

Application No: 15/3868N

Location: 144, Audlem Road, NANTWICH, Nantwich, Cheshire, CW5 7EB

Proposal: Outline permission for Residential development for up to 104 dwellings (Use Class C3) and land for expansion of Brine Leas School (Use Class D1)

Applicant: Wainhomes (North West) Ltd

Expiry Date: 23-Nov-2015

### **SUMMARY:**

The proposed development would be contrary to Policy NE.2 and RES.5 and the development would result in a loss of open countryside. However as Cheshire East cannot demonstrate a 5 year supply of deliverable housing sites and the presumption in favour of sustainable development applies at paragraph 14 of the Framework where it states that LPA's should grant permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits from it, when assessed against the Framework as a whole; or specific policies in the Framework indicate development should be restricted.

The principle of development, having regard to the northern portion of the site has previously been accepted under outline application 13/1223N, to which the appeal was allowed on August 2014.

The development would provide benefits in terms of affordable housing provision, delivery of housing, POS provision and LEAP and significant economic benefits through the provision of employment during the construction phase, new homes and benefits for local businesses in Nantwich.

The adverse impacts of the development would be the loss of open countryside and loss of agricultural land.

Having regard to the above benefits of the scheme including housing land supply and the Inspector's previous decision to application 13/1223N, it is considered that the adverse impacts in approving this development would not significantly and demonstrably outweigh the resultant benefits.

### **SUMMARY RECOMMENDATION:**

Approve subject to conditions

### **SITE DESCRIPTION:**

The application site is to the southern edge of Nantwich and mostly to the rear of a row of housing along Audlem Road, the A529. The majority of the site is semi-improved grassland. The gardens of the housing lie to the east, while the grounds and extensive playing fields of

Brine Leas High School and Weaver Vale Primary School lie to the north and west respectively. Elliots Wood is located to the south of the site.

Other than the access proposed through No 144 Audlem Road, the site lies outside of the settlement boundary as defined in the Borough of Crewe and Nantwich Replacement Local Plan 2011.

The proposal would involve the demolition of the dwelling at No 144 to allow for a new access to the site. The A529, reportedly an historic turnpike road between Chester and London, approaches Nantwich from the south. There is housing to both sides of Audlem Road, a small church and a public house, beyond which, traffic signals mark the junction with the A5301 and the road then leads, via the B5341, into the centre of Nantwich, which offers a range of facilities and transport options.

Public footpaths No 1 and No 28, run to the west of the site and improvements are proposed to these footpaths as part of the scheme.

### **PROPOSAL:**

The proposal seeks outline planning permission and approval for access for 104 no. dwellings.

Access would be obtained via No 144 Audlem Road, for which permission has already been granted to demolish the existing dwelling and create a new access under outline application 13/1223N.

The proposal also seeks permission to change the use of the land in the northern portion of the site to use class D1, to become part of the Brine Leas school site.

### **RELEVANT HISTORY:**

14/4588N - Reserved matters application for the erection of 33 dwellings with associated works to include landscaping following approved outline 13/1223N. Approved 02<sup>nd</sup> February 2015.

13/4603N - Outline application for up to 40 dwellings (resubmission of 13/1223N). Refused 20<sup>th</sup> March 2014.

13/1223N – Outline application for up to 40 dwellings. Appeal allowed 04<sup>th</sup> August 2014.

### **NATIONAL & LOCAL POLICY**

#### **National Policy:**

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

Of particular relevance are paragraphs:

17, 49 & 55

#### **Development Plan:**

The Development Plan for this area is the Borough of Crewe and Nantwich Local Plan 2011.

The relevant Saved Policies are: -

NE.2 (Open countryside)

NE.5 (Nature Conservation and Habitats)

NE.9: (Protected Species)

NE.20 (Flood Prevention)

BE.1 (Amenity)

BE.2 (Design Standards)

BE.3 (Access and Parking)

BE.4 (Drainage, Utilities and Resources)

RES.5 (Housing in the Open Countryside)

RES.7 (Affordable Housing)

RT.3 (Provision of Recreational Open Space and Children's Playspace in New Housing Developments)

RT.9 (Footpaths and Bridleways)

TRAN.3 (Pedestrians)

TRAN.5 (Cycling)

The saved Local Plan policies are consistent with the NPPF and should be given full weight.

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

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

PG2 – Settlement Hierarchy

PG5 - Open Countryside

PG6 – Spatial Distribution of Development

SC4 – Residential Mix

SC5 – Affordable Homes

SD1 - Sustainable Development in Cheshire East

SD2 - Sustainable Development Principles

SE3 – Biodiversity and Geodiversity

SE5 – Trees, Hedgerows and Woodland

SE 1 - Design

SE 2 - Efficient Use of Land

SE 4 - The Landscape

SE 5 - Trees, Hedgerows and Woodland

SE 3 - Biodiversity and Geodiversity

SE 13 - Flood Risk and Water Management

SE 6 – Green Infrastructure

IN1 – Infrastructure

IN2 – Developer Contributions

### **Supplementary Planning Documents:**

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

**CONSULTATIONS:**

**Highway Authority:** No objection subject to a condition to secure the submission of a Travel Plan to the satisfaction of Cheshire East Council and S.278 Agreement for the provision of a safe and suitable pedestrian crossing facility.

