

Application No: 19/2938C

Location: Hawthorn Cottage, Harvey Road, Congleton, CW12 2PS

Proposal: OUTLINE APPLICATION FOR THE REFURBISHMENT OF HAWTHORN COTTAGE, CANAL SIDE FARM AND THE ERECTION OF 35 NO. DWELLINGS. THE FORMATION OF A NEW VEHICLE AND PEDESTRIAN ACCESS FROM GORDALE CLOSE.

Applicant: Mr David Poyner, Davico Properties UK Ltd

Expiry Date: 28-Oct-2019

## SUMMARY

The proposed development would be contrary to Policy PG2 and PG3 of the Cheshire East Local Plan Strategy and saved policy PS7 Congleton Local Plan of the as the development site is located outside a settlement zone line and is wholly within designated Green Belt. The proposal is an inappropriate form of development for which there are no very special circumstances.

The development would provide economic benefits through the provision of employment during the construction phase, new homes, affordable and market and benefits for local businesses through new residents spending in the economy.

The impact upon education and health infrastructure would be neutral as the impact could be mitigated through a financial contribution as requested by the Education Manager and the NHS via S106.

The impact upon residential amenity/noise/air quality and contaminated land could be mitigated through the imposition of planning conditions.

The development can not be supported in design or residential mix terms for the reasons set out in the main report. The proposal would not accord with CELPS policy SE1, SC4 and SC5, nor would it accord with the NPPF in relation to design quality and the requirements of the CEC Design Guide SPD concerning the creation of sustainable communities.

The indicative layout falls considerably short of the necessary quantum of on site POS/children's play. Whilst this is an indicative layout and contributions to mitigate the impact upon indoor and outdoor sport could be dealt with by financial contributions.

The heritage significance of the site has not been adequately assessed contrary to the NPPF and the indicative layout is considered to comprise a significant overdevelopment of the site which would harm the setting of the Canal Conservation Area

There is a lack of detailed information about the impact upon protected trees at access point, where 2 TPO trees are likely to need to be removed. The indicative layout demonstrates an inadequate relationship with the adjoining Ancient Woodland, particularly with regard to the lack of a minimum 15m buffer between the woodland and any development (including residential gardens) and there is a general lack of information submitted with respect to trees and hedgerows. The proposals are therefore detrimental to ecological interests and the presumption in favour of sustainable development fails to apply

The proposal also contains insufficient or outdated information concerning ecological matters

## **RECOMMENDATION**

**Refuse**

## **DESCRIPTION OF SITE AND CONTEXT**

This 2.6 ha site is located circa 2 miles from the town centre of Congleton and is currently laid to pasture, with a dwelling and agricultural buildings to the south east boundary. These buildings comprise a two storey detached dwelling (Hawthorn Cottage, an inhabited dwelling occupied by people who are not associated with this application) and a small number of separate agricultural buildings which are presently unused. The buildings are clustered around Hawthorn Cottage; the remainder of the site is vacant agricultural land

The site is bordered by mature vegetation with trees and hedgerows forming a strong boundary edge to the site's northern curtilage, hedgerows and trees on the southern boundary (part of which borders properties in Swaledale Avenue and Gordale Close), hedgerows along the eastern boundary (adjoining the canal towpath), and extensive tree cover to the west (sloping down to the River Dane and afforded Ancient Woodland status). The vegetation makes a significant contribution to the character of the site. The site slopes considerably

Four trees to the south western boundary of the site on the boundary with Gordale Close are subject to TPO protection; The Congleton Borough Council (Goredale Close) TPO 1983.

The application site abuts the Macclesfield Canal Conservation Area, one of the earliest linear conservation areas in the country. The eastern side of Congleton is located at the Peak fringe resulting in the sloping topography within the application site. The canal forms the eastern boundary of the site, occupying the high point in relation to the site, which slopes steeply away to the west and north. The canal is set higher above the site in its south eastern corner where the land slopes down to the public right of way to the south of the site. An overhead power line traverses the centre of the site.

The site is wholly contained within the designated Green Belt. A bridleway (PROW) linking Swaledale Avenue and the canal towpath adjoins the southern boundary of the site.

## **DETAILS OF PROPOSAL**

This is an outline planning application for 35 dwellings, following a change in description sought by the Applicant on 23 September 2019, although the information detailed in the Planning

Statement, indicative plan and planning application form have not changed from the original 49 units.

Access is to be determined at this stage, with all other matters reserved. The proposal originally sought to demolish the existing Hawthorn Cottage and other buildings associated with the former agricultural use of the site. The indicative layout shows a suburban housing estate which utilises the entire site, together with a centre area of play.

The revised description refers to the 'refurbishment' of Hawthorn Cottage rather than demolition although no details are provided of that refurbishment, which may or may not be permitted development in any event.

The site is intended to be accessed via Goredale Drive. Two grade B TPO Ash trees would be removed to accommodate the access point at Gordale Drive.

## RELEVANT HISTORY

13/2954C Proposed outline application for the demolition of Hawthorne Cottage, Canal Side Farm, and gaining the consent for the principle of up to 49 no. dwellings. The formation of a new vehicle and pedestrian access from the existing Goredale Close carriageway refused 24/1/2014 for the following reasons:

*1 The proposal is an inappropriate form of development within the Green Belt, as defined by the Development Plan. The development is therefore contrary to policy PS7 of the Congleton Borough Local Plan First Review and would cause material harm to the openness of the Green Belt. The proposed development by reason of inappropriateness would be contrary to nationally established policy as set out in NPPF, and as a result would cause harm to the objectives of this guidance. There are no very special circumstances to outweigh this harm.*

*2 The proposed development, notwithstanding the contribution to economic and social activity associated with new residents, by virtue of its locational characteristics, impact upon trees and lack of information concerning protected species will cause environmental harm and thereby comprises unsustainable development contrary to the NPPF.*

*3 The proposed development by virtue of its size and siting of the proposed access would result in the direct loss of existing trees in Gordale Close which are subject to TPO protection; The Congleton Borough Council (Goredale Close) TPO 1983. The loss of these trees is considered to be unacceptable because of the impact upon the general amenity and character of the area in which the application site is located contrary to Policy NR1 of the Congleton Borough Local Plan First Review and the provisions of the National Planning Policy Framework.*

*4 The application fails to provide sufficient information to quantify and mitigate any impact on species protected under the Wildlife and Countryside Act 1981 and Habitat Regulations in accordance with Policies NR3 and NR4 of the Congleton Borough Local Plan First Review and the provisions of the National Planning Policy Framework*

*5 Insufficient information has been provided to demonstrate that the proposed development can achieve an adequate quality of design to justify approval of planning permission. In reaching this conclusion regard was had to the indicative design and layout including the width of access and the characteristics of the site, contrary to the Policy GR1, GR2, GR3 and GR9 of the*

*Congleton Borough Local Plan First Review and the provisions of the National Planning Policy Framework.*

The current application is a re-submission of this application.

## **POLICIES**

By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the application should be determined in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan for Cheshire East comprises the recently adopted Cheshire East Local Plan Strategy, and the saved policies from the Congleton Borough (January 2005), Crewe and Nantwich (February 2005) and Macclesfield Local Plans (January 2004). The Congleton Local Plan is applicable for the majority of this site.

