

To Kathryn Brindley

Date 31-05-2023

Dept. Planning

Ref 22/00543/OUTEIA

From Highway Authority
Andrew Blackburn

22/00543/OUTEIA

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire.

No Highway Objection, with conditions.

Sandymoor South Phase 2 (SSP2) is a 17.37 ha parcel of land immediately south of the previously developed area known as 'Sandymoor South Phase 1'.

The site is an allocation in the Delivery and Allocations Local Plan (DALP), Policy RD1 as Site Ref R29.

The description of the proposed development at Sandymoor South Phase 2 is "Outline Planning Permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure."

Given the scale of the development and the influence certain constraints, considerations and technical matters impose on the extent and quantum of development proposed, extensive technical work was undertaken in advance of the pre-application submission, Ref 21/07146/PREAPP.

Following this early engagement was continuing collaborative work, on many fronts, with key issues resolved to enable HBC Highways to determine the outline application and offer support.

Key highway issues, below, principally regarding the access and accessibility, were a particular priority in moving forward to an agreeable position with extensive and ongoing collaboration with the applicant, Homes England (HE) and their Highway representatives, Buro Happold (BH).

❖ Access and accessibility

There are three proposed vehicular access points, two of which will connect with existing highway infrastructure.

The primary access will be via the existing infrastructure from Windmill Hill Avenue East over the New Norton Bridge to the site. Built as a busway link, but not in active use, this will become the basis for the main distributor road (6.75m wide) enabled by significant structural improvements, to be secured by a condition¹, to give the necessary sustainable (pedestrian and cycle) route alongside the carriageway at the bend bringing it to adoptable and current standards e.g. LTN 1/20.

A secondary access will be provided by a new short link connecting Walsingham Drive, and Sandymoor South Phase 1, to the site.

A connection under Network Rail bridge #63 will give signalised vehicular access, and sustainable linkage, between this site and the proposed Wharford Farm (WF) development site, as well as preserving the amenity, leisure and service routes currently provided.

Active travel links such as the east-west PROW (the Mersey Valley Timberland Trail, N8 on the HBC Definitive Map), with a connection under Network Rail bridge #62, will be maintained and/or enhanced (though no detail has been presented to date).

The above-mentioned vehicle routes will be accessible for non-motorised modes (walkers, cyclists etc).

In addition, there are several established leisure and amenity paths including the exiting canal towpaths and bridges, which should be preserved and/or enhanced.

The bridleway loop will be completed with an extension as informed by the Sandymoor SPD, Chapter 3.0 - Design Influences - Constraints and Opportunities, notably parts i) to L), see extract below,

k) BRIDLEWAYS / CYCLE PATH NETWORK

3.31 Within eastern Runcorn is an existing bridleway and cycle path network, and the Halton UDP identifies a commitment to extend this type of provision within the Borough. *Proposals at Sandymoor for these modes of travel should not only provide for the continuity of the system into the wider area, but also create a peripheral circular route through the open spaces, in particular linking the cycle paths into the core of each development parcel.*

Consideration to the HBC Rights of Way Improvement Plan, the Greenway Network Plan, Design of Residential Development SPD, DALP as well as regional and National policies and guidance will also be relevant in informing of routing and detail of the bridleway loop completion.

Two Bridleway route options have been proposed, utilising the secondary roads in both a truncated and a longer iteration.

As presented they do not appear in accordance with the above guidance, nor with the Design and Access Statement, which - in 4.2 Green Infrastructure - states “well landscaped

and functional green corridors running through the site accommodating landscape features and active travel route”.

A condition² is therefore considered necessary to ensure an acceptable legible, permeable and connected network of compliant routes, for non-motorised users. This should include footpaths, cycle paths (including extension of The Ride) and completion of the bridleway loop; incorporating existing routes, and the proposed Greenway Network, with access points, crossing and junctions to create, and maintain, an accessible network of off-road, active travel routes with suitable and acceptable routing.

It should be noted that this should not be adjacent to highway, but be in separate green space corridors; in the case of the bridleway this should also be on the periphery of the site.

The condition² should include, but not be limited to, detail regarding gradients, slopes, ramps, surfacing, drainage, and signage in accordance with best practice as detailed in LTN 1/20, Inclusive Mobility, 2021 as well as the above mentioned SPD etc to ensure compliance with Policies CS(R)21, and HE4.

Suitable and adequate access for maintenance vehicles to enter/exit should be covered by the condition, if applicable.

Public consultation, with views of the British Horse Society, Ramblers and other such community groups should be sought, as well as the wider public, to inform of suitable and acceptable routing and overall provision.

Rail arch arrangements of Bridge #63, Wharford Farm Bridge and the interface with Wharford Basin (statutory name: Wharford Farm Reservoir), associated and other accesses will require gates and pedestrian links which will need detailing up, to be secured by a suitable condition³.

HBC Highways note the proximity of the proposed road to the basin; drawings appear to show the spine road heading towards the basin. An 8m easement from top of embankment to road is a stated requirement.

❖ Traffic/Trip Generation, Distribution and Capacity

The Transport Assessment was based on the entire network being complete and constructed upon the 2011 census and standard gravity model with manually assigned distribution designations separately for each site. The area has developed significantly since then, with new residential developments, school and more recently a local centre. Additional Transport Assessment (TA) and associated information was therefore presented to fully scrutinise the traffic and transport impact of the development in the local and wider area with sensitivity testing and modelling of variables.

Whilst the TA covers the wider development site i.e. both SSP2 and WF parcel, which will now come forward as a separate application, a worst-case scenario was presented, as well

as consideration of the traffic impact should one site come forward ahead of the other, as is now the case.

Following review and analysis of the Traffic and Transport ES , TA and supplementary information HBC Highways find the trip generation/trip distribution modelling agreeable.

Whilst the TA covers the wider development site i.e. both SS Phase 2 and WF parcel, which will now come forward as a separate application, a worst-case scenario was presented, as well as consideration of the traffic impact should one site come forward ahead of the other, construction traffic/phasing queries.

Notwithstanding the above and the current TA being acceptable in terms of this (SSP2) application in no way provides acceptance of the traffic analysis and conclusions in terms of any future Wharford Farm application.

❖ Area Bus routing

HBC requires that the spine road needs to be trafficable by bus, with support for services.

There has been work done associated with indicative bus routes new services through the area, a bus routing plan having been circulated.

Bus connectivity is also being looked at as part of emerging East Runcorn Connectivity Business Case which the Council are promoting with the Combined Authority; this includes various connectivity interventions.

Policy C1 Accessibility requires that dwellings be no more than 400m from a bus stop (for reserved matters stage). There should be space along the route to install bus stops infrastructure in each direction – there will likely be 4 bus stops, 2 in each direction as a minimum.

A condition⁴ is required to ensure bus provision in both the short and long-term meets all requirements in terms of temporary (i.e. during the projected 13 year construction period) bus infrastructure and service provision (stops/shelters/routes/frequency etc) as well as the post completion permanent infrastructure and service provision; ensuring accessibility to public transport as per policy compliance at all times.

❖ Section 106 Contributions

It is understood that there will be a new and separate agreement for each site with the SSP2 S106 being along the lines of the existing Sandymoor S106.

This will allow for off-site improvements to address mitigations as informed by the TA and associated information; including capacity improvements and other highway enhancements for safety, amenity etc.

❖ Suggested non-standard Conditions – wording to be agreed:

1¹ – Structural work of New Norton Bridge and embankement, to accommodate highway widening – including AiPs/adoption.

2² - Bridleway provision.

3³ - Access, gating etc.

4⁴ - Bus infrastructure provision, through all phases of development.

5 - Phasing, Construction Traffic Routing and Management.

Informatives:

- Where special materials or products with shorter life expectancies are used, or high-maintenance designs that will necessitate increased levels of care are implemented (such as drainage attenuation and landscaping), payment of appropriate commuted sums will be required by the Highway Authority and addressed in an Agreement to cover the additional costs of future maintenance.
- It is an offence to carry out any works within the public highway without the permission of the Highway Authority. This grant of planning permission does not negate the need for the submission and approval of highway engineering details for inclusion in an agreement under s38 and s278 of the Highways Act 1980 (for roads proposed for adoption and off site highway works respectively).



National Highways Planning Response (NHPR 21-09) Formal Recommendation to an Application for Planning Permission

From: Alan Shepherd
Operations Directorate
North West Region
National Highways
PlanningNW@nationalhighways.co.uk

To: Halton Borough Council

CC: transportplanning@dft.gov.uk
spatialplanning@nationalhighways.co.uk

Council's Reference: 22/00543/OUTEIA

National Highways Ref: 96527

Location: Sandymoor South Phase 2, Windmill Hill Avenue, East Runcorn, Cheshire

Proposal: Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure


Referring to the consultation on a planning application dated 19th April 2023 referenced above, in the vicinity of the M56 that forms part of the Strategic Road Network, notice is hereby given that National Highways' formal recommendation is that we:

- a) offer no objection (see reasons at Annex A);
- ~~b) recommend that conditions should be attached to any planning permission that may be granted (see Annex A – National Highways recommended Planning Conditions & reasons);~~
- ~~c) recommend that planning permission not be granted for a specified period (see reasons at Annex A);~~
- ~~d) recommend that the application be refused (see reasons at Annex A)~~

Highways Act 1980 Section 175B is / is not relevant to this application.¹

This represents National Highways' formal recommendation and is copied to the Department for Transport as per the terms of our Licence.

Should the Local Planning Authority not propose to determine the application in accordance with this recommendation they are required to consult the Secretary of State for Transport, as set out in the [Town and Country Planning \(Development Affecting Trunk Roads\) Direction 2018](#), via transportplanning@dft.gov.uk and may not determine the application until the consultation process is complete.

Signature: 	Date: 20 ^h April 2023
Name: Benjamin Laverick	Position: Assistant Spatial Planner
National Highways 8th Floor, Piccadilly Gate, Store Street, Manchester, M1 2WD	

¹ Where relevant, further information will be provided within Annex A.

Annex A ~~National Highways recommended Planning Conditions /
National Highways recommended further assessment required /
National Highways recommended Refusal~~

National Highways does not consider that the proposed development would have an adverse impact on the safety of, or queuing on, a trunk road.

The Climate Change Committee's [2022 Report to Parliament](#) notes that for the UK to achieve net zero carbon status by 2050, action is needed to support a modal shift away from car travel. The National Planning Policy Framework (NPPF) supports this position, with paragraphs 73 and 105 prescribing that significant development should offer a genuine choice of transport modes, while paragraphs 104 and 110 advise that appropriate opportunities to promote walking, cycling and public transport should be taken up.

Moreover, the *build clever and build efficiently* criteria as set out in clause 6.1.4 of [PAS2080](#) (Carbon Management in Infrastructure) promote the use of low carbon materials and products, innovative design solutions and construction methods to minimise resource consumption.

These considerations should be weighed alongside any relevant Local Plan policies to ensure that planning decisions are in line with the necessary transition to net zero carbon.



To:
FAO Planning Team
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From: Town Planning Team NW&C
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Date: 16th November 2022

FAO Planning Team

22/00543/OUTEIA	Sandymoor South Phase 2 Windmill Hill Avenue	250 dwellings
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Thank you for consulting Network Rail on the above proposal.

Network Rail **objects** to the above planning application in its current form.

A public bridle footpath crosses over the existing operational railway via Norton Level Crossing which will be materially impacted by the development proposals once occupied by new residents..

Whilst Network Rail has no concern with the principle of new development in this area, however the application in its current form does not address the impact of the proposal on Norton Level Crossing. . The LPA has a duty under Schedule 4 (j) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, which states that the network operator (Network Rail) should be consulted on any proposal for:

“Development which is likely to result in a material increase in the volume or a material change in the character of traffic using a level crossing over the railway”

The NPPF underpins this requirement stating:

*“Considering Development Proposals:
110. In assessing sites that may be allocated for development in plans, or specific*

*applications for development, it should be ensured that:
b) safe and suitable access to the site can be achieved for all users;*

*112. Within this context, applications for development should:
c) create places that are safe, secure...which minimise the scope for conflicts between pedestrians, cyclists and vehicles.”*

Network Rail believes that should the development come forward that it will have an unacceptable impact on risk (including a change in the character and volume of user) on Norton Level Crossing and therefore we are submitting an objection to the planning application in respect to this proposal. Network Rail also notes that this is part of the Sandymoor & Wharford masterplan for 850 dwellings and the council should take into account the cumulative impact of the proposed increase in dwellings.

In order to address Network Rail’s concerns, and to comply with the NPPF, the Council is requested to include a Grampian Condition upon the grant of any planning permissions for the development to ensure that:

1. The public bridle footpath over Norton Level Crossing is permanently stopped up via s257 of the T&CPA,

and,

2. The closure of the level crossing, and any necessary diversionary route must be completed prior to the new dwellings being occupied.

Network Rail is submitting a Narrative Risk Assessment for Norton Level Crossing for the attention of the council.

It is also noted that the proposals will require agreement with Network Rail asset protection engineers regarding layout/permanent arrangement and construction works. We are particularly concerned by the use of SUDS in close proximity to the railway boundary. Drainage works on site will require Network Rail agreement.

Please see separate comments in Appendix 2.

Please also see Appendix 1 for ‘vulnerable user’ definitions.

As a publicly funded organisation, Network Rail is not funded to mitigate the impact of new development proposals on its infrastructure, but we will assist where possible in providing information about level crossing risk.

Yours sincerely

Diane Clarke
Town Planning Technician NW&C
Assoc. RTPI
Network Rail

Appendix 1 Definition of Vulnerable Users

‘Vulnerable Users’ are characterised as those who are unable to use the level crossing quickly and effectively, and are not fully aware of the dangers at a level crossing. This term does not relate exclusively to disabled or elderly people with impaired mobility; but also

- Those with impaired hearing or vision
- Learning difficulties
- Or do not speak English
- Young children who do not have a mature perception of the risks that are inherent in crossing the railway
- Older children in groups
- And fully able bodied people who are vulnerable because, say, they may be carrying heavy bags, or pushing buggies
- Or walkers with a dog either on, or off the lead
- Many pedestrians now wear head-obscuring clothing and/or earphones and just do not see or hear an approaching train until it is too late
- Those who walk/lead a dog (or dogs) import a real possibility for vulnerability, albeit we do not say that every dog walker will always exhibit an equally high level of vulnerability.

Again, the approach is measured and ultimately, public safety-led.

There is high-level Parliament recognition of adopting categories of vulnerable users specifically in connection with assessing level crossings in public safety terms: see ‘House of Commons Safety at Level Crossings (Eleventh Report of Session: 2013-2014)’.

Appendix 2
(our ref) 170362/NW6238
Asset Protection Comments

22/00543/OUTEIA	Sandymoor South Phase 2 Windmill Hill Avenue	250 dwellings
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Clearance/Encroachment:

The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail land and its infrastructure or undermine or damage or adversely affect any railway land and structures.

- There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail air-space and no encroachment of foundations onto Network Rail land or under the Network Rail boundary.
- All buildings and structures on site including all foundations / fencing foundations must be constructed wholly within the applicant's land ownership footprint.
- Buildings and structures must not over-sail Network Rail air-space.
- Any future maintenance must be conducted solely within the applicant's land ownership.
- Rainwater goods must not discharge towards or over the railway boundary
- Should the applicant require access to Network Rail land to facilitate their proposal they will need to agree access requirements and timescales with Network Rail Asset Protection Team. The applicant would be liable for all costs incurred in facilitating the proposal and an asset protection agreement will be necessary to undertake works. Network Rail reserves the right to refuse any works by an outside party that may adversely impact its land and infrastructure.
- Any unauthorised access to Network Rail air-space or land will be deemed an act of trespass.

Network Rail requests that a condition is included within the planning consent as follows:
“Design report to be undertaken by the developer to demonstrate foundation interaction has no adverse effect on the Network Rail Embankment, to be reviewed and approved by Network Rail”

Drainage proposals and Network Rail land

The NPPF states:

“178. Planning policies and decisions should ensure that:

a. A site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability.”

And

“163. When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere.”

In order to comply with the NPPF, the applicant must ensure that the proposal drainage

does not increase Network Rail's liability, or cause flooding pollution or soil slippage, vegetation or boundary issues on railway land. Therefore, the proposed drainage on site will include the following:

- Suitable drainage or other works must be provided and maintained by the developer to prevent surface water flows or run-off onto Network Rail's land and infrastructure.
- Drainage works must not impact upon culverts, including culverts/brooks etc that drain under the railway.

NB: Soakaways can materially effect the strength of soil leading to stability issues. A large mass of water wetting the environment can soften the ground, and a build-up of water can lead to issues with the stability of Network Rail retaining walls/structures and the railway boundary. Network Rail does not accept the installation of soakaways behind any retaining structures as this significantly increases the risk of failure and subsequent risk to the travelling public.

If the developer and/or the council insists upon a sustainable drainage and flooding system then the issue and responsibility of flooding, water saturation and stability issues should not be passed onto Network Rail. We recognise that councils are looking to proposals that are sustainable, however, we would remind the council that flooding, drainage, surface and foul water management risk as well as stability issues should not be passed 'elsewhere', i.e. on to Network Rail land.

Network Rail requests that a condition is included within the planning consent as follows: *"The drainage proposals are to be agreed with Network Rail and surface water drainage on the site should be removed by a closed sealed pipe system unless agreed otherwise."*

Excavation and Earthworks and Network Rail land

The NPPF states:

"178. Planning policies and decisions should ensure that:

a. A site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability."

In order to comply with the NPPF, the applicant will agree all excavation and earthworks within 10m of the railway boundary with Network Rail. Network Rail will need to review and agree the works to determine if they impact upon the support zone of our land and infrastructure as well as determining relative levels in relation to the railway. Network Rail would need to agree the following:

- Alterations to ground levels
- De-watering works
- Ground stabilisation works
- Works to retaining walls
- Construction and temporary works
- Maintenance of retaining walls
- Ground investigation works must not be undertaken unless agreed with Network Rail.
- Alterations in loading within 15m of the railway boundary must be agreed with Network Rail.

- For works next to a cutting or at the toe of an embankment the developer / applicant would be required to undertake a slope stability review.
- Excavation or infilling/backfilling should be limited so as to not to adversely affect the passive resistance/active pressures acting upon the piers, or surcharge the same.

Network Rail would need to review and agree the methods of construction works on site to ensure that there is no impact upon critical railway infrastructure. No excavation works are to commence without agreement from Network Rail. The council are advised that the impact of outside party excavation and earthworks can be different depending on the geography and soil in the area. The council and developer are also advised that support zones for railway infrastructure may extend beyond the railway boundary and into the proposal area. Therefore, consultation with Network Rail is requested. Any right of support must be maintained by the developer.

Network Rail requests that a condition is included within the planning consent as follows: *“Prior to the commencement of the development full details of ground levels, earthworks and excavations to be carried out near to the railway boundary shall be submitted to the Local Planning Authority and Network Rail.”*

Vibration and Monitoring

The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail land and its infrastructure or undermine or damage or adversely affect any railway land and structures

- Vibration limits at the boundary are set at 5mm/s PPV and should be maintained at all times.
- Anticipated movement of the ground to be considered during temporary and permanent works including excavations/backfilling adjacent to the structure and any long term settlement due to adjacent construction
- Asset management plan required to detail any anticipated level of vibration/movement, trigger levels and mitigation measures
- A detailed and annotated de-lap survey will be required from the developer and agreed in advance of works.

Parking / Hard Standing Area

Vehicle movements have the potential to impact on the adjacent operational railway with accidental vehicle incursion.

Where a proposal calls for the following adjacent to the boundary with the operational railway, running parallel to the operational railway or where the existing operational railway is below the height of the proposal site:

- hard standing areas
- turning circles
- roads, public highways to facilitate access and egress from developments

Network Rail requests the installation of suitable high kerbs or crash barriers (e.g. Armco Safety Barriers).

This is to prevent vehicle incursion from the proposal area impacting upon the safe

operation of the railway.

Network Rail requests that a condition is included within the planning consent as follows: *“Details of appropriate vehicle safety protection measures along the boundary with the railway shall be submitted to the Local Planning Authority (in consultation with Network Rail).”*

Temporary Works

Temporary works which are to be constructed to support plant or any temporary structure that has the potential to collapse onto Network Rail infrastructure should be subject to a temporary works design Form 002/003 with a CAT 3 check

This is to ensure that the safety of the railway is preserved, and that scaffolding does not:

- Fall into the path of on-coming trains
- Fall onto and damage critical and safety related lineside equipment and infrastructure
- Fall onto overhead lines bringing them down, resulting in serious safety issues (this is applicable if the proposal is above the railway and where the line is electrified).

Network Rail would request a condition is applied as follows within the planning consent:

“Details of temporary works to be submitted to Network Rail for agreement.”

Vegetation

To prevent long term issues with leaf fall and encroachment to the Overhead Line Equipment impacting on the operational railway vegetation planting must be in line with the Network Rail recommended planting species which has been agreed with the Tree Council.

Network Rail would request a condition is applied as follows within the planning consent:

“Details of landscaping works, to be submitted to the council and Network Rail for agreement.”

Noise

The council and the developer (along with their chosen acoustic contractor) are recommended to engage in discussions to determine the most appropriate measures to mitigate noise and vibration from the existing operational railway to ensure that there will be no future issues for residents once they take up occupation of the dwellings.

The NPPF states:

“182. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use), in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

Network Rail is aware that residents of developments adjacent to or in close proximity to, or near to the existing operational railway have in the past discovered issues upon occupation of dwellings with noise and vibration. It is therefore a matter for the developer and the council via mitigation measures and conditions to ensure that any existing noise and vibration, and the potential for any future noise and vibration are mitigated appropriately prior to construction.

To note are:

- The current level of railway usage may be subject to change at any time without prior notification including increased frequency of trains, night time train running, heavy freight trains, trains run at weekends /bank holidays.
- Maintenance works to trains could be undertaken at night and may mean leaving the trains' motors running which can lead to increased levels of noise and vibration.
- Network Rail carry out works at night on the operational railway when normal rail traffic is suspended and these works can be noisy and cause vibration.
- Network Rail may need to conduct emergency works on the existing operational railway line which may not be notified to residents in advance due to their safety critical nature, and may occur at any time of the day or night, during bank holidays and at weekends.
- Works to the existing operational railway may include the presence of plant and machinery as well as vehicles and personnel for works.
- The proposal should not prevent Network Rail from its statutory undertaking. Network Rail is a track authority. It may authorise the use of the track by train operating companies or independent railway operators and may be compelled to give such authorisation. Its ability to respond to any enquiries regarding intended future use is therefore limited.
- The scope and duration of any Noise and Vibration Assessments may only reflect the levels of railway usage at the time of the survey.
- Any assessments required as part of CDM (Construction Design Management) or local planning authority planning applications validations process are between the developer and their appointed contractor.
- Network Rail cannot advise third parties on specific noise and vibration mitigation measures. Such measures will need to be agreed between the developer, their approved acoustic contractor and the local planning authority.
- Design and layout of proposals should take into consideration and mitigate against existing usage of the operational railway and any future increase in usage of the said existing operational railway.
- Railway land which is owned by Network Rail but which may be deemed to be 'disused ' or 'mothballed', may be brought back into use. Any proposals for residential development should include mitigation measures agreed between the developer, their acoustic contractor and the LPA to mitigate against future impacts of noise and vibration, based on the premise that the railway line may be brought back into use.
- Works may be carried out to electrify railway lines and this could create noise and vibration for the time works are in progress. Electrification works can also result in loss of lineside vegetation to facilitate the erection of stanchions and equipment. Network Rail would request a condition is applied as follows within the planning consent *"Details of noise and vibration assessment shall be submitted to the Local Planning Authority (in consultation with Network Rail)."*

Glint and glare/lighting

The proposed façade and glazing should not visually impair or cause distraction to train operators more predominately when approaching signage and signals.

Scaffolding:

Scaffolding which is to be constructed within 10 metres of the Network Rail / railway boundary must be erected in such a manner that at no time will any poles over-sail the railway. The applicant / applicant's contractor must consider if they can undertake the works and associated scaffolding / access for working at height within the footprint of their land ownership boundary. The applicant is reminded that when pole(s) are erected for construction or maintenance works, they must have a minimum 3m failsafe zone between the maximum height of the pole(s) and the railway boundary.

This is to ensure that the safety of the railway is preserved, and that scaffolding does not:

- Fall into the path of on-coming trains
- Fall onto and damage critical and safety related lineside equipment and infrastructure
- Fall onto overhead lines bringing them down, resulting in serious safety issues (this is applicable if the proposal is above the railway and where the line is electrified).

Network Rail would request a condition is applied as follows within the planning consent: *"Details of scaffolding works within 10m of the railway boundary, to be submitted to Network Rail for agreement."*

RAMS:

The developer is to submit directly to Network Rail, a Risk Assessment and Method Statement (RAMS) for all works, and this is in addition to any planning consent. Network Rail would need to be re-assured the works on site follow safe methods of working and have also taken into consideration any potential impact on Network Rail land and the existing operational railway infrastructure. Builder to ensure that no dust or debris is allowed to contaminate Network Rail land as the outside party would be liable for any clean-up costs. Review and agreement of the RAMS will be undertaken between Network Rail and the applicant/developer.

BAPA (Basic Asset Protection Agreement)

As the proposal includes works which could impact the existing operational railway and in order to facilitate the above, a **BAPA** (Basic Asset Protection Agreement) will need to be agreed between the developer and Network Rail

The developer will be liable for all costs incurred by Network Rail in facilitating this proposal, including any railway site safety costs, possession costs, asset protection costs / presence, site visits, review and agreement of proposal documents and any buried services searches. The BAPA will be in addition to any planning consent.

The applicant / developer should liaise directly with Asset Protection to set up the BAPA . Network Rail would request a condition is applied as follows within the planning consent *"The Developer is required to enter into a Basic Asset Protection Agreement (BAPA) with Network Rail"*



**North West & Central (NW&C) Region
North West Route
Level Crossing Risk Assessment**

Norton
Footpath Level Crossing with Miniature Stop Lights
20/04/2021



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1 INTRODUCTION

1.1 Reason for the risk assessment

- 1.1.1 Network Rail has a responsibility and legal duty under the Health and Safety at Work Act 1974 for the health, safety, and welfare of its employees and for protecting others against risk.
- 1.1.2 Network Rail also has a legal responsibility under the Management of Health and Safety at Work Regulations 1999. Section 3 focuses on the requirement for suitable and sufficient assessments of risk to health and safety of employees and others in connection with their undertaking.
- 1.1.3 Network Rail is committed to reducing the risk on the railway and has identified that one of its greatest public risks is at level crossings. This is where the railway has a direct interface with other elements e.g. vehicles and/or pedestrians. Network Rail is working to reduce this risk to as low as is reasonably practicable.
- 1.1.4 This risk assessment has been undertaken as part of a scheduled risk assessment frequency.

2 DESCRIPTION OF THE SITE

2.1 Level Crossing Details

Name of crossing	Norton
Hybrid crossing	No
Type	Footpath Crossing with Miniature Stop Lights
Engineers Line Reference (ELR)	CGJ2
Mileage	177m 40ch / 177m 0880y
Region / Route	NW&C Region / North West Route
OS grid reference	SJ565816
What3words	relishes.shuffle.wizard
Number of lines crossed	2
Line speed (mph)	125 mph
Electrification	Electrified – 25kv OLE
Signal box	Warrington Signal Box
Risk assessment next due date	20/07/2022

- 2.1.1 As part of a level crossing risk assessment, data is entered into the industry accepted risk modelling support tool (All Level Crossing Risk Model - ALCRM) which enables Network Rail to compare risk at all level crossings throughout the network. Results for this level crossing are provided below; see Appendix A for further details on how this is calculated.

2.1.2 ALCRM Risk Details

Risk Score	B2
Risk Per Traverse Score (RPT) -	0.000000441
Fatality Weighted Index (FWI)	0.020396767

- 2.1.3 Norton level crossing is an unprotected crossing. This means the crossing is not protected from train movements and therefore trains can traverse the crossing whether it is clear or not.
- 2.1.4 Norton level crossing is also known as an active crossing as there is an active method of warning provided to warn users of an approaching train.
- 2.1.5 At the time of writing this risk assessment there are 457 active level crossings in the North West Route. Out of this figure Norton crossing is currently ranked number 6 in terms of risk. If you compare this level crossing to other crossings of a similar type it is ranked 1 out of 3.

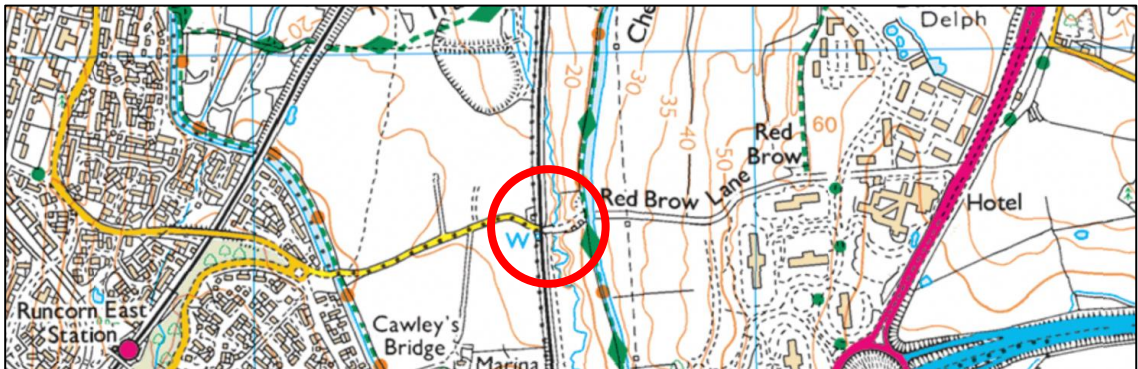
2.2 Crossing Imagery

2.2.1



Aerial view of Norton Level Crossing

2.2.2



Ordnance Survey Map view of Norton Level Crossing

2.2.3



Up side approach of Norton Crossing

2.2.4



Down side approach of Norton Crossing

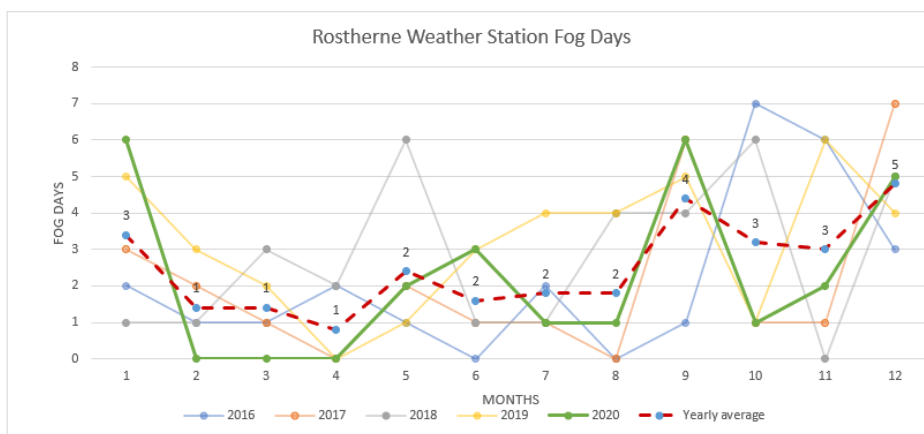
2.2.5 Additional photographs of the surrounding environment are provided in Appendix B.

2.3 Crossing Environment and Operation

- 2.3.1 **Footpath crossing:** These are designed primarily for pedestrians and usually include stiles or wicket gates to restrict access. The crossing user is responsible for making sure that it is safe to cross before doing so. In cases where sufficient sighting time is not available, the railway may provide a 'whistle' board, instructing drivers to sound the horn to warn of their train's approach, or miniature warning lights. A variant is the bridleway crossing, which is usually on a public right of way, although some are private and restricted to authorised users.
- 2.3.2 Norton level crossing is a bridleway crossing located in a rural location between the village of Daresbury, which has an approximate population of 246 (based on 2011 census) and the town of Runcorn, which has an approximate population of 61,789 (based on 2011 census). Whilst Runcorn is a highly developed area, the crossing is situated in a rural area with open fields and a canal in the vicinity.
- 2.3.3 To the north of the crossing, the railway leads north towards Warrington Bank Quay station which has an approximate footfall of 1.481 million according to 2019/20 figures. The surrounding area is rural with open fields and pockets of woodland. There is a single dwelling located immediately adjacent to the crossing in the north-west direction. There are a number of notable walking routes to the north including the Mersey Valley Trail and the Cheshire Ring Canal Walk; whilst neither route leads over the crossing, the crossing could provide access to the routes.
- 2.3.4 To the east of the crossing, the area remains rural with open fields and woodland areas. To the east there is a small stream of water known as Keckwick Brook. The Bridgewater Canal is located approximately 100 metres to the east of the crossing, situated just off Red Brow Lane. Leading much further east, the area then becomes highly industrialised with a large number of business units located within Daresbury Business Park. Red Brow Lane leads from the business park toward the crossing however there is no vehicular access along the road or over the crossing.
- 2.3.5 To the south of the crossing, the railway leads south towards Acton Bridge railway station which has an approximate footfall of 27,976 according to 2019/20 figures. The area is rural to the south of the crossing with large open fields and some woodland areas. There is a footpath route which leads from the crossing south, parallel to the railway, toward the Bridgewater Canal. There is also a marina known as Preston Brook Marina located approximately 450 metres south-west of the crossing.
- 2.3.6 To the west of the crossing, the area is rural with open fields and land used for farming. Leading further west along Red Brow Lane, the area then becomes much more urban with a large number of dwellings, small shops and schools approximately 500 metres west of the crossing as you get closer to the town of Runcorn. Due to the single dwelling located adjacent to the crossing, vehicles can travel along Red Brow Lane from the west however cannot traverse the crossing.
- 2.3.7 The crossing experiences high levels of usage from a wide range of types of users. There is a hotel located in Daresbury business park which houses migrants. The previous level crossing manager has been in contact with the hotel and has sent

over some level crossing safety information, as a large number of residents at the hotel traverse the crossing. Additionally, due to the proximity to the Bridgewater Canal, a number of users often walk their dogs in this area and along the canal.

2.3.8 Fog and mist can reduce visibility for crossing users at certain times of year. For this crossing the nearest weather station is Rostherne. The FDAT results reveal that this crossing is exposed to fog on an average of 29 times a year.



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
2016	2	1	1	2	1	0	2	0	1	7	6	3	26
2017	3	2	1	0	2	1	1	0	6	1	1	7	25
2018	1	1	3	2	6	1	1	4	4	6	0	5	34
2019	5	3	2	0	1	3	4	4	5	1	6	4	38
2020	6	0	0	0	2	3	1	1	6	1	2	5	27
Average	3	1	1	1	2	2	2	2	4	3	3	5	

2.4 Approach to crossing

2.4.1 This crossing is located between Acton Bridge station and Warrington Bank Quay station. At this location the crossing spans two lines with a maximum line speed of 125 mph. The railway is orientated approximately from north to south.

2.4.2 Approaching the crossing from the west you arrive on the down side. Users approaching from the west access via the residential area and enter onto Red Brow Lane. From here users traverse a small bridge which leads over the Bridgewater Canal and continues along Red Brow Lane for approximately 400 metres. Once at the crossing, users are presented with a Miniature Warning Light [MSL] system which provides visual indication as to if it is safe to cross or not. If it is safe, users open the first gate and traverse quickly over the crossing and through a second gate. From here, users can either continue east along Red Brow Lane toward the Bridgewater Canal and Daresbury Business Park or can head south parallel to the railway along a small path which again leads to the Bridgewater Canal.

2.4.3 Approaching the crossing from the east you arrive on the up side. Users approaching from the east access via Daresbury Business Park or via the Bridgewater Canal. From here, users continue down Red Brow Lane toward the level crossing. Once at the crossing, users are presented with an MSL system which provides visual indication as to if it is safe to cross or not. If it is safe, users open

the first gate and traverse quickly over the crossing and through a second gate. From here, users then continue west for approximately 400 metres and enter into the large residential area to the west of the crossing.

- 2.4.4 As previously noted, vehicles are able to travel along Red Brow Lane however there is no vehicular access over the crossing.
- 2.4.5 At this location, the crossing surface is of rubber construction and has anti-slip properties built into the surface. There is an MSL system at the crossing and a telephone provided in case of emergency or failure of the MSL system. The crossing surface is level at this location and the approaches directly adjacent to the crossing are also level; however along Red Brow Lane to the east, the road is very steep leading up to the business park.

2.5 Crossing usage

- 2.5.1 Normal passenger services run between the hours of 06:00 and 01:00 with approximately 150 services per day. Freight services also traverse this line with approximately 85 services running through the full 24 hours. The number and frequency of services can fluctuate depending on operational requirements, engineering works or during times of disruption.
- 2.5.2 At some level crossings, there is a chance that a second train may pass the crossing within 20 seconds of the first train. At this location, there is a chance this will happen sometimes.
- 2.5.3 Additionally, the chance that a second approaching train may not be seen until the first train has passed is likely.
- 2.5.4 A nine-day census was completed between 14/07/2021 and 23/07/2021. During this period there were 1550 adult pedestrians, 60 accompanied children, 470 cyclists, 171 dogs on a lead, 29 dogs not on a lead and 6 motorbikes. As a result, an average of 178 pedestrians and 53 cyclists per day has been input into ALCRM.

2.5.5

User Type	Total number during 9-day census
Pedal / Motorcycles	476
Pedestrians	1550
Accompanied Children	60
Dogs on a lead	171
Dogs not on a lead	29

- 2.5.6 During the census there was evidence of usage by vulnerable users, although this did not equate to a higher than usual number. However, it must be noted that a visual census does not fully identify all users with protected characteristics. The MSLs provide appropriate warning for vulnerable users.

- 2.5.7 During the census there was no evidence to suggest that a high number of irregular users were utilising the level crossing. There are no attractions nearby which would likely lead to an increase in irregular users.
- 2.5.8 Finally, during the census period there were 12 users during the Night Time Quiet Period (NTQP). This has worked out at 1 % usage during the NTQP which is not deemed to be a high number.

3 SIGHTING AND TRAVERSE TIME REQUIREMENTS

3.1 Sighting and traverse

- 3.1.1 A decision point is a position where an individual would reasonably make a decision to cross the railway.
- 3.1.2 Sighting is the distance that can be seen in both directions for approaching trains. At this crossing the sighting is less than required for the time needed to allow a person to traverse the crossing.
- 3.1.3 The length of the crossing from a safe place on one side of the railway to a safe place on the other side of the crossing is 10.7m when crossing from either side.
- 3.1.4 The time required to traverse the crossing from either side is 9 seconds for a pedestrian. These times have been calculated using the Network Rail sighting calculation tool.
- 3.1.5 The sighting at the crossing is not sufficient to provide suitable warning of an approaching train to enable the user to cross. As such Miniature Stop Lights are provided to give a visual indication of train approach; the system provides indication via a red or green light, if a train is approaching the system shows a red light indicating it is not safe to cross, whereas if the system shows a green light there is no train approaching and it is safe to cross
- 3.1.6 Telephones are provided at the crossing should the MSL fail, this allows a user to contact the signaller and obtain permission to cross when it is safe to do so. However, this is dependent on users reliably using the telephones and on the controlling signaller being able to know the location of any trains in relation to the crossing in order to advise the users.

3.2 Sighting Calculations

	Decision point (m)	Traverse length (m)	Measured from
Up side	3	10.7	Entry gate onto the level crossing.
Down side	3	10.7	Entry gate onto the level crossing.

	Traverse Time Up Side (seconds)	Traverse Time Down Side (seconds)
Pedestrians	9.00	9.00

	Minimum sighting distance required (m)	Available sighting distance (m)	Comments	Warning time provided by sighting distance (seconds)
Up side looking at trains travelling in the up direction	503	102	Measured to approaching train.	1.82
Up side looking at trains travelling in the down direction	503	221	Measured to passing train.	3.95
Down side looking at trains travelling in the up direction	503	351	Measured to Stanchion.	6.28
Down side looking at trains travelling in the down direction	503	624	Measured to Bridge 50.	11.17

3.3 Identified hazards and risks.

Hazard	Potential impact	Mitigations
Trains	Fatality or serious injury	<ul style="list-style-type: none"> • Level crossing signage. • Miniature Stop Lights installed for visual indication of train approach. • Audible alarms provided for those with visual impairments. • Telephones installed in case of MSL failure or emergency.
Underfoot conditions	Fatality or serious injury	<ul style="list-style-type: none"> • Appropriate crossing decking for crossing type and location. • Regular crossing inspections and maintenance regime in place. • Vegetation checked during inspections.
Difficulty on hearing or seeing approaching trains due to inclement weather	Fatality or serious injury	<ul style="list-style-type: none"> • Level crossing signage. • Vegetation checked during inspections. • Miniature Stop Lights installed for visual indication of train approach. • Audible alarms provided for those with visual impairments. • Telephones installed in case of MSL failure or emergency.
Darkness	Fatality or serious injury	<ul style="list-style-type: none"> • Review of night time usage completed – 1 % of usage during NTQP. • Miniature Stop Lights installed for visual indication of train approach. • Audible alarms provided for those with visual impairments.
Vegetation growth between visits reducing the ability to see trains approaching crossing	Fatality or serious injury	<ul style="list-style-type: none"> • Vegetation checked during inspections. • Regular inspection and maintenance regime in place. • Miniature Stop Lights installed for visual indication of train approach. • Audible alarms provided for those with visual impairments. • Telephones installed in case of MSL failure or emergency.
Unfamiliar users	Fatality or serious injury	<ul style="list-style-type: none"> • Standard crossing layout, compliant with Office of Rail and Road guidance. • Instructional signage at crossing. • Miniature Stop Lights installed for visual indication of train approach. • Audible alarms provided for those with visual impairments. • Telephones installed in case of MSL failure or emergency.
Increased usage due to future developments	Fatality or serious injury	<ul style="list-style-type: none"> • Review and update this risk assessment appropriately – no known nearby developments.

The risk assessment is based on data collected at the crossing and entered into ALCRM. This is a computer-based application used by Network Rail to assist in the risk management of level crossings. The risk result consists of a 'letter' and 'number' classification of safety risk, giving the 'letter' (A-M for individual risk) or 'number' (1-13 for collective risk) band. These rankings represent the range of risk across all types of crossings where A and 1 are the highest and M and 13 are the lowest.

☰ Risk Summary ^	
FWI Total	0.020396767
Collective Risk Number	2
Collision Frequency	0.025884222
Risk Group	Z03
Reassessment Frequency (years)	1.25
Next Assessment Due Date	dd/mm/yyyy
Core Type	FPMWL

Risk Per Traverse User	0.000000441
RPT Letter	B
Average Consequence	0.788
Reassessment Colour	Red
Calculation Date	21/04/2021
Crossing Type	FPGM ▼

4 SAFETY MANAGEMENT INFORMATION SYSTEM

4.1 Network Rails internal safety management information systems have been interrogated and revealed that during the previous 5 years there have been 15 reported incidents at the crossing, see details below.