**CEC Environmental Health:** Object to the application given there is no AQA submitted in support of the application. This has subsequently been provided and has been submitted to the Environmental Health Officer for consideration. Comments would be provided as an update. Conditions regarding the submission of an Environmental Management Plan and contaminated land are required.

**Strategic Housing:** No objection based on the applicants confirmation that 30% affordable housing would be provided on site, 65% as affordable and 35% as intermediate tenure.

**Flood Risk:** No objection subject to conditions to secure a surface water disposal scheme.

**United Utilities:** No objection subject to conditions to secure disposal of foul and surface water.

**CEC Education:** A contribution of £478,408.84 would be required given the proposal is expected to generate 20 primary school children and 16 secondary school children. CEC Education object to the application given this contribution has not been agreed by the applicant.

**Public Rights of Way Network:** No objection subject to conditions requiring the submission of a management plan, on-site improvements to Public Footpath No 1 Batherton. Off site improvements to Public Footpath No 28 Nantwich have previously been agreed under approved application 13/1223N and a contribution of £30,000 would be required as part of the S.106.

**Ansa (Public Open Space):** No objection.

**Stapeley Parish Council:** Object to the application. Concerns raised include safety concerns for access/egress to and from the site, the application is premature as the land forms part of the Neighbourhood Plan area, the Traffic Assessment supporting the application was carried out at one peak time, future potential for further expansion around the site, change in character of the parish from rural to urban, loss of agricultural land.

**Nantwich Town Council:** General observations made. Comments raised include the site was not included in the Nantwich Town Strategy or the original version of the Local Plan. Concerns raised regarding the proposed access.

**REPRESENTATIONS:**

33 representations received. 32 objecting to the proposal and 1 in support of the proposal.

Letter of support

Approval of this application would provide additional land for Brine Leas School which will enable the school to extend and provide new accommodation for pupils.

## Objections - Local Residents

### ***Principle of Development and Housing Need***

- The developer has not made a case for local housing need.
- There are already too many planning applications for building houses on agricultural land/green belt in and around Nantwich.
- Inappropriate use of valuable agricultural land.
- This site is located on greenfield land outside the settlement boundary which is designated as Open Countryside. It is therefore contrary to saved policy NE.2 of the Borough of Crewe and Nantwich Replacement Local Plan (CNRLP) 2011
- The development of the site would result in the loss of agricultural land.
- It is a greenfield site which should be preserved
- Nantwich has exceeded its housing allocation
- The development is premature as work on a definitive Housing Needs Assessment for the local area is currently work in progress.
- Nantwich as a whole, has exceeded its housing numbers allocation
- The field released to the school will not be returned to agricultural use
- The Inspector stated in the previous decision that *'There is a direct connection to the agricultural land to the south, which suggests that this could be a viable field to remain in productive use'*

### ***Highways and traffic***

- Narrow / restricted movement up and down the street caused by parked cars
- New houses will result in additional traffic
- Danger turning right from new access
- Proposal to build a footway makes a narrow road even narrower
- Traffic Congestion
- Issues at school time
- Narrow access will create accidents
- Proposed access would be insufficient and unsafe
- No provision in the outline application for alternative parking spaces, creating difficulty for existing residents to park outside their home
- The Transport Assessment has not demonstrated that the proposed access road is fit for purpose
- Regular HGV movements along the road to service the milk and farming industry
- Poor visibility at the access

### ***Infrastructure***

- The development would result in a strain on the town's facilities including schools, doctors, dentists, surgeries, hospital and emergency vehicles
- The field would not be strong enough to build on for another 35 years, since the new sewers were fitted some 11 years ago
- Gifting land to the school is not a valid planning reason to approve the application

### ***Ecology and Wildlife***

- Development of the site will have an adverse affect on the ecology and wildlife in the area.

- Development would result in the loss of trees

### **Other**

- The beauty of Nantwich is being spoilt by unnecessary development
- There seems to be no sense in further destruction of the character of Nantwich, for unnecessary housing purely to line developers pockets.
- Will affect existing householder's privacy and noise levels
- Local schools and infrastructure cannot support further growth
- Adverse impact on existing levels of residential amenity for existing occupiers, including overshadowing and overlooking

## **APPRAISAL**

### **Main Issues**

Given that the application is submitted in outline, the main issues in the consideration of this application are the suitability of the site for residential development, having regard to matters of principle of development, sustainability, loss of agricultural land, affordable housing, contaminated land, air quality, noise impact, drainage and flooding, design issues, open space, rights of way, amenity, landscape impact, trees and forestry, ecology, education, highway safety and traffic generation.

