIAL INSTITUTION), MOORSIDE HOTEL, MUDHURST LANE, DISLEY FOR STARDON (MOORSIDE) LTD**

(Prior to the consideration of the following item, Cllr Thorley left the meeting and did not return).

Consideration was given to the above application.

(Cllr G Marshall, representing Disley Parish Council; Dr D Harrop, an objector; and Mr D Adey, the agent for the applicant attended the meeting and spoke in respect of the application.

RESOLVED

That the application be deferred to allow further consideration of the impact on tourism and for consultation with the Peak Park Joint Planning Board.

- 44 **11/3738M-OUTLINE PLANNING APPLICATION FOR APPROXIMATELY 111 DWELLINGS, LAND TO THE EAST OF LARKWOOD WAY, TYTHERINGTON, MACCLESFIELD FOR THE EMERSON GROUP**

(Prior to the consideration of the following item, Cllr Hoyland left the meeting and did not return).

Consideration was given to the above application.

(The Chairman read out a letter on behalf of Cllr L Roberts, one of the Ward Members. Mr Cook, an objector and Mrs K Phillips, representing the applicant attended the meeting and spoke in respect of the application).

RESOLVED

That for the reasons set out in report and the Officer's update to the Board, the Board grant delegated powers to the Development and Building Control Manager to approve, subject to the completion of a Section 106 legal agreement comprising the following Heads of Terms:-

- 30% Affordable Housing = 33 units be 65% social or affordable rent, and 35% intermediate tenure
- A contribution of £70 000 towards highway improvements to be made to the A523, north of the application site. with particular consideration towards the provision of signage, road layout, impact on roundabout flares and traffic calming in the vicinity of Tytherington Lane
- Leisure Services have stated that the quantity of public open space to be provided on site would be acceptable subject to a detailed scheme for the design and layout of the open space to be approved prior to commencement. A NEAP will also be required.
- A commuted sum would be required for Recreation / Outdoor Sport of £77,000 (which includes discount of £33,000 for the affordable housing based on the affordable dwellings). The commuted sums would be used to make improvements, additions and enhancements to the facilities at Rugby Drive playing field. The Recreation / Outdoor sports commuted sum payment will be required prior to commencement of the development
- A 15 year sum for maintenance of the open space will be required IF the council agrees to the transfer of the open space to CEC on completion. Alternatively, arrangements for the open space to be maintained in perpetuity will need to be made by the developer, subject to a detailed maintenance schedule to be agreed with the council, prior to commencement
- Provision of art in public areas to be incorporated into the landscaping scheme

and subject to the following conditions :-

1. A06OP - Commencement of development
2. A03OP - Time limit for submission of reserved matters (within 1 year)
3. A01OP - Submission of reserved matters
4. A02OP_1 - Implementation of reserved matters
5. A09OP - Compliance with parameter plans
6. A10OP_1 - Details to be submitted -layout
7. A08OP - Ground levels to be submitted
8. A01LS - Landscape Masterplan - submission of details
9. A04LS - Landscaping (implementation)
- 10.A01GR - Removal of permitted development rights
- 11.A02HA - Construction of access

- 12.A04HA - Vehicular visibility at access to be approved
- 13.A32HA - Submission of construction method statement
- 14.A19MC - Refuse storage facilities to be approved
- 15.At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources
- 16.Phasing of landscaping works - along Silk Road first
- 17.Submission of a landscape management scheme to be submitted with the Reserved Matters application
- 18.The landscaping scheme shall incorporate details of boundary treatment
- 19.Protection of breeding birds
- 20.Provision of bird boxes
- 21.Arboricultural Implication Study required
- 22.Details of lighting to be approved
- 23.the maintenance of a 3 m landscape bund as protection
- 24.the constructional specifications of the proposed dwellings in terms of wall construction, standard of glazing and the provision of system 4 mechanical ventilation as noise mitigation measures to the identified dwellings.
- 25.Piling - contractor to be members of the Considerate Construction Scheme
- 26.Hours of construction/noise generative works
- 27.Mitigation to follow submitted air quality assessment
- 28.Submission of a drainage scheme including details in respect of surface water run-off
- 29.Submission of a scheme to manage the risk of flooding to be submitted
- 30.Submission of a Character Assessment justifying scale, layout and materials as part of the Reserved Matters application
- 31.Maximum scale of dwellings
- 32.Contaminated land
- 33.Times of Piling
- 34.Times of floor floating
- 35.Details of bin storage
- 36.No fires during construction

45 **11/2765W-VARIATION OF CONDITIONS 2, 11, 13, 14, 22, 24 AND 26 ON APPLICATION 5/06/2496P, HENSHAWS WASTE MANAGEMENT,**

**150, MOSS LANE, MACCLESFIELD FOR MR C.F.M HENSHAW -
WITHDRAWN FROM THE AGENDA**

The above application had been withdrawn from the agenda on advance of the meeting.

- 46 **11/2766W-EXTENSION OF EXISTING WASTE RECYCLING CENTRE FOR RELOCATION OF INERT WASTE PROCESSING PLANT AND EXISTING TROMMEL INCLUDING TWO ENCLOSED PICKING LINE SHEDS AND NEW AREAS FOR THE STORAGE OF SHEETED FULL SKIPS AND EMPTY SKIPS/CONTAINERS, HENSHAW'S WASTE MANAGEMENT, 150, MOSS LANE, MACCLESFIELD FOR MR C.F.M HENSHAW - WITHDRAWN FROM THE AGENDA**

The above application had been withdrawn from the agenda on advance of the meeting.

- 47 **12/1578M-OUTLINE APPLICATION FOR A CONTINUING CARE RETIREMENT COMMUNITY (CARE VILLAGE) COMPRISING 58 BEDROOM CARE HOME, 47 CLOSE CARE COTTAGES AND 15 SHARED OWNERSHIP AFFORDABLE DWELLINGS, TOGETHER WITH ACCESS ROADS, PUBLIC OPEN SPACE, LANDSCAPING, CAR PARKING AND ANCILLARY DEVELOPMENT, LAND ADJACENT TO COPPICE WAY, HANDFORTH FOR MR PASQUALE NICOSIA, GREYSTONE (UK) LTD - WITHDRAWN FROM THE AGENDA**

The above application had been withdrawn from the agenda on advance of the meeting.

- 48 **12/1627M-OUTLINE APPLICATION FOR NEW VEHICULAR ACCESS WITH MEANS OF ACCESS, LAYOUT AND ASSOCIATED ENGINEERING WORKS FOR CONSIDERATION (WITH LANDSCAPING RESERVED FOR SUBSEQUENT APPROVAL), LAND ADJACENT TO COPPICE WAY, HANDFORTH FOR MR PASQUALE NICOSIA, GREYSTONE (UK) LTD - WITHDRAWN FROM THE AGENDA**

The above application had been withdrawn from the agenda on advance of the meeting.

- 49 **WOODFORD AERODROME SUPPLEMENTARY PLANNING DOCUMENT WITHDRAWN FROM THE AGENDA**

The above item had been withdrawn from the agenda on advance of the meeting.

The meeting commenced at 10.30 am and concluded at 4.50 pm

Councillor H Davenport (Chairman)

Application No: 12/2685C

Location: LAND OFF, WARMINGHAM LANE, MIDDLEWICH

Proposal: Outline application with some matters reserved for proposed residential development of up to 194 dwellings, site access, highway works, landscaping, open space and associated works

Applicant: Gladman Developments Ltd.

Expiry Date: 12-Oct-2012

SUMMARY RECOMMENDATION

APPROVE subject to conditions and the completion of Section 106 legal agreement to secure the following:-

- 1. Provision of 30% affordable housing units – 65% to be provided as social rent/affordable rent with 35% intermediate tenure**
- 2. The provision of a LEAP and Public Open Space to be maintained by a private management company**
- 3. A commuted payment of £124,517 towards secondary school education**
- 4. Highways contribution**

MAIN ISSUES

Impact of the development on:-

**Principal of the Development
Planning Policy and Housing Land Supply
Renewable Energy
Landscape
Affordable Housing
Highway Implications
Amenity
Trees and Hedgerows
Design
Ecology
Open Space
Education
Flood Risk and Drainage
Agricultural Land
Archaeology
Other**

REASON FOR REFERRAL

This application is referred to the Strategic Planning Board as it relates to a departure to the Congleton Borough Local Plan.

1. DESCRIPTION OF SITE AND CONTEXT

The application site is located to the west of Warmingham Lane within the open countryside as defined by the Congleton Borough Local Plan. The site is relatively flat and L-shaped. The site is undeveloped agricultural land which is bound by native hedgerows and trees. To the north and east of the site are residential properties of varying sizes and styles which front onto Warmingham Lane, Byron Close, Davenham Way and Ashton Close. To the south of the site is an access track which serves Pettywood Farm.

2. DETAILS OF PROPOSAL

This is an outline planning application for up to 194 dwellings (35 dwellings per hectare). Access is to be determined at this stage with all other matters reserved.

The access point to serve the site would be taken off Warmingham Lane. The site would include the provision of 30% affordable housing, a LEAP, the creation of balancing ponds, 1.59 hectares of public open space which will encompass habitat creation, informal open space and new footpaths. The majority of the POS would be located centrally within the site.

The development would consist of 2 to 5 bedroom units which would have a maximum height of up to 2.5 storeys.

3. RELEVANT HISTORY

12/0883C - Outline Planning Application for Proposed Residential Development of Up to 194 Dwellings, Site Access, Highway, Landscaping, Open Space and Associated Works – Appeal Lodged for non-determination

4. POLICIES

National Policy

National Planning Policy Framework

Local Plan policy

PS3 – Settlement Hierarchy

PS8 - Open Countryside

GR21- Flood Prevention

GR1- New Development

GR2 – Design

GR3 - Residential Development

GR4 – Landscaping

GR5 – Landscaping

GR9 - Accessibility, servicing and provision of parking

GR14 - Cycling Measures

GR15 - Pedestrian Measures

GR16 - Footpaths Bridleway and Cycleway Networks
GR17 - Car parking
GR18 - Traffic Generation
NR1 - Trees and Woodland
NR3 – Habitats
NR4 - Non-statutory sites
NR5 – Habitats
H2 - Provision of New Housing Development
H6 - Residential Development in the Open countryside
H13 - Affordable Housing and low cost housing

Regional Spatial Strategy

DP1 – Spatial Principles
DP2 – Promote Sustainable Communities
DP7 – Promote Environmental Quality
L4 – Regional Housing Provision
L5 – Affordable Housing
RDF1 – Spatial Priorities
EM1 – Integrated Enhancement and Protection of the Regions Environmental Assets
MCR1 – Manchester City Region Priorities
MCR 4 – South Cheshire

Other Considerations

The EC Habitats Directive 1992
Conservation of Habitats & Species Regulations 2010
Circular 6/2005 - Biodiversity and Geological Conservation - Statutory Obligations and Their Impact within the Planning System
Interim Planning Statement Affordable Housing
Interim Planning Statement Release of Housing Land
Draft Middlesbrough Town Strategy Consultation

5. CONSULTATIONS (External to Planning)

Environment Agency: The Environment Agency has no objection in principle to the proposed development but made the following comments.

The site is shown on the EA Flood Maps as being within Flood Zone 1, which is low probability of river/tidal flooding. The Flood Risk Assessment (FRA) explains that the discharge of surface water from the proposed development is to be restricted to greenfield run-off rates. The FRA also explains that the attenuation is to be provided by storage/detention ponds, with final discharge to an existing surface water sewer. This is acceptable in principle. The amount of attenuation required for up to the 1% annual probability event, is to be increased for climate change. Therefore, the following conditions should be attached to any permission:

- A scheme to limit the surface water run-off from the site
- A scheme to manage the risk of flooding from overland flow

United Utilities: No comments received as part of this application but as part of the last application they stated:

'no objection; the site must be drained on a separate system with only foul drainage connected into the foul sewer. Several public sewers cross the site and United Utilities will not permit building over them'

Strategic Highways Manager: There are identified traffic impact issues at certain junction locations that this development would affect through additional traffic. On balance it is considered that this impact can be mitigated by providing a package of improvement measures at the site and to specific junctions on the A54 corridor serving the town centre, which would benefit all road users. Such a package of measures would need to reflect on the status of proposed strategic highway improvement, Middlewich Eastern Bypass should it come forward. In addition, a scheme to address speed reduction/safety measures can be implemented in the vicinity of the site.

There are no objections to the application subject to S106 contributions as set out below:

- £56,560 for traffic/speed reduction measures
- £33,000 for bus passes
- £622,160 to wider highway and transport improvements to benefit all road users on the following corridors; to Middlewich town centre, along the A54 towards M6 J18.

Environmental Health: No objections subject to conditions relating to construction hours, piling hours, noise mitigation measures, contaminated land and an environmental management plan

Public Open Space: Following an assessment of the existing provision of Amenity Greenspace accessible to the proposed development, if the development were to be granted planning permission there would be a surplus in the quantity of provision, having regard to the local standards set out in the Council's Open Space Study.

Following an assessment of the existing provision of Children and Young Persons Playspace accessible to the proposed development, if the development were to be granted planning permission there would be a deficiency in the quantity of provision, having regard to the local standards set out in the Council's Open Space Study. The plan indicates the inclusion of a LEAP sized play area located centrally within the central public open space. According to the design and access statement this equates to an area of 0.04 Ha. This should include at least 5 items incorporating DDA inclusive equipment, using play companies approved by the Council. The final layout and choice of play equipment should be agreed with CEC, and the construction should be to the Council's satisfaction. Full plans must be submitted prior to the play area being installed and these must be approved, in writing, prior to the commencement of any works. A buffer zone of a least 20m from residential properties facing the play area should be allowed for with low level planting to assist in the safety of the site.

Natural England: As part of the last application they stated that this proposal does not appear to affect any statutorily protected sites or landscapes, or have significant impacts on the conservation of soils. The proposal is not EIA development.

Public Rights of Way: The development does not appear to affect a PROW.

Archaeology: Mitigation should consist of a supervised metal detector survey, followed by a targeted watching brief in any areas where concentrations of material are located. This can be secured through the use of a planning condition.

Sustrans: If this land use is approved by the council's planning committee, the following comments should be taken into account:

- National Cycle Network Route 5 follows Warmingham Lane into Middlewich. Beyond the town this is a rural minor road, in the town a residential road. Sustrans would like to see the developer contribute to physical measures on the road to reduce speed and the intrusion of motor traffic, and to alter the feel of the road with selective landscaping.
- There should be several access points from the proposed development on to Warmingham Lane for pedestrians/cyclists, in addition to the main road entry.
- If adjacent land is earmarked for development, the layout of this estate should allow for future pedestrian/cycle connections.
- The design of any smaller properties should include storage areas for residents' buggies/bicycles.
- Travel planning with targets and regular monitoring should be set up for the site.

Cheshire Brine Board: The Cheshire Brine Board have considered the application and recommend that the proposed housing should incorporate raft foundations, as recommended in the Phase 1 report submitted by the applicant.

Education: As part of the last application, the education department stated that:

'At present there is sufficient provision within the local primary schools to accommodate the 31 primary school pupils which will be generated by this development.'

There is also a small amount of surplus at Middlewich High School to accommodate the 25 secondary aged pupils which will initially be generated by this development. The concern is that these pupils will soak up the surplus capacity at Middlewich High School.

The pupil yield which is applied to calculate the anticipated number of pupils to be generated is based on an average number of pupils per household. We then include the pupils generated into our projections and assume that all of the pupils will be accommodated in the schools in 5 years. The concern in this instance is that once the 25 High School places have been incorporated into our projections by 2016 this leaves only 23 surplus places throughout the entire school. Given that we are expecting this development to generate some additional 31 primary aged pupils then ultimately these will filter into the high school because Middlewich High School is the only High School within the 3 mile radius of the development therefore it seems fair that these are also added. This would mean that long term Middlewich High School is oversubscribed.

To quantify this I have taken the position in 2016 as having 23 surplus places, take from this the projected 31 primary pupils this means that there is a shortage of 8

places therefore the contribution sought is $8 \times 17,104 \times 0.91 = \text{£}124,517$ towards secondary provision'

Cheshire Wildlife Trust: As part of the last application the Cheshire Wildlife Trust stated that;

- The application was accompanied by an Ecological Appraisal by FPCR, which appears to have addressed the most likely ecological issues arising from the development of this greenfield site*
- The loss of semi-improved grassland is potentially important due to the relative scarcity of this habitat in Cheshire. Proposals for planting open space should aim to reinstate as much flower-rich grassland on the site as possible and manage it appropriately.*
- The hedges are of some inherent value because they consist of native species. They also provide very good foraging corridors for moderate numbers of up to 4 species of bats. For this reason they are, in the context of this location, of good ecological value and should, as recommended, be retained within wider corridors. This will involve protection during construction, followed by replanting as necessary and appropriate management. Proposals for protection and retention and details of long-term management should be a reserved matter following outline planning permission, if granted. Detailed proposals for bat-friendly lighting must also be submitted as a reserved matter for approval.*
- Similarly, badger re-surveys prior to starting work on site, and nesting bird surveys, should also be reserved matters, with details of avoidance measures to be submitted as required.*
- The Ecological Appraisal refers to the need for additional Great Crested Newt Surveys. These can be undertaken now, and results should be made available as soon as possible so that the suitability of proposed mitigation proposals can be confirmed. Again the follow-up GCN surveys, results and required mitigation should be a reserved matter following OPP. If possible, the results should be made available prior to determination.*
- Apart from the provision of new ponds and native planting – plans for which should be submitted for approval as reserved matters – the development should also provide new bird nest boxes for a range of species, bat roosting boxes and (subject to detailed recommendations from the ecologists) barn owl boxes at the western/southern edges of the site.*

Ramblers Association: No comments received at the time of writing this report

6. VIEWS OF THE PARISH COUNCIL

Middlewich Town Council: Recommend refusal of this application. It is premature, and in advance of the Cheshire East Local Development Framework and the conclusion of the Neighbourhood Planning process.

- The two developers with an interest in development off Warmingham Lane have clearly not worked together to provide a coherent plan to address the implications of their combined proposals for this area of Middlewich.*
- The comments from the Strategic Highways Manager on this application give great cause for concern. The need for an access strategy, sustainable transport links and public transport*

provision, in addition to pedestrian access to the development site all remain outstanding as key issues and in need of resolution.

- Furthermore, Middlewich Town Council requires the following issues to be addressed in consideration of this application, in the event of future approval by the Strategic Planning Board:
 - Significant financial contribution to the Middlewich Eastern By Pass
 - Investment in the Public transport network, to support extension to the bus service routes
 - Investment in pedestrian walkways, pathways and connectivity to the canal towpath to provide a green and safe route to the town centre
 - Commuted sum for installation and maintenance of play area and Public Open Space within the development site or surrounding area
 - Inclusion of amenities within the area, to include medical/dental facilities, community meeting area and additional retail facilities
 - Detailed analysis of the traffic impact on the through routes to Middlewich and Sandbach Town Centres and the implications for access and weight of traffic to Junctions 17 and 18 of the M6 Motorway
 - Potential for investment in Regeneration schemes in the Town Centre, in particular Town Wharf via S106 and CIL.

It is requested that Middlewich Town Council is involved at an early stage of discussions with the developer

Moston Parish Council: No comments received.

Warmingham Parish Council: No comments received but as part of the last application they stated that;

'Warmingham Parish Council is very concerned that the volume of traffic through the village will increase considerably as a direct result of this development, adding to current road safety issues.'

'As part of the Core Strategy Cheshire East has made Crewe a special commercial and employment development area and consequently traffic between new housing developments and Crewe is likely to result.'

'Warmingham village is a primary route between Middlewich and Crewe. Warmingham Parish Council would request that some S106 money be provided to help road safety and highway improvement schemes in Warmingham. Warmingham Parish Council note that in Gladman's traffic assessment no mention is made of the staggered crossroads at the junction of Dragon's Lane/Tetton Lane/Whitehall Lane and this proposed development would result in significant traffic increases at this junction'

7. OTHER REPRESENTATIONS

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

Principal of development

- The site is outside the settlement boundary
- The proposed development is not sustainable
- The proposal does not comply with the interim planning policy on the release of housing land
- The proposal is too large for Middlewich

- As part of the Fox appeal in Sandbach the SoS stated that the brownfield sites should be prioritised.
- Approving this development would prejudice the new local plan
- New tests to decide whether development is sustainable will be included within the new local plan
- Granting planning permission will allow for large areas of land to be developed in an adhoc manner
- No employment in Middlewich
- The site is not sustainable and is too far from local amenities
- Increased pressure on the stagnant housing market in Middlewich
- There are much better sites within other towns in Cheshire East
- Loss of Green Belt
- There are no facilities within Middlewich such as a train station and no swimming pool
- There are brownfield sites available within Middlewich
- There is no requirement for additional housing in Middlewich
- There is no employment within Middlewich
- The Middlewich Town Plan should be agreed first
- Existing planning permissions will meet the need in Middlewich
- The draft Town Strategy has identified that brownfield sites should be developed first
- The development would result in urban sprawl
- The proposal would pre-empt another application
- The Travel Plan is worthless
- The 5 year housing land supply should be provided around Crewe
- Impact upon the character and appearance of the area
- Approving this application would impact upon sites on previously developed land (Fodens Factory, Rookery Bridge and Albion Chemicals)

Highways

- No large scale development should be allowed until the Bypass is completed
- Warmingham Lane is in a poor condition
- Increased traffic congestion
- Impact upon highway safety
- Poor public transport
- Increased danger to cyclists and pedestrians
- Lack of pedestrian access to the site
- Dangerous site access
- The site will dependent on people using their cars

Green Issues

- Loss of green land
- Impact upon wildlife
- Impact upon protected species
- Impact upon Great Crested Newts which are within 250 metres of the site
- The impact upon bats which use the site
- Loss of hedgerow
- There would be a high landscape impact as a result of this development
- Increased pollution

Infrastructure

- Increased pressure on local schools
- The local schools are full to capacity
- Lack of shops in the town
- Doctors and dentists are full
- Lack of amenities in Middlewich
- There is no train station in Middlewich
- There is little in terms of leisure facilities
- There is no suitable recreational facilities for families with children/teenagers

Amenity Issues

- Loss of a view
- Noise and disruption from construction of the dwellings
- Increased noise caused by vehicular movements from the site
- Impact upon privacy
- Overlooking
- Increased light pollution
- Loss of outlook for properties on Davenham Way

Other issues

- Loss of property value

A letter of objection has been received from Fiona Bruce MP raising the following points;

- The above planning application is a source of great concerns amongst many residents in Middlewich
- When considered in conjunction with application 12/2584C there is a possibility of 343 new houses being built in close proximity to existing residents
- The infrastructure in Middlewich would not be able to cope with the extra demands that the proposed development would create. Too many houses have been built in the area and there is simply no demand for further development at this time.

A letter of objection has been received from Harris Lamb on behalf of Bovale Limited raising the following points;

- There are more sustainable and better located sites around Middlewich with better connectivity to employment land, the town centre and the highways network. For example land off Booth Lane is much better situated
- Bovale Ltd owns a large Greenfield site to the south of Booth Lane which is adjacent to the settlement boundary and has pedestrian access to Midpoint 18, Middlewich and Sandbach. A series of technical reports have been undertaken and these do not identify any technical reasons that would prevent the site coming forward for employment purposes.
- The application site is L shaped and would sever land from the surrounding fields leaving it isolated. The site will appear isolated from the Middlewich Settlement Boundary and would have a poor visual relationship.
- There are no links to the surrounding residential development
- There should be good connection to the Bellway site. It would be premature for the site to come forward before the Bellway site
- There is inappropriate highways information submitted with the application.

8. APPLICANT'S SUPPORTING INFORMATION

To support this application the application includes the following documents;

- Planning Statement (Produced by Gladman Developments Ltd)
- Design and Access Statement (Produced by Gladman Developments Ltd)
- Transport Assessment (Produced by Ashley Helme Associates)
- Travel Plan (Produced by Ashley Helme Associates)
- Ecological Report (Produced by Gladman Developments Ltd)
- Archaeology Report (Produced by Oxford Archaeology North)
- Landscape and Visual Assessment (Produced by Gladman Developments Ltd)
- Arboricultural Report (Produced by Gladman Developments Ltd)
- Air Quality Assessment (Produced by Wardell Armstrong)
- Flood Risk Assessment (Produced by Gladman Developments Ltd)
- Agricultural Land Quality Report (Produced by Land Research Associates)
- Noise Assessment (Produced by Wardle Armstrong)
- Statement of Community Involvement (Produced by Gladman Developments Ltd)
- Utilities and Infrastructure Report (Produced by Gladman Developments Ltd)
- Phase 1 Site Investigation Report (Produced by Johnson Poole & Bloomer)
- Renewable Energy Statement (Produced by Gladman Developments Ltd)
- Affordable Housing Report (Produced by Levvel Ltd)
- Socio-Economic Report (Produced by Regeneris)
- Historic Hedgerow Assessment (Produced by CGMS Consulting Ltd)
- S106 Heads of Terms

These documents are available to view on the application file.

9. OFFICER APPRAISAL

Principal of Development

Whilst PPS3 'Housing' has been abolished under the new planning reforms, the National Planning Policy Framework (NPPF) reiterates at paragraph 47 the requirement to maintain a 5 year rolling supply of housing and states that Local Planning Authorities should:

"identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land".

The NPPF states that, Local Planning Authorities should have a clear understanding of housing needs in their area. This should take account of various factors including:

- housing need and demand,
- latest published household projections,
- evidence of the availability of suitable housing land,
- the Government's overall ambitions for affordability.

The figures contained within the Regional Spatial Strategy proposed a dwelling requirement of 20,700 dwellings for Cheshire East as a whole, for the period 2003 to 2021, which equates to an average annual housing figure of 1,150 dwellings per annum. In February 2011 a full meeting of the Council resolved to maintain this housing requirement until such time that the new Local Plan was approved.

It is considered that the most up-to-date information about housing land supply in Cheshire East is contained within the Strategic Housing Land Availability Assessment (SHLAA) which was adopted in March 2012.

The SHLAA has put forward a figure of 3.94 years housing land supply.

Paragraph 47 of the NPPF requires that there is a five year supply of housing plus a buffer of 5% to improve choice and competition. The NPPF advocates a greater 20% buffer where there is a persistent record of under delivery of housing. However for the reasons set out in the report which was considered and approved by Strategic Planning Board at its meeting on 30th May 2012, these circumstances do not apply to Cheshire East. Accordingly once the 5% buffer is added, the Borough has an identified deliverable housing supply of 3.75 years.

The NPPF clearly states at paragraph 49 that:

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

This must be read in conjunction with the presumption in favour of sustainable development as set out in paragraph 14 of the NPPF which for decision taking means:

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

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

The forthcoming Cheshire East Local Plan will set new housing numbers for the area and identify sufficient land and areas of growth to meet that requirement up to 2030. The Submission Draft Core Strategy will be published for consultation in the spring of 2013. Consequently, the current shortfall in housing land will be largely remedied within the coming year or so. However, in order that housing land supply is improved in the meantime, an Interim Planning Policy on the Release of Housing Land has been agreed by the Council. This policy allows for the release of appropriate greenfield sites for new housing development on the edge of the principal town of Crewe and as part of mixed development in town centres and in regeneration areas, to support the provision of employment, town centres and community uses.

Although this proposal does not comply with the size requirements of the Revised IPP in this case Middlewich has produced a draft town strategy. The draft Middlewich Town Strategy underwent a

four week consultation between the 2nd March and 2nd April 2012. Initial analysis of responses to this consultation indicates that 37% of respondents support development of the site; 32% of respondents oppose development of the site; and 32% of respondents did not answer the question.

The Town Council approved the final version of the Town Strategy on 4th July 2012. The Strategy states that in terms of housing Middlewich should deliver in the region of 1,600 new homes by 2030. The potential housing sites are then ranked of preference for development with the application site being ranked fifth out of eight sites (subject to the creation of a link road from the A533 through the site). To deliver the projection of 1,600 homes it is considered that it would be necessary to develop this site, as the sites ranked 1 – 4 would not achieve the 1,600 dwellings.

Members should also be aware of the recent appeal decision at Loachbrook Farm Congleton. In this case the inspector gave significant weight to the lack of a 5-year housing land supply and approved the development for up to 200 dwellings. In the Inspectors view the site is within the open countryside and would not be in accordance with the local plan, the proposal would locally harm the character and appearance of the countryside and would result in the loss of the best and most versatile agricultural land. However, the Inspector found that these issues were outweighed by the need to secure a 5-year supply of deliverable housing land that would also contribute to providing affordable and low cost housing.

