CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 10th December 2014

Report of: David Malcolm – Principal Planning Manager

Title: Holmes Chapel Road, Congleton.

1.0 Purpose of Report

1.1 To consider the withdrawal of 4 reasons for refusal relating to planning application 14/0134C for a proposed development of land for up to 70 dwellings and associated works at Holmes Chapel Road, Congleton.

2.0 Decision Required

- 2.1 To agree to withdraw the reasons for refusal in respect of open countryside, housing land supply, important hedges, highways and landscape and to instruct the Principal Planning Manager not to contest the issues at the forthcoming public inquiry.
- 2.2 Resolve to enter into a Section 106 in respect of the forthcoming Appeal to secure the Heads of Terms set out below.

3.0 Background

- 1.2 Members may recall that on the 17th September 2014, Strategic Planning Board considered an application for a proposed residential development of up to 70 dwellings and associated works at Holmes Chapel Road, Congleton. (14/0134C refers)
- 3.1 The Application is the subject of an Appeal against non-determination and the Strategic Planning Board resolved to contest the Appeal on the following grounds:
 - 1. The proposed residential development is unsustainable because it is located within the Open Countryside, contrary to Policy PS8 and H6 of the Congleton Borough Local Plan First Review 2005, Policy PG5 of the emerging Cheshire East Local Plan Strategy Submission Version and the principles of the National Planning Policy Framework, which seek to ensure development is directed to the right location and open countryside is protected from inappropriate development and maintained for future generations enjoyment and use. As such it and creates harm to interests of acknowledged importance. The Local Planning Authority can demonstrate a 5 year supply of housing land in accordance with the National Planning Policy Framework and

- consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan, to the emerging Development Strategy and the principles of the National Planning Policy since there are no material circumstances to indicate that permission should be granted contrary to the development plan.
- 2. The proposal would result in loss of the best and most versatile agricultural land and given that the Authority can demonstrate a housing land supply in excess of 5 years, the applicant has failed to demonstrate that there is a need for the development, which could not be accommodated elsewhere. The use of the best and most versatile agricultural land is inefficient and contrary to Policy SE2 of the emerging Cheshire East Local Plan Strategy Submission Version and the provisions of the National Planning Policy Framework.
- 3. The proposed residential development, by virtue of the adverse impact that the proposals would have on the local landscape character thereby failing to recognise the intrinsic character and beauty of this site and the contribution to the wider landscape setting is contrary to Policies GR5, GR3 of the Congleton Borough Adopted Local Plan First Review 2005 and policies SE4,SE5 and SE6 of the emerging Cheshire East Local Plan Strategy Submission Version and the provisions of Paragraph 17 of the National Planning Policy Framework.
- 4. Insufficient information has been submitted to demonstrate that the proposal will have an acceptable impact upon the operation of the highway network in the vicinity in terms of safety and congestion impacts and lack of data in the Transport Assessment contrary to Policies GR9 and GR10 of the Congleton Borough Adopted Local Plan First Review 2005.
- 5. Insufficient information has been submitted to demonstrate that the scheme would provide for the retention and protection of existing trees of amenity value and no assessment of historic hedgerows has been provided therefore the applicant has failed to demonstrate that the proposal complies with Policies GR1 and NR1 of the adopted Congleton Borough Local Plan First Review 2005 and policy SE3 and SE5 of the emerging Cheshire East local Plan and the provisions of the National Planning Policy Framework.
- 3.4 Following submission of the Appeal a duplicate application (14/2685c refers), was submitted to the Council, and refused for the same reasons by the Strategic Planning Board on 15th October 2014. However, since that time the application has been the subject of ongoing negotiations with Officers which have led to the resolution of a number of the Board's previous concerns. These are explained in more detail below. In addition, the Local Plan Inspectors interim report has

been received which warrants the reconsideration of the other reasons for refusal.