### **Cheshire East Local Plan Strategy – (CELPS)**

PG2 – Settlement Hierarchy  
PG3 – Green Belt  
SC4 – Residential Mix  
CO1 Sustainable Travel and Transport  
CO4 – Travel Plans and Transport Assessments  
SC4 - Residential Mix  
SC5 – Affordable Homes  
SC6 Rural Exception housing  
SD1 - Sustainable Development in Cheshire East  
SD2 - Sustainable Development Principles  
SE 1 Design  
SE 2 Efficient Use of Land  
SE 3 Biodiversity and Geodiversity  
SE 4 the Landscape  
SE 5 Trees, Hedgerows and Woodland  
SE 6 – Green Infrastructure  
SE7 \_Conservation Areas  
SE 8 – Renewable and Low Carbon Energy  
SE 9 – Energy Efficient Development  
SE 13 Flood Risk and Water Management  
IN1 – Infrastructure  
IN2 – Developer Contributions

### **Saved Policies Congleton Local Plan 2005**

PS7- Green Belt  
GR 6 Amenity and Health  
GR9 - Accessibility, servicing and provision of parking  
GR14 - Cycling Measures  
GR15 - Pedestrian Measures  
GR16 - Footpaths Bridleway and Cycleway Networks  
GR17 - Car parking

GR18 - Traffic Generation  
GR 22 Open Space Provision  
NR3 – Habitats  
NR4 - Non-statutory sites  
NR5 – Non-statutory sites

### **Congleton Neighbourhood Plan**

The Congleton Neighbourhood Plan has formally been withdrawn.

### **National Planning Policy Framework**

Of particular relevance are paragraphs:

- 11 Presumption in favour of sustainable development.
- 50. Wide choice of quality homes
- 102-107 Promoting Sustainable Transport
- 124-132 Achieving well designed places
- 143-146 Green Belt
- 174-177 Habitat and biodiversity
- 184- 202 Conserving and Enhancing the Historic Environment

### **Other Considerations**

The EC Habitats Directive 1992  
Conservation of Habitats & Species Regulations 2010  
Circular 6/2005 - Biodiversity and Geological Conservation - Statutory Obligations and Their Impact within the Planning System  
Cheshire East Residential Design Guide

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

**United Utilities:** No objection subject to conditions

**Canal and River Trust :** The Trust is keen to ensure that the development does not result in any risk of damage to the embankment, which could result in a collapse of the towpath or, in the worst case scenario, cause a breach of the canal itself.

Consider the indicative layout to incorporate development that occurs on sections of the embankment to the eastern boundary of the site would be unacceptable and considered that the indicative layout may constitute an overdevelopment of the site.

The Trust would therefore advise that no built development should take place on the sections of embankment on the eastern boundary of the site, and these areas should be excluded from the garden areas of the proposed dwellings. Request conditions to ensure no development within 20m of the canal without full risk assessment and the creation of a towpath link where the existing towpath has an access. Also requests a financial contribution to upgrade the canal towpath in the interests of creating linkages. Also seek a financial contribution to upgrade the towpath

**CEC Drainage:** No Objection subject to condition

**CEC Strategic Highways Manager:** No Objection subject to condition

**CEC Strategic Housing Manager:** No objection subject to a provision of 30% affordable housing in a 65% (affordable or social rent): 35 % (intermediate) split. Notes that the Application details 12 affordable units when 15 are required to comply with policy for 49 units and would object if the full 30% affordable quota was not provided on site.

**CEC Environmental Health:** No objection subject to conditions

**ANSA Public Open Space (Amenity Greenspace) and Children's Play Space –** The proposal will result in deficiency in provision locally. On site provision for both open space and play space to an adoptable standard will be required. The indicative proposal is not acceptable

**CEC Public Rights of Way (Countryside Access Team):** A Public Right of Way, namely Public Footpath No. 58 and Public Bridleway Congleton No. 34 adjoin the site.

**CEC Education:** The development of 35 dwellings is expected to generate:

7 primary children (35 x 0.19)  
5 secondary children (35 x 0.15)  
0 SEN children (35 x 0.51 x 0.023%)

The development is expected to impact on secondary school places in the immediate locality. Contributions which have been negotiated on other developments are factored into the forecasts both in terms of the increased pupil numbers and the increased capacity at schools in the area as a result of agreed financial contributions. The analysis undertaken has identified that a shortfall of secondary school places still remains.

A financial contribution is sought towards secondary provision based on the following formula

$5 \times £17,959 \times 0.91 = £81,713$   
Total education contribution: £81,713

**NHS Eastern Cheshire CCG –** Advises that a financial contribution is necessary to mitigate for the impacts of the proposals on local health care facilities.

**Designing Out Crime:** No specific Comment. Recommends various matters to applicant concerning designing out crime

**Woodland Trust:** Objection on grounds of potential disturbance and deterioration to an irreplaceable habitat within the ancient woodland adjoining the site. Request a buffer to the woodland of 30m

## **VIEWS OF THE PARISH COUNCIL**

**Congleton Town Council:** Reject due to the following –  
1 In the green belt

- 2 Site not part of the Local Plan
- 3 Highway and safety issues
- 4 Traffic generation
- 5 Loss of important trees – two with TPO's
- 6 Landscaping
- 7 Risk of flooding

**Eaton Parish Council :** Comment as follows -

Eaton Parish Council has considered this application, noting that it lies outside Eaton Parish. Previous application No. 13/2954C on this site was REFUSED in January 2014

- The site is in Green Belt, and so not allocated for housing. Policy PG3 Green Belt applies;
- The site is not an allocated strategic site for housing in the Cheshire East Local Plan Strategy (2017);
- The site is not allocated for housing in the emerging Site Allocations and Development Policies Document; ('SADPD'). The SADPD makes it clear that Green Belt will continue to apply in future;
- Cheshire East Council can demonstrate 7.2 years supply of housing as at November 2018, so the site is not required for housing

**OTHER REPRESENTATIONS**

Approximately 100 representations have been received. The grounds for objection are summarised as follows:

- This is a Green Belt site
- Proposal is contrary to local policy and the NPPF
- Proposal is contrary to the Congleton Town Strategy
- Defeated in 2013 and no changes since
- Housing land supply has been satisfied
- Congleton has met housing targets
- There are no special circumstances to justify the development and is therefore inappropriate
- Brownfield sites should be used
- The development appears to be much higher density and not in keeping with the existing estate
- There are already vacant properties which cannot be sold in the area
- Would result in the loss of a green space
- Loss of protected trees in protected Woodland
- Would impact detrimentally on the character and appearance of the area
- Impact of protected species and local ecology
- Swallows, bats, badgers and other wildlife regularly use the site
- The site is prominent from the adjacent canal
- Disturbance to neighbouring amenity during building
- Site is elevated above adjoining properties on Swaledale Close and will look directly into those properties
- Schools in the locality are oversubscribed
- Doctors and dentists are full
- Loss of trees and hedgerows

- Not required on good agricultural land

## **OFFICER APPRAISAL**

### **Principle of Development**

Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

*This is acknowledged in the NPPF at paragraphs 2 and 12. Paragraph 12 states that ‘the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.’*

The site lies in the Green Belt, as designated in the Adopted Development Plan, where Policy PG3 of the Cheshire East Local Plan Strategy and saved policy PS7 of the Congleton Local Plan states that only development which is essential for the purposes of agriculture, forestry, outdoor recreation, essential works undertaken by public service authorities or statutory undertakers, limited infilling or complete redevelopment of brownfield sites which would not have any greater impact upon the openness of the green belt and the purposes of including land within it than the existing development.

The proposed development would not fall within any of the categories of exception to the restrictive policy relating to development within the Green Belt. 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*”.

Additionally, the emerging Site Allocations Document does not change the Green Belt Status of this land

### **Green Belt Issues**

The proposed site is located within the Green Belt. Paragraph 133 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics of the green belt are their openness and their permanence.