In terms of prematurity the Inspector found that it would not be premature or prejudice the development of other sites. The Inspector stated that;

'General Principles also indicates that applications should not be refused on the sole ground of prematurity and, taking account of Government advice, there is little justification for delaying a decision or, as the Council suggest, for considering other sites that the Council contend offer increased levels of sustainability'

From the above, it can be concluded that:

- The Council does not have a five year supply of housing – and the presumption in favour of sustainable development should apply.
- The site is being considered as part of the Middlewich Town Strategy. Whilst the final shape of that strategy is yet to be finalised, and it can therefore only be afforded limited weight, the majority of respondents were in favour of development on this site.
- The release of Greenfield sites is required for Middlewich to achieve 1,600 new homes by 2030
- The Cuddington Appeal in Cheshire West and Chester and the Loachbrook Farm Appeal at Congleton indicate that significant weight should be applied to housing supply arguments.
- The NPPF is clear that, where a Council does not have a five year housing land supply, its housing supply relevant policies cannot be considered up to date. Where policies are out of date planning permission should be granted unless:
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
 - *specific policies in the Framework indicate development should be restricted."*

Overall, housing supply is a very important consideration in the determination of this application and must be given considerable weight. On balance, it is considered that the principle of the scheme is acceptable and that it accords with the Middlewich Town Strategy. The application turns, therefore on whether there are any significant and demonstrable adverse effects, that indicate that the presumption in favor of the development should not apply and this is considered in more detail below.

Location of the site

The draft Middlewich Town Strategy also underwent draft Sustainability Appraisal which is informed by an Accessibility Assessment of the site. This indicates that the site benefits from good access to a range of open spaces and employment opportunities. It also has access to a transport node. However, a range of key amenities and some forms of public transport are outside the maximum recommended distance.

The accessibility of the site shows that following facilities meet the minimum standard;

- Amenity Open Space (500m) – 311m
- Children's Play Space (500m) – 311m
- Supermarket (1000m) – 544m
- Post office (1000m) – 573m
- Bank/Cash Point (1000m) – 573m
- Public House (1000m) – 544m
- Bus Stop (500m) – 400m

The following facilities fail to meet the minimum standard

- Convenience Store (500m) – 544m
- Post Box (500m) – 573m
- Primary School (1000m) – 1324m
- Child Care Facility (nursery or crèche) (1000m) - 1323m

Significant Failure to meet the minimum standard

- Outdoor Sports Facility (500m) – 1000m
- Pharmacy (1000m) – 2707m
- Secondary School (1000m) – 2289m
- Medical Centre (1000m) - 2697m
- Leisure Facilities (leisure centre or library) (1000m) – 2203m
- Railway Station (2000m where geographically possible) – 5154m
- Public Right of Way (500m) – 838m

It is considered that in this case that the site is sustainably located and that the site is acceptable for development.

Renewable Energy

The Interim Planning Policy on the Release of Housing land requires a high quality development to Code for Sustainable Homes Level 4.

In relation to renewable energy there are two options; a Solar Photovoltaic System or Solar Thermal Panels. Both would achieve the 10% renewable energy target contained within Policy EM18. The final details for renewable would be determined at the reserved matters stage.

Landscape

The 'L' shaped application site is to the south of Middlewich and to the west of Warmingham Lane. The site is currently agricultural land that covers two fields and has a network of hedgerows and a number of mature hedgerow trees. There is residential development to the north and east. To the west agricultural land slopes down to the River Wheelock. To the south beyond a track to Pettywood farm lies further agricultural land.

As part of the application a Landscape and Visual Assessment has been submitted. This correctly identifies the baseline landscape of the application site and surrounding area.

The appraisal, that the site has a fringe character to the local landscape with a low sensitivity to change, is accepted. As an outline application, the visual impacts of the development can only be assessed in relation to the Illustrative Master plan. The visual assessment indicates that as visual receptors, the residential properties on Warmingham Lane and properties to the north of the site would have moderate adverse impacts initially, reducing to slight adverse as proposed boundary planting matures.

The development would significantly change the character of the site. However, the Illustrative Masterplan indicates that a landscape framework could be created to assist in the assimilation of the site into the surrounding landscape and provide nature conservation benefits. In the event of approval, comprehensive landscape conditions would be appropriate.

Affordable Housing

As the site is located outside of the settlement boundary of Middlewich, the developer will be required to deliver a high quality, well designed development, with a minimum of 30% of the housing being affordable, in accordance with the Interim Planning Statement on Affordable Housing. This percentage relates to provision of both social/affordable rent and/or intermediate housing as appropriate. Normally the Council would expect a ratio of 65/35 between social/affordable rent and intermediate housing.

The Affordable Housing Interim Planning Statement requires that the affordable homes should be provided no later than occupation of 50% of the open market units, unless the proposed development is phased and there is a high degree of pepper-potting in which case the maximum proportion of open market homes that may be provided before the provision of all the affordable units may be increased to 80%.

All the Affordable homes should be constructed in accordance with the standards proposed to be adopted by the Homes and Communities Agency and should achieve at least Level 3 of the Code for Sustainable Homes (2007). The Affordable Homes should also be integrated with the open market homes and not be segregated in discrete or peripheral areas.

The Strategic Housing Market Assessment 2010 shows that for the sub-area of Middlewich, there

is a requirement for 57 new affordable units per year, made up of a need for 13 x one bed units, 8 x two bed units, 30 x three bed units and 6 x one/two bed older persons units.

Therefore, as there is affordable housing need in Middlewich, there is a requirement that 30% of the total units at this site are affordable. This equates to up to 58 dwellings. The Affordable Housing IPS also states that the tenure mix split the Council would expect is 65% rented affordable units (these can be provided as either social rented dwellings let at target rents or affordable rented dwellings let at no more than 80% of market rent) and 35% intermediate affordable units. The affordable housing tenure split that is required has been established as a result of the findings of the Strategic Housing Market Assessment 2010.

As this application is an outline application there are no further details about the affordable housing provision. The applicant will be required to submit details of their proposed affordable housing scheme at the first reserved matter stage and should include details of the affordable housing scheme, including the mix of unit types and how these meet the required tenure split of 65% rented affordable units and 35% intermediate tenure units.

Highways Implications

Although the application is in outline form access is to be determined at this stage. The application proposes a simple priority junction to the development from Warmingham Lane, close to the location of the existing change in speed limit from the national speed limit. A Road Safety Audit has been submitted in support of this application. Although traffic speeds in the location are in excess of 30mph, it is considered that the relocation of the speed limit and a suitable traffic and speed management scheme with accompanying gateway feature would have a significant calming effect on speeds when accompanied by the urbanization effect of the residential proposals of this and the adjacent site.

The applicant has presented a preliminary solution as to how a suitable traffic and speed management scheme might be achieved along the length of Warmingham Lane in the vicinity of the proposed site access points to both developments. A scheme should be implemented that reduces traffic speeds to an acceptable level at both site access points. A mechanism needs to be agreed to how these works are funded by the prospective developments. This could be via a contribution to a scheme undertaken by the Highway Authority and the costs should be shared pro rata by each developer (i.e. this applicant would pay 56.56% or £56,560 of this total). If however, the Strategic Planning Board were minded to approve one of the applications then an alternative solution would need to be considered.

The highways officer has expressed concern regarding a large existing tree to the north of the site access with overhanging branches that may potentially obstruct visibility from the site access. Any overhanging branches shall be cut back prior to construction and an agreement is required into to provide a suitable maintenance sum to maintain this tree in the public highway.

There are two bus services which can be accessed to the north of the site. These are:

- Hourly service (daytime weekday) Crewe-Leighton Hospital-Middlewich-Holmes Chapel-Congleton
- Half-hourly service (daytime weekday) Crewe-Sandbach-Winsford-Northwich

The highways officer considers it appropriate that the applicant provides an appropriate contribution to encouraging bus use by any future residents. One option could be the use of vouchers to the initial owner of each household of the site for the purchase of public transport season tickets to the value of a 3-monthly season ticket (3 x 4-weekly pass totals £170.10). It is also considered appropriate that the applicant provides one of two bus shelters in the location of existing stops at Cross Lane for service number 37 (the other shelter to be provided by the Gladman, the Applicant for the adjacent development proposal).

The poor operation of existing town centre junctions and the route towards M6 J18 has been a constraint upon development in Middlewich for some time. Recently funds have been identified that should bring forward the delivery of the Middlewich Eastern Bypass, which would relieve the key town centre junctions up to Leadsmithy Street. That funding is, in part, dependent on development coming forward and there are therefore potential risks to its availability in the near future.

In support of this application, a Transport Assessment has been produced and the following junctions have been considered;

- Site/Warminster Lane
- Warminster Lane/Cross Lane
- Warminster Lane/Long Lane South
- A533/Long Lane South
- A533/Cross Lane
- A54 Kinderton Street/A533 Leadsmithy Street
- A530 Nantwich Road/A54 Chester Road
- A54 Chester Road/A530 Croxton Lane
- A54 Middlewich Road/A533 Bostock Road
- A54 Kinderton Street/B5309 King Street
- Pochin Way roundabout
- M6 Junction 18
- A533 London Road/Dragons Lane
- Warminster Lane/Dragons Lane
- Dragons Lane/ A530 Nantwich Road

Of these junctions, the two which are at capacity and that would be affected by the development are the junctions at A54 Kinderton Street/A533 Leadsmithy Street and A54 Kinderton Street/B5309 King Street

The result of the joint assessment (between Bellway and Gladman) was that the applicants have suggested geometry improvements at each junction. At Kinderton Street/Leadsmithy Street, the applicants indicate widening of the Kinderton St arm from the east to allow for the provision of a left turn lane and an ahead lane from this direction. At the A54/King Street junction, widening is indicated on the western arm of the junction to allow for a left turn lane towards King St, with the provision of a pedestrian refuge island to assist crossing of the A54.

Neither improvement is intended as a panacea to solve all of the problems of each junction, but rather to mitigate against the joint impact of the development proposals. In particular, the improvement at the King Street junction is likely to bring only marginal benefits.

Analysis of the modelling provided for the Kinderton Street/Leadsmyth Street indicates that some benefits will accrue on the eastern approach to the junction, but that queues do increase on other arms in certain time periods, even with the improvement in place. It is more difficult to assess the true benefits of the proposed improvement at the A54/King Street and this proposal is likely to bring a marginal benefit in this location. On balance, and given the likely wider improvements to the strategic highway network, the highways officer accepts the proposed highway improvements as suitable to mitigate against the impact of the joint development traffic.

In the absence of detailed design and costing from the applicant, the highways officer has taken a view on the appropriate level of S106 contributions from each site that would likely be sufficient to secure the identified works. With the risks and contingencies required for these types of works and the upgrade to the canal towpath, the highways officer has estimated a sum of £1.1M for all these works.

As such, a S106 contribution from this development should be secured towards improvements that will benefit all road users on traffic routes from the site to the town centre and on the A54 corridor, which is set at £622,160.

At the time of writing this report, negotiations were continuing with the applicant and an update will be provided in relation to the level of contribution.

Amenity

In terms of the surrounding residential properties, these are mainly to the north and east of the site. Although the application is outline only, the indicative master plan shows that adequate separation distances would be provided to these properties.

The main impact will be on the amenities of the future occupiers of the proposed dwellings through noise from the surrounding land uses.

A noise assessment has been submitted by the as part of this application and this identifies that the general noise for this site is from road traffic on Warmingham Lane.

PPG24 sets out the Noise Exposure Category's (NEC) for proposed housing sites that will be exposed to noise from road, trains and mixed transport/industrial noise. The Noise Exposure Category's are defined as follows;

Category A - Noise need not be considered as a determining factor in granting planning permission, although the noise level at the high end of the category should not be regarded as a desirable level

Category B - Noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection against noise'

Category C – Planning permission should not normally be granted. Where development is permitted, steps should be taken to ensure a commensurate level of protection against noise

Category D – Planning permission should normally be refused

The majority of the site falls with Noise Exposure Category A for daytime and night time periods with the eastern part of the site adjacent to Warmingham Lane falling within NEC B.

As a result, it is necessary to secure mitigation and this will be secured through the use of a planning condition.

In terms of air quality, the Environmental Health Officer has requested a condition regarding an Environmental Management Plan to minimise the impact from the development in terms of the site preparation and construction phases.

In terms of contaminated land the site has a history of contractor compound use and there are potential in-filled ponds on the site. As a result a Phase II contaminated land report will be required. This would be secured through the use of a planning condition.

Trees and Hedgerows

Trees

The submitted Arboricultural report covers 20 individual trees and 3 groups of trees, which are mainly Oak. The tree survey identifies 13 individual trees and 2 groups of trees of moderate quality and value with 4 trees of low quality and value and 3 trees and 1 group being identified for removal on safety grounds.

Whilst three trees and one group of trees are recommended for removal on grounds of condition, based on the Illustrative Master plan it appears that there would be no tree loss to facilitate the proposals. The trees would be retained to form part of a structural landscape buffer. However, the full impact of the development could only be assessed as part of the reserved matters application. A condition in relation to tree protection would need to be attached to any approval.

Hedgerows

There are a number of lengths of hedgerow in the vicinity of the site. Based on the Illustrative Master plan, the proposals would require the removal of two sections of hedgerow in order to allow access. A plan within the Transport Assessment suggests it may be necessary to remove a greater length of hedgerow to accommodate a footway on the Warmingham Lane frontage. The loss of any hedgerow would be regrettable on landscape and nature conservation grounds.

Where proposed development is likely to result in the loss of existing agricultural hedgerows which are more than 30 years old, it is considered that they should be assessed against the criteria in the Hedgerow Regulations 1997 in order to ascertain if they qualify as 'Important'. Should any hedgerows be found to be 'Important' under any of the criteria in the Regulations, this would be a significant material consideration in the determination of the application. Hedgerows are also a habitat subject of a Biodiversity Action Plan.

The findings of the submitted Historic Hedgerows Assessment indicate that the hedgerow to the north of the site adjoining properties on Davenham Way is an 'Important Hedgerow' under Criteria

1 in the Hedgerow Regulations 1997. This hedgerow is shown as being retained on the indicative layout plan.

There is some question over the status of the roadside hedgerow, part of which is likely to be lost as part of the development. The submitted Historic Hedgerows Assessment suggests a reasonable interpretation of the available evidence and suggests that although this hedgerow was extant in 1831 (and therefore meets the pre-1845 threshold), it does not form part of a pre-enclosure field system, and rather it enclosed a parcel of Woodland and therefore does not meet Criteria 5a in the Regulations. It could be argued that if the evidence suggests the hedge was present, whether it encloses woodland or an open field is irrelevant. The hedge plants are likely to be younger than the dates cited. However on appeal a Government Inspector has made comment to the effect that it is the demarcation of the field system made by the line of the hedge which is important.

Policy NR3 (Habitats) of the adopted Congleton Borough Local Plan First Review, states that proposals for development that would result in the loss or damage to important hedgerows will only be allowed if there are overriding reasons for allowing the development, and where the likely effects can be mitigated or the habitat successfully recreated on or adjacent to the site and there are no suitable alternatives. In order to comply with the policy, all of these criteria must be met.

In this case, 40 metres of hedgerow that would be lost along the road frontage as part of the formation of the access point and visibility splays. The extent of the hedgerow loss is considered to be minor and replacement planting could be secured. There are significant benefits of approving this development in terms of the 5-year land supply which would outweigh the harm caused by the loss of the hedgerow and as a result the development is considered to be acceptable.

Design

The application is outline with details of scale, layout, appearance and landscaping to be determined at a later date. In support of this planning application a development framework plan and illustrative master plan have been submitted.

The importance of securing high quality design is specified within the NPPF and paragraph 61 states that:

“Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.”

The master plan and framework plan are illustrative and do contain both strengths and weaknesses.

In terms of the strengths the positive and externally orientated perimeter blocks are welcomed and the density of 35 dwellings per hectare is appropriate due to the urban fringe location of the site. The majority of the proposed development would be two-storey with occasional increases in height to define spaces and to create focal points. This is considered to be acceptable.

The illustrative masterplan indicates a simple hierarchy, explained in more detail and illustrated conceptually with cross sections in the Design and Access Statement. This includes areas of shared surface defining certain nodal points. In general terms, the hierarchy is considered appropriate for an edge of urban location but the street design will require further consideration and there is a preference that lanes also connect rather than creating cul-de-sacs. There are also locations where some plots appear to have no direct access serving them.

Avenue tree planting is identified and discussed within the Design and Access Statement to reinforce the Main Street, which is positive in terms of place making provided adequate space is provided. It is welcomed that existing hedge lines are retained as the basis for the landscape infrastructure and associated open spaces.

In terms of the weaknesses to the design/layout of the site there is considered to be a lack of integration between the application site and the site to the north-west. This relates to the design of the site, lack of a connected street network, integrated POS/landscaping/play provision and a joint approach to renewable energy/drainage/waste management. However it is difficult at this point to ensure on integration as this application is in outline form and at the time of writing this report there is no planning application or formal pre-application discussions relating to the adjacent site. It is considered that the most appropriate course of action in this case is to ensure that what has been submitted at outline, in particular the framework plan, is not approved as the spatial parameters for the scheme, other than establishing the overall coverage for particular land uses. This will leave all other issues to be considered at the detailed design stage including access within the scheme (both vehicular and pedestrian) and the potential to better connect and integrate this and the adjacent site, with the potential to be informed by an intermediate stage of master planning and design coding.

Ecology

Sandbach Flashes Site of Special Scientific Interest (SSSI)

Sandbach Flashes is a site of physiographical and biological importance. It consists of a series of pools formed as a result of subsidence due to the solution of underlying salt deposits. The water varies from freshwater, chemically similar to other Cheshire meres, to highly saline. Inland saline habitats are extremely rare and are of considerable interest because of the unusual associations of plants and animals. Most of the flashes are surrounded by semi-improved or improved grassland. Fodens Flash is partly surrounded by an important area of wet woodland.

As well as the physiographical and biological interests of the flashes, the SSSI is notified for both its breeding bird assemblage and for its aggregations of non-breeding birds specifically Curlew, Lapwing, Snipe, Teal and Widgeon. The site is also notified for its geological features resultant of the solution of underlying salt deposits.

In this case it is not considered that there will be an impact upon the SSSI following the comments made by Natural England.

Great Crested Newts

A number of ponds have been identified within 250m of the proposed development that support Great Crested Newts. In the absence of mitigation the Councils Ecologist advises that the proposed development is likely to have a 'High' impact on a small population of Great Crested Newts through the loss of terrestrial habitat, the isolation of the pond in the adjacent 'Bellway Homes' potential development site and the risk of killing/injuring newts during the construction phase.

To mitigate the risk of killing/injuring Great Crested Newts the applicant's ecologist has recommended the removal and exclusion of great crested newts from the site using best practice methodologies which would be subject to Natural England Licensing. The loss of terrestrial habitat is compensated for through the creation of a significant number of new ponds and the incorporation of terrestrial habitat suitable for Great Crested Newts within the open space provision. Finally, the indicative master plan includes wildlife corridors provided to link the pond within the Bellway Homes development to the open countryside.

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places,

- in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment

and provided that there is

- no satisfactory alternative and
- no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK implements the Directive in the Conservation of Habitats & Species Regulations 2010 which contain two layers of protection

- a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and
- a licensing system administered by Natural England.

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. (*"This may potentially justify a refusal of planning permission."*)

In this case there is an overriding public interest as the development would contribute to the Councils 5 year housing land supply and the development would provide benefits in the form of affordable housing provision.

It is not considered that there are any suitable alternatives as Cheshire East has not had a 5 year housing land supply for some time. As such, this site would provide a valuable contribution.

In terms of the favorable conservation status of Great Crested Newts, this will be maintained via the proposed mitigation and indicative master plan for the site.

However it should be noted that the proposed mitigation/compensation proposed could result in the partial isolation of the pond within the 'potential' Bellway Homes development from the open countryside.

An application for the adjacent Bellway Homes development has now been received and as has been agreed with the Councils Ecologist that their proposed development would include the creation of additional ponds off-site and the translocation of Great Crested Newts encountered within the footprint of their development to this nearby newly created habitat. If planning consent is granted for the adjacent Bellway development and Great Crested Newts are translocated from the Bellway Homes site, this would mean that there would be no isolation impacts in respect the current application.

Therefore that the great crested newt issue at this site is intrinsically linked between the two potential developments and so a co-ordinated great crested newt strategy between the two developments has been developed.

Consequently, the view of the Councils Ecologist is that provided the above co-ordinated approach to Great Crested Newt mitigation is adopted by both developers the favourable conservation status of great crested newts is likely to be at least maintained and quite possibly enhanced.

Bats

The submitted ecological assessment states that no trees will be removed to facilitate the proposed development.

A moderate level of bat activity was recorded during the survey. The level of activity recorded is as would be expected for a site of this nature. It is considered that the loss of two sections of hedgerow and disturbance from additional lighting is likely to disrupt bat foraging and commuting activity around the site. However, sensitively designed open space areas, including the proposed new ponds and the creation of appropriately managed new hedgerows around the boundary of the site, would be proportional mitigation/compensation for this impact.

Birds

The site is likely to support breeding birds including the more widespread BAP priority species, which are a material consideration for planning. Well designed open space areas and the use of native species in the landscaping scheme would reduce the adverse impacts of the development upon birds. If planning consent is granted, conditions will be required to safeguard breeding birds and ensure some additional provision is made for breeding birds and roosting bats.

Other Species and Habitat

No setts for other protected species were recorded on site. However, the proposed development will result in the loss of some foraging habitat. The adverse impact of the development upon other protected species is likely to be minor. As a result, any reserved matters application should be supported by an up-to date protected species survey. To

compensate for the loss of protected species foraging habitat fruit bearing trees should be incorporated into the finalised landscaping scheme for the site (which will be agreed at the reserved matters stage).

A small area of marsh habitat is present near the western boundary of the application site. Whilst this habitat does not appear particularly diverse, it is considered to be worthy of retention and enhancement as part of the habitat creation scheme associated with the development.

The submitted indicative layout includes proposals for a number of new ponds and areas of open space that have potential, if designed appropriately, to deliver significant benefits for wildlife. The creation of the ponds, in particular, would contribute to local habitat creation targets and deliver an ecological enhancement in accordance with the NPPF. Detailed proposals for open space/habitat creation areas should be submitted with any future reserved matters application. A 10 year management plan for these areas is also required.

Public Open Space

This development would provide 1.59 hectares of public open space which will encompass habitat creation, informal open space and new footpaths. This level of open space is considered to be acceptable and its provision and management will be secured via a S106 Agreement.

In terms of children's playspace, the Public Open Space Officer has requested the provision of an on-site 5 piece LEAP. The applicant's agent has confirmed that this will be provided and this will be secured through the S106 Agreement.

Education

In terms of primary schools, there are four which would serve the proposed development (Cledford, Middlewich Primary School, St Mary's and Warmingham). The proposed development would generate 31 new primary places and the current and projected numbers on roll at the four local schools show that there would be 139 unfilled places in 2011, 145 unfilled places in 2012, 147 unfilled places in 2013 and 155 unfilled places in 2014 and 2015. It is therefore clear that there is sufficient capacity within the primary school sector to accommodate the pupils generated.

In terms of secondary education, the proposed development would be served by Middlewich High School. The proposed development would generate 25 new secondary school places and the current and projected numbers on roll at Middlewich High School show that there are -12 spaces in 2012, -7 spaces in 2013 and 4 spaces in 2014. As there is a capacity issue at Middlewich High School the education department have requested a contribution of £124,517 towards enhancing the capacity of the secondary school. This has been agreed by the applicant and would form part of the S106 Agreement should this application be approved.

Flood Risk and Drainage

The application site is located within Flood Zone 1 according to the Environment Agency Flood Maps. This defines that the land has less than 1 in 1000 annual probability of flooding and all uses of land are appropriate in this location. As the application site exceeds 1 hectare, a Flood Risk Assessment has been submitted as part of this application.

The existing site is drained by a combination of natural infiltration and flow to local field ditches which feed into a tributary of the River Wheelock (which is 140m to the west of the site).

In terms of fluvial flooding, the separation distances to the surrounding water bodies, the topography of the site in relation to the water bodies and the nature of some of the water bodies (lagoons and canals) mean that the site is not affected by fluvial flooding.

There is no history of flooding from the UU adopted sewers in the area or from groundwater flooding.

As part of the proposed development, the overall drainage strategy will be in the form of SUDS. This will include the provision of positive drainage systems in the form of road gulleys to attenuation ponds or detention basins or swales/filter strips.

The foul drainage will discharge into the existing foul sewer located in Warmingham Lane. Due to the topography of the site the site may require to be pumped via a new rising main up to the existing sewer. An adoptable pumping station could be located within the site.

The Environment Agency and United Utilities have been consulted as part of this application and have raised no objection to the proposed development. As a result, the development is considered to be acceptable in terms of its flood risk/drainage implications.

Agricultural Land Quality

The presence of best and most versatile land (grades 1, 2 and 3a) should be taken into account alongside other sustainability considerations. In this case, the land has been surveyed and is graded sub-grade 3b and grade 4. As a result the loss of agricultural land cannot be considered as part of this planning application.

Archaeology

The application is supported by an archaeological desk-based assessment. The report considers the known archaeological information from the surrounding area and concludes that although there are currently no known archaeological sites from within the application area, the site does have some limited potential for archaeological deposits to be present, with particular reference to the Roman period. It is further concluded that this potential may be addressed by a limited programme of archaeological mitigation with the work secured by condition should planning permission be granted. This is accepted by the Councils Archaeologist.

Other issues

The Cheshire Brine Board has raised no objection subject to the proposed housing incorporating raft foundations. This will be secured through the use of a planning condition.

LEVY (CIL) REGULATIONS

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

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

The provision of a contribution towards the improvements of two junctions within the town centre or the Middlewich Eastern by-pass is required to help mitigate against the highways impact of the development. The contribution towards traffic calming, bus stops and travel passes is reasonably related to this development and are necessary to achieve a safe access and promote sustainable travel from the site. The proposed development cannot proceed without these improvements and the contribution is reasonably related in scale and kind to the development.

The development would result in increased demand for school places at Middlewich High School which has very limited spare capacity. In order to increase capacity of the school which would support the proposed development, a contribution towards the secondary school is required. This is considered to be necessary and fair and reasonable in relation to the development.

As explained within the main report, affordable housing, POS and children's play space is a requirement of the Interim Planning Policy. It is directly related to the development and is fair and reasonable.

On this basis the S106 recommendation is compliant with the CIL Regulations 2010.

10. CONCLUSIONS

It is acknowledged that the Council does not currently have a five year housing land supply, which is a requirement of the National Planning Framework. Accordingly, in the light of the advice contained in NPPF, the relevant policies for the supply of housing should not be considered to be up-to-date. Therefore, paragraph 14 of the NPPF states that planning permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF or policies within the NPPF indicate that development should be restricted.

In this case it is not considered that there are any adverse impacts that would significantly and demonstrably outweigh the benefits or there are any policies within the NPPF that indicate that development should be restricted. In this case there is support for this proposed development within the Middlewich Town Strategy and the site is considered to be in a sustainable location. Recent appeal decisions at Cuddington and at Loachbrook Farm also support the principle of housing in this location.

The proposal is also supported in principle by the Government's "Planning for Growth" agenda which states that Local Authorities should adopt a positive approach to new development, particularly where such development would assist economic growth and recovery and in providing a flexible and responsive supply of housing land. This proposal would do both. The Government has made it clear that there is a presumption in favour of new development except where this would compromise key sustainability principles.

It is considered that the development is acceptable in terms of affordable housing provision. Matters of contaminated land, air quality and noise impact can also be adequately addressed through the use of conditions.

The issues of highway safety are considered to be acceptable subject to traffic calming measures. In terms of traffic generation, the main impact will be on two junctions within the town. At the time of writing this report, negotiations were continuing regarding the level of contribution and an update will be provided.

Although there would be some adverse visual impact resulting from the loss of open countryside, it is considered that due to the topography of the site and the retention of existing trees and hedgerows, this would not be significant relative to other potential housing sites in the Borough. Furthermore, it is considered that the benefits arising from housing land provision would outweigh the adverse visual impacts in this case. It is considered that through the use of appropriate conditions, significant trees can be incorporated into the development. The hedgerow to be lost is relatively limited in length and it is considered that the requirement for housing outweighs the loss of these small stretches of hedgerow. Furthermore replacement planting will be secured as part of the reserved matters application(s).

With regard to ecological impacts, the Council's ecologist is satisfied with the proposed mitigation/compensation measures for protected species can be secured.

The scheme complies with the relevant local plan policies in terms of amenity and it is considered that an acceptable design and layout can be secured as part of the reserved matters application.

Policy requirements in respect of public open space provision have been met within the site, and therefore it is not considered to be necessary or reasonable to require further off-site contributions in this respect. A contribution has been secured to enhance secondary school provision in the area.

The Flood Risk Assessment has not identified any significant on or off site flood risk implications arising from the development proposals that could be regarded as an impediment to the development

The information submitted by the developer indicates that it is viable and feasible to meet the requirements of the RSS policy in respect of renewable energy and to achieve Code for Sustainable Homes Level 4. A detailed scheme can therefore be secured through the use of a planning condition.