Event date	Description
03/06/2018	LC Failure: Warrington MOM reported upside crossing phone at Norton LC was not working
16/08/2018	LC Failure: Member of public reported Up side gate was not latching when closed at Norton Level Crossing
22/05/2019	Vandalism - Member of public reported the Up side gate damaged at Norton LC.
13/04/2020	LC Failure: Member of public reported one of the gates at Norton LC would not close due to a broken hinge
21/04/2020	Suicide Intervention / Trespass - Warrington MOM directly intervened with a suicidal male at Norton LC.
31/07/2020	LC Failure - Yodel alarms reported to not be operating during the passage of a train at Norton LC.
21/11/2020	LC Failure: Member of public reported the upside gate at Norton LC was swinging inwards towards the up line
30/11/2020	LC Misuse: 9M86 (14:53 Edinburgh-Euston) reported a male crossed over Norton LC while barriers were lowered and lights showing red.
27/01/2021	Fatality: 5V33 (05:30 Crewe - Manchester Piccadilly) reported striking a person at Norton (Public Footpath) level crossing
14/04/2021	LC Near Miss/Misuse: 1S42 (0710 London Euston - Glasgow Central) reported a near miss with a member of public at Norton LC
18/04/2021	LC Failure: MOP reported crossing gate was not closing due to broken lock at Norton LC.
25/04/2021	LC Near Miss: 1M15 (15:43 Carlisle - Euston) reported a near miss with a female at Norton LC
03/06/2021	LC Failure/Alleged WSF: MOP reported red road lights and Klaxon failed for the passage of 6J48 (07:25 Shap Summit-Crewe PAD) at Norton LC, cause not established.
02/08/2021	Driver of AWC 9A53 1158 Lancaster to London Euston has reported to Winsford signaller via GSMR a near miss at Norton R/G foot Level Crossing between Acton Grange Junction and Weaver Junction with a young lad. Driver reports it was too close to apply the emergency brakes and is OK to continue.
06/09/2022	LC Near Miss: 9M54 (13:47 Blackpool North - Euston) reported a near miss with a pedestrian at Norton LC

5 OTHER FACTORS AFFECTING THE CROSSING

5.1 Changes affecting the crossing

- 5.1.1 At the time of this assessment, a housing development proposal has been put forward for a plot of land to the south-east of the crossing. Network Rail have been contacted by Halton council in relation to a development proposal of 108 dwellings 22/000354/REM.
- 5.1.2 The proposed land is to the immediate south-east of the crossing and will be a very short walk to the crossing. The town of Runcorn is on the west of the crossing, which boasts numerous schools, houses, and local amenities. Norton crossing would be a primary access to get from the development to Runcorn. The footpath and cycleway network in the area surrounding the crossing has recently been significantly improved and is already well used by a wide range of people.
- 5.1.3 From the National Office of Statistics, it can be determined that the average household has 1.2 children, again using the 108 dwellings on the development it can be determined that a further 129 children will be living in close proximity to this open access to the railway. Not only could this increase the possibility of deliberate acts of misuse of the crossing, for example children playing 'chicken', it will also increase the potential for accidental misuse e.g. groups of children not paying cognisance to their surroundings. Details from the RSSB state

'When in a group of people, individuals are prone to following the 'herd mentality', paying less attention to their surroundings and following the decision-making of the group as a whole. This may be particularly problematic at footpath and bridleway crossings on routes used often by ramblers. Young people in groups also exhibit more risky behaviour. A young person's attitude to risk tends to be one of a 'risk adopter'. Although most young people will not engage in extremely dangerous behaviour, peer group dynamics can encourage them to behave more dangerously than they would when on their own.'

- 5.1.4 Information from the Pet Food Manufacturers Association shows that approximately 25 % of households have pet dogs, as the development is for 108 new homes it can be assumed that there will be about 27 new houses with pet dogs. This may result in a further increase in use of the crossing by dog walkers.

	Risk Score	FWI	Increase / Decrease	Percentage Change
Current	B2	0.037394073		
10% Houses	B2	0.039012864	↑	4 %
20% Houses	B2	0.040793535	↑	9 %
30% Houses	B2	0.042574205	↑	14 %

5.1.5 **This risk increase at the crossing would be deemed unacceptable and closure of the crossing must be discussed in order to mitigate against that risk increase.**

5.1.6 Since the above planning application, a further application (22/00370/REM) for the approval of reserved matters (access, appearance, landscaping, layout and scale) of permission 20/00337/OUTEIA (Outline planning permission, with all matters reserved except for access, for the residential led mixed use development of the site, comprising of residential (Use Class C3), employment (Use Class B1) and local centre uses (Use Class A1-A4/D1) and associated infrastructure, landscaping and land remodelling) for erection of 97 No. dwelling houses and associated works at Land North Of Red Brow Lane, Warrington, WA4 4BB

5.1.7 As stated above, from the National Office of Statistics, it can be determined that the average household has 1.2 children, again using the 97 dwellings on the development it can be determined that a further 116 children will be living in close proximity to this open access to the railway. Not only could this increase the possibility of deliberate acts of misuse of the crossing, for example children playing ‘chicken’. It will also increase the potential for accidental misuse e.g. groups of children not paying cognisance to their surroundings. Details from the RSSB state

‘When in a group of people, individuals are prone to following the ‘herd mentality’, paying less attention to their surroundings and following the decision-making of the group as a whole. This may be particularly problematic at footpath and bridleway crossings on routes used often by ramblers. Young people in groups also exhibit more risky behaviour. A young person’s attitude to risk tends to be one of a ‘risk adopter’. Although most young people will not engage in extremely dangerous behaviour, peer group dynamics can encourage them to behave more dangerously than they would when on their own.

5.1.8 Information from the Pet Food Manufacturers Association shows that approximately 25 % of households have pet dogs, as the development is for 97 new homes it can be assumed that there will be about 24 new houses with pet dogs. This may result in a further increase in use of the crossing by dog walkers.

5.1.9 The below table shows the potential increase in risk from the information given in planning application 22/00370/REM and is based on the broad estimate of usage being 2 adults per dwelling and a further 1.2 children per dwelling traversing the crossing twice. This has been divided in to increased usage of

25 % - 151 additional traverses.
 50 % - 303 additional traverses.
 75 % - 454 additional traverses.
 100 % - 606 additional traverses.
 of the 97 dwellings utilising Norton Level Crossing.

	Risk Score	FWI	Increase / Decrease	Percentage Change
Current	B2	0.025884222		

25%	C2	0.028900044	↑	11.6 %
50%	C2	0.035269739	↑	36.2 %
75%	C2	0.060512728	↑	133 %
100%	C1	0.076371236	↑	195 %

5.1.10 **This risk increase at the crossing would be deemed unacceptable and closure of the crossing must be discussed in order to mitigate against that risk increase.**

5.1.11 Since the above 2 applications, another Pre-Application (21/07146/PREAPP) Sandymoor South Phase 2 & Wharford Farm has been submitted for the erection of a further 850 dwellings.

5.1.12 From the National Office of Statistics, it can be determined that the average household has 1.2 children, again using the 850 dwellings on the development it can be determined that a further 1020 children will be living in close proximity to this open access to the railway. Not only could this increase the possibility of deliberate acts of misuse of the crossing, for example children playing 'chicken', but it will also increase the potential for accidental misuse e.g. groups of children not paying cognisance to their surroundings. Details from the RSSB state

'When in a group of people, individuals are prone to following the 'herd mentality', paying less attention to their surroundings and following the decision-making of the group as a whole. This may be particularly problematic at footpath and bridleway crossings on routes used often by ramblers. Young people in groups also exhibit more risky behaviour. A young person's attitude to risk tends to be one of a 'risk adopter'. Although most young people will not engage in extremely dangerous behaviour, peer group dynamics can encourage them to behave more dangerously than they would when on their own.'

5.1.13 Information from the Pet Food Manufacturers Association shows that approximately 25 % of households have pet dogs, as the development is for 850 new homes it can be assumed that there will be about 680 new houses with pet dogs. This may result in a further increase in use of the crossing by dog walkers.

5.1.14 The below table shows the potential increase in risk from the information given in planning application 21/07146/PREAPP and is based on the broad estimate of usage being 2 adults per dwelling and a further 1.2 children per dwelling traversing the crossing twice. This has been divided in to increased usage of

25 % - 680 additional traverses.
50 % - 1360 additional traverses.
75 % - 2040 additional traverses.
100 % - 2720 additional traverses.
of the 850 dwellings utilising Norton Level Crossing.

	Risk Score	FWI	Increase / Decrease	Percentage Change
Current	B2	0.020396767		
25%	C1	0.059687251	↑	192 %
50%	C1	0.122169773	↑	498 %
75%	C1	0.178075187	↑	773 %
100%	C1	0.233980601	↑	1047 %

5.1.15 It is also important to note that the above are three separate phases/applications and if all three go ahead this would mean an increase of a possible 1055 dwellings. The below table shows the potential increase in risk from the information given above combining all 3 phases/applications. This again is based on the broad estimate of usage being 2 adults per dwelling and a further 1.2 children per dwelling traversing the crossing twice. This has been divided in to increased usage of

25 % - 844 additional traverses.
 50 % - 1688 additional traverses.
 75 % - 2532 additional traverses.
 100 % - 3376 additional traverses.
 of the 1055 dwellings utilising Norton Level Crossing.

	Risk Score	FWI	Increase / Decrease	Percentage Change
Current	B2	0.020396767		
25%	C1	0.079747429	↑	290 %
50%	C1	0.149135914	↑	631 %
75%	C1	0.218524398	↑	971 %
100%	C1	0.287912883	↑	1311 %

6 OPTIONS EVALUATED

6.1 Detailed below are a number of options that have been considered to reduce the risk at the crossing.

Option	Original ALCRM risk score	New ALCRM risk score	New ALCRM FWI	Safety benefit %	Cost	Cost Benefit Ratio
Closure by Diversion of Public Right of Way	B2	M13	0.000	100 %	Unknown	Discounted
Closure by Pedestrian Over Bridge	B2	M13	0.000	100 %	£2,100,000	0.69
Closure by Pedestrian Underpass	B2	M13	0.000	100 %	£4,000,000	0.36

NOTES

The following CBA criteria are used as a support to decision making:

- a. benefit to cost ratio is ≥ 1 : positive safety and business benefit established.
- b. benefit to cost ratio is between 0.99 and 0.5: reasonable safety and business benefit established where costs are not grossly disproportionate against the safety benefit; and
- c. benefit to cost ratio is between 0.49 and 0.0: weak safety and business benefit established.

7 CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

7.1.1 *Closure by Diversion of Public Right of Way*

The first option at this location would be to close the level crossing and divert the public right of way using existing routes. This option would provide 100 % risk reduction and allow users to reach either side of the railway without having to traverse the level crossing.

From a desktop study, it appears there are two alternate routes however the routes are approximately 1 mile and 1.2 miles in length respectively. Each route utilises existing paths to the west of the crossing and takes users toward the Bridgewater Canal using existing bridges or underpasses.

As the diversionary routes are lengthy, this option may not be suitable as the routes may be seen as excessive. Additionally, at present Norton level crossing also forms part of a bridleway route; this means any alternate route would also have to be suitable for equestrians. Neither route is suitable as a bridleway at present and as such, both routes are likely to be unsuitable.

As such, this option has been discounted as, at present there are no suitable diversionary routes nearby.

7.1.2 *Closure by Pedestrian Overbridge*

The next option at this location would be to close the level crossing and construct an overbridge to provide access to either side of the railway. This option would completely remove risk at the crossing and would allow users to traverse from one side of the railway to the other without having to use the level crossing.

Installation of an over-bridge is a costly option and may involve land purchase due to the footprint required to construct a footbridge. Additionally, because a bridge requires a large amount of land and as there is a single dwelling located adjacent to the crossing, the dwelling may need to be purchased and demolished in order to fit the structure in situ.

Another issue with this option is that, as mentioned, Norton forms part of a bridleway route and as such, the bridge would need to be suitable for equestrian traffic. It's likely that this would mean a ramped bridge rather than a stepped bridge and this would require even more land.

However, the option performs moderately on a cost benefit analysis. This is due to the current high risk at the crossing due to the sheer volume of pedestrians traversing daily.

This option should be considered further. Although there are issues around land and potential costing, the option performs moderately on a cost benefit analysis and would completely remove the risk whilst also providing access over the railway.

7.1.3 *Closure by Pedestrian Underpass*

The final option at this location would be to close the crossing and construct a pedestrian underpass. This option would completely remove risk at the crossing and would allow users to reach either side of the station without having to traverse the level crossing.

However, an underpass introduces new risks such as potential flooding and antisocial behaviour issues; flooding issues are more problematic here due to the small stream nearby and the proximity to the Bridgewater Canal. As with a footbridge, an underpass would require a large amount of land in order to correctly gradient the structure and may even require the purchase and demolition of the single dwelling nearby.

As such, because of the land issues, flooding issues and cost of the project, this option has been discounted as the cost significantly outweighs the safety benefit.

7.2 Recommendations

- 7.2.1 Network Rail is subject to the requirements of the Health and Safety at Work Act etc. 1974 to reduce risk 'so far as is reasonably practicable'. In simple terms this means that the cost, time and effort required in providing a specific risk reduction measure needs to be commensurate with the safety benefit that will be obtained as a result of its implementation.
- 7.2.2 Following the completion of the risk assessment and having reviewed all relevant information and options including the proposed new housing development, the assessor recommends that closure of the level crossing is the only suitable option. The risk at the crossing is high due to the sheer volume of pedestrian users alongside the 125 mph linespeed of trains traversing the crossing throughout the day and night. This option would remove this risk entirely. This option is subject to funding and technical approval.
- 7.2.3 In the short term, the assessor recommends that a level crossing safety awareness day takes place at the crossing. This would help educate the local public on the risks at Norton level crossing and how to use the level crossing safely.

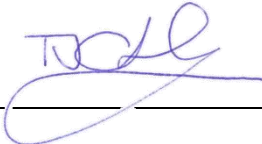
8 TACTICAL GROUP REVIEW

8.1 DELETE AS APPROPRIATE

This assessment has been discussed at Tactical Group on xxdatexx.
 Add any comments made -
 At this stage no additions are required to be made in this Narrative Risk Assessment.

This assessment has been circulated to the Tactical Group members prior to the meeting on xxdatexx – The group accept the recommendation, that the crossing risk level is currently as low as reasonably practicable, and no further comments were made.

9 APPROVAL

Prepared by: Megan Noblett	Signature:
Job Title:	Network Rail Level Crossing Manager
Date:	10/11/2022
Reviewed by: Tim Clark	Signature: 
Job Title:	Network Rail Route Level Crossing Manager
Date:	15/11/2022

10 APPENDIX A

ALCRM provides an output estimate of both the risk per traverse and collective risks at a level crossing.

The risk per traverse and collective risk is expressed in Fatalities and Weighted Injuries (FWI). The following values help to explain this:

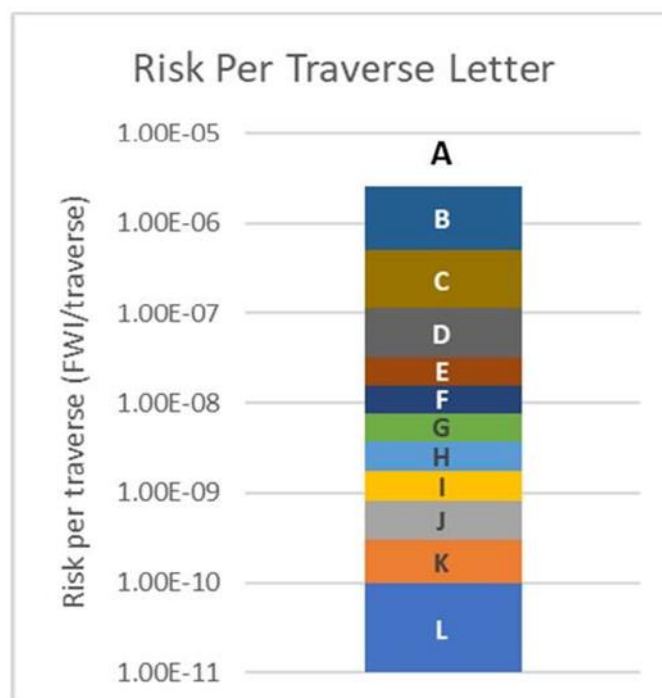
- **1** = 1 fatality per year or 10 major injuries or 200 minor RIDDOR events or 1000 minor non-RIDDOR events
- **0.1** = 20 minor RIDDOR events or 100 minor non-RIDDOR events
- **0.005** = 5 minor non-RIDDOR events

RISK PER TRAVERSE

This is the level of calculated risk to an individual crossing user. It applies to a single traverse of the level crossing or each time the crossing is used by an individual.

Risk per traverse:

- Can be calculated for crossing users, train staff and passengers. Ranking is based on the risk to users only.
- Does not increase with the number of users.
- Is presented as a simplified ranking A to M. A is highest, L is lowest, and M is 'zero risk' e.g. temporary closed, dormant or crossings on mothballed lines.
- Allows risks to individuals on a per traverse basis to be assessed even if usage and Collective Risk is low.
- Can help in the prioritisation of risk mitigation and investment in safety.

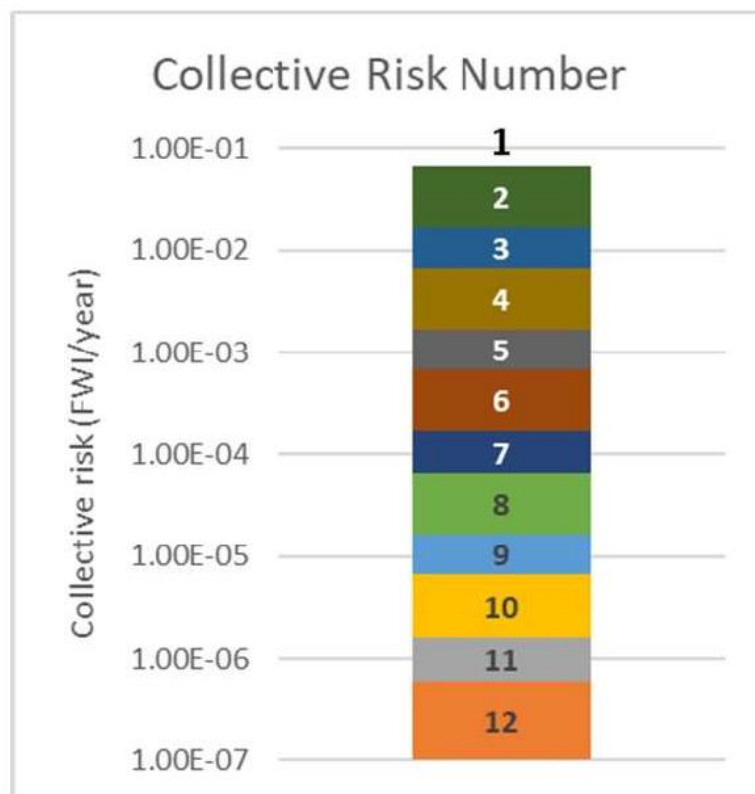


COLLECTIVE RISK

This is the total risk for the crossing and includes the risk to users (pedestrian and vehicle), train staff and passengers.

Collective risk:

- Is presented as a simplified ranking:
 - Allocates collective risk into rankings 1 to 13 (1 is highest, 12 is lowest, and 13 is 'zero risk' e.g. temporary closed, dormant or crossings on mothballed lines)
 - Can easily compare collective risk between any two crossings on the network



11 APPENDIX B

Additional photographs of crossing environment.



Up side across crossing



Down side across crossing



Up side looking up



Down side looking up



Up side looking down



Down side looking down

Halton Borough Council
Development Control
Municipal Building Kingsway
Widnes
Cheshire
WA8 7QF

Our ref: SO/2022/122617/01-L01
Your ref: 22/00543/OUTEIA
Date: 27 October 2022

To Whom it May Concern,

APPLICATION FOR OUTLINE PLANNING PERMISSION WITH ALL MATTERS RESERVED (EXCEPT MEANS OF ACCESS) FOR RESIDENTIAL DEVELOPMENT COMPRISING UP TO 250 DWELLINGS, ELECTRICITY SUB STATIONS, ALONG WITH RECREATIONAL OPEN SPACE, LANDSCAPE AND OTHER RELATED INFRASTRUCTURE.

SANDYMOOR SOUTH PHASE 2, WINDMILL HILL AVENUE, EAST RUNCORN, CHESHIRE.

Thank you for consulting us on the above application, on 25th October 2022.

Environment Agency position:

We have no objection to the application.

--

Should you have any queries regarding this response, please do not hesitate to contact me.

Yours faithfully,

Miss India Blythin
Planning Advisor

india.blythin@environment-agency.gov.uk

Halton Borough Council
Development Control
Municipal Building Kingsway
Widnes
Cheshire
WA8 7QF

Our ref: SO/2022/122617/02-L01
Your ref: 22/00543/OUTEIA
Date: 24 April 2023

To Whom it May Concern,

APPLICATION FOR OUTLINE PLANNING PERMISSION WITH ALL MATTERS RESERVED (EXCEPT MEANS OF ACCESS) FOR RESIDENTIAL DEVELOPMENT COMPRISING UP TO 250 DWELLINGS, ELECTRICITY SUB STATIONS, ALONG WITH RECREATIONAL OPEN SPACE, LANDSCAPE AND OTHER RELATED INFRASTRUCTURE.

SANDYMOOR SOUTH PHASE 2 WINDMILL HILL AVENUE EAST RUNCORN CHESHIRE.

Thank you for consulting us on the above application, on 19th April 2023.

We have no further comments to add to our letter dated 27 October 2022, our reference SO/2022/122617/01-L01. Please see copy attached.

-

Should you have any queries regarding this response, please do not hesitate to contact me.

Yours faithfully,

Miss India Blythin
Planning Advisor
Spplanning.rfh@environment-agency.gov.uk

Halton Borough Council
Development Control
Municipal Building Kingsway
Widnes
Cheshire
WA8 7QF

Our ref: SO/2022/122617/01-L01
Your ref: 22/00543/OUTEIA
Date: 27 October 2022

To Whom it May Concern,

APPLICATION FOR OUTLINE PLANNING PERMISSION WITH ALL MATTERS RESERVED (EXCEPT MEANS OF ACCESS) FOR RESIDENTIAL DEVELOPMENT COMPRISING UP TO 250 DWELLINGS, ELECTRICITY SUB STATIONS, ALONG WITH RECREATIONAL OPEN SPACE, LANDSCAPE AND OTHER RELATED INFRASTRUCTURE.

SANDYMOOR SOUTH PHASE 2, WINDMILL HILL AVENUE, EAST RUNCORN, CHESHIRE.

Thank you for consulting us on the above application, on 25th October 2022.

Environment Agency position:

We have no objection to the application.

--

Should you have any queries regarding this response, please do not hesitate to contact me.

Yours faithfully,

Miss India Blythin
Planning Advisor

india.blythin@environment-agency.gov.uk

To Kathryn Brindley

Date 15/12/2022

Dept. Planning

Ref 22/00543/OUTEIA

From Local Lead Flood Authority

Local Lead Flood Authority Consultation Response - 22/00543/OUTEIA

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2, Windmill Hill Avenue East, Runcorn, Cheshire.

After reviewing 22/00543/OUTEIA application, the LLFA found the following:

- The site is 17.37ha, it is considered to be a Greenfield site.
- The proposed development for a residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure. This would increase the site's current vulnerability to flooding to 'More Vulnerable' according to NPPF guidance and have a design life of 100years.
- The proposed development involves the land use change which will likely reduce the permeability. This change would likely increase the surface water runoff at the proposed site.

The Applicant has submitted an ES Chapter, a Flood Risk Assessment for Sandymoor South, a Flood Risk Assessment for the potential Wharford Farm development (not covered by this red line boundary so not considered by LLFA as part of this application) and outline drainage strategy to cover both the Sandymoor South and Wharford Farm sites in support of the planning application.

With regards to Chapter 9 of the ES (Water Resources and Flood Risk) the LLFA has the following comments:

- The ES looks at the cumulative effects of both the Sandymoor South and Wharford Farm proposed developments. Although it's good to get an overview of the whole scheme, the LLFA would note this makes this chapter slightly confusing when just assessing the Sandymoor South application.
- Section 9.2.11 doesn't include the updated PPG for Flood risk and coastal change (August 2022), this needs to be updated and the advice in the PPG used.
- Section 9.3.12 indicates infiltration is not viable, therefore swales and open attenuations basins will be used and discharge into Sandymoor and Keckwick Brook.
- Section 9.3.14 indicates Greenfield Runoff Rate as 449.64 l/s, the LLFA is assuming this is the joint rate from Wharford Farm and Sandymoor South. The

- ES needs to explicitly state the runoff rates just for Sandymoor South as it's the area within the red line boundary for the proposed development, the same with any attenuation volumes stated through the chapter.
- Sections 9.3.20 and 24 show Keckwick Brook and Sandymoor Brook due to its connectivity to Keckwick Brook as highly sensitive receptors.
 - Sections 9.3.34 to 9.3.56 relate to current flood risk on site. The LLFA would disagree with the sections on fluvial, surface water and artificial flood risk sources as detailed further in the Sandymoor South FRA comments.
 - Sections 9.3.57 to 9.3.65 relate to the future baseline. The LLFA wouldn't agree with the statement in 9.3.61 that the future baseline would remain unchanged in terms of sensitivity as the population served by this network increases and the effects of climate change will likely increase the sensitivity of the network.
 - Sections 9.4.5 to 9.4.8 discusses the potential effects of the proposed development on increased sediment load to the Brooks. The LLFA appreciates the comments regarding sediment increase on flooding of the Brooks as this is a significant concern at these locations.
 - Section 9.4.23 discusses the potential effects of flood risk to workers and construction plant. The LLFA would disagree with the statement that the site is located in flood zone 1, the 2014 modelling of Sandymoor Brook is discussed in the FRA and indicates flooding occurs from the 1 in 20year event upwards, therefore there are sections of the site in Flood Zone 3b and this risk should be reflected in the ES chapter.
 - Sections 9.4.31 to 9.4.35 don't go into enough depth regarding mitigation of flood risk during the intermediate year construction to support the statement 'Overall the flood risk to residents from concurrent construction and operation is not considered to be significant'.
 - Section 9.5.10 – it would be useful to understand which areas would be positively drained and which are being left to their natural pathways / if any of these would be disrupted by the proposed development. Again the Sandymoor South and Wharford Farm discharge rates need to be separated out to assess the proposed development adequately.
 - Table 9-10 needs to be updated with 1 in 100 year +45% CC allowance figures too.
 - The LLFA is not commenting on the Wharford Farm FRA as part of this response as it is not within the red line boundary.
 - Section 9.5.19 – the wrong climate change allowance is being used and the FFL would need to be 600mm above the 1 in 100 year +52% CC event. This would need updating.
 - 9.5.28 - Again LLFA don't agree that the site is solely in Flood Zone 1, see previous comments.
 - Tables 9 – 11, 9-14 and 9-15 should include flood risk for Sandymoor South.
 - Section 9.7.19 – without updated modelling it is hard to assess if this statement is correct.

With regards to the Sandymoor South Flood Risk Assessment ref 044732-BHE-XX-XX-RP-CW-0002, Revision 1 the LLFAs comments are:

- With regards to fluvial flood risk the FRA refers to the site as being located within Flood Zone 1, the LLFA would dispute this as although the EA's mapping shows the site to not be located in the floodplain of a Main River the site is at

risk of flooding from Sandymoor Brook which runs through the site. The FRA goes on to state 2014 modelling of Sandymoor Brook (commissioned by HCA) showed flooding occurring from the 1 in 20 year flood event upwards, indicating that some of the site would actually lie within Flood Zone 3b and development within these areas should be avoided. The applicant has not provided the original model report nor has updated the model with current hydrology to ensure fluvial flood risk on site has been mapped correctly. Therefore, the LLFA cannot determine the impact of fluvial flooding to or from the site and whether the proposed development is appropriate. As such the LLFA would object to the application.

- Section 4.3.20 of the FRA indicates the 2014 modelling of Sandymoor Brook identifies inundation of the site primarily occurring due to overtopping of the left bank of Sandymoor Brook at culvert SAND26 as the capacity is exceeded. The FRA indicates the 2014 modelling looked at options to remove the culvert and possibly upsize the culvert SAND18 downstream to reduce flood risk both to the site and downstream. In principal the LLFA would not object to this however submission of the 2014 modelling report would be required to determine if this is a suitable solution and not increase flood risk off site i.e. at SAND18 (Walshingham Drive).
- The LLFA disagrees with the way Climate Change in relation to Sandymoor Brook has been assessed.
 - o In Section 3.27 and 3.2.8 the FRA correctly identifies the Design Flood Event for a More Vulnerable Development in Weaver Gowy Catchment as the 100year + 52% allowance for Climate Change (CC). It is then noted in section 4.3.9 that since the 2014 modelling of Sandymoor Brook, there has been updated guidance with considers an uplift of 52% peak river flow appropriate for the assessment of the proposed development and as such the Design Flood event is the 1 in 100 year +35% CC event. It then goes on to state 'it is considered appropriate to sensitivity test the 1 in 20% CC findings with the 1 in 1000 year scenario to inform the recommendations of this report'.
 - o The LLFA doesn't consider this an appropriate assessment of climate change as the DFE is clearly the 1 in 100 year +52% not 1 in 100 year +35% and the 1 in 100 year +52% flood outline / depths would likely be larger / deeper than the 1 in 1000year outline so any assessment of flood risk based on the 1 in 1000year rather than the 1 in 100 year +52% CC would likely underestimate the extent and depth of flooding on site. Therefore any recommendations such as finished floor levels based off this assessment would not be appropriate.
 - o Without the hydraulic model being reran with updated hydrology the LLFA would not be able to determine that future flood risk to and from the site has been adequately assessed as dictated in NPPF and the updated PPG.
- The LLFA disagrees with the way the Finished Floor Levels have been set, they need to be set at 600mm above the modelled water level for the 1 in 100year +52% CC event.
- The LLFA would clarify that no development should be permitted within 8m of a waterbody or the Flood Storage Area (not just the building outline as mentioned in the FRA).

- The LLFA would disagree with section 4.3.25 that any upgrades should be modelled at detailed design stage. The modelling should be done to support the outline application, this site lies in a Critical Drainage Area and flood risk needs to be assessed appropriately. Without the modelling the LLFA cannot determine the impact of the proposed development on flood risk downstream and the impact of flood risk to the development in the future, which it is required to look at under NPPF and the associated PPG.
- With regards to Groundwater the LLFA agrees with the FRA's assessment that the risk is low.
- In regards to Surface Water Flood Risk the FRA takes a high level assessment of the risk to the site. It is fairly clear looking at the EA mapping a large amount of the surface water flood risk is likely caused by flooding of Sandymoor Brook. The modelling which backs the mapping doesn't always consider culverts and larger areas where higher flood risk seen on site may be depicted due to this. Again this emphasises the need for Brook's modelling to be updated in order to assess all sources of flood risk on site.
- With regard to how surface water will be managed on site, the applicant has provided as Surface Water Drainage Strategy which is referred to in the FRA. The applicant proposes to discharge surface water through gravity sewers to a swale in the middle of the site which connects to two detention ponds which will provide water quality treatment and attenuation before discharging to Sandymoor Brook at the restricted Greenfield Runoff Rates of 76.3l/s from Basin 1A and 93.4l/s from Basin 1B. The LLFA would accept this in principal but would require the calculations be provided for Sandymoor South rather than the joint calculations for Sandymoor South and Wharford Farm.
- With regards to Sewer flooding the LLFA agrees the risk is likely low currently and in the future as long as best practice guidance is followed in the detailed design.
- With regards to flooding from artificial sources the LLFA would agree that the current risk of flooding from the Bridgewater Canal is likely to be low due to the maintenance regime of Peel holdings, however the Residual Risk of flooding from this source hasn't been adequately addressed and the LLFA would recommend the applicant look at Paragraph: 041 Reference ID: 7-041-20220825 of the governments PPG: Flood risk and coastal change which can be found: <https://www.gov.uk/guidance/flood-risk-and-coastal-change#para41>
- The LLFA would comment overall there is very little detail with regard to mitigation against potential flood risk sources and access and egress presented.
- The FRA concludes that the flood risk to and from the proposed development would be low from all sources. The LLFA would disagree with this based on the comments above and would recommend further works be undertaken to properly assess the fluvial, surface water and artificial sources both on and off site for current and future scenarios.

The LLFA has reviewed the drainage strategy ref. 044732 - Surface Water Drainage Strategy 11.pdf. The LLFAs comments on this document are as follows:

- The strategy considers a wide range of SuDS. It is understood that infiltration testing has been undertaken and has been found to not be viable. Evidence of

- the infiltration test results have been included within the submitted document and are found acceptable.
- Assuming that evidence of infiltration testing is supplied, the LLFA considers that the proposals to attenuate flow using ponds swales and porous paving prior to discharge to local watercourses is acceptable.
 - The LLFA notes that an 8m offset has been proposed between the proposed infrastructure and the local waterbodies. Whilst this is considered to be acceptable to facilitate access for maintenance, should the applicant progress the Wharford Farm site they would be expected to submit interpretive geotechnical assessments to demonstrate that there would be no adverse impact on the stability of the reservoir.
 - The report identifies the greenfield and post development runoff rates for each of the drainage catchments during the 1% AEP +40 %storm event, this has been sensitivity tested to ensure the 1% AEP +45% could be attenuated on site as required by updated climate change guidance which the LLFA finds acceptable, please could the section 2.11.2 and table 2-7 be updated to reflect current guidance.
 - It is noted only the calculations for the joint sites have been provided as part of the hydraulic calculations in the appendices. The LLFA would require the calculations for just Sandymoor South be provided as this is the red line boundary area.
 - It is good to see should the Wharford Farm site move forward there that a 10% reduction in runoff rate would be achieved for the developments as a whole.
 - o The LLFA would also expect to see runoff rates for the 100% and 3.33% AEP events for just Sandymoor South detailed, to demonstrate that this reduction in flow would apply across smaller magnitude events.
 - The inclusion of a 10% allowance for urban creep is welcomed.
 - It is noted that only the 1% AEP +40% and the 1% AEP +45% Storm events have been tested within the model outputs supplied. The LLFA would expect that the 100% and 3.33% AEP events to be tested along with uplifts for climate change to demonstrate the performance of the drainage system.
 - Water quality implications have been assessed and the LLFA is satisfied that the two levels of treatment provided by swales and ponds would manage any water quality impacts effectively.
 - It is positive to see the UU NW SuDS pro forma being used as requested during pre-application conversations, however it would need to be updated to accurately address the flood risk and just for the Sandymoor South development.
 - In summary, the LLFA is satisfied that the proposed drainage strategy would be sustainable and would help to manage flood risk within the wider catchment. However, additional detail would need to be provided within the planning application including the calculations be provided for Sandymoor South rather than the joint calculations for Sandymoor South and Wharford Farm.

The LLFA has taken a review of the Wharford Farm FRA. Although interesting to see the FRA for the next phase the LLFA would request it be removed from the material supporting the determination of this application as it is outside of the red line boundary. I am happy to provide comments regarding the Wharford Farm FRA in the New Year if the applicant would like them.

Based on the above the LLFA would object to the proposed application based on the following reasons:

- The Flood Risk Assessment for Sandymoor South provided in support of this application is not considered to be NNPF compliant as it does not adequately assess the impact of fluvial, surface water and artificial sources of flood risk both currently and in the future to the proposed development and the proposed development's impact of flood risk from the proposed development.
- The ES needs to focus on Sandymoor South and be updated based on the FRA update and above comments.
- The Surface Water Drainage Strategy appendices need to be updated in line with above comments.

To Kathryn Brindley

Date 18/05/2023

Dept. Planning

Ref 22/00543/OUTEIA

From Local Lead Flood Authority

Local Lead Flood Authority Consultation Response - 22/00543/OUTEIA - Addendum

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2, Windmill Hill Avenue East, Runcorn, Cheshire.

After reviewing 22/00543/OUTEIA application, the LLFA found the following:

- The site is 17.37ha, it is considered to be a Greenfield site.
- The proposed development for a residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure. This would increase the site's current vulnerability to flooding to 'More Vulnerable' according to NPPF guidance and have a design life of 100years.
- The proposed development involves the land use change which will likely reduce the permeability. This change would likely increase the surface water runoff at the proposed site.

The Applicant has submitted an Addendum to the previously reviewed ES Chapter, a Flood Risk Assessment for Sandymoor South, and outline drainage strategy to cover both the Sandymoor South and Wharford Farm sites in support of the planning application. As previously

Comments provided by the LLFA on the October 2022 ES chapter have been addressed within the water resources and flood risk section of the addendum to the ES. The applicant has also considered further updated information such as the updated Flood Risk and Coastal Change PPG, UU's Draft Water Resources Management Plan 2024 and their Draft Drainage and Wastewater Management Plan 2023 inform the future baseline environment for 2036. The LLFA is satisfied with the updates discussed through sections 5.2.3 to 5.2.49.

The applicant has provided an updated Flood Risk Assessment ref 044732-BHE-XX-XX-RP-CW-0002, Revision 3. With regards to the updates to the FRA the LLFA has the following comments:

- The FRA clearly states that areas lying within areas at high risk of flooding, including those from surface water sources, should not be developed.

- The FRA indicates the design flood event is the 1 in 100 year +52% CC, as there is not up to date modelling of Sandymoor Brook, the FRA uses the 2014 AECOM modelled 1 in 1000 year outline as a conservative proxy for the flood outline of Sandymoor Brook. The current masterplan includes green corridors along the alignment of Sandymoor Brook to ensure no new urban development is included in this zone.
- The applicant and LLFA have agreed detailed modelling of Sandymoor Brook, including any changes to culverts or ground levels on site, would be required to support any future applications.
- The FRA indicates Finished Floor Levels will therefore be set to the higher of 150mm above ground level or 600mm above the detailed modelled water level for the 1 in 100 year +52% CC event.
- The FRA has been updated to include further detail regarding the residual risk of flooding from the Bridgewater Canal. The LLFA agrees the highest areas of risk are located in the Sandymoor Brook corridor and the green corridors along Sandymoor Brook in the current masterplan would mitigate against this.
- The FRA has been updated to include a section on access and egress, again it is noted detailed modelling of Sandymoor Brook would be required or the design of the proposed secondary access route and pedestrian crossing of the Brook.

The LLFA has reviewed the updated drainage strategy (revision 13). As per previous comments the LLFA's comments on this document relate only to the area within the red line boundary for 22/00543/OUTEIA and are as follows:

- The LLFA is satisfied that the proposed outline drainage strategy would be sustainable and would help to manage flood risk within the wider catchment.
- Should the masterplan be brought forward to a detailed design stage the LLFA would require a detailed drainage strategy to support it, along with flood routing plans should the system fail and a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by, or connection to any system adopted by, any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

Based on the above the LLFA would accept the proposed application based on the following conditions to be applied:

- Something about detailed modelling of Sandymoor Brook being required to support any further applications – it would need to include any culvert removals, proposed new structures i.e. pedestrian access / highways crossing the Brook, ground levels changes due to progression of a detailed design, pre and post development flood outlines, maximum flood outlines and levels for the following scenarios: 5% AEP, 3.3% AEP, 1% AEP, 1% + 52% CC & 0.1% AEP, for any culverts/ structures there would need to be blockage scenarios ran too.

- This is needed to ensure no flooding to property, to set FFLs, to ensure there are safe access and egress routes from the site should the Brook flood.
- Should the masterplan be brought forward to a detailed design stage the LLFA would require a detailed drainage strategy to support it, along with flood routing plans should the system fail and a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by, or connection to any system adopted by, any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

Kathryn Brindley

Subject: FW: Planning Application Consultation 22/00543/OUTEIA

From: National Planning Function <NationalPlanning.Function@canalrivertrust.org.uk>

Sent: 26 October 2022 11:31

To: Dev Control <Dev.Control@halton.gov.uk>

Subject: RE: Planning Application Consultation 22/00543/OUTEIA

Dear Sir / Madam

The Canal & River Trust is a statutory consultee under the Town and Country Planning (Development Management Procedure) (England) Order 2015. The current notified area applicable to consultations with us, in our capacity as a Statutory Consultee was issued to Local Planning Authorities in 2011 under the organisation's former name, British Waterways. The 2011 issue introduced a notified area for household and minor scale development and a notified area for EIA and major scale development.

This application falls outside the notified area for its application scale. We are therefore returning this application to you as there is no requirement for you to consult us in our capacity as a Statutory Consultee.

We are happy to comment on particular applications that fall outside the notified areas if you would like the Canal & River Trust's comments in specific cases, but this would be outside the statutory consultation regime and must be made clear to us in any notification letter you send.

Should you have a query in relation to consultation or notification of the Canal & River Trust on planning applications, please email us at planning@canalrivertrust.org.uk

Regards,

Victoria

Victoria Johnson

Planning and Data Support Technician

E planning@canalrivertrust.org.uk

My working days are Wednesday, Thursday and Friday



-----Original Message-----

From: dev.control@halton.gov.uk <dev.control@halton.gov.uk>

Sent: 25 October 2022 10:53

To: National Planning Function <NationalPlanning.Function@canalrivertrust.org.uk>
Subject: Planning Application Consultation 22/00543/OUTEIA

CAUTION: This email originated from an external source. DO NOT CLICK/OPEN links or attachments unless you are certain of their origin.

Please see the attached Planning Application Consultation Re - Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

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Canal & River Trust is a charitable company limited by guarantee registered in England & Wales with company number 7807276 and charity number 1146792. Registered office address National Waterways Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire CH65 4FW.

Cadw mewn cysylltiad

Cofrestrwch i dderbyn e-gylchlythyr Glandŵr Cymru <https://canalrivertrust.org.uk/newsletter>

Cefnogwch ni ar <https://www.facebook.com/canalrivertrust>

Dilynwch ni ar <https://twitter.com/canalrivertrust> ac <https://www.instagram.com/canalrivertrust>

Mae'r e-bost hwn a'i atodiadau ar gyfer defnydd y derbynnydd bwriedig yn unig. Os nad chi yw derbynnydd bwriedig yr e-bost hwn a'i atodiadau, ni ddylech gymryd unrhyw gamau ar sail y cynnwys, ond yn hytrach dylech eu dileu heb eu copïo na'u hanfon ymlaen a rhoi gwybod i'r anfonwr eich bod wedi eu derbyn ar ddamwain. Mae unrhyw farn neu safbwynt a fynegir yn eiddo i'r awdur yn unig ac nid ydynt o reidrwydd yn cynrychioli barn a safbwyntiau Glandŵr Cymru.

Mae Glandŵr Cymru yn gwmni cyfyngedig drwy warant a gofrestrwyd yng Nghymru a Lloegr gyda rhif cwmni 7807276 a rhif elusen gofrestredig 1146792. Swyddfa gofrestredig: National Waterways Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire CH65 4FW.

Kathryn Brindley

Subject: FW: Planning Application Consultation 22/00543/OUTEIA

From: National Planning Function <NationalPlanning.Function@canalrivertrust.org.uk>

Sent: 20 April 2023 15:42

To: Dev Control <Dev.Control@halton.gov.uk>

Subject: RE: Planning Application Consultation 22/00543/OUTEIA

Dear Sir / Madam

The Canal & River Trust is a statutory consultee in Article 18 and Schedule 4 Paragraph z(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). The current notified area applicable to consultations with us, in our capacity as a Statutory Consultee was issued to Local Planning Authorities in March 2023 for use from 1 April 2023. It comprises three zones that relate to notifications for different types and scales of proposed development.

This application falls outside the notified area for its application scale and location. We are therefore returning this application to you as there is no requirement for you to consult us in our capacity as a Statutory Consultee.

We are happy to comment on particular applications that fall outside the notified areas where there are relevant circumstances. If you would like the Canal & River Trust's comments in this case or any other, please clarify the reason for your consultation when you send it.

Should you have a query in relation to consultation or notification of the Canal & River Trust on planning applications, please email us at planning@canalrivertrust.org.uk

Regards,

Victoria

Victoria Johnson

Planning and Data Support Technician

My working hours are Wednesday, Thursday 8:00-16:30 and Friday 8:00-16:00

E planning@canalrivertrust.org.uk



From: dev.control@halton.gov.uk <dev.control@halton.gov.uk>

Sent: Wednesday, April 19, 2023 3:50 PM

To: National Planning Function <NationalPlanning.Function@canalrivertrust.org.uk>

Subject: Planning Application Consultation 22/00543/OUTEIA

Please see the attached Planning Application Consultation Re - Sandymoor South Phase 2
Windmill Hill Avenue East

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Halton Borough Council

By email

Your ref: 22/00543/OUT
EIA

Our ref: DC/22/3672

Date: 15-NOV-22

Dear Planning Team

Location : Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire
Proposal : Outline planning with all matters reserved (except means of access) for upto 250No dwelling

United Utilities wish to make the following comments regarding the proposal detailed above.

UNITED UTILITIES WATER MAIN - REQUIREMENT FOR FURTHER INFORMATION

It is important for the applicant and the Local Planning Authority (LPA) to understand we recommend clarification on the following points below **prior to determination** to ensure there are no issues further into the development process.

The LPA should be aware that the proposed access is potentially over a large water main and the applicant must provide clarity on the **EXACT** location of the asset to ensure it will not be directly built over. Although the application is an outline submission, the applicant is applying for access. Therefore, as the access is near to a critical water asset, it is a material consideration for the LPA. The applicant must therefore demonstrate an understanding for developing the access over the water asset to understand the obligations and whether there should be any amendments to the access proposed as part of the outline application.

Our recommendation to the LPA is that the application is **not progressed** further until the **EXACT** location of the aqueduct is confirmed with us and so that the implications for the proposed site layout can be fully understood and redesigned if necessary prior to determination.