### **Principle of Development**

The application site is a Greenfield site lying outside the settlement boundary. This represents a departure from adopted local plan policy.

The northern portion of the site has outline planning permission for up to 40 no. dwellings, granted on appeal under 13/1223N on 04<sup>th</sup> August 2014. The principle for residential development in the northern portion of the site has therefore already been established.

Nevertheless, this application proposes a larger residential scheme for 104 no. dwellings which extends southwards of the approved scheme.

The proposed development would not fall within any of the categories of exception to Policy NE.2 relating to development within the open countryside. As a result, it constitutes a "departure" from the development plan and there is a presumption against the proposal, under the provisions of sec.38(6) of the Planning and Compulsory Purchase Act 2004 which states that planning applications and appeals must be determined "*in accordance with the plan unless material considerations indicate otherwise*".

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

The impact of the change of use of land from agricultural land to land for the school (use class D1) at this stage is difficult to assess and it remains unknown how the land will be used. However, the expansion of a school into adjacent countryside can be accepted provided there is demonstrated need. Further discussion on this matter is on-going with education colleagues and will be updated accordingly.

## **Housing Land Supply**

Paragraph 47 of the National Planning Policy Framework requires that Council's identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.

The calculation of Five Year Housing supply has two components – the housing requirement – and then the supply of housing sites that will help meet it. In the absence of an adopted Local Plan the National Planning Practice Guidance indicates that information provided in the latest full assessment of housing needs should be considered as the benchmark for the housing requirement.

Following the suspension of the Examination into the Local Plan Strategy and the Inspectors interim views that the previous objectively assessed need (OAN) was 'too low' further evidential work has now taken place and a fresh calculation made.

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

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

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

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

## **SOCIAL SUSTAINABILITY**

### **Affordable Housing**

The site falls partly within the Nantwich sub-area and partly in the Wybunbury and Shavington sub-area for the purposes of the Strategic Housing Market (SHMA) Update 2013.

The general minimum proportion of affordable housing for any site will normally be 30%, in accordance with the recommendation of the 2010 Strategic Housing Market Assessment. The preferred tenure split for affordable housing identified in the SHMA 2010 was 65% affordable or social rented and 35% intermediate tenure. This would equate to a requirement of 31 affordable units in total on this site, split as 20 for social or affordable rent and 11 for intermediate tenure.

In this case the Strategic Housing Manager originally objected to the application due to the lack of detail in relation to affordable housing provision on this site. However the applicants

have now confirmed that they will provide 30% affordable housing on this site (20 social rented units and 11 intermediate tenure). The Strategic Housing Manager has now confirmed that this is acceptable and this would be secured as part of a S106 Agreement. Exact details of the affordable housing would be provided at reserved matters stage.

### **Public Open Space**

Policy RT.3 states that where a development exceeds 20 dwellings the Local Planning Authority will seek POS on site.

In this case the level required would be 3,640sq.m. The submitted Design and Access Statement states that the level of public open space provided by the development would amount to 3,200sq.m which would be located to the north of the development. This does however fall 440sq.m short of the requirement under Policy RT.3.

The applicant has since confirmed that this figure excludes the open space provision along the western boundary of the site. However, the strip along the western boundary has been indicated in the response of the Councils Ecologist that this should be a wildlife corridor.

A revised plan has been submitted in accordance with the Ecologists comments in regards to the presence of great crested newts on the site, to which revised comments are awaited and will be provided as an update. Therefore, this western strip is currently being assessed for the potential of providing a wildlife corridor and the provision of public open space here may not be possible.

In taking the relative shortfall of open space provision required and the potential lack of open space provision along the western boundary, it is considered that an appropriate mitigation would be required to compensate for the shortfall of POS provision. This is currently under discussion with the applicant and will be provided as an update prior to the Strategic Planning Board meeting.

In terms of children's play space this would be provided on site and the applicant has indicated in the Planning Statement that they are willing to provide a LEAP. Public Open Space has requested a provision of 5 pieces of play equipment. This is considered would be an acceptable level given the number of dwellings on the site and would comply with Policy RT.3.

### **CEC Education**

CEC Education advise that a development of 104 no. dwellings is expected to generate 20 primary school children and 16 secondary school children. The development is forecast to increase an existing shortfall predicted for 2019 and beyond, for both primary and secondary provision in the immediate locality.

To alleviate forecast pressures, contributions to the sum of £478,408.84 would be required. This would be split as £216,925.80 for primary school children and £261,483.04 for secondary school children.

CEC Education currently hold an objection to the proposal, given the applicant has not agreed to provide the financial mitigation required.



The applicants advise that should this development be approved, the land in the northern portion of the site to which has outline permission, would be gifted to Brine Leas School as part of the application.

Discussions are currently proposed between CEC Education, the applicant and the school to which an alternative provision is being discussed. The results of which would be added as an update to this report prior to the Spatial Planning Board meeting.