It is therefore considered that the proposal would comply with the relevant local plan policies and would not compromise key sustainability principles as set out in national planning policy. Therefore there is a presumption in favour of the development and accordingly it is recommended for approval.

11. RECOMMENDATIONS

APPROVE subject to completion of Section 106 legal agreement to secure the following:-

1. A scheme for the provision of 30% affordable housing – 65% to be provided as social rent/affordable rent with 35% intermediate tenure. The scheme shall include:
 - The numbers, type, tenure and location on the site of the affordable housing provision
 - The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing
 - The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved
 - The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
2. The provision of a LEAP and Public Open Space to be maintained by a private management company
3. A commuted payment of £124,517 towards secondary school education
4. Highways contribution

And the following conditions

1. Standard Outline
2. Submission of Reserved Matters
3. Time limit for submission of reserved matters
4. Prior to the submission of any reserved matter application a detailed masterplan and design code shall be submitted to the LPA for approval in writing
5. The framework plan is not approved as the spatial parameters of the scheme other than establishing the overall coverage
6. Approved Plans
7. No development shall take place within the area until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.
8. Hours of construction limited to 08:00 to 18:00 Monday to Friday, 09:00 – 14:00 Saturday and not at all on Sundays
9. Pile driving limited to 08:30 to 17:30 Monday to Friday, 09:00 – 13:00 Saturday and not at all on Sundays
10. No development shall commence until a mitigation scheme for protecting the proposed dwellings from traffic noise has been submitted to and approved by the Local Planning Authority; all works which form part of the scheme shall be completed before any of the dwellings are occupied.
11. The developer shall agree with the LPA an Environmental Management Plan (EMP) with respect to the construction phase of the development. The EMP shall identify all potential dust sources and outline suitable mitigation. The plan shall be implemented and enforced throughout the construction phase.
12. Prior to the commencement of development a Phase II Contaminated Land Assessment shall be submitted to the LPA for approval in writing.

13. The development hereby permitted shall not be commenced until such time as; a scheme to limit the surface water run-off generated by the proposed development, has been submitted to and approved in writing by the local planning authority.

14. The development hereby permitted shall not be commenced until such time as; a scheme to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the local planning authority.

15. No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority showing how at least 10% of the predicted energy requirements of the development will be secured from decentralised and renewable or low-carbon sources. The scheme shall be implemented as approved and retained thereafter.

16. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority.

17. The reserved matters application shall include detailed designs of the proposed ponds, details of the habitat creation areas

18. Retention and enhancement of the marsh area

19. Provision of bat and bird boxes

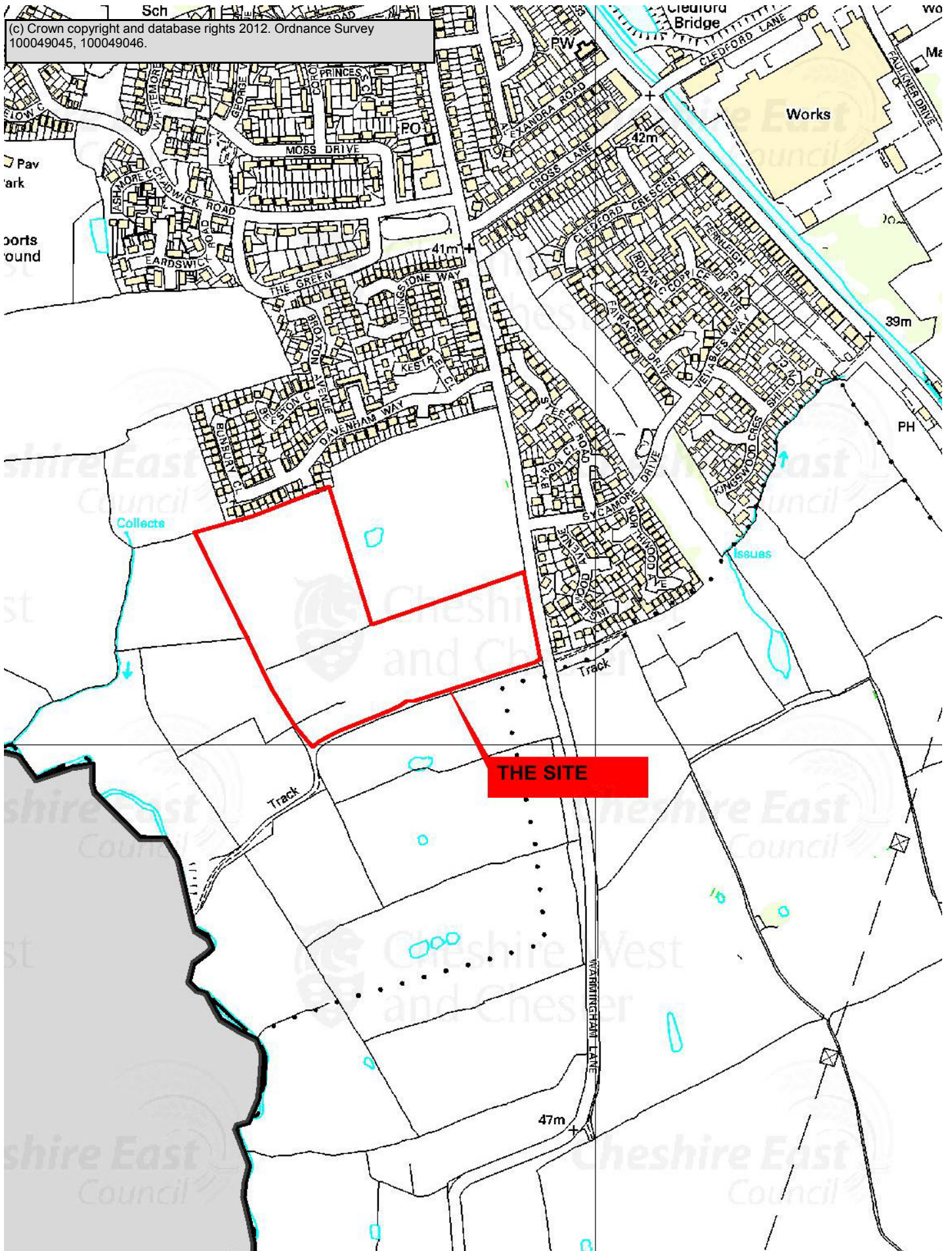
20. Updated protected species survey

21. Works should commence outside the bird breeding season

22. Compensation/mitigation measures for GCN

23. Provide a pedestrian/cycle link to the boundary of the proposed Bellway development in the SW corner of the site to the satisfaction of the SHM prior to first occupation.

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



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Application No: 12/0883C

Location: Land Off, WARMINGHAM LANE, MIDDLEWICH, CHESHIRE

Proposal: Outline Planning Application for Proposed Residential Development of Upto 194 Dwellings, Site Access, Highway, Landscaping, Open Space and Associated Works

Applicant: Gladman Developments Limited

Expiry Date: 08-Jun-2012

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 12th September 2012

Report of: Stephen Irvine – Development Management and Building Control Manager

Title: Resolution for application 12/0883C, which relates to an outline planning application for up to 194 residential dwellings, site access, highway, landscaping, open space and associated works at land off Warmingham Lane, Middlewich

1.0 Purpose of Report

- 1.1. The above application is subject to an appeal for non determination.
- 1.2. 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 to seek the Committee's resolution as to what its decision would have been, had it been able to determine the application.
- 1.3. This will form part of the Authority's Statement of Case at 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 cost implications.
- 1.4. The application is identical to planning application 12/2685C.

2.0 Decision Required

- 2.1 To determine how the Council would have determined planning application 12/0883C.

3.0 Background

- 3.1 The application site is located to the west of Warmingham Lane within the open countryside as defined by the Congleton Borough Local Plan.
- 3.2 The site is relatively flat and L-shaped. The site is undeveloped agricultural land which is bound by native hedgerows and trees. To the north and east of the site are residential properties of varying sizes and styles which front onto Warmingham Lane, Byron Close, Davenham Way and Ashton Close. To the south of the site is an access track which serves Pettywood Farm.
- 3.3 The application is an outline application which is identical to application 12/2685C.

4 Officer Comment

- 4.1 Planning application 12/0883C is identical to application 12/2685C which is also on this agenda. It is not necessary to repeat the same report and reference should be made to the assessment of that application and the conclusions and recommendation which are also located elsewhere on this agenda.
- 4.2 This report has been produced as the Council is required to produce a Statement of Case for the appeal for non determination.

5 Conclusion

- 5.1 If the identical application considered earlier by this Committee is felt to be acceptable by the Members, then it is recommended that the Strategic Planning Board determine that they would have approved application 12/0883C, subject to the completion of a S106 agreement and the conditions set out below.
- 5.2 Alternatively, if they consider that the earlier application should be refused, then they should refuse this application for identical reasons.

6 Recommendation

- 6.1 That the Council would have APPROVED the application, subject to completion of Section 106 legal agreement to secure the following:
- 1 A scheme for the provision of 30% affordable housing – 65% to be provided as social rent/affordable rent with 35% intermediate tenure. The scheme shall include:
 - The numbers, type, tenure and location on the site of the affordable housing provision
 - The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing

- The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved
 - The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
2. The provision of a LEAP and Public Open Space to be maintained by a private management company
 3. A commuted payment of £124,517 towards secondary school education
 4. Highways contribution

And the following conditions

1. Standard Outline
2. Submission of Reserved Matters
3. Time limit for submission of reserved matters
4. Prior to the submission of any reserved matter application a detailed masterplan and design code shall be submitted to the LPA for approval in writing
5. The framework plan is not approved as the spatial parameters of the scheme other than establishing the overall coverage
6. Approved Plans
7. No development shall take place within the area until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.
8. Hours of construction limited to 08:00 to 18:00 Monday to Friday, 09:00 – 14:00 Saturday and not at all on Sundays
9. Pile driving limited to 08:30 to 17:30 Monday to Friday, 09:00 – 13:00 Saturday and not at all on Sundays
10. No development shall commence until a mitigation scheme for protecting the proposed dwellings from traffic noise has been submitted to and approved by the Local Planning Authority; all works which form part of the scheme shall be completed before any of the dwellings are occupied.
11. The developer shall agree with the LPA an Environmental Management Plan (EMP) with respect to the construction phase of the development. The EMP shall identify all potential dust sources and outline suitable mitigation. The plan shall be implemented and enforced throughout the construction phase.
12. Prior to the commencement of development a Phase II Contaminated Land Assessment shall be submitted to the LPA for approval in writing.
13. The development hereby permitted shall not be commenced until such time as; a scheme to limit the surface water run-off generated by the proposed development, has been submitted to and approved in writing by the local planning authority.

14. The development hereby permitted shall not be commenced until such time as; a scheme to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the local planning authority.
15. No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority showing how at least 10% of the predicted energy requirements of the development will be secured from decentralised and renewable or low-carbon sources. The scheme shall be implemented as approved and retained thereafter.
16. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority.
17. The reserved matters application shall include detailed designs of the proposed ponds, details of the habitat creation areas
18. Retention and enhancement of the marsh area
19. Provision of bat and bird boxes
20. Updated protected species survey
21. Works should commence outside the bird breeding season
22. Compensation/mitigation measures for GCN
23. Provide a pedestrian/cycle link to the boundary of the proposed Bellway development in the SW corner of the site to the satisfaction of the SHM prior to first occupation.

7 Financial Implications

- 7.1 There are no financial implications.

8 Legal Implications

- 8.1 The Borough Solicitor has been consulted on the proposals and raised no objections

9 Risk Assessment

- 9.1 There are no risks associated with this decision.

10 Reasons for Recommendation

- 10.1 To allow Cheshire East Council to progress work to defend the appeal for non-determination and to reduce the risk of a cost application against the Council.

For further information:

Portfolio Holder: Councillor Rachel Bailey
Officer: Daniel Evans – Principal Planning Officer
Tel No: 01270 537013
Email: daniel.evans@cheshireeast.gov.uk

Background Documents:

- *Application 12/0883C*
- *Application 12/2685C*

Application No: 12/2584C

Location: LAND OFF, WARMINGHAM LANE, MIDDLEWICH

Proposal: Full Planning Application for Erection of 149 Dwellings with Associated Access and Landscaping Arrangements Alongside a Newt Relocation Strategy

Applicant: Bellway Homes

Expiry Date: 10-Oct-2012

SUMMARY RECOMMENDATION

APPROVE subject to conditions and the completion of Section 106 legal agreement to secure the following:-

- 1. 30% affordable housing – 65% to be provided as social rent/affordable rent with 35% intermediate tenure. The scheme shall include:**
- 2. The provision of a LEAP and Public Open Space to be maintained by a private management company**
- 3. A commuted payment of £295,728 towards secondary school education**
- 4. A commuted payment towards highway improvements**

MAIN ISSUES

Impact of the development on:-

Principal of the Development
Planning Policy and Housing Land Supply
Renewable Energy
Landscape
Affordable Housing
Highway Implications
Amenity
Trees and Hedgerows
Design
Ecology
Open Space
Education
Flood Risk and Drainage
Agricultural Land
Archaeology
Other

REASON FOR REFERRAL

This application is referred to the Strategic Planning Board as it relates to a departure to the Congleton Borough Local Plan.

1. DESCRIPTION OF SITE AND CONTEXT

The application site is located to the west of Warmingham Lane within the open countryside as defined by the Congleton Borough Local Plan. The site is relatively flat and square shaped. The site is undeveloped agricultural land which is bound by native hedgerows and trees. To the north and east of the site are residential properties of varying sizes and styles which front onto Warmingham Lane, Byron Close, Davenham Way and Ashton Close. To the south of the site is an access track which serves Pettywood Farm.

The site edged red also includes a separate parcel of land to the south-east of the housing site. This parcel of land is also within the open countryside, relatively flat, in agricultural use and bound by hedgerows and trees.

2. DETAILS OF PROPOSAL

This is a full planning application for 149 dwellings.

The access point to serve the site would be taken off Warmingham Lane via a roundabout. The site would include the provision of 30% affordable housing, a LEAP and 0.41 hectares of public open space. The majority of the POS would be located centrally within the site.

The development would consist of 2 to 4 bedroom units which would have a maximum height of 2storeys.

The second parcel of land would include the construction of two additional ponds. These ponds would serve the Great Crested Newt population on the application site and the GCN would be translocated from the housing site.

The site is adjacent to a larger L shaped site which is subject to planning application 12/2685C for 194 dwellings

3. RELEVANT HISTORY

The site has no relevant planning history.

4. POLICIES

Local Plan policy

PS3 – Settlement Hierarchy

PS8 - Open Countryside

GR21- Flood Prevention

GR1- New Development

GR2 – Design

GR3 - Residential Development

GR4 – Landscaping
GR5 – Landscaping
GR9 - Accessibility, servicing and provision of parking
GR14 - Cycling Measures
GR15 - Pedestrian Measures
GR16 - Footpaths Bridleway and Cycleway Networks
GR17 - Car parking
GR18 - Traffic Generation
NR1 - Trees and Woodland
NR3 – Habitats
NR4 - Non-statutory sites
NR5 – Habitats
H2 - Provision of New Housing Development
H6 - Residential Development in the Open countryside
H13 - Affordable Housing and low cost housing

Regional Spatial Strategy

DP1 – Spatial Principles
DP2 – Promote Sustainable Communities
DP7 – Promote Environmental Quality
L4 – Regional Housing Provision
L5 – Affordable Housing
RDF1 – Spatial Priorities
EM1 – Integrated Enhancement and Protection of the Regions Environmental Assets
MCR1 – Manchester City Region Priorities
MCR 4 – South Cheshire

National Policy

National Planning Policy Framework

Other Considerations

The EC Habitats Directive 1992
Conservation of Habitats & Species Regulations 2010
Circular 6/2005 - Biodiversity and Geological Conservation - Statutory Obligations and Their Impact within the Planning System
Interim Planning Statement Affordable Housing
Interim Planning Statement Release of Housing Land
Draft Middlesbrough Town Strategy Consultation

5. CONSULTATIONS (External to Planning)

Environment Agency: No objection. Conditions suggested in relation to the following:

- A scheme to limit the surface water run-off generated by the development
- A scheme to manage the risk of flooding from the site
- A scheme for the provision and management of the compensatory habitat creation

United Utilities: No objection to the proposal provided that the following conditions are met:

- This site must be drained on a total separate system, with only foul drainage connected into the public foul sewerage system.
- Several public sewers cross this site and UU will not permit building over them. UU will require an access strip width of 5 metres either side of the centre line of the respective sewer which is in accordance with the minimum distances specified in the current issue of "Sewers for Adoption", for maintenance or replacement.
- Surface water should discharge to the adjacent watercourse or the public surface water sewer and may require the consent of the Local Authority.
- If surface water is allowed to be discharged to the public surface water sewerage system we will require the flow to be limited to the existing "Greenfield" run-off rate.

Strategic Highways Manager: There are identified traffic impact issues at certain junction locations that this development would affect through additional traffic. On balance it is considered that this impact can be mitigated by providing a package of improvement measures at the site and to specific junctions on the A54 corridor serving the town centre, which would benefit all road users. Such a package of measures would need to reflect on the status of proposed strategic highway improvement and Middlewich Eastern Bypass should it come forward. In addition, a scheme to address speed reduction/safety measures can be implemented in the vicinity of the site.

There are no objections to the application subject to S106 contributions as set out below:

- £43,440 for traffic/speed reduction measures
- £25,350 for bus use
- £447,840 to wider highway and transport improvements to benefit all road users on the following corridors; to Middlewich town centre, along the A54 towards M6 J18.

Environmental Health: Conditions suggested in relation to construction hours, pile driving, implementation of the noise mitigation measures, air quality and contaminated land.

Public Open Space:

Children and Young Persons Provision

Following an assessment of the existing provision of Children and Young Persons Provision accessible to the proposed development, if the development were to be granted planning permission there would be a deficiency in the quantity of provision, having regard to the local standards set out in the Council's Open Space Study. Consequently there is a requirement for new Children and Young Persons Provision to meet the needs arising from the development.

It is proposed to provide onsite play provision in the form of a LEAP located centrally within the Public Open Space. This should include at least 5 items incorporating DDA inclusive equipment, using play companies approved by the Council. It is requested that the final layout and choice of play equipment be agreed with CEC, the construction should be to the Council's satisfaction. Full plans must be submitted prior to the play area being installed and these must be approved, in writing prior to the commencement of any works. A buffer zone of at least 20m from residential properties facing the play area should be allowed for with low level planting to assist in the safety of the site.

Based on the Council's Guidance Note on its Draft Interim Policy Note on Public Open Space Requirements for New Residential Development, the financial contributions sought from the developer for maintenance for a 25 year period would be:

Maintenance: £144,175.50

Amenity Greenspace

Following an assessment of the existing provision of Amenity Greenspace accessible to the proposed development, if the development were to be granted planning permission there would be a surplus in the quantity of provision, having regard to the local standards set out in the Council's Open Space Study.

Consequently there is not a requirement for new Amenity Greenspace to meet the future needs arising from the development. It is understood that an amount of 0.44 Ha of public open space is to be provided which is in a single block

Based on the Council's Guidance Note on its Draft Interim Policy Note on Public Open Space Requirements for New Residential Development the financial contributions sought from the developer for maintenance only for a 25 year period would be:

Maintenance : £57,114.75

Natural England: The proposal does not appear to affect any statutorily protected sites or landscapes or have significant impacts on the conservation of soils, nor is the proposal EIA development. Reference should be made to Natural England's standing advice for protected species.

Public Rights of Way: The application refers to walking as being the most important mode of transport at the local level. However, the Planning Layout does not encourage this mode of transport to and from the site. The Plan notes that the town centre to the north of the site on Warmingham Lane will create a desire line from the site onto Warmingham Lane using the most direct route which would be the north east corner of the site. This desire line, for both pedestrians and cyclists should be accommodated within the design of the site through the provision of a shared use facility within a green corridor.

This connection would prove useful for future residents of the adjoining potential development site to the south (12/2685C). Should planning permission be granted for both sites, a shared use facility within a green corridor should form a south west-north east spine through both developments, connecting in the south west corner of the development site in question (12/2584C). Additional shared use links could connect other parts of the two proposed developments (for example on the north western and south east boundaries) to increase the permeability of both sites to non-motorised users.

The proposed roundabout should accommodate pedestrian movements.

The canal towpath is likely to act as an important route to the town centre and to Sandbach for residents of the proposed development for both leisure and work journeys. Contributions towards

the improvement of the surface of the towpath to accommodate this increased traffic and pedestrian and cyclist access to the towpath from the site would be sought.

Archaeology: In the event that planning permission is granted, a condition should be attached.

Sustrans: If this land use is considered appropriate by the Council's planning committee. Sustrans would like to make the following comments:

- National Cycle Network Route 5 follows Warmingham Lane into Middlewich. Beyond the town, this is a rural minor road, in the town a residential road. Sustrans would like to see the developer contribute to physical measures on the road to reduce speed and the intrusion of motor traffic, and to alter the feel of the road with selective landscaping.
- There should be several access points from the proposed development on to Warmingham Lane for pedestrians/cyclists, in addition to the main road entry.
- If adjacent land is earmarked for development, the layout of this estate should allow for future pedestrian/cycle connections.
- The design of any smaller properties should include storage areas for residents' buggies/bicycles.
- Travel planning with targets and regular monitoring should be set up for the site.

Cheshire Brine Board: The site is in an area which has previously been affected by brine subsidence and the possibility of minor future movements cannot be completely discounted. Therefore the Cheshire Brine Board recommends that any dwelling erected thereon should be constructed on a reinforced concrete raft foundation.

Education: There will be sufficient capacity in the local primary schools to accommodate the 28 primary aged pupils from this development. During the process for application 12/0883C, we sought a contribution towards provision at the local secondary school. This was on the basis that whilst the projections indicated an element of surplus at Middlewich High School by 2018, the secondary aged pupils generated by application 12/0883C would take up most of this surplus and once you factor in the additional primary aged pupils generated then Middlewich High School will be under pressure. In light of this, a contribution of £295,728 towards secondary education provision will be required.

Cheshire Wildlife Trust: No comments received

6. VIEWS OF THE PARISH COUNCIL

Middlewich Town Council: Recommend refusal of this application. It is premature, in advance of the Cheshire East Local Development Framework and the conclusion of Neighbourhood Planning process.

The two developers with an interest in development off Warmingham Lane have clearly not worked together to provide a coherent plan to address the implications of their combined proposals for this area of Middlewich.

The comments from the Strategic Highways Manager on this application give great cause for concern. The need for an access strategy, sustainable transport links and public transport provision, in addition to pedestrian access to the development site all remain issues in need of resolution.

Furthermore, Middlewich Town Council requires the following issues to be addressed in consideration of this application, in the event of future approval by the Strategic Planning Board:

- Significant financial contribution to the Middlewich Eastern By Pass
- Investment in the public transport network, to support extension to the bus service routes
- Investment in pedestrian walkways, pathways and connectivity to the canal towpath to provide a green and safe route to the town centre
- Commuted sum for installation and maintenance of play area and Public Open Space within the development site or surrounding area
- Inclusion of amenities within the area, to include medical/dental facilities, community meeting area and additional retail facilities
- Detailed analysis of the traffic impact on the through routes to Middlewich and Sandbach Town Centres and the implications for access and weight of traffic to Junctions 17 and 18 of the M6 Motorway
- Potential for investment in regeneration schemes in the Town Centre, in particular Town Wharf via S106 and CIL.

It is requested that Middlewich Town Council is involved at an early stage of discussions with the developer

Moston Parish Council: No comments received

Warmingham Parish Council: No comments received

7. OTHER REPRESENTATIONS

Letters of objection have been received from 10 local households raising the following points;

Principal of development

- The site is outside the settlement boundary
- Approving this development would prejudice the new local plan
- The site is not sustainable and is too far from local amenities
- The development will prejudice the key strategic decisions about the growth of Middlewich
- Increased pressure on the stagnant housing market in Middlewich
- There are much better sites within other towns in Cheshire East
- Development in Middlewich is disproportionate to the south of the town
- The proposal does not comply with the Interim Planning Policy on the release of housing land
- There is limited employment opportunities in Middlewich
- As part of the Fox appeal in Sandbach the SoS stated that the brownfield sites should be prioritised
- Loss of Green Belt
- There are no facilities within Middlewich such as a train station and no swimming pool
- There are brownfield sites available within Middlewich
- The site is too far from the settlement boundary creating urban sprawl
- There is no requirement for additional housing
- There is no employment within Middlewich
- The draft Town Strategy has identified that brownfield sites should be developed first
- The development would result in urban sprawl

- Approving this application would impact upon sites on previously developed land (Fodens Factory, Rookery Bridge and Albion Chemicals)

Highways

- No large scale development should be allowed until the Bypass is completed
- Warmingham Lane is in a poor condition
- Increased traffic congestion
- Vehicles backing out onto Warmingham Lane would impact upon highway safety
- Disruption caused by the new roundabout
- Impact upon highway safety
- Bus services are infrequent
- Increased danger to cyclists and pedestrians
- Concern about safety at the site access point
- Lack of pedestrian access to the site
- Future occupants will be dependent on the car
- The cumulative highway impact of the Gladman and Bellway sites

Green Issues

- Loss of green land
- Impact upon the open countryside
- Impact upon wildlife
- Impact upon protected species
- Loss of hedgerow

Infrastructure

- Increased pressure on local schools
- The local schools are full to capacity
- Lack of infrastructure
- Lack of shops in the town
- Doctors and dentists are full
- There is little in terms of leisure facilities

Amenity Issues

- Loss of a view
- Noise and disruption from construction of the dwellings
- Increased noise caused by vehicular movements from the site
- Impact upon privacy
- Increased light pollution
- Loss of outlook
- Loss of a view

Other issues

- Loss of property value

A letter of objection has been received from Fiona Bruce MP raising the following points;

- The planning application is a source of great concern amongst many residents in Middlewich
- When considered in conjunction with application 12/2685C there is a possibility of 343 new houses being built in close proximity to existing residents

- The infrastructure in Middleswich would not be able to cope with the extra demands that the proposed development would create. Too many houses have been built in the area and there is simply no demand for further development at this time

8. APPLICANT'S SUPPORTING INFORMATION

To support this application the application includes the following documents;

- Planning Statement (Produced by HOW Planning)
- Design and Access Statement (Produced by Astle planning and Design)
- Transport Assessment (Produced by DTPC Ltd)
- Transport Combined Sites Test (Produced by DTPC Ltd)
- Framework Travel Plan (Produced by Produced by DTPC Ltd)
- Extended Phase 1 Habitat Survey (Produced by Pinnacle)
- Great Crested Newt Method Statement (Produced by TEP)
- Landscape Specification (Produced by LDS)
- Arboricultural Impact Assessment (Produced by Pinnacle)
- Flood Risk Assessment (Produced by Betts Associates)
- Noise Impact Assessment (Produced by Red Acoustics)
- Statement of Community Involvement (Produced by HOW Planning)
- Phase 1 Desk Study Report (Produced by Betts Associates)
- Building for Life Overview (Produced by Astle planning and Design)
- S106 Heads of Terms

These documents are available to view on the application file.

9. OFFICER APPRAISAL

Principal of Development

Whilst PPS3 'Housing' has been abolished under the new planning reforms, the National Planning Policy Framework (NPPF) reiterates at paragraph 47 the requirement to maintain a 5 year rolling supply of housing and states that Local Planning Authorities should:

"identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land".

The NPPF states that, Local Planning Authorities should have a clear understanding of housing needs in their area. This should take account of various factors including:

- housing need and demand,
- latest published household projections,
- evidence of the availability of suitable housing land,

- the Government's overall ambitions for affordability.

The figures contained within the Regional Spatial Strategy proposed a dwelling requirement of 20,700 dwellings for Cheshire East as a whole, for the period 2003 to 2021, which equates to an average annual housing figure of 1,150 dwellings per annum. In February 2011 a full meeting of the Council resolved to maintain this housing requirement until such time that the new Local Plan was approved.

It is considered that the most up-to-date information about housing land supply in Cheshire East is contained within the Strategic Housing Land Availability Assessment (SHLAA) which was adopted in March 2012.

The SHLAA has put forward a figure of 3.94 years housing land supply.

Paragraph 47 of the NPPF requires that there is a five year supply of housing plus a buffer of 5% to improve choice and competition. The NPPF advocates a greater 20% buffer where there is a persistent record of under delivery of housing. However for the reasons set out in the report which was considered and approved by Strategic Planning Board at its meeting on 30th May 2012, these circumstances do not apply to Cheshire East. Accordingly once the 5% buffer is added, the Borough has an identified deliverable housing supply of 3.75 years.

The NPPF clearly states at paragraph 49 that:

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

This must be read in conjunction with the presumption in favour of sustainable development as set out in paragraph 14 of the NPPF which for decision taking means:

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

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

The forthcoming Cheshire East Local Plan will set new housing numbers for the area and identify sufficient land and areas of growth to meet that requirement up to 2030. The Submission Draft Core Strategy will be published for consultation in the spring of 2013. Consequently, the current shortfall in housing land will be largely remedied within the coming year or so. However, in order that housing land supply is improved in the meantime, an Interim Planning Policy on the Release of Housing Land has been agreed by the Council. This policy allows for the release of appropriate greenfield sites for new housing development on the edge of the principal town of Crewe and as part of mixed development in town centres and in regeneration areas, to support the provision of employment, town centres and community uses.