Paragraph 145 of the NPPF echoes the advice contained within PS7 of the Congleton Local Plan First Review. Para 145 advises:

*‘A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:*

- *buildings for agriculture and forestry;*



- *provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;*
- *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
- *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- *limited infilling in villages,*
- *limited affordable housing for local community needs under policies set out in the development Plan (inc policies for rural exception sites);*
- *limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would :*
  - *not have a greater impact on the openness of the Green Belt than the existing development*
  - *not cause substantial harm to the openness of the Green Belt, where development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.*

Paragraph 143 advises:

*“inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”.*

Paragraph 144 goes on to state:

*“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations”.*

CELPS policy PG3 does consider ‘limited infilling’ of brownfield land (excluding residential garden areas) which does not have any greater impact upon the openness of the green belt as being appropriate development, as the NPPF does.

The proposed development, which is indicated to comprise the entire site comprises the ‘refurbishment’ of the one dwelling on site and the demolition of a small number of agricultural buildings located close to the dwelling with the remainder of the site is open pasture/ agricultural land.

Agricultural buildings are specifically excluded from the definition of brownfield land and therefore **do not** comprise previously developed land (PDL) for the purposes of the policy or the NPPF.

The proposal does not therefore comply with the limited infilling/PDL criteria listed in either the CELPS or the NPPF and would have a substantial harm on the openness of the Green belt in this location, and therefore has to be regarded as “inappropriate” development in principle.

Accordingly, in order to consider whether very special circumstances exist to justify development within the Green Belt it will be necessary to consider if the harm caused by reason of inappropriateness is outweighed by other considerations. These are considered below.

## Housing Land Supply

The Cheshire East Local Plan Strategy was adopted on the 27th July 2017 and forms part of the statutory development plan. The plan sets out the overall strategy for the pattern, scale and quality of development, and makes sufficient provision for housing (36,000 new dwellings over the plan period, equating to 1,800 dwellings per annum) in order to meet the objectively assessed needs of the area.

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.

The National Planning Policy Framework (NPPF) identifies the circumstances in which relevant development plan policies should be considered out-of-date. These are:

- Where a local planning authority cannot demonstrate a five year supply of deliverable housing sites (with appropriate buffer) or:
- Under transitional arrangements, where the Housing Delivery Test Result indicates that the delivery of housing was substantially below 25% of housing required over the previous three years.

In accordance with the NPPF, the council produces an annual update of housing delivery and housing land supply. The council's most recent Housing Monitoring Update (base date 31 March 2018) was published on the 6th November 2018. The report confirms:

- A five year housing requirement of 12,630 net additional dwellings. This includes an adjustment to address historic shortfalls in delivery and the application of a 5% buffer.
- A deliverable five year housing land supply of 7.2 years (18,250 dwellings).

The 2018 Housing Delivery Test Result was published by the Ministry of Housing Communities and Local Government on the 19th February 2019 and this confirms a Cheshire East Housing Delivery Test Result of 183%. Housing delivery over the past three years (5,610 dwellings) has exceeded the number of homes required (3,067). The publication of the HDT result affirms that the appropriate buffer to be applied to the calculation of housing land supply in Cheshire East is 5%.

Relevant policies concerning the supply of housing should therefore be considered up-to-date. There is no very special circumstance to justify the release of the site from the Green Belt

## SUSTAINABILITY

The National Planning Policy Framework definition of sustainable development is:

*"Sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs"*

The NPPF determines that sustainable development includes three overarching objectives – economic, social and environmental – which are interdependent and need to be pursued in mutually supportive ways (so opportunities can be taken to secure net gains across each of the different objectives).

**an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation and improved productivity; and by identifying and co-ordinating the provision of infrastructure;

**a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

**an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change including moving to a low carbon economy.

These roles should not be undertaken in isolation, because they are mutually dependent.

## **Economic Benefits**

With regard to the economic role of sustainable development, the proposed development would contribute to a flexible and responsive supply of land for housing as well as bringing direct and indirect economic benefits to the local area including additional trade for local shops and businesses by virtue of people living in the houses, and the economic benefits during the construction phase including jobs in construction and economic benefits to the construction industry supply chain.

## **Locational Sustainability**

Both policies SD1 and SD2 of the CELPS refer to supporting development in sustainable locations. Within the justification text of Policy SD2 is a sustainable development location checklist toolkit from the CELPS.

The toolkit sets maximum distances between the development and local amenities. These comprise of everyday services that a future inhabitant would call upon on a regular basis, these are:

- a local shop (500m),
- post box (500m),
- playground / amenity area (500m),
- post office (1000m), bank / cash point (1000m),
- pharmacy (1000m),
- primary school (1000m),
- medical centre (1000m),
- leisure facilities (1000m),
- local meeting place / community centre (1000m),
- public house (1000m),
- public park / village green (1000m),
- child care facility (1000m),

- bus stop (500m)
- railway station (2000m).
- public right of way (500m)

In this case the development meets the standards in the following areas:

- a local shop - Co-op St Johns/ Wharfdale Road junction(500m),
- post box - opposite Co-op St Johns/ Wharfdale Road junction(500m),
- bus stop – St Johns Road/ Wharfdale Road - outside Co-op (bus 92 twice hourly in peak times -, no Sunday service to Macclesfield and Biddulph) (500m) – limited hourly service 09:35 to 16.15 daily with additional bus at 07.35, 17.45 and 19.00

A failure to meet minimum standard (with a significant failure being 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) exists in respect of the following:

- primary school – Havannah Primary School Malhamdale Road (840m)
- playground / amenity area - childrens play ground Llttondale Road(600m),
- post office / bank / cash point - counter/bank machine inside Havannah Street Londis convenience store (1200m)
- pharmacy Havannah Street (1200m)
- medical centre – Lawton House surgery Bromley Road (1868m)
- leisure facilities – Leisure Centre Worrall St (2170m)
- public house – Church House Buxton Road (1200m)
- public park – Congleton Park (2300m)
- child care facility – Old Hall Private nursery, Spragg Street (2000m)
- railway station (2900m)

Clearly, this site is located on the urban fringe so the same distances would apply to the existing residents in the area. However, public transport accessibility to the site is rather poor with the bus service being hourly but none on Sundays at all. Even this limited analysis demonstrates, for day to day services and facilities that any resident would need, the site fails more criteria than it passes and locationally must be regarded as being generally unsustainable. However, it is acknowledged that these facilities are available within the town and Congleton is a principal town in Core Strategy where we can expect development to occur on the periphery.

Inspectors have determined that locational accessibility is but one element of sustainable development and it is not synonymous with it. There are many other components of sustainability other than accessibility. These include, meeting general and affordable housing need, an environmental role in protecting and enhancing the natural environment, reducing energy consumption through sustainable design, and assisting economic growth and development.

The Design and Access Statement and the Transport Statement do not provide any indication as to how principles of sustainable development be met within the development. The Transport Assessment whilst indicating willingness to provide access to the towpath, however this proposes a location that is not supported by the Canal and Rivers Trust. The TA also provides

no indication as to how the development would contribute to sustainable transport options. The local bus does not run on a Sunday and runs twice an hour morning to night

Nevertheless, this is an outline application and a detailed scheme to achieve greater linkages and permeability could be secured through the use of conditions, although it is less clear how this scheme would be designed to, or what commitment the Applicant has to encourage sustainable transport options.

## **Affordable Housing**

According to the planning application form which has not been revised following the change in description, this application is for '49' dwellings, the indicative plan shows 44 four bed and 5 three bed houses which is not likely to cater to the affordable need in the area. Out of a development of 49 dwellings, 15 dwellings should be provided as affordable dwellings.

To comply with policy, the affordable housing requirement would be 30% of units would be required as affordable housing in a 35%:65% split between affordable or social rent and intermediate properties.