To secure the protection of the pipelines, United Utilities **will not allow** building over or development in close proximity to our critical assets. Our access to these pipelines should not be compromised in any way as part of future development at the proposed site.

Should the Council deem this application suitable for approval without agreed tracing of our asset, **which we do not recommend**, we request the following condition is included in the

subsequent Decision Notice to afford appropriate protective measures for our water and sewer assets:

CONDITION 1 – Protection of United Utilities Water Main

As part of the first submitted reserved matters application, details of the means of ensuring the water main that is laid within the site boundary is protected from damage as a result of the development have been submitted to and approved by the Local Planning Authority in writing. The details shall include a survey that identifies the exact location of the water main, the potential impacts on the water main from construction activities (including the construction compound), the impacts post completion of the development on the water main infrastructure within the red line boundary and identify mitigation measures, including a timetable for implementation, to protect and prevent any damage to the water main both during construction and post completion of the development. The details shall include a pre and post construction condition survey of water main within the red line boundary.

Any mitigation measures shall be implemented in full prior to commencement of development in accordance with the approved details and timetable and shall be retained thereafter for the lifetime of the development.

Reason: In the interest of public health and to ensure protection of strategic water mains.

Further information is provided below, under ‘United Utilities’ Property, Assets and Infrastructure’.

DRAINAGE

We request the following drainage condition is attached to any subsequent approval:

CONDITION 2 – Foul and Surface Water Drainage

As part of the submission of the first reserved matters application, details of a sustainable surface water drainage scheme and a foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The drainage schemes must include:

- (i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water in accordance with BRE365;*
- (ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations);*
- (iii) Levels of the proposed drainage systems including proposed ground and finished floor levels in AOD;*
- (iv) Incorporate mitigation measures to manage the risk of sewer surcharge where applicable;*
and
- (v) Foul and surface water shall drain on separate systems.*

The approved schemes shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

Prior to occupation of the proposed development, the drainage schemes shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

Reason: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution.

The applicant can discuss any of the above with Developer Engineer, **Nicola Pilkington**, by email at wastewaterdeveloperservices@uuplc.co.uk.

Please note, United Utilities is not responsible for advising on rates of discharge to the local watercourse system. This is a matter for discussion with the Lead Local Flood Authority and / or the Environment Agency (if the watercourse is classified as main river).

If the applicant intends to offer wastewater assets forward for adoption by United Utilities, their proposed detailed design will be subject to a technical appraisal by our Developer Services team and must meet the requirements outlined in 'Sewerage Sector Guidance Appendix C – Design and Construction Guidance v2-2' dated 29 June 2022 or any subsequent iteration. This is important as drainage design can be a key determining factor of site levels and layout.

Acceptance of a drainage strategy does not infer that a detailed drainage design will meet the requirements for a successful adoption application. We strongly recommend that no construction commences until the detailed drainage design, has been assessed and accepted in writing by United Utilities. Any work carried out prior to the technical assessment being approved is done entirely at the developer's own risk and could be subject to change.

Management and Maintenance of Sustainable Drainage Systems

Without effective management and maintenance, sustainable drainage systems can fail or become ineffective. As a provider of wastewater services, we believe we have a duty to advise the Local Planning Authority of this potential risk to ensure the longevity of the surface water drainage system and the service it provides to people. We also wish to minimise the risk of a sustainable drainage system having a detrimental impact on the public sewer network should the two systems interact. We therefore recommend the Local Planning Authority include a condition in their Decision Notice regarding a management and maintenance regime for any sustainable drainage system that is included as part of the proposed development. You may find the condition below a useful example.

Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a. Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and
- b. Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

Reason: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development.

Please note United Utilities cannot provide comment on the management and maintenance of an asset that is owned by a third party management and maintenance company. We would not be involved in the discharge of the management and maintenance condition in these circumstances.

WATER AND WASTEWATER SERVICES

If the applicant intends to receive water and/or wastewater services from United Utilities, they should visit our website or contact the Developer Services team for advice. This includes seeking confirmation of the required metering arrangements for the proposed development.

If the proposed development site benefits from existing water and wastewater connections, the applicant should not assume that the arrangements will be suitable for the new proposal.

In some circumstances we may require a compulsory meter is fitted. For detailed guidance on whether the development will require a compulsory meter please visit <https://www.unitedutilities.com/my-account/your-bill/our-household-charges-20212022/> and go to section 7.7 for compulsory metering.

If reinforcement of the water network is required to meet potential demand, this could be a significant project and the design and construction period should be accounted for.

To avoid any unnecessary costs and delays being incurred by the applicant or any subsequent developer, we strongly recommend the applicant seeks advice regarding water and wastewater services, and metering arrangements, at the earliest opportunity. Please see 'Contacts' section below.

UNITED UTILITIES PROPERTY, ASSETS AND INFRASTRUCTURE

Water pipelines

United Utilities will not allow building over or in close proximity to a water main.

As above, a large diameter trunk main is located at the entrance of the site. It must **not** be built over, or our access to the pipeline compromised in any way. The Water Industry Act 1991 affords United Utilities specific rights in relation to maintenance, repair, access and protection of our water infrastructure. We require an access strip as detailed in our 'Standard Conditions for Works Adjacent to Pipelines', a copy of which accompanies this letter. The applicant must comply with this document to ensure pipelines are adequately protected both during and after the construction period. It also includes advice regarding landscaping in the vicinity of pipelines. Given the size and nature of the pipeline concerned, we strongly recommend that if they have not already done so, the applicant contacts our Developer Services team at the earliest opportunity for advice on determining the precise location of the pipeline and additional protection measures they must consider both during and after construction. See Contacts section below.

Following our review of the proposed site layout, we have concerns regarding the proximity of the proposed access to our water assets. To resolve this matter, and to avoid any unnecessary costs or delays to either the applicant or any future developer, we request the applicant submits a detailed site layout plan which overlays the proven location of the water main in relation to any proposed development (including walls, fencing, parking etc.). Without this information we are unable to provide further comment and there is a risk that as the scheme progresses, the applicant, or any subsequent developer, may discover that their plans are not implementable in their existing form or that diversion of assets is required. As above, we strongly recommend this matter is resolved **PRIOR TO DETERMINATION**.

By doing so a full understanding can be demonstrated as to how our critical infrastructure impacts future proposals and if the proposed layout and future layouts can be achieved. It is our preference that any assets are not located within residential curtilage and we would welcome the thorough consideration of the location of the water mains in relation to the proposed residential dwellings, including any necessary protective measures, at detailed design stage and prior to the submission of Reserved Matters applications.

No excavation works, including trial holes or land clearance may be carried out within our easement without our written permission, or entry made in to our chambers, or any valves operated. Any damage to our assets could cause serious injury and flooding and lead to a loss of the water supply to a wider area.

Wastewater pipelines

United Utilities will not allow a new building to be erected over or in close proximity to a public sewer or any other wastewater pipeline. This will only be reviewed in exceptional circumstances. *Nb. Proposals to extend domestic properties either above, or in close proximity to a public sewer will be reviewed on a case by case basis by either by a building control professional or following a direct application to United Utilities (see our website for further details).*

Public sewers cross the site. We require an access strip for maintenance or replacement of each sewer. The minimum distances that might be acceptable to United Utilities are detailed within Part H of the Building Regulations however, we recommend the applicant determines the precise location, size, depth and condition of each pipeline as this is likely to influence the required

stand-off distance from any structure and/or whether diversion or building over might be considered.

Advice relating to both water and wastewater infrastructure

It is the applicant's responsibility to demonstrate the exact relationship between United Utilities' assets and the proposed development. Developer's should investigate the existence and the precise location of water and wastewater pipelines as soon as possible as this could significantly impact the preferred site layout and/or diversion of the asset(s) may be required. Where United Utilities' assets cross the proposed red line boundary, developers must contact our Developer Services team prior to commencing any works on site, including trial holes, groundworks or demolition.

Unless there is specific provision within the title of the property or an associated easement, any necessary disconnection or diversion of assets to accommodate development, will be at the applicant/developer's expense. In some circumstances, usually related to the size and nature of the assets impacted by proposals, developers may discover the cost of diversion is prohibitive in the context of their development scheme.

Any agreement to divert our underground assets will be subject to a diversion application, made directly to United Utilities. This is a separate matter to the determination of a planning application. We will not guarantee, or infer acceptance of a proposed diversion through the planning process (where diversion is indicated on submitted plans). In the event that a diversion application is submitted to United Utilities and subsequently rejected (either before or after the determination of a planning application), applicants should be aware that they may need to amend their proposed layout to accommodate United Utilities' assets.

Where United Utilities' assets exist, the level of cover to United Utilities pipelines and apparatus must not be compromised either during or after construction and there should be no additional load bearing capacity on pipelines without prior agreement from United Utilities. This would include earth movement and the transport and position of construction equipment and vehicles.

Any construction activities in the vicinity of United Utilities' assets, including any assets or infrastructure that may be located outside the applicant's red line boundary, must comply with national building and construction standards and where applicable, our 'Standard Conditions for Works Adjacent to Pipelines'. The applicant, and/or any subsequent developer should note that our 'Standard Conditions' guidance applies to any design and construction activities in close proximity to water pipelines and apparatus that are no longer in service, as well as pipelines and apparatus that are currently operational. A copy of this document is available on our website.

The applicant or developer should contact our Developer Services team for advice if their proposal is in the vicinity of water or wastewater pipelines and apparatus. It is their responsibility to ensure that United Utilities' required access is provided within their layout and that our infrastructure is appropriately protected. The developer would be liable for the cost of any damage to United Utilities' assets resulting from their activity. Please see 'Contacts' section below.

CONTACTS

Website

For detailed guidance on water and wastewater services, including application forms and the opportunity to talk to the Developer Services team using the 'Live Chat' function, please visit:

<http://www.unitedutilities.com/builders-developers.aspx>

Email

For advice on water and wastewater services or to discuss proposals near to pipelines, email the Developer Services team as follows:

Water mains and water supply, including metering - DeveloperServicesWater@uuplc.co.uk

Public sewers and drainage - WastewaterDeveloperServices@uuplc.co.uk

Telephone - 0345 072 6067

Property Searches (for asset maps):

A number of providers offer a paid for mapping service including United Utilities. For more information, or to purchase a sewer and water plan from United Utilities, please visit

<https://www.unitedutilities.com/property-searches/>

Water and sewer records can be viewed for free at our Warrington Head Office by calling 0370 751 0101. Appointments must be made in advance. Public sewer records can be viewed at local authority offices. Arrangements should be made directly with the local authority.

The position of the underground apparatus shown on asset maps is approximate only and is given in accordance with the best information currently available. United Utilities Water will not accept liability for any loss or damage caused by the actual position being different from those shown on the map.

We request that a copy of this letter is made available to the applicant.

Yours faithfully

The Planning, Landscape and Ecology Team

Merseyside Environmental Advisory Service
The Barn, Court Hey Park
Roby Road, Huyton, L16 3NA
Director: Alan Jemmett, PhD, MBA

Enquiries: 0151 934 4951

Contact: Nicola Hayes
Email: measdconsultations@sefton.gov.uk

DEVELOPMENT MANAGEMENT ADVICE

To: Kathryn Brindley
Organisation: Principal Planning Officer, Halton Council

Your Ref: 22/00543/OUTEIA
File Ref: HA22-055
W/P Ref: eDM Folder
Date: 22nd November 2022

From: Nicola Hayes
Contaminated Land Principal Officer

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure
Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

1. Thank you for consulting Merseyside Environmental Advisory Service in respect of this planning application. The proposals comprise **the erection of up to 250 dwellings**.
2. Having reviewed the application and supporting documentation, our advice is set out below.
 - Part One deals with issues of regulatory compliance, action required **prior to determination** and matters to be dealt with through planning conditions. Advice is only included here where action is required or where a positive statement of compliance is necessary for statutory purposes.
 - Should the Council decide to adopt an alternative approach to MEAS Part 1 advice, I request that you let us know. MEAS may be able to provide further advice on options to manage risks in the determination of the application.

Part One comprises paragraphs **3 to 52**.

Part One

EIA Conformity

3. The Environmental Impact Assessment Regulations 2017 set out in Schedule 4 the general requirements for the content of Environmental Statements. These comprise information on: the nature of the development; consideration of alternatives; relevant aspects of the environment; likely environmental impacts arising; proposed mitigation measures; and an indication of any difficulties in compiling the information needed. A non-technical summary of the contents of the Environmental Statement is also required.

Merseyside Environmental Advisory Service – delivering high quality environmental advice and sustainable solutions to the Districts of Halton, Knowsley, Liverpool, St.Helens, Sefton and Wirral



4. The applicant has submitted an Environmental Statement (Buro Happold, October 2022), which comprises a Non-Technical Summary, Main Report and Technical Appendices.
5. Having reviewed the submitted Environmental Statement we advise that, subject to the satisfactory receipt of any additional information required by the Council under paragraph 25 of the EIA Regulations (including addressing any queries detailed within this memorandum), it satisfies these requirements and can be used as a basis for determination of the application. I will defer to the relevant technical experts in terms of the technical content of the individual chapters.

Ecology

Ecological Information

6. An Environmental Statement (ES) has been submitted with the application (*Buro Happold, October 2022*). Chapter 10 relates to ecology. The ES includes a full desk based assessment of the site, and also assesses the ecological impacts of the proposals and assesses significance and magnitude of both the construction and operational phase of the developments as well as providing appropriate mitigation measured where required. I advise that ES approach is acceptable in relation to ecology.
7. Chapter 10 of the submitted Environmental Statement considers the likely ecological impacts of the proposals. A number of ecological reports are provided in the Appendices of the ES:
 - Appendix 10-A: Sandymoor South Phase 2 Desktop Study (2022);
 - Appendix 10-B: Wharford Farm Desktop Study (2022);
 - Appendix 10-C: Sandymoor South Phase 2 Extended Phase 1 Habitat Survey (2019);
 - Appendix 10-D: Wharford Farm Extended Phase 1 Habitat Survey (2019);
 - Appendix 10-E: Sandymoor South Phase 2 GCN survey (2018);
 - Appendix 10-F: Sandymoor South Phase 2 and Wharford Farm GCN eDNA surveys (2019);
 - Appendix 10-G: Sandymoor South Phase 2 and Wharford Farm Great Crested Newt Surveys (2020);
 - Appendix 10-H: Sandymoor South Phase 2 Breeding Bird Survey (2019);
 - Appendix 10-J: Sandymoor South Phase 2 Bat Surveys (2020);
 - Appendix 10-K: Wharford Farm Bat Surveys (2020);
 - Appendix 10-L: Sandymoor South Phase 2 Bat Activity Surveys (2019);
 - Appendix 10-M: Wharford Farm Bat Activity Surveys (2019);
 - Appendix 10-N: Sandymoor South Phase 2 Water Vole survey (2020);
 - Appendix 10-O: Wharford Farm Water Vole survey (2020);
 - Appendix 10-P: Bryophyte survey undertaken by Bryophyte Surveys Ltd (2020);



- Appendix 10-Q: Sandymoor South Phase 2 Landscape and Habitat Management Plan;
- Appendix 10-R: Wharford Farm Landscape and Habitat Management Plan;
- Appendix 10-S: Sandymoor South Phase 2 and Wharford Farm Habitat Regulations Assessment;
- Appendix 10-T: Sandymoor South Phase 2 Extended Phase 1 Habitat Survey (2021);
- Appendix 10-U: Wharford Farm Extended Phase 1 Habitat Survey (2021);
- Appendix 10-V: Sandymoor South Phase 2 and Wharford Farm Bat Great Crested Newt Surveys (2022); and
- Appendix 10-W: Sandymoor South Phase 2 and Wharford Farm Bat Surveys (2022).

8. In addition, the applicant has submitted a BNG assessment:
- *Sandymoor South Phase 2 BNG Assessment – Biodiversity Net Gain Assessment, Ref: 5810.91.002, TEP, September 2022*
9. Draft green infrastructure plans and landscape strategy plans for the site were submitted as part of the pre-application enquiry:
- *Green Infrastructure Parameter Plan Sandymoor South (Phase 2), Barton Willmore, Project No. 31035, Dwg. No. DWG13, Rev. H, 23.09.21*
 - *Sandymoor South - Landscape Strategy Plan, Barton Willmore, Project No. 31035, Dwg. No. LN-LP-09, Rev. B, 28.05.21*

Designated Sites

10. The proposed development is close to the following designated sites, and Local Plan policy HE1 and Core Strategy policy CS(R)20 apply:
- Red brow Cutting Site of Special Scientific Interest (670m east). However, this SSSI is designated for its geological interest as opposed to ecological value.
 - Murdishaw Wood and Valley LNR (920m south);
 - Dorchester Park LNR (1km north).
 - Pond at Delphfield LWS (320m south-west);
 - Windmill Hill LWS (460m west);
 - Daresbury LWS (490m east);
 - Murdishaw Wood and Valley LWS (920m south);
 - Big Wood LWS (980m northwest);
 - Dorchester Park LWS (1km north);
 - Sandymoor South LWS (1km north).
11. Given the distance from the designated sites and barriers imposed by the Bridgwater Canal and railway lines it is considered unlikely that construction activities would result in damage or pollution to these designated areas.

12. Residents of the proposed development are likely to access nearby designated sites for recreational purposes. In combination with the extensive development in the area of the site being brought forward as part of the Local Plan I believe that a cumulative impact is likely to occur, particularly at the Daresbury LWS and Murdishaw Wood LNR/LWS. To address this potential impact I advise that in line with other proposals in the area a Section 106 should be secured to fund site management at the accessible LWS and LNR sites in close proximity to the development area. This would need to be provided or funded by the applicant and secured by planning condition or Section 106. This issue needs to be resolved **prior to determination**.

Habitats Regulations Assessment

13. The Mersey Estuary Ramsar and SPA is located 5km to the west of the application site and Local plan policy HE1 and Local Plan Core Strategy policy CS(R)20 apply. Given the distance from the application site no noise or visual disturbance impacts are considered likely during construction phase or operation of the site, and pollution of the designated areas is also considered unlikely.
14. The potential for recreational pressure impacts arising from new occupiers of the proposed development has been considered within the ES (*ES Appendix 10-S*) as a Shadow HRA (sHRA) report – *Sandymoor South Phase 2 and Wharford Farm – Habitat Regulations Assessment, Ref: 7500.Eco.SandySPhase2.012, TEP, September 2022*. Table 10-8 of the ES provides a summary of the effects during the operational phase of development. It is concluded that mitigation in the form of the retention of large areas of green infrastructure, new green infrastructure and connections to the extensive footpath network in the local areas will minimise any likely impacts, as local residents will not necessarily feel the need to travel elsewhere to enjoy recreational opportunities. This is accepted.
15. The Halton Recreational Management Interim Approach highlights that access to the Mersey Estuary south bank from the application site is not possible due to the presence of the Manchester Ship Canal. The sHRA concludes that no developer contributions are required in respect of the proposals as the site being located outside the ‘inner’ and ‘outer’ zones. This is accepted. The provision of a homeowners information pack is however recommended, which includes information on a responsible user code and available SANGs. This approach is accepted, and should follow the template provided on the MEAS website¹. The provision of the residents pack can be secured by a suitably worded condition.
16. The submitted sHRA (*TEP, September 2022*) and associated Appropriate Assessment are acceptable, and can be adopted by the local authority as its own. I advise that Natural England is consulted on the outcome of the Appropriate Assessment **prior to determination and any points which may arise should be addressed**. Its views, together with the outcome of the Appropriate Assessment, are required to be included within the Planning Committee/Delegated report.

¹ http://www.meas.org.uk/media/11044/lcr_leaflet_halton.pdf



Ecological Network

17. The Sandymoor Brook corridor, the Bridgewater Canal and the railway embankments to the west and east of the site form wildlife corridors. The Bridgewater Canal also forms part of the Bridgewater Canal-Keckwick Brook Nature Improvement Area (NIA), as part of the Liverpool City Region (LCR) Ecological Network. The submitted outline Green Infrastructure plans and Landscape Strategies (*Barton Willmore, 2021*) indicate that the existing trees and other vegetation adjacent to the canal and brook will be retained. A landscape buffer will also be created along these features. These landscaping works will contribute towards the wildlife corridors along the watercourses and contribute towards the NIA targets. Detailed landscaping proposals should be submitted as part of the reserved matters planning application.

Priority Habitats

18. The proposals affect Priority Habitats (*Natural Environment and Rural Communities (NERC) Act 2006/Habitats Regulations 2017*) and Local Plan policy HE1 and Core Strategy policy CS(R)20 apply. These habitats are a material consideration.
19. Areas of semi-natural broad-leaved woodland are located adjacent to the Bridgewater Canal to the west of the site. This semi-natural broad-leaved woodland is identified as a (S41) UK Habitat of Principal Importance and a Local Biodiversity Action Plan (LBAP) habitat.
20. The species-poor and species-rich intact hedgerows on site comprise predominantly native species and therefore qualify as a habitat of principal importance (HPI) for the conservation of biodiversity, as specified under the requirements of Section 41 of the Natural Environment and Rural Communities Act 2006.
21. Ponds on site were positive for great crested newt in 2018, 2019 and 2020. The presence of this European protected species within the ponds confirms them as a (S41) UK Habitat of Principal Importance and Local Biodiversity Action Plan (LBAP) – Ponds.
22. All ponds, native species-rich hedgerow and Sandymoor Brook will be retained as part of the proposals. Significant retention of other habitats will take place as shown on the submitted Green Infrastructure and Landscape Strategy plans (*Barton Willmore, 2021*). The submitted Biodiversity Net Gain (BNG) assessment (*TEP, September 2022*) and ES state that some areas of Priority Habitat will however be lost:
- Species poor hedgerow (1150m)
 - Woodland (0.26 hectares)
 - Reedbed
23. The BNG assessment and ES state that new woodland and hedgerow planting as part of the landscape Strategy will ensure no net loss of these habitats (hedgerow will have net increase of +13.5%). No compensation is currently provided for reedbed habitat, and I advise that details of new reedbed creation, potentially associated with new ponds, should be agreed **prior to determination**. The full metric calculations have also not been provided, and these should also be submitted for review **prior to determination**.

Protected/Priority Species

Bats

24. A ground based daytime Preliminary Roost Assessment (PRA) of the trees within the site was completed in September 2019. This assessment was carried out in accordance with the Bat Conservation Trust (BCT) Good Practice Guidelines (Collins, 2016). One tree on-site with *Low* potential to support roosting bats was identified, a mature alder to the north of site. This tree should be felled using reasonable avoidance measures for bats under the supervision of a licensed bat ecologist. This can be secured by a suitably worded condition, or as part of the CEMP.
25. A ground based daytime PRA was carried out on the following built structures at the site between June and August 2020:
- Norton Crossing Cottage (no internal access due to Covid restrictions);
 - Borrow's Bridge;
 - Cawley's Bridge;
 - New Norton Bridge (which enters plot A from the northwest); and
 - The railway arches.
26. The PRA assessed Norton Crossing Cottage and New Norton Bridge as moderate roost potential and Borrow's Bridge, Cawley's Bridge and the railway arches as low roost potential. Nocturnal roost surveys identified a single soprano pipistrelle roost in New Norton Bridge. The roost is classified as a day roost, likely to be used opportunistically, as indicated by the absence of roosting behaviour during two of the three survey visits. An updated bat survey of the bridge in 2022 identified roosting by two Soprano pipistrelle bats. An EPS license will be required for any works likely to impact the identified roost. Developments affecting European protected species must be assessed by the Local Planning Authority against three tests set out in the Habitats Regulations **prior to determination** of any planning application. By including the assessment within the Planning Committee / Delegated Powers report shows how the Council has engaged with the Habitats Directive. If an EPS license is required this should be submitted to the local authority prior to the start of works on site, this can be secured by condition on any future planning application.
27. In accordance with current guidance (*Collins, 2016*) bat activity transects and static bat detector surveys were undertaken to identify any important foraging habitats and commuting routes within and adjacent to the site. Large numbers of pipistrelle species, small numbers of noctules and individual brown long-eared and myotis species bats were recorded foraging and commuting across the site during the 2019 activity surveys. The Bridgewater Canal is a valuable foraging and commuting corridor for bat species, with common pipistrelle, soprano pipistrelle, Daubenton's bat, noctule, brown long eared bat *Plecotus auritus*, natterer's bat *Myotis nattererii*, whiskered bat *Myotis mystacinus*/Brandt's bat *Myotis brandtii*, serotine *Eptesicus serotinus* identified during the 2020 nocturnal surveys. The site is evaluated as being of county importance for commuting and foraging bats.

28. The existing watercourses and associated bankside vegetation will be retained, this should maintain the suitability of these habitat features for bats. The newt reserve area and other greenspace on site will also offer additional foraging habitat for bats in the long term. New lighting could impact foraging and commuting bats, particularly lighting adjacent to important habitat features such as watercourses. A lighting scheme can be designed so that it protects ecology and does not result in excessive light spill onto important habitats in line with NPPF (paragraph 180). This can be secured by a suitably worded planning condition. It would be helpful for the applicant to refer to *Bat Conservation Trust website* <https://www.bats.org.uk/news/2018/09/new-guidance-on-bats-and-lighting>. Particular consideration should be given to avoiding light spill onto watercourses at existing or proposed bridge crossings.

Great Crested Newts

29. There are five ponds within the site. A further seventeen ponds are located to the north of the site in the wider Sandymoor area, including five ponds within 500m of the site. Onsite ponds P25, P26, P27 and P28 are part of a newt reserve, created and maintained by Homes England as GCN mitigation for development at Sandymoor. The location and extent of the newt reserve is shown on the Phase 1 habitat drawing in (ES, Appendix 10-C).
30. The eight ponds that were subject to a Natural England GCN Mitigation Licence for Sandymoor North Phase 1, which comprise the six ponds in the site and a further two ponds to the north of the site in the wider Sandymoor area, underwent full amphibian surveys in spring 2018, which was the final year of monitoring for the licence. Further GCN surveys were undertaken on eleven ponds (P25, P26, P27, P28, P29, P30, P31, P32, P33, P34 and P36) between April and June 2020. In 2020 GCN were recorded within five on-site ponds (P25, P26, P27, P28 and P30) and also in off-site pond P31. The ponds were assessed as supporting two separate small GCN metapopulations. However, given the limitations to survey from Covid-19, where TEP was unable to complete a bottle trapping exercise, it is considered that the number of GCN was likely under recorded and that a medium population of GCN remains as identified during previous surveys. Full surveys of ponds P25, P26, P27, P28, P29, P30, P31, P32, P33 were completed in 2022. These surveys included bottle trapping, egg searches and torching. Medium sized populations of GCN were identified in ponds P25, P26, P27, P28 and P33. Small populations were identified in ponds P30 and P31.
31. Bridgewater local wildlife area was created as a mitigation area under a Natural England GCN licence and is subject to a minimum 25-year management scheme, running from 2014 to at least 2039. The Bridgewater Local Wildlife Area is also protected under Sandymoor Supplementary Planning Document.
32. Developments affecting European protected species must be assessed by the Local Planning Authority against three tests set out in the Habitats Regulations **prior to determination** of any planning application. The applicant should confirm whether the site will be the subject of an EPS license application, or whether District Level Licensing will be utilised.

Badger and Hedgehog

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33. No evidence of badger activity was identified on site during the extended phase one survey in 2021. Badgers could however enter the site to forage. Badger are a protected species and Local Plan policy HE1 and Core Strategy policy CS(R)20 apply. Hedgehog, a Priority Species, could also utilise parts of the site. The following reasonable avoidance measures should be put in place to ensure that there are no adverse effects on these species:
- A pre-commencement check for badger and hedgehog by a suitably qualified ecologist;
 - All trenches and excavations should have a means of escape (e.g. a ramp);
 - Any exposed open pipe systems should be capped to prevent mammals gaining access; and
 - Appropriate storage of materials to ensure that mammals do not use them.

These measures can be secured by a suitably worded planning condition, or as part of the CEMP.

Water Vole and Otters

34. Evidence of water vole activity was identified in the central and northern sections of the surveyed area of Keckwick Brook during the 2020 surveys (*ES Appendix 10-N and 10-O*). Footprints, latrines and feeding remains were all identified. A potential American mink burrow was identified to the north of the site on Sandymoor Brook during the 2019 surveys. American mink is a non-native invasive species that predate water vole. Signs of American mink were observed in the north of the Keckwick Brook in September 2020. No signs of otter were observed during the Phase 1 Habitat Survey or during the water vole survey. Both Keckwick Brook, and to a lesser extent the Sandymoor Brook, have potential to support otter.
35. A minimum standoff of 7m will be maintained from Sandymoor Brook to prevent impacts on water vole. Precautionary measures in respect of water vole should be secured by a suitably worded condition, or as part of the CEMP.
36. The ES states that a homeowner information pack will be provided to residents of the new properties detailing the presence of water voles and protection measures. The provision of a homeowner information pack should be secured by a suitably worded condition. Habitats improvements along the brook corridors will also form part of the landscaping proposal, this is welcomed.
37. The Bridgewater Canal has been assessed as having low suitability for both water vole and otters. As a precautionary measure, a pre-commencement check of the watercourse for evidence of water voles and otter should be completed by a suitably experienced ecologist immediately prior to the start of any works directly impacting the banks, eg. bridge works. This can be secured by a suitably worded condition, or as part of the CEMP.

Barn Owl

38. No trees on site were found to be suitable for Barn owl nesting. Barn owls have however previously been recorded within 500m of the site. The proposals, in combination with other developments in the area, will result in the loss of potential

foraging habitat for this species. Barn Owl have been assessed as having importance at the Local level within the ES. The creation of habitat corridors adjacent to the Bridgewater Canal and across the site as shown on the Landscape Strategy plans will retain some degree of connectivity for Barn Owl. It is also proposed to erect two barn owl boxes in these areas, this is welcomed.

Breeding Birds

39. A breeding bird survey of the site was completed in 2019 with survey visits between May and June. The 39 bird species recorded within the site boundary and 100m survey buffer represents a moderate species diversity with the majority of species recorded being common and widespread.
40. Birds could nest within trees, scrub and hedgerows on site, and ground nesting species could utilise some areas. Breeding birds are protected, and Local Plan policy HE1 and Core Strategy policy CS(R)20 apply. No tree felling, scrub clearance, hedgerow removal, vegetation management or ground clearance are to take place during the period 1 March to 31 August inclusive. If it is necessary to undertake works during the bird breeding season then the site and all trees, scrub, hedgerows and vegetation are to be checked first by an appropriately experienced ecologist to ensure no breeding birds are present. If present, details of how they will be protected are required to be submitted for approval. These measures in respect of breeding birds can be secured by a suitably worded condition, or as part of the CEMP.
41. Significant areas of nesting habitat will be retained as part of the proposals and new tree, hedgerow and shrub planting will take place as part of the landscaping proposals. This will compensate for any loss of bird nesting habitat as a result of the proposals in the long term. To further mitigate for this loss in the short term, details of bird nesting boxes (e.g. number, type and location on an appropriately scaled plan) that will be erected on the site should be provided to the Local Planning Authority for agreement. The provision of bird nesting boxes can be secured by a suitably worded condition, or can form part of the landscape and ecology management plan for the site.

Bryophytes

42. Four bridges and intersections along the Bridgewater Canal were surveyed to determine presence/absence of Freiberg's screw-moss by Bryophyte Surveys Ltd in October 2020. Freiberg's screw-moss is a Priority Species.
43. Freiberg's screw-moss was found to be absent from the four bridge structures but occurs very close to all of them. It is entirely restricted to the historic sandstone edging blocks that line the canal and occurs commonly along the 1.4 km of canal between the bridges surveyed. Any works to bridges should include re-instatement of sandstone edging blocks to ensure suitable substrate is available for the growth of Freiberg's screw-moss. This can be secured by a suitably worded condition.

Invasive Species

44. A number of invasive species including Himalayan Balsam, Japanese Knotweed and New Zealand Pygmy-Weed were identified during the extended phase one habitat surveys of the sites. These species are listed on Schedule 9 of the Wildlife and

Countryside Act / Schedule 2 of the Invasive Alien Species (Enforcement and Permitting) Order 2019 and national Planning Policy Guidance applies². The applicant should submit a method statement, prepared by a competent person, which includes the following information:

- A plan showing the extent of the plants;
- The methods that will be used to prevent the plant/s spreading further, including demarcation;
- The methods of control that will be used, including details of post-control monitoring; and
- How the plants will be disposed of after treatment/removal.

The method statement should be submitted for approval to the Local Planning Authority prior to commencement of any works on site. The method statement can be secured by a suitably worded planning condition, or can form part of the CEMP.

Construction Environmental Management Plan (CEMP)

45. The ES states that a draft Construction Environmental Management Plan (CEMP) will be produced and will be finalised prior to commencement on site. This will be implemented during the construction stage for the proposed development. The CEMP should describe the following measures:

- Pre-construction surveys to ensure baseline data remains up to date;
- Appointment of an appropriately qualified Ecological Clerk of Works (ECoW)
- Demarcation of the working areas (including storage areas and accesses), using appropriate fencing, to protect retained habitats and features;
- Clearance of trees, hedges, grassland and other habitats will take place under supervision and at the appropriate time of year, as appropriate to the site/species in question.
- General Method Statements for habitat protection;
- Species-specific Method Statements, addressing protected and priority species issues (including water voles, nesting birds and badger);
- Provisions for tree protection including felling, pruning, pollarding, replacement tree and hedgerow planting, and use of protective fencing and root protection zones in accordance with BS5837:2012;
- Invasive species method statements;
- Lighting plan during construction;
- The approach to post-construction monitoring relating to mitigation activity including triggers for and details of appropriate remedial action;
- Pollution control measures to ensure that site run-off and potential pollution events will be prevented from entering the surrounding drainage network and watercourses in line with Environment Agency pollution prevention guidance notes and a range of good practice working methods. The CEMP should identify any specific requirements to ensure protection of the Bridgewater Canal, Keckwick Brook and Sandymoor Brook.

² <https://www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-non-native-plants>



46. The production of a full CEMP should be secured by a suitably worded condition. The CEMP should be submitted to the local authority for approval prior to the start of works on site.

Habitat Management Plan and Landscape Strategy

47. Draft landscape strategies and green infrastructure plans have been submitted for the site (*Barton Willmore, 2021*). These include outline proposals for habitat retention and landscaping as part of the proposed developments. The landscaping proposals include new tree and native hedgerow planting, the creation of habitat buffers adjacent to watercourses, SUDs, new meadow grassland areas and new pond creation. The outline landscaping proposals are considered to be acceptable. Detailed landscaping proposals, including species mixes, should form part of the reserved matters application.
48. A draft landscape and habitat management plan (LHMP) has been submitted for the site (*ES Appendix 10-Q*). The LHMP for the site will run for a period of 30 years post-construction and will be implemented by either a management company and/or a local wildlife group. The LHMP identifies targets for enhancement of habitats, as identified in the Biodiversity Net Gain Assessments (*Sandymoor South Phase 2 BNG Assessment – Biodiversity Net Gain Assessment, Ref: 5810.91.002, TEP, September 2022*), and includes management measures and timescales to achieve and maintain the target habitats including:
- Management objectives;
 - Key management prescriptions;
 - Acceptable thresholds and/or targets;
 - Work schedules with timetables for management operations;
 - Management roles and responsibilities.
49. The draft habitat management plan is acceptable. The provision of a full and detailed LHMP can be secured by a suitably worded condition.

Biodiversity Net Gain Assessment

50. A Biodiversity Net Gain (BNG) Assessment for the proposed development has been undertaken and has been included as part of the ES (*Sandymoor South Phase 2 BNG Assessment – Biodiversity Net Gain Assessment, Ref: 5810.91.002, TEP, September 2022*). The proposed developments have been assessed using the Natural England Biodiversity Metric v3.1. Post-development habitat units have been estimated based on the outline Landscape Strategy for the proposed development.
51. A number of habitats will be lost to the proposed development, some habitats will be retained and/or enhanced. A number of new habitats will also be created. Based on an assessment of habitats to be lost and those to be retained, enhanced and created, there is an overall biodiversity net gain of 9.92 units (+16.07%) for habitats and an overall gain of 2.5 units +13.54%) for hedgerows at the Sandymoor South Phase 2 site. The full metric calculations have not been provided, and these should be submitted for review **prior to determination**.

52. At present the metric trading rules are not met as one high distinctiveness (and Priority Habitat) in the form of reedbed has an overall net loss. The unit loss for this habitat has not been provided. The BNG assessment states that loss of reedbed habitat will be addressed at the detailed design stage, however as this is Priority Habitat I advise that the principles of reedbed provision should be agreed **prior to determination**.

I would be pleased to discuss these issues further and to provide additional information in respect of any of the matters raised.

Nicola Hayes

Contaminated Land Principal Officer

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Kathryn Brindley

From: Joe Whittick
Sent: 21 December 2022 10:37
To: Kathryn Brindley
Subject: 22/00543/OUTEIA - Sandymoor South Phase 2

Follow Up Flag: Follow up
Flag Status: Flagged

22/00543/OUTEIA - Sandymoor South Phase 2 - Metric

Hi Kathryn

Many thanks for sending over the completed metric spreadsheet for the above application. I have reviewed the document and can confirm that it is acceptable. As stated in our most recent response, we just need to agree some outline proposals for reedbed creation to compensate for the loss of this Priority habitat as part of the proposals, otherwise the biodiversity calculations in terms of habitat loss and gains are acceptable.

Let me know if you have any queries

Best regards

Joe

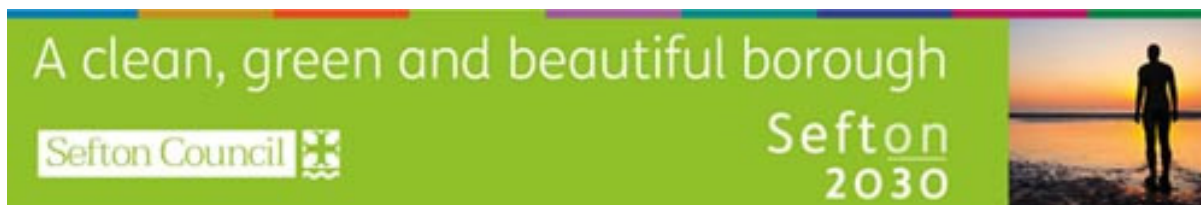
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Historic Environment Record email to Merseyside.HER@sefton.gov.uk

Local Environmental Record Searches email to info@merseysidebiobank.org.uk

Individual Officers email to name.surname@sefton.gov.uk or name.surname@eas.sefton.gov.uk

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DEVELOPMENT MANAGEMENT ADVICE

To: Glen Henry
Organisation: Halton Council
From: Daniel Finegan

Your Ref: 22/00543/OUTEIA
File Ref: HA22-055
Date: 28 March 2023

Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

1. Thank you for consulting Merseyside Environmental Advisory Service in respect of this planning application. The proposal comprise the erection of up to 250 dwellings.
2. Having reviewed the application and supporting documentation, our advice is set out below.
 - Part One deals with issues of regulatory compliance, action required **prior to determination** and matters to be dealt with through planning conditions. Advice is only included here where action is required or where a positive statement of compliance is necessary for statutory purposes.
 - Should the Council decide to adopt an alternative approach to MEAS Part 1 advice, I request that you let us know. MEAS may be able to provide further advice on options to manage risks in the determination of the application.

In this case Part One comprises paragraphs 3 to 11.

Part One

Introduction

3. The case officer, Kathryn Brindley, has asked for an indication of a desired Section 106 contribution and examples of suitable mitigation measures for cumulative recreational pressure impacts on Daresbury Local Wildlife Site (LWS) and Murdishaw Wood LWS (& Local Nature Reserve) resulting from the quantum of development in Daresbury and nearby Halton (email, 01/03/2023).

Mitigating impacts to Local Wildlife Sites (including Priority Habitats)

4. In line with paragraph 12 of the MEAS advice of 22/11/2022 (N. Hayes, MEAS ref: HA22-055) any funds should be received to fund site management at the LWS and LNR sites in close proximity to the development area. This could form measures such

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as information leaflets in sales packs, information boards, access, pathway improvements and other measures.

5. In this instance, Daresbury LWS lies adjacent to the development site and Murdishaw Wood and Valley LWS is likely to be a significant draw to new residents in the area due to its size (28ha). It is unlikely residents can be directed to other green spaces in the area which lie west beyond the Daresbury and Murdishaw Wood sites. Therefore, the above measures should be employed directly at Daresbury and Murdishaw Wood sites to limit recreational pressure. Any mitigation scheme must be submitted to the Council for review.
6. Proposing a sum for the above measures can depend on which measures are included, site ownership and both the agreement and capacity of land owners and/or land managers. Daresbury LWS is owned by Halton Borough Council and Murdishaw Wood is owned by Woodland Trust and Halton Borough Council.

Great crested newt

7. Glen Henry of Halton Planning has also enquired as to what the applicant would be expected to provide in terms of great crested newt mitigation via the standard licensing route or through District Level Licensing (email, 23/03/2023).
8. The standard licensing route requires detailed survey data and a mitigation strategy to be submitted and accepted **prior to determination**. The mitigation strategy must be completed by a suitably qualified ecologist. IT should be noted that the accepted survey data previously submitted is sufficient with which to determine GCN presence, population and to accompany a mitigation licence (A14) application.
9. Natural England interim guidance¹ states that where District Level Licensing (DLL) has been adopted, developers can obtain an indication from Natural England whether the proposal is eligible for DLL. Natural England will determine the impact of the proposed development on GCN, assess the cost of addressing the impact through DLL and issue a provisional certificate. Once agreed by the developer and countersigned by Natural England, this is called the *Impact Assessment and Conservation Payment Certificate* (IACPC). Developers can then submit this document with a planning application instead of site-survey information for GCN and an associated mitigation strategy to confirm their eligibility and intention to enter DLL.
10. On an individual case basis LPAs may take the IACPC into account when determining a planning application, as being confirmation of Natural England's view that the development in question is suitable for DLL and that the Conservation Payment will suffice to compensate for its impacts on GCN. In order to do this the LPA will need to check that the IACPC has been signed for and on behalf of Natural England and that the site details and boundaries of the IACPC are the same as the planning application. If the details match, the IACPC can be relied upon by the planning authority as confirmation that the impacts of the development on GCN are capable of being fully addressed in a manner which complies with the requirements of the Habitats Regulations.

¹ [Great crested newts: district level licensing schemes for developers and ecologists - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/great-crested-newts-district-level-licensing-schemes-for-developers-and-ecologists)



11. It is understood that the applicant wishes to retain flexibility of approach in reference to the licensing route for providing GCN mitigation. However, in order to assess the proposal against the three planning derogation tests (Habitats Regulations) the Council must be in receipt of either detailed survey data and a mitigation strategy or an IACPC **prior to determination**.

I would be pleased to discuss these issues further and to provide additional information in respect of any of the matters raised.

Daniel Finegan
Ecologist



Merseyside Environmental Advisory Service
The Barn, Court Hey Park
Roby Road, Huyton, L16 3NA
Director: Alan Jemmett, PhD, MBA

Enquiries: 0151 934 4951

Contact: Daniel Finegan
Email: measdconsultations@sefton.gov.uk

DEVELOPMENT MANAGEMENT ADVICE

To: Kathryn Brindley
Organisation: Halton Council
From: Daniel Finegan

Your Ref: 22/00543/OUTEIA
File Ref: HA22-055
Date: 26 May 2023

Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire Additional information: HRA addendum & information regarding great crested newt

1. Thank you for consulting Merseyside Environmental Advisory Service in respect of this outline planning application. The additional information relates to European protected species.
2. Having reviewed the application and supporting documentation, our advice is set out below.
 - Part One deals with issues of regulatory compliance, action required **prior to determination** and matters to be dealt with through planning conditions. Advice is only included here where action is required or where a positive statement of compliance is necessary for statutory purposes.
 - Should the Council decide to adopt an alternative approach to MEAS Part 1 advice, I request that you let us know. MEAS may be able to provide further advice on options to manage risks in the determination of the application.
 - Appendix 1 provides the detailed reasoning in respect of the conclusions presented in Part One with regards to Habitats Regulations Assessment.

In this case Part One comprises paragraphs 3 to 20.