The forthcoming Cheshire East Local Plan will set new housing numbers for the area and identify sufficient land and areas of growth to meet that requirement up to 2030. The Submission Draft Core Strategy will be published for consultation in the spring of 2013. Consequently, the current shortfall in housing land will be largely remedied within the coming year or so. However, in order that housing land supply is improved in the meantime, an Interim Planning Policy on the Release of Housing Land has been agreed by the Council. This policy allows for the release of appropriate greenfield sites for new housing development on the edge of the principal town of Crewe and as part of mixed development in town centres and in regeneration areas, to support the provision of employment, town centres and community uses.

Although this proposal does not comply with the size requirements of the Revised IPP, in this case Middlewich has produced a draft town strategy. The draft Middlewich Town Strategy underwent a four week consultation between the 2nd March and 2nd April 2012. Initial analysis of responses to this consultation indicates that 37% of respondents support development of the site; 32% of respondents oppose development of the site; and 32% of respondents did not answer the question.

The Town Council approved the final version of the Town Strategy on 4th July 2012. The Strategy states that in terms of housing Middlewich should deliver in the region of 1,600 new homes by 2030. The potential housing sites are then ranked of preference for development with the application site being ranked fifth out of eight sites (subject to the creation of a link road from the A533 through the site). To deliver the projection of 1,600 homes, it is considered that it would be necessary to develop this site, as the sites ranked 1 – 4 would not achieve the 1,600 dwellings.

Members should also be aware of the recent appeal decision at Loachbrook Farm Congleton. In this case the inspector gave significant weight to the lack of a 5-year housing land supply and approved the development for up to 200 dwellings. In the Inspectors view the site is within the open countryside and would not be in accordance with the local plan, the proposal would locally harm the character and appearance of the countryside and would result in the loss of the best and most versatile agricultural land. However, the Inspector found that these issues were outweighed by the need to secure a 5-year supply of deliverable housing land that would also contribute to providing affordable and low cost housing.

In terms of prematurity, the Inspector found that it would not be premature or prejudice the development of other sites. The Inspector stated that;

'General Principles also indicates that applications should not be refused on the sole ground of prematurity and, taking account of Government advice, there is little justification for delaying a decision or, as the Council suggest, for considering other sites that the Council contend offer increased levels of sustainability'

From the above, it can be concluded that:

- The Council does not have a five year supply of housing – and the presumption in favour of sustainable development should apply.
- The site is being considered as part of the Middlewich Town Strategy. Whilst the final shape of that strategy is yet to be finalised, and it can therefore only be afforded limited weight, the majority of respondents were in favour of development on this site.

- The release of Greenfield sites is required for Middlewich to achieve 1,600 new homes by 2030
- The Cuddington Appeal in Cheshire West and Chester and the Loachbrook Farm Appeal at Congleton indicate that significant weight should be applied to housing supply arguments.
- The NPPF is clear that, where a Council does not have a five year housing land supply, its housing supply relevant policies cannot be considered up to date. Where policies are out of date planning permission should be granted unless:
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
 - *specific policies in the Framework indicate development should be restricted.*

Overall, housing supply is a very important consideration in the determination of this application and must be given considerable weight. On balance, it is considered that the principle of the scheme is acceptable and that it accords with the Middlewich Town Strategy. The application turns, therefore on whether there are any significant and demonstrable adverse effects, that indicate that the presumption in favor of the development should not apply and this is considered in more detail below.

Location of the site

The draft Middlewich Town Strategy also underwent draft Sustainability Appraisal which is informed by an Accessibility Assessment of the site. This indicates that the site benefits from good access to a range of open spaces and employment opportunities. It also has access to a transport node. However, a range of key amenities and some forms of public transport are outside the maximum recommended distance.

The accessibility of the site shows that following facilities meet the minimum standard;

Amenity Open Space (500m) – 311m
Children's Play Space (500m) – 311m
Supermarket (1000m) – 544m
Post office (1000m) – 573m
Bank/Cash Point (1000m) – 573m
Public House (1000m) – 544m
Bus Stop (500m) – 400m

The following facilities fail to meet the minimum standard

Convenience Store (500m) – 544m
Post Box (500m) – 573m
Primary School (1000m) – 1324m
Child Care Facility (nursery or crèche) (1000m) - 1323m

Significant Failure to meet the minimum standard

Outdoor Sports Facility (500m) – 1000m
Pharmacy (1000m) – 2707m
Secondary School (1000m) – 2289m
Medical Centre (1000m) - 2697m
Leisure Facilities (leisure centre or library) (1000m) – 2203m
Railway Station (2000m where geographically possible) – 5154m

Public Right of Way (500m) – 838m

It is considered that in this case that the site is sustainably located and that the site is acceptable for development.

Renewable Energy

In relation to renewable energy, Policy EM18 of the RSS has a requirement of 10% of the predicted energy requirements to come from decentralised and renewable or low carbon sources. In this case the applicant has provided a number of specifications to be incorporated in the build which the applicant stated will reduce the 'dwelling emission rate of each dwelling by 10% under the maximum rate permitted by building regulations'. This does not meet the requirements of Policy EM18 and a condition will be attached to ensure that the decentralised and renewable or low carbon sources are provided.

Landscape

The square shaped application site is to the south of Middlewich and to the west of Warmingham Lane. The site is currently agricultural land that covers one large field which has a network of hedgerows and a number of mature hedgerow trees to its boundaries. There is residential development to the north and east.

The site has a fringe character to the local landscape with a low sensitivity to change. The development would irreversibly change the character of the site, extending the urban edge of Middlewich into open countryside. There would be significant visual impacts on the adjoining residential properties to the north and properties facing the site on Warmingham Lane which currently enjoy views over open countryside. However, the landscape would not impact upon more distant views and it is considered that the development would sit comfortably alongside the built form opposite and to the north of the site.

Affordable Housing

As the site is located outside of the settlement boundary of Middlewich the developer will be required to deliver a high quality, well designed development with a minimum of 30% of the housing being affordable in accordance with the Interim Planning Statement on Affordable Housing. This percentage relates to provision of both social/affordable rent and/or intermediate housing as appropriate. Normally, the Council would expect a ratio of 65/35 between social/affordable rent and intermediate housing.

The Affordable Housing Interim Planning Statement requires that the affordable homes should be provided no later than occupation of 50% of the open market units, unless the proposed development is phased and there is a high degree of pepper-potting.

All the Affordable homes should be constructed in accordance with the standards proposed to be adopted by the Homes and Communities Agency and should achieve at least Level 3 of the Code for Sustainable Homes (2007). The Affordable Homes should also be integrated with the open market homes and not be segregated in discrete or peripheral areas.

The Strategic Housing Market Assessment 2010 shows that for the sub-area of Middlewich, there

is a requirement for 57 new affordable units per year, made up of a need for 13 x one bed units, 8 x two bed units, 30 x three bed units and 6 x one/two bed older persons units.

Therefore, as there is affordable housing need in Middlewich, there is a requirement that 30% of the total units at this site are affordable. This equates to up to 45 dwellings. The Affordable Housing IPS also states that the tenure mix split the Council would expect is 65% rented affordable units (these can be provided as either social rented dwellings let at target rents or affordable rented dwellings let at no more than 80% of market rent) and 35% intermediate affordable units. The affordable housing tenure split that is required has been established as a result of the findings of the Strategic Housing Market Assessment 2010.

In this case the proposed development would meet the requirement of the IPP and the level of affordable housing will be secured as part of a S106 Agreement.

Highways Implications

This application includes a new four-arm roundabout to Warmingham Lane, opposite the existing Sycamore Drive, to form the access to this site. The speed limit in this location is 30mph and the change to the national speed limit (60mph) about 170m to the south. A Road Safety Audit has been submitted with this application.

The design of the roundabout has been provided only at a preliminary level. The Road Safety Audit indicates a number of minor issues with the roundabout design, none of which on their own represent potentially fatal flaws. The highways officer considers that a suitable roundabout layout and design is likely to be achieved at this location and that such a design ought to be conditioned to be delivered, prior to any occupation of development through a S278 Agreement.

The applicant has presented a preliminary solution as to how a suitable traffic and speed management scheme might be achieved along the length of Warmingham Lane. A scheme should be implemented that reduces traffic speeds to an acceptable level at both site access points. A mechanism needs to be agreed to how these works are funded by the prospective developments. This could be via a contribution to a scheme undertaken by the Highway Authority and the costs should be shared pro rata by each developer (i.e. this applicant would pay 43.44% or £43,440 of this total). If however, the Strategic Planning Board were minded to approve one of the applications, then an alternative solution would need to be considered.

There are two bus services which can be accessed to the north of the site. These are:

- Hourly service (daytime weekday) Crewe-Leighton Hospital-Middlewich-Holmes Chapel-Congleton
- Half-hourly service (daytime weekday) Crewe-Sandbach-Winsford-Northwich

The highways officer considers it appropriate that the applicant provides an appropriate contribution to encouraging bus use by any future residents. One option could be the use of vouchers to the initial owner of each household of the site, for the purchase of public transport season tickets to the value of a 3-monthly season ticket (3 x 4-weekly pass totals £170.10). It is also considered appropriate that the applicant provides one of two bus shelters (via a S278 Agreement) in the location of existing stops at Cross Lane for service number 37 (the other shelter to be provided by the Gladman, the Applicant for the adjacent development proposal).

The poor operation of existing town centre junctions and the route towards M6 J18 has been a constraint upon development in Middlesbrough for some time. Recently funds have been identified that should bring forward the delivery of the Middlesbrough Eastern Bypass, which would relieve the key town centre junctions up to Leadsmithy Street. That funding is, in part, dependent on development coming forward consequently, there are therefore potential risks to its availability in the near future.

A joint assessment has been carried out into the impact the neighbouring scheme will have on the surrounding highway network. The findings show that the two junctions, which are at capacity, would be affected by the development. These are the junctions at A54 Kinderton Street/A533 Leadsmithy Street and A54 Kinderton Street/B5309 King Street

The result of the joint assessment (between Bellway and Gladman) was that the applicants have suggested geometry improvements at each junction.

At Kinderton Street/Leadsmithy Street, the applicants indicate widening of the Kinderton St arm from the east to allow for the provision of a left turn lane and an ahead lane from this direction. At the A54/King Street junction, widening is indicated on the western arm of the junction to allow for a left turn lane towards King St with the provision of a pedestrian refuge island to assist crossing of the A54.

Neither improvement is intended as a panacea to solve all of the problems of each junction, but rather to mitigate against the joint impact of the development proposals. In particular, the improvement at the King Street junction is likely to bring only marginal benefits.

Analysis of the modelling provided for the Kinderton Street/Leadsmithy Street indicates that some benefits will accrue on the eastern approach to the junction but that queues do increase on other arms in certain time periods even with the improvement in place. It is more difficult to assess the true benefits of the proposed improvement at the A54/King Street and this proposal is likely to bring a marginal benefit in this location. On balance, and given the likely wider improvements to the strategic highway network, the highways officer accepts the proposed highway improvements as suitable to mitigate against the impact of the joint development traffic.

In the absence of detailed design and costing from the applicant, the highways officer has taken a view on the appropriate level of S106 contributions from each site that would likely be sufficient to secure the identified works. With the risks and contingencies required for these types of works and the upgrade to the canal towpath, the highways officer has estimated a sum of £1.1M for all these works.

As such, a S106 contribution from this development should be secured towards improvements that will benefit all road users on traffic routes from the site to the town centre and on the A54 corridor, which is set at £477,840.

At the time of writing this report negotiations were continuing with the applicant and an update will be provided in relation to the level of contribution.

Amenity

In terms of the surrounding residential properties (these are mainly to the north and east of the site) adequate separation distances would be provided to these properties.

The main impact will be on the amenities of the future occupiers of the proposed dwellings through noise from the surrounding land uses.

A noise assessment has been submitted by the as part of this application and this identifies that the general noise for this site is from road traffic on Warmingham Lane and the electricity sub-station to the north-east corner of the site.

PPG24 (which has now been cancelled by the NPPF) set out the Noise Exposure Category's (NEC) for proposed housing sites that will be exposed to noise from road, trains and mixed transport/industrial noise. The Noise Exposure Category's are defined as follows;

Category A - Noise need not be considered as a determining factor in granting planning permission, although the noise level at the high end of the category should not be regarded as a desirable level

Category B - Noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection against noise'

Category C – Planning permission should not normally be granted. Where development is permitted, steps should be taken to ensure a commensurate level of protection against noise

Category D – Planning permission should normally be refused

The majority of the site falls with Noise Exposure Category A for daytime and night time periods with the eastern part of the site adjacent to Warmingham Lane falling within NEC B at night time and NEC C during day-time.

As a result it is necessary to secure mitigation and this will be secured through the use of a planning condition.

In terms of air quality, the Environmental Health Officer has requested a condition regarding an Environmental Management Plan to minimise the impact from the development in terms of the site preparation and construction phases.

In terms of contaminated land, a Phase II contaminated land report will be required. This would be secured through the use of a planning condition.

Trees and Hedgerows

Trees

The submitted Arboricultural report covers 12 individual trees, 3 groups of trees and 3 hedgerows. The tree survey identifies 7 individual trees, 1 group of trees and 3 hedgerows of moderate quality

and value (Grade B) with 5 trees and 1 group of trees of low quality and value (Grade C) and 1 group of trees is identified for removal as they consist of mostly dead Elm.

All trees, hedgerows and groups of trees are located to the boundaries of the site with all being retained apart from the hedgerow to the Warmingham Lane frontage (Grade B), 1 group of Elm trees to the north-east corner and 1 tree (Grade C) to the boundary with Warmingham Lane. The loss of these trees is considered to be acceptable.

On the whole, it is considered that the impact upon trees is acceptable this is subject to minor amendments to the layout in relation to plots 33, 43, 44, 61, and 62 to ensure that the relationship between these plots and adjacent trees are improved. At the time of writing this report, an amended plan had been received and comments were awaited from the Councils Tree Officer.

Hedgerows

The hedgerow boundary to Warmingham Lane would be removed as part of the proposed development. Where proposed development is likely to result in the loss of existing agricultural hedgerows which are more than 30 years old, it is considered that they should be assessed against the criteria in the Hedgerow Regulations 1997 in order to ascertain if they qualify as 'Important'. Should any hedgerows be found to be 'Important' under any of the criteria in the Regulations, this would be a significant material consideration in the determination of the application. Hedgerows are also a habitat subject of a Biodiversity Action Plan.

The findings of the submitted Historic Hedgerows Assessment indicate that the hedgerow to the Warmingham Lane frontage is an 'Important Hedgerow' under the Criteria of the Hedgerow Regulations 1997. This hedgerow is shown as being retained on the indicative layout plan. This is based on the historical rather than ecological context as the hedgerow is 'generally species poor'. The hedgerow assessment recommends the provision of native hedgerows along the Warmingham Lane boundary and that this would be *'re-aligned rather than lost completely, therefore the historical element of the boundary feature will largely remain'*.

Policy NR3 (Habitats) of the adopted Congleton Borough Local Plan First Review, states that proposals for development that would result in the loss or damage to important hedgerows will only be allowed if there are overriding reasons for allowing the development, and where the likely effects can be mitigated or the habitat successfully recreated on or adjacent to the site and there are no suitable alternatives. In order to comply with the policy all of these criteria must be met.

In this case there are overriding reasons for allowing the development in order to meet the Councils 5 year housing land supply. As a result, the loss of the hedgerow would comply with Policy NR3 (Habitats).

Design

The surrounding development comprises relatively modern two storey development notwithstanding this, there is consistency in terms of materials with most walls being finished in simple red brick with some properties incorporate render. The predominant roof forms are gables although some are hipped and most are finished in grey tiles. The surrounding properties to the north and east are suburban in character.

The layout of the site includes dwellings which front onto the Warmingham Lane frontage with a mix of dwelling types to create a varied street scene. Within the development the highways layout would conform to manual for streets with a less formal highways network. The public open space would be located centrally within the site and would be well overlooked with dwellings fronting onto the open space at all sides.

The corner properties on the site would be dual fronted to provide an active frontage and to create improve natural surveillance in the street scene. All dwellings would be two-stories in height and this would be consistent with the surrounding area.

The proposed dwellings include features such as projecting gables, sill and lintel details, porches and bay windows, these details provide interest to the dwellings and they would not appear out of character with the surrounding residential development especially the properties fronting Warmingham Lane, Davenham Way and Sycamore Drive. Although the house types are standard house types and not individually designed for the site, the dwellings would not appear out of character compared to the surrounding development, and are therefore considered to be acceptable.

The proposed dwellings would provide surveillance of all public areas, including the highways, public open space and the footpath/cycle link.

The site is considered to be legible and residents would be able to find their way across the site relatively easily. In terms of connectivity an amended plan has been provided to show that there would be improved connectivity to the adjacent Gladman site as well as providing improved connectivity for pedestrians and cyclists on to Warmingham Lane.

Ecology

Sandbach Flashes Site of Special Scientific Interest (SSSI)

Sandbach Flashes is a site of physiographical and biological importance. It consists of a series of pools formed as a result of subsidence due to the solution of underlying salt deposits. The water varies from freshwater, chemically similar to other Cheshire meres, to highly saline. Inland saline habitats are extremely rare and are of considerable interest because of the unusual associations of plants and animals. Most of the flashes are surrounded by semi-improved or improved grassland. Fodens Flash is partly surrounded by an important area of wet woodland.

As well as the physiographical and biological interests of the flashes, the SSSI is notified for both its breeding bird assemblage and for its aggregations of non-breeding birds specifically Curlew, Lapwing, Snipe, Teal and Widgeon. The site is also notified for its geological features resultant of the solution of underlying salt deposits.

In this case, it is not considered that there will be an impact upon the SSSI following the comments made by Natural England.

Great Crested Newts

Great Crested Newts have been recorded at a pond on site and also in a number of ponds surrounding the site. The population of great crested newts present is small. In the absence of

mitigation, the proposed development, would result in the loss of the on-site pond and the surrounding terrestrial habitat and would have a high level of impact on the small local population of great crested newts.

In this instance, due to concurrently proposed residential development on the adjacent land which would lead to the isolation of the retained pond and the risk of post development interference (such as introduction on non-native species and fish) the Councils Ecologist does not consider it appropriate to retain the pond and associated Great Crested Newt population in its current location.

Following discussions with the applicant and their ecological advisors, a mitigation/compensation strategy which involves the creation of additional amphibian habitat, including two new ponds on land the opposite side of Warmingham Lane, has been formulated for this proposed development. This would be secured via a planning condition together with a scheme of management.

The Councils Ecologist has advised that if planning consent is granted the proposed mitigation/compensation is broadly acceptable and is likely to maintain the favourable conservation status of Great Crested Newts.

However, only limited details of the design of the 'off-site' mitigation area have been submitted.

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places,

- in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment

and provided that there is:

- no satisfactory alternative and
- no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK implements the Directive in the Conservation of Habitats & Species Regulations 2010 which contain two layers of protection

- a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above,
- a licensing system administered by Natural England.

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. (*"This may potentially justify a refusal of planning permission."*)

In this case there is an overriding public interest as the development would contribute to the Councils 5 year housing land supply and the development would provide benefits in the form of affordable housing provision.

It is not considered that there are any suitable alternatives, Cheshire East has not had a 5 year housing land supply for some time. As such this site would provide a valuable contribution.

In terms of the favorable conservation status of Great Crested Newts, this will be maintained via the proposed mitigation which will be secured via a condition.

Bats

The submitted ecological assessment states that no trees will be removed to facilitate the proposed development.

A moderate level of bat activity was recorded during the survey. The level of activity recorded is as would be expected for a site of this nature. It is considered that the loss of sections of hedgerow and disturbance from additional lighting is likely to disrupt bat foraging and commuting activity around the site. However, the mitigation area designed for Great Crested Newts including proposed new ponds and the creation of new hedgerows, is likely to provide an adequate level compensation for the loss of bat foraging habitat.

Birds

The site is likely to support breeding birds, including the more widespread BAP priority species, which are a material consideration for planning. If planning consent is granted the conditions will be required to safeguard breeding birds and ensure some additional provision is made for breeding birds and roosting bats.

Reptiles

Grass snakes are known to occur in Middlewich. Whilst the site of the proposed development does not appear to offer particularly significant habitat for this species the presence of a pond means that this species may make use of the site on at least a transitory basis.

The proposed mitigation/ compensation for Great Crested Newts is also likely to broadly address and potential adverse impacts associated with the development on grass snakes. However, the Councils Ecologist advises that the submitted ecological assessment be amended to also deal with the potential presence of reptiles on site. This has been requested and an update will be provided.

Water Voles

No evidence of water voles was recorded during a specific survey undertaken in 2010. However, this survey, which is now out of date was undertaken extremely late in the survey season. An updated survey has been requested and an update will be provided as part of the update report.

Other Species and Habitat

No setts for other protected species were recorded on site. However, the proposed development will result in the loss of some foraging habitat. The adverse impact of the development upon other protected species is likely to be minor.

Common toad, a UK Bap species and hence a material consideration, has also been recorded on site. The Councils Ecologist advises that a robustly designed Great Crested Newt mitigation strategy would also be likely to address the potential adverse impacts of the development upon toads.

As the on-site pond will be lost as a result of the proposed development, the Councils Ecologist advises that it must be subject to an invertebrate survey to assess its nature conservation value for this species group. The invertebrate survey should include detailed surveys for protected and BAP priority invertebrate species. A survey has been requested and an update will be provided as part of the update report.

The grassland habitats present on site are primarily agricultural in origin and are of limited nature conservation value.

The site is however enclosed by a number of hedgerows. Hedgerows are a UK BAP priority habitat and hence a material consideration. The hedgerows bounding this site are moderately diverse so are of nature conservation value. The proposed development will result in the loss of a significant stretch of hedgerow along the frontage of the site. This loss appears to be only partially compensated for by the 'gapping up' of the remaining hedgerows on site. In this case, it is considered that the benefits of allowing the development would outweigh the harm.

Public Open Space

This development would provide 0.41 hectares of public open space which would be located centrally within the site and would add to the sense of place on this development. This level of open space is considered to be acceptable and its provision and management will be secured via a S106 Agreement.

In terms of children's playspace the Public Open Space Officer has requested the provision of an on-site 5 piece LEAP. The applicant's agent has confirmed that this will be provided and the LEAP and its management will be secured through the S106 Agreement.

Education

In terms of primary schools there are four which would serve the proposed development (Cledford, Middlewich Primary School, St Mary's and Warmingham). The current and projected numbers on roll at the four local schools show that there would be 139 unfilled places in 2011, 145 unfilled places in 2012, 147 unfilled places in 2013 and 155 unfilled places in 2014 and 2015. It is therefore clear that there is sufficient capacity within the primary school sector to accommodate the pupils generated.

In terms of secondary education the proposed development would be served by Middlewich High School. The proposed development would generate 19 new secondary school places and the current and projected numbers on roll at Middlewich High School show that there are -12 spaces in 2012, -7 spaces in 2013 and 4 spaces in 2014. As there is a capacity issue at Middlewich High

School the education department have requested a contribution of £295,728 towards enhancing the capacity of the secondary school.

Flood Risk and Drainage

The application site is located within Flood Zone 1 according to the Environment Agency Flood Maps. This defines that the land has less than 1 in 1000 annual probability of flooding and all uses of land are appropriate in this location. As the application site exceeds 1 hectare, a Flood Risk Assessment has been submitted as part of this application.

The FRA identifies that there is no historical flooding in the immediate site area, there is little likelihood of overland flooding or groundwater flooding and the River Wheelock is 800m from the site and does not present a significant flood risk. There have been previous sewer capacity issues in the area and United Utilities are currently working to alleviate this issue.

As part of the proposed development, the overall drainage strategy will be in the form of SUDS. There will also be surface water disposal via the public surface water sewer, subject to the surface water flows being restricted to Greenfield run-off rates and the agreement of UU.

The Environment Agency and United Utilities have been consulted as part of this application and have raised no objection to the proposed development. As a result, the development is considered to be acceptable in terms of its flood risk/drainage implications.

Agricultural Land Quality

The presence of best and most versatile land (grades 1, 2 and 3a) should be taken into account alongside other sustainability considerations. In this case the land has not been surveyed and the applicant has referred to the survey of the adjacent site which is identified as sub-grade 3b and grade 4.

It is noted that Policy NR8 (Agricultural Land) of the Congleton Borough Local Plan has not been saved. However, there is guidance contained within the NPPF which states at paragraph 112 that:

'Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality'

The lack of a 5 year housing land supply would outweigh the loss of agricultural land on this site and a reason for refusal could not be sustained on these grounds. This is supported by a recent decision made by the Secretary of State at Bishop's Cleeve, Gloucestershire where two developments (one of up to 450 homes and another of up to 550 dwellings) were approved outside the settlement boundary with one being located on the best and most versatile agricultural land and the recent decision at Loachbrook Farm, Congleton.

Archaeology

At the request of the Councils Archaeologist a condition will be attached to ensure that an archaeological watching brief is secured as part of the conditions attached to any permission.

Other issues

The Cheshire Brine Board has raised no objection subject to the proposed housing incorporating raft foundations. This will be secured through the use of a planning condition.

LEVY (CIL) REGULATIONS

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

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

The provision of a contribution towards the improvements of two junctions within the town centre or the Middlewich Eastern by-pass is required to help mitigate against the highways impact of the development. The contribution towards traffic calming, bus stops and travel passes is reasonably related to this development and are necessary to achieve a safe access and promote sustainable travel from the site. The proposed development cannot proceed without these improvements and the contribution is reasonably related in scale and kind to the development.

The development would result in increased demand for school places at Middlewich High School which has very limited spare capacity. In order to increase capacity of the school which would support the proposed development a contribution towards the secondary school is required. This is considered to be necessary and fair and reasonable in relation to the development.

As explained within the main report, affordable housing, POS and children's play space is a requirement of the Interim Planning Policy and the Local Plan. It is directly related to the development and is fair and reasonable.

On this basis the S106 recommendation is compliant with the CIL Regulations 2010.

10. CONCLUSIONS

It is acknowledged that the Council does not currently have a five year housing land supply, which is a requirement of the National Planning Framework. Accordingly, in the light of the advice contained in NPPF, the relevant policies for the supply of housing should not be considered to be up-to-date. Therefore, paragraph 14 of the NPPF states that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF or policies within the NPPF indicate that development should be restricted.

In this case it is not considered that there are any adverse impacts that would significantly and demonstrably outweigh the benefits or there are any policies within the NPPF that indicate that development should be restricted. Furthermore, case there is support for this proposed

development within the Middlewich Town Strategy and the site is considered to be in a sustainable location and the recent appeal decisions at Cuddington and at Loachbrook Farm also support the principle of housing on this site.

The proposal is also supported in principle by the Government's "Planning for Growth" agenda, which states that Local Authorities should adopt a positive approach to new development, particularly where such development would assist economic growth and recovery and in providing a flexible and responsive supply of housing land. This proposal would do both. The Government has made it clear that there is a presumption in favour of new development, except where this would compromise key sustainability principles.

It is considered that the development is acceptable, in terms of affordable housing provision. Matters of contaminated land, air quality and noise impact can also be adequately addressed through the use of conditions.

The issues of highway safety are considered to be acceptable, subject to traffic calming measures. In terms of traffic generation the main impact will be on two junctions within the town. At the time of writing this report, negotiations were continuing regarding the level of contribution and an update will be provided.

Although there would be some adverse visual impact resulting from the loss of open countryside, it is considered that, due to the topography of the site and the retention of existing trees and hedgerows, this would not be significant relative to other potential housing sites in the Borough. Furthermore, it is considered that the benefits arising from housing land provision would outweigh the adverse visual impacts in this case. It is considered that through the use of appropriate conditions, significant trees can be incorporated into the development. The hedgerow to be lost is of historic value only and it is considered that the requirement for housing outweighs the loss whilst replacement planting will be secured as part of the landscaping condition.

With regard to ecological impacts, the Council's ecologist is satisfied with the proposed mitigation/compensation measures for protected species can be secured. An update will be provided in relation to reptiles, Water Voles and Invertebrates.

The scheme complies with the relevant local plan policies in terms of amenity and it is considered to be of an acceptable design and layout.

Policy requirements in respect of public open space provision have been met within the site, and therefore it is not considered to be necessary or reasonable to require further off-site contributions in this respect. A contribution has been requested to enhance secondary school provision in the area.

The Flood Risk Assessment has not identified any significant on or off site flood risk implications arising from the development proposals that could be regarded as an impediment to the development

It is therefore considered that the proposal would comply with the relevant local plan policies and would not compromise key sustainability principles as set out in national planning policy. Therefore there is a presumption in favour of the development and accordingly it is recommended for approval.