The Cheshire East Local Plan (CELPS) and the Councils Interim Planning Statement: Affordable Housing (IPS) states in Settlements with a population of 3,000 or more that we will negotiate for the provision of an appropriate element of the total dwelling provision to be for affordable housing on all unidentified 'windfall' sites of 15 dwellings or more or larger than 0.4 hectares in size. The desired target percentage for affordable housing for all allocated sites will be a minimum of 30%, in accordance with the recommendations of the Strategic Housing Market Assessment carried out in 2013. This percentage relates to the provision of both social rented and/or intermediate housing, as appropriate. Normally the Council would expect a ratio of 65/35 between social rented and intermediate housing.

The CELPS states in Policy SC5 justification paragraph 12.44, 'The Housing Development Study shows that there is the objectively-assessed need for affordable housing for a minimum of 7,100 dwellings over the plan period, which equates to an average of 355 dwellings per year.' This is for the whole borough of Cheshire East.

The current number of those on the Cheshire Homechoice waiting list with Congleton as their first choice is 800. This can be broken down to 406 x one bedroom, 234 x two bedroom, 110 x three bedroom, 28 x four bedroom and 22 x five bedroom dwellings.

The SHMA 2013 showed the majority of the house type demand annually up to and including 2018 in Congleton was for 27 x one bedroom, 10 x three bedroom and 46 x four+ bedroom dwellings per annum for General Needs.

The SHMA also showed an annual requirement for 37 x one bedroom dwellings for Older Persons, these can be via cottage style flats, bungalows and lifetime adaptable homes.

If the application is to be a Full or Reserved Application an Affordable Housing Statement will have to be produced and agreed with the council that confirms the following:

- (a) the Agreed Mix;

- (b) the timing, location and distribution of the Affordable Housing within the Site, ensuring that the Affordable Housing is pepper-potted throughout the Site and not segregated from the Open Market Housing;
- (c) details of how the proposed design and construction of the Affordable Housing will ensure that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the Open Market Housing of similar size within the Development;

The Cheshire East Plan (CELPs) and the Councils Interim Planning Statement: Affordable Housing (IPS) requires that the affordable units should 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 and also that the affordable housing should be provided no later than occupation of 50% of the open market dwellings

The Strategic Housing Manager notes that the Applicant is proposing 12 affordable units, which would not be 30% of 49 units, however, 30% would be required to comply and this would comprise Heads of Terms for the purposes of any Appeal, regardless of the ultimate number of dwellings the Applicant proposes.

However, in site planning terms for reasons explained elsewhere, this site could not sustain the development of 35 units in any event and, notwithstanding the issues of principle here, the technical feasibility for development could be compliant with affordable housing requirements by virtue of the reduction in numbers on site

Additionally, the application form indicates the scheme seeks to deliver 44 four bed houses and 5 three bed houses, which is unlikely to meet the local demand or range of affordable units ranging from 1 bed units to 4 bed units. A adequate range of units would be a requirement of any S106 affordable housing scheme

The Local Plan Strategy's annual affordable housing target for the borough is 7,100 across the Plan period (average of 355 per year). Affordable housing completions since 2010 are reflected in the following taken from the Councils Annual Monitoring Report (AMR).

The proposal could deliver up to 15 affordable dwellings. However this is a policy compliant level of provision that could be secured on any site considered suitable for residential development.

In terms of affordable housing need, the borough wide housing requirement for 36,000 new dwellings, includes the provision of 7,100 new affordable homes over the plan period, equating to 355 dwellings per year.

Affordable housing completions between 01.04.2010 – 31.3.2018 totalled 2812 dwellings compared to a requirement of 2840 (355x8) over the same period. However it should be noted that there has been a significant uplift in affordable housing delivery since 2014/15 with 2113 dwellings delivered over this 4 year period, equivalent to 528 dwellings per annum. This is shown in the extract from the Authority Monitoring Report 2017/18 below.

#### MF4 Gross total of affordable housing units provided (SA1)

**12.88** Table 12.30 shows the number of affordable units completed over the last five years. In 2017/18, 27% of the gross dwellings built were affordable. This is an increase of 283 dwellings on the number of affordable dwellings built in 2016/17 and reflects the Council's policy on affordable housing provision across the Borough.

Table 12.30 Provision of Affordable Homes<sup>(52)</sup>

2013/14	2014/15	2015/16	2016/17	2017/18
131	638	448	372	655

## Public Open Space

The indicative plan show that the open space would measure approximately 125sqm and located in central portion of the site.

The Buglawton area of Congleton already suffers from a deficiency of amenity green space and children's play space therefore a combined area of 40m<sup>2</sup> per dwelling (20m<sup>2</sup> childrens play and 20m<sup>2</sup> amenity open space) is required from this development in accordance with Table 13.1 of CELP Policy SE6.

Based on the current proposal for 35 dwellings a total of 1,400m<sup>2</sup> combined POS is needed so as not to place extra burden on existing the POS in the area. Any childrens play area should be a LAP with 3 pieces of equipment and comprise a minimum area of 700m<sup>2</sup>. This should be centrally located, well drained and reasonable flat site surface. A buffer zone of 5 meters minimum depth should separate the activity zone and the forward-most part of the nearest dwelling. Further discussions as to how the trees could benefit the area will need to take place for example in the form of interactive art incorporating local ecology and/or natural play elements.

The indicative proposals fall considerably short of what is required, regardless of the reduction in the description of development. The quantum of open and play space required to comply with adopted policy further indicates that the indicative proposals of 49 houses, which is the only plan received, is a significant overdevelopment that the constraints of the site does not allow for adequate open space or childrens play space. The reduction in numbers put forward to 35 units is not considered to materially alter this assessment. This is a reason to refuse this application.

## Outdoor Sport

Policy SC2 and SE6, Table 13.1 for Open Space Standards require developer contributions for outdoor sports facilities. In line with the recently updated Playing Pitch Strategy contributions sought would be £1,000 per family dwelling or £500 per 2 bed space (or more) apartment for off-site provision. This figure may change as Policy is updated at any time.

Policy SE6 Green Infrastructure requires all developments to strengthen and contribute to sport and playing fields through developer contributions.

Policy SC2 for Indoor and Outdoor Sports Facilities states that *“major (10 dwellings or more) residential developments contribute, through land assembly and/or financial contributions, to new or improved sports facilities where development will increase demand and/or there is a recognised shortage in the locality that would be exacerbated by the increase in demand arising from the development.”*

## **Indoor Sport**

Policies SC1 and SC2 of the Local Plan Strategy provide a clear development plan policy basis to require developments to provide or contribute towards both outdoor and indoor recreation. Policy SC2 – states that whilst new developments should not be required to address an existing shortfall of provision, they should ensure that this situation is not worsened by ensuring that it fully addresses its own impact in terms of the additional demand.

Based on the revised description of 35 dwellings -

- 35 dwellings at 1.61 people per residence = a population increase of 57
- The annual Sport England Active People Survey Results for 2016 showed 42.7% participation rate for Cheshire East. = 24 additional “active population” due to the new development in Congleton
- Based on an industry average of 25 users per piece of health & fitness equipment this equates to an additional equivalent of 1 station (one fitness station equivalent of £6,500). A contribution of £6,500 is sought towards improvements at Congleton Leisure Centre. Specified use should be included within a Section 106 agreement. This would need to be secured as part of a S106 Agreement.

## **Education**

This is an outline application which seeks approval for the development of 49 dwellings.