## Location of the site

To aid this assessment, there is a toolkit which was developed by the former North West Development Agency. With respect to accessibility, the toolkit advises on the desired distances to local amenities which developments should aspire to achieve. The performance against these measures is used as a “Rule of Thumb” as to whether the development is addressing sustainability issues pertinent to a particular type of site and issue. It is NOT expected that this will be interrogated in order to provide the answer to all questions.

Category	Facility	AUDLEM ROAD
<b>Open Space:</b>	Amenity Open Space (500m)	0m
	Children’s Play Space (500m)	0m
	Outdoor Sports Facility (500m)	1100m
<b>Local Amenities:</b>	Convenience Store (500m)	1000m
	Supermarket* (1000m)	1400m
	Post box (500m)	31m
	Playground / amenity area (500m)	1300m
	Post office (1000m)	1800m
	Bank or cash machine (1000m)	1000m
	Pharmacy (1000m)	1400m
	Primary school (1000m)	750m
	Secondary School* (1000m)	400m
	Medical Centre (1000m)	2200m
	Leisure facilities (leisure centre or library) (1000m)	2100m
	Local meeting place / community centre (1000m)	26m
	Public house (1000m)	170m
	Public park or village green (larger, publicly accessible open space) (1000m)	1100m
	Child care facility (nursery or creche) (1000m)	2000m
<b>Transport Facilities:</b>	Bus stop (500m)	23m
	Railway station (2000m where geographically possible)	1300m
	Public Right of Way (500m)	0m
	Any transport node (300m in town centre / 400m in urban area)	1300m

### Disclaimers:

*The accessibility of the site other than where stated, is based on current conditions, any on-site provision of services/facilities or alterations to service/facility provision resulting from the development have not been taken into account.*

*\* Additional parameter to the North West Sustainability Checklist*

*Measurements are taken from the centre of the site*

Rating	Description
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	Meets minimum standard
	Fails to meet minimum standard (Less than 60% failure for amenities with a specified maximum distance of 300m, 400m or 500m and 50% failure for amenities with a maximum distance of 1000m or 2000m).
	Significant failure to meet minimum standard (Greater than 60% failure for amenities with a specified maximum distance of 300m, 400m or 500m and 50% failure for amenities with a maximum distance of 1000m or 2000m).

The site fails against 11 criteria in the North West Sustainability checklist, 8 of which are 'significant' failures. However, these facilities are within the town, albeit only just outside minimum distance and Nantwich is a key service centre in the emerging Core Strategy where development can be expected on the periphery. Development on the edge of a town will always be further from facilities in town centre than existing dwellings but, if there are insufficient development sites in the Town Centre to meet the 5 year supply, it must be accepted that development in slightly less sustainable locations on the periphery must occur. Nevertheless, this is not untypical for suburban dwellings and the proposal would lie to the side of the established linear form of development along Audlem Road of which lie within Nantwich Settlement Boundary.

Similar distances exist between the town centre and the approved development site (subject to the completion of the S.106 Agreement) at Kingsley Fields and, although the development at Kingsley Fields would probably be large enough to have its own facilities, not all the requirements of the checklist would be met on site.

Accordingly, it is considered that the site is locationally sustainable.

## **ENVIRONMENTAL SUSTAINABILITY**

### **Residential Amenity**

Due to the separation distances involved to existing properties along Batherton Lane and Audlem Road and the intervening boundary treatments, there is not considered to be a significant impact to the surrounding dwellings.

Detailed measures to achieve appropriate levels of existing and proposed residential amenity between properties would be secured at reserved matter stage.

The Environmental Health Officer has requested conditions in relation to the submission of an Environmental Management Plan and contaminated land.

### **Air Quality**

The applicant has submitted an Air Quality Assessment to which Environmental Health

The Environmental Health Officer objected to the application given no Air Quality Assessment had been submitted with the application. This has subsequently been received and submitted to the Officer for consideration and this will be provided in an update prior to the Strategic Planning Board meeting.

### **Public Rights of Way**

The development would affect Public Footpaths No. 28 Nantwich and No. 1 Batherton.

PROW raise no objections to the development subject to a condition to secure a Public Rights of Way scheme of management to be submitted to and approved in writing by the Local Planning Authority.

Proposed on-site improvements to Public Footpath No. 1 Batherton which runs along and within the western boundary of the site, would involve the provision of an all-weather route between the site and the facilities of the school and town centre. Public Rights of Way have confirmed that the specification of the route improvement has been agreed and confirmed with the applicant and this would be added as a condition to any grant of consent.

Public Footpath No. 28 Nantwich runs from the north-western boundary of the site northwards and provides a sustainable, traffic-free route between the site and the facilities of the schools and town centre.

Provision of off-site improvements to this route, to the sum of £30,000 has previously been established and agreed with the applicant under approved outline application 13/1223N. This sum would also be required for this application and would be secured in the S.106 Agreement.