Open Countryside & Housing Land Supply

- 3.2 Paragraph 47 of the National Planning Policy Framework requires that Council's identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements
- 3.3 This calculation of Five Year Housing supply has two components the housing requirement and then the supply of housing suites that will help meet it. In the absence of an adopted Local Plan the National Planning Practice Guidance indicates that information provided in the latest full assessment of housing needs should be considered as the benchmark for the housing requirement.
- 3.4 The current Housing Supply Position Statement prepared by the Council employs the figure of 1180 homes per year as the housing requirement, being the calculation of Objectively Assessed Housing Need used in the Cheshire East Local Plan Submission Draft
- 3.5 The Local Plan Inspector has now published his interim views based on the first three weeks of Examination. He has concluded that the council's calculation of objectively assessed housing need is too low. He has also concluded that following six years of not meeting housing targets a 20% buffer should also be applied.
- 3.6 Given the Inspector's Interim view that the assessment of 1180 homes per year is too low, we no longer recommend that this figure be used in housing supply calculations. The Inspector has not provided any definitive steer as to the correct figure to employ, but has recommended that further work on housing need be carried out. The Council is currently considering its response to these interim views
- 3.7 Any substantive increase of housing need above the figure of 1180 homes per year is likely to place the housing land supply calculation at or below five years. Consequently, at the present time, the Council is unable to robustly demonstrate a five year supply of housing land.
- 3.8 On the basis of the above, the Council at this time cannot reasonably continue to rely upon the first reason for refusal for this appeal.

Agricultural land

3.9 It is noted that Policy NR8 (Agricultural Land) of the Congleton Borough Local Plan has not been saved. Policy SE2 of the Submission Version of the Local Plan concerns the efficient use of land and states that development should safeguard natural resources including agricultural land.

3.10 In addition, the National Planning Policy Framework, states that:

"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".

- 3.11 A survey has been provided to by the applicant which indicates that the entire 3.9 hectares of the site is Best and Most Versatile Agricultural land. Previous Appeal decisions make it clear that in situations where authorities have been unable to demonstrate a 5 year supply of housing, the need for housing land outweighs the loss of agricultural land. However, given that Cheshire East has a greater than 5 year supply of housing, it is considered that this argument does not apply and that the loss of the agricultural land makes the scheme less sustainable since it results in a loss of such land in the open countryside when there is no necessity to do so in housing land supply terms.
- 3.12 The proposal is therefore contrary to policy SE2 of the emerging local plan and the provisions of the NPPF in respect of loss of agricultural land.
- 3.13 However, taking account of the planning balance in respect of the weight that has been attached to the loss of agricultural land in other appeal decisions it is not considered that there would be sufficient justification to maintain the reason for refusal as outlined above.

Landscape

- 3.5 The application site occupies an area of approximately 3.9 hectares and is located on the western edge of Congleton within land defined in successive Local Plans' including the Submission Version of the Core Strategy as being Open Countryside.
- 3.6 The 200 house Loachbrook Farm development on the site to the north of the application site has commenced and it is in the context of the finished Loachbrook development that this assessment has been undertaken by the Council's Landscape Architect.
- 3.7 However, it is also important to recognise that the area of built development within the Loachbrook Farm Development itself terminates some distance to the south of this site on the other side of the Loach Brook itself. The area of land within the Loachbrook Farm development site immediately adjacent to the application site is entirely open public space as designed within the Loachbrook Farm Development, which would be entirely open when viewed from Holmes Chapel Road.
- 3.8 The Loachbrook Inspector identified the (now de-designated) Scheduled Ancient Monument as being important feature within the

landscape. This feature is a well tree'd mound which within the context of the current proposals lies to the west of the proposed housing.