The development of 49 dwellings is expected to generate:

8 primary children (49 x 0.19) 9 – 1 SEN  
7 secondary children (49 x 0.15)  
1 SEN children (49 x 0.51 x 0.023%)

The development is expected to impact on secondary school places in the immediate locality. Contributions which have been negotiated on other developments are factored into the forecasts both in terms of the increased pupil numbers and the increased capacity at schools in the area as a result of agreed financial contributions. The analysis undertaken has identified that a shortfall of secondary school places still remains.

Special Education provision within Cheshire East Council currently has a shortage of places available with at present over 47% of pupils educated outside of the Borough.

To alleviate forecast pressures, the following contributions would be required:



$7 \times £17,959 \times 0.91 = £114,399$   
 $1 \times £50,000 \times 0.91 = £45,500$  (SEN)  
Total education contribution: £159,899

Without a secured contribution of £159,899 Children's Services raise an objection to this application.

Given the late change in description, this figure needs to be revised. This will be reported in an update

## **Health**

The East Cheshire Clinical Commissioning Group (CCG) have sought a S106 Contribution advise that the local medical centres are operating at capacity and therefore to accommodate the future residents put forward, and the Readesmoor Surgery , Lawton House Surgery, Meadows Medical Centre will need to be developed to support their ability to provide the expected level of primary care facilities in Congleton.

The mitigation requested, as this is an outline application for 35 dwellings the numbers of bedrooms as yet unknown is , based on the formula consisting of occupancy x number of units in the development x £360. This equates to £35280

The requested mitigation can be provided as part of the overall financial contributions offered. On this basis the proposal mitigates for its health related impacts

## **Residential Amenity**

According to Policy GR6, planning permission for any development adjoining or near to residential property or sensitive uses will only be permitted where the proposal would not have an unduly detrimental effect on their amenity due to loss of privacy, loss of sunlight and daylight, visual intrusion, and noise. Supplementary Planning Guidance Note 2 advises on the minimum separation distances between dwellings. The distance between main principal elevations (those containing main windows) should be 21.3 metres with this reducing to 13.8 metres between flanking and principal elevations.

The layout and design of the site are reserved matters but will need to take account of the buffer zones that have been incorporated and the elevated nature of the site above the adjoining dwellings.

The SPD also requires a minimum private amenity space of 65sq.m for new family housing. Care would also be needed with regard to levels differences within the site and the adjoining dwellings and the potential overlooking problems that would be created.

There is significant concern that a development as applied for of 44 four bedroomed houses and 5 three bedroomed houses could physically be accommodated on this site whilst also safeguarding the privacy of neighbours/future residents.

## **Landscape Visual Impact**

The application site is bounded by the canal and towpath, which are elevated above the site. The site levels generally fall from a high area adjacent to the canal boundary towards the western, southern and northern boundaries. The gradient shelves steeply towards the northern boundary where there's an area of unimproved grassland. The site is accessed via a narrow, unmade private road to the south which is a bridleway that joins the canal tow path via a flight of steps. The canal towpath is a public right of way

The vegetation on and around the boundaries encloses and screens the site. There is a hedge with protected trees on the boundary with Gordale Close, the Dane Valley woodland, a hedgerow with trees to the north and a tall hawthorn hedgerow along the entire eastern Canal boundary.

The application includes a Landscape Appraisal which is unchanged from the previous, refused application. It states that the site is in an urban fringe location but has the character of an attractive, self contained and discrete site, well contained by the existing landform and by hedgerows and trees. Because of this the effect is to have a limited effect on the overall wider landscape.

The Councils Landscape Architect would broadly agree with this statement. The development site is largely contained and would have little impact on the character of the wider landscape but it would have an adverse impact on the rural, tranquil character of the adjacent Canal Conservation Area. This would be particularly relevant should housing back onto the Canal tow path and future occupiers punch access through the hedgerow, as has happened on Harvey Road and over which there would be no planning control.

Public views of the site are limited. There are filtered views from Gordale Close and some views from other residential properties in the vicinity. The site is visible from a short section of the bridleway to the south. It is not visible from the canal towpath during the summer months but in winter there are some filtered views through the hedge. There are unlikely to be longer distance views from the A54 to the east or from the A 536 Macclesfield road to the west due to the undulating landform and the Dane Valley woodland.

The visual impact on the existing residential areas and the short section of bridleway would be fairly minor. However, it is likely that any proposed houses located on the higher, eastern side of site would be visible above the hedge from tow path which could adversely affect views from the tow path.

This would be a sensitive viewpoint which would urbanise an essentially rural aspect presently. It would also be difficult to control the height and retention of the boundary hedge in the longer term if it was owned by numerous potential dwellings backing on to the canal. It would therefore be important that any dwellings should not back onto the canal frontage of the site.

The site lies within the Green Belt whilst also being within a countryside setting and is governed by Policy PG3 of the CELPS. This seeks to restrict development within the countryside apart from a few limited categories. The NPPF at para 127 seek to ensure that planning decisions (amongst other things) ensures that developments are ..'sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation and change (such as increased densities).'

Policy PG3 of the CELPS accords with the NPPF desire to recognize the landscape setting. The application, by developing the site where there is no development in visual terms hence eroding an area of Green Belt conflicts with Policy PG3.

### **Impact upon Trees/Ancient Woodland**

The Woodland Trust have indicated the presence of Ancient Woodland to the west of the site and recommend a 30m undeveloped buffer ( including this being outside garden area). The Ancient Woodland is important in ecological terms and Natural England, as a statutory consultee require a 15m buffer (excluding garden) to the woodland, which has not been provided for within the indicative layout. It should be noted the requirement for any buffer of a minimum distance of 15m would have significant impact on the site's ability to accommodate the indicative units as applied for in this application.

This will be considered further in the ecological section.

There is significant tree and hedgerow cover in the vicinity. Four trees to the south western of the site on the boundary with Gordale Close are subject to TPO protection; The Congleton Borough Council (Gordale Close) TPO 1983. Woodland on adjacent land to the west has Ancient Woodland Status.

The submission is supported by a Tree survey and Arboricultural constraint report dated August 2013. Tree constraints are illustrated on a copy of the topographic survey. The report identifies a grade A Oak tree on the site boundary at the end of Gordale Close, 7 grade B trees, distributed between the south west and the northern boundaries, 3 Grade C trees and one Grade U tree.

The report indicates that for the new entrance to the proposed development, trees T1 & T2 in the survey, (grade B trees) and T3 in the survey (a grade A Oak) may have to be removed. The report recommends that protective measures be provided for all retained trees.

*BS5837:2012 Trees in relation to design, demolition and Construction – Recommendations* places an emphasis on 'evidence based planning' and accords with standard RIBA work stages. The standard now requires higher levels of competency and a more precautionary approach to tree protection.

The tree survey and constraints report/plan does not encompass all the tree cover on /adjacent to the site. In particular it excludes trees around Hawthorn Cottage and Canalside Farm, and trees to the north and west, all of which could influence or be impacted by the development. Further, a 2013 tree survey must now be considered out of date.

The British Standard identifies at para 5.2 *Constraints posed by Trees* that all relevant constraints including Root Protection Areas (RPAs) should be plotted around all trees for retention and shown on the relevant drawings, including proposed site layout plans. Above ground constraints should also be taken into account as part of the layout design. The submitted illustrative 'Proposed Site Layout' does not provide an accurate representation of arboricultural constraints.

Taking into account level changes on site and likely associated engineering works, without detailed information it is not possible to ascertain from the submission the full impacts on all the protected trees in the vicinity of the access.

Ancient Woodland has protection in the NPPF and Natural England /Forestry Commission Standing Advice for the protection of Ancient Woodland states a buffer zone of at least 15 metres will be required and in some circumstances the buffer will need to be greater. (The advice indicates the inclusion of gardens in buffer zones should be avoided). In an objection to the application, The Woodland Trust has recommended a 30m undeveloped buffer outside garden area.