## **Highways**

### Access

The application is made in outline with approval for access only.

Access into the site would be direct from Audlem Road and the detached dwelling at No. 144 would be demolished as part of the proposal. The proposed access has already been established given the same access was proposed and allowed on appeal under outline application 13/1223N.

The access remains as previously approved, consisting of a simple priority junction with a footway provided to the north and south. The footway provision provides a build out for the access and a narrowing of Audlem Road from approximately 7.2m to 5.5m in the vicinity of the site access.

The visibility splays indicated are 2.4m x 34m to the north (to the edge of the carriageway) and 2.4m x 32m to the south (0.17m into the carriageway).

As the Inspector in his decision to outline application 13/1223N accepted that the proposed access would be safe, the Highway Authority accept that there would be no capacity issues at the site access itself and that the access would be safe and suitable for this proposed development of 104 no. dwellings.

### Traffic impact

A Transport Assessment has been submitted in support of the application. The traffic data was collected in 2013 however is considered to be suitable for the assessment of the impacts of this development proposal.

The footway provision mentioned above would result in a narrowing of Audlem Road to 5.5m. Audlem Road generally has parking present throughout the day in the vicinity of the site access particularly on the opposite side of the road. Under the existing layout, even with parking present, cars can pass each other with care allowing two-way vehicle flow but a car and larger vehicle cannot pass each other with the parking present. Larger vehicles form some 5% of overall traffic flows on Audlem Road. overall traffic flows on Audlem Road.

The narrowing of the carriageway, with parking present, would form a barrier to two-way traffic flow unless parking on Audlem Road relocates. The applicant is proposing six unallocated parking bays alongside the access road to their development. This issue was considered at Inquiry for the outline application under 13/1223N to which the Inspector concluded that whether or not the parking bays were used by residents of Audlem Road, the impact of the development would not be severe in terms of delays to existing vehicles using Audlem Road.

The proposal is for an additional 64 dwellings, beyond the original approval. It is considered that realistically, this level of additional development would be likely to generate 35 to 45 peak hour vehicle trips. This authority made a case for severe traffic impact related to the proposed 40 dwellings. Given the views expressed in the Inspector's decision that such impact was not severe it is considered unlikely that a Highways refusal for an additional traffic impact of less than one vehicle per minute in peak hours could be sustained, even with the increased delay associated with the road narrowing.

### Pedestrian Access

The applicant is proposing upgrades to existing footpaths and the provision of a footway to the south of the site access on Audlem Road. The upgraded footpaths would assist mainly those at the site and the footway on Audlem Road would assist those in dwellings immediately to the south of the site access; with its primary purpose being to increase visibility from the site access at the expense of carriageway width and potential increased delays to main road traffic with parking in place.

The assessment of access on foot to local services and facilities relied upon in the TA refers to 'preferred maximum' rather than 'acceptable' walking distances. Besides access to bus stops and a secondary school, distances on foot to many other facilities is not ideal and are, in fact, beyond what are indicated as 'acceptable' distances in the IHT guidance.

It is considered that the WYG conclusion in their TA that the site is 'very accessible by foot' is not supported by the evidence base.

In this respect, the Head of Strategic Infrastructure considers that more needs to be done to promote sustainable transport modes and reduce the reliance on the single-occupancy private car. A condition would be attached to any grant of consent to secure the provision of a Travel Plan to the satisfaction of Cheshire East Council, prior to commencement of

development. A S.278 agreement would also be attached to the decision notice to secure provision for 2 no. bus shelters.

Concerns have been raised through the consultation process regarding the safe crossing of Audlem Road, given that traffic flows on the road would increase as a direct result of this development (and the approved development). This issue has been discussed with the applicant as well as the applicants Highway Consultant and it has been agreed that a suitable and safe pedestrian crossing would be implemented to support the application, between the site access and traffic signal junction to the north. Details of the level and form of contributions required for the provision of the crossing are currently under discussion and an update will be provided prior to the Strategic Planning Board meeting.

### Highways Conclusion

On balance, it is considered that the current application, even for this higher level of development, would be likely to result in a similar outcome on the original matters raised, provided the conditions and S.278 Agreements above are addressed.

### **Character and Appearance**

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.”*

In this case an indicative layout has been provided in support of this application and this shows that an acceptable layout can be achieved and that the areas of open space and all highways would be well overlooked. The proposal would have a low density of 20.8 dwellings per hectare, which is considered to be appropriate. It is considered that an acceptable design/layout that would comply with Policy BE.2 (Design Standards) and the NPPF could be negotiated at the reserved matters stage.

### **Trees/Hedgerows**

The submitted report identifies 25 individual trees, 7 groups and one boundary hedgerow located within and immediately adjacent to the application site. Ten individual trees have been identified as High (Category A) trees; 4 individual and 4 groups as Moderate (Category B) trees and 11 individual trees as Low (Category C) trees. One tree, a Hawthorn require removal by virtue of its condition.