Part One

Habitats Regulations

3. A shadow HRA completed in relation to the wider Sandymoor scheme was previously submitted and accepted (*Environmental Statement (Appendix 10-S) – Sandymoor South Phase 2 and Wharford Farm – Habitat Regulations Assessment, Ref: 7500.Eco.SandySPhase2.012, TEP, September 2022*).
4. The applicant has submitted a HRA addendum (*Habitats Regulations Assessment Addendum, TEP, 6 April 2023, ref: 7500.Eco.SandySPhase2.013*) due to finalised proposal designs, to the separation of this application and the previously included

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Wharford Farm, adjacent to the site and in response to Natural England requiring updated assessment of habitats on site with reference to suitability for wintering birds.

5. The HRA addendum is informed by updated site visit of 17th February 2023 which concluded the habitats on site and within 500m are of negligible interest to wintering birds, with no qualifying species of the Mersey Estuary SPA observed during survey. This is accepted.
6. The HRA addendum also revisits the Appropriate Assessment which confirms the inclusion of recreational pressure as an in-combination likely significant effect. The addendum goes on to discount the development both alone and in-combination due to <1% contributions to overall coastal visitor numbers within the average UK trip length of 13.8km (UK Travel Survey, 2016).
7. The HRA addendum does not refer to either the LCR RMS Evidence Report v24 or Halton's RMS Interim Approach and therefore does not take into account best available evidence. However, these reports are considered in the original shadow HRA.
8. Halton's RMS Interim Approach discounts development south of the Mersey Estuary due to a lack of coastal access and for this reason the proposal is not required to make a developer contribution.
9. The shadow HRA and HRA addendum can be accepted and adopted to evidence the LPA's duty under the Habitats Regulations.

Great crested newt

10. This application for development of Sandymoor South Phase 2 is part of a multi-phase scheme. As such, the wider scheme was previously granted a Natural England European Protected Species Mitigation Licence for which mitigation comprised retention and enhancement of the southern pond cluster to form a newt reserve, including green corridors to link with created ponds within the centre of the site. Despite the mitigation strategy being site wide and for all phases it was not secured correctly in terms of phased implementation of mitigation measures and thus the Licence expired in 2018.
11. Ponds P25, P26, P27, P28, P29, P30, P31, P32, P33 were the subject of updated great crested newt surveys in 2022. Medium sized populations of GCN were identified in ponds P25, P26, P27, P28 and P33. Small populations were identified in ponds P30 and P31

Traditional Mitigation Licensing route

12. I advise the measures proposed as mitigation for great crested newt are still acceptable and the surveys are sufficiently robust with which to accompany a new Natural England European Protected Species Mitigation Licence if the applicant chooses to progress using the traditional Licence route, which would be applied for upon granting of the outline planning proposal.
13. If any future developer chooses this route then a Natural England European Protected Species licence will be required prior to any works commencing. To ensure this is in place the following planning condition would be required:

14. **Works will not commence unless the local planning authority has been provided with a copy of a licence issued by Natural England or Impact Assessment & Conservation Payment Certificate countersigned by Natural England (and with evidence of having contributed the Initial Payment) pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 authorising the specified development to go ahead.**

District Level Licensing route

15. The applicant has also submitted a provisional Impact Assessment & Conservation Payment Certificate (IACPC) from Natural England to demonstrate suitability under District Level Licensing (DLL) and lists costs for registering under the District Level Licence route. The initial payment for recreation of 5.3 ponds lost to development is £116,000 and would be payable by the developer **prior to determination** if this route is chosen (total cost of £451,377.30). The IACPC lapsed on 21/4/23 but still acts to demonstrate the proposal's suitability under a District Level Licensing scheme.
16. LPAs (and their ecological advisors) can take the IACPC into account when determining a planning application, as being confirmation of Natural England's view that the development in question is suitable for DLL and that the Conservation Payment will suffice to compensate for its impacts on GCN. I can confirm that the site details and boundaries of the IACPC are the same as the planning application. The IACPC can be relied upon by the planning authority as confirmation that the impacts of the development on GCN are capable of being fully addressed in a manner which complies with the requirements of the Habitats Regulations.
17. It is understood that the applicant will sell the development to a private developer upon granting of the outline permission, therefore, they are keen to leave traditional and DLL licensing routes open. As a result, the IACPC has not been finalised, the initial payment has not been made and the IACPC has not been signed for and on behalf of Natural England. On this occasion, and due to the previously granted NE Mitigation Licence, I advise this can be accepted.

Three tests assessment (Habitats Regulations)

18. Developments affecting European protected species must be assessed by the Local Planning Authority against three tests set out in the Habitats Regulations **prior to determination**. I attach a three tests assessment which concludes that for test 3 the survey effort and mitigation measures submitted satisfy both the traditional and DLL licensing routes and that if the mitigation/compensation recommended is implemented, then this test would be satisfied (Appendix 1). **By including the assessment within the Planning Committee / Delegated Powers report shows how the Council has engaged with the Habitats Directive.**

Reedbed Priority Habitat

19. The previously submitted DEFRA Biodiversity Metric shows high distinctiveness reedbed habitat on site which will be lost to development. Communication with Tom West of TEP ecological consultants confirms that this is a formatting error as a result of Phase 1 to UK Habs conversion and the habitat more resembles swamp with smaller

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areas of reed which are not of high distinctiveness. This is accepted and the habitat is no longer classified as Annex I habitat or Priority Habitat. I advise compensation for loss of reedbed habitat is no longer required.

20. It has also been confirmed the developer is agreeable to planting reedbed areas within SuDS basins and along the retained Sandymoor brook and this is welcomed. Landscaping and habitat enhancement measures can be reviewed at the reserved matters stage and could be incorporated within BNG measures.

I would be pleased to discuss these issues further and to provide additional information in respect of any of the matters raised.

Daniel Finegan
Ecologist



Appendix 1:

Three-Test Assessment for European Protected Species

22/00543/OUTEIA - Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

NB: post-Woolley case law does not require the three-tests to be carried out by LPAs, however, they still have to determine whether a licence is likely to be issued. As NE do not comment on licensing issues at the planning application stage, the easiest way to determine this is to use the three derogation tests.

The three tests are set out in Regulation 55 of the Habitats Regulations 2017. The three-test assessment of the proposals is set out below. National Planning Policy Guidance applies¹.

This three-test assessment has been undertaken by a MEAS suitably qualified ecologist. Set out below is our advice to the Local Planning Authority (LPA) case officer in relation to the proposed development and whether Tests 1 to 3 are satisfied. Tests 1 and 2 are social, economic, and planning tests, therefore we recommend the case officer draws upon on wider information with regard to evidencing of whether Tests 1 and 2 are satisfied as necessary in determining this application.

Test 1: Regulation 55(1)(e): *“preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”*

For completion by LPA

Test 2: Regulation 55(9)(a): *“that there is no satisfactory alternative”*

For completion by LPA

Test 3: Regulation 55(9)(b): *“that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range”*

This application for development of Sandymoor South Phase 2 is part of a multi-phase scheme. As such, the wider scheme was previously granted a Natural England European Protected Species Mitigation Licence for which mitigation comprised retention and enhancement of the southern pond cluster to form a newt reserve, including green corridors to link with created ponds within the centre of the site. This Licence expired in 2018.

Ponds P25, P26, P27, P28, P29, P30, P31, P32, P33 were the subject of updated great crested newt surveys in 2022. Medium sized populations of GCN were identified in ponds P25, P26, P27, P28 and P33. Small populations were identified in ponds P30 and P31.

¹ [Protected species and development: advice for local planning authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67222/protected-species-and-development-advice-for-local-planning-authorities.pdf)

I advise the measures proposed as mitigation for great crested newt are still acceptable and the surveys are sufficiently robust with which to accompany a new EPS Licence if the applicant chooses to progress using the traditional Licence route, which would be applied for upon granting of the outline planning proposal.

The applicant has also submitted a provisional Impact Assessment & Conservation Payment Certificate (IACPC) from Natural England to demonstrate suitability under District Level Licensing (DLL) and lists costs for registering under the District Level Licence route. The IACPC lapsed on 21/4/23 but still acts to demonstrate the proposal's suitability under a District Level Licensing scheme.

The provisional IACPC confirms Natural England's view that the development in question is suitable for DLL and that the Conservation Payment will suffice to compensate for its impacts on great crested newt. I can confirm that the site details and boundaries of the IACPC are the same as the planning application. The IACPC can be relied upon by the planning authority as confirmation that the impacts of the development on GCN are capable of being fully addressed in a manner which complies with the requirements of the Habitats Regulations.

It is understood that the applicant will sell the development to a private developer upon granting of the outline permission, therefore, they are keen to leave traditional and DLL licensing routes open. As a result, the IACPC has not been finalised, the initial payment has not been made and the IACPC has not been signed for and on behalf of Natural England. On this occasion, and due to the previously granted NE Mitigation Licence, I advise this can be accepted.

As the survey effort and mitigation measures submitted satisfy both the traditional and DLL licensing routes I advise that, in our view, if the mitigation/compensation recommended is implemented, then this test would be satisfied.

Please ask for: Kathryn Brindley Extn: Quoting 22/00543/OUTEIA

Date: 25.10.2022

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING ACT 1990,
THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS
2017 (AS AMENDED) AND PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT
1990

Application Number: 22/00543/OUTEIA

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

I am writing to inform you that an application has been received in respect of the above proposal. A copy of the application can be viewed electronically at www.halton.gov.uk/planningapps. Alternatively it can be viewed online at Halton Direct Link Rutland House, Halton Lea, Runcorn WA7 2ES or Halton Direct Link 7 Brook Street, Widnes WA8 6NB, at any of the Council libraries or a hard copy can be viewed, in person, at Halton Direct Link Rutland House, Halton Lea, Runcorn WA7 2ES.

Electronic versions of the Environmental Statement (ES) documents are available by emailing Tom.Peacock@burohappold.com and quoting 'Sandymoor South Phase 2 and Wharford Farm ES request'.

Anyone who wishes to make representations should do so by e-mail to dev.control@halton.gov.uk or in writing, within a period of 21 days from the date of this letter, to Andrew Plant, Divisional Manager-Policy & Development Services, Municipal Building, Kingsway, Widnes, Cheshire, WA8 7QF.

Should we not hear from you within 21 days we will presume you have no comments to make on the application.

Yours faithfully



Andrew Plant
Divisional Manager - Planning & Development

It's all happening **IN HALTON**

Date: 31 January 2023
Our ref: 417705
Your ref: 22/00543/OUTEIA



Kathryn Brindley
Halton Borough Council

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear Ms Brindley

Planning consultation: Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure.

Location: Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire.

Thank you for your consultation on the above received by Natural England on 11 January 2023.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on:

- Mersey Estuary Special Protection Area (SPA)
- Mersey Estuary Ramsar
- Mersey Estuary Site of Special Scientific Interest (SSSI)

Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

A Habitats Regulations Assessment, including:

- Consideration of habitat suitability for overwintering and passage bird species associated with the above designated sites.

Please re-consult Natural England once this information has been obtained.

Natural England's further advice on designated sites and advice on other issues is set out below.

Internationally and Nationally Designated Sites

The application site is within 4.9km of Mersey Estuary SPA, Ramsar and SSSI.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The [Conservation Objectives](#) for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

Please see the subsequent sections of this letter for our advice relating to SSSI features.

Habitats Regulations Assessment (HRA)

Natural England notes that TEP (September 2022), on behalf of your authority, have undertaken an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

As competent authority, it is your responsibility to produce the HRA and be accountable for its conclusions. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

On the basis of information provided, it is the advice of Natural England that it is not possible to conclude that the proposal is unlikely to result in significant effects on the European site(s) in question.

Special Protection Areas (SPAs) are classified for rare and vulnerable birds. Many of these sites are designated for mobile species that may also rely on areas outside of the site boundary. These supporting habitats (also referred to as functionally linked land/habitat) may be used by SPA populations or some individuals of the population for some or all of the time. These supporting habitats can play an essential role in maintaining SPA species populations, and proposals affecting them may therefore have the potential to affect the European site.

Natural England advises that there is currently not enough information to determine whether the likelihood of significant effects on the nearby designated can be ruled out. It is advised that the potential for offsite impacts needs to be considered for the development site and surrounding areas in assessing what, if any, potential impacts the proposal may have on European sites.

We advise you obtain the following information to help you undertake a Habitats Regulations Assessment:

- Consideration of habitat suitability for overwintering and passage SPA bird species associated with the above designates sites. If supporting habitats are present on-site or within the surrounding area, suitable bird survey evidence for birds associated with the above designated sites will be required.

Natural England note that upon review of the appropriate assessment (TEP, September 2022) we are satisfied with the assessment and proposed mitigation for potential impacts of increased recreational pressures on functionally linked land.

Sites of Special Scientific Interest (SSSI)

Our concerns regarding the potential impacts upon the Mersey Estuary SSSI coincide with our concerns regarding the potential impacts upon the above international designated sites, therefore we are content that providing the application is undertaken in strict accordance with the details submitted and providing the above conditions are secured, the development is not likely to damage the interest features for which the site has been notified.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it

and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Should the applicant wish to discuss the further information required and scope for mitigation with Natural England, we would be happy to provide advice through our Discretionary Advice Service.

If you have any queries relating to the advice in this letter please email consultations@naturalengland.org.uk quoting the reference number at the top of this letter.

For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Isaac Lees
Sustainable Development Adviser
Cheshire, Greater Manchester, Merseyside & Lancashire

Date: 18 May 2023
Our ref: 430433
Your ref: 22/00543/OUTEIA



Ms Kathryn Brindley
Holton Borough Council

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

BY EMAIL ONLY

T 0300 060 3900

Dear Ms Kathryn Brindley,

Planning consultation: Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure

Location: Sandymoor South, Phase 2, Windmill Hill Avenue, East Runcorn, Cheshire.

Thank you for your consultation on the above, received by Natural England on 19 April 2023.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED

We consider that without appropriate mitigation the application would have an adverse effect on the integrity of:

- Mersey Estuary Special Protection Area (SPA)
- Mersey Estuary Ramsar
- Mersey Estuary Site of Special Scientific Interest (SSSI)

In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures should be secured:

- The provision of Homeowner packs
- The inclusion of green infrastructure as proposed in the application and the Habitat Regulations Assessment Addendum
- The inclusion of on-site cycle routes and footpaths as proposed in the application and the Habitat Regulations Assessment Addendum

We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures.

Natural England's further advice on designated sites is set out below.

Internationally and Nationally Designated Sites

The application site is within 4.9km of Mersey Estuary SPA, Ramsar and SSSI.

Habitats Regulations Assessment (HRA)

Natural England have reviewed the Habitats Regulations Assessment (HRA) [TEP. 06 April 2023]. We note that the HRA has not been produced by your authority, but by the applicant. As competent authority, it is your responsibility to produce the HRA and be accountable for its conclusions. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

The appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given.

The following measures should be secured:

- Advisory Homeowner Packs to mitigate any increased recreational pressure on nearby designated sites. Please see below our further advice below regarding content for information packs.
- 8.82ha of Green Infrastructure to be included within the development including Public Open Space, play, existing watercourse, retained landscape features, new pedestrian and cycle routes, proposed planting, Sustainable Drainage System (SuDS), area of ecology and ecological enhancement and HV Pylon easement as detailed in the application and page 4 of the Habitat Regulations Assessment Addendum.
- On-site cycle routes and footpaths connecting to areas away from the Mersey Estuary should be enhanced in order to increase the likelihood of residents visiting areas away from these protected sites as detailed in the application and page 4 of the Habitat Regulations Assessment Addendum.

Homeowner packs

Natural England guidance on contents for homeowner information packs is as follows:

The packs should comprise, but are not limited to:

- Introduction section, setting out the issue.
- Description of the designated sites and their features, this should include a map explaining the boundaries of designated sites.
- An explanation of the sensitivities of features to recreational disturbance and key sensitive times for the features of the designated sites.
- List any access restrictions in the local area (i.e. under the Countryside and Rights of Way Act 2000, Marine and Coastal Access Act 2009 or Byelaws).
- Suggestions of alternative recreational sites (i.e. parks, walking or cycling routes).
- Code of conduct (i.e. not disturbing flocks of feeding / roosting birds, suggested distances to keep from birds).

- Suggested areas for responsible bird watching and opportunities for people to get involved in the local natural environment (i.e. volunteering opportunities).

Natural England would also expect the following principles to be followed for the packs:

- The packs are tailored to the location of the development and the designated sites in the area.
- Tailored to the audience using clear and easy to understand language.
- An appropriate format is used to present and share the information packs (i.e. print, size).

Mersey Estuary SSSI

Our concerns regarding the potential impacts upon Mersey Estuary SSSI coincide with our concerns regarding the potential impacts upon the international designated sites, therefore we are content that providing the application is undertaken in strict accordance with the details submitted and providing the above conditions are secured, the development is not likely to damage the interest features for which the site have been notified.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Should the applicant wish to discuss the further information required and scope for mitigation with Natural England, we would be happy to provide advice through our [Discretionary Advice Service](#).

For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

We would not expect to provide further advice on the discharge of planning conditions or obligations attached to any planning permission.

Yours sincerely

Ben Scotter
Marine and Sustainable Development Adviser
Cheshire, Greater Manchester, Merseyside & Lancashire

North West & West Midlands Area Office

Ghyll Mount
Gillan Way
Penrith 40 Business Park
Penrith
Cumbria
CA11 9BP

Tel: 0300 067 4190

nwwm@forestrycommission.gov.uk

Area Director
Keith Jones

Planning & Development
Halton Borough Council
Municipal Building
Kingsway
Widnes
WA8 7QF

Ref:

Date: 10 November 2022

Dear Mr Plant

Planning Application for Sandymoor South Phase, 2 Windmill Hill Avenue, East Runcorn, Cheshire

I refer to your letter of 25 October 2022.

There is no ancient woodland affected and consequently we have no comment to make on this occasion.

However, it is Government Policy to replace any trees lost through development and we trust therefore, the Local Planning Authority will take this into account during their decision making process.

Thank you for consulting the Forestry Commission.

Yours sincerely

G T Sim

Graham Simms
Area Admin Officer



Historic England

Ms Kathryn Brindley
Halton Borough Council
Municipal Building
Kingsway
Widnes
WA8 7QF

Direct Dial: 0161 242 1433

Our ref: **W:** P01551690

4 November 2022

Dear Ms Brindley

**T&CP (Development Management Procedure) (England) Order 2015
& Planning (Listed Buildings & Conservation Areas) Regulations 1990**

**SANDYMOOR SOUTH PHASE 2 WINDMILL HILL AVENUE EAST RUNCORN
CHESHIRE, WARD: DARESBUURY, MOORE & SANDYMOOR
Application No. 22/00543/OUTEIA**

Thank you for your letter of 25 October 2022 regarding the above application for planning permission.

Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application.

We suggest that you seek the views of your specialist conservation and archaeological advisers. You may also find it helpful to refer to our published advice at <https://historicengland.org.uk/advice/find/>

It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

Yours sincerely

Linda Calvert
Business Officer
E-mail: linda.calvert@HistoricEngland.org.uk



SUITES 3.3 AND 3.4 CANADA HOUSE 3 CHEPSTOW STREET MANCHESTER M1 5FW

Telephone 0161 242 1416
HistoricEngland.org.uk



Kathryn Brindley

From: LLOYD, Kirsty
Sent: 13 January 2023 11:53
To: Kathryn Brindley
Subject: RE: EIA Scoping Opinion. (Ref: 22/00543/OUTEIA)

Development Control,

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire (Ref: 22/00543/OUTEIA)

Thank you for your consultation concerning the Screening Opinion for this proposed development which will affect an extensive area to the east of Windmill Hill known as the Sandymoor Phase 2 development. I note that heritage is considered in section 12.4.11 of the Scoping Report where it is noted that “Archaeological investigations should be carried out to establish whether remains of the houses east of Norton bridge survive and, if so, to characterise them and assess their significance and especially their date. Should those works establish that the remains survive and that they are of sufficient significance, then further investigation should be undertaken to record the remains prior to their destruction.”

It is accepted that the effect of the proposals on the archaeological significance of the area is unlikely to be sufficient to trigger a requirement for an EIA but the potential remains of the structures outlined above from within the proposed development area along with further study of historic maps, aerial photographs, LIDAR, and readily-available secondary sources will almost certainly reveal other features of interest which, where affected by development works, may require further evaluation and mitigation.

It is, therefore, essential, that the proposed Heritage Assessment is expanded to include a consideration of the archaeological issues and sources noted above. It should also consider the likely effect of specific aspects of the development process on any features identified. This study will assist in defining the need for any further evaluation work and mitigation that may be required should the development proceed.

This advice has been prepared in line with the guidance contained in Paragraph 194, Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (Revised 2021), published by the Department for Communities and Local Government and Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2 (Historic England 2015).

Thank you

Kirsty Lloyd
Development Management Archaeologist
Cheshire Archaeology Planning Advisory Service
Total Environment
Place Strategy
Cheshire West and Chester Council
Mob: 07739789302
Email: Kirsty.Lloyd
Location: The Forum, Chester CH1 2HS



From: LLOYD, Kirsty <Kirsty.Lloyd@cheshirewestandchester.gov.uk>

Sent: 07 November 2022 10:28

To: Dev Control <Dev.Control@halton.gov.uk>

Subject: EIA Scoping Opinion. (Ref: 22/00543/OUTEIA)

Development Control

Sandymoor South Phase 2 and Wharford Farm – EIA Scoping Opinion. (Ref: 22/00543/OUTEIA)

Thank you for consulting with APAS in regard to the above EIA Scoping Opinion request for the above proposed application. Having reviewed the supporting information and the information held on the Cheshire Historic Environment Records, there are some archaeological considerations for this proposed development.

These archaeological considerations while requiring archaeological mitigation are unlikely to trigger the requirement of an Environmental Impact Assessment, and the appropriate archaeological works may be secured by condition on the receipt of a full application.

I note that in chapter 6.8 within the EIA Scoping Report that some of the potential archaeological remains within the proposed development area are outlined; however, the report fails to note several other potential archaeological features which may be impacted by this proposed development. The Noted sites include the site of Wharford Farm and the site of the houses Norton Cottages, although chapter 6.8 does not note the site of Wharford Green, the WWII features (Aircraft Battery and Observation post), the Parish boundary to the West and the Township boundary to the East. All of which will require some level of archaeological mitigation in order to identify and record the surviving below ground remains of these features.

It is expected that upon the submission of a formal application, that the archaeological mitigation for each potential archaeological deposits will be assessed and recommendations for the appropriate works offered at that stage and may be secured by condition. Primarily, the recommended works should include a developer funded watching brief for the WWII sites, the site of Norton Cottages, Wharford Farm and Wharford Green, along with a watching brief at

any work which may impact the canal or canal related features. The works should also include evaluation trenching at the Parish boundary and township boundaries.

The above programme of mitigation may be secured by condition, the recommended wording for this is offered below:

No development shall take place within the area indicated until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

The use of such a condition is in line with the guidance set out in Paragraphs 194 & 205, Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (Revised 2021), published by the Department for Communities and Local Government and Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2 (Historic England 2015). The Cheshire Archaeology Planning Advisory Service does not carry out archaeological work and the applicants will need to appoint an archaeological contractor to organise the mitigation.

This advice has been prepared in line with the guidance set out in Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (Revised 2021), published by the Department for Communities and Local Government and Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2 (Historic England 2015).

Thank you

Kirsty Lloyd
Development Management Archaeologist
Cheshire Archaeology Planning Advisory Service
Total Environment
Place Strategy
Cheshire West and Chester Council
Mob: 07739789302
Email: Kirsty.Lloyd@cheshirewestandchester.gov.uk
Location: The Forum, Chester CH1 2HS

Kirsty Lloyd
Development Management Archaeologist
Cheshire Archaeology Planning Advisory Service
Total Environment
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Mob: 07739789302
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Location: The Forum, Chester CH1 2HS

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Kathryn Brindley

From: LLOYD, Kirsty
Sent: 30 January 2023 11:50
To: Kathryn Brindley
Subject: Sandymoor South

Dear Kathryn,

Sandymoor South

Following on from our meeting last week, please find below the recommended programme of archaeological mitigation for the proposed works at Sandymoor South.

Having reviewed the supporting documentation along with the information held on the Cheshire Historical Environment Records, there are some archaeological considerations which require a programme of mitigation for this proposed development.

As outlined in the supporting documentation of the EA chap12.4.11, the main archaeological consideration is the structures seen on the first edition OS Map at Norton Town Bridge. These structures are likely to be destroyed from the proposed development and therefore a programme of archaeological mitigation is required to identify and record these structures. This programme of mitigation is as outlined in Chp 12.4.11 in the supporting documentation.

This programme of archaeological observation may take the form of a developer funded watching brief, during key stages of the proposed development. These key stages include the removal of topsoils, excavations for foundations and excavations of services. This work may be secured by condition, a recommended wording for this is offered below:

No development shall take place within the area indicated until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

The use of such a condition is in line with the guidance set out in Paragraphs 194 & 205, Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (Revised 2021), published by the Department for Communities and Local Government and Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2 (Historic England 2015). The Cheshire Archaeology Planning Advisory Service does not carry out archaeological work and the applicants will need to appoint an archaeological contractor to organise the mitigation.

This advice has been prepared in line with the guidance set out in Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (Revised 2021), published by the Department for Communities and Local Government and Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2 (Historic England 2015).

Thank you.

Kirsty Lloyd
Development Management Archaeologist
Cheshire Archaeology Planning Advisory Service
Total Environment
Place Strategy
Cheshire West and Chester Council
Mob: 07739789302

Email: Kirsty.Lloyd

Location: The Forum, Chester CH1 2HS

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Kathryn Brindley

From: LLOYD, Kirsty
Sent: 01 February 2023 14:56
To: Kathryn Brindley
Subject: RE: Sandymoor South 22/00543/OUTEIA

Hi Kathryn

That's brilliant, it works well to clarify the work.

Very happy with that

Thank you

From: Kathryn Brindley <Kathryn.Brindley@halton.gov.uk>
Sent: 01 February 2023 14:54
To: LLOYD, Kirsty
Cc: Dev Control <Dev.Control@halton.gov.uk>
Subject: RE: Sandymoor South 22/00543/OUTEIA

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Kirsty,

I have forwarded your comments to the applicant and they have asked if you would agree to a tweaked condition to read as below:

No development shall take place within the area of the former houses east of Town Bridge until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work to be carried out in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

Chris at Hawk Heritage has a suggested amendments to the archaeology condition (in italics) which just make it a bit more specific in terms of the area indicated & tighten up the language around the submission of the WSI.

Do you have any comments on this or would you find it acceptable?

Regards

Kathryn

Kathryn Brindley BSc Hons MBA MCD MRTPI

Principal Planning Officer

www.halton.gov.uk/planningpolicy

www.halton.me/planning-contact/

www4.halton.gov.uk/Pages/planning/Selfbuild.aspx

Direct Dial 0151-511-6458 (Alt Planning 0151-511-7657 / Transport 0151-511-7670)

Switchboard 0303-333-4300



From: LLOYD, Kirsty _____
Sent: 30 January 2023 11:50
To: Kathryn Brindley _____
Subject: Sandymoor South

Dear Kathryn,

Sandymoor South

Following on from our meeting last week, please find below the recommended programme of archaeological mitigation for the proposed works at Sandymoor South.

Having reviewed the supporting documentation along with the information held on the Cheshire Historical Environment Records, there are some archaeological considerations which require a programme of mitigation for this proposed development.

As outlined in the supporting documentation of the EA chap12.4.11, the main archaeological consideration is the structures seen on the first edition OS Map at Norton Town Bridge. These structures are likely to be destroyed from the proposed development and therefore a programme of archaeological mitigation is required to identify and record these structures. This programme of mitigation is as outlined in Chp 12.4.11 in the supporting documentation.

This programme of archaeological observation may take the form of a developer funded watching brief, during key stages of the proposed development. These key stages include the removal of topsoils, excavations for foundations and excavations of services. This work may be secured by condition, a recommended wording for this is offered below:

No development shall take place within the area indicated until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

The use of such a condition is in line with the guidance set out in Paragraphs 194 & 205, Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (Revised 2021), published by the Department for Communities and Local Government and Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2 (Historic England 2015). The Cheshire Archaeology Planning Advisory Service does not carry out archaeological work and the applicants will need to appoint an archaeological contractor to organise the mitigation.

This advice has been prepared in line with the guidance set out in Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (Revised 2021), published by the Department for Communities and Local Government and Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2 (Historic England 2015).

Thank you.

Kirsty Lloyd
Development Management Archaeologist

Cheshire Archaeology Planning Advisory Service

Total Environment

Place Strategy

Cheshire West and Chester Council

Mob: 07739789302

Email: Kirsty.Lloyd

Location: The Forum, Chester CH1 2HS

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Kathryn Brindley

From: DAVIES, Tayler
Sent: 13 January 2023 14:47
To: Kathryn Brindley
Subject: RE: 22/00543/OUTEIA - Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

Good afternoon Kathryn,

Thanks for getting to be on this. I have reviewed the red line and are of the opinion that the proposed development at Windmill Hill will have no effect on the surrounding heritage assets.

There are no heritage assets within the red line indication on the location plan provided. Within the vicinity of the site there are a small number of listed buildings in Norton including Grade II Norton Lodge and the Grade II Borrows Bridge and associated hand-cranked crane. While the proposed development may be visible from each of these assets it does not appear the setting of these assets will be effected. The setting of Borrows Bridge has the potential to be impacted through the loss of open space but this would be negligible and at most cause a low level of less than substantial harm.

North east of the development site sits Daresbury Conservation Area and Grade II Bridgewater Canal George Gleave's Bridge. Due to the distance of the heritage assets from the development site it is not consider these asserts will be affected, and any loss of open space will not have any effect on the setting of these assets.

To mitigate any possible harm the proposed development should be designed with the local building vernacular with planted buffer areas to the north east of the site to soften any impact of the surrounding heritage assets.

Kind regards,

Tayler Davies

Built Environment Officer (Conservation and Design)

Cheshire West and Chester Council

Email: Tayler.Davies

Location: Nicholas House, 1 Black Friars, Chester, Cheshire CH1 2NU

Visit: cheshirewestandchester.gov.uk

Please note: Due to the Coronavirus pandemic the Council has implemented a policy of home working for the majority of its employees. If you need to contact me, please do so via email and I will respond as soon as I can. Thank you for your patience and understanding during this period.

To dev.control@halton.gov.uk

Date 16/01/2023

Dept. Planning

Ref 22/00543/OUTEIA

From Environment Services

Planning Consultation Response

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

Further to your consultation I have considered the open space implications and would make the following comments;

Trees/ Hedgerows

I note that there are no trees subject to Statutory Protection or any formal Conservation Area constraints within the area subject to the proposed EIA.

However, the proposed development site is located within the Mersey Forest, specifically within area H12, and is covered by the Mersey Forest Plan and a woodland cover target of 30%. Consideration should therefore be taken to secure this and to retain as many trees as possible, particularly in relation to Category A and B trees, and hedgerows regardless of their assigned category as these are important habitats that are currently in national decline. Open grassland and woodland along the Bridgewater Canal is also highlighted for retention under the Mersey Forest Plan.

The developer should ensure that tree cover is increased through new planting to compensate for the loss of trees, especially Category B trees, as highlighted in the Arboriculture Impact Assessment, and the proposals should be specifically in line Mersey Forest's aims to achieve 30% tree cover in this area.

The three Category A trees highlighted for removal and retention should be retained where possible, and may receive TPO status following further inspection.

Ecology

Significant impacts to ecology, most notably to protected water voles, are highlighted in the Ecology Report.

While some measures proposed to mitigate the potential significant negative effects of the proposed development are adequate, the mitigation measures in relation to these effects on water voles could be considered as lacking.

A planning application should not be endorsed if the permanent habitat loss of a protected species is inevitable and certain to have a negative and irreversible effect, as this current proposed development will have on the water vole population at Keckwick Brook. As such, consideration into the proposed development in relation to the effects on water voles should be greatly considered and reviewed to prevent permanent habitat loss of protected species.

Mitigation measures to prevent the high-severe damage or injury to watercourses, retained waterbodies, high value trees, breeding birds and bats should also be strictly adhered to if the planning application were to be given permission.

Landscape and Visual Impact

Chapter 14 of the Landscape and Visual Impact Assessment identifies and assesses the likely effect on local visual amenity. Hedgerows and their associated trees are further highlighted as characteristic features that form a distinct network in relatively good condition at the site. I would therefore further highlight the importance of retaining and improving these hedgerows where possible; any subject to removal should be replanted close by to retain and enhance biodiversity.

Furthermore, the visual impact of the proposed development to the residents within/ around the site area are valued at medium sensitivity with the susceptibility of the viewers being high. To the users of the PToW along the Bridgewater Canal, the Cheshire Ring Canal Walk, the sensitivity is valued at high to medium. Consideration into the high sensitivity of visual receptors along these areas should therefore be greatly considered in determining the acceptability of the proposed development.

Furthermore:

- Boundary planting is important, not only to compensate for the potential loss of hedgerow to the, but also to reinforce the existing wildlife corridors and improve their connectivity with corridors in the wider landscape.
- Ongoing maintenance of the proposed plantings throughout the site must be considered and we would require plans and schedules for a minimum of five years post-completion establishment maintenance.
- Permitted tree work shall be carried out strictly in accordance with British Standard 3998:1989 "Recommendations for Tree Work" to safeguard the health and visual amenity of the tree.
- Work shall not be carried out between April and July if it would result in disturbance to nesting birds to ensure no damage to wildlife.
- Wildlife and Countryside Act 1981 Part 1 Section 1 (1) Consult W&C Act 1981 (with amendments) for full details of protection afforded to wildlife
- The consent shall be valid for a period of two years from the date of notice to remove any doubt in the future as to whether proposed work already has a valid consent.

Isabella Silo



MEMORANDUM

To Kathryn Brindley

Date 17/01/2023

Dept. Planning

Ref. 22/00543/OUTEIA

From Martin McCoy

Title of Document: HBC Design & Development Team Comments to Sandymoor South Phase 2 Outline Planning Application

Sandymoor South Phase 2: Outline Planning Application with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub-stations, along with recreational open space, landscape and other related infrastructure.

1.0 Landscape and Visual Impact Assessment

1.1 As stated in the previously submitted review of the Sandymoor South Phase 2 and Wharford Farm LVIA at Pre-application Stage (21-07146-PREAPP response HBC: January 2022), the landscape and visual effects identified through the assessment reflect the change in character of the plots from pastoral land to residential development and are considered appropriate to guide the designed-in and supplementary mitigation proposed.

1.2 The Sandymoor South Phase 2 and Wharford Farm LVIA shows a clear understanding of the requirements of GLVIA3 in terms of the methodology and how the methodology is applied to undertake the assessment. The presentation of narrative material and supporting illustrative material is also in accord with GLVIA3.

2.0 Landscape Strategy and Design

2.1 We have reviewed the landscape design elements of the application and find they provide a clear description of the evolution of the Illustrative Masterplan (to Stage 7) and the underpinning design concepts and principles which have informed the DAS.

2.2 As the current application is for outline planning permission there is insufficient detail to comment on final proposed landscape layouts and design details at this stage and we would therefore request that detailed landscape design proposals are provided for comment when developed for the subsequent Reserved Matters Stage.

3.0 Landscape Maintenance and Management

- 3.1 We would also request that information is provided at the Reserved Matters Stage with regards to establishment and maintenance of retained landscape features and proposed new green infrastructure including, public open space, children's play area, active travel routes, ecology mitigation areas, drainage features and new planting.

Martin McCoy
Landscape Architect

Martin McCoy

Environment & Regeneration Directorate

Environment Services

Landscape Architect

Halton Borough Council, Picow Farm Depot, Picow Farm Road, Runcorn, WA7 4UB

Tel: 0151 511 8354. Mob: 07342 068422

E-mail: martin.mccoy@halton.gov.uk



ENGLAND
GOLF

Sandymoor South Phase 2 And Wharford Farm Sandymoor Runcorn WA7 1QY

Planning Enquiry Response

November 2022



Runcorn, WA7 1QY

Sandymoor South Phase 2 And Wharford Farm Sandymoor Runcorn WA7 1QY

Halton Council

Golf Background

Golf is the fifth largest participation sport in the Country, with around 730,000 members belonging to one of nearly 1800 affiliated clubs and a further 3.5 million people playing golf independently outside of club membership.

As a sport, golf is unique in providing an opportunity for life-long participation with the ability for players of all ages and skill levels to play together equitably. Other than the obvious physical health benefits of playing the game, golf is also seen to have numerous mental & social well-being advantages.

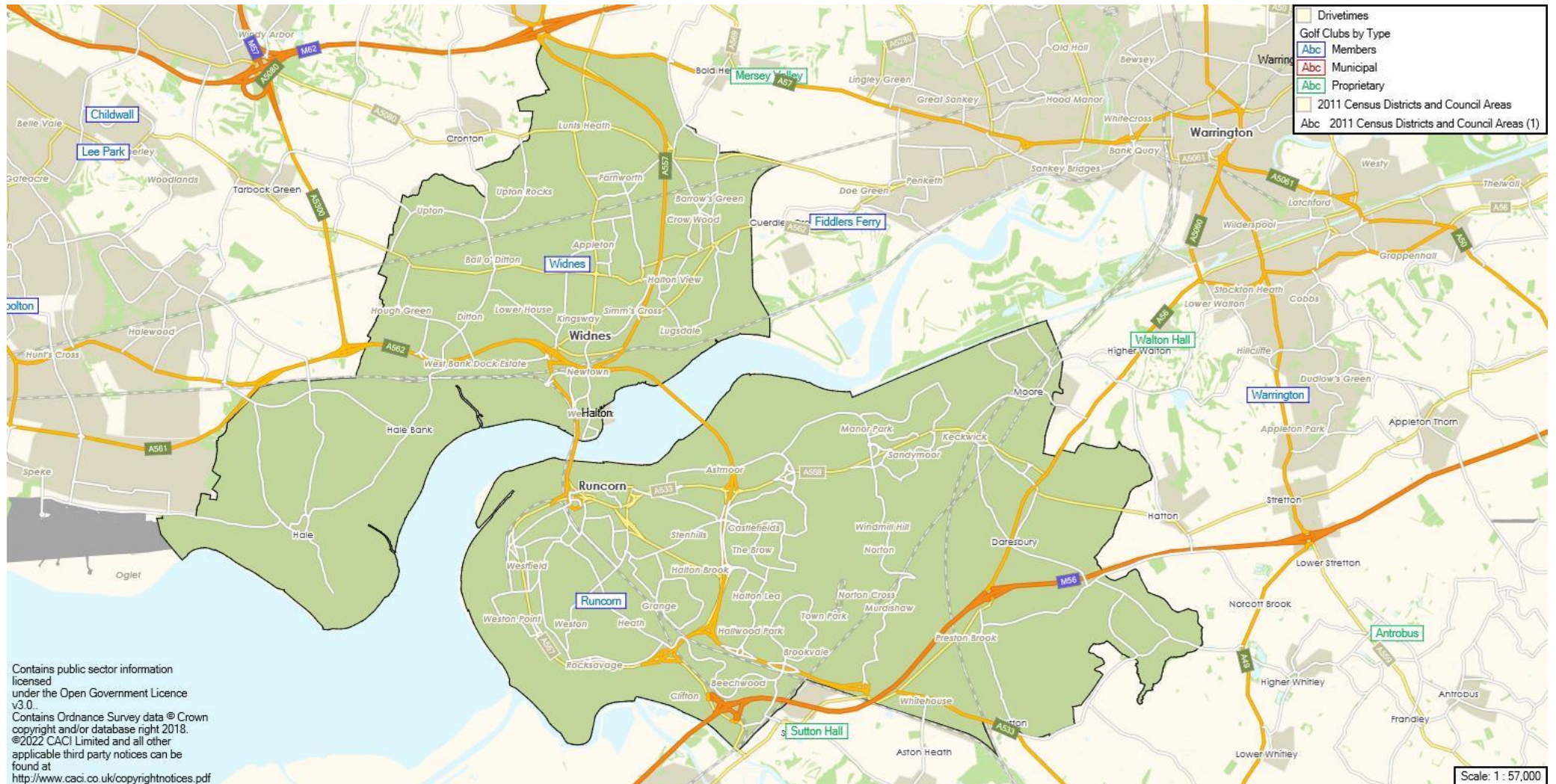
Report Background

This area is subject to the development and construction of 250 dwellings. It is worth noting, however, that this application forms part of an eventual larger scale plan for 850 dwellings but the plan for the further 600 houses has yet to be filed.

Due to the growth in population in this area that 250, and potentially 850 dwellings will cause, an investigation is taking place as to whether there is a need to provide sports provisions to meet the new demand.

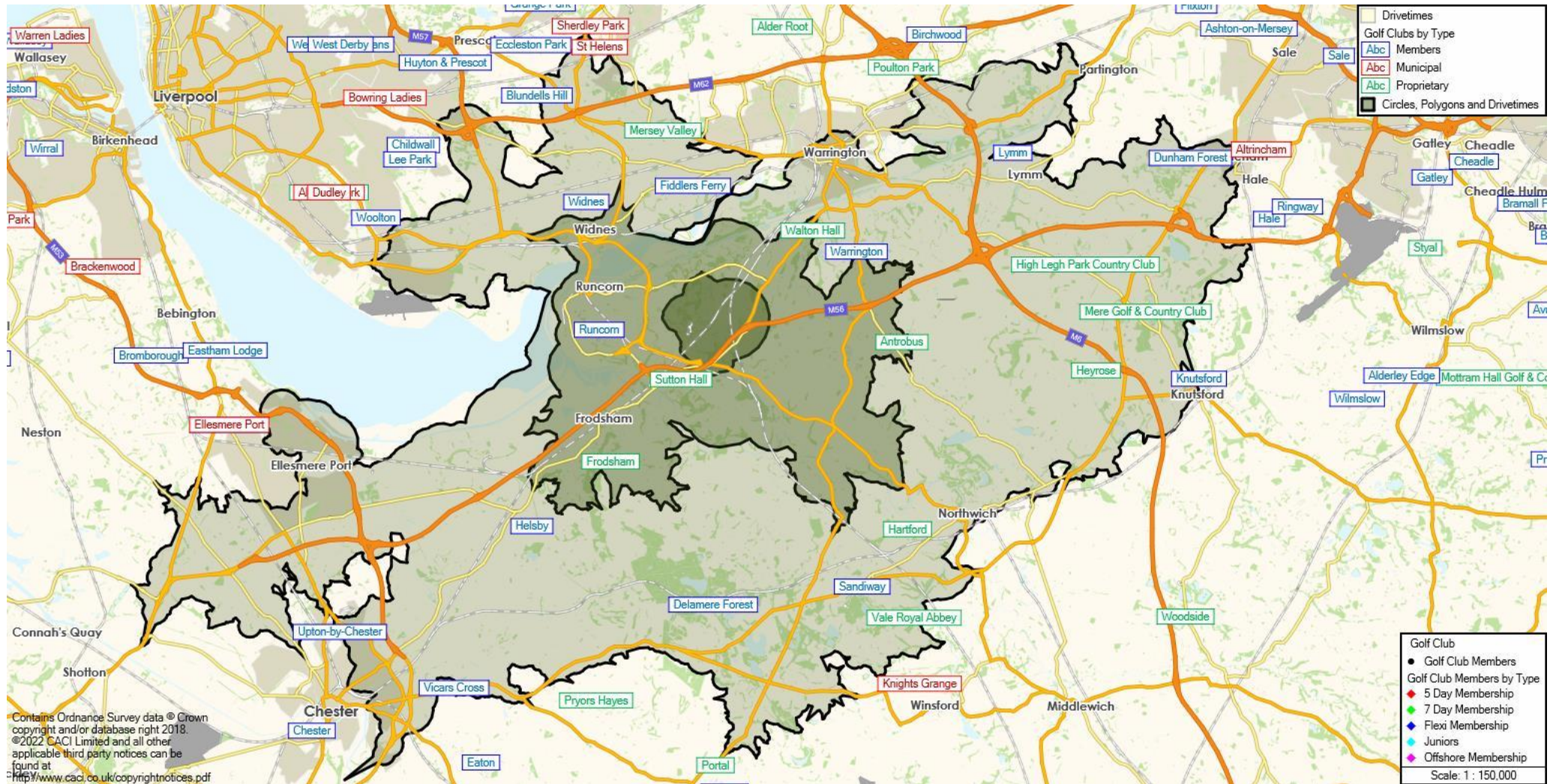
This report is an analysis of the current local golf demand and supply in the area and the level of provision which already exists.