The indicative layout does not show a buffer or achieve even the minimum 15m separation outside gardens and therefore would not be acceptable. The provision of a 15m buffer would have significant impact on the site's ability to accommodate 49 units as applied for in this application. This will be considered further in the ecological section.

Although requested, the applicant has failed to provide additional arboricultural information.

Overall it is considered that there is inadequate information provided to demonstrate that the scale of development proposed could be accommodated without harm to trees.

It is also considered that the removal of the TPO protected trees at Gordale Close to accommodate the access is not justified in planning terms and would be detrimental to the visual amenity and landscape character of the area.

This is reason to refuse this application.

### **Impact upon the setting of the Macclesfield Canal Conservation Area**

The application site, by virtue of being adjacent to the Macclesfield Canal is considered to be within the setting of the Macclesfield Canal Conservation Area.

On this basis, in accordance with Para 189 of the NPPF, a Heritage Assessment should have supported this application. The Applicant has provided an Assessment on 23 September 2019.

The Conservation Officer does not agree with the scope of the assessment and the submitted Assessment does not follow key principles in the guidance note by Historic England "Good Practice Advice ;the setting of heritage assets". The conservation area appraisal hasn't been referred to or any real assessment of significance undertaken.

The Assessment also offers the retention of Hawthorn Cottage as mitigation for the harm to the Conservation Area

An assessment of Hawthorn Cottage, the building appears on the tithe map/ it was an important part of the assessment for demolition to further investigate its significance and history . The submitted Assessment indicates the buildings are down for retention. Whilst this is positive, the purpose of asking for the assessment was to understand what significance, if any, it has. if there is no significance to the buildings this wouldn't be needed. The heritage statement hasn't provided any historic detail on the significance of these buildings to inform this view.

This is not sufficient to satisfy the requirement of paragraph 189 the NPPF.

The extent of the Conservation Area is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral”.

The application site makes a positive contribution to the setting of the Canal Conservation Area; section 11. Therefore the application is required by policy within the CELPS policy SE7 and Government policy guidance to be supported by a heritage impact assessment.

The submitted Assessment doesn't provide a detailed assessment of significance or evidence of how the conclusions reached have been arrived at.

As set out within the Conservation Area Appraisal, section 11, this part of the conservation area has a strong rural character,

*‘..This rural section is almost uninterrupted in a winding westwards direction until, just after Bridge No.65, it turns ninety degrees southwards. Again the towpath is accompanied by the hedgerow to the north side. This section is particularly prevalent with distance markers. Once again the Railway Viaduct over the River Dane is visible and ‘The Cloud’ overlooks this section. Alongside the canal a number of timber-framed buildings from the late medieval period survive and indicate the long standing prosperity of this part of Cheshire, including examples at Big Fenton Farm and Crossley Hall. Views across to the stone-built Buglawton Hall, with the Cloud as a backdrop are a feature of this stretch...’*

Consequently, it is important to the conservation area that its character and appearance is not undermined by weakening its rural, landscape dominated setting.

The outline submission hasn't taken into account at this early stage the challenging topographical issues of the site as it elevates from Goredale Close towards the Canal and how this significant slope will impact on the designated heritage asset. This would be expected to be part of the heritage impact assessment, as mentioned above, for this very important reason. The impact of the development of the designated heritage asset must be taken into account. The demolition of Hawthorn Cottage/Canal Side Farm (although a more recent building) will also require assessment and justification for demolition, as a non designated heritage asset, clearly shown on the title map of 1840. This rural farm marks the edge of the urban area and the change in character.

The development will create an urbanised development and have a severe impact on the surrounding character of the land, which is respite from the urban area, a transitional point into a rural tranquil character. This is the essential setting of the canal at this point.

The development of the site, with built form, changes the way in which the Canal is appreciated and erodes the contribution the site makes to its significance. This change in character within the setting would undermine its significance as a designated heritage asset.

The Conservation Officer has assessed the Heritage Statement. She is of the opinion that the Assessment is fundamentally flawed. As part of the Heritage Assessment she required an

assessment of Canal side cottage and Hawthorn Cottage, as one appears on the tithe map and it was part of the process to understand whether the building should be retained. It's the wrong approach to retain it without having at least gone through this process. The Assessment is also proposing a heritage buffer, but there is no indication what this is and what form it will take. The Conservation Officer is of the view that the Assessment put forward is an incorrect assessment and there is no clear reasoning behind it. There is also no annotation to show the heritage buffer.

As the Assessment as required by NPPF is inadequate insufficient information is provided by the Applicant to assess the significance as required in NPPF para 190.

While it is not possible to fully assess the impact of the proposals in this application, based on CAA, given the site coverage and density as indicated, there is likely a high level of harm caused to the significance and setting of the Conservation Area at this point, and the development is not substantiated by any evidence that this harm would be justified contrary to NPPF paragraph 193.

The harm caused to the Conservation Area is therefore a reason to refuse this application.

## **Highways Implications**

The Transport Assessment (TA) provided is identical to the previous version from 2013. This is over analysis for this scale of development and in fact national guidance does not require technical assessment for developments below 50 units.

Nonetheless the TA is acceptable in terms of: trip rates and traffic impact. The TA recognises that the existing roads on the approach to the site are of sufficient standard to serve the proposed number of units and this agreed by the Highways Manager. It also quotes the NPPF with regard to the definition of severe impact and the S.H.M. agrees that this is also correct.

In terms of sustainable modal choice the TA does not offer any specific proposals to enhance or improve local options and bus facilities are at or just beyond the preferred maximum walking distance from the centre of the site. The national document: Guidance on Transport Assessments requires developers to provide for and encourage the use of sustainable transport options and this proposal does not do that.

Indeed the access to bus services in particular is highlighted as an issue locally as the nearest bus stops are located outside the desirable maximum walking distances from the site (400 metres), at over 600 metres. In addition the elevated nature of the site and sloping topography to and from the shelters is not flat and involves a number of significant inclines which is therefore less attractive to pedestrian access.

The proposed development does not offer any incentives to sustainable transport options.

The TA states that the internal layout will be designed to Manual for Streets (MfS).

Policy GR9 states that proposals for development requiring access, servicing or parking facilities will only be permitted where a number of criteria are satisfied. These include adequate and safe

provision for suitable access and egress by vehicles, pedestrians and other road users to a public highway.

Paragraph 109/ 110 of the National Planning Policy framework states that:-

*'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'*

*Within this context, applications for development should:*

- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;*
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and*
- e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations...*

The impact of this site is modest on the local road network. This is mainly due to the location of the site and the positioning of the access at Goredale Close.

The indicative layout's failure to comply with Manual for Streets principles is another indication of the poor design quality of this scheme.

In summary, the level of development trips generated is not considered a severe impact as set out in the NPPF policy test to mitigate for the impacts of the proposal on the local highways network.

## **Loss of Agricultural Land**

The National Planning Policy Framework highlights that the use of such land should be taken into account when determining planning applications.

In this instance, whilst no information has been submitted in the form of any assessment of the agricultural land quality, the land was last used as horse grazing, indeed some of the buildings on site are stables, it is not known whether the quality of the land is the best and most versatile agricultural land. The size of the site is very small, steeply sloping and is constrained in any ability to extend by the canal, the houses and the woodland.

It is therefore considered that the proposal would not break up a viable agricultural holding or holdings, and given that only a very limited amount of land is involved and that Inspectors have previously attached only very limited weight to the matter of agricultural land, it is not considered that an additional reason for refusal on these grounds could be substantiated.