- The submission includes a Landscape and Visual Assessment (LVA). The LVA states that the methodology used encompasses the 'Guidelines for Landscape and Visual Impact Assessment' (GLVIA) published by the Institute of Environmental Assessment and the Landscape Institute (2002) and 'Landscape Character Assessment. Guidance for England and Scotland' (LCA) published by the Countryside Agency and Scottish National Heritage 2002. The baseline conditions are based on Natural England's Countryside Character Assessment defining the site as Character Area 61; Shropshire, Cheshire and Staffordshire Plain. The study also refers to the Cheshire Landscape Character Assessment (adopted in 2008) which identifies the site as being located in Landscape Type 10: Lower Farms and Woods, the site is also located within the Brereton Heath Character Area: LFW2.
- 3.10 The site description identifies that the surrounding landscape is predominantly pastoral with some areas of woodland, as well as the tree covered mound, formerly a Scheduled Ancient Monument, which is acknowledged to be 'an important element in the landscape. Its distinctive form can be clearly seen from the surrounding area and forms part of the view upon arrival from Congleton from the west'.
- 3.11 The Councils Landscape Architect has considered the detail of the application Landscape and Visual Character Assessment.
- 3.12 The assessment identifies that there would be a moderate/major adverse effect upon the site's landscape character at the construction phase. The Landscape Architect agrees with this
- 3.13 The assessment identifies that upon completion there would be a minor adverse landscape effect upon this localised part of the Brereton Character Area, this appears to be based on consideration of the already approved site to the south having an impact on the immediately surrounding landscape, and because the assessment considers that this landscape contains no significant features. This point is contested.
- 3.14 The assessment correctly identifies that 'the existing character of the site is dominated by its current use as agricultural farmland' and has also identified the former Scheduled Ancient Monument, a mound approximately 130m long and 25m wide, which 'forms an important element in the landscape. Its distinctive form can be clearly seen from the surrounding area and forms part of the view upon arrival into Congleton from the west'. This would appear to indicate that it is indeed a 'significant feature'. Nevertheless, the assessment notes that the overall significance of effects on the local landscape will be

- minor adverse. It is considered that it would in fact be more adverse than this.
- 3.15 As part of the visual assessment a number of viewpoints have been identified (Viewpoints 1- 11). At the construction phase the assessment identifies that there would be a moderate to major adverse visual effect. The Landscape Architect concurs with this assessment.
- 3.16 Upon completion the assessment identifies that for those residential receptors on Holmes Chapel Road that there would be a negligible/minor to moderate/major significance. The Visual effects table notes that this would reduce to Moderate Adverse.
- 3.17 It is accepted that here are a small number of properties on Holmes Chapel Road, the Councils Landscape Architect is of the opinion that the significance would be moderate/major for most of these properties and would remain so upon completion.
- 3.18 The assessment also identifies that the operation visual effect on public rights of way will be moderate adverse and will remain so, and will also be minor adverse, and remain so for users of vehicles along Holmes Chapel Road. It should be noted that there is a footway along Holmes Chapel Road, the visual effects for walkers along this route would be, and would remain greater than minor adverse. Similarly, Sandy Lane is assessed as having a moderate adverse visual effect, reducing to minor adverse. Sandy Lane is a recognised cycle route and the Landscape Architect considers that the visual effect would remain greater than minor adverse.
- 3.19 The submitted Landscape and Visual Impact assessment identifies that relevant policies in the Congleton Borough Local First review are Open Countryside PS8 and Landscape GR5. Policy PS8 identifies suitable developments and that they should preserve the openness of the countryside and maintain or enhance its local character (II)
- 3.20 The submitted Landscape and Visual Impact Assessment notes that the surrounding landscape is predominantly pastoral with some areas of woodland, as well as the tree covered mound, formerly a Scheduled Ancient Monument, which is acknowledged to be 'an important element in the landscape and also notes that the most significant changes arising to the site's landscape character during the construction process would result from the change in land use from agricultural to residential, and that this would 'cause a noticeable change upon entrance to the town'.
- 3.21 The assessment notes that there will be a moderate major adverse landscape effect at construction and that this will remain as minor adverse upon completion. The assessment notes that the development will have an adverse landscape effects and that this will remain adverse, also acknowledging the most significant change, that of