In terms of impact on trees, access from 144 Audlem Road is as the extant consent and would necessitate the removal of two low category groups (G1, G2) and the declining Hawthorn referred to above.

Access to the southern part of the site would require the removal of trees (mostly Hawthorn and Elm) within a moderate category group (G3). It is acknowledged however that the impact is not considered to be significant in terms of the wider amenity.

The submitted sketch plan seeks to demonstrate how up to 104 dwellings could be accommodated on the site. Whilst this shows how dwellings are to be located around internal access roads, it is not considered that this would result in the most appropriate design in terms of the retention of those A and B category tree constraints identified in the submitted Tree Report. The positions of existing trees, in particular those located on the Batherton Road frontage are not shown accurately on the sketch plan and it would appear that a number of mature trees along the Batherton Road frontage would potentially be located within the rear gardens of properties. As part of the design process required by BS5837 there is a requirement to ensure due allowance for space around retained trees, particularly in terms of their relationship and social proximity to new buildings. If mature trees are to be located within rear gardens, then additional space may be required in order to ensure the trees long term retention, which could impact upon the overall layout design in terms of plot numbers.

No reference is made in the submitted Tree Report to Elliots Wood to the south of the site. In this regard an assessment would need to be carried out as part of an Arboricultural Impact Assessment as to the impact in terms of the future growth of woodland edge trees and the shading of buildings and gardens.

Existing trees to the west (adjacent to FP1 Batherton) are shown located within proposed open space although there is some interface with buildings. BS5837:2012 design and Root Protection Area (RPA) requirements as part of a formally submitted Arboricultural Impact Assessment (AIA) at reserved matters stage would need to address these issues.

Any reserved matters application would need to be supported by an Arboricultural Impact Assessment (AIA) in accordance with Section 5.4 of BS5837:2012 Trees in Relation to Design, Demolition and Construction (Recommendations). The AIA would need to evaluate the direct and indirect impact of the proposed design and layout at reserved matters stage on existing trees.

## **Landscape**

The application site is flat and well enclosed. The application has been considered by the Councils Landscape Architect who considers that a housing development on this site would not have any significant impacts on the character of the wider landscape area or have any significant visual impacts.

The Landscape Architect broadly agrees with the submitted Landscape Visual Impact Appraisal that any potential landscape and visual impacts can be mitigated with appropriate design details and landscape proposals.

Detailed landscape proposals would be addressed at reserved matters stage.

## **Ecology**

Article 12 (1) of the EC Habitats Directive requires Member states to take requisite measures to establish a system of strict protection of certain animal species prohibiting the deterioration or destruction of breeding sites and resting places. Art. 16 of the Directive provides that if there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species at a favourable conservation status in their natural range, then Member States may derogate *"in the interests of public health and public safety or for other imperative reasons of overriding public interest, including those of a social and economic nature and beneficial consequences of primary importance for the environment"* among other reasons.

The Directive is then implemented in England and Wales : The Conservation of Habitats and Species Regulations 2010. ("The Regulations"). The Regulations set up a licensing regime dealing with the requirements for derogation under Art. 16 and this function is carried out by Natural England.

The Regulations provide that the Local Planning Authority must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of their functions.

It should be noted that, since a European Protected Species has been recorded on site and is likely to be adversely affected by the proposed development, the planning authority must have regard to the requirements for derogation referred to in Article 16 and the fact that Natural England will have a role in ensuring that the requirements for derogation set out in the Directive are met.

If it appears to the planning authority that circumstances exist which make it very likely that the requirements for derogation will not be met, then the planning authority will need to consider whether, taking the development plan and all other material considerations into account, planning permission should be refused. Conversely, if it seems from the information that the requirements are likely to be met, then there would be no impediment to planning permission in this regard. If it is unclear whether the requirements will be met or not, a balanced view taking into account the particular circumstances of the application should be taken and the guidance in the NPPF. In line with guidance in the NPPF, appropriate mitigation and enhancement should be secured if planning permission is granted.

In this case the Council's Ecologist has examined the application and made the following comments.

#### Great Crested Newts

Great Crested newts have been recorded at a pond located within the centre of the proposed housing development and also at numerous ponds surrounding the development.

The proposed development would result in the loss of one pond used by great crested newts and also a significant area of relatively low value terrestrial habitat. The proposed development would also pose the risk of killing or injuring any newts present on site when the development was undertaken.

In order to address the potential impacts of the proposed development the applicant is proposing to remove and exclude newts from the footprint of the proposed development using standard best practice measures under the terms of a Natural England license. The loss of the

pond would be compensated for through the enhancement of an existing pond and the construction of a new pond to the north of the proposed houses.