## Ecology

The ecological survey submitted with this application is identical to the Survey submitted in 2013 and is out of date.

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

(a) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment, and provided that there is

(b) no satisfactory alternative and

(c) no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK has implemented the Directive in the Conservation (Natural Habitats etc) Regulations 2010 (as amended) which contain two layers of protection (i) a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and (ii) a licensing system administered by Natural England and supported by criminal sanctions.

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

The NPPF advises LPAs to conserve and enhance biodiversity: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) or adequately mitigated, or as a last resort, compensated for, planning permission should be refused.

Natural England's standing advice is that, if a (conditioned) development appears to fail the three tests in the Habitats Directive, then LPAs should consider whether Natural England is likely to grant a licence: if unlikely, then the LPA should refuse permission: if likely, then the LPA can conclude that no impediment to planning permission arises under the Directive and Regulations.

### Incomplete and out of date Ecological Assessment

Part of this site, located near the south-west boundary has not been surveyed as part of the submitted ecological assessment. The submitted ecological assessment is dated 2013 and is out of date. This part of the site includes buildings which may have potential to support roosting bats and barn owls. To enable the Council to make a fully informed assessment of the potential impact of the proposed development the Council's ecologist advises that the entirety of the site must be subject to a detailed ecological survey.

### Local Wildlife Sites /Sites of Biological Importance(SBI)



The proposed development is adjacent to the River Dane SBI on its north-west boundary. The SBI supports ancient woodland habitats. The proposed development will not result in the direct loss of habitat within the ancient woodland or SBI.

Ancient woodland habitats are considered to be irreplaceable habitats and receive particular protection through paragraph 175 d) of the NPPF.

The proposed development will not result in the direct loss of ancient woodland habitat within this Local Wildlife Site. However the submitted indicative layout plan shows residential gardens backing onto the woodland. Consequently, the proposed development has the potential to have an adverse impact upon the Local Wildlife it in a number of well evidenced ways which include:

- The tipping of garden waste from adjacent residential properties.
- Direct loss of habitat due to the unauthorised extension of gardens into the woodlands.
- The introduction of non-native invasive species from adjacent gardens.
- Contamination resulting from garden pesticides and herbicides.
- Disturbance associated increased public access.
- Disturbance associated with increased road traffic.
- Increased predation from domestic cats.
- Light pollution.
- Disturbance impacts occurring during the construction phase.
- Pruning of trees due to issues of shading.

The proposed development as indicated by the submitted illustrative master plan has the potential to have a significant adverse impact upon the adjacent ancient woodland/ Local Wildlife Site in contravention of Policy SE3 of the CELPS and the NPPF. The ecologist accepts that the application is outline only and that the submitted layout is illustrative only. Based on current best practice guidance, and Natural England requirements an undeveloped buffer zone of a minimum of 15m consisting of semi natural habitats should be provided adjacent to the ancient woodland to address the potential adverse impact of the development upon the ancient woodland/Local Wildlife Site.

It is imperative that no development activity including: the movement of vehicles, storage of materials, retaining wall construction related activity, earth works or another engineering operations or site preparations take place within this buffer.

The indicative layout plan could be further amended to reflect the required undeveloped buffer and that the provision of the buffer be secured by means of a planning condition , but this would have considerable implication for the potential density of the site and, notwithstanding all the other constraints on site, further demonstrates that this site would struggle to accommodate the 49 units indicatively shown whilst also ensuring the buffer zones are left clear of any residential development, including garden space.

## Habitats

### *Unimproved grassland*

This habitat, which is a UK biodiversity action plan priority habitat and hence a material consideration has been identified in the north eastern corner of the proposed development site. It is highly likely that this proportion of the site would qualify for designation as a Local Wildlife

Sites. The ecologist advises that the loss of this habitat to development would represent a significant loss of biodiversity interest from the site.

The submitted (2013) ecological assessment acknowledges the value of this habitat and recommends that the area of unimproved grassland be retained and enhanced as part of the proposed development.

The Councils Ecologist advise that any development within this area would fail to safeguard the nature conservation value of unimproved grassland as this habitat would be lost if gardens, open space, play areas associated with a modern estate etc. were to be constructed in this area.

#### *Semi-improved neutral grassland*

This habitat covers much of the remainder of the application site. Based upon the species recorded it is possible that this habitat could also qualify for designation as a Local Wildlife site. However, no information has been provided as to the abundance of the various plant species recorded from this habitat which makes an accurate assessment of its nature conservation value difficult.

Clarification has been sought as to which species were recorded from both the unimproved and semi-improved grassland habitats and whether they hold any additional information on the abundance of the various plant species recorded.

#### *Hedgerows*

Hedgerows are a biodiversity action plan priority habitat and hence a material consideration. Based upon the submitted illustrative layout it appears likely that much of the existing hedgerows can be retained as part of the proposed development. The Ecologist advises that any losses of hedgerow must be compensated for through the creation of additional native species hedgerows as part of any detailed landscaping scheme for the site. This could be resolved by condition.

#### Protected Species

##### *Great Crested Newts*

A pond which has potential to support great crested newts has been recorded at a distance of 300m from the proposed development. The submitted ecological assessment recommends that this pond be subject to a detailed great crested newt survey. No such survey has been submitted. The applicant has failed to provide the information as recommended by his own Consultant.

##### *Common Toad*

This UK BAP priority species has been recorded just outside the application site boundary. Considering the distance from the nearest pond it is unlikely that the proposed development would have a significant adverse impact upon this species.

##### *Bats*

Trees identified by target notes 6 and 13 on the submitted habitat plan have been identified as having potential to support roosting bats. Whilst a number of trees appear to be retained under the submitted illustrative layout the submitted ecological assessment states that some trees would require removal.

Trees identified on the submitted Habitat Plan by target notes 6 (over mature ash) and target note 13 (mature oak and ash) have been identified by the submitted ecological appraisal as having potential to support roosting bats. The submitted ecological appraisal recommends that any trees to be lost or pruned as a result of the development must be subject to a detailed bat survey. No such survey has been provided

It is likely that the tree at target note 6 will be retained as part of the development however two trees at target note 13 (T1 and T2 on the tree report) will be lost as a result of the proposed access.

In law in order for the Council to determine this application in accordance with its policy and statutory obligations in respect of protected species a detailed bat survey of these trees is required prior to the determination of this application. The lack of such information is a reason to refuse this application.

### *Breeding birds*

If planning consent was granted standard conditions would be required to safeguard breeding birds.

### *Other Protected Species*

A number of setts have been recorded around the site. The submitted report is out of date although it recommends the incorporation of wildlife corridors and buffer zones around the boundary of the site to mitigate any direct impact on the setts and also to ensure other protected species are able to move freely between the setts. A license from Natural England would need to be obtained if any works are undertaken within 10m of the identified setts.

The other protected species corridor must be free of any form of development, such as garden fences, access roads etc. and must include additional screening planting to act as a deterrent to any potential interference with the setts.

A condition could be imposed to ensure that the buffer does not include garden areas, however, this has implications for the layout of the site and further reduces the area of development and limits density. This has knock on effects for the design and setting out of development within this constrained site. It further demonstrates the overdeveloped nature of the indicative proposals.

### **Air Quality**

Policy SE12 of the Local Plan states that the Council will seek to ensure all development is located and designed so as not to result in a harmful or cumulative impact upon air quality. This is in accordance with paragraph 181 of the NPPF and the Government's Air Quality Strategy.

Also there is a need for the Local Planning Authority to consider the cumulative impact of a large number of developments in a particular area. In particular, the impact of transport related emissions on Local Air Quality. Taking into account the uncertainties with modelling, the impacts of the development could be significantly worse than predicted.