- agricultural land to residential. This is considered to be contrary to Policy PS8.
- 3.22 Policy GR5 notes that Development will be permitted only where it respects or enhances the landscape character of the area. Development will not be permitted which in the view of the Borough Council, would be likely to impact adversely on the landscape character of such areas or would unacceptably obscure views or unacceptably lessen the visual impact of significant landmarks or landscape features when viewed from areas generally accessible to the public, as a result of the location, design or landscaping of the proposal. Particular attention will be paid to the protection of features that contribute to the setting of urban areas.
- 3.23 The landscape effects have been described and as adverse which is considered to be contrary to Policy GR5. The Councils Landscape Architect also considers that notable features also appear to have been undervalued in the landscape assessment submitted.
- 3.24 In addition the visual assessment identifies that the visual effects will be moderate adverse and remain so for residential receptors along Holmes Chapel Road and also be moderate adverse, and remain so for users of the existing public footpath between Sandy Lane and Sandbach Road and that there will also be adverse visual effects for users of Sandy Lane and of Holmes Chapel Road. Clearly the acknowledged adverse landscape character and adverse visual effect are also contrary to Policy GR5.
- 3.25 The Pre-Submission Core Strategy (November 2013) recognises in Policy SE4 the high quality of the built and natural environment is recognised as a significant characteristic of the Borough and that all development should conserve the landscape character and quality and where possible, enhance and effectively manage the historic, natural and man-made landscape features that contribute to local distinctiveness of both rural and urban landscapes.
- 3.26 The acknowledged adverse landscape and visual effects will also be contrary to policy SE4 and will be a significant weight against the sustainability of the proposals in the overall planning balance.

Highways

Highway Safety

- 3.27 The accident data has been considered and it is agreed between the Strategic Highways Manager and the Applicant that there are no existing highway safety issues along the site frontage with Holmes Chapel Road.
- 3.28 It is also agreed that the visibility attributes and operation of the residential driveways located opposite the site along the northern edge

of Holmes Chapel Road (as mentioned in the highway officer's consultation response) are not of concern.

Site Access

- 3.29 It is agreed that the simple priority form of junctions and achievable visibility splays which provide 160m lateral visibility along the section of Holmes Chapel Road which is subject to a 50 mph speed limit and 120m lateral visibility along 40 mph sections are acceptable.
- 3.30 The locations of the two proposed site accesses as shown in the "Development Framework' plan submitted as part of the planning application (Ref: 5912-L-03 rev E) are acceptable.
- 3.31 There are no highway capacity issues with regards to the proposed site junctions.

Baseline Traffic Conditions

- 3.32 It is agreed that the baseline traffic conditions set out in the transport assessment submitted alongside the application "Proposed Residential Development, Holmes Chapel Road, Congleton, Transport Assessment", 18 December 2013, A084622 are acceptable.
- 3.33 The committed developments set out in the transport assessment and listed below for ease of reference represent the known committed development traffic at the time of the application.
 - Albany Mill, Canal Street, Congleton (residential, 43 units)
 - o Bath Vale Works, Bath Vale Congleton (residential, 130 units)
 - Bossons Mill I Brooks Mill, Congleton (residential, 60 units)
 - Danebridge and Providence Mills, Congleton (residential, + 15 units)
 - Loachbrook Farm, Congleton (residential, 200 units)
 - Congleton Business Park extension (office, +6,436 sq m)
- 3.34 It is agreed that traffic associated with these committed developments should be included in future forecasts to recognise traffic growth from development.

Traffic Generation

3.35 The trip generation rates used to calculate the total development traffic within the transport assessment submitted alongside the application "Proposed Residential Development, Holmes Chapel Road, Congleton, Transport Assessment", 18 December 2013, A084622) are acceptable.

Traffic Distribution

3.36 It is agreed between the parties that the traffic distribution as adopted in the submitted transport assessment is acceptable to assess the impact of development traffic.

Traffic Impact

- 3.37 The Local Highway Authority maintain concerns with respect to traffic impact on the A34 corridor and is undertaking further modelling work using VISSIM. However, the applicant and the Strategic Highways Manager are continuing dialogue on this point and the Strategic Highways Manager is confident that the matter will be resolved. As and when further agreement has been reached an update will be provided to Members
- 3.38 It is agreed that traffic impact arising from the development at all other areas of the local highway network is acceptable.
- 3.39 On this basis, subject to a satisfactory outcome of the VISSIM sensitivity test, it is considered that all of the previous highway concerns have now been overcome.