Local Authority Provision (map)





Provision within 30-minute drivetime (map)





Golf Demand Analysis – Local Area

Profile Name	Average number of people per club/facility/local authority (within 20-minute drive time*)		
	<u>Local Authority</u>	<u>County</u>	<u>Region</u>
	Halton	Cheshire	North West
1: Relaxed Members	12,069	7,265	10,794
2: Older Traditionalists	10,204	6,467	9,133
3: Younger Traditionalists	12,248	7,120	10,990
4: Younger Fanatics	10,959	7,051	9,816
5: Younger Actives	11,541	7,008	10,330
6: Late Enthusiasts	10,603	6,765	9,484
7: Occasional Time Pressed	11,885	7,095	10,652
8: Social Couples	10,769	6,664	9,617
9: Casual Fun	10,687	7,191	9,557

* The figures represent the number of people within each profile, within a 20-minute drive time of each club/facility. It is averaged to ensure no double counting and is therefore at its most accurate at club/facility level



Golf Demand Analysis – Local Authority

			Average number of people per club/facility/local authority (within 20 minute drive time*)								
Facility Name	Affiliated?	Local Authority	Relaxed Members	Older Traditionalists	Younger Traditionalists	Younger Fanatics	Younger Actives	Late Enthusiasts	Occasional Time Pressed	Social Couples	Casual Fun
WIDNES GOLF CLUB	Y	Halton	12984	10609	13457	11290	12346	10980	12852	11375	10665
RUNCORN GOLF CLUB	Y	Halton	11153	9798	11040	10628	10736	10226	10918	10163	10709



Golf Demand Analysis – Proximity to facility

Facility Name	Affiliated?	Local Authority	Drivetime Catchment (mins)**	Average number of people per club/facility/local authority (within 20 minute drive time*)								
				Relaxed Members	Older Traditionalists	Younger Traditionalists	Younger Fanatics	Younger Actives	Late Enthusiasts	Occasional Time Pressed	Social Couples	Casual Fun
WARRINGTON GOLF CLUB	Y	Warrington	20	9709	8717	9453	9542	9379	9134	9467	8943	9807
ANTROBUS GOLF CLUB	Y	Cheshire West and Chester	20	8457	7651	8231	8400	8187	8018	8260	7802	8664
RUNCORN GOLF CLUB	Y	Halton	20	11153	9798	11040	10628	10736	10226	10918	10163	10709
SUTTON HALL GOLF CLUB	N	Cheshire West and Chester	20	11029	9718	10942	10534	10629	10132	10816	10056	10605
FRODSHAM GOLF CLUB	N	Cheshire West and Chester	20	3768	3317	3716	3620	3627	3470	3685	3430	3668
MERSEY VALLEY GOLF CLUB	Y	St Helens	30	27743	22878	28630	24418	26426	23699	27445	24406	23254
FIDDLERS FERRY GOLF CLUB	N	Warrington	30	No Data Available								
WIDNES GOLF CLUB	Y	Halton	30	12984	10609	13457	11290	12346	10980	12852	11375	10665
LYMM GOLF CLUB	Y	Warrington	30	5560	5073	5351	5605	5386	5335	5410	5153	5846
DUNHAM FOREST GOLF CLUB	Y	Trafford	30	17029	15540	16522	17362	16522	16377	16667	15639	18111
HIGH LEGH PARK COUNTRY CLUB	Y	Cheshire East	30	11139	10147	10915	11332	10818	10673	10957	10184	11750
THE MERE	Y	Cheshire East	30	No Data Available								
KNUTSFORD GOLF CLUB	Y	Cheshire East	30	5660	5590	5279	6389	5589	5928	5530	5380	6976



HEYROSE GOLF CLUB	Y	Cheshire East	30	6771	6628	6321	7465	6668	6999	6592	6464	8091
WALTON HALL GOLF CLUB	Y	Warrington	30	9459	8277	9322	8990	9089	8654	9232	8615	9077
HARTFORD GOLF CLUB	Y	Cheshire West and Chester	30	2752	2636	2624	2901	2700	2758	2689	2617	3070
SANDIWAY GOLF CLUB	Y	Cheshire West and Chester	30	3736	3508	3585	3837	3648	3667	3646	3527	4020
VALE ROYAL ABBEY GOLF CLUB	Y	Cheshire West and Chester	30	3408	3137	3301	3395	3313	3269	3326	3197	3506
DELAMERE FOREST GOLF CLUB	Y	Cheshire West and Chester	30	2995	2911	2813	3251	2946	3064	2918	2858	3497
HELSEBY GOLF CLUB	Y	Cheshire West and Chester	30	8762	7870	8550	8546	8468	8220	8546	8099	8742

* The figures represent the number of people within each profile, within a 20-minute drive time of each club/facility. It is averaged to ensure no double counting and is therefore at its most accurate at club/facility level

** from WA7 1QY

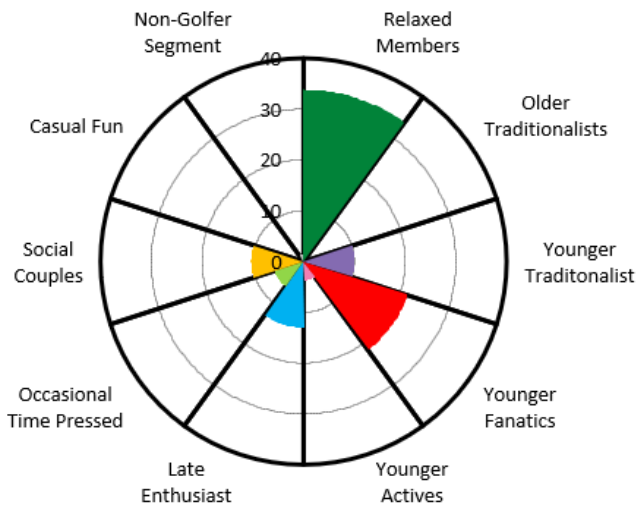


Population Profile Analysis

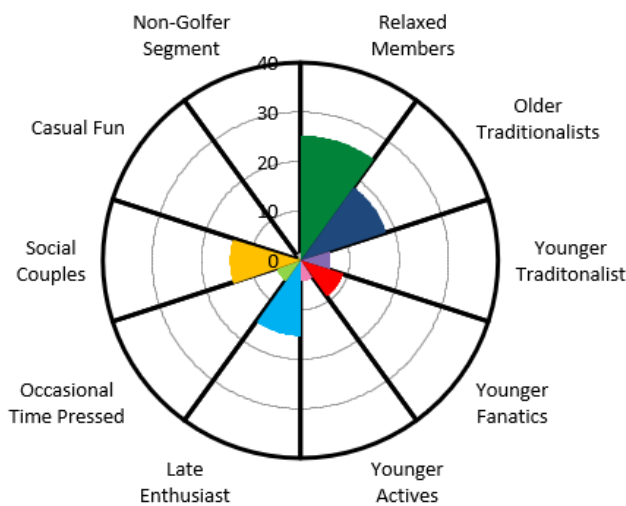
PROFILE	10min	%	20min	%	30min	%	Base%	Index	0	100	200
RELAXED MEMBER	2,502	34	15,188	25	87,417	27	13	199			
OLDER TRADITIONALIST	9	0	11,012	18	50,397	15	11	141			
YOUNGER TRADITIONALIST	743	10	3,691	6	20,866	6	11	60			
YOUNGER FANATICS	1,590	21	5,442	9	40,674	12	14	86			
YOUNGER ACTIVES	276	4	2,548	4	19,599	6	12	51			
LATE ENTHUSIASTS	964	13	9,199	15	43,498	13	9	142			
OCCASIONAL TIME PRESSED	447	6	3,107	5	16,983	5	9	60			
SOCIAL COUPLES	766	10	8,611	14	41,353	13	13	100			
CASUAL FUN	0	0	441	1	2,384	1	7	10			
NON-GOLFER	100	1	839	1	4,637	1	1	100			

TOTAL **7,397** **60,078** **327,808**

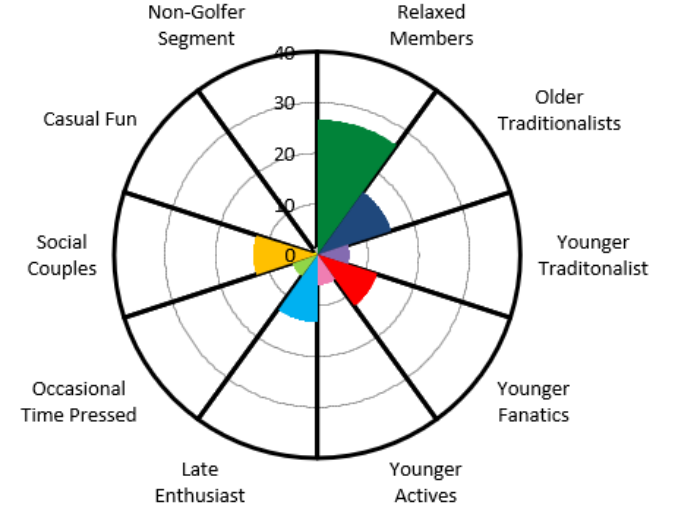
10 minute drivetime %



20 minute drivetime %



30 minute drivetime %





Golf Participation Analysis

Membership Figures (Affiliated clubs within Wirral local authority)

Affiliated Club Name	2015 Average	2016 Average	2017 Average	2018 Average	2022 Average	Average % Change (2018-22)
WIDNES GOLF CLUB	477	488	433	343	527	+54%
RUNCORN GOLF CLUB						
<i>No. Affiliated Facilities</i>	2	2	2	2	2	



Golf Participation Analysis

Membership Figures (Affiliated clubs within 30-minute drivetime)

Affiliated Club Name	2015 Average	2016 Average	2017 Average	2018 Average	2022 Average	Average % Change (2018-22)
WARRINGTON GOLF CLUB	375	367	346	358	469	+31%
ANTROBUS GOLF CLUB						
RUNCORN GOLF CLUB						
SUTTON HALL GOLF CLUB (Dis-affiliated in 2020)						
FRODSHAM GOLF CLUB (Dis-affiliated 2022)						
MERSEY VALLEY GOLF CLUB (No Data in 2018)						
FIDDLERS FERRY GOLF CLUB (Data for 2017 Only - Dis-affiliated)						
WIDNES GOLF CLUB						
LYMM GOLF CLUB						
DUNHAM FOREST GOLF CLUB						
HIGH LEGH PARK COUNTRY CLUB						
THE MERE						
KNUTSFORD GOLF CLUB						
HEYROSE GOLF CLUB						
WALTON HALL GOLF CLUB						
HARTFORD GOLF CLUB						
SANDIWAY GOLF CLUB						
VALE ROYAL ABBEY GOLF CLUB (No Data in 2018)						
DELAMERE FOREST GOLF CLUB						
HELSEBY GOLF CLUB						
<i>No. Affiliated Clubs</i>	19	19	20	15	18	



Facility Provision Analysis

In the Halton local authority there are two affiliated clubs playing. Additionally, within a 30-minute drivetime of WA7 1QY, there are 20 facilities including three that are not affiliated, one of which closed in 2020. The analysis below shows details of all the facilities within a 30 minute drivetime.

Affiliated Club Name	Number of Holes	Club Type	Course Type	Driving Range? Y/N	No. of bays	Clubhouse? Y/N	Green fees weekday	Green fees weekend	7 Day membership fees
WIDNES GOLF CLUB	18	Private Members	Parkland	N	-	Y	£30	£35	£975
RUNCORN GOLF CLUB	18	Private Members	Parkland	Y	32	Y	?	?	?
WARRINGTON GOLF CLUB	18	Private Members	Parkland	N	-	Y	£65	£65	£1115
ANTROBUS GOLF CLUB	18	Proprietary	Parkland	Y	10	Y	£26	£30	£900
SUTTON HALL GOLF CLUB	Closed in 2020								
FRODSHAM GOLF CLUB	18	Private Members	Parkland	Y	?	Y	POA	POA	£800
MERSEY VALLEY GOLF CLUB	18	Proprietary	Parkland	N	-	Y	£25	£30	£820
FIDDLERS FERRY GOLF CLUB	18	Municipal	Parkland	Y	22	Y	£20	£25	£250
LYMM GOLF CLUB	18	Private Members	Parkland	N	Y	£44	£50	POA	18
DUNHAM FOREST GOLF CLUB	18	?	Parkland	N	-	Y	£90	£110	POA
HIGH LEGH PARK COUNTRY CLUB	27	Proprietary	Parkland	Y	14	Y	£25	£25	£1199
THE MERE	18	Proprietary	Parkland	Y	?	Y	POA	POA	POA
KNUTSFORD GOLF CLUB	9	Private Members	Heathland/Parkland	N	-	Y	£15	£15	£1200



HEYROSE GOLF CLUB	18	Proprietary	Parkland	Y	12	Y	£30	£35	£881
WALTON HALL GOLF CLUB	18	Municipal	Parkland	N	-	Y	£16	£20	POA
HARTFORD GOLF CLUB	9	Private Members	Parkland	Y	26	Y	£18	£20	£760
SANDIWAY GOLF CLUB	18	?	Heathland/Parkland	N	-	Y	£80	N/A	POA
VALE ROYAL ABBEY GOLF CLUB	18	Private Members	Parkland	N	-	Y	£35	£40	£1300
DELAMERE FOREST GOLF CLUB	18	Private Members	Heathland	N	-	Y	£90	N/A	POA
HELSEBY GOLF CLUB	18	Private Members	Parkland	N	-	Y	£40	£45	£970



Within the Halton local authority there is a strong demand for golf that surpasses that of the average for the county and the region. The demand cuts across all 9 golfing profiles, both club based and independent. Membership numbers are strong in the local authority and are continuing to grow. Whilst, prior to 2022, 2016 was the only year that surpassed the national average of 484 members, a hugely promising 54% increase in average membership between 2018 and 2022 has seen the figures once again rise well above the national average. Within a 30 minute drivetime of WA7 1QY membership numbers are still strong, however do fall just short of the national average. It is promising however to see a growth of 31% between 2018 and 2022. It is also worth noting that each club will have a different financial model in terms of income generation from membership vs green fees etc. and clubs can operate successfully above and below that average.

There is a poor level of provision in the Halton local authority itself with only two facilities. Within a 30 minute drivetime of WA7 1QY there is a stronger provision, with 20 clubs, one of which however closed in 2020. 18 hole Parkland courses dominate and there is little deviation from this, with only two facilities describing their course as parkland and heathland offering any offer of variety. There are also two nine hole and one 27 hole golf complex. It is pleasing however to see eight driving ranges, a strong number.

Conclusion

Golf has almost certainly seen a rise in participation and popularity as a result of the pandemic which also currently shows no sign of reversing or levelling off. The findings of this report show a strong and increasing demand for golf within the local proximity of WA7 1QY, suggested by the strong segmentation figures and continually growing membership numbers. The report also shows that a healthy demand is currently met with a fairly strong level of provision – however the main noteworthy thing is the lack of variety on offer. More 9 hole courses offering cheaper and quicker ways to play would allow more options for a more casual golfer, or those looking to play the sport at more affordable prices.

England Golf would therefore suggest that the increase in population expected to come with 250 (potentially rising to 850) new dwellings is only likely to add to the strong demand already within the area, and that whilst provision in the area is currently fairly strong, the large increase in expected demand and the lack of variety already on offer suggests a need to improve provision at an entry level.

Kathryn Brindley

Subject: FW: App Ref: 22/00543/OUTEIA - Sandymoor South Phase 2 And Wharford Farm Sandymoor Runcorn WA7 1QY - Sport England Ref: PA/22/NW/HA/62998

From: Christopher Carroll <Christopher.Carroll@sportengland.org>

Sent: 24 April 2023 18:20

To: Dev Control <Dev.Control@halton.gov.uk>

Subject: RE: App Ref: 22/00543/OUTEIA - Sandymoor South Phase 2 And Wharford Farm Sandymoor Runcorn WA7 1QY - Sport England Ref: PA/22/NW/HA/62998

FAO: Andrew Plant

Thank you for consulting Sport England on the above application after the receipt of additional information.

Sport England have reviewed this information and it appears that it doesn't address any of the comments provided on 15th November 2022 and included below for your convenience.

As such, Sport England would like to **maintain its objection** for the reasons outlined below.

Summary: Sport England makes no comment in relation to the principles around housing needs and has focussed on ensuring, if development goes ahead, that sufficient community infrastructure for indoor and outdoor sports facilities are provided to support the increase in population associated with the development.

The proposal makes no contributions to formal sports facilities, indoor or outdoor, therefore **Sport England wishes to maintain its objection** to this application as it is not compliant with NPPF and Sport England's Planning for Sport principles. The impact of the additional demand for sport generated from this development has not been adequately considered by the applicant.

Sport England has used their Playing Pitch Calculator and the Sports Facilities Calculator to estimate the additional demand for sports generated by this development proposal and which show the following:

- Total indicative cost for outdoor sport improvements/new pitches = £202,553 (excluding lifecycle costs)
- Total indicative cost for indoor sport improvements = £220,416 (excluding lifecycle costs)

Sport England would be pleased to review the objection with a view to potentially withdrawing it when we have received further details of any appropriate on site and/or off site outdoor sport and indoor sport enhancements to meet the additional demand arising from the development. A Section 106 Agreement to secure the contribution with a condition or Section 106 Agreement with a clause for a Sports Strategy to provide the detail of what needs to be provided when, where, and how is required should be agreed.

It is welcomed that the applicant has considered how the proposal could meet the ten principles of Active Design. However, given this is an outline planning application, with all matters reserved (except means of access) for residential development, it is recommended that a planning condition for an Active Environment Strategy is included on any subsequent planning approval to ensure that the principles are properly embedded in the design and layout of the proposal at the Reserved Matters stage.

An assessment of the proposal, and reasons for the further information is set out below.

If the Local Planning Authority is minded to approve this application then two conditions are strongly recommended that, the wording of which is set out later in the email:

- Sports Strategy
- Active Environment Strategy

Sport England – Non Statutory Role and Policy

The Government, within their Planning Practice Guidance (Open Space, Sports and Recreation Facilities Section) advises Local Planning Authorities to consult Sport England on a wide range of applications. <https://www.gov.uk/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space#open-space-sports-and-recreation-facilities>

Sport England previously provided comments on a pre application enquiry on a residential proposal across two sites (known as Sandymoor Phase 2 and Wharford Farm), one of which included this site (i.e. Sandymoor Farm). As such, it is considered that this site as well as the adjacent site would cumulatively fall within the scope of the above guidance as it relates to the development of more than 300 residential units and therefore Sport England assesses this type of application in light of the National Planning Policy Framework (NPPF) and against its own planning objectives. These are:

- Protect - To protect the right opportunities in the right places;
- Enhance - To enhance opportunities through better use of existing provision;
- Provide - To provide new opportunities to meet the needs of current and future generations.

Further information on the objectives and Sport England’s wider planning guidance can be found on its website: <http://www.sportengland.org/planningforsport>

My comments are made in relation to two key elements:

1. Additional Demand for Sports Provision
2. Active Design and creating an Active Environment

1. Additional Demand for Sports Provision

The description of the proposed development at Sandymoor South Phase 2, Windmill Hill Avenue, Runcorn, Cheshire is as follows:

“Outline Planning Permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure.”

The occupiers of new development, especially residential, will generate demand for sporting provision. The existing provision within an area may not be able to accommodate this increased demand without exacerbating existing and/or predicted future deficiencies. Therefore, Sport England considers that new developments should contribute towards meeting the demand that they generate through the provision of on-site facilities and/or providing additional capacity off-site. The level and nature of any provision should be informed by a robust evidence base such as an up to date Sports Facilities Strategy, Playing Pitch Strategy or other relevant needs assessment. The Halton Playing Pitch Strategy (2021) shows shortfalls of pitch provision across the majority of pitch types and sizes in Runcorn which will be exacerbated by future demand. As the current supply of pitches are not able to meet current demand then improvement/new provision is required to accommodate the additional demand generated by this development.

It is noted that paragraph 5.27 of the Planning Statement states:

“The Council’s Open Space Calculator in respect of Sandymoor South Phase 2 indicates that if the Site were to be brought forward for development in isolation (i.e. without subsequent development at Wharford Farm), a financial contribution towards the provision of open space would be required in accordance with Policy CS(R)21. However, although the adjacent Wharford Farm site is to be subject to a separate future planning application, the combined on site provision of open space across the two sites has been considered within the accompanying Environmental Statement and the Council’s Open Space Calculator confirms that no additional contributions would be required should both sites come forward. It is therefore assumed that no financial contribution will need to be paid in relation to any open space deficit in connection with Sandymoor South Phase 2 but, for robustness, it is intended that the Sandymoor South Phase 2 Section 106 Agreement will allow for payment of a contribution in circumstances where the development of Wharford Farm does not come forwards.”

Sport England are unable to find the calculation that is referred to in the paragraph nor can they find any draft heads of terms or draft planning obligations as to the proposed on-site and off-site sports provision in relation to this particular planning application. As such, Sport England provide the following calculations to evidence the additional demand for sport arising from the development for this particular planning application site.

Outdoor Sports Provision

The population of the proposed development is estimated to be 600 (based on 250 dwellings at an average household size of 2.4 – taken from the Playing Pitch Strategy Housing Growth Scenarios). This additional population will generate additional demand for sports facilities. If this demand is not adequately met then it may place additional pressure on existing sports facilities, thereby creating deficiencies in facility provision. In accordance with the NPPF, Sport England seeks to ensure that the development meets any new sports facility needs arising as a result of the development.

Sport England has developed a Playing Pitch Calculator (PPC) which is used to estimate the additional demand for different pitch types that could be generated from housing developments. This calculator has been used in this instance to estimate the additional demand for pitch types arising from the development and was used to develop Housing Growth Scenarios in the PPS. Based on a proposed population of 600 (using a 2.4 - taken from the Playing Pitch Strategy Housing Growth Scenarios) additional demand will be generated and includes:

1. The combined additional demand for peak period matches and training sessions equates to 0.68 pitch equivalents at an indicative capital cost of £77,198 and lifecycle cost of £11,168. Broken down into pitch types this equates to:
 - o 1a. Natural Grass Pitches to accommodate match play during the peak period equates to 0.65 pitch equivalents at indicative capital cost of £47,555 with lifecycle costs of £10,054 for the creation/improvement of football (adult, youth and mini football pitches), rugby league pitches, rugby union pitches and cricket pitches.
 - o 1b. Artificial Grass Pitch (to accommodate training over the week) - total indicative capital cost of £29,644 (with a split of £27,331 for 3G and £2,312 for sand based) and a total indicative lifecycle costs of £1,114;
2. This additional demand would generate the need for 0.75 additional changing rooms at an indicative cost of £125,355.

The total indicative cost for outdoor sport improvements/new pitches = £202,553 (excluding lifecycle costs)

The indicative cost for providing qualitative improvements is taken from Sport England’s Sports Facilities Cost Second Quarter 2021.

<https://www.sportengland.org/how-we-can-help/facilities-and-planning/design-and-cost-guidance/facility-cost-guidance>

Once the applicant, after consultation with the Council and the National Governing Bodies of Sport, has established how best to provide the additional capacity either on or off site, a more accurate cost analysis should be undertaken based on works required at specific sites. The cost analysis can inform the requirement for a developer contribution secured via a Section 106 Agreement.

Indoor Sports Provision

In relation to indoor sports provision you may be aware that Sport England’s Sports Facilities Calculator (SFC) can help to provide an indication of the likely demand that will be generated by a development for certain facility types. The SFC indicates that a population of 600 in this local authority area will generate a demand for:

Sports Halls		Swimming Pools	
Courts	0.17	Lanes	0.12
Halls	0.04	Pools	0.03
Vpwpp*	51	Vpwpp*	40
Cost	£105,316	Cost	£115,100

*Vpwpp = visits per week in the peak period

Total indicative cost for indoor sport improvements = £220,416 (excluding lifecycle costs)

The table above shows that additional visits to sports halls and swimming pools will be generated.

The applicant, in consultation with the Council should assess whether:

- Existing facilities within the locality can accommodate the additional demand; or
- Improvements to existing facilities are required to build in capacity for the additional demand; or
- A contribution towards planned new provision is required

Again the costs are indicative and any improvements/new provision required should be informed by a more accurate cost analysis.

More information on the Sports Facility Calculator can be found on our website at: <https://www.sportengland.org/facilities-planning/planning-for-sport/planning-tools-and-guidance/sports-facility-calculator/>

Consultation with the National Governing Bodies of Sport (NGBs)

As part of the assessment of this consultation, Sport England has sought the views of various National Governing Bodies (NGBs) of Sport who to date have provided the following comments, which are summarised below:

England Golf (EG):

- *Please see attached assessment.*
- *Golf has almost certainly seen a rise in participation and popularity as a result of the pandemic which also currently shows no sign of reversing or levelling off.*
- *The findings of this report show a strong and increasing demand for golf within the local proximity of WA7 1QY, suggested by the strong segmentation figures and continually growing membership numbers.*
- *The report also shows that a healthy demand is currently met with a fairly strong level of provision –however the main noteworthy thing is the lack of variety on offer. More 9 hole courses offering cheaper and quicker ways to play would allow more options for a more casual golfer, or those looking to play the sport at more affordable prices.*

- *England Golf would therefore suggest that the increase in population expected to come with 250 (potentially rising to 850) new dwellings is only likely to add to the strong demand already within the area, and that whilst provision in the area is currently fairly strong, the large increase in expected demand and the lack of variety already on offer suggests a need to improve provision at an entry level.*

England and Wales Cricket Board (ECB):

- Demand outstrips supply in the area with really only 1 club accessible in the area – Runcorn CC
- The ECB would be looming for contribution rather than a new ground.
- Runcorn CC have plans to develop. Plans included – rebuild of pavilion (£250k), resurface of car park (£40k) and refurbishment of practice facility (£12k)
- There is a big lack of indoor training facilities on the area so a contribution towards cricket in a multi sport indoor sports hall is something we would look at.

Football Foundation (FF):

- *The Halton Playing Pitch Strategy (2021) evidences capacity shortfalls for football in the Runcorn sub-area in which the proposed application site is located.*
- *There are capacity shortfalls for grass football pitches and a quantitative shortfall of two full sized 3G pitches for football.*
- *FF notes this application is for 250 homes and on this basis alone would prefer to see a financial contribution in lieu of onsite provision. However, given this application forms part of a wider development and should consent for both parts of the scheme be granted, onsite provision could possibly be explored.*
- *FF preference would be for offsite financial contribution to go towards the development of new 3G pitch provision and for the Council to work with FF to explore how this contribution and potential FF funding could together help deliver two 3G pitches.*

Rugby Football Union (RFU):

- *The RFU believes it is reasonable for participants to travel 20 minutes in order to participate in rugby union activity because of this we would expect Moore RUFC to see an increase in demand as a result of the proposed development.*
- *It is not believed onsite provision would benefit rugby union, with the population generated by the development not being sufficient to realistically see the creation of a new rugby union club.*
- *Moore RUFC would benefit from financial contribution in lieu of onsite provision in the form of changing room improvements. The changing rooms on the site are not currently fit for purpose given there is male and female activity on site and only communal showers, it is reasonable to believe this issue will be further exacerbated as a result of the development due to the increase in participants. The club plans on renovating all the changing rooms in order to make them self-contained with ensuite provision. The costs of this project are currently unknown.*

Swim England (SE):

- *There is a high demand within the district, with the current facilities operating at a high capacity.*
- *Additional water space could be required to accommodate such a large housing development, otherwise the current facilities could become overwhelmed.*
- *The largest facility within the district, Kingsway LC, would not likely be the facility used by the potential dwellings and Runcorn would be unlikely to cater for further use with its smaller water space.*
- *A concern for us would be the age of the current facilities and likely need of replacement or significant investment for future sustainability in the coming years. This could be an opportunity for that investment.*

The above NGB comments support the need to provide for sport facilities to meet the demand created by the new residents either on site or through off site contributions, or a mixture of the two. It is strongly recommended that a Sports Strategy is developed and prepared by the applicant in consultation with the Council, Sport England and the relevant National Governing Bodies of Sport. The Sports Strategy should provide the evidence of increase in demand for sport, an analysis of what sports facilities; pitch types and ancillary facilities that are required to meet demand, and where they are best located. Once the applicant has established how best to provide the additional sporting capacity, a more accurate cost analysis should be undertaken based on works required at specific sites. The cost analysis can inform the requirement for a developer contribution, or if appropriate, by properly supported on-site pitches and ancillary facilities.

Therefore, if approved, it is suggested that further work is undertaken to properly establish the evidence of need, new pitch/court/indoor sport requirements and how and where they are to be provided. This can either be submitted as part of the reserved matters application or the following condition, or variation thereof, may be included on any subsequent planning approval:

Prior to any reserved matters application being submitted a Sports Strategy for the development shall be submitted and approved by the Local Planning Authority, after consultation with Sport England. The Sports Strategy shall inform any forthcoming Reserved Matters application and include:

- 1. Size, type and location of sports facilities to include:*

- a. On and/or Off site sports provision (new and enhancements) informed by the most up to date Wirral Playing Pitch and Outdoor Sport Strategy and any other relevant sports strategy;
 - b. Evidence of demand and rationale for the mix of sports facilities proposed; and
2. Management and Maintenance arrangements for the sports facilities.

Reason: To provide sustainable sports facilities that are fit for purpose that support the development and to comply with [insert relevant local plan policy], paragraphs 92, 93 and Section 8 (promoting Healthy Communities) of NPPF

Informative: the applicant is advised to engage a Sports Facility Specialist/Consultant to carry out the Sports Strategy for the development. The Council's up to date Playing Pitch Strategy and any indoor Sports Facility Strategy, adopted at the time of the reserved matters application being submitted, should be used to help inform the developments Sports Strategy.

2. Active Design and creating an Active Environment

Sport England, in conjunction with Public Health England, has produced 'Active Design' (October 2015), a guide to planning new developments that create the right environment to help people get more active, more often in the interests of health and wellbeing. The guidance sets out ten key principles for ensuring new developments incorporate opportunities for people to take part in sport and physical activity. The Active Design principles are aimed at contributing towards the Government's desire for the planning system to promote healthy communities through good urban design. Sport England would commend the use of the guidance in the master planning process for new residential developments. The document can be downloaded via the following link:

<http://www.sportengland.org/activedesign>

Sport England and BRE Global have worked together to map the individual issues and criteria in each BREEAM Scheme with the Active Design principles outlined by Sport England. The built environment can have major impacts on people's health and wellbeing, designing the Principles of Active Design into new, emerging and established areas of the built environment is becoming increasingly desirable at national and local planning levels. BREEAM, HQM and CEEQUAL are schemes which can be used to ensure that the high level principles of active design are met and implemented where possible during each stage of a projects lifecycle.

<https://www.breeam.com/engage/research-and-development>

It is noted that page 14 of the Design and Access Statement provides a summary as to how the proposal could meet the ten principles of Active Design, which Sport England welcome. Active Design is a key component in the creation of Active Environments, which is a key objective of Sport England's 'Uniting the Movement Strategy'. Given this is an outline planning application, with all matters reserved (except means of access) for residential development, it is recommend that the following planning condition for an Active Environment Strategy is included on any subsequent planning approval to ensure that the principles are properly embedded in the design and layout of the proposal at the Reserved Matters stage.

Sport England strongly recommends the application continues to be developed to incorporate the key principles of Active Design in order to accord with paragraphs 92, 93, 102, 110 and 127 of the NPPF, and Sport England Planning for Sport Principles:

<http://www.sportengland.org/planningforsport>

For that reason the following condition, or variation thereof, is strongly recommended to be attached to any subsequent planning approval:

Prior to the submission of any Reserved Matters application, an Active Environment Strategy with details of pedestrian and cycling networks to be provided through each site and which shall incorporate the principles of Active Design set out within Sport England's Active Design Guidance (Active Design: Planning for health and wellbeing through sport and physical activity), shall be submitted to and approved in writing by the Local Planning Authority, after consultation with Sport England. The design of the development shall be prepared in accordance with the approved Active Environment Strategy.

Reason: To promote active travel and create an active environment through the provision of a network of safe, secure, convenient and attractive walking and cycling routes, informal spaces and facilities that encourage physical activity, and ensure this forms an integral part of the proposed development having regard to Policies [insert relevant local plan policy], paragraphs 92, 93 and Section 8 (promoting Healthy Communities) of NPPF

Informative: The applicant is advised to refer to Sport England's 'Active Design Guidance' the Active Design checklist and Active Design User Guide, and Sport England's Strategy 'Uniting the Movement' and 'Planning for Sport' guidance. The Strategy should include a statement, based on the Active Design checklist, that clearly sets out how Active Design has been incorporated into the design to create an Active Environment.

<http://www.sportengland.org/planningforsport>

<http://www.sportengland.org/activedesign>

<https://www.sportengland.org/why-were-here/uniting-the-movement>

Conclusion

Sport England makes no comment in relation to the principles around housing needs and has focussed on ensuring, if development goes ahead, that sufficient community infrastructure for indoor and outdoor sports facilities are provided to support the increase in population associated with the development.

It is Sport England's opinion that the development would, if permitted, create a need for the creation and/or a contribution to sports facilities. Such a contribution should be secured by Section 106 Agreement and invested in improving/creating new sports facilities within the sports catchment of the proposal. The details above provide an idea of the level of new sports provision and/or contributions that might be required although the type, size, location and costs of sports provision should be informed by a Sports Strategy for the application.

The proposal makes no contributions to formal sports facilities, indoor or outdoor, therefore **Sport England wishes to maintain its objection** to this application as it is not compliant with NPPF and Sport England's Planning for Sport principles. The objection may be withdrawn if a Section 106 Agreement that is fully evidenced and secures the creation of/contribution towards appropriate sporting facilities is prepared, in consultation with Sport England. The detail of where, how and when the contribution will be invested should be informed by a Sports Strategy secured via condition.

We would be grateful if you would advise us of the outcome of the application by forwarding a copy of the decision notice.

Kind Regards,

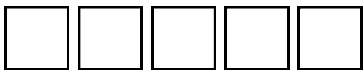
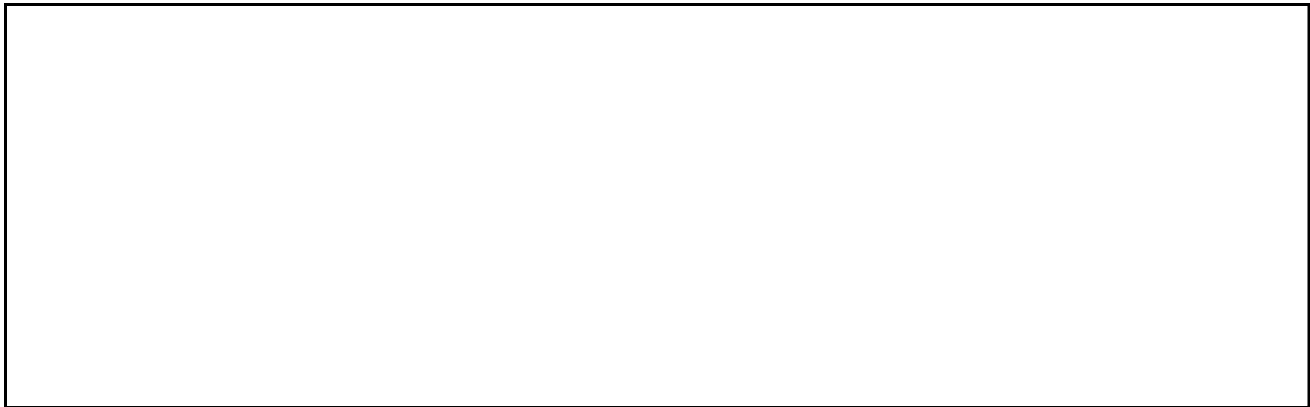
Christopher Carroll
Planning Manager

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handling of personal data you can contact Gaile Walters, Sport England's Data Protection Officer directly by emailing DPO@sportengland.org

Kathryn Brindley

From: Martin West
Sent: 01 February 2023 16:00
To: Kathryn Brindley
Cc: Catriona Gallimore; Yvonne Ward; Clare Fay
Subject: RE: 22/00543/OUTEIA Sandymoor South Phase 2

Hi Kathryn,

As discussed this morning, in terms of primary school provision the proposed development in Sandymoor South falls within Runcorn East for school place planning purposes, and we have circa 19% surplus capacity within the primary sector in that area which equates to 693 vacant places. In addition, the forecast is for a static/declining birth rate across the borough so even taking into account proposed new house build, the existing capacity indicates that there is not a need at this time for additional primary provision.

In terms of secondary provision, again we have surplus capacity in Runcorn within the secondary sector at circa 17% which equates to 758 vacant places. We are also aware that Sandymoor School originally made space available for 6th Form provision, but that has not be utilised, so there is potential for them to increase their Published Admission Limit should they see a demand in requests for places.

If you need anything further from me please let me know.

Best wishes
Martin

From: Kathryn Brindley
Sent: 31 January 2023 14:32
To: Martin West
Cc: Dev Control <Dev.Control@halton.gov.uk>
Subject: RE: 22/00543/OUTEIA Sandymoor South Phase 2

Hi Martin,

I am looking to pull together the committee report for this application and the draft heads of terms for the S106 are under way.

Please can you confirm if you wish to respond or have no comments so the application can move forward.

Kind regards

Kathryn

Kathryn Brindley BSc Hons MBA MCD MRTPI

Principal Planning Officer

www.halton.gov.uk/planningpolicy

www.halton.me/planning-contact/

www4.halton.gov.uk/Pages/planning/Selfbuild.aspx

Direct Dial 0151-511-6458 (Alt Planning 0151-511-7657 / Transport 0151-511-7670)

Switchboard 0303-333-4300



From: Kathryn Brindley
Sent: 16 December 2022 09:09
To: Martin West _____
Cc: Dev Control <Dev.Control@halton.gov.uk>
Subject: 22/00543/OUTEIA Sandymoor South Phase 2

Hi Martin,

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

As part of the application and gathering any S106 requirements etc would there be any need for additional primary/secondary school places as a result of the development?

I am aware that as part of a wider Sandymoor S106 there has been school contributions made but I was wondering if application would reach the tipping point where that school would be required?

If S106 contributions were required please can you provide the evidence for this and how much would you require through the S106 process in order to address any issue?

If you wish to discuss this matter further please do not hesitate to contact me.

Regards

Kathryn

Kathryn Brindley BSc Hons MBA MCD MRTPI

Principal Planning Officer

www.halton.gov.uk/planningpolicy

www.halton.me/planning-contact/

www4.halton.gov.uk/Pages/planning/Selfbuild.aspx

Direct Dial 0151-511-6458 (Alt Planning 0151-511-7657 / Transport 0151-511-7670)

Switchboard 0303-333-4300





Kathryn Brindley
Policy & Development Services
Halton Borough Council
Municipal Building
Kingsway
Widnes
WA8 7QF

25th October 2022

Dear Madam

Your Reference: Application Number 22/00543/OUTEIA
Location: Sandymoor South Phase 2, Windmill Hill Avenue East, Runcorn
Our Reference: TH/HJS/NA1853
Proposal: Outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure

Thank you for your letter received by email of today's date.

SABIC would have no observations to make in this instance, as the proposed works are outside of the current LUP Land Use Planning Consultation Zones and would therefore not affect SABIC pipeline apparatus.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Thomas Hawkesworth'.

Thomas Hawkesworth
CCPL NW Team Leader
SABIC UK Petrochemicals Ltd

To Kathryn Brindley

Date 5 December 2022

Dept. Planning

Ref 22/00543/OUTEIA

From Contaminated Land Team

Planning application consultation response

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2, Windmill Hill Avenue East, Runcorn

No objection, subject to conditions

I have reviewed the application in relation to land contamination impacts. The Environmental Statement does not directly cover possible land contamination, however in the technical appendices there is a desk study covering contamination and ground conditions.

- Sandymoor South Phase 2 Runcorn. Ground engineering desk study report. Ref 044732-BHE-XX-XX-RP-GE-SM0001, rev 03, Buro Happold Ltd, 9 September 2022.

The report reports on the findings of a desk study collating available information and site visit and presents a preliminary risk assessment and conceptual site model.

The site is predominately former agricultural land traversed by railway land, with a low potential for contamination. The assessment recognises the possibility of some impact from the railway land and localised made ground, e.g. trackways.

The report concludes that there is a need to determine ground conditions for construction design purposes and to prove the conceptual model, given the sensitivity of the end use to land contamination if present. A scope of site investigation is included.

The submitted supporting information is appropriate for this application and I have no objection to the proposals, provided that any approval is conditioned to require the further site investigation and assessment. If the findings of that investigation determine it to be necessary, a remediation strategy must also be submitted, along with suitable verification reporting upon completion of any such remediation.

Suggested wording

No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:

1. A site investigation scheme to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
2. The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Will Watson
Contaminated Land Officer



The Coal
Authority



INVESTOR IN PEOPLE



RTPI
Learning Partner

200 Lichfield Lane
Berry Hill
Mansfield
Nottinghamshire
NG18 4RG

Tel: 01623 637 119 (Planning Enquiries)

Email: planningconsultation@coal.gov.uk

Web: www.gov.uk/coalauthority

For the Attention of: Kathryn Brindley

Halton Borough Council

[By Email: dev.control@halton.gov.uk]

28 October 2022

Dear Kathryn Brindley

PLANNING APPLICATION: 22/00543/OUTEIA

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure; SANDYMOOR SOUTH PHASE 2, WINDMILL HILL AVENUE, EAST RUNCORN, CHESHIRE

Thank you for your consultation notification of the 25 October 2022 seeking the views of The Coal Authority on the above planning application.

The Coal Authority Response: No Observations

I can confirm that the above planning application has been sent to us incorrectly for consultation.

The application site **does not** fall within the defined coalfield; there is no requirement therefore to consider coal mining issues as part of this planning application or to consult The Coal Authority.

The Coal Authority has **no comments** to make on this planning

Yours sincerely

Christopher Telford BSc(Hons) DipTP MRTPI
Principal Development Manager



The Coal
Authority



INVESTOR IN PEOPLE



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Learning Partner

200 Lichfield Lane
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Tel: 01623 637 119 (Planning Enquiries)

Email: planningconsultation@coal.gov.uk

Web: www.gov.uk/coalauthority

For the Attention of: Kathryn Brindley

Halton Borough Council

[By Email: dev.control@halton.gov.uk]

24 April 2023

Dear Kathryn Brindley

PLANNING APPLICATION: 22/00543/OUTEIA

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure; SANDYMOOR SOUTH PHASE 2, WINDMILL HILL AVENUE, EAST RUNCORN, CHESHIRE

Thank you for your consultation notification of the 19 April 2023 seeking the views of The Coal Authority on the above planning application.

The Coal Authority Response: No Observations

I can confirm that the above planning application has been sent to us incorrectly for consultation.

The application site **does not** fall within the defined coalfield; there is no requirement therefore to consider coal mining issues as part of this planning application or to consult The Coal Authority.

The Coal Authority has **no comments** to make on this planning

Yours sincerely

Christopher Telford BSc(Hons) DipTP MRTPI
Principal Development Manager



WARRINGTON
Borough Council

Kathryn Brindley
Halton Borough Council

Professor Steven Broomhead
Chief Executive

Steve Park
Director of Growth

East annexe
Town Hall
Sankey Street
Warrington WA1 1UH

24/11/2022

Reference: Adjacent authority consultation (Application Number: 22/00543/OUTEIA)
Application for outline planning permission with all matters reserved (except means of access)
for residential development comprising up to 250 dwellings, electricity sub stations, along
with recreational open space, landscape and other related infrastructure at Sandymoor South
Phase 2 Windmill Hill Avenue East Runcorn Cheshire

Dear Kathryn

Warrington Borough Council have no objections to application 22/00543/OUTEIA
Application for outline planning permission with all matters reserved (except means of access)
for residential development comprising up to 250 dwellings, electricity sub stations, along
with recreational open space, landscape and other related infrastructure at Sandymoor South
Phase 2 Windmill Hill Avenue East Runcorn Cheshire

Kind Regards

Liz

Liz Snead MRTPI
Senior Planning Officer (Majors)
Development Management
Growth Directorate
Warrington Borough Council
East Annexe
Town Hall
Sankey Street
Warrington
WA1 1UH

T:01925 442915

www.warrington.gov.uk

Kathryn Brindley

From: Dev Control
Sent: 01 June 2023 11:11
To: Kathryn Brindley
Subject: FW: App. 2023/00504/ADJA. Adjacent authority consultation Sandymoor South Phase 2, 22/00543/OUTEIA

Follow Up Flag: Follow up
Flag Status: Completed

Morning Kathryn

On Uniform & CSD.