Congleton has two Air Quality Management Areas, and as such the cumulative impact of developments in the town is likely to make the situation worse, unless managed.

Poor air quality is detrimental to the health and wellbeing of the public and also has a negative impact on the quality of life for sensitive individuals. It is therefore considered appropriate that mitigation should be sought in the form of direct measures to reduce the adverse air quality impact.

Conditions are suggested in relation to a Travel Plan, Electric Vehicle Charging Points, Dust Control and low emission boilers should the application be approved.

### **Contaminated Land**

The contaminated land officer has no objection to the application but states that the application is for new residential properties which are a sensitive end use and could be affected by any contamination present. Furthermore there are a number of emissions within the submitted Phase I report due to areas not being assessed.

As such, and in accordance with the NPPF a condition is suggested in relation to contaminated land is added if permission is granted.

### **Flood Risk and Drainage**

The majority of the application site is located within Flood Zone 1 according to the Environment Agency Flood Maps. This defines that the land has less than 1 in 1000 annual probability of flooding and all uses of land are appropriate in this location. The Environment Agency and United Utilities recommends standard conditions and on this basis there are no objections.

### **LEVY (CIL) REGULATIONS**

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

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

The development would result in increased demand for school places in Congleton where there is very limited spare capacity. In order to increase capacity of the school(s) which would support the proposed development, a contribution towards primary school education is required. This is considered to be necessary and fair and reasonable in relation to the development.

Likewise the proposal will have a direct impact upon existing medical provisions in Congleton which are running at capacity. This is considered to be necessary and fair and reasonable in relation to the development.

The development would result in increased demand for indoor and outdoor sports provision in where there is very limited spare capacity. In order to increase capacity of the facilities which would support the proposed development, a contribution towards indoor and outdoor sport will be required. The contribution to improve the canal towpath links into the accessibility of the site via in the Green Infrastructure around the site. This is considered to be necessary and fair and reasonable in relation to the development.

As a result the contributions are necessary, directly related to the development and fair and reasonable.

The future maintenance of public amenity space and play space within the site as required and the required mitigation is directly related to the development and is fair and reasonable.

On this basis and for the purpose of any appeal, the S106 for the scheme is compliant with the CIL Regulations 2010.

## **CONCLUSIONS**

Green Belt policy within NPPF strongly indicates that this scheme should be resisted in principle. It is considered that the NPPF and Local Planning policy are consistent with each other and the green belt policy within the Local Plan can be afforded very significant weight. The site, being mainly agricultural buildings and land, are specifically excluded from the definition of 'previously developed land' for the purposes of the policy.

It is considered that the harm caused to the Green Belt by this development is not outweighed by other considerations in the form of any benefit to the housing land supply and therefore there are no very special circumstances to justify this development.

The proposal would be environmentally harmful to the adjacent ancient woodland and result in the un-necessary removal of important protected trees. Any benefit in the form of additional housing would be outweighed by that environmental harm. Overall, the proposal is not considered to constitute a sustainable form of development. The benefits to the housing land supply, including the affordable housing does not outweigh the harm caused.

This proposal will result in the direct loss and the threat to the continued well being of trees protected by a Tree Preservation Order that contribute to the amenity of the area and are designated heritage assets. The scheme fails to demonstrate that there would be adequate mitigation for the loss of trees, how the rooting and soil environment of retained trees can be adequately protected from damage, and that the health, long term viability and safe well being of these trees can be maintained. In addition, the loss of protected trees adds to the environmental harm caused by the proposal.

It considered that insufficient information has been submitted to demonstrate that the development of the site would not be harmful to the character and appearance of the area and given the need for significant areas of the site to be free from any form of development, including gardens, the need for extensive retaining structures and there is no indication that the development of site could realistically be achieved without adverse impact upon the setting of the adjoining Canal Conservation Area, protected trees and the wider area.

The indicative layout as submitted is over engineered in terms of design and is an over-development of a highly constrained site, and provides insufficient assessment of the impact upon protected species and no buffer to the ancient woodland.

There is insufficient information and out of date submitted in respect of protected species. Information that is required in law prior to determination of any application which affects European Protected Species has not been provided

There are no interests of acknowledged importance which would outweigh the presumption against the inappropriate development in the green belt. Accordingly, a recommendation of refusal is made.

## **RECOMMENDATIONS**

**Refuse for the following reasons:**

**1 The proposal is an inappropriate form of development within the Green Belt, as defined by the Development Plan. The development is therefore contrary to policy PG3 of the Cheshire East Local Plan Strategy and Policy PS7 of the Congleton Borough Local Plan First Review and would cause material harm to the openness of the Green Belt. The proposed development by reason of inappropriateness would be contrary to nationally established policy as set out in NPPF, and as a result would cause harm to the objectives of this guidance. There are no very special circumstances to outweigh this harm.**

**2 The proposed development by virtue of the siting of the proposed access would result in the direct loss of existing trees which are the subject of the Congleton Borough Council (Gordale Close) TPO 1983. The loss of these trees is considered to be unacceptable because of the impact upon the general amenity and character of the area in which the application site is located, contrary to Policy SE5 of the Cheshire East Local Plan Strategy and the provisions of the National Planning Policy Framework.**

**3 The proposed development, as shown on the illustrative layout plan, is likely to result in a significant adverse impact on the adjacent Local Wildlife Site and Ancient Woodland. The application fails to provide sufficient information to determine, assess, and mitigate or compensate any potential impact on protected/priority species and habitats and biodiversity in general, and fails to demonstrate that it would contribute positively to the conservation and enhancement of biodiversity. The application therefore fails to comply with the requirements of Policy SE 3 of the Cheshire East Local Plan Strategy and saved Policies NR3 and NR4 of the Congleton Borough Local Plan First Review and the provisions of paras 175-177 of the National Planning Policy Framework.**

**4 Insufficient information has been provided to demonstrate that the proposed development is a sustainable form of development which can achieve an adequate quality of design that would be in keeping with the location of the site adjacent to the Macclesfield Canal Conservation Area. In reaching this conclusion regard was had to the indicative design, the housing mix as proposed and the indicative layout, contrary to the Policy SD1, SD2, SC3, SE1, SE7, SC4 of the Cheshire East Local Plan Strategy and the Residential Design Guide SPD**

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

**In order to give proper effect to the Board's intent and without changing the substance of its decision, authority is delegated to the Interim Head Planning in consultation with the Chair (or in their absence the Vice Chair) to correct any technical slip or omission in the resolution, before issue of the decision notice**

**Should the application be subject to an appeal, the following Heads of Terms should be secured as part of any S106 Agreement:**

<b>S106</b>	<b>Amount</b>	<b>Triggers</b>
<b>Affordable Housing</b>	30% affordable housing in a 65:5:35 split in accordance with the IPS	In accordance with details to be submitted and approved.
<b>Health</b>	£35280. (based on 35 dwellings)	Paid prior to first occupation of the development.
<b>Education</b>	£81,713 (based on 35 dwellings)	Staged contributions – 50% upon commencement, 50% on o 1 <sup>st</sup> occupation
<b>Indoor Sport</b>	£6500	Paid prior to first occupation of the

		development.
<b>Outdoor Sport</b>	Formula - £1,000 per family dwelling or £500 per 2 bed space (or more) apartment for off-site provision.	Paid prior to first occupation of the development.
<b>Private management scheme for all POS/ Children's Play space on site.</b>		Prior to commencement of development, implementation prior to 1 <sup>st</sup> occupation
<b>Towpath upgrade</b>	Amount to be confirmed	Prior to commencement of development