11. RECOMMENDATIONS

APPROVE subject to completion of Section 106 legal agreement to secure the following:-

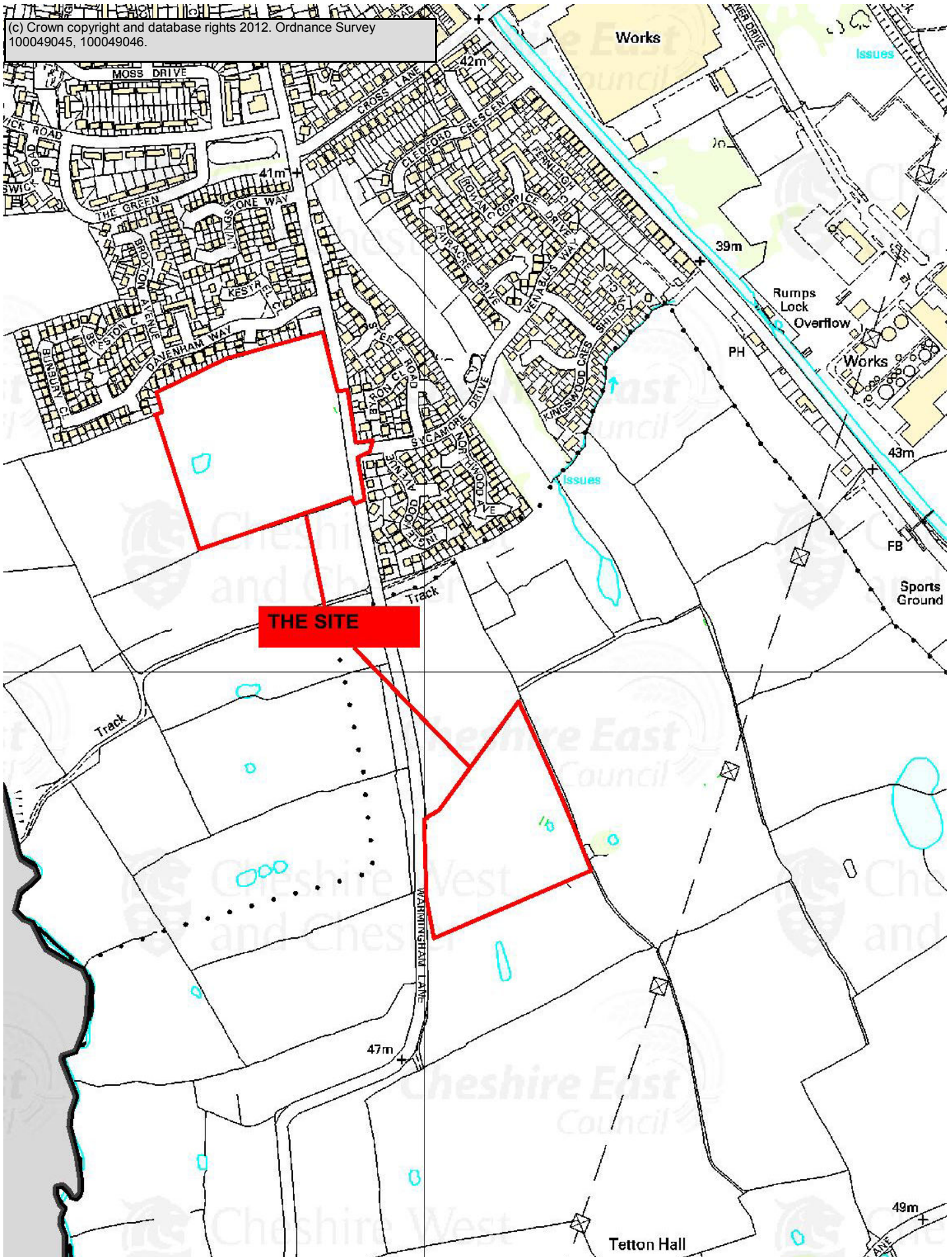
- 1. 30% affordable housing – 65% to be provided as social rent/affordable rent with 35% intermediate tenure. The scheme shall include:**
- 2. The provision of a LEAP and Public Open Space to be maintained by a private management company**
- 3. A commuted payment of £295,728 towards secondary school education**
- 4. A commuted payment towards highway improvements**

And the following conditions

- 1. Standard time limit 3 years**
- 2. Approved Plans**
- 3. No development shall take place within the area until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.**
- 4. Hours of construction limited to 08:00 to 18:00 Monday to Friday, 09:00 – 14:00 Saturday and not at all on Sundays**
- 5. Pile driving limited to 08:30 to 17:30 Monday to Friday, 09:00 – 13:00 Saturday and not at all on Sundays**
- 6. Prior to the commencement of development the applicant shall submit a method statement, to be approved by the Local Planning Authority**
- 7. The mitigation recommended in the noise report shall be implemented prior to the use of the development / first occupation.**
- 8. No development shall take place until a scheme to minimise dust emissions arising from construction activities on the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development. The construction phase shall be implemented in accordance with the approved scheme, with the approved dust suppression measures being maintained in a fully functional condition for the duration of the construction phase.**
- 9. Prior to the commencement of development a Phase II Contaminated Land Assessment shall be submitted to the LPA for approval in writing.**
- 10. The development hereby permitted shall not be commenced until such time as; a scheme to limit the surface water run-off generated by the proposed development, has been submitted to and approved in writing by the local planning authority.**
- 11. The development hereby permitted shall not be commenced until such time as; a scheme to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the local planning authority.**
- 12. No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority showing how at least 10% of the predicted energy requirements of the development will be secured from decentralised and renewable or low-carbon sources. The scheme shall be implemented as approved and retained thereafter.**

13. Provision of bat and bird boxes
14. Works should commence outside the bird breeding season
15. Compensation measures for GCN including the provision of 2 ponds to be provided in accordance with the approved details
16. 10 year management plan for the GCN ponds
17. Details of concrete raft foundations to be submitted and approved
18. Materials to be submitted and approved
19. Landscaping to be submitted and approved
20. Landscaping scheme to be implemented
21. Remove Permitted Development Rights for certain plots
22. Boundary Treatment details
23. Tree and hedgerow retention
24. Tree Protection to be submitted and approved
25. The parking spaces to be provided on the approved plan should be provided
26. Provide a pedestrian/cycle link to the boundary of the proposed Gladman development in the SW corner of the site to the satisfaction of the LPA prior to first occupation.
27. No occupation of the development until the roundabout site access has been constructed to the complete satisfaction of the LPA.

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



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STRATEGIC PLANNING BOARD – 12 SEPTEMBER 2012**SUPPLEMENTARY REPORT**

Application No. 12/2082M

Location: MOORSIDE HOTEL, MUDHURST LANE, DISLEY, SK12 2AP

Proposal: CHANGE OF USE FROM USE CLASS C1 (HOTEL)
TO USE CLASS C2 (RESIDENTIAL INSTITUTION).

Prepared: 31 August 2012

BACKGROUND

Members will recall that this application was deferred from the 22 August 2012 Strategic Planning Board, in order to consult the Peak District National Park, and our Visitor Economy Development Manager.

These consultations have been carried out, and formal responses have been requested by 7th September 2012. An update report will be circulated to Members in advance of the Committee meeting setting out their response.

In advance of this, the Case Officer has discussed the proposed development with the Cheshire East Visitor Economy Manager. He has raised concerns about the loss of the hotel, as it is in an excellent location and it is the only large provider of tourist accommodation in the area. The closest alternative hotel in Cheshire East is Shrigley Hall, Pott Shrigley, over 6 miles away.

ADDITIONAL INFORMATION**Economic Viability**

During the Committee, Members raised concerns in respect of the economic viability of the hotel.

The applicant has submitted the audited accounts for year end 31st December 2010. For clarity, the accounts are for the Hotel and Leisure club as one enterprise. The accounts, (which have been independently audited) show a pre-tax loss of £158,400. Draft accounts for 2011 have also been submitted, which indicate a pre-tax loss of £197,000. This shows a trend of increasing losses.

As the accounts are commercially sensitive, they are not in the public domain, although, Officers can confirm that the operation is running at a significant loss. In addition, the accounts demonstrate that the sale of the hotel is unlikely to recoup the losses.

Chardon have looked into trading the Leisure Club as a stand alone entity. However, it has been concluded that it would not be financially viable. Membership numbers and average membership income are reducing, and if the hotel closes, Savills predict that membership would plummet.

Sustainability

As outlined at the 22nd August Strategic Planning Board, Officers are of the view that the proposed development is no less sustainable than the existing use of the site. Moreover, the provision of a mini-bus service would help improve the site's sustainability.

CONCLUSION

Whilst the informal comments from our Visitor Economy Development Manager are noted, no evidence has been advanced to substantiate the harm of the development on the tourist economy. Having regard to paragraph 14 of The Framework, any adverse impacts must be significant and demonstrable to warrant the refusal of an application.

As is stands, and in advance of the formal comments from our Visitor Economy Development Manager and the Peak District National Park, the recommendation of approval remains, subject to conditions.

Application No: 12/2082M

Location: MOORSIDE HOTEL, MUDHURST LANE, DISLEY, SK12 2AP

Proposal: Change of use from Use Class C1 (Hotel) to Use Class C2 (Residential Institution).

Applicant: Stardon (Moorside) Ltd

Expiry Date: 29-Aug-2012

SUMMARY RECOMMENDATION

Approve, subject to conditions

MAIN ISSUES

- Whether the development complies with the National Planning Policy Framework (The Framework) and the MBC Local Plan;
- Whether the change of use would have a materially greater impact than the present use on the openness of the Green Belt;
- Loss of tourist accommodation and a private health & leisure club;
- Viability of the Hotel;
- Impact on employment levels;
- Whether the proposal would maintain a balance of residential uses;
- Sustainability issues;
- Highway Safety.

REASON FOR REPORT

The proposal is a major development as defined by The Town and Country Planning (Development Management Procedure) Order 2010. Under the Council's constitution, such applications are required to be considered by Strategic Planning Board.

DESCRIPTION OF SITE AND CONTEXT

The Moorside Grange Hotel is situated in an isolated position to the south of Disley. It is within the Green Belt and an Area for Special County Value for landscape, at the fringe of the Peak District. The site is accessed off Mudhurst Lane. The Hotel currently provides 98 bedrooms with associated conferencing, banqueting and leisure facilities and 195 parking spaces.

DETAILS OF PROPOSAL

Full planning permission is sought for a change of use of the Hotel from Use Class C1 to C2 for use as a Residential Institution.

Permitted uses within Use Class C2 include:

1. Residential care homes
1. Hospitals
2. Nursing homes
3. Boarding schools
4. Residential colleges
5. Training centres

No physical alterations to the building are proposed at this stage.

For clarity, permission is **NOT** sought for a C2A use (Secure Residential Institutions). Uses within C2A include uses such as prisons, young offenders institutions, detention centres, secure training centres, custody centres, short term holding centres, secure hospitals, secure local authority accommodation or use as a military barracks.

If this application were to be approved and implemented, a separate application would be required for the change of use to C2A (Secure Residential Institution). This subsequent application would have to be assessed against the Planning Policy at that time, and regard would have to be paid to the advice from Consultees, and comments from the Parish Council and Local Residents.

RELEVANT HISTORY

A number of applications have been approved for physical alterations and extensions to the Hotel, including the extension to provide the leisure centre. In addition, permission has been granted for a 10-hole golf course, landscaping works, and various signs.

POLICIES

North West of England Regional Spatial Strategy

- DP1 - Spatial principles applicable to development management
- DP2 - Criteria to promote sustainable communities
- DP3 - Promotion of sustainable economic development
- DP4 - Sequential approach to make the best use of existing resources
- DP7 - Criteria to promote environmental quality
- RDF2 - Spatial priority for development in rural areas
- RDF4 - Maintaining the general extent of the Region's Green Belt

Local Plan

- GC8 & GC9 – Reuse of buildings within the Green Belt
- NE1 – Areas of Special County Value for Landscape
- DC3 – Residential Amenity
- DC6 – Circulation and access

DC14 – Sound proofing
DC42 - Subdivision of property for residential purposes
DC57 – Residential Institutions

Other Material Considerations

- National Planning Policy Framework
- Written Ministerial Statement: Planning for Growth June 2011
- Localism Bill

CONSULTATIONS (External to Planning)

The following consultation & representation responses are a summary. Full copies of the consultation response are available at Committee should Members wish to read the comments in full.

Highways:

No objection, subject to a condition preventing the site being used as a private hospital.

Environmental Health:

Recommend a condition in respect of noise mitigation.

Adult Services:

Although it is generally acknowledged that the number of older people is likely to increase in the next few years, it is difficult to pinpoint exactly where the demand will be. There is already considerable provision of residential and nursing home places in the north of the borough and it is unclear whether or not this will need to be increased in the medium to long term or whether demand will be for other types of supported living.

If the hotel building were to be used as a residential or nursing home, this could put considerable pressure on local services such as hospitals, doctors and dentists as the number of people requiring services in the area would increase significantly.

Public Rights of Way:

The property is adjacent to public footpath No's 54, 55 and 56 in the parish of Disley. It appears unlikely that the proposal would affect the public rights of way. An informative is recommended to prevent any obstruction of the footpaths.

VIEWS OF THE PARISH / TOWN COUNCIL

Disley Parish Council strongly objects to the application for the following reasons:

The application contravenes DC57 sections 1, 2 & 6 of the Local Plan because:

- i) The site is in a remote rural location, with no bus service, local shops or community facilities
- ii) Pedestrian access along Mudhurst Lane is very unsafe, particularly at night as it is unlit
- iii) Mudhurst Lane is a road traffic accident black spot.

Further concerns are raised in respect of:

- Loss of tourism / tourist accommodation. Disley is being promoted as 'Gateway to the Peak District'. The availability of accommodation for visitors is absolutely essential to the future sustainability and prosperity of Disley.
- Adverse impact on local economy
- Loss of major employer (100 employees)
- Loss of the Health and Leisure Club
- Proposals may add pressure onto healthcare services and infrastructure

OTHER REPRESENTATIONS

42 letters of objection have been received. Some of these letters have been written on behalf of groups of residents.

In summary concerns are raised in respect of:

Viability of the Hotel

- The Hotel & Leisure Club are viable and profitable (advertised as a going concern worth £4 million in 2010)
- The Hotel is still taking Wedding and Christmas bookings
- The Hotel has not been marketed sufficiently

Sustainability

- The site is in an isolated position
- There is a lack of public transport, there is only 1 bus service which runs weekly on a Wednesday
- There are no services or local shops within walking distance
- The development may increase the pressure on the local Doctor's surgery

Access

- Vehicular and pedestrian access is poor, with no pavements and a 60MPH speed limit on Mudhurst Lane
- A Boarding School would not be appropriate in this location, as children may be injured trying to walk into Disley
- Proposal may increase traffic on an unsafe road

Tourism

- The proposal would have an adverse impact on tourism, due to lack of tourist accommodation being available at the fringe of the Peak District
- The proposal would undermine the Parish Council's objectives to promote tourism

Economy

- The proposal would have an adverse impact on local economy as local businesses rely on "linked trips" from visitors to the Moorside
- The proposal would result on a loss of jobs, rather than a gain

Leisure Centre

- Loss of the leisure club, and associated impact on health & wellbeing. New Mills Leisure Centre is not a satisfactory alternative

Residential uses

- Proposal would lead to an imbalance of residential uses - there is already a care home in Disley, and there is no need for another one
- Proposal could result in anti-social behaviour if troubled children/teenagers were accommodated on site
- Proposal may bring a large number of temporary residents, which would change the character of the Village
- It may not be possible to accommodate additional children at the local school

Other

- Serious sewage / drainage disposal problems, due to incorrect dosing of the main drain, and infrequent cleaning of the drain by the Hotel, leading to offensive smells for residents on Mudhurst Lane & Buxton Old Road
- The development will be a "nuisance" to neighbours
- Stardon have not invested into the Hotel, which has resulted in the Hotel having a dated appearance

APPLICANT'S SUPPORTING INFORMATION

- Design and Access Statement
- Planning Supporting Statement
- Marketing summary letter
- Transport Statement
- Travel Plan
- Question & Answer document following Disley Parish Council meeting (24th July 2012)

OFFICER APPRAISAL

Background

In February this year, the Local Planning Authority issued an advice letter to the applicant, following the submission of a pre-application enquiry. In our letter we expressed concerns in respect of the loss of the Hotel, as it provides tourist accommodation, and is a local employer. Furthermore, we raised concerns in respect of the sustainability of this site. However, we thought this issue could potentially be overcome if a Travel Plan was submitted with the application, which proposed frequent mini-bus services into Disley for the future residents, staff and visitors of the Residential Institution.

Marketing

The site was marketed as a Hotel between March and June 2011. During this period 3 offers were made from Hoteliers. However, it transpired that none of them had the proper funding in place for a sale to proceed.

Marketing has continued on-line, and through cross-referral. We are told by Savills that other Hotel groups are concerned that if the current experienced Hotel operator can not trade successfully in this location, then they may not be able to either. Furthermore, the Hotel requires significant capital input, to improve its standard.

No acceptable offers have been made to date, although the applicants have been approached by a number of C2 operators, including a care home / care village operator, residential school for children young adults with special needs, and other residential study centres. It is for this reason that permission is sought for the change of use to maximise the variety of permitted uses on site, in order to sell the property.

National Planning Policy Framework 2012 (The Framework)

The Framework is key in the determination of this application.

At paragraph 14 it advises:

*'At the heart of The Framework is a presumption in favour of sustainable development...'For decision-taking this means' (unless material considerations indicate otherwise)... 'where the development plan is absent, silent or relevant policies are **out-of-date, granting permission unless:***

- *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole:*
or
- *Specific policies in this Framework indicate development should be restricted'*

As the Macclesfield Local Plan was adopted in 2004, it is now 8 years out of date. As such, it is considered that more weight should be afforded to The Framework, in accordance with paragraph 215. Members therefore need to consider **whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.**

In section 3, paragraph 28 of The Framework (Supporting a prosperous rural economy) it advises:

'Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings'*

The key issue in respect of this policy is the impact a change of use would have in terms of employment. The applicant advises that the Hotel currently employs approximately 44 staff (full time equivalent), and the proposed new user would support at least this number, although some users within Use Class C2 may employ double that figure.

Viability of the Hotel

The owners have indicated that the Hotel is not viable for them to continue as it is. They advise that income is declining year on year and the present situation cannot continue. The audited published accounts for the last year available (year ended 31 December 2010) show a pre-tax loss of £158,000. The trading performance has declined since then.

The owners have actively sought to sell to Hotel operators for over a year whilst continuing to operate the Hotel as is. The fact that no credible offer from a Hotel operator has been made is further testament to the difficulties the Hotel faces. Details of a sustained marketing campaign have been submitted with the application, which substantiate that the operator has taken all reasonable steps to market the property properly.

This indicates that whilst the Hotel currently employs 44 (FTE), if the Hotel were to close, these jobs would be lost.

Green Belt

In respect of Green Belt policy, paragraph 90 advises that the re-use of buildings is not inappropriate, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. As the proposed development is limited to a change of use of the buildings (with no physical alterations), it is considered that the development would not harm the openness of the Green Belt.

Residential Institutions

Local Plan policy DC57 specifically considers C2 Residential Institutions. In respect of this application, criterion 1, 2 & 6 are most relevant.

Criterion 1

The site must be close to local facilities such as bus services, local shops and other community facilities and is normally in a residential area

Criterion 2

A satisfactory balance of residential uses must be maintained in any neighbourhood and that the concentration of specialist housing and care facilities is avoided

Criterion 6

Vehicular and pedestrian access should be safe and convenient, particularly by the adequate provision of visibility splays

It is clear to see that there is some conflict with this policy.

Although policy DC57 is somewhat out of date, the principle of sustainable development is a key theme throughout The Framework. The application site is in an isolated position, within limited access to public transport, shops and services. Without knowing the specific end user, it is difficult to assess the degree of conflict with this policy. In our advice letter, we explained that under the C2 use class umbrella, there are uses which are less sensitive to the location. We advised that a residential conference or training centre would be more acceptable, as there would be less reliance on local services. We also thought it might be possible to overcome the sustainability issue by proposing a Travel Plan with a dedicated, reliable and frequent mini-bus service into Disley.

Whilst a Travel Plan has been submitted with the application, it does not propose a mini-bus service, rather it proposes a number of initiatives to promote the use of cycling, car sharing and rail travel to the site in order to reduce the number of single occupancy car journeys to and from the site. We do not consider that this goes far enough, and recommend a condition requiring a dedicated mini-bus service for residents, staff & visitors.

In respect of the concentration of specialist housing, Members need to consider if there is any harm in permitting a care home/nursing home in this location, and if so, if this significantly and demonstrably outweighs the benefits to the rural economy through job creation/replacement. Officers are of the view that the benefits to the rural economy through job creation/replacement outweigh any harm caused by concentrated specialist housing, and conditions can be imposed on any approval to mitigate the development to some degree.

In respect of the access, the Highway Engineer concludes that a C2 operator (with the exception of a private hospital) would be no worse than the existing use of the site. Therefore, a refusal could not be substantiated on highway grounds, as discussed below.

Highways

The Highway Engineer has reviewed the highway issues to determine whether such a change of use would materially affect road safety or cause excessive traffic generation.

The collision record on Mudhurst Lane/ Higher Lane indicates a number of accidents, including a fatality. Most collisions involved loss of control or misjudgement resulting in a collision with an oncoming vehicle. No collisions occurred at the site entrance and none involved a pedestrian or cyclist.

The sites current use as Hotel and leisure centre has been compared with that of possible alternative uses. Data provided by the applicant suggests that for possible uses such as nursing/care home traffic generation would be less whereas for some hospital uses it could be more. However, the existing site is somewhat atypical in its location and it is difficult to predict traffic generation on the basis of that generated by sites in built-up areas.

The use which would generate the greatest traffic (approximately twice that of a Hotel) is a private hospital. The applicant has agreed that a condition preventing change of use to a private hospital would be accepted.

With the above condition, no objections are raised.

Residential Amenity

Concerns have been raised from local residents in respect of unpleasant smells coming from the poor drainage of the site.

A condition is recommended requiring the submission of a detailed drainage scheme, which specifies how waste will be adequately disposed of from site.

CONCLUSIONS AND REASON(S) FOR THE DECISION

The determination of this application is finely balanced. On the one hand, concerns are raised in respect of the sustainability of the site, the pressure the development will have on local services, the loss of tourist accommodation and leisure facilities; on the other hand, a C2 use is comparable to a Hotel in terms of sustainability, and we are told that the current Hotel use is not viable.

Whilst the closure of the Hotel would be regrettable, there is nothing the Local Planning Authority can do to stop the Hotel & Leisure Club from closing. The Framework encourages us to support economic growth in rural areas in order to create jobs, if an alternative use were to provide the same or more jobs than the Hotel, then this use should be supported.

The Framework indicates that planning permission should be granted, unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Officers consider that sustaining rural employment outweighs any harm the development creates, and therefore the application is recommended for approval, subject to conditions.

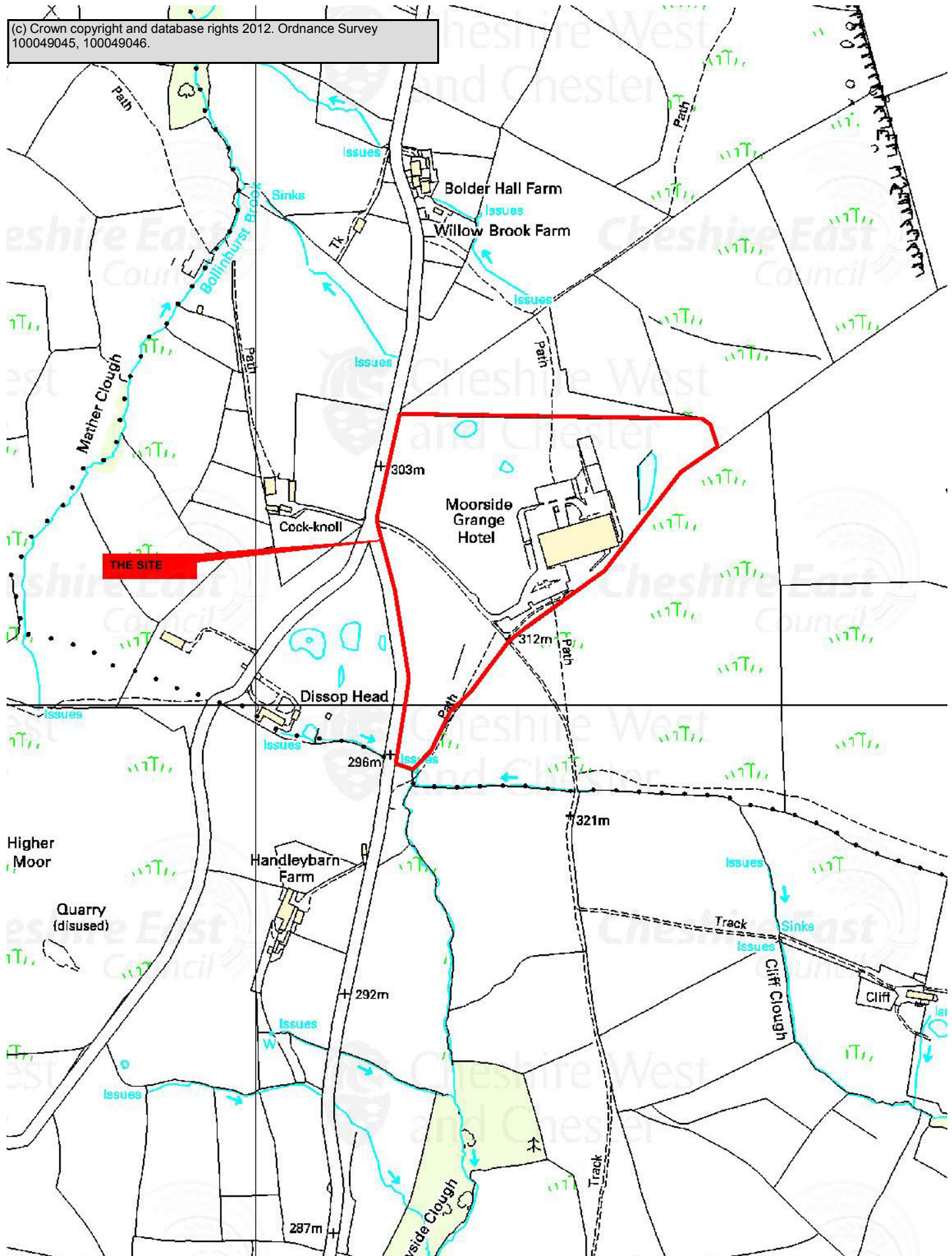
Application for Full Planning

RECOMMENDATION: Approve subject to following conditions

1. A01BC - Change of use - no consent for alteration or extension
2. A03FP - Commencement of development (3 years)
3. A04NC - Details of drainage to be submitted

4. Submission of a scheme outlining noise mitigation measures
5. Limitation on use - Private hospital not permitted
6. Submission of amended travel plan to include the provision of a dedicated mini-bus service for use by staff, residents and visitors of the C2 operator.

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Application No: 12/1445N

Location: WHITTAKERS GREEN FARM, PEWIT LANE, BRIDGEMERE, CHESHIRE, CW5 7PP

Proposal: APPLICATION TO REMOVE CONDITION 11 OF PERMISSION 7/904/0124, CONDITION 7 OF PERMISSION 7/2006/CCC1, CONDITION 7 OF PERMISSION 7/2007/CCC7 AND CONDITION 7 OF PERMISSION 7/2009/CCC1

Applicant: MR F H RUSHTON

Expiry Date: 14-Jul-2012

SUMMARY RECOMMENDATION: Approve

MAIN ISSUES

Impact on Living Conditions of Local Residents

REASON FOR REPORT AND NATURE OF APPLICATION

Due to the site area, this application is considered to be a major waste application and should therefore be determined by the Strategic Planning Board in accordance with the established terms of reference.

DESCRIPTION OF SITE

The application site is an existing green waste composting facility, located within the open countryside, approximately 8.5 miles south east of Nantwich and a kilometre south of Hunsterson.

The surrounding countryside is slightly undulating, divided into medium sized fields utilised for arable production.

There are a number of isolated properties and farm units widely spaced surrounding the compost site. The nearest residential property, Fox Moss, is 230 metres to the north east of the site, with Pewit House a further 200 metres away to the north east. The Uplands lies 440 metres and Whittakers Green Farm is located 470 metres to the north of the application site. Woodend is 350 metres to the east of the site, and Woodfall Hall Farm is 670 metres to the south west.

The site has a weighbridge and small office and on-site facility building at its entrance. The reception of waste, shredding, composting and storage takes place upon a large sealed concrete pad.

Hunsterson Footpath No. 22 lies immediately on the eastern and southern boundary of the compost site.