Cheers

Alan

From: Halsey, James
Sent: 01 June 2023 09:41
To: Dev Control <Dev.Control@halton.gov.uk>
Subject: App. 2023/00504/ADJA. Adjacent authority consultation Sandymoor South Phase 2, 22/00543/OUTEIA

Good morning,

Thanks for consulting Warrington BC on 22/00543/OUTEIA. We have no comments or objections to make.

Regards,

*James Halsey
Assistant Majors Officer
Development Management
Growth Directorate*

E: james.halsey
www.warrington.gov.uk

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Cheshire and Merseyside



Property Services

Kathryn Brindley
Principal Planning Officer
Development Management
Halton Council
Municipal Building
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WA8 7QF

NHS Cheshire and Merseyside ICB - Halton
Runcorn Town Hall
Heath Road
Runcorn
WA7 5TD

philip.thomas@knowsleyccg.nhs.uk

BY EMAIL ONLY

25th May 2023

Dear Kathryn,

Site/ Development Reference: Sandymoor South Phase 2, Runcorn (22/00543/OUTEIA)

NHS Cheshire and Merseyside Integrated Care Board (ICB) and NHS Property Services (NHSPS) are responding to the above proposal at Sandymoor South Phase 2 in relation to the requirements for a S106 Developer Contribution to mitigate the impact of the development.

The ICB commissions (plans, designs and purchases) many of the health services that local people use, including medicines, hospital care, urgent and emergency services, mental health care, GP services, Community Pharmacy, dentistry and general ophthalmology (eye care services) and many community services.

There is a well-established connection between planning and health. Development proposals which impact on local infrastructure will be expected to mitigate their impact to be considered sustainable. Therefore, planning permission should only be granted subject to the provision or appropriate funding towards the level of infrastructure to support the development. Residential developments often have very significant impacts in terms of the need for additional healthcare provision for future residents, meaning that a planning obligation requiring that the development contributes to or delivers a new healthcare facility is often necessary.

Infrastructure Delivery and Funding

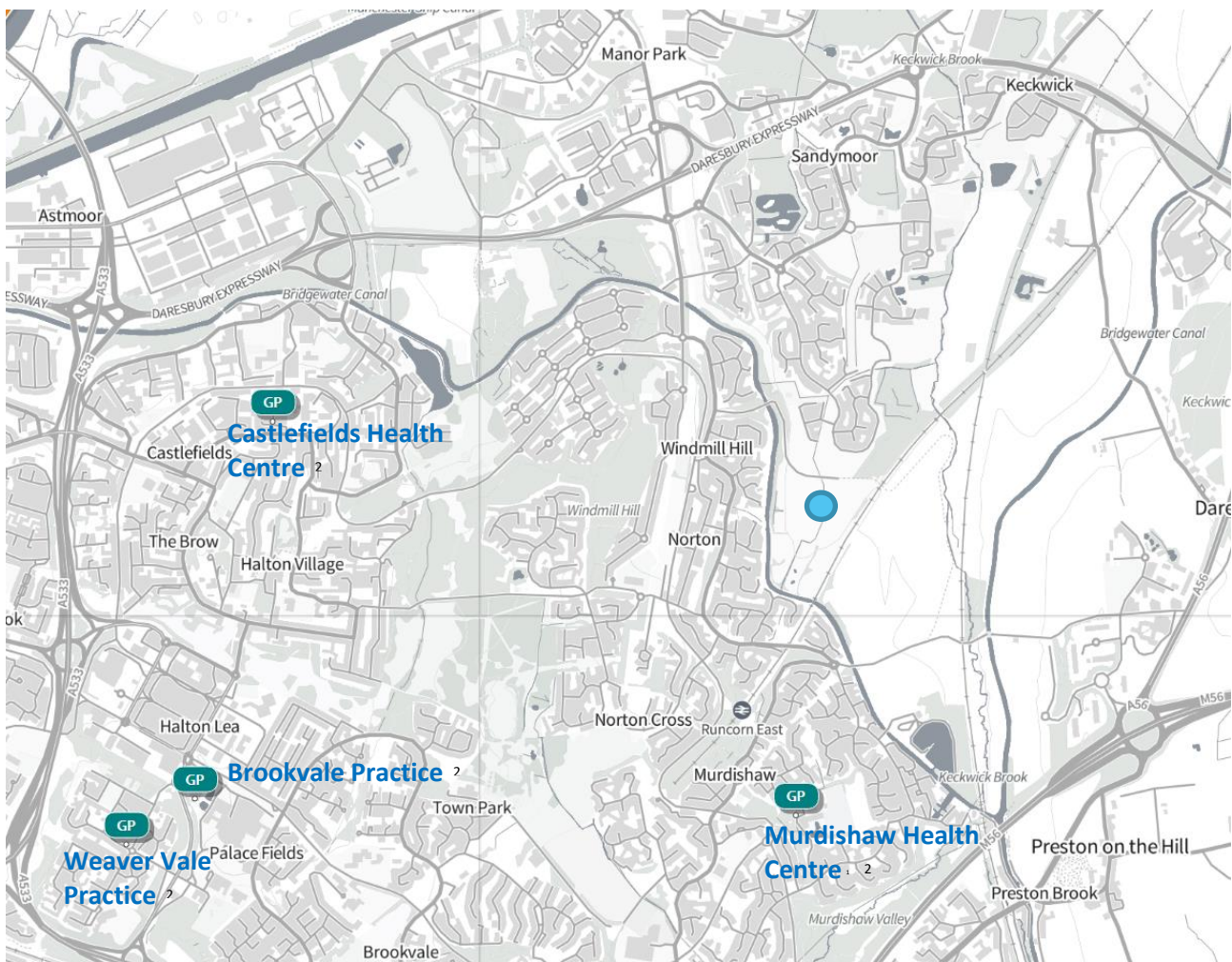
The National Planning Policy Framework (2021) recognises the importance of sustainable development, and that sufficient provision of healthcare infrastructure should be made. The adopted Halton Delivery and Allocations Local Plan (2022) at Policy CS (R) 7 states that where a new development creates or exacerbates deficiencies in infrastructure it will be required to ensure those deficiencies or losses are compensated for, adequately mitigated or substituted for in a timely manner.

It is common knowledge that NHS services and infrastructure will be under evermore pressure due to population growth. It is therefore imperative that the NHS uses all available funding sources to ensure it can continue delivering quality patient care. The NHS, council and other partners must work together to deliver the infrastructure required to support the projected population growth and development across the borough. A vital part of this is ensuring the NHS has the ability to develop

additional healthcare infrastructure where necessary. The Local Plan policies clearly support seeking and securing of planning obligations towards healthcare infrastructure.

Existing healthcare capacities

The proposed development is located on the north-eastern edge of Runcorn. The ICB has identified that Murdishaw Health Centre, Castlefields Health Centre and Brookvale Practice are most likely to be impacted by the proposed development and these are shown on Map 1. Please note that the Weaver Vale Practice boundary does not include Sandymoor, and therefore would not accept patients.



Map 1: GP practice locations in relation to the proposed development

Walking distances

- 1) Murdishaw Health Centre (0.9 miles)
- 2) Castlefields Health Centre (1.8 miles)
- 3) Brookvale Practice (2.1 miles)

The distance of approximately 1.5 mile/ 2.4km in a suburban area is a reasonable commuting distance to be travelled for access to primary healthcare services. Murdishaw Health Centre falls within this threshold being 0.9 miles away from the site in question.

Murdishaw Health Centre is the closest Health Centre to the proposed development in terms of waking distance. Analysis has shown that refurbishment and reconfiguration of the existing building could unlock space capable of accommodating the floorspace required to mitigate the impact of the proposed development. In doing so, this would also enable an efficient use of the existing healthcare facility that is well-located to the proposed scheme. There is additionally potential at Castlefields Health Centre and Brookvale Practice to provide mitigation for the proposed scheme should an alternative project be required.

Healthcare needs arising from the proposed development

The proposed development is for up to 250 residential units. The 2011 ONS Household data outlines that Halton has an average population per household figure of 2.3, which generates an estimated population figure of 575 from the 250 residential units.

This means that a population impact of 575 people will be created as a result of this development proposal and mitigation measures will need to be provided to ensure that the development can be made acceptable in planning terms.

The Department of Health publication "Health Building Note 11-01: facilities for Primary and Community Care Services" indicates a floorspace requirement of approximately 150m² (GIA)/ 120 m² (NIA) per 1,750 patients. Given there is no existing spare primary care capacity in the local area, circa 49.3m² of healthcare floorspace would be needed to be provided to accommodate the associated population.

Capital costs methodology for additional primary healthcare services

Taking into account the above, mitigation for the site-specific impacts of the proposed development, in the form of a capital costs contribution would likely be necessary. The ICB sought advice from its NHS partner, NHS Property Services, on recent costs benchmarks for refurbishment works. This equated to £3,620 per m² (once adjusted for professional fees, fit out and contingency, but excluding land acquisition). Having rebased this cost to Halton using the location factor from the Build Cost Information Service, the cost equates to £3,660 per m². Using the above inputs, Table 1 calculates the site-specific capital cost contribution for the proposed development to be £180,438.

	Additional Population Growth ¹	Additional Floorspace required to meet growth (m ²) ²	Capital required to create additional floorspace ³
Proposed Development	575	49.3	£180,438

Table 1: Capital costs calculation of additional primary healthcare services

The ICB would look to secure the capital cost contribution outlined above through a S106 planning obligation linked to any grant of planning permission.

Conclusion

The ICB notes that development will result in up to 250 homes, which would have a direct impact on local healthcare services and therefore will require mitigation.

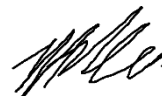
Without this mitigation, the development would not comply with Policy CS(R)7 of the Halton Delivery and Allocations Local Plan, paragraphs 55 to 58 of the NPPF as well as Planning Practice Guidance on Planning Obligations.

We hope this information is of assistance to you. Please do not hesitate to contact us should you have any questions.

Yours sincerely,



Philip Thomas
Associate Director
Transformation and Partnerships - Halton
NHS Cheshire & Merseyside ICB



Laura Allen
Associate Town Planner
NHS Property Services Ltd

¹ Based on 2.3 persons per residential unit

² Based on 150m² GIA per 1,750 patients

³ Based on the NHS Property Services build cost benchmark rebased to Halton (excluding land acquisition costs), m² cost multiplier for primary healthcare for adjusted for professional fees, fit out and contingency

Our ref: AG6674

Your ref: 22/00543/OUTEIA

Date: 14th November 2022



In reply address correspondence to:

Alison Gabbott

Telephone: 07816 115995

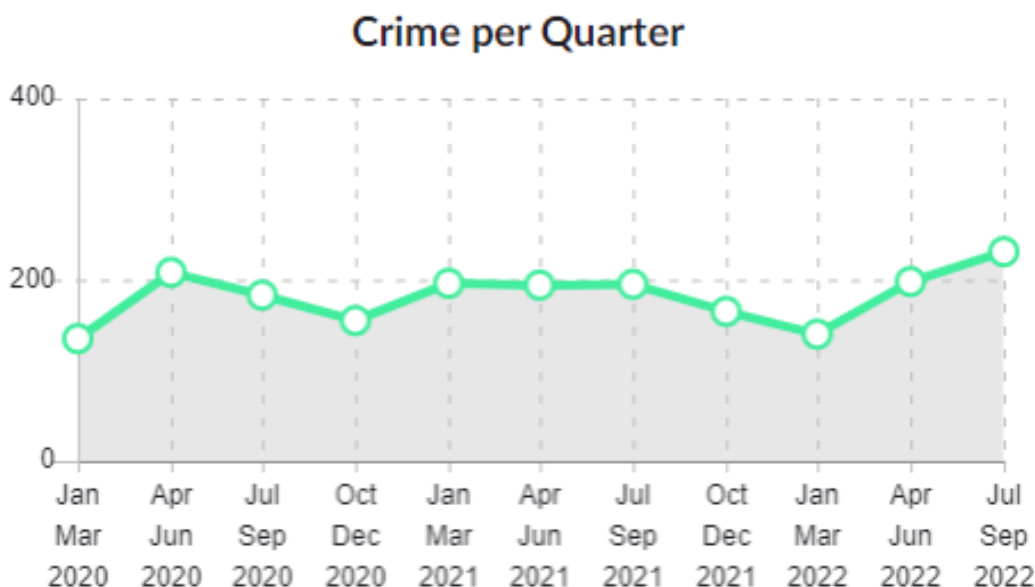
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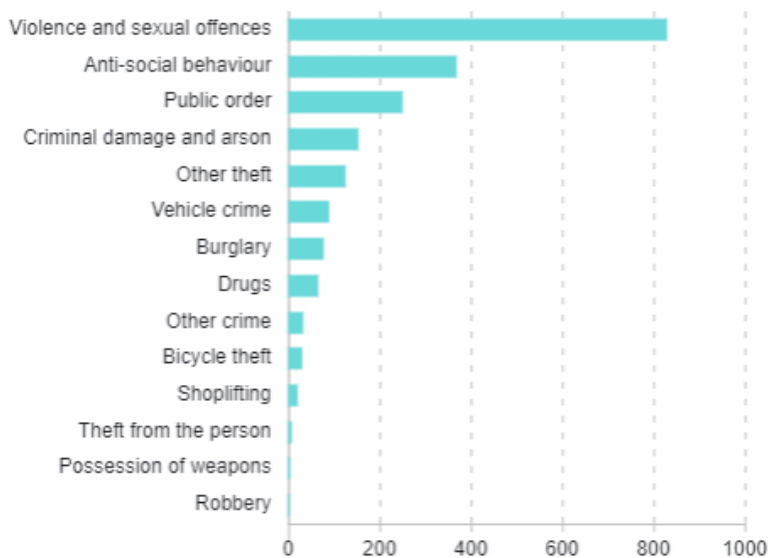
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Location Sandymoor South Phase 2 Windmill Hill Avenue East Runcorn Cheshire

Thank you for consulting the Constabulary on the above planning application.

The map below shows the crime levels in the Windmill Hill / Daresbury Ward from January 2022 to September 2022.



The chart below shows the types of crime over the same period.



There is limited mention of safety and security in the Design and Access statement. In my mind the key issues to address in this development will be the safety and security regarding the multiple access points, for example the pedestrian and cycle access via Norton Town Bridge and the pedestrian and cycle connection to Wharford Farm via the Mersey Valley Trail Bridge. This is of particular importance in Runcorn due to the complex nature of the existing pedestrian infrastructure.

On a positive note, it is good to see that cars will be surveyed by a gable end window and that each dwelling will have a secure storage place for at least one cycle. It is good to see that buildings will face the public realm which will assist with providing good natural surveillance of the site. Reference is made to secure private parking courts where on plot parking is not possible i.e., between the apartment blocks, the security of these areas is paramount especially as they are at the perimeter of the development with less natural surveillance.

Consideration should be given to the seven attributes of safer places throughout the design and development process:

- *Access and movement*: places with well-defined routes, spaces and entrances that provide for convenient movement without compromising security.
- *Structure*: places that are structured so that different uses do not cause conflict.
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- Lighting has a very important part to play not only in aesthetics, but also in the security of buildings and grounds. Lighting will assist surveillance and make the area unattractive to the criminal element. All lighting should comply with British standard 5489-1:2020 and BS EN 12464-1:2002. Attention should be paid so that lighting provides a uniform coverage without creating any pools or shadows. Lighting schemes need to be designed in conjunction with landscaping and any tree planting. Lighting should illuminate all elevations containing a door set, car parking, garage areas and any footpath leading up to the dwelling.
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If a shed is being used to store a bicycle, then it should be robust in nature and include the following aspects:

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I recommend that all developments be designed to comply with the principles of Secured by Design (SBD) regardless of whether the award is being pursued. I would however welcome a Secured by Design Application for the scheme, which would enhance the development and provide greater benefits.

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Yours sincerely

Alison Gabbott
Designing Out Crime Officer (DOCO)
Cheshire Constabulary

Our ref: AG6674

Your ref: 22/00543/OUTEIA

Date: 14th November 2022



In reply address correspondence to:

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Telephone: 07816 115995

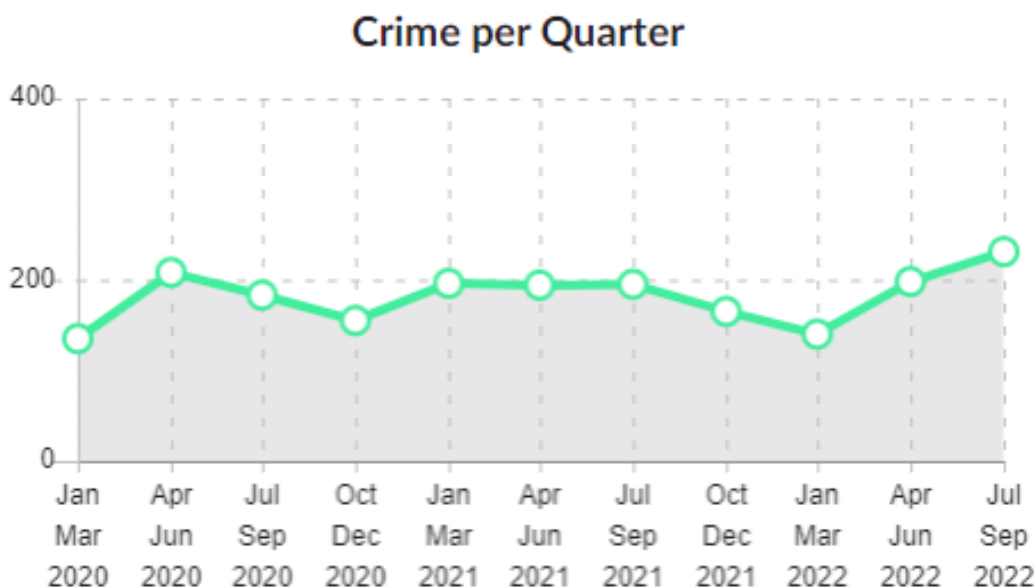
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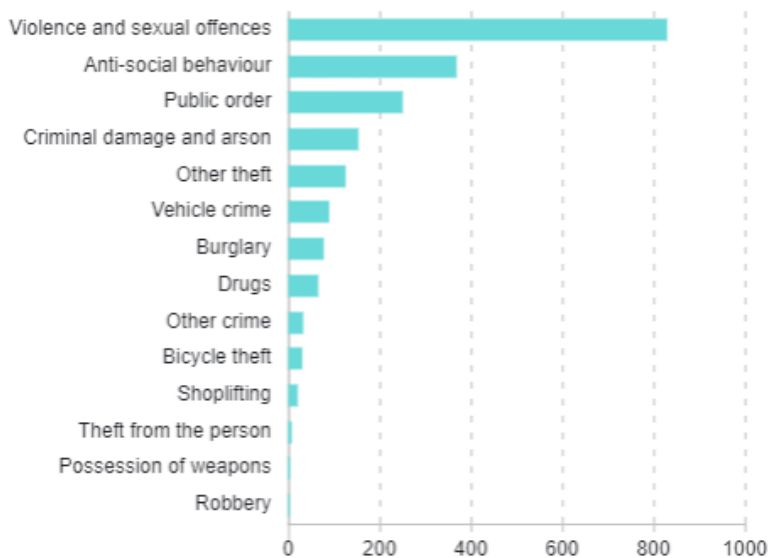
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Yours sincerely

Alison Gabbott
Designing Out Crime Officer (DOCO)
Cheshire Constabulary

16 January 2022



Your ref: 22/00543/OUTEIA
Our ref: 211222/HBC/007

Cheshire Constabulary HQ
Clemonds Hey
Oakmere Road
Winsford
CW7 2UA

Halton Borough Council
Policy Planning & Transportation
Municipal Building
Widnes
Cheshire
WA8 7QF

Contact: Hannah Payne
Tel: 07815973545
Email: hannah.payne@cheshire.police.uk

Dear Sir, Madam,

Planning application ref: 22/00543/OUTEIA – Sandymoor South Phase 2, Windmill Hill Avenue East, Runcorn – Consultation response by Cheshire Constabulary

I write in relation to the above planning application proposing the following:

Application for outline planning permission with all matters reserved (except means of access) for residential development comprising up to 250 dwellings, electricity sub stations, along with recreational open space, landscape and other related infrastructure at Sandymoor South Phase 2, Windmill Hill Avenue East, Runcorn, Cheshire.

Given the scale, nature and significance of the development proposals and associated demands it will place on Cheshire Constabulary, the force considers it appropriate for the applicant to contribute towards the provision of police infrastructure by way of a S106 contribution to mitigate the impacts of the development.

To enable the delivery of sustainable development growth, Cheshire Constabulary must ensure that it delivers the infrastructure necessary to guarantee the safety and security of both existing and planned communities.

It is the responsibility of the Police and Crime Commissioner for Cheshire to ensure the Chief Constable has sufficient financial support to provide an outstanding police service to the Cheshire public and protect the communities it serves. Faced with unprecedented levels of proposed growth across Cheshire, the Constabulary has resolved to seek financial contributions via Section 106 agreements and Community Infrastructure Levy fund receipts to support its capital program.

The proposed development of up to 250 dwellings has the potential to increase the population of the site by up to 575 persons.

Increases in population bring with it a risk of a corresponding increase in crime and demand from new residents for policing services across a wide spectrum of support and intervention. The development will require police deployment upon occupation of the first dwelling and throughout the lifetime of the development as residents go about their daily lives at the site and across the wider policing sub region.

Cheshire Constabulary delivers crime prevention and presence through response, neighbourhood and town centre teams, attendance and service lead at emergencies and non-emergencies (such as road traffic incidents, flooding etc.), counter terrorism and community reassurance. It also attends all incidents involving deaths, provide crowd and events policing, supports community safety and crime partnerships, and provides referral responses when there are expressed concerns about domestic abuse, the safety of children, the elderly and those with special needs. Whether residents are victims of crime, witnesses to it, or require the police for any other reason, the increase in population brought about by the proposed development will result in an increase in demand for these services.

Consequently, the development will place a significant additional demand on police services and infrastructure capacity that does not currently exist.

The proposed development is located in the ward of Daresbury and Windmill Hill. During the 12 month period from December 2021 to November 2022, the following crimes were recorded*:

- 302 incidents of violence and sexual offences
- 115 incidents of anti-social behaviour
- 97 public order offences
- 75 thefts
- 58 incidents of criminal damage and arson
- 22 incidents of vehicle crime
- 28 incidents relating to drugs
- 23 burglaries

*Source: police.uk

The constabulary experiences a year-on-year increase in demand for services and it already faces challenges in meeting its existing operational requirements which it does so through a balanced budget. The proposed development will place further permanent, on-going, unsupported demands on the force.

As has been the expectation previously, the constabulary cannot continue to absorb the additional service and infrastructure demands placed upon it by development proposals.

The Constabulary's Designing out Crime Officers encourage the incorporation of physical designing out crime measures within schemes to promote safety and security and reduce the propensity for crime and disorder. However, in isolation, they do not remove the need for operational police service deployment for new developments.

Therefore, to deliver a consistent level of service provision to the newly developed community without compromising existing frontline policing services, **£75,828.03** is sought from this development to mitigate its impacts on Cheshire Constabulary infrastructure.

There is a fundamental need to provide expanded infrastructure capability in areas such as but not limited to:

- Refurbishment of existing or new build premises;
- Staff and officer set up costs (uniform and personal equipment, workstation, training etc.)
- Premises (adaptation or refurbishment)
- Mobility (police vehicles)
- Control room telephony and database capacity, communications (CCTV, ANPR, radio systems and IT infrastructure)
- Support functions (crime recording, strategic planning, public protection, judicial services, HR, finance, fleet management, forensics and others)

Additional demand will also be placed on the Constabulary's Force Control Centre and its ability to field 999 calls, coordinate a response, deploy resources to incidents and investigate crimes.

In line with many other police forces across the country, Cheshire Constabulary has adopted the nationally recognised methodology for infrastructure requests developing the formula so that it accurately reflects the Constabulary's operational policing model, current infrastructure levels and deployment capacity in the borough. It also aligns with national best practice recommended by the National Police Chiefs' Council (NPCC).

Appendix 1 sets out the formal justification and context for the contribution requested below along with a detailed explanation of the methodologies used to calculate the contribution and our application of local policy, the NPPF and CIL Regulations to justify each of these.

The approach to Section 106 requests has been tested on numerous occasions at appeal nationally and is consistent with decisions taken by the Secretary of State as demonstrated in the decisions included at Appendices 2, 3 and 4.

Formal assessment and request

Baseline background

Where development is proposed, the constabulary will seek to deploy additional staffing and infrastructure at the same level that is required to deliver policing to the locality. Without additional support, unacceptable pressures will be placed on existing personnel and capital infrastructure.

At July 2022, Cheshire Constabulary employed 4,285 personnel to do this (2,406 officers/1,879 staff). The constabulary serves a population of approximately 1,095,100 across Cheshire (2021 census) and 128,200 in Halton.

Local policing across Cheshire is deployed from the nine Local Policing Units (LPU) based at Chester (Blacon), Ellesmere Port, Northwich, Runcorn, Widnes, Warrington, Macclesfield, Congleton and Crewe. The four unitary authorities are served by the following LPUs:

- Cheshire East Council – Macclesfield, Congleton and Crewe
- Cheshire West and Chester Council – Chester, Ellesmere Port and Northwich
- Halton Borough Council – Runcorn and Widnes
- Warrington Borough Council – Warrington

Deployment resource is also based at local police stations and community hubs located in each of the 122 wards in Cheshire offering weekly public facing drop-in surgeries.

The proposed development falls within the Runcorn LPU and served by the local police station at Runcorn.

243 dedicated police officers and staff (personnel) deliver local policing to Halton only (response, beat, CID, helpdesk, public protection, PCSO and Special Constables (approx. 10% capacity of FTE officer)).

Population to local policing personnel for Halton is 528:1.

Average population of the new development could be up to 575 (based on Halton average household size of 2.3 persons).

Therefore, the number of new local policing personnel required to serve the new development is $575/528 = 1.1$ new members of personnel.

There are also over 2,000 active officer and staff roles based centrally at our Headquarters (HQ) in Winsford that are drawn upon when required. These range from support functions (IT, Estates, Fleet etc.) to operational functions (Force Control Centre, Force Incident Bureau, Major Investigations Team, Criminal Justice, Forensics etc). These services are deployed force wide. For the purposes of this request, we have only used those departments of 10 or more personnel where the demands on their services show a clear link to housing/population increase.

Cheshire-wide (serving a population of 1,095,100 in Cheshire), 1,202 centralised support and operational staff and officers will deliver policing to the proposed development. This equates to approximately 140 serving Halton (based on 128,200 population).

Population to central policing staff for Halton is 915:1.

Therefore, the number of centralised policing staff required to serve the new development is $575/915 = 0.6$ new members of personnel.

Total new staff required to serve the proposed development is therefore 1.7 (1.1+0.6).

Staff set up

Additional personnel needed to police the development will require additional equipment to undertake their jobs.

Force wide, Cheshire Constabulary employ officers to staff at a ratio of 0.56 to 0.44. The basic average set up costs of equipping and recruiting staff are therefore listed below. It should be noted that these are the necessary start-up capital costs incurred by Cheshire Constabulary for officers and staff to undertake their role.

Costs are correct at January 2023.

Officer			
Start-up equipment (uniform, ICT and workstation, radio, body worn camera)	£4,767.83	0.56	£2,669.98
Start-up recruitment	£940	0.56	£526.40
Total	£5,707.83	0.56	£3,196.38

Support staff			
Start-up equipment (workstation and ICT)	£2,120.83	0.44	£933.17
Start-up recruitment	£400	0.44	£76
Total	£2,520.83	0.44	£1,109.17

The average cost of equipping a new member of staff is therefore £4,305.55 (£3,196.38 + £1,109.17).

The development is forecast to generate the need to employ additional personnel at a rate of 1.7 existing members of personnel. The contribution should therefore be **£7,319.44** (£4,305.55 x 1.7).

This contribution will go toward equipping additional local police personnel within Runcorn LPU and centralised personnel based at HQ.

Police vehicles

Vehicles are fundamental capital policing infrastructure to deliver community safety and address crime, especially at a neighbourhood level. It is vital to ensure fleet deployment is maintained in line with the existing population of Halton to deliver a consistent level of deployment to the current area and proposed community.

There is currently no capacity within the Cheshire Constabulary fleet to meet the additional policing needs generated by the proposed development, therefore investment towards increasing fleet capacity is sought.

In managing and responding to crime, a number of different vehicles can be deployed ranging from General Response Vehicles (GRVs or patrol cars), unmarked general support vehicles, Public Service Unit vans and minibuses, scientific vehicles, pursuit vehicles – 4x4 and high speed, motorcycles and so on.

Current fleet deployment to Cheshire is 735 vehicles with 73 dedicated neighbourhood policing vehicles serving Halton (population of 128,200). These vehicles support functions such as crime management, local command, local investigations, neighbourhood policing, neighbourhood response, response investigations and community support; all vehicles that would be deployed to the proposed development in the event of an incident.

The average equipped cost of a vehicle is £16,255 (not including fuel and maintenance) and this is very close to the actual cost of a GRV. Our guideline for the majority of marked vehicles is to replace them on average every 8 years or 110,000 miles. The condition of vehicles at the end of their police life varies however, the constabulary forecasts that they will redeem on average, 5% of a vehicles original value on disposal.

73 vehicles average net value £1,186,615

Unit cost per person ($£1,186,615/128,200$) = £9.26

For the proposed new development, this equates to **£5,324.50** ($£9.26 \times 575$) to give an 8-year life of provision. This will part fund one new vehicle to serve Halton.

Premises

Workspace for the additional personnel generated by the proposed development will need to be accommodated within our existing estate within their deployment area/base.

If there is available floorspace to accommodate additional personnel that meets operational requirements, no contribution is sought towards premises. If vacant floorspace is available that does not meet operational requirements, a contribution is sought towards refurbishment costs for the floorspace. Where there is no available floorspace, a contribution will be sought towards a proportion of new build floorspace.

Local policing deployment to the development site will be from the constabulary's Runcorn LPU which is full to capacity meaning there is no available floorspace to accommodate any additional personnel. Similarly, nearby Widnes LPU is unable to accommodate the additional personnel necessitated by the development.

In this instance, as the additional personnel cannot be accommodated within the constabulary's existing estate within the relevant deployment area, a contribution is sought towards delivering a proportion of a new build premises.

Due to the recent shift in working habits, the constabulary is currently undertaking an exercise to understand capacity at Winsford HQ premises and its ability to accommodate

force-wide, centralised staffing provision. Therefore, a contribution is not being sought towards premises costs for centralised policing staff generated by the development in this instance.

Taking an average of the floor space provision (including WC and locker facilities) existing officers/members of staff occupy over our sites across Cheshire that deliver neighbourhood policing, each new member of personnel will be allocated 13.73sqm.

The Q1 2023 (14/01/2023) issue of the RICS BICS costs for the North West Region (Appendix 5) lists the median cost for new build police stations as £2,707/m² which would be considered the minimum cost appropriate to support the additional officers/staff in Runcorn LPU deployment area.

The cost of accommodating a minimum of 1.7 no. additional local personnel (necessary to police this development) would therefore be 13.73 x £2,707 x 1.7 = **£63,184.09**.

Summary

This response outlines Cheshire Constabulary’s infrastructure requirements necessary to mitigate the impacts of the proposed development.

The contribution requested is directly related to the proposed development and the policing impacts it will generate based on an examination of demand and deployment areas in adjacent areas. It is fairly and reasonably related in scale and kind and to the proposed development and is necessary to make this development acceptable in planning terms.

The constabulary is seeking a contribution towards the very minimum level of infrastructure required to mitigate the impacts of the proposed development in order to maintain existing service levels. The development will undoubtedly place additional demand on other infrastructures such as communications and surveillance technology etc. However, where the constabulary has capacity to absorb the additional demand, no contribution is sought.

The principle of policing S106 contributions accords with national and local planning policy and guidance. The methodology used to calculate the requested contribution has been extensively tested, found to be compliant with the CIL Regulations 122 and approved by the Secretary of State and Planning Inspectorate (Appendices 2,3 and 4) on numerous occasions.

The contribution is itemised below with individual methodologies applied to identify the infrastructure necessitated by the proposed development.

Infrastructure requirement	Area	Total cost	Timing of delivery
Staff set up	Runcorn LPU and Winsford HQ	£7,319.44	TBC
Vehicles	Runcorn and Widnes LPUs	£5,324.50	TBC
Premises	Runcorn LPU	£63,184.09	TBC
Total		£75,828.03	

The constabulary confirms that the contribution will be used wholly to meet the direct impacts of the development proposed and the deployment of policing to it. It expects to procure the identified additional infrastructure on commencement of development. The contribution will be spent as individual amounts to expand the cover of infrastructure to serve the development. Where individual contribution amounts do not secure the total infrastructure

item, the constabulary may fund the shortfall if no other developers contribute towards a proportion of policing in this area of the borough.

The provision of policing services and infrastructure to support the proposed development and the fundamental role it plays in the delivery of sustainable communities is a key planning consideration. We kindly request that it be given due regard in the determination of this planning application.

For clarity, you may receive a separate response from the constabulary's Designing out Crime Officer Mrs Gabbott, relating to matters of designing out crime within the development through appropriate environmental design.

I trust this response provides all the information necessary to inform your discussions with the applicant. Please do not hesitate to get in touch should you have any queries on the content of these comments.

Yours sincerely,



Hannah Payne

MPlan (Hons), MRTPI

Principal Planner

Enc.

Appendix 1 – Justification and context for policing S106 contributions

Appendix 2 – Examples of appeal decisions supporting police contributions

Appendix 3 – The Queen (on the application of The Police and Crime Commissioner for Leicestershire) vs Blaby Council and Hallam Land (et al.) [2014] EWHC 1719 (Admin) CO/831/2014

Appendix 4 - Jelson Limited vs Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council [2016] EWHC 2979 (Admin) CO/2673/2016

Appendix 5 – BCIS AveragePricesResults

Appendix 1 - Justification and context for policing S106 contributions

This statement covers the following matters in support of the accompanying consultation response.

1. Current levels of deployment and infrastructure to Halton
2. Police funding and development growth
3. Secured by Design
4. Assessment against relevant planning policy and legislation
5. Legal context to policing contributions

1. Current levels of deployment and infrastructure to Halton

Cheshire Constabulary currently employs 4,285 personnel to do this (2,406 officers/1,879 staff). The Constabulary serves a population of approximately 1,095,100 in Cheshire (2021 census) and 128,200 in Halton.

Local policing across Cheshire is deployed from the nine Local Policing Units (LPU) based at Chester (Blacon), Ellesmere Port, Northwich, Runcorn, Widnes, Warrington, Macclesfield, Congleton and Crewe. The four unitary authorities are served by the following LPUs:

- Cheshire East Council – Macclesfield, Congleton and Crewe
- Cheshire West and Chester Council – Chester, Ellesmere Port and Northwich
- Halton Borough Council – Runcorn and Widnes
- Warrington Borough Council – Warrington

The deployment resource is also based at local police stations and community hubs located in each of the 122 wards in Cheshire offering weekly public facing drop in surgeries.

Each LPU offers a comprehensive range of functions, services and teams that will be called upon to deliver services to the proposed development (response, beat, CID, helpdesk, public protection, PCSO and Special Constables).

There are also over 2,000 active officer and staff roles based centrally at our Headquarters (HQ) in Winsford which are drawn upon when required. These range from support functions (IT, Estates, Fleet etc.) to operational functions (Force Control Centre, Force Incident Bureau, Major Investigations Team, Criminal Justice, Forensics etc). These services are deployed force wide.

Where additional development is proposed, the Constabulary will seek to deploy additional staffing and infrastructure at the same level that is required to deliver policing to the locality. Without additional support, unacceptable pressures will be placed on existing personnel and capital infrastructure. The impacts of the proposed development and others in the local area are so significant that they cannot be met without additional staff deployed at a level consistent with the current policing of similar sized developments.

The following infrastructure is required for all policing activities across Halton:

- Personal equipment for staff comprising workstations, radios, protective equipment, uniforms and bespoke training in the use of these.
- Police vehicles of varying types and functions covering existing patterns of development and community demand. The fully equipped vehicle fleet is maintained

at a level to meet existing patterns of demand from the four unitary authorities in Cheshire, with reductions made whenever possible. Vehicles are used by staff on patrol, deployed to deal with emergency responses and for follow-up of recorded crimes. There is no capacity in this deployment for increases to meet the demands of the proposed development.

- Premises sufficient to accommodate the staff delivering services to the borough. The Constabulary has an active estates review function minimising the premises needed to meet existing policing demand. It cannot afford to have buildings underused and dispose of these wherever necessary; using the receipts gained to re-invest where there are known difficulties. The existing premises delivering services to the application site is the Widnes LPU which does not have capacity to accommodate additional personnel.
- Other capital infrastructures such as control room telephony, Police National Database and airwave capacity, specialist equipment in use by forensics, support teams such as firearms and dog unit, prisoner detention, transportation and processing at custody suites in core locations.

The Constabulary is seeking contributions towards the very minimum level of infrastructure required to mitigate the impacts of the proposed development and to maintain existing service levels. The development will undoubtedly place additional demands on other infrastructures not included for in the consultation response however, where the Constabulary has capacity to absorb the additional demand, no contribution is sought.

2. Police funding and development growth

Since 2010, police forces have faced significant reductions in resources due to the Government's austerity programme which has necessitated changes to the policing model. As a result, Cheshire has suffered a decrease in police officers, support staff and other essential resources. The Constabulary already faces challenges in meeting its existing operational requirements and does so through a balanced budget, a position exacerbated by a lack of availability of central funding to address additional pressures arising from development growth.

Consequently, the primary issue for the Constabulary is to ensure that new development makes adequate provision for the future demands it will generate. Like other public services, the Constabulary's primary funding stream is insufficient to provide new infrastructure to support major new development when and wherever this occurs. The link between police funding and population growth is not a simple one, but an increase in population in an area does not lead to an overall increase in central government grant.

There are no external taxation funds that the police can apply for to secure finance to provide capital infrastructure in response to development growth. These shortfalls will also not be remedied by council tax precept growth as any additional monies collected will be spent on meeting revenue costs. Whilst national and local funding will continue to cover salary and maintenance costs, funding is not available for new infrastructure that would be required to effectively police the proposed areas of new development.

On 9 October 2019, the Home Office confirmed that the Constabulary will receive funding to recruit an additional 240 officers by the end of 2024, this was purely meant to address the reductions in officer numbers in preceding years caused by austerity. This funding is therefore earmarked to ensure existing settlements and communities receive an acceptable level of policing service, rather than provision in response to proposed development growth.

More broadly, the Constabulary predominately funds its existing capital infrastructures by borrowing. However, in a service where most of the budget is staffing related, the Constabulary capital program can only be used to overcome very pressing issues with existing facilities/services, or to re-provide essential facilities (such as vehicles) once these can no longer be used.

The reality of this financial situation is a major factor in Cheshire Constabulary's planning and alignment with plans for growth in that whilst it can plan to use its revenue resources to meet its ongoing, and to a limited extent, additional revenue costs, these do not stretch to fund necessary additional investment in its infrastructures.

There are no bespoke capital funding regimes to address the problem. This issue has been tested extensively and endorsed by numerous Planning Inspectors and by various Secretaries of State via a large number of public inquiries, as demonstrated by **Appendix 2**.

The proposed development will place further permanent, on-going unsupported demands on the force. As has been the expectation previously, the constabulary cannot continue to absorb these additional service and infrastructure demands placed upon it by development proposals.

Additional infrastructure costs will arise as a direct result of the development proposed. Securing modest contributions for the police under Section 106 to mitigate identified impacts is both necessary and justified so that the same level of service can be provided to residents of new developments as it is to existing, without compromising frontline services.

3. Secured by Design

Secured by Design (SBD) is a well-established national programme of police projects which aims to create safe and secure developments by way of designing out crime. Design that does not consider and implement crime prevention through environmental design can create a high demand on police and partner agencies, increase the perception of crime and feeling of vulnerability for the community. Cheshire Constabulary would therefore like to see SBD standards comprehensively addressed in the design of this development.

Whilst the police expect to see design measures incorporated into a scheme to help safety and security, they do not remove the need for police service deployment and consequently by extension, associated infrastructure requirements for the following reasons.

1. There is no legal basis by which a Police and Crime Commissioner (PCC) or a Chief Constable can reduce police service deployment to a development solely on the basis it incorporates Secured by Design. The same high quality and level of service must be maintained consistently throughout the force area concerned by law.
2. The idea of reducing police service deployment assumes that the development concerned has adopted Secured by Design in full, throughout. This is a rare occurrence as less than 1% of all development nationally does so.
3. There is no evidence that fully implementing Secured by Design across a development directly results in reduced police deployment due to the low levels of implementation nationally.

Cheshire constabulary provide Secured by Design advice free of charge via their Designing out Crime Officers. This is to enable a developer to make their scheme safer for the people

who will live, work and visit there; hence the advice provided by Mrs Gabbott via a separate response in this case.

4. Assessment against relevant planning policy and legislation

The Community Infrastructure Levy Regulations 2010 Regulation 122 stipulates that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is -

- 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

This section explains how the contribution is directly related to the development, in terms of the location of the development and its scale along with how each individual sum has been calculated. It confirms that the contributions will be spent on infrastructure to serve the proposed development as the sum requested is not required to meet a funding deficit elsewhere or to service existing development.

In relation to the 'necessary' test, the Secretary of State and the Planning Inspectorate have confirmed via numerous decisions (see **Appendix 2**) that the funding available to the police service is insufficient to cover some of the additional infrastructure required as a result of development growth.

In this respect, it should be noted that Cheshire Constabulary do not seek contributions towards all aspects of policing such as communications, forensics, firearms or highways, but only to those elements where there is no additional capacity.

Nationally, the Constabulary ensures it takes regular legal advice and guidance from industry professionals on the applicability of NPPF tests relating to the application of Regulation 122 on our funding requests for S106 agreements and involvement in the preparation of Infrastructure Delivery Plans. This included advice as to what is infrastructure, which can be summarised as follows:

- The first point to note is that "infrastructure" is not a narrowly defined term. Section 216 of the Planning Act 2008 provides a list of "infrastructure" but is clear that that list is non-exhaustive. That fact is demonstrated by the use of the word "includes" prior to the list being set out.
- There is no difficulty in the proposition that contributions towards police infrastructure fall within the definition of infrastructure for the purposes of the 2008 Act.

Policing contributions are assessed against each of three "tests" in turn below.

1. Necessary to make the development acceptable in planning terms

The creation of safe and accessible environments where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion, is fundamental to planning for sustainable development as confirmed in the National Planning Policy Framework.

Police contributions are, in principle, within the lawful ambit of the policy regime which requires financial contributions from developments to help defray the external costs of the proposals which would otherwise fall on general taxation/borrowing.

Although Halton local planning policy supports the principle of policing contributions, the Secretary of State has recognised that it is not a rigid requirement to have express reference

to policing within local planning policy because the overarching principle of ensuring safe communities is recognised in the NPPF. The Planning Inspector in the case of North-west Leicester District Council vs Money Hill Consortium (APP/G2435/A/14/2228806 dated 15 February 2016) (**Appendix 2**) stated:

'[62] The obligations of the Undertaking, other than that to support Police operations, are all related to requirement of development plan policies and are all necessary to make the development acceptable in planning terms. They are all furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement, setting aside the Police contributions, therefore complies with Regulation 122 of the CIL Regulations 2010. Furthermore, taking into account the submissions of NWLDP, LCC and LP, the Agreement complies with Regulation 123 of the CIL Regulations 2010.

'[63] The contributions of £219,029 towards Police infrastructure is not related to requirement of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those where there is no additional capacity. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contributions to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.

The wider principles of sustainable development within the NPPF also require consideration of all necessary infrastructure requirements, as observed by Foskett J in R. (Police and Crime Commissioner for Leicestershire) v Blaby DC (**Appendix 3**) and others. This judgment stated:

'[11] It is obvious that a development of the nature described would place additional burdens on local health, education and other services including the police force. The focus in this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages "sustainable development": see for example, paragraphs 17 of 79 of the National Planning Policy Framework (NPPF). It is that that leads to the Claimants interest in the matters'.

