

# CHESHIRE EAST COUNCIL

## SOUTHERN PLANNING COMMITTEE REPORT

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**Date:** 25<sup>th</sup> February 2015

**Report of:** Daniel Evans – Principal Planning Officer

**Title:** Update following the resolution to approve application 14/4300N subject to a S106 Agreement

**Site:** Lodge Farm Industrial Estate, Audlem Road, Hankelow, Cheshire

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### 1.0 Purpose of Report

1.1 Planning application 14/4300N was determined by the Southern Planning Committee on 17<sup>th</sup> December 2014. This report is to consider the amendment to the S106 Heads of Terms within the Southern Planning Committee resolution for this application.

1.2 The minutes from the meeting are as follows:

*(a) That, for the reasons set out in the report and the update report, the application be APPROVED 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. Provision of Public Open Space and a LEAP to be maintained by a private management company*

*3. Secondary School Education Contribution of £49,028*

*4. Medical Infrastructure Contribution of £21,319, to be paid prior to commencement*

*And the following conditions:-*

- 1. Standard Outline*
- 2. Submission of Reserved Matters*
- 3. Time limit for submission of reserved matters*
- 4. Approved Plans*
- 5. Construction Method Statement for any piling works*
- 6. Dust control measures*
- 7. Contaminated land*
- 8. Bat mitigation measures*
- 9. Prior to undertaking any works between 1st March and 31st August in any year, a detailed survey is required to check for nesting birds. A report of the survey and any mitigation measures required to be submitted and agreed by the LPA.*
- 10. Prior to the commencement of development the applicant to submit detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds. Such proposals to be agreed by the LPA. The proposals shall be permanently installed in accordance with approved details.*
- 11. The reserved matters application shall include retention of the boundary hedgerows*
- 12. Submission of an updated badger survey in support of any future reserved matters application.*
- 13. Submission of a Construction Method Statement including Reptile mitigation measures in support of any future reserved matters application.*
- 14. Any reserved matters to be supported by proposals for the ecological enhancement of the proposed public open space area.*
- 15. Submission of a habitat management plan.*
- 16. Reserved matters application to include details of existing and proposed levels*
- 17. No development should commence on site until such time as detailed proposals for disposal of surface water and foul water have been submitted to and agreed in writing by the LPA*

*(b) That, in order to give proper effect to the Committee's intentions and without changing the substance of the decision, authority be delegated to the Head of Strategic and Economic Planning, in consultation with the Chairman (or in her absence the Vice Chairman) of Southern Planning Committee, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.*

## **2.0 Decision Required**

- 2.1 Further negotiations have now taken place with the applicant who has questioned the need for the S106 Heads of Terms underlined above which relate to a contribution towards medical infrastructure and secondary school education. This follows a recent appeal decision at

Audlem Road, Audlem (13/2224N) which was issued on 7<sup>th</sup> January 2015.

### **3.0 Background**

- 3.1 The application site is relatively flat and extends to 0.93 hectares and is located within the open countryside as defined by the Crewe and Nantwich Replacement Local Plan 2011.
- 3.2 The site is located to the rear of existing ribbon development which fronts Audlem Road. The site includes a number of utilitarian buildings which form Lodge Farm with an area of external storage to the north-west. The site has an existing access to the north adjacent to the boundary of a dwelling known as 'Daisy Cottage'. The site is bound by fencing to the residential properties to the south and east with hedgerow to all other sides.
- 3.3 The site was last occupied by a conservatory company.

### **4 Proposed Development**

- 4.1 14/4300N is an outline application for up to 22 dwellings (23 dwellings per hectare). Access is to be determined at this stage and all other matters would be reserved.
- 4.2 The access would be via a single priority junction off Audlem Road.
- 4.3 The indicative plan shows that open space would be provided on this site together with a LEAP.

### **5 Additional Consultation Responses**

**CEC Education:** In light of the appeal decision CEC Education have produced further research for forecasts for Brine Leas. This involved placing children who currently attend out of catchment (-287 at Brine Leas) back in their own catchment schools (+51 Brine Leas). Including developments that have been granted planning permission which impact on Brine Leas within 3 miles and including the 3 secondary children generated from Lodge farm, a shortfall remains in the forecast for Brine Leas. CEC Education believe that the contribution will be required.

**NHS:** The NHS has no further comments to make as the NHS strategic plan is not yet in place. The NHS has commissioned a plan but it will not be ready or available to refer to in relation to this planning application.