It should be noted that since a European Protected Species has been recorded on site and is likely to be adversely affected the proposed development the planning authority must have regard to whether Natural England would be likely to subsequently grant the applicant a European Protected species license under the Habitat Regulations. A license under the Habitats Regulations can only be granted when:

- the development is of overriding public interest,
- there are no suitable alternatives and
- the favourable conservation status of the species will be maintained

The Council's Ecologist advises that the proposals to mitigate the risk of newts being killed or injured during the construction phase are considered to be acceptable.

Concerns were initially raised in regards to the location of the replacement pond, which was originally sited further north of the existing pond and 270m north of Elliots Wood. This was considered would isolate the pond from the potentially high value terrestrial habitats at Elliot's Wood and the network of ponds located to the south of the application site.

The applicant has since submitted a revised Masterplan, showing the relocation of the pond, so that it would be sited approximately 76m north of Elliots Wood and set within an area of terrestrial habitat which is linked to the northern pond through a wildlife corridor which follows the line of existing public footpath No. 1 Batherton. This has been submitted to the Council's Ecologist and his comments would be provided as an update prior to Strategic Planning Board meeting.

#### Roosting Bats and Trees

A number of trees have been identified as having potential to support roosting bats. Based upon the submitted masterplan, the Council's Ecologist advises that it appears feasible for these trees to be retained as part of the proposed development. It is considered that bats would not therefore present a constraint to the proposed development.

#### Hedgerows

Hedgerows are a priority habitat and hence a material consideration. It appears likely that the proposed development would result in the loss of a section of hedgerow to facilitate the site access. It must be ensured that any losses of hedgerow are compensated for by means of appropriate native species hedgerow creation at the detailed design stage of the development.

#### Hedgehog

Hedgehogs are a biodiversity action plan priority species and hence a material consideration. There are records of hedgehogs in the broad locality of the proposed development and so the species may occur on the site of the proposed development. The Council's Ecologist recommends that a condition to support the presence of hedgehogs is attached to any grant of consent.



## **Flood Risk**

The application site is located within Flood Zone 1 according to the Environment Agency Flood Maps. Flood Zone 1 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 is more than 1 hectare, a Flood Risk Assessment (FRA) has been submitted in support of the application.

The Councils Flood Risk Manager and United Utilities have been consulted as part of this application and have both raised no objection to the proposed development subject to the imposition of planning conditions. As a result, the development is considered to be acceptable in terms of its flood risk/drainage implications.

## **ECONOMIC SUSATINABILITY**

### **Loss of Agricultural Land**

Policy NE.12 of the Local Plan states that development on the best and most versatile agricultural land (grades 1, 2 and 3a in the Ministry of Agriculture Fisheries and Food classification) will not be permitted unless:

- the need for the development is supported in the local plan;
- it can be demonstrated that the development proposed cannot be accommodated on land of lower agricultural quality, derelict or non agricultural land; or
- other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land.

This is supported by the National Planning Policy Framework, which 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”.*

The previous outline application under 13/1223N included the submission of an agricultural land survey which indicated that the northern portion of the site is grade 3a agricultural land. The applicant has not submitted a survey to accompany this application, however, given the application site is only separated to the northern portion of the site by a hedgerow, it is assumed that the application site would also be classed as grade 3a 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.

The Council accepted in the Statement of Common Ground relating to application 13/1223N, that the loss of BMV land would not be a reason to refuse the application in the absence of a five year housing land supply. In his decision, the Inspector concluded that given the scale of land in the district available for agriculture, the loss of BMV land in this instance represented only a limited weight against the proposal.

It is acknowledged that the size of the application site is larger than the previously approved outline application. However, the Inspector also concluded in his decision under 13/1223N that

the proposed development would significantly contribute to the Council's shortfall in housing land supply as well as result in an increase in affordable housing in the area, to which afforded greater weight than the impact of the development on the character and appearance of the open countryside and loss of agricultural land.

Accordingly, this would be weighed in the overall planning balance.

## **CIL Regulations**

In order to comply with the Community Infrastructure Regulations 2010 it is necessary for planning applications with planning obligations 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.

As explained within the main report, POS and children's play space is a requirement of the Local Plan Policy RT.3. It is necessary to secure these works and a scheme of management for the open space and children's play space. The contribution/mitigation required is currently under discussion with the applicant and will be provided as an update prior to SPB meeting.

The development would result in increased demand for primary and secondary school places in the area and there is very limited spare capacity. In order to increase capacity of the primary and secondary schools which would support the proposed development, a contribution towards primary and secondary school education is required. This is currently under discussion between CEC Education, the Brine Leas High School and the applicant, having regard that the applicant is gifting a portion of land to Brine Leas High School. This will be provided as an update prior to the meeting.

The development would result in increased use of Public Footpath No 28 Nantwich, which is presently unsurfaced and considered to be unsuitable for year round use. The route is considered to be an important sustainable transport route to and from the proposed development and a contribution to improve the route is considered to be necessary and reasonable. The contribution sum of £30,000 has already been established under approved outline application 13/1223N.