SITE HISTORY

The site has been operational for approximately 8 years. The original application (7/P04/0124) granted in 2004 established the use of the land for the composting of green waste, with the compost being spread on the applicants farm unit. Further consents have been granted over time, the most relevant being:

- **December 2006** application ref.7/2006/CCC/11 was approved for variation of condition 13 of permission 7/P04/0124 to allow importation of green waste on Bank Holidays except for Christmas. All conditions of 7/P04/0124, except those previously discharged, were replicated.
- **June 2007** application ref.7/2007/CCC/7 was approved for extension to the compost storage pad. Previous conditions were again replicated.
- **March 2009** application ref.7/2008/CCC/7 was approved for new access track to join Bridgemere Lane to Whittakers Green Farm and the compost site (and hence avoid the use of Pewit Lane) subject to legal agreement regarding routing.
- **July 2008** application ref.7/2008/CCC/9 was refused for variation of condition 14 of permission 7/P04/0124 to increase green waste vehicle movements from 10 to 40 a day. The subsequent was appeal dismissed **October 2008**. On refusing the appeal the Inspector considered that the increase in vehicle movement would generate a level of traffic which would be unsuitable on the local highway network and which would harm the safe movement of traffic on the local roads. It would also have an unacceptable impact on local communities and the local environment with regards to increased noise and disturbance contrary to Policy 28 of the Cheshire Replacement Waste Local Plan (CRWLP).
- **March 2009** application ref.7/2009/CCC/1 was approved as a resubmission of application to vary condition 14 of permission 7/P04/0124 to increase vehicle numbers but provide seasonal variations in maximum vehicle numbers and restricted hours of delivery to avoid conflict with school times.
- **October 2009** application ref.09/1624W approved for retrospective application for improvement and extension of an existing agricultural track for use in association with agricultural and green waste compost operations at Foxes Bank and Whittakers Green Farm. This permission regularised the development that took place to extend the track approved by 7/2008/CCC/7 and to join existing tracks.
- **November 2010** Applications ref.10/1005N and 10/2251N were refused for a broadening of the definition of green waste imported at the site and an allowance for a quantity of contaminated waste to be imported. The subsequent appeals (APP/R/0660/C/09/2140836 and 2141878) were allowed on the grounds that it would not cause unacceptable effects on the visual amenity of the surrounding area, on neighbouring land uses by reason of matters including noise, air quality, odour, dust, human health, water quality, litter and visual intrusion.
- **June 2011** application ref.10/4485N was refused for variation of condition 9 of 7/2009/CCC/1 to amend hours of working to resort back to that previously approved prior to the increase in vehicle numbers permitted. Application refused as being contrary to Policy 28 of CRWLP. In particular having an unacceptable environmental impact on the safe movement of traffic on local roads and villages in the area and the arrival and departure of vehicles and people at local schools.

- **January 2012** application ref.10/2984W – removal of conditions to enable export of waste from the site. Appealed against non-determination. Appeal dismissed due to the harm that the proposal would cause to the living conditions of local residents, with particular reference to noise and disturbance.
- **May 2012** application ref.11/3389N was approved as a resubmission of variation of condition 9 of 7/2009/CCC/1 to amend hours of working to resort back to that previously approved prior to the increase in vehicle numbers permitted, with slight variations to winter operational hours.

Enforcement Appeal; APP/Z0645/C/09/2098882

- **January 2009** enforcement notice was served for the alleged change of use to a waste transfer station operation including mixed waste being brought on site. The Notice was appealed and the appeal dismissed. A subsequent appeal to High Court was also dismissed.

DETAILS OF PROPOSAL

The application seeks the removal of condition 11 of 7/P04/0124; and conditions 7 of permissions 7/2006/CCC/11, 7/2007/CCC/7 and 7/2009/CCC/1; all of which state:

‘No compost shall be exported from the area edged in blue....’. The area edged blue being the farm unit.

The reason for the conditions is to:

‘control the scale of the development, in the interests of residential amenity and to comply with Policy R7 of the Cheshire Replacement Structure Plan, Policies 7 and 12 of the Cheshire Replacement Waste Local Plan, Policy BE1 of the Crewe and Nantwich Replacement Local Plan and Policy DP 7 of the RSS’.

These policies seek to protect amenity, promote environmental quality, control the impact of development and ensure correct location of facilities.

It is stated in the planning statement that the intensity of operations at the site is currently controlled by restricting vehicle movements to and from the site and the size of the composting pad. The applicant wishes to export compost, whilst at the same time adhering to current vehicle restrictions imposed on consent 7/2009/CCC/1. The applicant envisages compost being exported from the site in the same vehicles used for importation of green waste.

This application seeks to address the concerns raised by the Inspector at appeal into application 10/2984W, which also considered the principle of permitting export of compost from the site. Specifically, it seeks to address the concerns raised regarding the potential noise and disturbance impacts associated with export of compost from the site on local residents close to the site access track. As such, the applicant has submitted a noise assessment in support of the application.

PLANNING POLICIES

Regional Spatial Strategy

DP 7 Promote Environmental Quality
EM10: A Regional Approach to Waste Management

Cheshire Replacement Waste Local Plan (CRWLP)

Policy 1: Sustainable Waste Management
Policy 12: Impact of Development Proposals
Policy 14: Landscape
Policy 17: Natural Environment
Policy 18: Water Resource Protection and Flood Risk
Policy 20: Public Rights of Way
Policy 23: Noise
Policy 24: Air Pollution; Air Emissions Including Dust
Policy 25: Litter
Policy 26: Odour
Policy 28: Highways

Borough of Crewe and Nantwich Adopted Local Plan 2011

BE.1 Amenity
BE.4: Drainage, Utilities and Resources
NE.2 Open Countryside
NE.5 Nature Conservation and Habitats
NE.9 Protected Species
NE.12 Agricultural Land Quality
NE.17: Pollution Control
RT.9: Footpaths and Bridal ways

National Policy

Planning Policy Statement 10: Planning for Sustainable Waste Management
National Planning Policy Framework

Other Material Considerations

Waste Strategy (2007)
Government Review of Waste Policy in England 2011

CONSULTATIONS (External to Planning)

The Strategic Highways and Transport Manager

The conditions being varied by this application currently prevent any exportation of material from Whittakers Green Farm. This application seeks to remove these conditions without increasing vehicular movements with no proposals to the existing operational hours. Some residents have expressed a concern regarding noise, but it is evident that vehicles arriving at this site make less noise full, then when leaving empty. In view of the above, the Strategic Highways and Transportation Manager has no objections to this proposal.

The Borough Council's Environmental Health Officer

The application seeks to allow the export of compost from the above site. This would be a move away from the current use where the compost can only be used on the surrounding farm land. Therefore, the amount of on site activity, processing and production of compost

and subsequent potential for noise, dust, odour and air quality impacts, were limited by this condition. As the supporting statement accompanying this application clearly points out, the stated reasons for this limit are:

“to control the scale of the development and to comply with Policy R7 of the Cheshire Replacement Structure Plan” and “to control the scale of the development; in the interests of residential amenity and to comply with Policies 7 and 12 of the Cheshire Replacement Plan...”

Permission to allow the export of compost would remove this limiting factor and therefore have the potential to increase impacts on the environment, regardless of limits on vehicle movements.

From looking at the noise report, it can be seen that there is very little difference in the noise results of articulated (6 axle) lorries when they are loaded or empty. Hence as these lorries can already access the site loaded, there would be very little difference in the overall noise level, if they were to leave the site loaded, rather than empty. In fact, lorries leaving the site loaded would also reduce the amount of body panel rattle, which can arise from empty vehicles accessing the site. It is also noted that the 2/3 axle lorries would not be used to export compost from the site. Therefore, as there would appear to be no apparent significant increase in noise levels, we do not object to this proposal.

The noise report states that a 2 metre high acoustic fence alongside the eastern boundary of the access road alongside and south of Fox Moss, would provide an additional 13dB(A) of attenuation against vehicle noise. Similarly, a 2 metre acoustic fence immediately south of the access road and opposite The Uplands would provide an additional 13dB(A) attenuation. For the calculations, it has been assumed that it would be a close boarded wooden fence of a surface mass of at least 7.5kg/square metre, immediately adjacent to the access road. Should the Planning Officer feel this additional noise protection is necessary to protect the local residents; then a suitably worded condition needs to be attached to any permission granted.

The Environment Agency

No comments received

VIEWS OF THE PARISH / TOWN COUNCIL

None received

OTHER REPRESENTATIONS

Approximately 33 letters of objection have been received from local residents and an objection on behalf of Bridgemere School. These raise concerns over the following issues.

Amenity:

- Close proximity of the site to residential properties and the school – Concern raised over impacts on local amenity associated with increased on-site activities, including use of more mechanical equipment, potential for increased vehicle movements and potential change in nature of vehicles being used. Concerns particularly relate to the impacts of noise and disruption, vibration, air pollution including odour and dust, loss of privacy from passing vehicles overlooking gardens;
- Deterioration of tranquillity of countryside;
- Site is not operated with the usual standards of governance;

- impact of large vehicles on grass verges and hedges;

Highways:

- Impact of increased vehicles or change in size of vehicles on the condition of local roads;
- Adequacy of local road network for increased vehicles or change in size of vehicles in relation to capacity, road width and visibility;
- Conflict of future site traffic with non-vehicular road users, including pedestrians, cyclists, walkers, horse riders and school users. Particular concern over risk of accidents and potential for intimidation to these users by the larger HGV traffic from the site;
- View of Highways Officer are inconsistent and does not take into account potential change in character of traffic;
- Uncertainty over the current 7.5 tonnes weight limit on Bridgemere Lane;

Visual Impact

- Visual impact of stockpiles of material;
- Potential for additional infrastructure/plant/buildings required to facilitate export;

Land Use

- Intensification of the site and whether this is appropriate in the open countryside;
- There is no need for export to be permitted on the site;

Enforcement:

- Removing this condition means there will be no control over the scale of the development and this is the only condition protecting against harm to the living conditions of local residents;
- Use of same vehicles for import and export cannot be enforced;
- Will result in heavier vehicles being used permanently which cannot be controlled through the consent;
- potential for unauthorised activity on the site concerning vehicle movements, hours of operation, and stockpile heights. Earlier enforcement history on the site also raised as a concern;
- Concern there are factors affecting noise that cannot be controlled by condition including size and type of vehicle, speed of vehicle, potential for convoy of vehicles and frequency of vehicles;

Other:

- Potential for increased water pollution
- Council should not treat on-farm and commercial composting impacts differently;
- questioned the adequacy of the noise assessment; in terms of the monitoring undertaken, predictions made, locations used and number/type of vehicles assessed; questioned whether it had taken into account other factors affecting noise generated.
- Concern that noise assessment does not reflect the fact there is already a noise nuisance from the site which will be increased; and that the noise assessment shows the current noise levels to be comparable to a busy public house operating 14hours a day;
- Loss of human rights;
- Stockpiles of compost currently on site are in excess of the nitrate vulnerability zone capacity for the farm;

- The new nitrate vulnerability zone regulations will affect how much compost can be spread on the land, and this could affect the Inspectors view on the use of limitations of waste to be imported.

Letters of representation have been received by the local ward member in response to which she has written a letter of objection which is included as Appendix A to this report.

In response to this letter, the agent has also submitted representations. Copies of these submissions are also contained in Appendix A.

APPLICANT'S SUPPORTING INFORMATION

Planning Application Form dated 12th April 2012

A Supporting Planning Statement dated April 2012

Noise Report and Assessment

Location Plan

OFFICER APPRAISAL

Background

The planning history of the site is of direct relevance to the consideration of the scheme. Consent was first granted in 2004 (ref 7/P04/0124) for the use of the land for green waste composting, which was intended to be used on the applicants farm to assist in obtaining organic status. In granting the consent, a restriction was imposed on the export of compost from the site, stating:

'No compost shall be exported from the area edged blue on plan 9'.

The area edged blue was the applicants farm unit.

Subsequent permissions have all replicated this same condition. The stated reasons for the conditions are:

'to control the scale of the development, in the interests of residential amenity'.

Whilst application 7/P04/0124 indicated an estimated 10,000 tons of green waste to be imported to the site annually, no restrictions were placed on the consent, or any subsequent consent, in terms of quantities of waste to be imported. However, the site is subject to an Environmental Permit which is regulated by the Environment Agency. Amongst other environmental controls, the permit places a cap on the importation of waste of 75,000 tons per annum.

The current planning permission restricts vehicle movements to the following:

Between 1 April to 31 October:

A maximum of 198 movements (99 in, 99 out) a week; of which no more than:

- *A maximum of 40 (20 in, 20 out) on any one day Monday – Friday;*
- *A maximum of 18 (9 in, 9 out) on Saturday mornings (between 0800 and 1200);*
- *A maximum of 10 (5 in, 5 out) on Bank or Public Holidays (between 0830 – 1600);*

No green waste vehicle movements on Sundays.

Between 1 November and 31 March:

A maximum of 140 movements (70 in, 70 out) a week, of which no more than:

- A maximum of 32 (16 in, 16 out) on any one day Monday to Friday.*
- No green waste vehicle movements on Saturday or Sunday;*
- A maximum of 10 (5 in, 5 out) on Bank or Public Holidays.*

The reason for this condition is:

'To control the scale of the development; in order to safeguard the amenities of both the area and local residents and in the interests of highway safety; and to comply with Policy 28 of Cheshire Replacement Waste Local Plan, and Policy BE.1 of the Crewe and Nantwich Local Plan'.

The facility has been operational for approximately eight years with all compost being used on the farm unit. Over time, the quality of the compost produced has improved and is now of sufficient standard to confirm to PAS 100 standards as a soil improver. The applicant now wishes to export compost from the site. The planning statement suggests that compost material could be exported using the same vehicles used for the importation of green waste.

The principle of exporting compost from the site has previously been considered at the appeal into application 10/2984W. One of the main issues addressed by the Inspector was the effect of allowing export on the living conditions of local residents, with particular reference to noise, dust, litter, odour and bio-aerosols, and the safety and convenience of highway users.

The Inspectors Report took into account the fact that current restrictions on vehicle movements would remain in force, and that it may not be possible for vehicles importing waste to be used to export compost. He also acknowledged that allowing export would not automatically result in reduced vehicle movements or less material being composted, and that it would be possible for the applicant to increase the size of vehicles accessing the site within the remit of the existing consent. On the basis of these factors, he assessed the application in terms of the scale of the activity likely to result from the proposal; and then whether there would be any implications for the living conditions of local residents, with regard also given in this context to the safety and convenience of highway users.

In the Inspectors opinion, the effect of allowing export on the safety and convenience of highway users was acceptable. However, he did not consider that this outweighed the harm the scheme would cause to the living conditions of local residents. He considered that the change in the character of traffic would materially increase the noise and disturbance experienced by residents located close to the access track, thereby causing unacceptable harm to their living conditions. This was considered contrary to the aims of CRWLP Policy 12, CNRLP .Policy BE1. For these reasons the appeal was dismissed.

Main Issues

Given the appeal decision on application 10/2984W, the main issue in the determination of this application is whether the further information submitted in respect of noise and

disturbance would address the concerns raised by the Inspector regarding the potential harm to those residential properties located close to the access track arising from the change in character of traffic likely to be generated by this scheme.

Impact on the living conditions of local residents

Policy 12 of CRWLP does not permit development which would have any unacceptable impacts. Equally, Policy 23 does not permit proposals which would give rise to unacceptable levels of noise pollution. This approach is supported in CNRLP Policy BE1 which requires new development to be:

- compatible with surrounding land uses;
- not prejudice the amenity adjacent properties by (amongst other things) noise and disturbance or odour; and
- not lead to an increase in air, noise or water pollution insofar as this might have an adverse effect on the other use of land.

At a national level, PPS10 requires schemes to help secure the recovery or disposal of waste without endangering human health and without harming the environment. It states that full consideration should be given to the impacts on the local environment and amenity, with particular regard given to air emissions including dust, odours, and noise and vibration (Annex E of PPS10). Likewise NPPF states that:

“Planning policies and decisions should aim to:

- *avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions”* (NPPF, page 29, para 123)

A large proportion of concerns raised by local residents relate to the potential amenity impacts associated with allowing export of compost, especially in relation to increased site activity, and the impact of vehicular traffic on local roads and the access track.

Scale of activity

The Inspector gave full consideration to these issues, particularly in relation to the potential increase in the scale of the activity likely to be generated, and whether there would be any implications for the living conditions of local residents. He noted that the consent does not restrict the amount of green waste imported (although the original application did provide an estimate of 10,000 tons per annum). On the basis of the area of farm land available, it was calculated that approximately 2880 tons per annum of compost could be spread on the land. However, the actual composting rate is currently 5000 tons per annum which equates to 15,000 tons of green waste imported. This is over and above the capacity of the farm land and has resulted in stockpiles of compost around the site.

The Inspector considered that the rate at which the compost can be spread does not automatically limit compost production but, along with the limit on export, acts as a disincentive to increased importation of waste. Other factors limiting compost production were noted as being:

- time taken to produce PAS100 standard compost;
- the maximum stockpile heights of 3m;

- the useable area of the concrete processing pad.

In the view of the Inspector, the processing capacity of the site would be used more fully should export be permitted. This could result in a significant increase in waste importation potentially up to 36000 tons per annum, with corresponding 9000 tons of compost being exported. He considered that this would increase the number of HGVs accessing the site, along with the average size of loads, materially altering the character of traffic associated with the site.

Impact of this change on the living conditions of local residents

The potential for such a material change in the character of traffic accessing the site was then considered in relation to the living conditions of local residents. He noted that the access track serving the site passes a number of residential properties which occupy relatively isolated positions in the open countryside. He considered that these were sensitive to increases in traffic noise associated with the site; and the change in character of traffic would materially increase the noise and disturbance experienced by residents close to the access track. This was deemed to present unacceptable harm to their living conditions.

It is important to note at the time of the appeal and in forming the decision, the Inspector did not have sight of any technical assessment of the noise impacts associated with the scheme.

The noise assessment submitted in support of the application undertook noise monitoring of empty articulated HGVs on an unmetalled section of the access road to the site. The measurements were then used to calculate the maximum predicted noise levels at sensitive receptors. The noise assessment concluded that exporting compost using the existing 20 consented vehicle movements would result in a reduction of up to 4dBA maximum noise level than currently experienced from those lorries leaving the site empty.

The assessment identified that a very noticeable aspect of noise from empty 5 axle HGVs arose from banging and rattling of trailer panels which was not present in HGVs carrying a full load. It noted that certain acoustic features can increase the likelihood of complaint, and the banging and rattling of body panels on the trailers of empty lorries are more likely to attract attention. This could be prevented by allowing the articulated heavy goods vehicles to depart loaded.

Overall, the assessment concludes that permitting export of compost from the site would not result in an increase in noise levels from the situation as currently permitted. If anything the situation would be improved by reducing the amount of body panel rattle experienced from empty vehicles.

Some deliveries to the site are made by refuse vehicles that collect green waste from households in Cheshire East. These are either 2 or 3 axle rigid heavy goods vehicles. The maximum noise levels produced by these vehicles is little different whether or not they are loaded or empty and they produced no evident body panel rattle. This type of vehicle would not be suitable for exporting compost from the site.

The Environmental Protection Officer has considered both the noise assessment submitted, and the concerns raised by local residents, particularly in relation to the adequacy of the technical assessment.

They consider that the restriction on export limits the amount of on site activity, processing and production of compost and subsequently, the potential for noise, dust, odour and air quality impacts. They also acknowledge that removing this restriction has the potential to increase impacts on the environment regardless of limits on vehicle movements. However, the officer notes that there is very little difference in the noise results of articulated (6 axle) lorries when they are loaded or empty. Hence as these lorries can already access the site loaded, there would be very little difference in the overall noise level, if they were to leave the site loaded, rather than empty. In fact, lorries leaving the site loaded would also reduce the amount of body panel rattle, which can arise from empty vehicles accessing the site. It is also noted that the 2/3 axle lorries would not be used to export compost from the site. Therefore as there would appear to be no apparent significant increase in noise levels, no objection is raised.

In relation to the concerns expressed by local residents relating to the scope of the noise assessment, the Environmental Protection Officer considers that the noise assessment submitted adequately assesses the potential noise impacts generated by the scheme. They consider the scope of the assessment is acceptable given the nature of the application and issues raised by the Inspector. In particular, the following points are noted with regards to issues of concern raised by local residents:

- background noise readings used include normal operational noise from the site as the scope of the assessment is to assess the impact of export of compost on a normal working day;
- the report does include a number of readings with only the machines operating on the site;
- whilst the report cannot replicate the full effect of export, the assessment used full vehicles arriving at the site to try and estimate the noise level generated by full vehicles used in export as the material being brought to the site is similar to that being exported.
- Concern was raised over readings monitoring a single vehicle rather than a number arriving and unloading at the same time. It is considered that if a number of vehicles leave and arrive at the same time, there would be less individual noise emissions hence reducing the overall noise level through the day which will have a beneficial effect on the noise. It should also be noted that where multiple noise sources are added together, it is on a logarithmic scale so would not necessarily result in a material impact on the noise level in the area.
- The report makes reference to noise levels from a range of lorries with 2, 3, 5 and 6 axles and for the purposes of the noise calculation the worst case was taken as set out in section 3.3 of the report.
- Whilst only one monitoring location was used, this is an accepted approach. This enabled a reference noise level to be obtained, which was at the point where the noise levels would have been at their highest, hence using the worst case scenario.
- The speed of lorries is a factor which needs to be taken into account. However in this situation, their speed is limited to the type and length of the track, and is not considered to affect noise levels on the site.

Whilst one of the principle concerns raised by residents relates to the potential for unacceptable amenity impacts associated with noise and disruption arising from this scheme, this is an operational waste management facility which, in carrying out normal activities, will generate some degree of noise and disruption. The Inspector dismissed the appeal on the basis that the change in character of traffic resulting from the scheme could materially increase noise and disruption to local residents, thereby causing unacceptable harm to their living conditions. This view was taken without the benefit of a technical assessment of the impacts of noise from the scheme on the local sensitive receptors.

On the basis of the noise assessment submitted, and the views of the Environmental Protection Officer, it is not considered that there is sufficient evidence to demonstrate that this scheme would result in a material increase in noise and disruption experienced by residents located close to the access track which could causing unacceptable harm to their living conditions. On balance, it is not considered that the scheme would not conflict with the aims of CRWLP Policy 12 and Policy 23; and CNBLP Policy BE1 and NE17, the approach of PPS10 or NPPF.

Whilst no material increase in noise and disruption is anticipated by this scheme, the submitted noise report does calculate that a 2 metre high acoustic fence alongside the eastern boundary of the access road alongside and south of Fox Moss would provide an additional 13dB(A) of attenuation against vehicle noise. Similarly, a 2 metre acoustic fence immediately south of the access road and opposite The Uplands would provide an additional 13dB(A) attenuation. Whilst not being required to provide direct acoustic mitigation, this additional noise protection could go some way to alleviating the fear of noise associated with the proposal. The provision of this mitigation could be secured by suitable planning condition. In addition, a planning condition could be used to ensure all vehicles exporting compost from the site are suitably sheeted to minimise dust and ensure no debris is deposited on the highway.

Other issues

On-site activity

A large number of objections to the scheme raised concerns over the potential intensification of the site and increase in on-site activity. Significant concerns have also been made in relation to the impacts associated with potential change in character of traffic on the safety and convenience of highway users. These issues were considered previously by the Inspector when assessing the impact on the living conditions of local residents.

In relation to on-site activity, concerns expressed in representations to the application relate to the potential increase in amenity issues arising from the site, including increased noise and vibration, dust, odour, bio-aerosols and overall impacts on health. The Inspector considered that the proposal would increase the likelihood of the processing capacity of the site being utilised to the full. However, he acknowledged that the composting process and emissions are subject to controls under the Environmental Permit. PPS10 and NPPF make it clear that the planning system should not concern itself with the control of pollution which are a matter for the pollution control authorities. Whilst the annual throughput would be likely to increase as a result of the proposal, no changes to the composting process were anticipated by this scheme. Given the safeguards provided by the Permit, and the absence of evidence to suggest that existing site operations have caused significant problems, the Inspector considered it unlikely that the on site activities as a result of this proposal would present

unacceptable impacts on residential amenity associated with noise, dust, litter, odour or bio-aerosols arising from the composting site itself. As such, these issues have been addressed and discounted at appeal and have not been given any further consideration in the assessment of this case.

Safety and convenience of highway users

Significant concerns have also been raised in relation to the impact of larger vehicles on local rural roads surrounding the site. In particular, the adequacy of the road network and risk of accidents arising from conflict of HGV traffic on local roads with non-vehicular users such as pedestrians, cyclists, horse riders and school users. Concern has also been raised that the Highways Officer has not considered the potential effect of larger vehicles on local roads arising from the scheme.

Policy 12 of CRWLP requires applications to address relevant environmental issues which include highway management and safety. CNRLP Policy BE1 requires new development to (amongst other things) ensure that it does not generate levels of traffic that would prejudice the safe movement of traffic on surrounding roads, or have an adverse impact on neighbouring uses.

The impact of the scheme on the safety and convenience of highways users has also previously been addressed by the Inspector. He gave regard to the concerns of the previous Inspector into the appeal of 7/2008/CCC/9 concerning the potential impact on highway safety of increasing vehicle movements to 40 a day. He also took into account the findings of previous transport assessments provided in relation to application 7/2009/CCC/1. The Inspector acknowledged the concerns of local residents regarding fear of accidents on non-vehicular users, particularly school users and considered these to be material planning considerations. Whilst he accepted that the proposal would be likely to lead to changes in the character of traffic to and from the site, with an increased numbers of HGVs, he noted that no evidence had been provided to demonstrate that an increased number of HGVs could not be safely accommodated on the highway. He also noted that there is no substantial evidence to show that the increased vehicle movements associated with previous planning permissions on the site has caused significant highway safety problems.

The Inspector acknowledged the measures in place to control vehicles on the highway which includes:

- the experimental weight restriction order along Bridgemere Lane;
- restriction on site vehicles turning right out of the site access road;
- restrictions on the site concerning deliveries around school peak times.

However he recognised that the operator could give no guarantee that vehicles travelling to and from the site would adhere to these requirements. On this basis, the weight given to these factors in his decision is reduced but nevertheless, he considered that they still weighed in favour of the proposal.

It is noted that since the appeal decision, the restrictions concerning vehicle movements around school peak times have been removed by virtue of consent 11/3389N. However, the Highways Officer has assessed this scheme and does not raise any objection. Equally, it is

still considered that vehicular conflict with school users could be adequately managed by of good site management practice as is the case with other waste management facilities.

The Inspector concluded on this matter by stating that he considered on balance, the concerns raised regarding impacts of HGVs using the highway network would not be sufficient on their own to justify refusing planning permission. In his opinion, the effect of the proposal on the safety and convenience of highway users would be likely to be acceptable and would not conflict with the aims of CRWLP Policy 12, CNBLP Policy BE1 or Policy DP7 of RSS. On the basis of the lack of concern expressed by the Highways Officer, and in view of the weight given by the Inspector to the restricted movements of traffic at school times, it is not considered that there are sufficient grounds to refuse planning permission solely based on this one change in circumstance. As such, it is not considered that the scheme would conflict with the aims of CRWLP Policy 12, and CNRLP Policy BE1.

It is noted that some representations have raised concerns over the previous enforcement issues on the site and potential for further breach of planning control in the future. However, each application should be considered on the planning merits of each case, and these issues are not considered to be of relevance in the assessment of this application.

CONCLUSIONS

The application seeks the removal of condition 11 of 7/P04/0124; and conditions 7 of permissions 7/2006/CCC/11, 7/2007/CCC/7 and 7/2009/CCC/1, all of which state:

‘No compost shall be exported from the area edged in blue....’.

The area edged blue being the farm unit. The condition has been applied to every relevant consent on the site in order to:

‘control the scale of the development, in the interests of residential amenity and to comply with Policy R7 of the Cheshire Replacement Structure Plan, Policies 7 and 12 of the Cheshire Replacement Waste Local Plan, Policy BE1 of the Crewe and Nantwich Replacement Local Plan and Policy DP 7 of the RSS’.

These policies seek to protect amenity, promote environmental quality, control the impact of development and ensure correct location of facilities.

There are no restrictions on the existing consent concerning the importation of waste from the site. There are however restrictions on the vehicle movements and the applicant has also indicated that any exportation of compost would be achieved within the existing vehicle movements permitted and they intend to use the same vehicles to export compost that would also be used to import waste. The importation of waste to the site is capped through the Environmental Permit which restricts to an annual level of 75,000 tons per annum.

The principle of export at the site has previously been considered at appeal. The Inspector considered the scale of activity likely to result from the scheme and the impact of this on the living conditions of local residents. He gave regard to the fact that the scheme could result in potentially larger vehicles accessing the site than at present and that this would materially change the character of traffic accessing the site. However, he concluded that the effect of allowing export on the safety and convenience of highway users was acceptable.