### **6 Officer Comment**

Education Contribution

- 5.1 In this case the S106 Heads of Terms include a contribution of £49,028 towards secondary school education (Brine Leas High School) which would assist in accommodating the 3 secondary school aged pupils from this development. However at the recent appeal decision at Audlem Road, Audlem (13/2224N) the proposed contribution towards secondary school education (Brine Leas) was disputed by the applicant. As part of her decision the Inspector in this case found that:

*'The Council contend that the Brine Leas secondary school, located some 4 miles from the appeal site, is oversubscribed. The development would only generate a demand for 16 secondary spaces. The future children of the development would apply for places in the same way as other children but being within the catchment area they would receive some priority over outside catchment area children.'*

*In this case there seems to be little doubt that the effect of the introduction of new children from the development to Brine Leas would be to displace out of catchment area children wishing to come to the school.*

*However, I note that about a mile further away at Malbank School the EPDS study indicates 317 surplus places with an additional 364 extra places available at Shavington High School. However, these two schools are not as popular as Brine Leas their OFSTED performance being less favourable. As a result at Brine Leas nearly 39% of children on roll live outside the catchment area.*

*The proposed contribution is not to accommodate the 16 children from the development but to accommodate 16 new children without impacting negatively on the existing pattern of parental preference in the area.*

*The Council has a statutory duty to comply with parental preference unless it would prejudice the provision of efficient education and the efficient use of resources and to increase opportunities for parental choice.*

*In considering applications for entry to Brine Leas, the school can assess the impact of increasing its intake on the provision of efficient education and use of resources. Some of those children applying will almost certainly live in the catchment area for the other nearby schools where there is significant capacity.*

*Parental preference may be the responsibility of the Council but not of the appellant company. The raw data indicates Brine Leas school could overtime accommodate the 16 children generated by the development. Presumably the Council are working to improve standards at the other two nearby schools which would seem to be the obvious solution to changing parental preference. This would utilise available school places without the need for children to travel to schools outside of their own catchment area.*

Therefore, it is for this reason that I consider it has not been shown that the contribution towards education is necessary or justified to mitigate the effects of the new development in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. Consequently, it is not reasonable to take this aspect of the UU into account'

- 5.2 However since the determination of this appeal the CEC Education Department have carried out further work in terms of the forecasts for Brine Leas and this includes placing children back in their own catchment areas and an updated assessment of approved developments within the area. On this basis the CEC Education Department consider that the contribution is still required to mitigate the impact of this development. This is accepted and the contribution will be retained within the Heads of Terms.

#### Medical Infrastructure

- 5.3 In this case the S106 Heads of Terms include a contribution of £21,319 towards medical infrastructure at Audlem. However at the recent appeal decision at Audlem Road, Audlem (13/2224N) the proposed contribution towards medical infrastructure was disputed by the applicant. As part of her decision the Inspector in this case found that:

*'There is no doubt that the proposed development would generate a need for local health services. The existing GP surgery in Audlem is working at or close to capacity and the issue between the parties is whether the identified contribution would go directly to meeting local needs. The NHS Strategic Plan has a wider more general remit than identifying specific projects in known areas of growth. In fact at the hearing it became apparent that the Health Strategic Plan (SP), which is still in the early stages of formulation, is working steps behind the CELP and until the full site allocations process has been completed the localised detail of the NHS plan cannot be finalised.*

*The current situation, were a local project to be promoted such as an extension to the local GP surgery, would be that a business case would be submitted to NHS England and this would be considered taking into account the priorities of the wider NHS. It would also have to be weighed against the generality of the emerging SP as it may be more efficient to provide a surgery elsewhere to increase capacity.*

*Paragraph 204 of the Framework sets out that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. This is in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations.*

At present, there is no specified project or area of service improvement which has been identified which could be considered to be directly related to the development. In addition, there seems to be a lack of clarity about how the decision making process on potential schemes might be dealt with. There is also an issue in relation to the paying across of any capital sum which might increase capital values of premises, the subject of improvement, were that to be a benefiting project; and how the appellant company might be credited for this. Therefore, with the SP progressing slowly I heard nothing that gave me confidence that the contribution requested was likely to be spent in accordance with the terms of the Framework and the CIL Regulations. For this reason I do not consider it reasonable to take this aspect of the UU into account. In reaching this view I have considered the wording of the UU that the contribution would be used for primary and community healthcare services for the residents of Audlem to be provided in the vicinity of the village. However, the lack of a NHS plan where the available funding would be appropriately targeted is a serious flaw which undermines any justification for the contribution'

- 5.4 In this case there has been no change in the position and no scheme of improvements to Audlem Surgery has been identified. Based on this and the outcome of the appeal which is quoted above it is not considered that the contribution is CIL compliant and this should be removed from the Heads of Terms.

## **6 Conclusion**

- 6.1 On the basis of the above, it is considered that the changes to the Heads of Terms in relation to the deletion of the medical provision contribution is acceptable. The education contribution will be retained.

## **7 Recommendation**

- 7.1 Point 4 of the Heads of Terms be removed from the committee resolution.

## **8 Financial Implications**

- 8.1 There are financial implications associated with a possible appeal should this recommendation not be accepted.

## **9 Legal Implications**

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

## **10 Risk Assessment**

- 10.1 There are no risks associated with this decision.

## **11 Reasons for Recommendation**

11.1 For the purpose of negotiating and completing a S106 Agreement for application 14/4300N and to issue the planning permission.

***For further information:***

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***Background Documents:***

- *Application 14/4300N*