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

## **PLANNING BALANCE**

The proposed development would be contrary to Policy NE.2 and RES.5 and the development would result in a loss of open countryside. However as Cheshire East cannot demonstrate a 5 year supply of deliverable housing sites and the presumption in favour of sustainable development applies at paragraph 14 of the Framework where it states that LPA's should grant permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits from it, when assessed against the Framework as a whole; or specific policies in the Framework indicate development should be restricted.

The principle of development, having regard to the northern portion of the site has previously been accepted under outline application 13/1223N, to which the appeal was allowed on 04<sup>th</sup> August 2014.

The Inspector concluded in the appeal decision that the proposal would meet the economic and social role of sustainable development.

The NPPF defines sustainable development with reference to a number of social, economic and environmental factors. These include the need to provide people with places to live and, on this basis, it is not considered that the Council would be successful in defending a reason for refusal on the grounds of lack of locational sustainability.

Furthermore, the Highway Authority has requested that the development provides a pedestrian crossing and the upgrade of the existing 2 no. bus stops located adjacent to the site, to bus shelters. This is envisaged would help to improve non-car mode accessibility.

In addition to its locational sustainability, the proposal would supply up to 104 no. market housing on the edge of Nantwich Settlement Boundary which is considered would help to contribute to housing supply in the local area.

The proposed development would also generate direct and indirect economic benefits to the town, including additional trade for local shops and businesses, jobs in construction and economic benefits to the construction industry supply chain.

The NPPF makes it clear that:

*“the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.”*

According to paragraphs 19 to 21:

*“Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century. Investment in business should not be overburdened by the combined requirements of planning policy expectations.”*

It is acknowledged that the proposal would result in harm to the character and appearance of the open countryside and the loss of the best and most versatile agricultural land. However, the Inspector concluded in the previous decision that the resultant harm in this respect did not outweigh the significant economic and social benefits to which the development would result, stating that:-

*“Of greater weight in my view, are the benefits that the proposed developments would have, which include, in particular, the significant contribution to addressing the shortfall in the Council’s housing supply, and the pressing need for more affordable housing in the area.”*

The Inspector further considered that the proposal was sustainable development concluding that:

*“when considered against the test of paragraph 14 of the Framework, (the development) has clear benefits, which are not significantly and demonstrably outweighed by the harm I have identified and that the overall balance of material considerations weigh in favour of granting planning permission.”*

Therefore, having regard to the housing land supply and the Inspector’s previous decision to application 13/1223N, it is considered that the adverse impacts in approving this development would not significantly and demonstrably outweigh the resultant benefits. As such the application is recommended for approval.

## **RECOMMENDATION**

**APPROVE** subject to the following Heads of Terms to be secured as part of any S106 Agreement:

**1. A scheme for the provision of 30% affordable housing in perpetuity – 65% to be provided as social rent/affordable rent with 35% intermediate tenure. The scheme shall include:**

- transfer of any rented affordable units to a Registered Provider
- provision of details of when the affordable housing is required
- provisions that require the 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 should match the Councils allocations policy.
- includes the requirement for an affordable housing scheme to be submitted at reserved matters stage that includes full details of the affordable housing on site including location by reference to a plan, type, size and tenure.
- requires the affordable units which will be transferred to a Registered Provider to be constructed to the Governments Technical standards October 2015

**2. Provision of a LEAP (5 pieces of equipment) to be maintained by a private management company**

**3. Provision of £30,000 towards off-site improvements to Public Footpath No. 28 Nantwich**

**Education contributions TBA**

**Provision of the pedestrian crossing TBA**

**And the following conditions:-**

**1. Submission of Reserved Matters**

**2. Application for Approval of Reserved Matters**

**3. Plans**

**4. Submission / Approval and Implementation of a Public Rights of Way scheme of management having regard to Public Footpath No. 1 Batherton**

**5. Submission / Approval and Implementation of Environmental Management Plan**

**6. Submission / Approval of Information regarding Contaminated Land**

**7. Submission / Approval and Implementation for a Hedgehog Protection Scheme**

**8. Submission / Approval and Implementation of a Travel Plan to include public transport vouchers to the value of six month season tickets from a local operator (one per household) and upgrade of 2 no. local bus stops to shelters**

**9) Sustainable Drainage Scheme**

- 10) Surface Water Disposal Scheme**
- 11) Foul Water Disposal Scheme**
- 12) Submission / Approval of an Arboricultural Impact Assessment**
- 13) Submission / Approval and Implementation of a Habitat and Landscape Management Plan**
- 14) Construction of Access Road and Additional Parking Spaces**

**\* \* \* \* \***

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

**Should this application be the subject of an appeal, authority be delegated to the Head of Planning (Regulation) in consultation with the Chairman of the Strategic Planning Board to enter into a planning agreement in accordance with the S106 Town and Country Planning Act to secure the Heads of Terms for a S106 Agreement.**