Nevertheless, he did not consider that this outweighed the harm the scheme would be likely to cause to the living conditions of local residents. He considered that the change in the character of traffic to and from the proposal site that would result from the proposal would materially increase the noise and disturbance experienced by adjacent residents located close to the access track, thereby causing unacceptable harm to their living conditions. This was considered contrary to the aims of CRWLP Policy 12, CNRLP .Policy BE1. For these stated reasons, the appeal was dismissed.

In order to address the concerns of the Inspector, a noise assessment has been carried out to assess impacts on sensitive properties close to the access track. The noise assessment demonstrates that overall, it is likely that a fully loaded large HGV would generate lower noise levels than one which would be empty. In particular, it noted that empty vehicles created a noticeable noise from body panel rattle, which is reduced when carrying a full load.

The Environmental Protection Officer raises no objection to the scheme on the basis that the noise assessment does not identify that there would be any significant increases in noise levels from the scheme. Based on the results of the noise assessment submitted, and the views of the Environmental Protection Officer, it is not considered that there is sufficient evidence to demonstrate that this scheme would result in a material increase in noise and disruption experienced by adjacent residents to the access track which could causing unacceptable harm to their living conditions. As such, it is considered that, on balance, the scheme accords with the aims of CRWLP Policy 12 and Policy 23; and CNBLP Policy BE1 and NE17, as well as the approach of PPS10 and the NPPF.

Significant concern has been raised by local residents regarding the potential for unacceptable amenity impacts associated with on-site activities of the scheme. In addition concern is raised regarding the impact of the scheme in relation to the safety and adequacy of the highways network. Particular concern relates to the conflict between HGVs and non-vehicular traffic, such as pedestrians, cyclists and school users.

Given the safeguards provided by the Environmental Permit, and the absence of evidence to suggest that existing site operations have caused significant problems, the Inspector has previously considered it unlikely that the on site activities would present unacceptable impacts on residential amenity associated with noise, dust, litter, odour or bio-aerosols arising from the composting site itself. As such, these issues have been addressed and discounted at appeal and have not been given any further consideration in the assessment of this case.

Likewise, the Inspector has previously considered the impacts of the scheme on the safety and convenience of highway users. He considered the concerns of local residents regarding fear of accidents on non-vehicular users, particularly school users, to be material planning considerations. Whilst he accepted that the proposal would be likely to lead to changes in the character of traffic to and from the site, with an increased numbers of HGVs, he noted that no evidence had been provided to demonstrate that an increased number of HGVs could not be safely accommodated on the highway. He also noted that there is no substantial evidence to show that the increased vehicle movements associated with previous planning permissions on the site have caused significant highway safety problems.

The Inspector previously took into account the fact that there were restrictions on the site concerning deliveries around school peak times. However he recognised that the operator

could give no guarantee that vehicles travelling to and from the site would adhere to these requirements. On this basis, the weight given to these factors in his decision was reduced, but nevertheless, still weighed in favour of the proposal.

Whilst the restrictions on deliveries times have now been removed by subsequent planning permissions, the Highways Officer has assessed this scheme and does not raise any objection. Equally, it is still considered that vehicular conflict with school users could be adequately managed by good site management practice, as is the case with other waste management facilities.

The Inspector concluded on this matter by stating that he considered, on balance, the concerns raised regarding impacts of HGVs using the highway network would not be sufficient on their own to justify refusing planning permission. In his opinion, the effect of the proposal on the safety and convenience of highway users would be likely to be acceptable and would not conflict with the aims of CRWLP Policy 12, CNBLP Policy BE1 or Policy DP7 of RSS. On the basis of the lack of concern expressed by the Highways Officer and in view of the weight given by the Inspector to this issue, it is not considered that there are sufficient grounds to refuse planning permission solely based on this one change in circumstance. As such, it is not considered that the scheme would conflict with the aims of CRWLP Policy 12, and CNRLP Policy BE1.

RECOMMENDATION

That the application be approved and the amendments made as follows:

Removal of condition 11 of planning permission 7/P04/0124;

Removal of conditions 7 of planning permissions 7/2006/CCC/11, 7/2007/CCC/7 and 7/2009/CCC/1.

This is subject to the following:

- **Imposition of all other conditions as stipulated on consents 7/P04/0124; 7/2006/CCC/11, 7/2007/CCC/7 and 7/2009/CCC/1**
- **Imposition of planning condition requiring construction of an acoustic fence as per the recommendations of the noise survey, details of which to be agreed in writing with the Local Planning Authority.**
- **Imposition of condition requiring sheeting of all vehicles exporting compost from the site.**

Appendix A

Representations from Local Ward Councillor

Letter dated 30/05/2012

I am writing in my role as Ward Councillor for the Wybunbury Ward in which this development is situated, in response to concerns from:

- The Doddington and District Parish Council
- Local Residents situated in the Hunsterson Parish
- Director of Public Health (Cheshire East Council, East Cheshire & South Cheshire PCTs)

This application is the latest in a series of past applications to remove **conditions related to the export of compost** from this site.

To date, each application has been refused and most recently an Appeal to the Planning Inspectorate (29th and 30th June 2011), where I was in attendance, was also refused.(Appeal Decision APP/RO660/A/10/2138836)

The principal reasons for the Inspector's decision are as follows:

1) He explains that whilst vehicles movements are restricted to 20 vehicles in (and 20 out) each weekday, the permitting of export of compost would enable the applicant to maximise imports through the use of larger vehicles upon which there are no conditions.

At the hearing, the applicant explained that, at that time, he was receiving between 14 and 18 vehicles each day (28 & 36 vehicle movements). The inspector concluded that permitting export would enable the maximum number of vehicle imports to be made and that:

"In my judgement, it is likely that, as a result of the proposal, the number of HGVs travelling to and from the site would increase along with the average size of the loads being carried, materially altering the character of the traffic associated with the site". (Page 7: Para 27)

2).The inspector then considered the implications for the living conditions of local residents in relation to the likely changes in the character of traffic associated with the compost site. He concluded that:

" These dwellings occupy relatively isolated positions in the open countryside, away from public highways, and so they are likely to be particularly sensitive to increases in traffic noise likely to be associated with passing appeal site HGVs. (page 7, Para 29).

In turn permitting export "...would materially increase the noise and disturbance experienced by the residents of dwellings located close to the access-way leading to the appeal site, thereby causing unacceptable harm to their living conditions contrary to CRWLP Policy 12 and LP Policy BE1". (Page 8. Para 30)

It is important to note that the inspector refers clearly to both noise AND disturbance and in this context states that the proposed development would;

"...conflict with the aims of CRWLP Policy 12, LP Policy BW1 and NE17 as well as Policy DP7 of the RSS"

His concludes that the conditions under dispute are

"... reasonable and necessary as a means of limiting the scale of development in order to safeguard amenity and I am content that they meet the other conditions set out in Circular 11/95".
(Page 9, Para 35)

Appellant's Response:

In response the applicant has challenged the Inspector's findings in his Supporting Planning Statement (SPS) with regard to possible alterations to the character of traffic accessing the site and in relation to noise experienced by residents.

1) Character of the Traffic

It is suggested (SPS Para 3,.1) that compost could be removed from the site in the same vehicles in which it came thus reducing the noise impact of empty vehicles.

However;

At present the majority of vehicles are contracted from Cheshire East Council (CEC) and are roadside waste collection vehicles. These are not suitable for re-loading with compost (as is clearly reported by the appellant in the inspectors report page 5, para 17).

It is also noted that occasionally green waste imports are sent to another site for 'bulking up' onto much larger HGVs which then come to Whittaker's Green Farm. These vehicles are capable of being filled with compost for export but their size confirms the Inspector's concerns regarding altering the character of traffic accessing the site to the detriment of residents.

2) Commissioned Noise Report

I am concerned about this report for a number of reasons:

- a) Noise was monitored on just two occasions at just one site on the access road.
- b) The report was conducted in February 2012 – this is the quietest time of year for green waste collection as it precedes the growing season. Each session was just 1.5 hours and both took place at the same time of day.
- d) The report has made no attempt to monitor the level of noise created by heavy plant machinery actually on-site as it operates the open-air Windrow system.
- e) The report has focused on measurements of 'loudness' (dBA) which is important but has failed to evaluate the ways in which vehicle noise may violate legislation in relation to **Statutory Noise Nuisance**.

This is a highly selective analysis and the results fail to mitigate residents' loss of amenity as clearly identified in the Inspector's report.

It is important to note that the Inspector refers to (what was then) **the Draft National Planning Policy Framework** which is important in this regard.

"In light of my conclusion in relation to the likely impact on the living conditions of local residents, I consider on balance that the proposal would not be sustainable economic development. Furthermore the DNPPF does not indicate otherwise. ...sustainable development means, among other things, protecting and enhancing the natural environment by preventing existing development from being adversely affected by unacceptable levels of noise pollution".(Page 11, para 50)

The Planning Policy Framework has now been in force since 27.03.2012 and these parts of the draft have since been included in full in the definitive legislation (NPPF Page 2, para 7) and so must now be given due weight.

The impact of noise on amenity and Health and well-being are later explicitly highlighted in the NPPF:

"Planning policies and decisions should aim to:

- *avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions" (NPPF, page 29, para 123)*

The NPPF also directs planning authorities to give weight to **The Noise Policy Statement for England** (NPSE; March 2010)

This guidance suggests a **Noise Policy Vision** to;

"Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development".

Furthermore noise can cause annoyance and fatigue, interfere with communication and sleep, reduce efficiency and damage hearing. The World Health Organisation recommends a guideline daytime level for outdoor sound levels of 50dB to prevent people from becoming "moderately annoyed" (Guidelines for Community Noise 2000). And the concept of 'annoyance' is further developed by the WHO on the **Noise Policy Statement 2010** within the context of sustainability and 'adverse affect'.

It is interesting to note that the independent Noise Report cited by the appellant in this application, even in the very brief time and selective format when that noise was monitored, still registered noise at levels that would exceed WHO recommendations for daytime outdoor sound levels, and constitute 'moderate' or 'severe' adverse affect.

Statutory Noise Nuisance

As stated earlier, this area of legislation is pertinent as it relates to the 'nature' and character of noise. Duration, intensity, vibrations, unpredictability, times of day can all contribute to noise nuisance and is monitored by Environmental Health Officers.

At the time that the appeal was heard (June 2011), the Inspector found AGAINST the appeal on the grounds of loss of amenity and disturbance - this was at a time when the site opening hours were limited by condition.

In March 2012, those conditions were altered to extend site opening hours on Mondays to Fridays 8am – 6pm, Saturdays and Bank Holidays.

Since that time residents have experienced severe 'adverse effect'. During the Spring, Summer and Autumn, green waste imports increase (in line with seasonal expectation) and the extended hours have already enabled maximum vehicle movements to take place since the decision was made

However, this has resulted in further loss of amenity for residents in the following ways:

- Residents having to access the access road to get to, or returning from work or school are now having significant problems as they encounter HGVs on the narrow access track.
- Children are unable to ride their bikes, residents are unable to walk the dog safely.
- At times when rural residents can legitimately expect to enjoy the tranquillity and amenity of the countryside (evenings, weekends, bank holidays), there is frequent unpredictable noise disturbance and visual impact that has a greater impact because this is an isolated rural setting.
- Already the extended hours have resulted in maximum imports. On average a roadside waste collection vehicle will take 15 – 25 minutes to navigate the access road from Bridgemere Lane, drive into the site onto the weighing plate, complete paperwork, reverse to the concrete pads, unload the green waste and drive off the site.

Larger HGVs will take commensurately longer (25 – 30 minutes).

As soon as green waste has been imported, **heavy plant machinery on site** must sort the material, install it on the concrete pads appropriately to start the process, turn previous deliveries to aerate and move material in various stages of the composting process further down the processing site. This is an on-going process (taking approximately 12 weeks in total) until the compost product has reached an appropriate standard for use.

- There is already active HGV / heavy plant noise nuisance for 6 – 10 hours each week day. Heavy Plant activity has been recorded after 6pm by residents.
- Lifting conditions on export will result in larger vehicles to maximise imports, facilitate export and will increase on-site processing.
- Loading empty vehicles with compost will lengthen the period of time each vehicle will spend on site and will increase noise nuisance exponentially.
- The Appellant's Noise Monitoring Report has already identified levels that exceed WHO guidelines for daytime noise levels. The cumulative impact of the intensification of activity that export activity will bring is a legitimate material concern that will cause unacceptable harm to residents' living conditions (Inspector's Report Page 8, para 30)

It is important to highlight that the Health & Social Care Bill has now been enacted bringing Public Health Roles and Responsibilities from the NHS into Local Government. Sustainable Planning is also a feature of this legislation and noise issues are included in the Public Health Indicator Framework to which Local Government must now adhere.

The Director of Public Health is usually consulted regarding planning matters related to Waste Sites in conjunction with Environment Agency issues, but may also be called upon to offer advice on other matters impacting on Public Health.

At the time of writing this report (29.05.2012), Dr Heather Grimbaldeston has not been contacted by planning officers or by the environment agency.

In conclusion, on behalf of local residents and the Doddington & District Parish Council,

We believe that the appellant has failed to produce substantive evidence that would warrant removal of conditions related to export of compost.

Indeed, since operating hours at the site were extended in March 2012, there is evidence that noise and disturbance to residents has been significantly exacerbated which further supports the conclusions of the Planning Inspector's Appeal report.

We support the decision made by the Appeal Inspector (APP/RO660/A/10/2138836) and conclude (that in the absence of further evidence from the appellant) that

- this application conflicts with the aims of CRWLP Policy 12, LP Policy BE1 and NE17, Policy DP 7 of the RSS.
- In addition this application fails to meet the NPPF (2012) requirement for sustainable economic and social development (NPPF Para 7 & 171)
- It contravenes the Noise Policy Statement for England (NPSE) March 2010 and
- constitutes a Statutory Noise Nuisance as described by the WHO day-time noise level indicators and verified by the appellant's Noise Monitoring Report.

We therefore recommend that the application for removal of planning conditions be rejected

Yours sincerely

Cllr Janet Clowes MSc. BSc. PGCE. RGN.

Ward Member: Wybunbury Ward

Portfolio Holder: Health & Well-Being

Letter dated 28/08/2012

Thank you for your email outlining the concerns of Mr Thorley of Civitas Planning Limited dated 6th August 2012.

I am surprised that Mr Thorley has raised these concerns but I would like to reassure him, his client and yourself of the following points:-

1. I was asked, in my role as Ward Councillor, to respond to the application by Doddington & District Parish Council and Hatherton Parish Council by the required May 2012 deadline. This is a legitimate function of my role as Ward Councillor.
2. I was asked by residents living at Whittaker's Green (not Bridgemere Lane) to include their material concerns as part of this report – this I have done and again would reiterate that this is a legitimate function of my role as Ward Councillor.
3. I did contact the Director of Public Health prior to submitting the response in May as planning applications related to Waste Sites may often be referred to the DPH via planning or the environment agency. At that point no referral had been made and I felt it was important that this was noted (even if in the consequent period it was determined that this was not required in this case). My understanding at this time (28.08.2012) is that a public health referral has not been required / requested. (I did make this very clear that this may be the case in the report on page 5)
4. Mr Thorley has suggested that I have 'abused my position as portfolio holder for Health and Adult Social Care' by including material that is not in the public domain. I would like to reassure Mr Thorley and his client that all comments and material referred to in my report is very definitely in the public domain and can be accessed either via the Cheshire East website or any internet search engine. In addition I have referenced material that was accessed in the report so that readers may read this material for themselves if they so wish.
5. Clearly my response had to be submitted by the end of May before all planning reports and requests for information were obtained. In particular the second Environmental Health report had not been submitted at that stage. I would like to make it clear that I do not take issue with Ms Edge's report.
6. Nonetheless there are other aspects to loss of amenity and noise nuisance mentioned in the Appeal Inspector's report that are still highly relevant and must not be ignored. These are clearly described in my response and are an essential part of any discussion related to changes in conditions – hence their inclusion.

I hope this clarifies the context in which my response was written and has allayed the concerns raised.

Yours sincerely

Cllr Janet Clowes: Wybunbury Ward

Representations on behalf of the applicant made by Agent

Email dated 09/07/2012 from David Erskine on behalf of the Applicant in response to the representation from ward member.

Cllr Clowes indicates that she is writing is response to concerns that have been raised by the Director of Public Health (Cheshire East Council, East Cheshire and South Cheshire PCTs). These alleged concerns are not in the public arena. There are no comments raised by the Director of Public Health either on the council website or as far as we are aware in writing. If there are any relevant comments relating to planning matters raised by the Director of Public Health then we would wish to be able to

see them. However in the absence of any comments then no weight may be attached to this in any planning decision.

Cllr Clowes summarises the principal reasons for the Inspectors decision. It is important to note that the comments quoted from the Inspectors decision relate only to those properties on the private access way from the highway to the appeal site. This conclusion was made by the Inspector without any quantifiable assessment of the noise impact. The current application includes an assessment from a professionally qualified noise consultant which demonstrates that there will not be any unacceptable increase in noise from the proposal. This view is shared by the Local Planning Authority Environmental Health Officer who has considered the submitted noise report.

The concerns raised about the noise report in respect of the times and extent of the survey are not relevant. The procedures followed in the noise report follow accepted professional methods and have been used to establish the only issue of relevance, namely the noise from passing HGV,s. The assessment examines the worst case scenario. The Local Planning Authority has professionally commented on the assessment and has not raised any concerns about the procedure adopted. The concern regarding failure to monitor noise from the machinery on site is not relevant as the Inspector has already concluded that this is not an issue. Reference is made to statutory noise nuisance and it is asserted that this legislation may be violated. However this is an entirely speculative and separate issue and no evidence has been provided to suggest that a statutory noise nuisance exists. The LPA have since 2004 had the ability to consider whether a statutory noise nuisance exists. They have never considered it necessary to investigate this matter.

It should be noted that dB is not the same as dBA or LAeq, L90 or LAmx. The noise assessment needs to take place within the context of the locality. The correct assessment of noise impact has indicated that there would not be any increase in noise levels beyond that already permitted.

Cllr Clowes indicates that she has raised the concern of local residents encountering HGV, s on the private access track. . Only one resident on the access track has objected. The four other residents along the access road have not raised any objection. The asserted loss of amenity raised by Cllr Clowes is unfounded and not supported by the views of the majority of residents on the access track.

The issue of visual impact raised by Cllr Clowes is not relevant as the Inspector has not found any relevant planning issue with regard to visual impact.

The issues raised concerning the use of machinery on the site and the time taken for processing are not relevant. The Inspector has found no issue with noise from the composting site.

Cllr Clowes indicates that she is writing in her role as ward councillor in response to concerns that have been raised. However the letter concludes with the phrase "we recommend". The implication is that this response is with the approval of local residents, Doddington and District Parish Council and the Director of Public Health. There is no indication that these individuals or bodies share the views expressed in this letter and it must therefore be taken as an individual point of view.

Email dated 21/06/2012 from David Erskine in relation to comments made by members of the public.

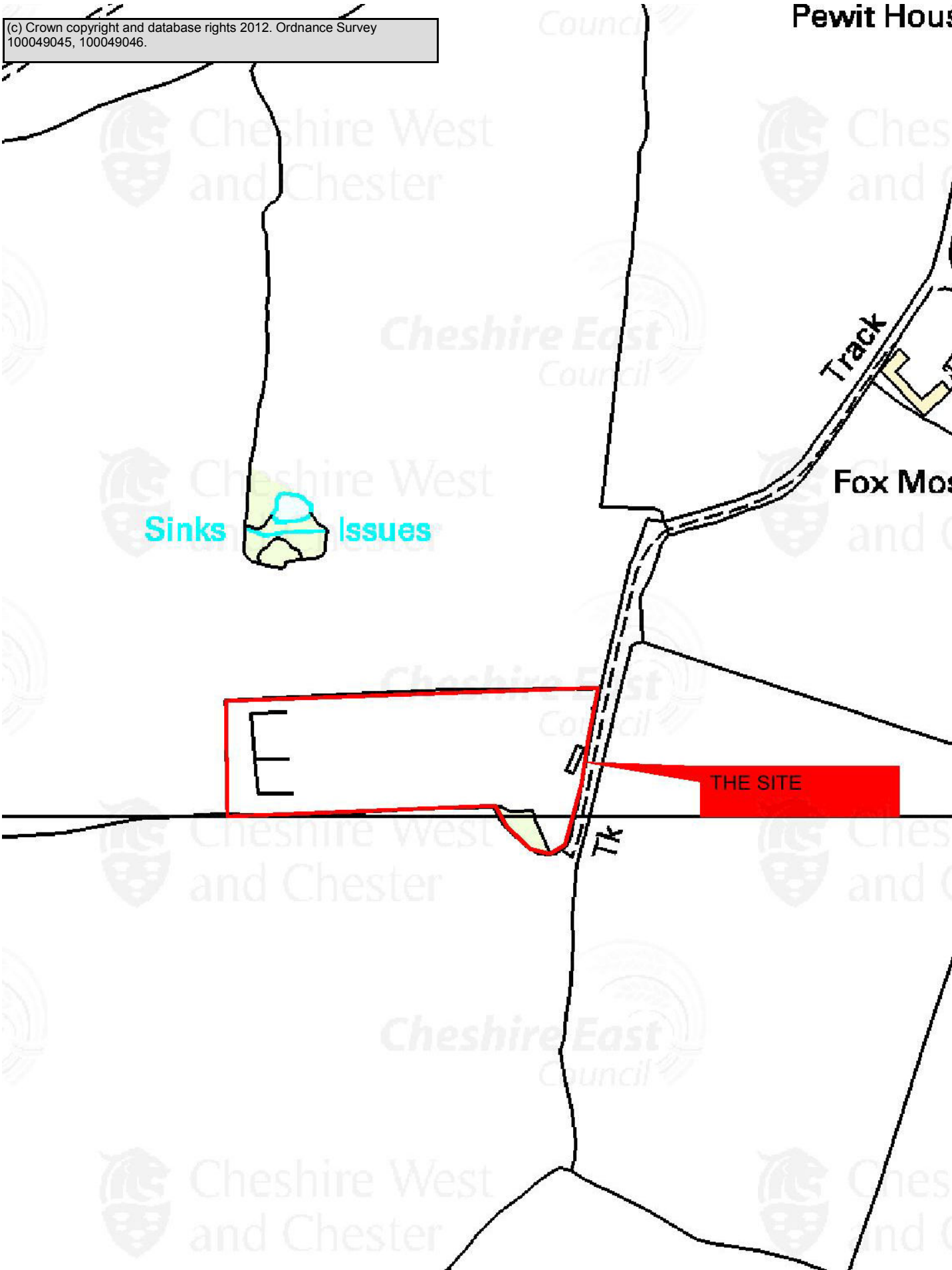
I have looked at all the neighbour objections to this application that have been posted on the Council website. Of those that have provided an address I would point out the following.

- The majority of the objections relate to matters which have already been addressed and dismissed by the Inspector at the most recent appeal.
- In respect of the only outstanding planning matter, namely noise from traffic on the internal access road and the noise assessment provided with the application, I have set out on the

attached plan the location of those residents that have raised this issue. It is clear that all of these residents, with the exception of the objection of the residents of Pewit House, are some considerable distance from the internal haul road and the composting site. It is noted that there are five residential properties located along the internal access road of which only one (Pewit House) has raised an objection.

- Three objections relate to the shortcomings of the professional noise assessment which has been provided with the application. We remain of the view that the noise assessment has been carried out in accordance within recognised professional standards and the conclusions are both sound and based on relevant measurements and assessments.

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CHESHIRE EAST COUNCIL

Strategic Planning Board

Date of Meeting:	12 September 2012
Report of:	Borough Solicitor
Subject/Title:	Review of the Planning Protocol and the Public Speaking Protocol

1.0 Report Summary

1.1 This report advises Members of the need to review the Council's existing Planning Protocol and Planning Public Speaking Protocol following the adoption of the new Code of Conduct by Cheshire East Council in July 2012 and the amendments to the rules on pre determination as a result of the provisions in the Localism Act 2011.

2.0 Recommendation

2.1 That Members approve the proposed amendments to the Council's Planning Protocol and Planning Public Speaking Protocol and recommend their adoption by the Audit and Governance Committee and full Council.

2.2 Reasons for Recommendations

3.1 It is essential that the Council's existing practice and procedures are not inconsistent with any of the provisions in the new Code.

3.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

6.1 Strong Ethical Governance, including clear policies and protocols supporting and underpinning the Code of Conduct, are critical for the corporate governance of the Council and for public confidence in the Council's decision making processes.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 There are no obvious financial implications

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Localism Act 2011 is being implemented over a phased period of time. The provisions in relation to the replacement of the current Standards regime were brought into effect from 01 July 2012. The Act requires that the Council not only adopts a Code of Conduct but has in place effective procedures to enable the investigation of any complaints or allegations that a Member has been in breach of the Code of Conduct. The Borough Council remains responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct.

9.0 Risk Management

- 9.1 The Council must have robust processes in place both from a reputational management viewpoint and to safeguard the integrity of the Council's Corporate Governance and Decision making processes as a whole.

10.0 Background and Options

- 10.1 Under the Localism Act 2011 the Council has a statutory duty to promote and maintain high standards of conduct by both its Elected Members and co-opted Members. The Council must adopt a Code of Conduct which sets out the conduct expected of Members whenever they act in their capacity as an Elected Member and must also have in place a suitable procedure at a local level to investigate complaints that a Member is in breach of the new Code of Conduct.
- 10.2 At its meeting on 19 July 2012 Full Council approved the adoption of a new Code of Conduct for Elected Members of Cheshire East Council together with a procedure relating to the investigation of complaints under the new Code.
- 10.3 The new Code of Conduct gives rise to a need to ensure that the Planning Protocols reflect it.

11.0 Planning Protocol and Planning Public Speaking Protocol

- 11.1 Members will be aware that the Council has approved a Planning Protocol which supplements the Member Code of Conduct and sets out guidance and best practice in terms of dealing with Planning issues both as a Member of the Strategic Planning Board and Northern and Southern Planning Committees and as a Ward Member. The Planning Protocol needs to be updated to bring the guidance in line with the new Code of Conduct and to incorporate the provisions in relation to pre determination as enacted earlier in the year under the Localism Act. The Planning Public Speaking Protocol was also approved by the Council in order to regulate how those wishing to address the Planning Committees may do so. Amendments are required in order to bring it into line with the amended Planning Protocol.

11.2 The amended Planning Protocol is set out at Appendix 1 and the amended Planning Public Speaking Protocol is set out at Appendix 2 .After consideration by both the Strategic Planning Board and the Constitution Committee they will be considered by the Audit and Governance Committee at its meeting on the 27 September 2012 as that Committee now has responsibility for Code of Conduct issues and any comments from the SPB and Constitution Committee will be reported to that meeting for Member's information. Members are requested to recommend to Council the adoption of the amended Planning Protocol and Planning Public Speaking Protocol.

11.3 The main amendments set out in the Planning Protocol are as follows :

- The description of hospitality is amended in line with Code of Conduct for Members
- Reference is made to Disclosable Pecuniary Interests and the requirement to register/declare them
- Reference is made to Non Pecuniary Interests which although not specified in the Code of Conduct for Members should be declared
- The amended Protocol makes it clear that if a member has a Disclosable Pecuniary Interest in a proposal they may neither take part in the debate or vote, nor exercise public speaking rights and must leave the planning meeting when the relevant item is announced
- There is a reminder that it is a criminal offence to fail to declare or register a Disclosable Pecuniary Interest or to take part in a debate or vote where such an interest exists
- The amended Protocol makes it clear that if a member has a Non Pecuniary Interest arising from a close association or connection then they should not take part in the debate or vote
- The Protocol's provisions on pre determination are up dated in line with the Localism Act 2011 and request that members leave a planning meeting where they have pre determined
- Notifications to (and responsibilities of) the Head of Planning and Housing are now to the Development Management and Building Control Manager abbreviated to DMBCM

11.4 The main amendments to the Planning Public Speaking protocol are set out below –

- To extend public speaking to matters other than planning applications, for example variations of planning obligations
- To remind members that they need to register their intention to speak even if they have called in an application
- To clarify when members may or may not speak when they have declared an interest

12.0 **Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Caroline Elwood
Designation: Borough Solicitor
Tel No: 01270 685882
Email: caroline.elwood@cheshireeast.gov.uk

PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS

Section	Subject	Page Number
	Summary	1
1	Development proposals and interests under the <u>Code of Conduct for Members - 2012</u>	3
2	Pre-determination (fettering discretion) in the planning process	4
3	Membership of Parish Councils and outside bodies	5
4	Cabinet Members	6
5	Contact with Applicants, Developers, Objectors	7
6	Pre-Application discussions	8
7	Lobbying of Planning Committee members	8
8	Membership of lobby or general interest groups	9
9	Site Inspections	11
10	Public Speaking at Meetings	12
11	Officers	13
12	Decision Making	14
13	Training	15
14	Involvement in s106 Agreements	15
15	Monitoring and review	16

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The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way and **applies to members of the Strategic Planning Board and Northern and Southern Planning Committees when they are involved in the planning process.**

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The Council was required under section 27 of the Localism Act 2011 to adopt a new code of conduct from July 2012 based on the core principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. The new code of conduct is entitled 'Cheshire East Council Code of Conduct for Members – 2012' and this Planning Protocol (and the Public Speaking Protocol mentioned in it) has been reviewed and amended in light of it. It is referred to as the Code of Conduct for Members throughout this Planning Protocol.