Trees & Hedges

- 3.40 The Council's Landscape Officer examined the proposals and commented that discrepancies in respect of access points appear to have been clarified with two similar points shown on Tree retention plan detailed access figure 4 ref. 5912-A-04 and Hourigan Connolly Proposed Access plan 3.2 A
- 3.41 Plan 5912-A-04 appears to indicate that the two proposed access points and associated visibility splays whilst requiring removal of sections of roadside hedge, would not require the removal of trees. On the plan, the proposed combined footway/cycle way has been set back further into the site than indicated previously. The covering letter suggests the cycle /footway can be secured at reserved matters stage and that if required with the proposed landscape buffer, no dig construction could be used in the root protection area of retained trees. If this element of the layout is not to be determined at this stage, full details would have to be given careful consideration at reserved matters stage.
- 3.42 Evidence provided confirms that the roadside hedge and a hedge running at right angles to the road both qualify as 'Important' under the Hedgerow Regulations 1997 due to historic value.
- 3.43 In this case, it is the historic line of the hedgerow which is considered to be important rather than the species within it or the habitat which it

creates. It is acknowledged that only sections of the hedgerow need to be removed, and that, as its line follows that of the road, it could still be traced in the landscape following the implementation of the development. Notwithstanding this point, there are no overriding reasons for allowing the development and it is considered that there are suitable alternatives for accommodating the necessary housing supply. Therefore, the development fails to comply with all of the tests within Policy NR3 and it is a material consideration which weighs against the proposal in the overall planning balance.

4.0 Planning Balance and Conclusion.

- **4.1** The proposal is contrary to development plan policies PS8 (Open Countryside) GR5 (Landscape) and NR3 (Nature Conservation) and therefore the statutory presumption is against the proposal unless material considerations indicate otherwise.
- 4.2 The most important material consideration in this case is the NPPF which 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.
- 4.3 The development plan is not "absent" or "silent". The relevant policies are not out of date because they are not time expired and they are consistent with the "framework" and the emerging local plan. Policy GR5 is not a housing land supply policy. However, Policy PS8, whilst not principally a policy for the supply of housing, (its primary <u>purpose</u> is protection of intrinsic character and beauty of the countryside,) it is acknowledged has the <u>effect</u> of restricting the supply of housing. Therefore, where a 5 year supply cannot be demonstrated, Policy PS8 can be considered to be out of date in terms of its geographical extent and the boundaries of the area which it covers will need to "flex" in some locations in order to provide for housing land requirements. Consequently the application must be considered in the context of paragraph 14 of the Framework, which states:

At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking......For decision taking means:

- approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - n 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."
- 4.4 It is therefore necessary to consider whether the proposal constitutes "sustainable development" in order to establish whether it benefits from the presumption under paragraph 14. The cases of Davis and Dartford have established that that "it would be contrary to the fundamental principles of the NPPF if the presumption in favour of development, in paragraph 14, applied equally to sustainable and non-sustainable development. To do so would make a nonsense of Government policy on sustainable development". In order to do this, the decision maker must reach an overall conclusion, having evaluated the three aspects of sustainable development described by the framework (economic, social and environmental) as to whether the positive attributes of the development outweighed the negative in order to reach an eventual judgment on the sustainability of the development proposal. However, the Dartford case makes clear that this should done simultaneously with the consideration of whether "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" as required by paragraph 14 itself and not on a sequential basis or as a form of preliminary assessment.
- 4.5 In this case, the development would provide market and affordable housing to meet an acknowledged shortfall. The proposal would also have some economic benefits in terms of jobs in construction, spending within the construction industry supply chain and spending by future residents in local shops.
- 4.6 Balanced against these benefits must be the loss of a significant area of best and most versatile agricultural land. All of the site will be lost from agriculture, whether built upon or subject to open space. However, much of Cheshire East comprises best and most versatile land and use of such areas will be necessary if an adequate supply of housing land is to be provided. Furthermore, previous Inspectors have attached very limited weight to this issue in the overall planning balance.
- 4.7 The proposals would also result in the loss of part of an important hedgerow, although only a small gap would need to be created in order to form the access and the historic line could still be traced in the landscape, provided that the footpath and cycleway were constructed behind the hedge. This could be secured by condition.
- 4.8 As with agricultural land, in similar cases at Appeal, Inspectors, whilst concluding that the loss of important hedgerows goes against proposals in the overall planning balance, have not found this issue to be determinative.