Paragraph 61 and 62 of the judgment state:

'[61] I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble of a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would want to know that the police service can operate efficiently and effectively in the area. That would plainly be "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in

these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.

[62] I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide police with sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant’.

Appeal decision APP/C3240/W/16/314445 dated 21 March 2017 (**Appendix 2**) provides further support for developer contributions towards the capital costs of additional policing infrastructure arising from new development. The Planning Inspector stated:

‘[165] There is no doubt that the proposed development would generate a need for policing and that need would require additional resources which have been calculated on a pro-rata dwelling basis. The Framework identifies a need for safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. In addition, an extensive array of appeal decision supports the principle of police contributions. Overall, the balance of the evidence before me points to the obligation (based on the underlying pro-rata calculation) being necessary and proportionate mitigation for the development.’

As set out in Section 2, there is no dedicated Government funding to comprehensively cover the capital costs associated with policing the proposed development. Unless contributions from new developments are secured, then Cheshire Police would be unable to maintain the current levels of policing with resources diverted and stretched and with this brings a risk of a corresponding increase in crime. Cheshire Constabulary continually strives to reduce the level of crime in the county however, due to the significant numbers of new housing being brought forward, the need for more front line staff and associated infrastructure has never been more relevant as a fundamental planning policy consideration.

A financial contribution towards essential policing infrastructure is therefore clearly essential to make the proposed development acceptable in planning terms. The policing infrastructure items outlined in the accompanying request are essential to help support new staff and officers required due to population growth and most importantly keep existing and future residents of Halton safe.

2. Directly related to the development

There is a functional link between new development and the contributions requested. Put simply without new development taking place and the subsequent population growth, there would be no requirement for the additional infrastructure. The infrastructure outlined in this request has been specifically identified by the Local Policing Units serving Halton to deal with the likely form, scale and intensity of incidents the proposed new housing development will generate.

In line with many other police forces across the country, Cheshire Constabulary has adopted the nationally recognised methodology for infrastructure requests developing the formula so that it accurately reflects the Constabulary’s operational policing model, current infrastructure levels and deployment capacity in the borough.

The direct link between policing contributions and the development proposed is recognised in recent court judgments.

Jelson Limited vs Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council [2016] EWHC 2979 (Admin) (**Appendix 4**) stated:

“[79]... The gist of the Inspectors reasons are adequately set out in paragraphs [44]-[47]. She records that LP has adequately demonstrated that the sums would be spent on equipment and services which arose “.. Directly from the new households occupying the proposed development”. Accordingly she concluded, in terms of causality, that there was a proper nexus between the expenditure and the new development. She also records that the proposed spending was properly attributed between individual projects and procurement such as property adaption and contributions towards a vehicle in order to prevent a need for pooling contributions”.

“[80]... Mr Lambert cited empirical data based upon existing crime patterns and policing demand and deployment from nearby residential areas which established the direct and additional impacts of the development upon local policing. That data established that there would be an incremental demand in relation to such matters as calls and responses per year via the police control centre; an increase in annual emergency events within the proposed development; additional local non-emergency events which trigger follow-up with the public; additional recorded crimes in the locality based upon beat crime and household data and a proportionate increase in anti-social behaviour incidents an increase in demand of patrol cover; and, an increase in the use of vehicles equating to 12% of an additional vehicle over a six year period.”

The Constabulary seeks contributions towards capital infrastructure simply to ensure it can maintain existing levels of deployment to both the existing area and the proposed new community, during and once the site has been out. The contributions are therefore directly related to the proposed development.

3. Fairly and reasonably related in scale and kind to the development

Securing proportionate developer contributions towards necessary capital expenditure is essential to help meet a proportionate increase in police infrastructure costs and to enable Cheshire Constabulary to maintain its current level of service in the borough.

The most recent appeal decision dated 12 August 2021 for a scheme in Warwick District (APP/T3725/W/21/3270663) (**Appendix 2**) supporting policing contributions confirms this point concluding:

‘[56] In my view, all of the obligations in the s106 Agreement are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 (2) of the CIL Regulations and should be taken into account in the decision.’

A clear numerical, evidence based approach has been outlined for the accompanying request which is supported by case law and recent appeal decisions by the Planning Inspectorate. The various items of capital expenditure and infrastructure requested are considered CIL compliant and are necessary to enable new personnel to undertake their role effectively to meet the policing needs of the development and mitigate impacts to existing resources. A reasonable and proportionate approach has been adopted.

Levelling Up and Regeneration Bill May 2022

As part of the Government's reforms to the planning system, the Levelling Up and Regeneration Bill published on 10 May 2022 sets out the intended legal framework for the Infrastructure Levy. The Bill makes specific provision for emergency services to be included in the categories of 'infrastructure' (see 204N(3) on page 294) and includes "facilities and equipment". Although in its early stages, the Bill clearly identifies the emergency services as essential infrastructure providers for which IL funds will be used to address the demands that development places on it.

National Planning Policy

National Planning Policy Framework, July 2021

The National Planning Policy Framework (NPPF) requires developments to "create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience" (paragraph 130(f)). Planning policies and decisions are expected to deliver this.

Paragraphs 8, 97, 119 together confirm that sustainable development means securing a safe environment through the delivery of social infrastructure needed by communities. Furthermore, Paragraph 20 impels strategic policies to set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for key infrastructure including "security".

Paragraphs 16, 26, 28, 32 and 38 collectively envisage this being delivered through joint working by all partners concerned with new developments.

This is expanded on by paragraph 97, which states planning policies and decisions should promote public safety and security requirements by using the most up-to-date information available from the police; who are "essential local workers" providing frontline services to the public, according to Annex 2 of the NPPF.

If the additional infrastructure requested in these representations is not provided, the development will impact on the ability of Cheshire Constabulary to provide a safe and appropriate level of service and to respond to the needs of the local community in an effective way. That outcome would be contrary to policy and without the contribution, the development would be unacceptable in planning terms.

Planning Practice Guidance

The PPG includes a section entitled 'Supporting safe communities', which emphasises that planning provides an important opportunity to consider the security of the built environment, those that live and work in it and the services it provides.

It highlights the importance of Section 17 of the Crime and Disorder Act 1998 (as amended) which requires all local, joint and combined authorities to exercise their functions with due regard to their likely effect on crime and disorder and do all they can to prevent crime and disorder. Crime for these purposes includes terrorism (Paragraph: 009 Reference ID: 53-009-20190722).

Paragraph: 010 Reference ID:53-010-20190722 sub-titled 'How can planning help to achieve resilient places?' states that good design that considers security as an intrinsic part of a masterplan or individual development can help achieve places that are safe as well as

attractive, which function well and which do not need subsequent work to achieve or improve resilience. However, good security is not only about physical measures and design; it requires risks and mitigation to be considered in a holistic way.

Against this context, the Chief Constable has a statutory duty to deliver a service that operates efficiently and effectively to protect the residents of Cheshire from crime and disorder. If developments do not effectively mitigate their impacts on police services and infrastructure, communities are at risk from increased levels of crime which in contrast to national policy, could undermine the “quality of life or community cohesion and resilience” and delivery of sustainable communities.

Local planning policy

Halton Delivery and Allocations Local Plan (DALP)

The DALP plans for a minimum of 8,050 new dwellings over the period 2014 to 2037.

Accordingly, Cheshire Constabulary infrastructure will require expansion in response to the planned housing and other development growth in the borough.

DALP Policy CS(R)7: Infrastructure Provision requires developments that create or exacerbate deficiencies in infrastructure to ensure those deficiencies or losses are compensated for, adequately mitigates or substituted for in a timely manner. Where infrastructure provision is not made directly by the developer, contributions may be secured by an agreement under section 106 of the Act.

Emergency services are considered to fall under “social infrastructure including community services and facilities” under the supporting text to CS(R)&7.

It is logical to conclude that the additional 8,050 homes over the plan period will lead to a proportional increase in demand for policing services in areas such as, but not limited to:

- Additional calls and responses per year via the Force Control Centre.
- Attendance to additional emergency events within the development and locality each year.
- Additional non-emergency events to follow up with public contact each year.
- Additional recorded crimes in the development and locality.
- Additional anti-social behaviour incidents each year within the new development and locality.
- Demand for increased patrol cover.
- Additional vehicle usage.
- Additional calls on police Airwaves system.
- Additional use of the Police National Database (PND) systems to process and store crime records and intelligence.
- Additional demand for deployment of Mobile CCTV technologies.
- Additional demand for use of ANPR technologies.
- Additional demand for local access to response and beat staff from local neighbourhood teams.
- Additional policing cover and interventions in all the areas described when considering staffing and functions above and for additional accommodation from which to deliver them.

Under Policy CS(R)7, developments are therefore required to mitigate identified impacts on police resources and capital infrastructures either by way of on site provision, or a financial contribution in lieu of on-site provision.

The Infrastructure Plan (2019) also recognises the impact of development growth on policing capital infrastructure and that “policing and community safety needs” should be taken into account by develops when determining planning applications.

5. Legal context to policing contributions

The approach and methodology Cheshire Constabulary use to calculate S106 requests accords with national best practice recommended by the NPCC, and found to comply with the statutory CIL regulations by the High Court, Secretary of State and the Planning Inspectorate. There there are now 12 Secretary of State and 31 Planning Inspectorate decisions supporting Section 106 contributions for police infrastructure (see **Appendix 2**).

The most recent of these dated 12 August 2021 for a scheme in Warwick District (APP/T3725/W/21/3270663) which supported the principle of policing S106 contributions.

The High Court handed down a judgement on 2 November 2016 in the case of *Jelson Limited vs Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council* [2016] EWHC 2979 (Admin) (**Appendix 4**).

Jelson Limited were appealing to the High Court against the decision of a Planning Inspector to refuse planning permission for 73 homes. The case revolved around a dispute between the parties over the calculation of ‘Full Objectively Assessed Need’ for housing. However, Jelson Limited also objected in the case to making a Section 106 contribution to Leicestershire Police, on grounds that such contributions did not comply with CIL Regulation 122.

Mr Michael Lambert, on behalf of Leicestershire Police, had submitted detailed representations to both the original planning application (14/00475/OUT) and to the subsequent appeal requesting the following Section 106 contributions:

- £3,527 – Start-up equipment for a police officer
- £1,697 – Vehicle costs
- £153 – Additional radio capacity
- £80 – Police National Database
- £176 – Call handling
- £2,055 – ANPR
- £375 – Mobile CCTV
- £19,278 – Premises
- £146 – Hub equipment for police officers
- £27,487 – Total

Hinckley and Bosworth Borough Council considered the above contributions CIL Regulations compliant, as did the Planning Inspector following a public inquiry.

Jelson Limited’s arguments against the police contribution are contained in paragraphs 73 – 76 of the enclosed High Court judgement. In essence, they argued that the Planning Inspector had not properly assessed the evidence submitted by Leicestershire Police. Had the Inspector done so, she would have rejected Leicestershire Police’s Section 106 contribution request.

The High Court rejected all of Jelson Limited's arguments, as detailed in paragraphs 77 – 81 of the enclosed judgement (Appendix 4). In summary, the reasons for this were as follows:

1. It was unreasonable to have expected the Inspector to undertake a more detailed analysis of the submissions from Leicestershire Police than she had done.
2. The request made by Leicestershire Police was clear, with the contributions requested properly allocated to specific projects.
3. The police evidence comprehensively demonstrated and evidenced the impact caused by the development and why the infrastructure types (and contributions) identified would mitigate this.
4. In view of the above, the Inspector could have made no other reasonable choice but to award the requested Section 106 contribution to Leicestershire Police.

The judgement provides support for Cheshire Constabulary's Section 106 request, because the methodology used to request contributions in this case for officer and staff set-up costs, vehicles and premises follows Leicestershire Police's.

Other recent decisions and pertinent points to note are summarised below:

Land to the south of Tamworth Road and to the West of the M42, Tamworth – APP/R3705/W/3196890

The most relevant paragraph from the decision is as follows:

'[46] I also accept that the other obligations of that UU, involving financial contributions to mitigate impacts on hospital, healthcare and police services would be policy and legally compliant (our emphasis).'

Land at Ashlawn Road West, Rugby – APP/E3715/W/16/3147448

Paragraphs 157 and 166 of the Inspector's report state:

'[157] WP objects to the development proceeding without the necessary contributions as the resulting development could not be adequately policed, contrary to Core Strategy Policy CS13 and policies within the Framework. There is extensive evidence in WP's written representations which cover how the contribution request was calculated and compliance with Community Infrastructure Levy (CIL) Regulations 122 and 123(3). Each element of the contribution would be spent on an individual 'project' to meet the needs of the development alone, without the need for any pooling of contributions.'

'[166] Based on the above, I have found that the planning obligations in the S106 Agreement meet the tests in CIL Regulation 122 and 123(3) and paragraph 204 of the Framework. I have therefore taken them into account in my conclusions and recommendations.'

Following the above, the Secretary of State then issued a decision concerning a development in West Sussex on 13 July 2017 (APP/C3810/V/16/3143095). As set out in **Appendix 2**, he fully endorsed his Inspector's recommendation that the police Section 106 contribution should be awarded. This decision illustrates the work of police forces nationally in the planning system and evidences also the nationwide acceptability of the methodology used to calculate such contributions.

In the two decisions issued by the Secretary of State on 14 January 2016 (see **Appendix 2**), the Secretary of State and the Planning Inspectorate confirmed the acceptability of Section 106 contributions for police infrastructure.

The details of these two decisions are as follows:

Land South of Gallows Hill/West of Europa Way, Heathcote, Warwick - APP/T3725/A/2229398

Paragraph 33 of the Secretary of State's decision letter confirms that Section 106 contributions for police infrastructures comply with the regulations and guidance.

Paragraph 464 of the Inspector's report states:

'[353] The contributions for police services are similar to those which the Secretary of State has previously endorsed as compliant with Regulation 122 [354]. I consider that the CIL compliance statement shows that they are also compliant with Regulation 123.'

Land at the Asps, Bound by Europa Way (A452) to the East and Banbury Road (A425) to the West – APP/T3725/A/14/2229398

Paragraph 32 of the Secretary of State's decision confirms his agreement with the Planning Inspector that a Section 106 contribution to the police complied with the CIL Regulations.

Paragraphs 14.154 and 14.155 of the Inspector's report discussed the contribution and the police's approach to Section 106 requests. They state:

'Police As set out in the CIL Compliance Schedule, the appellant is not satisfied that the arrangement is CIL compliant, with the Council being of the view that insufficient evidence was available to come to an informed view on the matter. However, no evidence was before the Inquiry to support these concerns.

Having had sight of the Schedule, Warwickshire Police and West Mercia Police submitted further correspondence on the matter, dated 10 April 2015. They demonstrate that the arrangement has been arrived at after careful analysis of the current and planned levels of policing in the area. With reference to existing local deployment reflecting actual policing demands and local crime patterns, it is confirmed that five additional staff would be required to serve the development proposed. Policing of the area is delivered currently from three separate premises (in Warwick, Leamington and Leek Wootton) all of which are maintained to capacity. I am in no doubt therefore, that a new police office would need to be provided at the site, and fitted out, in order to accommodate the additional staff. I consider the arrangement to be necessary to make the development acceptable, it is directly related to the development proposed and to mitigating the impacts that it would generate, and it is reasonably related in scale and kind to the development. The arrangement therefore meets the relevant tests. Moreover, as a discrete project to which no more than five developments would contribute, I have no reason to suppose, on the basis of the information before me, that there would be any conflict with CIL Regulation 123.'

Land at Melton Road, Barrow Upon Soar, Leicestershire – APP/X2410/A/12/2173673

In his report, dated 14 May 2013, the Inspector in this case (endorsed by the Secretary of State) stated:

'[291]...the twelfth core planning principle of the Framework...can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote inter alia, safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.'

'[292] Adequate policing is so fundamental to the concept of sustainable communities that I can see no reason, in principle, why it should be excluded from the purview of S106 financial contributions, subject to the relevant tests applicable to other public services. There is no reason, it seems to me why police equipment and other items of capital expenditure necessitated by additional development should not be so funded, alongside, for example, additional classrooms and stock and equipment for libraries (emphasis added).'

Land South of Greenhill Road, Coalville, Leicestershire – APP/G2435/W/15/3005052

Paragraph 69 of the Inspector's report states:

'The contribution to Leicestershire Police (LP) has been justified following a close and careful analysis of the current levels of policing demand and deployment in the beat area. The financial contribution would be spent on start-up equipment, vehicles, additional radio call capacity, PND (Police National Database) additions, additional call handling, ANPR, Mobile CCTV, additional premises and hub equipment. No part of the LP contribution provides for funding towards any infrastructure project that would offend the restriction on pooling. In my view, the LP contribution is fully compliant with Regulations 122 and 123 of the CIL Regulations.'

The types of police infrastructure for which contributions were sought and endorsed via the aforementioned appeal decisions (as well as the others listed in **Appendix 2**) comprise premises, officer set-up and equipment costs, police vehicles and Automatic Number Plate Recognition (ANPR) cameras. They do not preclude contributions from being sought towards provision of other infrastructures subject to compliance with the requisite tests.

Ensuring compliance with CIL Regulation 122 is at the heart of all police Section 106 requests as demonstrated by the aforementioned appeal decisions and the consistency with which police forces nationally, successfully engage with the town planning system.

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/T3725/W/21/3270663

Appeal Decision: Allowed – 12 August 2021

Planning Inspector: Harold Stephens BA MPhil Dip TP MRTPI FRSA

Appellants: A. C. Lloyd (Homes) Ltd

Land south of Chesterton Gardens, Leamington Spa

The development proposed is an outline planning application for a residential development of up to 200 dwellings with associated access, landscaping and public open space (all matters reserved apart from access).

Application: W/20/0617 – Warwick District Council

53. *The s106 Agreement is between (1) AC Lloyd Homes Limited (2) Ann Richardson, Janet Stallard & Robert McGregor (3) Warwick District Council and (4) Warwickshire County Council. The proposed planning obligations within the s106 Agreement are as follows...*
- *Police Contribution: £33,645 towards the recruitment and equipping of police staff, the provision of police vehicles and the provision of police office accommodation...*
54. *The tables in section 6 of the CIL Compliance Statement explain how the above planning obligations comply with the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulation 2010 (as amended) and paragraph 57 of the NPPF.*
56. *In my view, all of the obligations in the s106 Agreement are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 (2) of the CIL Regulations and should be taken into account in the decision. The development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/W3710/W/20/3251042

Appeal Decision: Allowed – 09 November 2020

Planning Inspector: JP Sargent BA(Hons) MA MRTPI

Appellants: North Warwickshire & South Leicestershire College

North Warwickshire & South Leicestershire College, Hinckley Road, Nuneaton, CV11 6LS

The development proposed is the development of up to 195 dwellings together with the provision of a 3G sports pitch, associated public open space, and other green infrastructure, and landscaping.

Application: 036050 – Nuneaton & Bedworth Borough Council

40. *I have considered the legal agreement against advice in the Framework and the tests in Regulation 122 of The Community Infrastructure Levy Regulations 2010, as well as the requirements of the development plan.*
41. *In the light of Borough Plan Policies H1, H2, HS1 and HS5, and having regard to the evidence before me, I have no grounds to find the intended affordable housing, and contributions to education, healthcare, primary care and policing would not be necessary, related to the development or proportionate. Using the agreement to secure the provision and management of the sustainable drainage scheme and the public open space is also appropriate.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/Y0435/W/20/3251121

Appeal Decision: Allowed – 14 October 2020

Planning Inspector: David Prentis BA BPI MRTPI

Appellants: HB (South Caldecotte) Ltd

Land at Brickhill Street, South Caldecotte, Milton Keynes, MK17 9FE

The development proposed is the development of the site for employment uses, comprising of warehousing and distribution (Class B8) floorspace (including mezzanine floors) with ancillary Class E office space, a small standalone office (Class E) and small café (Class E) to serve the development; car and HGV parking areas, with earthworks, drainage and attenuation features and other associated infrastructure, a new primary access of Brickhill Street, alterations to Brickhill Street and provision of Grid Road reserve to Brickhill Street.

Application: 19/01818/OUT – Milton Keynes Council

13. *A draft s106 Agreement was discussed at the inquiry. As changes were made to the draft at a late stage, I allowed some time after the Inquiry for it to be signed. The signed version subsequently received was consistent with the final draft. The Agreement would provide for...*
- *schedule 7 – a public art strategy; an emergency services contributions; a public art contribution and a community facilities contributions...*
41. *The Council submitted a statement of compliance with the Community Infrastructure Levy Regulations (CIL Regulations) which set out the justification for the above obligations, including identification of relevant policies in Plan:MK (the adopted Local Plan). With the exception of the matters referred to below, the need for these obligations was agreed between the Council and the appellant and was not disputed by any other party. I see no reason to differ and have taken the obligations into account accordingly.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/W3710/W/20/3251042

Appeal Decision: Allowed – 09 November 2020

Planning Inspector: JP Sargent BA(Hons) MA MRTPI

Appellants: North Warwickshire & South Leicestershire College

North Warwickshire & South Leicestershire College, Hinckley Road, Nuneaton, CV11 6LS

The development proposed is the development of up to 195 dwellings together with the provision of a 3G sports pitch, associated public open space, and other green infrastructure, and landscaping.

Application: 036050 – Nuneaton & Bedworth Borough Council

40. *I have considered the legal agreement against advice in the Framework and the tests in Regulation 122 of The Community Infrastructure Levy Regulations 2010, as well as the requirements of the development plan.*
41. *In the light of Borough Plan Policies H1, H2, HS1 and HS5, and having regard to the evidence before me, I have no grounds to find the intended affordable housing, and contributions to education, healthcare, primary care and policing would not be necessary, related to the development or proportionate. Using the agreement to secure the provision and management of the sustainable drainage scheme and the public open space is also appropriate.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/R3705/W/19/3234056

Appeal Decision: Dismissed – 30 April 2020

Planning Inspector: S J Lee BA(Hons) MA MRTPI

Appellants: Summix IFW Developments Ltd

Land East of Islington Farm, Tamworth Road, Wood End, Warwickshire

The development proposed is residential development (Class C3) with associated access, landscaping, open space and drainage infrastructure, with all matters reserved save access.

Application: PAP/2018/0762 – North Warwickshire Borough Council

3. *A signed and dated S106 agreement was produced at the hearing. This includes an obligation to provide up to 50% affordable housing. It also requires the developer to make financial contributions towards the provision of sustainable travel packs, improvements to public rights of way and a bus stop, police services, youth provision, off-site leisure and healthcare. I shall return to this matter below.*
37. *I have considered the S106 Agreement in line with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework. These state that planning obligations must only be sought where they are necessary to make development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.*
39. *Detailed correspondence outlining the requirements from the increased population for healthcare and policing was submitted by the relevant bodies in relation to the original application...*
42. *I conclude that the terms of the S106 agreement meet the tests set out above and thus I will take them all into account as material considerations. Nevertheless, all obligations other than that relating to affordable housing provide mitigation for the impacts of development, rather than any specific benefits.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/R3705/W/18/3196890

Appeal Decision: Dismissed – 01 April 2019

Planning Inspector: Brendan Lyons BArch MA MRTPI IHBC

Appellants: Taylor Wimpey UK Ltd

Land to the south of Tamworth Road and to the west of the M42, Tamworth, B78 1HU

The development proposed is described as residential development of up to 150 dwellings, open space, landscaping, drainage features and associated infrastructure, with full approval of the principal means of access and all other matters reserved.

Application: PAP/2017/0602 – North Warwickshire Borough Council

46. *I also accept that the other obligations of that UU, involving financial contributions to mitigate impacts on hospital, healthcare and police services would be policy and legally compliant.*
48. *I conclude that with the exception of the proposed biodiversity offsetting obligation, the proposal would provide adequate justified mitigation for the effects of development on local infrastructure.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/C3810/W/17/3187601

Appeal Decision: Allowed – 28 September 2018

Planning Inspector: Matthew C J Nunn BA BPL LLB LLM BCL MRTPI

Appellants: Mulgrave Properties LLP

Land west of Church Lane and south of Horsemere Green Lane, Climping, West Sussex, BN17 5RY

The development is described on the application form as “outline application for the erection of up to 300 dwellings and ancillary development comprising open space, a building within use class D1 of up to 875 sqm (net), a building for A1 use having a floor area of up to 530 sqm (net), together with open space and ancillary work, including car parking and drainage arrangements, with appearance, landscaping, layout and scale wholly reserved for subsequent approval; the access detail, showing the points of access to the development, and indicated on Bellamy Roberts drawings numbered 4724/004 and 4724/005 are access proposals to be determined at this stage of the application; for the avoidance of doubt all other detail within the site is to be determined as a reserved matter at a later stage.”

Application: CM/1/17/OUT – Arun District Council

28. *A planning obligation was completed on 3 September 2018. The obligation secures the provision of affordable housing at a rate of 30%. It also secures the following for the Council: an NHS contribution; a police contribution; sports facilities contributions (including towards sports pitches, sports hall and swimming pool). It also secures a community building and the provision of public open space (including play areas), and a travel welcome pack to occupiers of the dwellings on first occupation (to include a cycle voucher or bus travel season ticket). In terms of provisions in favour of WSCC, the obligation safeguards land for future highway works, as well as contributions to highway improvement works. It also secures the provision of fire hydrants, and suitable access for fire brigade vehicles and equipment, contributions to fire and rescue services, library facilities, and education (primary, secondary and sixth form).*
29. *I have no reason to believe that the formulae and charges used by the Council and WSCC to calculate the various contributions are other than soundly based. Both the Council and WSCC have produced Compliance Statements which demonstrate how the obligations meet various Council policies and the Community Infrastructure Levy Regulations. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate in scale and kind to the development, thereby meeting the relevant tests in the Revised Framework and the Community Infrastructure Levy Regulations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/R3650/V/17/3171287

Secretary of State Decision: Allowed – 29 March 2018

Planning Inspector: Philip Major BA(Hons) DipTP MRTPI

Appellants: Dunsfold Airport Limited (DAL) and Rutland (DAL) Limited

Dunsfold Park, Stovolds Hill, Cranleigh, Surrey, GU6 8TB

The development proposed is a hybrid planning application; part Outline proposal for a new settlement with a residential development comprising 1800 units (Use Class C3), plus 7500sqm care accommodation (Use Class C2), a local centre to comprise retail, financial and professional, cafes/restaurant/takeaway and/or public house up to a total of 2150sqm (Use Classes A1, A2, A3, A4, A5); new business uses including offices, and research and development industry (Use Class B1a and B1b) up to a maximum of 3700sqm; storage and distribution (Use Class B8) up to a maximum of 11000sqm; a further 9966sqm of flexible commercial space (B1(b), B1(c), B2 and/or B8); non-residential institutions including health centre, relocation of existing Jigsaw School into new premises and provision of new community centre (Use Class D1) up to a maximum of 9750sqm; a two form entry primary school; open space including water bodies, outdoor sports, recreational facilities, canal basin and nature conservation areas; public transport routes, footpaths and cycleways; landscaping; the removal of three runways; all related infrastructure including roads, car and cycle parking, energy plant and associated equipment, water supply, telecommunications, drainage systems and waste water treatment facilities; and part Full application for the demolition of 8029sqm of existing buildings and the retention of 36692sqm of existing buildings, for their future use for a specified purpose as defined by the Use Classes as specified in the schedule of buildings and their use; and the temporary use of Building 132 for a construction headquarters.

Application: W/2015/2395 - Waverley Borough Council

33. *Having had regard to the Inspector's analysis at IR308-316, the planning obligation dated 1 August 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR317 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.*
263. *The development would place undue pressure on existing infrastructure. This includes schools, health facilities and sewerage. The Fire Service has been known to 'run out' of appliances and there are plans to close existing stations. In addition the service has lost many firefighter posts since 2010. Waverley is one of the worst areas for ambulance services and beds in hospitals are scarce. This proposal would also add to the burden upon the police.*
312. *A number of contributions are included in the Obligation. These are for such matters as the Cranleigh Leisure Centre replacement, provision for Surrey premises on site, and police equipment, as well as contributions to the improvements in public rights of way nearby, education facilities, and transport improvements. Given the increase in local population which would result from this development all of these facilities and services would be put under increased pressure and would need to provide extra and improved services. The development is*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

directly related to them, and the contributions are reasonable in scale and kind and where necessary would provide mitigation for the impacts of the development. There are no contributions which would fall foul of pooling restrictions and they therefore meet the tests of the CIL Regulations.

317. *Taken overall I am satisfied that the S106 Agreement meets the tests of the CIL Regulations and PPG and can be taken into account in determining this application.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/R1845/W/17/3173741

Appeal Decision: Dismissed – 14 March 2018

Planning Inspector: Matthew C J Nunn BA BPL LLB LLM BCL MRTPI

Appellant: Gladman Developments Limited

Land off The Lakes Road, Bewdley, Worcestershire, DY12 2BP

The development is described as “outline planning permission for up to 195 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space, and children’s play area, surface water flood mitigation and attenuation, vehicular access point from The Lakes Road and associated ancillary works. All matters to be reserved with the exception of the main site access off The Lakes Road”

Application: 16/0550/OUTL – Wyre Forest District Council

63. *I have no reason to believe that the formulae and charges used by the Council to calculate the various contributions are other than soundly based. In this regard, the Council has produced a detailed Compliance Statement which demonstrates how the obligations meet the relevant tests in the Framework and the Community Infrastructure Levy Regulations... It also explains the necessity for the police contribution and how monies would be spent...*
64. *The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of both the obligations... are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework and the Community Infrastructure Regulations... Overall, I am satisfied that the planning obligations... accord with the Framework and relevant regulations, and I have taken them into account in my deliberations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/C3105/W/17/3172731

Appeal Decision: Allowed - 20 December 2017

Planning Inspector: Karen L Baker DipTP MA DipMP MRTPI

Appellant: Gladman Developments Limited

White Post Road, Banbury (Grid Ref. Easting: 445726 and Grid Ref. Northing: 238365)

The development proposed is ‘up to 280 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children’s play area, surface water flood mitigation and attenuation, vehicular access point from White Post Road and associated ancillary works.’

Application: 15/01326/OUT – Cherwell District Council

54. *Policing: Thames Valley Police is seeking a financial contribution, based on a formulaic approach, towards the provision of additional resources to mitigate the impact of the proposed development. The Unilateral Undertaking includes a financial contribution of £40,303 towards the infrastructure of Thames Valley Police, including ANPR cameras, new premises, patrol vehicles and staff set up costs. Given the scale and nature of the proposed development, I am satisfied that the increase in population would lead to an increase in demand on police resources. As such, I am satisfied that this obligation would pass the statutory tests.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/C3105/W/16/3163551

Appeal Decision: Allowed - 28 November 2017

Planning Inspector: P W Clark MA MRTPI MCMII

Appellant: Albion Land Ltd

Land off Howes Lane and Middleton Stoney Road, Bicester, Oxfordshire

The development proposed is the erection of up to 53,000sq.m of floor space to be for B1, B2 and B8 (use classes) employment provision within two employment zones covering an area of 9.45ha; parking and service areas to serve the employment zones; a new access off the Middleton Stoney Road (B4030); temporary access of Howes Lane pending the delivery of the realigned Howes Lane; 4.5ha of residential land; internal roads, paths and cycleways; landscaping including strategic green infrastructure (GI); provisions of sustainable urban systems (SUDS) incorporating landscaped areas with balancing ponds and swales; associated utilities and infrastructure.

Application: 14/01675/OUT – Cherwell District Council

9. *The proposal is accompanied by a signed and dated Unilateral Undertaking. In addition to the usual procedural, administrative and interpretative matters, the Unilateral Undertaking provides for...*
- *A Police contribution of £151.30 per dwelling up to a maximum of £22,693.96 paid in two instalments towards the increase in capital costs of providing neighbourhood policing...*
38. *...The appellant believes that a test of these obligations against the CIL regulations would reduce the burden. To put this concern into context, the total financial contributions for a typical 3-bedroomed house may be summed as follows...*
- *Police £151.30*
44. *Thames Valley Police has assessed that the development of the North-West Bicester eco-town, of which the development is part will generate: (i) a requirement for 15 new members of staff to police the additional population generated by the development; (ii) to be accommodated by an extension to and adaption of the existing Bicester Police Station; (iii) a control room/police network database at their Kidlington district headquarters; (iv) 4.5 additional patrol vehicles, 4.5 PCSO vehicles and 6 bicycles; (v) two additional Automatic Number Plate Recognition cameras; (iv) mobile IT kit for each police officer; and (vii) an increase in radio coverage.*
45. *Proposals are included in the Council's Infrastructure Delivery Plan. Each element would be delivered in phases. The first phase of additional personnel would be delivered by the 2000th dwelling (probably around the year 2028 according to the trajectory described in the Council's Infrastructure Delivery Plan), the second phase by the 3,500th dwelling (circa 2033) and the third phase by the 5,500th (out of 6,000) dwellings (circa 2043).*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

46. *I am not convinced that the revenue costs of paying the salaries of the additional staff required is a cost attributable to the development, since the residents of the development will be paying in the usual way towards the funding of police salaries. To make a contribution through a planning obligation charged to the capital costs of buying their homes would be paying twice over and is not necessary. To that extent I do not regard the obligation contained in Schedule 2 of the Unilateral Undertaking as complying with the CIL Regulations. But the other elements represent capital costs which can be said to be attributable to the development.*
47. *The accommodation would be provided towards the end of the eco-town's build-out period (design work on Bicester Police Station to commence by the 4,900th dwelling, circa 2039). The building work would be started by the time of the 5,260th dwelling (circa 2042) and be completed by the time of the 5,500th dwelling (circa 2043).*
48. *The first phase of the control room would be rolled out by the 2,500th dwelling (circa 2029), the second phase circa 2043 by the time of the 5,500th dwelling. Phase 1 of the vehicle fleet would be delivered by the time of the 2,000th dwelling (circa 2028), the second phase by about the 3,500th dwelling (circa 2033) and the final phase by the 5,500th dwelling (circa 2043).*
49. *The two ANPR cameras would be installed by the time of the 2,000th dwelling (circa 2028). Phase 1 of the mobile IT equipment roll-out would be completed at the same time, Phase 2 by the 3,500th dwelling (circa 2033) and Phase 3 by the 5,500th dwelling (circa 2043). Phase 1 of the increased radio coverage would be completed by the 2,500th dwelling (circa 2029) and the second phase by the time of the 5,500th dwelling (circa 2043).*
50. *Because the obligation contained in Schedule 2 of the Unilateral Undertaking includes a payback requirement if the contribution is not spent or committed with 15 years of the final payment of the contribution (probably circa 2035), it is likely that the obligation would in fact only contribute to the ANPR cameras, the first phase of the control room, the first two phases of the IT equipment roll-out and the first phase of the increased radio coverage. In so far as that would be fairly and reasonably related in scale and kind to the development and is directly related to the development, I accept that the obligation contained in Schedule 2 of the Unilateral Undertaking complies with the CIL regulations and I have taken it into account in making my decision.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/C3810/V/16/3143095

Secretary of State Decision: Allowed - 13 July 2017

Planning Inspector: S R G Baird BA (Hons) MRTPI

Appellants: Fontwell Estates Limited & Global Technology Racing

Land east of Fontwell Avenue, Fontwell, West Sussex, BN18 0SB

The development proposed is up to 400 new dwellings, up to 500sq.m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000sq.m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal, informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage.

Application: WA/22/15/OUT – Arun District Council

42. *Having had regard to the Inspector's analysis at IR10.8-10.15 and IR11.61, the planning obligation dated 2 December 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.61 that all the obligations, bar the NHS contribution which has not been substantiated and fails the CIL tests, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.*
43. *The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application (IR10.8-10.15 and IR11.61). The Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.*
- 1.4 *The local planning authority (lpa) considered the application on the 25 November 2015 and resolved to grant planning permission subject to conditions and a S106 Agreement (CD 24). The applicants submit an engrossed S106 Agreement dealing with the provision of financial contributions relating to education; libraries; the fire service; highways and transport; police infrastructure; primary healthcare facilities; leisure facilities and the provision of affordable housing and public open space (CD 37). The applicants, the lpa and West Sussex County Council (WSCC) submitted notes on CIL R122 compliance (CDs 49, 55 & 52).*
- 9.23 *...Other responses included... Sussex Police – sought financial contribution towards the provision, maintenance and operation of Police infrastructure.*
- 10.15 *The payment of:*
- *£70,000 towards the provision of mobile IT kit, speed awareness kits and towards the re-provision of Littlehampton Police Station. CD 55 Appendix A1.7 provides a detailed*

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justification by Sussex Police for the principal of the contribution. Whilst the Sussex Police request was originally for £109,714 the sum subsequently agreed is £70,000 (LPA 3);

11.61 All the obligations, bar the NHS contribution which has not been substantiated and fails the CIL tests, are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, the S106 Agreement is consistent with the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations and where appropriate, I have attached weight to it in coming to my conclusion.

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Appeal Ref: APP/E3715/W/16/3147448

Secretary of State Decision: Allowed - 10 July 2017

Planning Inspector: Martin Whitehead LLB BSc(Hons) CEng MICE

Appellants: David Wilson Homes (East Midlands) and Gallagher Estates Ltd

Land at Ashlawn Road West, Rugby, Warwickshire, CV22 5RZ

The development proposed is the demolition of existing buildings, erection of up to 860 dwellings, land for potential primary school, two vehicular accesses from Ashlawn Road and the provision of a bus link control feature to Norton Leys, open space, green infrastructure, landscaping and associated infrastructure, including sustainable urban drainage works.

Application: R13/2102 - Rugby Borough Council

30. *Having had regard to the Inspector's analysis at IR158-166, the planning obligation dated 17 February 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR166 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.*
156. *Warwickshire Police (WP) requested a sum of £185,278 towards police infrastructure that would mitigate the impact of the proposed development. This contribution has not been disputed and should be secured in a S106 planning obligation. It reflects the precise need that would arise from the development of up to 860 new homes on the appeal site based on WP's experience policing development in the area. The contribution would be used to mitigate the impact on infrastructure where there is no spare capacity and would accord with Core Strategy Policy CS10. Appendix 3 of the Core Strategy includes police as one of the critical infrastructure requirements to ensure delivery and mitigation, which are expected to be included in a S106 Agreement.*
157. *WP objects to the development proceeding without the necessary contributions as the resulting development could not be adequately policed, contrary to Core Strategy Policy CS13 and policies within the Framework. There is extensive evidence in WP's written representations which cover how the contribution request was calculated and compliance with Community Infrastructure Levy Regulations (CIL) Regulation 122 and 123(3). Each element of the contribution would be spent on an individual 'project' to meet the needs of the development alone, without the need for any pooling of contributions.*
160. *The Council, WCC and WP have provided documents to demonstrate CIL compliance. I have not received any evidence to demonstrate that the planning obligations would contravene any of the above Regulations.*
165. *...The obligations to secure a Police contribution would ensure that the money would be spent on police equipment, premises and vehicles that would be necessary to police the new development.*

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166. *Based on the above, I have found that the planning obligations in the S106 Agreement meet the tests in CIL Regulation 122 and 123(3) and paragraph 204 of the Framework. I have therefore taken them into account in my conclusions and recommendations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/C3240/W/16/3144445

Appeal Decision: Dismissed - 21 March 2017

Planning Inspector: David M H Rose BA (Hons) MRTPI

Appellant: Redrow Homes Limited

Land east of Kestrel Close/Beechfields Way, Newport, Shropshire, TF10 8QE

The development proposed is an outline application to include access for residential development for up to 170 dwellings with open space following demolition of 14 and 15 Kestrel Close, Newport, Shropshire, TF10 8QE

Application: TWC/2015/1003 - Telford & Wrekin Council

157. *The planning obligation concluded after the close of the inquiry provides for... a contribution towards police premises, recruiting and equipping new officers and staff to serve the development and vehicles.*
163. *The current development plan is silent on police contributions although it is matter addressed in the emerging Telford and Wrekin Local Plan and the related Infrastructure Delivery Plan. The premises contribution is not controversial.*
164. *The legitimacy of contributions towards training new officers and the provision of equipment and vehicles is less clear cut in so far as it would, in effect, amount to a tariff payment with no exclusivity for the proposed development. Nonetheless, the sums sought are fully quantified against the policing requirement, which existing resources cannot meet, for the proposed development.*
165. *There is no doubt that the proposed development would generate a need for policing and that need would require additional resources which have been calculated on a pro-rata dwelling basis. The Framework identifies a need for safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. In addition, an extensive array of appeal decisions supports the principle of police contributions. Overall, the balance of the evidence before me points to the obligation (based on the underlying pro-rata calculation) being necessary and proportionate mitigation for the development.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/K2420/W/15/3004910

Appeal Decision: Dismissed - 04 May 2016

Planning Inspector: Siân Worden BA DipLH MCD MRTPI

Appellant: Jelson

Land off Sherborne Road, Burbage, Leicestershire, LE10 2BE

The development proposed is residential development and associated infrastructure (73 dwellings).

Application: 14/00475/OUT - Hinckley and Bosworth Borough Council

44. *Leicestershire Police (LP) has demonstrated adequately that the sums requested would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, therefore, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework's core planning principle of supporting local strategies to improve health, social and cultural wellbeing and delivering sufficient community facilities and services to meet local needs.*
45. *In respect of compliance with CIL Regulation 123(3) the proposed spending has been apportioned to individual projects and procurement, such as property adaptation and a contribution towards a vehicle, in order to ensure no need for the pooling of contributions. In addition a clause of the undertaking which, in requiring written confirmation prior to payment that it would only be spent where there were no more than four other contributions, would provide a legal mechanism for ensuring full compliance with Reg. 123(3).*
46. *Evidence was submitted in the form of two maps with types of criminal incidents plotted on them. The first of these shows that there were several burglaries and thefts in the housing area adjacent to the appeal site during the year up to July 2014. The second map covers a larger area, this time in Blaby, and indicates a steady rate of incidents, mainly forms of stealing, in all types of residential area. I have no reason to believe that levels of crime differ significantly between Hinckley/Burbage and Blaby.*
47. *I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence gives credence to the additional calls and demands on the police service predicted by LP.*
51. *My overall conclusion on planning contributions is that those requested by LP and by LCC for the civic amenity site would be necessary to make the development acceptable in planning terms and would meet the other tests set out in the Framework. In those respects the submitted planning obligation carries significant weight. The contribution sought for Burbage library would not.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/G1630/V/14/2229497

Secretary of State Decision: Allowed – 31 March 2016

Planning Inspector: Mrs KA Ellison BA, MPhil, MRTPI

Appellants: ERLP and the Merchant Venturers

Land at 'Perrybrook' to the north of Brockworth and south of the A417, Brockworth, Gloucestershire

The development proposed is a mixed use development of up to 1,500 dwellings including extra care housing, community facilities including A1, A2, A3, A4 and A5 local retail shops, B1/B8 employment uses, D1 health facilities and formal/informal public open space.

Application: 12/01256/OUT – Tewkesbury Borough Council

23. *The Secretary of State agrees with the Inspector's assessment of the two planning obligations at IR14.12-14.21. He is satisfied that the requirements of the completed, signed and dated Section 106 agreements referred to at IR14.12 are in accordance with paragraph 204 of the Framework and the CIL Regulations 2010 as amended.*

14.21 *The Statement of Common Ground in respect of planning obligations sets out details of any relevant planning obligations made since 2010 and confirms that none of the obligations exceed the pooling restrictions in Regulation 123(3) of the Community Infrastructure Regulations 2010 (as amended). The obligations also accord with Regulation 122 in that they are necessary to make the development acceptable, directly related to it and are fair and reasonable in scale and kind.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/G2435/A/14/2228806

Secretary of State Decision: Allowed - 15 February 2016

Planning Inspector: John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Appellant: Money Hill Consortium

Money Hill, Land North of Wood Street, Ashby-de-la-Zouch, Leicestershire

The development proposed is 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way.