The Code of Conduct for Members should be applied throughout the decision making process and this Planning Protocol seeks to explain and supplement the Code of Conduct for Members in relation to planning control. If you do not follow this Planning Protocol you may put the Council and yourself at risk of proceedings on the legality or maladministration of the related decision. Furthermore section 34 of the Localism Act 2011 introduced new criminal

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offences of failing to declare or register certain interests and debating or voting whilst having such an interest.

The Code of Conduct for Members requires Disclosable Pecuniary Interests (which are specified and defined in it) to be notified to the Monitoring Officer. Non Pecuniary Interests may be required to be notified but none have yet been specified.

If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any **planning meeting takes place.**

In this Planning Protocol "planning meeting" covers all meetings of the Strategic Planning Board and the Northern and Southern Planning Committees.

SUMMARY

Important things to remember –

1. apply the rules in the Code of Conduct for Members first, and continue to comply with them throughout the decision making process, and disclose the existence and nature of any interest set out in the Code at the relevant **planning** meeting unless you have already registered it.
2. understand what Disclosable Pecuniary Interests **as** referred to in the Code of Conduct for Members are, and the implications of such interests arising. If you have a Disclosable Pecuniary Interest in a matter you must not speak or vote on it.
3. If you have a non-pecuniary private interest in a planning matter, declare it and leave the room, although you may exercise public speaking rights before you go.
4. don't make your mind up on how you will vote on a matter before the formal consideration of the matter at the **planning** meeting
5. be aware that if you do lobby or campaign on a particular issue it may mean you can't take part in the decision making process
6. if you are a cabinet member, don't take part in a planning meeting in a matter where you appear to be the advocate of a proposal
7. if you are approached for technical planning advice or receive any materials relating to an application (other than those circulated by an Officer), refer the person who approached you or the material to Officers

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8. if you attend meetings individually with developers or lobby groups be careful not to put yourself in a position where you appear to favour a person or a group over another
9. if you do attend a meeting with a developer or lobby group make sure it is clear that you do not bind the authority to a particular course of action, or views, and that the meeting is noted in your diary
10. you can ask that Officers attend and/or organise meetings
11. avoid accepting gifts, benefits or hospitality from anyone involved in a planning proposal
12. it is not advisable to become a member of a group or organisation whose primary purpose is to promote or oppose specific planning proposals in your area
13. a site inspection is the opportunity to seek information and observe the site, not to start the debate into the merits of the application.
14. you can call-in an application to be determined by Committee that would otherwise be delegated to Officers, and can seek advice from Officers over the wording. Take care that the wording of your call-in does not give the impression of bias for or against an application
15. you can discuss applications with Officers but the Officer must be able to reach their own conclusion
16. make sure you are present at the planning meeting for the entire item, including the Officers introduction and update, otherwise you cannot take part in the debate or vote on that item
17. do not allow members of the public to communicate with you during planning meetings
18. you must not exercise your public speaking rights on a matter at a planning meeting if you have a Disclosable Pecuniary Interest in that matter
19. make sure your decisions at a planning meeting take into account the development plan and other relevant material planning considerations
20. put your and your local community concerns forward at the planning meeting, and consider whether planning gain requirements under s106 could help make acceptable development that would otherwise be unacceptable in planning terms

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21. include the content of s106 agreements in the debate at a planning meeting

21. if you are proposing or seconding a decision that is contrary to Officer recommendation, you need to identify the planning reasons for doing so, if necessary with the assistance of the the Officers at the planning meeting

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22. you must attend mandatory training and should try to attend all training sessions arranged by the Council

This summary provides a list of the main points to remember while the body of the Protocol provides more detailed information, explanation and assistance.

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1 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE CODE OF CONDUCT FOR MEMBERS

1.1 DISCLOSABLE PECUNIARY INTERESTS

It is your responsibility to register Disclosable Pecuniary Interests and where such an interest has not been registered to declare its existence at the relevant planning meeting, and any informal meetings or discussions with Officers and other Councillors. Preferably, disclose any Disclosable Pecuniary Interest that you have not already registered, at the beginning of the planning (or other) meeting and not just at the commencement of discussion on that particular matter. The requirements for you to declare any Disclosable Pecuniary Interest that you have not already registered apply whenever you are in attendance at a planning (or other) meeting, regardless of whether you are a member of the Committee.

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- 1.2 Where you have a Disclosable Pecuniary Interest: You must register it in the register of interests held by the Monitoring Officer
- If a matter related to it is on the agenda of a planning meeting, you must not participate in, or give the appearance of trying to participate in, the making of any decision on the matter by the planning authority, including the processing of the application. You must withdraw from the planning meeting room when the matter is

announced and you must not exercise public speaking rights in respect of it.

- You shouldn't try to represent local, Ward or Area views, get another Member to do so instead.
- Be careful not to seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a Disclosable Pecuniary Interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not be able to do the same.
- Whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary Interest to an appropriate Officer, in person or in writing, be aware that the Code of Conduct for Members places greater limitations on you than would apply to a normal member of the public.

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1.3 You do need to notify the Monitoring Officer and Development Management and Building Control Manager ("DMBCM") in writing if you are submitting your own application, or if you are employed as an agent and:-

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- The notification to the Monitoring Officer and the DMBCM should be made no later than submission of the application;
- the proposal will always be reported to a planning meeting and not dealt with by Officers under the scheme of delegation; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at the planning meeting (where appropriate) to avoid public criticism

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you can make written representations to Officers about the proposal but may not address the planning meeting pursuant to the Public Speaking Protocol.

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1.4 NON PECUNIARY INTERESTS

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The Code of Conduct for Members has not specified any Disclosable Non Pecuniary Interests. However, the general obligation of honesty requires you to declare any non-pecuniary private interests relating to your public duties and to resolve any conflicts arising, in a way which protects the public interest. In practice this will mean declaring a non-pecuniary interest at the Planning Meeting and leaving the room for the duration of the item, although you may exercise public speaking rights before you go. So, if you attend a planning meeting at which a proposal is to be considered and you have some close association or connection with the site or applicant or objector by reason of, for example, a friendship or membership of a body or organisation then you should not take part in the debate or vote and should leave the planning meeting room prior to consideration of the proposal. In the interest of openness you should declare the nature of your interest.

If you have an association or connection with the site, applicant consultee or objector which is not close enough to affect your judgment but which it would be advisable to declare in the interests of openness, do this but then stay to take part in the debate and vote. This is likely to happen where you are a member of a consultee body which has expressed an opinion regarding an application

2 PRE-DETERMINATION (FETTERING DISCRETION) IN THE PLANNING PROCESS

2.1 Councillors making decisions in planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, so must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings. Not to do so puts the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination.

2.2 S25 Localism Act 2011 provides that previous acts shall not be taken by themselves as proof of predetermination. However, predetermination is still unlawful: this intention of this provision is just to make it easier for members to form legitimate predispositions and to discuss planning matters in the community before they make up their minds and come to a final decision at the Planning Meeting. Prior involvement with an application could still justify a challenge on grounds other than predetermination, for example on grounds of bias or of taking an immaterial consideration into account and should be approached with caution. In the rest of this Protocol references to bias include these other grounds of challenge.

2.2 In order to avoid allegations of bias, and therefore jeopardising your ability to participate in planning decision-making, wait until the formal planning meeting to hear the Officers' presentation, any public speakers and arguments on both sides before expressing your view on an application.

2.3 Take care in the wording of your planning reasons on a call-in that you do not suggest that you have already formed a view on the application, if you have not done so, and that you are biased for or against it. Seek advice on this from Officers if necessary prior to completion of your form. Wording such as "I consider that this application may raise issues of ..." will help avoid claims of pre-determination if you have not done so.

2.4 If the Council is the landowner, developer or applicant and you have acted as, or could be viewed as being, a chief advocate for the proposal then you may appear biased in its favour. This is more than a matter of dual membership: it arises where significant personal

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involvement in preparing or advocating the proposal means that you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)

- 2.5 You are always free to listen to a person's point of view about a planning proposal, give basic procedural advice and can agree to forward any comments, but beyond this you should refer the person to the appropriate planning Officer.
- 2.6 If there are other ward Councillors available that do not sit as a member of the same planning meeting then they will not be subject to the same restrictions regarding pre-determination and can therefore be an alternative contact for members of the public or lobby groups.
- 2.7 Political group meetings prior to the planning meeting should not determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but you should not make up your mind until you have read the planning Officer's report and update and heard any further representations and the debate at the planning meeting.
- 2.8 You should not speak and vote on a proposal as a member of the planning meeting where you have pre-determined an application. You are not legally obliged to withdraw from the room but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If in any doubt you should seek advice from the Monitoring Officer. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 2.9 If you have pre-determined an application you should explain that you have, or could reasonably be perceived as having already made up your mind on an application so that this can be recorded in the minutes. You may then exercise separate speaking rights, where you do wish to speak:
 - advise the democratic services Officer or Chairman that you wish to speak in this capacity before the planning meeting;
 - remove yourself from the member seating area to the public gallery for all of that item and consider whether you need to leave the room; and
 - ensure that your actions are recorded in the minutes.

If you foresee that prior involvement in a planning matter could give you an appearance of bias (to a fair-minded and informed observer), make it plain beforehand and again at the Planning Meeting that you

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will retain and have retained an open mind throughout. If the appearance of bias is so strong, in the circumstances, that an assurance will not be sufficient to rebut it, then you should declare an appearance of bias or predetermination and, unless you want to exercise public speaking rights, you should take no part in the item and, ideally, leave the room.

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3 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

3.1 The Code of Conduct for Members that you are bound by because you are a member of Cheshire East Council may be the same as or different from the one you are bound by because you are also a member of a town or parish council. Nonetheless, all Member Codes are based on the same principles including selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. If you are bound by different Codes, you need to be aware of this, and if necessary you may want to seek advice on any issues you are not clear about.

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3.2 You need to exercise discretion in deciding whether or not to participate where you have been significantly involved in the preparation, submission or advancement of a planning proposal on behalf of :
 (a) another local or public authority of which you are a member; or
 (b) a body to which you have been appointed or nominated by the Council as its representative; or
 (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

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In such cases, whilst no Disclosable Pecuniary Interest arises, an issue of lack of impartiality arises, and you should withdraw from the planning meeting.

3.3 You can take part in the debate on a proposal when acting as part of a consultee body for a planning application (where you are a member of the Parish Council, for example), provided:

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- the proposal does not relate to any Disclosable Pecuniary Interest you may have

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- you make it clear to the consultee body at the time they consider the matter that:

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- (a) your views are expressed on the limited information before you only;

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- (b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and

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- (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting.

It is also advisable in the interests of openness to mention your membership or role when the planning meeting ultimately comes to consider the proposal.

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4 CABINET MEMBERS

- 4.1 There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.

- 4.2 You should not speak or vote as a member of any planning meeting on any matter which you have discussed at Cabinet unless you have declared in both meetings that you will approach the planning decision afresh, taking material planning considerations into account at the Planning Meeting. Again, if the assurance will not rebut appearances, declare an appearance of bias and, unless you want to exercise public speaking rights, take no part in the matter: ideally, leave the room.

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- 4.3 Where you do wish to speak :

- advise the democratic services Officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area to the public gallery for the duration of that item and consider leaving the room after you have spoken; and
- ensure that your actions are recorded in the minutes

Deleted: At a planning meeting on a matter in which you may have been seen as advocating a proposal as a Cabinet Member, and so predetermined the matter, do you should not not take part in the debate, but you can exercise separate speaking rights and the Public Speaking Protocol provided you do not have a personal and prejudicial interestDisclosable Pecuniary Interest.

5 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 If you are approached for technical planning advice you should refer the person to Officers, and can always refer a person to Officers if you are uncomfortable giving procedural or other advice.

- 5.2 Where you feel that a formal meeting would be useful in clarifying issues, you should request the DMBCM to organise this. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that views expressed are provisional, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the planning meeting.

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- 5.3 If you are invited to attend a meeting with applicants, developers or groups of objectors you should exercise care particularly between the submission of an application and the planning meeting where it is to be

determined. You can attend meetings but, **to avoid complaints of bias,** you need to be careful not to express views or opinions on the application if you are intending to take part in the planning meeting.

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5.4 In addition you should consider:

- the advice on lobbying;
- whether or not it would be prudent in the circumstances to make notes when contacted;
- notifying the **DMBCM** of any significant contact with the applicant and other interested parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file;
- asking relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.

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5.5 Don't attend a planning presentation unless an Officer is present and/or it has been organised by Officers, as it is a form of lobbying and you need to be careful not to express any views on the application or give the impression you have made up your mind.

5.6 Remember that a presentation is not part of the formal process of debate and determination of any application, this will be carried out by the appropriate planning meeting of the planning authority, but you are able to ask relevant questions for the purposes of clarifying your understanding of the proposals.

6 PRE-APPLICATION DISCUSSIONS

6.1 It is recognised that pre-application discussions can be of great benefit to the planning process, however, this may create some risks for Councillors and for the integrity of the decision making process and therefore they should only take place within clear parameters and governance arrangements and always with Officers present and a written record of the discussions made and kept.

6.2 If you are involved by an Officer in pre-application discussions ensure that it is made clear that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional, as by their very nature not all relevant information will be available and no formal consultation will have taken place.

6.3 Officers should deal with any queries or give advice in pre-application discussions upon policies within the Development Plan and other material considerations that may be relevant to a particular proposal or be drawn into negotiations. This ensures a consistent and co-ordinated approach from the Council.

- 6.4 Where there is a legitimate reason justifying non-disclosure respect a request for confidentiality. Seek advice from the Officers present if you are unsure.

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- 6.5 Make sure you provide information on matters of fact, local knowledge and geography to any pre-application meeting rather than dealing with the merits of any proposed application.

- 6.6 Make sure you do not use your position to improperly influence decisions in pre-application meetings.

- 6.7 You can ask an Officer for a briefing or update on the content of pre-application meetings if you are uncomfortable about attending those meetings yourself.

7 LOBBYING OF PLANNING COMMITTEE MEMBERS

- 7.1 While you can listen to those lobbying or attempting to lobby you, you should explain that it prejudices your impartiality and therefore your ability to participate in the planning meetings decision-making to form an intention to vote one way or another or express such a firm point of view that you could appear biased.

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- 7.2 As a member of the planning meeting your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

- 7.3 You should not accept any gifts, benefits or hospitality from a person involved in or affected by a planning proposal. Where a degree of hospitality is entirely unavoidable, you must ensure it is of a minimum level, its acceptance is declared as soon as possible and remember the Code of Conduct for Members requires that you register any gift, benefit or hospitality which you have accepted where its value is over £100.

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- 7.4 Remember you can copy or pass on lobbying correspondence you receive to the DMBCM, if relevant or raising new issues, or declare the receipt of lobbying information at the planning meeting.

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- 7.5 If you receive any offer of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise, refer the offer to the DMBCM.

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- 7.6 If you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts, benefits or

hospitality), notify the Monitoring Officer who will in turn advise the appropriate Officers to follow the matter up.

- 7.7 Unless you have a Disclosable Pecuniary Interest, you will not have fettered your discretion or breached this Planning Protocol through:
- listening to or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Councillors or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

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8 MEMBERSHIP OF LOBBY OR GENERAL INTEREST GROUPS

- 8.1 Avoid becoming a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals or those within a limited geographical area, as if you do, you are likely to have fettered your discretion and have to withdraw from the planning meeting.
- 8.2 Depending on your degree of involvement with a group and its purpose, you can sometimes continue to participate but note that if it could realistically lead to allegations of bias, you should withdraw from the meeting.
- 8.3 If a matter relates directly to the lobby group of which you are a member rather than to the views it holds, or is submitted by the group you should ordinarily withdraw from considering the matter.
- 8.4 Where your lobby group has expressed a public view on a matter you need to consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors you should consider are:
- the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- 8.5 If the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the

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management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.

- 8.6 Remember that if you publicly support a particular outcome on a proposal within your Ward or actively campaign for it, you will not be able to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge, particularly where the campaign included factors or expressed viewpoints which were not material planning considerations. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining any application in accordance with the law.

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- 8.7 You are able to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but it is sensible at a planning meeting to refer to your membership where that organisation has made representations on a particular proposal; you should also make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.

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- 8.8 Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest.

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- 8.9 You should not ever decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

9 SITE INSPECTIONS

The Council has a separate protocol that deals with Site Inspections in more detail.

- 9.1 Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact

finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to both Councillors requests for a Site Inspection and those the ~~DMBCM~~ may arrange without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.

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- 9.2 It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors at site visits will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all planning meeting members will attend all formal site inspections and a record of attendance will be maintained and monitored.
- 9.3 You should try to attend site inspections organised by the Council.
- 9.4 You can request a site inspection if you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
 - where design considerations are of the highest importance particularly in relation to the surrounding locality.
- 9.5 The site inspection is an opportunity for you to seek information and to observe the site, and therefore you can ask the Officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection. Officers may seek clarification from the applicant or an objector on your question, but you should not do this directly.
- 9.6 Be careful not to be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind while on a site inspection by expressing opinions or views to anyone. The decision can only be made at the planning meeting and you should make this clear to any applicant or other party who approaches you and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the Officer present.

- 9.7 Information that you gain from the site inspection should be reported back to the planning meetings, so that all Councillors have the same information.
- 9.8 You should not enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias. If you feel it is essential for you to visit the site other than through attending the official site inspection you should speak to the DMBCM about your intention to do so and give him the opportunity of an Officer accompanying you. If you do attend site on your own ensure you comply with these good practice rules on site inspections.

10 PUBLIC SPEAKING AT MEETINGS

The Council has a separate protocol that deals with the procedure for Public Speaking at meetings in more detail.

- 10.1 Members of the public and non-committee members should not communicate with you during the planning meeting (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 10.2 Make sure that you comply with the Council's Protocol for Public Speaking at planning meetings if you are attending the planning meeting other than as a member.
- 10.3 Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member.
- 10.4 Where you have a Disclosable Pecuniary Interest in an application then you must as soon as the item is announced leave the planning meeting room whilst the meeting considers the proposal.
- 10.5 Where you have a non-pecuniary interest in an application then you may exercise public speaking rights but leave the room immediately afterwards to counter any potential suggestion that the remaining members were influenced by your continued presence.
- 10.6 Planning Councillors who have pre-determined a matter may also exercise public speaking rights and should consider withdrawing from the meeting room having spoken on a matter to counter any potential suggestion that the remaining members were influenced by your continued presence.

11 OFFICERS

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11.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst Officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to Officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.

11.2 You can submit views on current applications to the DMBCM, which can be incorporated into any committee report.

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11.3 Officers are part of a management structure and you can discuss a proposal, outside of any arranged meeting, with those Officers who are authorised by the DMBCM to deal with the proposal at a Member level or the DMBCM. However, you should not seek to do anything that would compromise, or is likely to compromise, the impartiality of Officers who must be free to reach their own conclusion.

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11.4 Officers who are involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors.

11.5 Remember the Council's Member/Officer Relations Protocol.

12 DECISION MAKING

The Council has adopted a separate protocol that deals with the Call in of planning applications in more detail.

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12.1 Ensure that the planning reasons in your request for a proposal to go before the planning meeting rather than be determined through Officer delegation are recorded and repeated correctly in the report to the planning meeting.

12.2 Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless other material considerations indicate otherwise.

12.3 It is important that you reach your decision only after due consideration of all of the information reasonably required upon which to base a decision. You should come to meetings with an open mind and if you feel there is insufficient time to digest new information or

that there is simply insufficient information before you, request that further information, and if necessary, defer or refuse the application.

12.4 It is vital that you have been present to hear the entire item, including the Officers' introduction to the matter before you vote or take part in the planning meeting's discussion on a proposal.

12.5 Check that the minutes of the meeting record correctly the reasons for the planning meeting's decision to grant, refuse or defer any proposal.

12.6 The planning meeting can delegate to the DMBCM in conjunction with the Chairman, if necessary, the specific wording of conditions that the planning meeting may wish to add or amend when they are considering an application for approval. An explanation of why the change or addition is required should be given to the planning meeting.

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12.7 Be aware that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that you need to clearly identify and explain the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and will be recorded and Officers will be able to assist with formal wording. Be aware that you may have to assist in defending a resulting decision by giving evidence in the event of any challenge.

12.8 Where necessary, you can consider deferring the determination of sensitive applications that the planning meeting wish to approve against Officer recommendation to the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further new information.

12.9 Where necessary, you can consider deferring the determination of an application to another meeting if there is a very strong objection from Officers on the validity of reasons for refusal against Officer recommendation, to allow the proposed reasons to be further investigated and form the basis of an updated report to a future meeting.

12.10 You should ensure that you are aware of, and comply with the Protocols adopted by the Council.

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13 TRAINING

13.1 You must attend the mandatory planning training prescribed by the Council before you participate in decision-making at planning meetings.

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- 13.2 You should try to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and assist you in carrying out your role properly and effectively.

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14 INVOLVEMENT IN SECTION 106 AGREEMENTS

- 14.1 The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by such benefits offered.

- 14.2 Remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.

- 14.3 Requirements of Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the DMBCM as soon as you become aware of them.

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- 14.4 The content of Section 106 Agreements needs to be discussed at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.

- 14.5 If you feel that a meeting would be useful to clarify issues of content of potential Section 106 agreements, you should ask the DMBCM to arrange a meeting with relevant Officers. Participants can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.

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- 14.6 Do remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that the Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors can contact Officers for any information required on completed Section 106 Agreements.

15 MONITORING AND REVIEW

- | 15.1 The DMBCM will report annually to the Portfolio Holder regarding compliance with the arrangements set out in this Planning Protocol and will identify any proposals for amendment in light of issues that have arisen, although any amendments would be required to go through the Council's formal process.

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- | 15.2 In particular, the DMBCM shall monitor the following:-
- (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
 - (b) the number of appeals upheld;
 - (c) any external inspection reports in respect of relevant issues;
 - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
 - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

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PROTOCOL ON PUBLIC SPEAKING RIGHTS AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

- a) The Strategic Planning Board and Planning Committees have to make decisions on the merits of each individual application, upon the basis of what is in the Development Plan and other material considerations. All written representations made to the Council will be taken into account in the Officers' written report to Committee, but this procedure allows members of the public and Councillors who are not members of the Strategic Planning Board or Committees to attend a Strategic Planning Board or Planning Committee meeting and speak for or against an application prior to the Strategic Planning Board or Planning Committees making a decision about a planning application or other item on their public agenda.

- b) The Strategic Planning Board usually meets at Macclesfield at 10.30 am every 3 weeks.

- c) The Planning Committees usually meet at the Crewe Municipal Buildings, Earle Street, Crewe, CW1 2BJ (Southern) and at the Macclesfield Town Hall, Market Place, Macclesfield, SK10 1DX (Northern) every 3 weeks.

NB. As both venues and start times of meetings are subject to change, it is important that members of the public check details on the relevant agenda (available a week before the meeting) or contact Democratic Services for confirmation.

- d) The agenda for each Strategic Planning Board or Planning Committee meeting is available five clear working days before the meeting and is available via the Council's website. Interested groups and individuals should keep themselves informed about when a planning application will come to the Strategic Planning Board or Planning Committees. A list of meetings can be obtained from the Council Offices and officers will be able to advise on the progress of applications.

- e) This protocol has been amended in light of the Code of Conduct for Members – 2012

PROCEDURE:

1. WHO CAN SPEAK AND FOR HOW LONG

1.1 The following individuals/groups are eligible to speak

- Objectors
- Applicants or their agents
- Supporters
- The relevant Parish or Town Council

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- Local representative groups/Civic Society (where not covered by any of the above categories)
NB. In order to be treated separately to individual objectors and entitled to a separate speaking slot, local groups are expected to have a formal Constitution.
- Ward Members if they are not on the Board/Committee provided that they do not have a Disclosable Pecuniary Interest
- Members who are not on the Board/Committee and are not Ward Members provided that they do not have a Disclosable Pecuniary Interest

1.2 Each person or group identified shall be entitled to speak for a period of up to three minutes. If there is more than one person wishing to speak from a particular group e.g. objectors, people are encouraged to consult each other and agree how to share their 3 minute slot. The Chairman has a general discretion which may be exercised to extend time limits, but this will normally only be exercised in exceptional cases. Where a listed building or conservation area application is involved, no extra time will normally be provided.

1.3 The site plan will be shown and may be referred to throughout the consideration of the application. In order to be fair to all parties, no other presentation aids will be permitted. Similarly, the circulation of information, photographs and/or plans at the meeting will not be allowed.

2 HOW TO SPEAK AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

2.1 It is necessary to inform, in writing (email, fax or letter), the Democratic Services Section of an intention to speak at a Strategic Planning Board or Planning Committee meeting no later than 12.00 noon the day before the day of the planning meeting. Any emails should be sent to Speakingatplanning@cheshireeast.gov.uk Members should note that they still need to register their intention to speak even if they have called in an application.

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2.2 Speakers are advised to arrive for meetings approximately 10-15 minutes prior to the start of the meeting in order to register with the Democratic Services Officer.

2.3 A statement to the Strategic Planning Board or Planning Committee should only refer to planning issues, for example:

- exterior design, size, appearance, layout, etc
- residential amenity
- highway safety
- character of the area
- trees and historic buildings

- planning policy (Local Plan/Structure Plan)
- Government guidance

2.4 The Strategic Planning Board or Planning Committee cannot take into account non-planning issues, for example:

- boundary disputes/property rights
- personal comments about any individual
- loss of property value or loss of view
- matters covered in other laws

2.5 Speakers are reminded of the law relating to slander. If, at the meeting, they say something which is not true about another person, they could be at risk of legal action. Further, Race Relations and Human Rights legislation will not allow any discriminatory comments, for example race, religious beliefs or disability.

2.6 The order of speaking at the meetings of the Strategic Planning Board and Planning Committees is as follows -

- Announcement of the item by the Chairman
- Introduction and description of the application by the Planning Officer, including any update of the Committee report and an oral report of any site visit and highlighting of the key issues
- Ward Councillor(s) (3 mins) (NB. In single Member Wards, the Ward Member may at his or her discretion delegate the right to speak to an alternative Member.)
- Members who are not on the Board/Committee and are also non-Ward Members (3 mins)
- Parish/Town Council representations (3 mins)
- Civic Society/Local Representative Groups (3 mins)
- Objectors' representations (3 mins)
- Supporters' representations (3 mins)
- Applicants' representations (3 mins)
- Further comments by Planning Officer
- Ward Councillor if a Member of the Board/Committee
- Board/Committee Members debate and decision taken

2.7 At the Chairman's discretion, members of the Strategic Planning Board or Planning Committee may ask, through the Chairman, any of the speakers listed above to clarify an issue of fact after their statement is concluded. The Chairman may also ask that questions of fact are answered by any speakers during the Members' discussion to clarify matters. Speakers will not be permitted to ask questions of the Strategic Planning Board or Planning Committee or other speakers or to interrupt the Members' discussion on an individual planning application. The Constitution (Paragraph 58 of the General Procedure Rules) provides Chairmen with powers to ensure good order during meetings.

- 2.8 In exceptional circumstances, the Chairman may (with the approval of the Board or Committee) extend the speaking period for some or all speakers or allow more speakers if appropriate. This power will be treated with caution for controversial or complex schemes and if additional time is granted to objectors, a similar allowance will be given to supporters and/or the applicant.

2.9 Members who have a Disclosable Pecuniary Interest in an application must not speak on it and must leave the planning meeting room as soon as the application is introduced. If a member has a non pecuniary private interest they should declare it and leave the planning meeting room but may exercise public speaking rights before doing so. If a member of the committee has pre determined an application they may exercise public speaking rights and then, ideally, leave the planning meeting room.

3 AFTER THE DECISION

- 3.1 Speakers are asked to respect the decision made by the Strategic Planning Board or Planning Committee during the course of the meeting. The Strategic Planning Board's or Planning Committee's decision is final, but the applicants do have the right to appeal to the Secretary of State if their application is refused or if conditions are attached which they do not like. Objectors do not have the right to appeal a decision to the Secretary of State but they can seek to have a decision quashed by an application to the High Court by way of judicial review.

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- 3.2 If an application is deferred to a future meeting for consideration, speakers will be required to register to speak for that meeting in accordance with this protocol.

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- 3.3 This scheme will be monitored and reviewed by the Strategic Planning Board annually.

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