- 4.9 Previous highways and tree concerns have now been resolved and can be addressed through appropriate conditions, and it is no longer considered that these provide sustainable reasons for refusal.
- 4.10 It is also necessary to consider the negative effects of this incursion into Open Countryside by built development effects that would be all the more marked in the locality given the conclusions of the Landscape Architect. Nevertheless, the change in the housing land supply position significantly alters the way in which this should be viewed in the overall planning balance, and it is not considered that this is sufficient, either individually or when taken cumulatively with the other negative aspects of the scheme to be sufficient to outweigh the benefits in terms of housing land supply in the overall planning balance.
- 4.11 On the basis of the above, it is considered that the Council should withdraw its putative reasons for refusal and agree with the Appellant not to contest the issue at Appeal, subject to the imposition of appropriate conditions and the Appellant agreeing to the necessary Section 106 contributions.

5.0 Recommendation

- **5.1** To agree to withdraw the reasons for refusal in respect of open countryside, housing land supply, important hedges, highways and landscape and to instruct the Principal Planning Manager not to contest the issues at the forthcoming public inquiry.
- **5.2** Resolve to enter into a Section 106 in respect of the forthcoming Appeal to secure the Heads of Terms set out below.
 - Affordable housing:
 - 30% of all dwellings to be affordable (65% social or affordable rented and 35% intermediate tenure)
 - A mix of 1, 2, 3 bedroom and other sized properties to be determined at reserved matters
 - units to be tenure blind and pepper potted within the development, the external design, comprising elevation, detail and materials should be compatible with the open market homes on the development thus achieving full visual integration.
 - constructed in accordance with the Homes and Communities Agency Design and Quality Standards (2007) and should achieve at least Level 3 of the Code for Sustainable Homes (2007).
 - no more than 50% of the open market dwellings are to be occupied unless all the affordable housing has been provided, with the exception that the percentage of open market dwellings that can be occupied can be increased to 80% if the affordable housing has a high degree of pepper-potting and the development is phased.

- developer undertakes to provide the social or affordable rented units through a Registered Provider who are registered with the Homes and Communities Agency to provide social housing.
- Provision of minimum of 1680m2sqm and of shared recreational open space and children's play space to include a LEAP with 5 pieces of equipment
 - Private residents management company to maintain all on-site open space, including footpaths and habitat creation area in perpetuity
 - Commuted Sum (to be negotiated) towards improvement of the Waggon and Horses Junction and the improvements at Barn Road roundabout or other measures that will provide similar congestion relief benefits to the A34 corridor through Congleton amount to be confirmed
 - Commuted sum of £40000 to upgrade existing Puffin Crossing to Toucan Crossing
 - Commuted Sum payment in lieu of health related provision in accordance with the NHS Health Delivery Plan for Congleton of £68,000.

6.0 Risk Assessment and Financial Implications

- 6.1 There is a risk that if the Council continues to pursue the Appeal, in the light of the Local Plan Inspectors Interim findings when the outstanding information in respect of trees and highways has now been received and the issues can be adequately dealt with via conditions and Section 106 obligations, a successful claim for appeal costs could be made against the Council on the grounds of unreasonable behaviour.
- 6.2 There would also be an implication in terms of the Council's own costs in defending the reasons for refusal.
- 6.3 There are no risks associated with not pursing the reasons for refusal at Appeal.

7.0 Consultations

Borough Solicitor

7.1 The Borough Solicitor has been consulted and recommends the withdrawal of the reasons for refusal.

Landscape Officer and Highway Engineer

7.2 The Council's Landscape Officer and Highway Engineer have been consulted on the withdrawal of the reasons for refusal.

8.0 Reasons for Recommendation

8.1 To ensure that an approved scheme for essential affordable housing within the rural area is delivered.

For further information:

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Background Documents:

Applications 14/0134C