Application: 13/00335/OUTM - North West Leicestershire District Council

17. *The Secretary of State has also considered the executed and signed Unilateral Undertaking; the Inspector's comments on this at IR61-63; paragraphs 203 and 205 of the Framework, and the Guidance. He considers that that the provisions offered by the Unilateral Undertaking would accord with the tests set out at paragraph 204 of the Framework and agrees with the Inspector that they would also comply with Regulations 122 and 123 of the CIL Regulations.*

63. *The contribution of £219,029 towards Police infrastructure is not related to requirements of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contribution to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/X2410/W/15/3007980

Appeal Decision: Allowed - 08 February 2016

Planning Inspector: C Thorby MRTPI IHBC

Appellant: Rosconn Group

Land rear of 62 Iveshead Road, Shepshed, LE12 9ER

The development proposed is the erection of up to 77 dwellings following demolition of 62 Iveshead Road (access only to be determined)

Application: P/14/0777/2 - Charnwood Borough Council

19. *Planning obligation. The necessity for contributions towards affordable housing, on site open space, policing, healthcare, travel plan, transport, education and civic amenity have been justified by comprehensive evidence from the local and County Council, and the Police Authority. There is no dispute that the provisions of the legal agreement would meet the Council's policy requirements, the tests set out in paragraph 204 of the National Planning Policy Framework (NPPF) and the CIL Regulations 122 and 123 relating to pooled contributions. I am satisfied that this is the case and am taking them into account.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/T3725/A/14/2221613

Secretary of State Decision: Allowed - 14 January 2016

Planning Inspector: Jennifer A Vyse DipTP DipPBM MRTPI

Appellant: Barwood Strategic Land II LLP

Land at The Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west

The development proposed is described on the application form as residential development (use class C3) for up to 900 dwellings, a primary school (use class D1), a local centre (use classes A1 to A5) and D1) and a Park and Ride facility for up to 500 spaces (sui generis) with access from Europa Way and Banbury Road, areas of public open space, landscaping enhancements and archaeological mitigation.

Application: W/14/0300 - Warwick District Council

32. *The Secretary of State has had regard to the matters raised by the Inspector at IR13.1 – 13.5 and agrees with the Inspector’s reasoning and conclusions on the two Unilateral Undertakings at IR14.137-14.161. In making his decision on this case, the Secretary of State has taken into account the provisions in the Unilateral Undertakings that do accord with Paragraph 204 of the Framework and do meet the tests in the CIL Regulations 2010 as amended.*

Condition 7 - An area of land measuring no less than 0.5 hectare shall be reserved for a local centre. This area of land should broadly be in the location identified on drawing No EDP 1871/116C. Any reserved matters proposal for development on this land must provide a mix of A1 and A2 and A3 and A4 and D1 floorspace, and a police post and associated off-street servicing and parking facilities, all of which shall be delivered in accordance with the phasing plan.

11.5 *Warwickshire Police and West Mercia Police: They requested a S106 contribution to provide police infrastructure necessary to enable the direct delivery of policing services to the site. No objections were received from either the Council or the appellant and so it was assumed that HE request met the relevant statutory tests. It was a surprise, therefore, to see on the Statement of CIL compliance, that the request was considered not to be compliant, notwithstanding that the Obligation did include the requested provision. The correspondence sets out why, in their view, the contribution is CIL compliant and is supported by four Appendices.*

13.18 *Police: the obligation secures the provision of a building for use as a police office, of at least 200 square metres gross internal floor area (together with service connections and external parking) to be located within the local centre that forms part of the development scheme. In addition, a contribution of £187,991 is secured, payable to the Council to fund the provision, fitting out and equipping of the police office.*

14.154 *Police: As set out in the CIL Compliance Schedule, the appellant is not satisfied that the arrangement is CIL compliant, with the Council being of the view that insufficient evidence*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

was available to come to an informed view on the matter. However, no evidence was before the Inquiry to support those concerns.

- 14.155 *Having had sight of the Schedule, Warwickshire Police and West Mercia Police submitted further correspondence on the matter, dated 10 April 2015. They demonstrate that the arrangement has been arrived at after careful analysis of the current and planned levels of policing in the area. With reference to existing local deployment reflecting actual policing demands and local crime patterns, it is confirmed that five additional staff would be required to serve the development proposed. Policing of the area is delivered currently from three separate premises (in Warwick, Leamington and Leek Wooton) all of which are already maintained to capacity. I am in no doubt therefore, that a new police office would need to be provided on the site, and fitted out, in order to accommodate the additional staff. I consider the arrangement to be necessary to make the development acceptable, it is directly related to the development proposed and to mitigating the impacts that it would generate, and it is fairly and reasonably related in scale and kind to the development. The arrangement therefore meets the relevant tests. Moreover, as a discrete project to which no more than five developments would contribute, I have no reason to suppose, on the basis of the information before me, that there would be any conflict with CIL Regulation 123.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/T3725/A/14/2229398

Secretary of State Decision: Allowed - 14 January 2016

Planning Inspector: Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

Appellant: Gallagher Estates Ltd

Land South of Gallows Hill / West of Europa Way, Heathcote, Warwick

The development proposed is a residential development up to a maximum of 450 dwellings; provision of two points of access (one from Europa Way and one from Gallows Hill); comprehensive green infrastructure and open spaces including potential children's play space; potential footpaths and cycleways; foul and surface water drainage infrastructure and ground modelling.

Application: W/14/0681 - Warwick District Council

33. *Having examined the completed and signed S106 Planning Agreement and considered the commentary and views at IR349 - 356 and the Inspector's assessment at IR462 - 467, the Secretary of State concludes that the obligations in the Agreement accord with Paragraph 204 of the Framework and meet the tests in the CIL Regulations 2010 as amended.*
353. *The Council has submitted a summary table of S106 contributions (Document AD13) to demonstrate that the Regulation 123 limit of a maximum of 5 contributions to infrastructure would not be exceeded. The Council has also submitted a CIL Regulations Compliance Statement (Document AD14) which sets out the justification for each obligation, matters of agreement and matters of dispute. Appendix D explains that the monitoring fee is necessary as the large scale housing site with multiple contributions requires additional monitoring work. It sets out how the sum has been calculated including the activities to be carried out and the hourly rate of the officer.*
354. *Mr T Jones represents Warks and West Mercia Police Authority. He appeared at the Inquiry in a round table session to further provide evidence in support of the need for the financial contribution for police services that is included in the submitted S106 planning obligation agreement. There is supporting written evidence at OIP7, OIP22, and OIP23. The contribution is sought to support police services for the local area to accommodate the rising need generated by this new development. Appeal decisions by the Secretary of State have been submitted in support of such contributions APP/X2410/A/12/2173673 (Document OIP22) and APP/X2410/A/13/2196928/APP/X2410/A/13/ 2196929 (Document OIP23). In each case the Secretary of State agreed with the Inspector that the contributions were compliant with Regulation 122 of the CIL Regulations. The Inspector's Report for the first case noted that contributions had previously been supported in some appeals and not in others.*
462. *The S106 planning obligation agreement between the LPA and the Appellant and landowners covers all the matters referred to as reasons for refusal [349-352]]. However the Appellant has queried whether all of the obligations satisfy the requirements of the Community Infrastructure Levy Regulations 2010 (as amended) and the Obligation Agreement itself provides that if the 'Planning Inspector or Secretary of State in the Decision Letter' concludes that any of the planning*

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obligations or the monitoring fee or any part of the obligation are incompatible with Regulations 122 or 123 of the Community Infrastructure Levy Regulations 2010 (as amended) then that shall cease to have effect. In particular the Appellant queries the legality of the monitoring fee and the contributions to police and health services. The LPA has provided a CIL compliance statement [353].

464. *The contributions for police services are similar to those which the Secretary of State has previously endorsed as compliant with Regulation 122 [354]. I consider that the CIL compliance statement shows that they are also compliant with Regulation 123 [353].*

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Appeal Ref: APP/G2435/W/15/3005052

Appeal Decision: Allowed - 05 January 2016

Planning Inspector: Harold Stephens BA MPhil DipTP MRTPI FRSA

Appellant: Gladman Developments Ltd

Land South of Greenhill Road, Coalville, Leicestershire

The development proposed is described as development of up to 180 dwellings, including a retail unit, access and associated infrastructure (outline-all matters reserved apart from part access).

Application: 14/00614/OUTM - North West Leicestershire District Council

69. *The contribution to Leicestershire Police (LP) has been justified following a close and careful analysis of the current levels of policing demand and deployment in the beat area. The financial contribution would be spent on start-up equipment, vehicles, additional radio call capacity, PND additions, additional call handling, ANPR, Mobile CCTV, additional premises and hub equipment. No part of the LP contribution provides for funding towards any infrastructure project that would offend the restriction on pooling. In my view, the LP contribution is fully compliant with Regulations 122 and 123 of the CIL Regulations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/Q3115/A/14/2222595

Appeal Decision: Allowed - 02 June 2015

Planning Inspector: P W Clark MA MRTPI MCMII

Appellant: RJ & S Styles

Land North of Littleworth Road, Benson

The development proposed is described as (1) the erection of 125 dwellings with associated access, open space and landscaping and (2) 41 retirement flats and 11 retirement bungalows with associated parking and car share facilities.

Application: P14/S0673/FUL - South Oxfordshire District Council

51. *The necessity, relevance and proportionality of these and the other elements of the planning agreement are set out in three documents submitted to the Inquiry. They (include)... a letter from Simon Dackombe Strategic Planner, Thames Valley Police. With one exception they provide convincing (and undisputed) evidence that the obligations comply with regulation 122 of the CIL Regulations.*

52. *The exception is that part of the contribution sought for policing which relates to the training of officers and staff. Whereas all the other specified items of expenditure relate to capital items which would ensure for the benefit of the development, staff training would provide qualifications to the staff concerned and would benefit them but these would be lost if they were to leave the employ of the police and so are not an item related to the development. I therefore take no account of this particular item in coming to a decision on the appeal. This does not, however, invalidate the signed agreement.*

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Appeal Ref: APP/A2470/A/14/2222210

Appeal Decision: Allowed - 26 May 2015

Planning Inspector: Christopher J Anstey BA (Hons) DipTP DipLA MRTPI

Appellant: Hanover Developments Ltd

Greetham Garden Centre, Oakham Road, Greetham, Oakham LE15 7NN

The development proposed is the redevelopment of the former Greetham Garden Centre for residential development for up to 35 dwellings, and provision of access.

Application: 2013/0956/OUT - Rutland County Council

- Refusal Reason 2 related to the failure in the appeal application to make any commitment to developer contributions. As part of the appeal submissions two unilateral undertakings have been submitted. I consider that these two undertakings are compliant with paragraph 204 of the National Planning Policy Framework (the Framework) and Regulation 122 of the CIL Regulations 2010. In arriving at this view I have taken account of the replies from the Council and the Police Authority to the Planning Inspectorate's letter of 5 May 2015 relating to 'pooled' contributions. The first unilateral undertaking, dated 22 January 2015, makes provision for various contributions towards health services, indoor activity services, libraries, museums, outdoor sports, open space, children's services and policing. As the contribution to policing is in line with the amount per dwelling specified in the adopted Developer Contributions Calculation increasing this amount would not be justified. The second unilateral undertaking, dated 12 March 2015, will ensure that at reserved matters stage a Section 106 agreement is drawn up to secure 35% affordable housing. Consequently I believe that Refusal Reason 2 has now been addressed.*

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Appeal Ref: APP/A2470/A/14/2227672

Appeal Decision: Allowed - 19 May 2015

Planning Inspector: Ian Radcliffe BSc(Hons) MCIEH DMS

Appellant: Larkfleet Homes

Land to the rear of North Brook Close, Greetham, Rutland LE15 7SD

The development proposed is construction of 19 residential dwellings, including garages and associated infrastructure.

Application: 2013/1042/FUL - Rutland County Council

16. *The proposed development would increase demands on the Market Overton Doctor's Practice. The building is not large enough to cater for the additional patients that it has been calculated would live in the area as a result of planned new housing development including the appeal site. Similarly, the police service delivers its service locally from premises at Oakham. This facility is at capacity and the new development would generate a need for additional space, equipment, information handling and communications. A financial contribution is therefore necessary to mitigate the effect of the development by expanding the Doctor's Surgery and police service provision.*

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Appeal Ref: APP/L2440/A/14/2216085

Appeal Decision: Allowed - 10 February 2015

Planning Inspector: Geoffrey Hill BSc DipTP MRTPI

Appellant: Bloor Homes Ltd

Land at Cottage Farm, Glen Road, Oadby, Leicestershire LE2 4RL

The development proposed is development of land for up to 150 dwellings (Use Class C3) and associated infrastructure, including pedestrian and vehicular access, open space and structural landscaping.

Application: 13/00478/OUT - Oadby & Wigston Borough Council

82. *A completed planning obligation, in the form of an agreement made under Section 106 of the Town and Country, was submitted at the inquiry (Document OW15). I have considered the submitted planning obligation against the tests set out at paragraph 204 of NPPF.*
83. *In general terms, the agreement establishes a commitment to provide 30% affordable dwellings, support for sustainable transport, the provision of open space for public use, and financial contributions for education, the county council library service and police infrastructure. The terms of the offered agreement were discussed, and whether the contributions put forward were directly related to the development being proposed. Nothing was said at the inquiry to indicate that what is being offered is unreasonable, disproportionate, or likely to be covered by other sources of financial support or revenue.*
84. *I am satisfied that, in the light of the matters discussed at the inquiry, and taking into account the written submissions relating particularly to the police contribution (document LP1), all the offered contributions and undertakings are necessary to make the development acceptable in planning terms, are directly related to the development and reasonably related in scale and kind to the development.*

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Appeal Ref: APP/X2410/A/14/2222358

Appeal Decision: Allowed - 23 January 2015

Planning Inspector: P W Clark MA MRTPI MCMII

Appellant: Gladman Developments Ltd

Tickow Lane, Shepshed, Loughborough, Leicestershire, LE12 9LY

The development proposed is 180 dwellings.

Application: P/13/1751/2 - Charnwood Borough Council

15. *The planning obligation makes provision for a financial contribution to policing costs in the form of whichever of three alternatives (if any) is determined to meet the tests for planning obligations set out in regulation 122 of the CIL Regulations. A further provision of the obligation allows for the exclusion of any component of the obligation if this Decision concludes that it does not meet those same tests.*
16. *From the many other planning appeals which were presented to me, I draw the following precepts. Policing is a statutory service which is funded at public expense but so too are many other services which are the subject of planning obligations to offset the impact of a development upon those services; that consideration alone does not cause a planning obligation to fail the CIL tests.*
17. *It is commonly accepted that the day to day running costs of a servicing a development would be covered by revenues to the service provider, such as Council Tax. On the other hand, capital expenditure arising directly from the needs of a development might not be provided in time or at all within the priorities of a public service provider and, if not provided, the development would have an unacceptable impact. If the investment would be necessary to make the development acceptable in planning terms, then it would satisfy one of the CIL tests. In this case, the evidence which the police provided concerning their capital financing made clear the difficulties they would face in funding capital expenditure and the consequential unacceptable impact in the form of a dilution of their services over a more extensive area.*
18. *Applying this precept to the itemised entries in option (c) of the "Police Contribution" as defined in the obligation, I do not find anything other than the references to training in item (i) which would not fall within a reasonable definition of capital expenditure. Training however, is not a necessary adjunct to the creation of new posts; they could (and some would say should) be filled with already qualified and trained personnel. Moreover, whereas the other items would be retained by the police force in the event of a recruit leaving the service, any training would not. I doubt even the most creative accountant could convincingly define that as capital expenditure.*
19. *Although it is correct to say that the spatial impact of a development upon policing cannot be precisely quantified because nothing can be known for certain in advance about the crime rates likely to occur, the same is true of impacts on other services; impacts on traffic generation can only be estimates based on measurements of similar development elsewhere; likewise, impacts*

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on the provision of schools can only be based on estimates of the child population likely to arise derived from analyses of similar developments elsewhere. Yet such estimates are commonly accepted and, in the current case, those put forward by the police were not discredited. Nor were alternative ways of apportionment suggested. For these reasons I have no difficulty with the basis on which the police have estimated the impact on their services likely to arise from this proposed development. I am satisfied that the outcome is fairly and reasonably related in scale to the development.

20. *It is fair to say that the police have gone into far greater detail in analysing the impact of the development on their capital expenditure than is normal amongst service providers. In consequence, the closer scrutiny which that invites may make it appear that it should not be “necessary” for such petty amounts to be recouped from a developer through a planning obligation and that the small adverse impacts upon police capital expenditure should be tolerated in light of the wider benefits of the development as a whole.*
21. *But each is a building block to a larger sum and there are parallels with the way some other services calculate the impacts of developments on their services, as set out in the Council’s S106 Developer Contributions Supplementary Planning Document. In addition, I recall paragraph 61 of Mr Foskett’s judgement which was brought to my attention; although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police. Therefore, I do not doubt their necessity.*
22. *I conclude that the provisions made in option (c) of the “Police Contribution” entry of the obligation, adjusted to remove the second sentence of paragraph (i) would comply with the CIL regulations. With that obligation in place, the development would have an acceptable effect on policing, in compliance with section (xviii) of Local Plan policy ST/1 which requires developments to provide for public services and with policy ST/3 which requires development to provide for infrastructure if lacking.*

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Appeal Ref: APP/Y2430/A/14/2224790

Appeal Decision: Allowed - 06 January 2015

Planning Inspector: Thomas Shields MA DipURP MRTPI

Appellant: Davidsons Developments Limited

Land to the east of Nottingham Road, Melton Mowbray, Leicestershire

The development proposed is residential development for up to 85 dwellings with associated infrastructure, access and areas of open space.

Application: 14/00078/OUT - Melton Borough Council

28. *In the completed Agreement there are covenants relating to affordable housing, police service requirements, open space and maintenance, bus stop and bus shelter provision, bus travel, a travel plan co-ordinator and travel packs, off-site traffic signal works, civic amenity, leisure facilities, library facilities, Melton Country Park facilities, and training opportunities. Support for infrastructure requirements is provided in saved LP Policy OS3 and within the County Council's SPG11. In addition, at the Hearing Mr Tyrer, the County Council's Developer Contributions Officer, and Mr Lambert, the Growth and Design Officer for Leicestershire Police, provided detailed information and justification of the infrastructure requirements and how financial contributions would be spent.*
30. *I am satisfied that the proposed planning obligations are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/M2460/A/14/2213689

Appeal Decision: Allowed - 04 December 2014

Planning Inspector: Richard Clegg BA(Hons) DMS MRTPI

Appellant: Mr J Kent

Land rear of 44-78 Ashby Road, Hinckley, Leicestershire, LE10 1SL

The development proposed is described as 'residential development'.

Application: 2013/0862/04 - Leicestershire County Council

39. *A police contribution of £13,756 is included in the planning obligation. Detailed evidence in support of this level of contribution has been submitted by the Police and Crime Commissioner. It is clear that the increase in the local population from up to 60 dwellings on the appeal site would place additional demands on the police. Contributions are not sought across the board. The representations identify those areas where there is spare capacity and they have not been taken into account in calculating the overall level of contribution. A need has been identified in the following areas: start-up equipment, vehicles, radio call capacity, database capacity, call-handling, automatic number plate recognition cameras, mobile CCTV, premises, and hub equipment. Details are provided of the purpose to which the funding would be put, and, in the case of each area where a need has been identified, the level of contribution has been calculated in relation to the size of the appeal proposal, even if this means that some expenditure is required from the police budget. The policing contribution is necessary to make the development acceptable in planning terms, and it also complies with the other statutory tests.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/K2420/A/13/2208318

Secretary of State Decision: Allowed - 18 November 2014

Planning Inspector: David Cullingford BA MPhil MRTPI

Appellant: Rainier Properties Limited

Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire

The development proposed is described as an outline application for the ‘demolition of Nos.11 and 13 Welbeck Avenue to create vehicular and pedestrian access and redevelopment of the site to provide up to 135 dwellings, public and private open space together with landscaping and associated infrastructure (all matters reserved except for the point of access).’

Application: 13/00529/OUT - Hinckley and Bosworth Borough Council

22 *The Secretary of State has considered the terms of the planning obligation submitted at the inquiry and considered by the Inspector at IR11.54-11.57; and he agrees with him at IR11.57 that these contributions meet the Framework test and comply with CIL regulations.*

8.1 *Policing is a service that is always available and responds to demand on an ‘equal access’ basis; the level and efficiency of that response depends on the facilities available. Calls and deployments are monitored and give an indication of the level of services delivered to the 45,400 households in the Borough or the 6393 houses in Burbage. In 2011 there were 83,315 calls from the Borough, 9,386 of which required emergency attendance and 5,314 entailing some ‘follow up’. In Burbage there were 11,664 calls, 314 emergencies and 744 attendances; last year there were 419 recorded incidents. Those incidents largely entail burglary, car related crime and theft and there are geographical concentrations at the commercial units around Hinckley Island and the town centre. Some 372 incidents of anti-social behaviour are recorded in Burbage and regular patrolling and local community contact maintained by the Neighbourhood Policing team, located at Hinckley Local Policing Unit.*

8.2 *The integrated nature of policing means that many different operational units are involved in responding to recorded incidents. Staff at the Local Police Unit, the hub at Braunston, the Basic Command Unit at Loughborough, the Force HQ at Enderby, tactical support, road safety, communications and regional crime can all be involved. Some 270 staff are employed to deliver policing in the Borough and about 80% of their time is devoted to such activities. The minimum number of staff is deployed to meet existing levels of demand, which means that there is little additional capacity to extend staffing to cover additional development. The aim is to deploy additional staffing and additional infrastructure to cover the demand from new development at the same level as the policing delivered to existing households. Hence, additional development would generate a requirement for additional staff and additional personal equipment (workstations, radios, protective clothing, uniforms and bespoke training), police vehicles of varying types and functions, radio cover (additional base stations and investment in hardware, signal strengthening and re direction), national database availability and interrogation, control room telephony, CCTV technologies, mobile units, ‘beat drop in hubs’, premises and the like. Yet, the prognosis is that ‘It is sensible to assume that most of the capital requirements incurred by*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

growth will not be covered by existing mainstream central and local funding'. Hence, the necessity to seek developer contributions to ensure that existing levels of service can be maintained as growth continues.

- 8.3 *The proposed development is expected to increase the overnight population of this settlement by at least 307 people and a net addition of 133 new houses must bring additional policing demands. Extrapolating from existing empirical data indicates that the scheme would generate annual additions of some 239 calls and responses, 28 emergency events, 16 non-emergency events, 9 additional recorded crimes and 8 recorded anti-social behaviour incidents. In turn those events would require additional vehicle use, more radio calls, greater use of the PND systems to process and store crime records and intelligence, further deployment of mobile CCTV technologies and additional access for beat staff in a local Hub, not to mention consequences for support and HQ staff.*
- 8.4 *The Framework supports the provision of the facilities and services needed in a community. This is one of the 'core principles' and SPDs are indicated to be an appropriate means to assist applicants in understanding the obligations that proposals might generate. The Framework advocates the creation of healthy and inclusive environments where crime and disorder and the fear of crime do not undermine the quality of life. Policy IMP1 of the Local Plan reflects that advice and provides an over-arching justification for the contributions sought. And, the Leicestershire County Council Statement of Requirements sets out the provisions that should be made towards the need for additional policing that might be due to new development.*
- 8.5 *The contribution requested amounts to £44,711 to mitigate the additional impacts estimated to accrue directly from the proposed development. These contributions are required to upgrade the capacity of existing infrastructure, which would not otherwise be sufficient to meet the likely demand from the scheme. It is anticipated that staff salaries and day to day routine additional costs would be met by rate revenues. A programme to procure the additional facilities required would be agreed as a clause in a legal agreement. The contributions sought would be directly related in scale and kind to the development, so that the completion of some infrastructures would require funding from elsewhere. But, the contribution would be used wholly to meet the direct impacts of this development and wholly in delivering the policing to it. On the basis of advice, the level of contributions sought are not based on a formula but derived solely from the direct impact of the scheme on policing. This has elicited support at appeal. A detailed explanation of the methods used to calculate each element of the total contribution is offered together with the justification for it derived from the advice in the Framework. It is shown that the contributions sought are directly related to the development, fairly and reasonably related in scale and kind to the scheme and necessary to make the development acceptable in planning terms. There would thus be CIL compliant.*
- 11.57 *The Contributions towards... additional policing... are directly related to the development, proportionate to the scheme and necessary to make the proposal acceptable in planning terms. Hence, I consider that the contributions sought can be considered to be CIL compliant.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/F2415/A/14/2217536

Appeal Decision: Allowed - 21 August 2014

Planning Inspector: Jane Miles BA (Hons) DipTP MRTPI

Appellant: Ullesthorpe Court Hotel and Golf Club Ltd

Land off Fairway Meadows, Ullesthorpe, Leicestershire

The development proposed is new housing development on Land off Fairways Meadows, Ullethorpe.

Application: 13/01228/OUT - Harborough District Council

31. *Returning to the unilateral undertaking, I have already mentioned obligations relating to measures to promote more sustainable modes of transport, which are necessary to make the development acceptable. The undertaking also includes provision for contributions towards library facilities and police services and, given the justifications provided, I find that these are also necessary to make the development acceptable.*
32. *Taking account also of the information provided to explain how the various contributions are calculated and how they would be used, I find that all the obligations would be directly related to the development and fairly and reasonably related to it in scale and kind. The tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and in the Framework are therefore satisfied and thus I have had regard to all the obligations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Refs: APP/K2420/A/13/2202658 and APP/K2420/A/13/2210904

Appeal Decision: Appeal A Dismissed and Appeal B Allowed - 18 August 2014

Planning Inspector: Mark Dakeyne BA (Hons) MRTPI

Appellant: Alexander Bruce Estates Ltd

Land off (to the south of) Spinney Drive and land off (to the east of) Brookside, Barlestone, Leicestershire

Appeal A - The development proposed is the erection of 49 new dwellings, landscaped public open space and creation of a formal wetland habitat with boardwalk access.

Application: 12/01029/FUL – Hinckley and Bosworth Borough Council

Appeal B – The development proposed is erection of 49 dwellings with landscaped open space.

Application: 13/00735/FUL - Hinckley and Bosworth Borough Council

34. *The contribution to Leicestershire Police has been justified based on crime statistics within the area and demands that would arise from the development. It would fund equipment and infrastructure to support additional personnel within the beat area, not the staffing itself. In terms of civic amenity contributions, the nearest household waste and recycling disposal site is at Barwell. Figures were provided indicating that the site is at or above capacity at peak periods such as Bank Holiday weekends. The contributions would assist in the acquisition of an additional storage container to cater for the waste from this and other new housing developments in the area.*
35. *The Council considers that the police and civic amenity contributions do not meet the tests within Regulation 122 of the Community Infrastructure Regulations (CIL) but does not provide much evidence to support its position. In contrast Leicestershire Police and the County Council have provided significant justification for the contributions, including reference to a number of recent appeal decisions where such contributions have been supported by Inspectors and the Secretary of State.*
36. *The contributions would accord with Policies IMP1, REC2 and REC3 of the LP and the Council's Play and Open Space Guide SPD. In addition the contributions to the County Council are supported by the Statement of Requirements for Developer Contributions in Leicestershire.*
37. *The obligations within the S106 agreements are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests within CIL Regulation 122 and should be taken into account in the decision. I consider that the conditions set out in Paragraph 2.9 of the agreement are satisfied and that the obligations should become effective.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Refs: APP/H1840/A/13/2199085 and APP/H1840/A/13/2199426

Secretary of State Decision: Appeals A and B Allowed - 02 July 2014

Planning Inspector: Harold Stephens BA MPhil Dip TP MRTPI FRSA

Appellants: Barberry Droitwich Ltd (Appeal A) and Persimmon Homes Limited & Prowting Projects Ltd (Appeal B)

Site at Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa

Appeal A - The development proposed is an outline planning application for the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices (Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure.

Application: W/11/01073/OU – Wychavon District Council

Site at Land North of Pulley Lane and Newland Land, Newland, Droitwich Spa

Appeal B - The development proposed is an outline application for the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space.

Application: W/12/02336/OU - Wychavon District Council

19 *The Secretary of State has also considered the S106 Planning Agreement in respect of Appeal A submitted by the main parties at the inquiry (IR8.88) and, like the Inspector, he is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework and that full weight in support of the appeal proposal can therefore be given to the obligations.*

1.15 *With regard to **Appeal A** the planning application was submitted in outline form with all matters reserved except for access. A schedule of the application documents and plans on which the SoS is requested to determine the proposal is at BDL 13. The reader should note that the most helpful plan in this schedule is the Indicative Masterplan. The proposed development is described as including the following components...*

- *A police post*

6.25 *...With other development already underway there is over a 12% increase in the town's population which amounts to a massive effect on local services such as doctors, dentists, schools and the police...*

8.88 *A S106 obligation (BDL5) was submitted at the inquiry and is agreed by the main parties... From all the evidence that is before me I consider that the provisions of the S106 Agreement complies*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions...

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/F2415/A/12/2183653

Secretary of State Decision: Dismissed - 17 April 2014

Planning Inspector: Stephen Roscoe BEng MSc CEng MICE

Appellant: Mr IP Crane

Land South Of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire

The proposal is a development of 111 dwellings including a new community hall, sports pitches and associated parking, open space, access and landscaping.

Application: 12/00494/OUT - Harborough District Council

22. *The Secretary of State agrees with the Inspector's assessment of the Section 106 agreement dated 23 May 2013 at IR62-76. He agrees that all of the contributions would be necessary to make the proposal acceptable in planning terms and would accord with the CIL Regulations 2010 and the tests in paragraph 204 of the Framework (IR77).*
70. *The contribution towards policing has been requested by the Police and Crime Commissioner for Leicestershire [PCCL/ML/1]. The proposal would increase the workload of the Leicestershire Constabulary in terms of additional calls, non-emergency follow ups and additional vehicle miles amongst other things. The contribution would enable the force to respond to this increased workload. It would therefore accord with CS Policy CS12 and the Local Infrastructure Schedule in the CS [HDC13].*
77. *All of the above contributions would therefore be necessary to make the proposal acceptable in planning terms and be directly and reasonably related to it in scale and kind. They would therefore also accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Refs: APP/X2410/A/13/2196928 and APP/X2410/A/13/2196929

Secretary of State Decision: Appeals A and B Allowed - 08 April 2014

Planning Inspector: Harold Stevens BA MPhil DipTP MRTPI FRSA

Appellant: William Davis Ltd

Land off Mountsorrel Lane, Rothley, Leicestershire, LE7 7PS

Appeal A: construction of a maximum of 250 dwellings, replacement primary school, change of use from dwelling to medical facility, change of use from agricultural land to domestic curtilages, green infrastructure, potential garden extensions, construction of a relief road, and demolition of barns in accordance with application ref: P/12/2005/2, dated 20 September 2012; and

Application: P/12/2005/2 – Charnwood Borough Council

Appeal B: an area of public open space including water balancing ponds and green infrastructure in accordance with application ref: P/12/2456/2 dated 21 November 2012.

Application: P/12/2456/2 - Charnwood Borough Council

- 16 *The Secretary of State has also considered the Planning Obligations as described by the Inspector at IR8.42-8.47. He agrees with the Inspector (IR8.42) that all the provisions included in the executed Section 106 Agreement dated 13 December 2013 are necessary and comply with the Framework and Regulation 122 of the CIL Regulations. He also agrees with the Inspector (IR8.43-8.46) that the completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the Council and the Police and Crime Commissioner for Leicestershire (APP10) meets the tests of Regulation 122 and the Framework and should be regarded as a material consideration.*
- 5.1 *The sum of £106,978 is sought by The Police and Crime Commissioner for Leicestershire (LP) towards Police infrastructure that would mitigate the impact of the proposed development. That figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. LP3 page 17 contains an itemised breakdown of the anticipated expenditure on Police services/items dedicated towards the appeal development.*
- 5.2 *It is noted that the Landowner in this matter does not accept that any part of the Police Contribution meets the CIL tests as recited in the Unilateral Undertaking at clause 1.2.10. However, there appears to be no criticism by the Appellant of the approach taken by LP to the contribution requested, and no evidence has been produced to undermine the conclusions LP arrive at as to the nature and level of contribution required to mitigate the impact of the proposed development on LP resources.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

- 5.3 *The sum requested equates to approximately £427.91 per dwelling. That sum can only be arrived at by working backwards - it is not a roof tax applied to all proposed residential developments in the force area because that would not reflect the individual circumstances and needs of each development. For example, in the Land south of Moira Road appeal APP/G2435/A/13/2192131, the contribution per dwelling amounted to approximately £300 whereas in the Land at Melton Road appeal APP/X2410/A/12/2173673, the contribution worked out to be £590.85 per dwelling. In both instances, the requests were found to be CIL compliant.*
- 5.4 *Mr Lambert explains through the documentation submitted in respect of the initial application and for this appeal why the Police seek contributions, including the planning policy justification at both national and district level, and the difficulties associated with funding new infrastructure items in response to growth in residential development which places additional demand on police resources. The Inspector considering the Land at Melton Road Appeal at paragraph 291 accepted that "the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services for example," and went on to conclude:*
- "Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... "take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs", can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, "safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion."*
- 5.5 *Those conclusions were endorsed in the SoS's decision letter at paragraph 20.*
- 5.6 *Mr Lambert also explains why current revenue sources e.g. Council tax receipts, are insufficient to respond to growth in residential development, and are unable to fund much needed infrastructure to mitigate the additional demand placed on police resources by that growth. That position was examined and verified by external consultants employed by Local Councils in the Leicestershire Growth Impact Assessment of 2009; the Executive Summary is reproduced at Mr Lambert's Appendix 4.*
- 5.7 *There is no spare capacity in the existing infrastructure to accommodate new growth and any additional demand, in circumstances where additional infrastructure is not provided, would impact on the ability of police to provide a safe and appropriate level of service and to respond to the needs of the local community in an effective way. That outcome would be contrary to policy and without the contribution the development would be unacceptable in planning terms. It is right, as the Inspector accepted in the Melton Road decision (paragraph 292), that adequate policing is fundamental to the concept of sustainable communities. It is therefore necessary for the developer to provide a contribution so that adequate infrastructure and effective policing can be delivered; that is provided for through the Unilateral Undertaking APP10.*
- 5.8 *Mr Lambert has addressed each and every item of infrastructure required in his evidence and has sought to justify each request by reference to the 3 tests of Regulation 122 of the 2010*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Regulations and also paragraph 204 of the NPPF. Those tests provide the framework in which LP work to assess the appropriate level of contribution necessary to mitigate the impact of residential development - a process which is under constant review to keep requests up-to-date and accurate as demonstrated by the recent letter dated 14 November 2013 amending the total sum sought in respect of Police vehicles downwards to reflect the fact that an average of 10% of the original value of a vehicle will be redeemed upon disposal.

- 5.9 *Furthermore, LP confirms that the contribution can be, and would be spent on infrastructure to serve the appeal development because the sum requested is not required to meet with a funding deficit elsewhere or to service existing development. The contribution sought is therefore directly related to the development.*
- 5.10 *In conclusion, the request for a contribution towards additional Police infrastructure to mitigate the impact of the appeal proposal is a necessary, carefully considered and lawful request. The request is directly related to the development and to mitigating the impacts it would generate based on an examination of present demand levels and existing deployment in the District.*
- 5.11 *The request is wholly related to the scale and kind to the appeal development and the Inspector, and SoS are respectfully asked to conclude the same.*
- 5.12 *The Appellant does not accept that any part of the LP requested contribution meets the tests of Regulation 122 of the CIL Regulations 2010. The LPA has indicated that it is neutral in relation to the request.*
- 8.42 *APP9 is a signed and completed s106 Planning Obligation Agreement, dated 13 December 2013, between the Appellant, the LPA and LCC. The Agreement covers the following matters...*
- 8.43 *The Appellant has also submitted two s106 Unilateral Undertakings in respect of financial contributions requested by the Police and Crime Commissioner for Leicestershire Police... The Appellant is not satisfied that these contributions are CIL compliant. The LPA has indicated that it is a neutral in relation to both requests.*
- 8.44 *APP10 is a signed and completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the LPA and the LP. The sum of £106,978 is sought by LP towards Police infrastructure to mitigate the impact of the development. Schedule 1 of the Undertaking provides details of the contribution and how it would be used to deliver adequate infrastructure and effective policing. Document LP2, prepared by LP, provides a statement of compliance with the CIL Regulations 2010.*
- 8.45 *In my view the sum of £106,978 has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. The LP has confirmed that the contribution would be spent on infrastructure to serve the appeal development and is not required to meet a funding deficit elsewhere or to service existing development.*
- 8.46 *I consider that the contribution is necessary to make the development acceptable, it is directly related to the development and to mitigating the impacts that it would generate and it is*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

fairly and reasonably related in scale and kind to the development. The Undertaking therefore meets the 3 tests of Regulation 122 of the CIL Regulation 2010 and the criteria in paragraph 204 of the NPPF. I accord the Undertaking significant weight and I have had regard to it as a material consideration in my conclusions.

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/T2405/A/13/2200867

Appeal Decision: Dismissed - 02 January 2014

Planning Inspector: Martin Whitehead LLB BSc(Hons) CEng MICE

Appellants: Mrs S Shropshire-Boddy, H Knowles and J E Smith

Land at Seine Lane/Forest Road, Enderby, Leicestershire

The development proposed is the erection of up to 244 dwellings, public open space, landscaping and vehicular access.

Application: 12/0823/1/OX - Blaby District Council

41. *At the inquiry, the appellants submitted an engrossed Section 106 Agreement. The planning obligations would secure 30% affordable housing, contributions towards a bus service, bus passes, travel packs, highway improvements, healthcare, libraries, police and the maintenance of the proposed footbridge and public open space that would form part of the scheme. I have considered the evidence provided in writing and at the inquiry, including that from Leicestershire County Council regarding contributions towards libraries and from Leicestershire Police regarding contributions towards policing services and facilities, to demonstrate that the obligations meet the tests in Community Infrastructure Levy Regulation 122.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Refs: APP/T2405/A/13/2193758 and APP/T2405/A/13/2193761

Appeal Decision: Appeals A and B Allowed - 01 August 2013

Planning Inspector: Martin Whitehead LLB BSc(Hons) CEng MICE

Appellant: David Wilson Homes (East Midlands)

Land east of Springwell Lane, Whetstone, Leicestershire LE8 6LT

Appeal A: The development proposed is residential development of up to 150 dwellings and parkland with associated access, infrastructure and landscaping.

Application: 12/0952/1/OX – Blaby District Council

Land off Countesthorpe Road and Springwell Lane, Whetstone, Leicestershire

Appeal B: The development proposed is formation of access for use by construction traffic in conjunction with proposed residential development.

Application: 12/0951/1/PY - Blaby District Council

28. *The appellant has submitted an engrossed Section 106 Agreement for Appeal A after the close of the hearing. The planning obligations would secure 25% affordable housing, contributions towards public transport, cycling, a travel pack, highway improvements, healthcare, libraries, police and the maintenance of the public open space that would form part of the scheme. I have considered the evidence provided in writing and at the hearing in support of the contributions to satisfy myself that the obligations meet the tests in Community Infrastructure Levy (CIL) Regulation 122. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development.*
33. *Leicestershire Police (LP) has supported the need for contributions towards policing services and facilities in its statement and at the hearing. The required contributions are significantly less than those considered by the previous Inspector, and LP have suggested that it has used a different method of calculation, based on the impact of the development itself. Therefore, I am satisfied that the sum provided for in the obligation is necessary to make the development acceptable in planning terms, having regard to the requirements in paragraph 58 of the Framework to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.*
35. *Having regard to the above, I conclude on the Section 106 Agreement that all the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. Without the obligations, the proposal would fail to accord with the relevant development plan policies and would have unacceptable impacts on local facilities and services and affordable housing in the District.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/V3120/A/13/2192205

Appeal Decision: Allowed – 25 July 2013

Planning Inspector: Tim Wood BA(Hons) BTP MRTPI

Appellant: Gladman Developments Ltd

Barnett Road, Steventon, Oxfordshire, OX13 6AJ

The proposal is for residential development of up to 50 dwellings, landscape, open space, highway improvement and associated works.

Application: P12/V1980/O – Vale of White Horse District Council

21. *The completed Unilateral Undertaking and Planning Obligation (the latter being the agreement with the County Council) contain other obligations including ones relating to contributions towards police, street naming, works of art, education, public transport, bus stop, library and museum. On the basis of the evidence submitted, I am satisfied that all of these obligations satisfy the tests of Regulation 122 of the CIL regulations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/V3120/A/13/2191911

Appeal Decision: Allowed – 11 July 2013

Planning Inspector: J.P. Watson BSc MICE FCIHT MCMI

Appellant: Hallam Land Management Ltd

Land east of Drayton Road, Abingdon, Oxfordshire

The development proposed is described as 160 residential dwellings, open space, a new access off Drayton Road, engineering (including ground modelling) works, infrastructure works (including drainage works, utilities provision and site reclamation), car parking and lighting.

Application: P12/V2266/FUL – Vale of White Horse District Council

95. *The planning obligation between the site owners, the Appellant and Vale of White Horse District Council makes provision for various on- and off-site elements. The on-site elements include a work of art, street nameplates and waste and recycling bins and the off-site elements include sports facilities and equipment for the Police. I find insufficient evidence to support the work of art contribution and so I attribute little weight to it. I am satisfied that in all other respects the planning obligation meets the three tests in Framework paragraph 204, and so I attribute full weight to the planning obligation in those respects.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/G2435/A/13/2192131

Appeal Decision: Allowed - 30 May 2013

Planning Inspector: Colin Ball DArch DCons RIBA IHBC

Appellant: J S Bloor (Measham) Ltd

Land south of Moira Road, Ashby-de-la-Zouch LE65 2NJ

The development proposed in 2009 was described as the erection of 83 no. dwellings with associated garaging and formation of new access road to Moira Road.

Application: 09/00620/FUL - North West Leicestershire District Council

36. *...The additional population would also bring additional policing requirements, which would need to be addressed.*
37. *The s106 Agreement would effectively bind the appellant to providing 18 affordable dwellings as part of the development. It would also require the appellant to make, and the District Council and County Council to disburse, contributions of...*
 - *£24,903 towards the capital costs of policing the development*
39. *Evidence submitted to the inquiry showed that, without these contributions, the development would not be acceptable in planning terms because of its harmful impact on local infrastructure. These measures are therefore necessary to mitigate that impact. The need for additional facilities arises directly from the development of the site so the contributions are directly related to it. The extent of additional provision in each case has been carefully considered and is proportionate, appropriate and no more than is necessary to meet the additional demands, so the provisions of the Agreement are fairly and reasonably related in scale and kind to the development. The provisions of the Agreement therefore comply with 203 of the Framework and meet the tests of Regulation 122 of the CIL Regulations 2010. I therefore consider that the harmful impact of the proposal on local infrastructure would be satisfactorily overcome by the binding planning obligations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/X2410/A/12/2173673

Secretary of State Decision: Allowed - 14 May 2013

Planning Inspector: Keith Manning BSc (Hons) BTP MRTPI

Appellant: Jelson Homes

Land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN

The development proposed is residential development (300 dwellings).

Application: P/10/1518/2 - Charnwood Borough Council

20. *With regard to the Planning Obligation (IR4, IR216-218, and IR283-301), the Secretary of State is satisfied that the provisions set out in the signed and sealed Planning Agreement dated 14 October 2012, as varied by the Deed of Variation dated 15 January 2013 (to make its provisions conditional upon their items being determined by the Secretary of State to meet the statutory tests) can be considered to be compliant with CIL Regulation 122...*
288. *The 'Police Authority Contribution' is for £177,255. The manner in which the authority would seek to spend it is set out in the Third Schedule to the Planning Obligation. By letter to the Planning Inspectorate of 6 August 2012, the Leicestershire Constabulary explained in some detail its approach to the use of S106 monies for police infrastructure throughout the county, supported by a number of appeal decisions in which it was concluded that the contributions in each case passed the relevant tests and could therefore be accorded weight. The letter appends (Appendix 2) a useful note from the Association of Chief Police Officers which draws the distinction between capital expenditure on equipment and premises, the basic infrastructure of policing, and revenue expenditure which might reasonably be expected to be supported by the increased number of households. A January 2012 policy statement from the Leicestershire Police Authority 'Policing Contributions from Development Schemes' is also included. This sets out its approach to the increased pressure on policing from additional housing development. The document includes at Section 7 the principles whereby financial contributions will be deployed, including provision for repayment if the police authority fails to spend the contributions, linkage to the development in question and use for additional needs arising from it and a "clear audit trail demonstrating that financial contributions have been used in a manner that meets the tests" (in the subsequently cancelled Circular 05/2005 Planning Obligations.)*
289. *Those tests are essentially the same as those of the extant CIL Regulations and hence there is a clear recognition by the Leicestershire Police Authority that development is not simply a source of additional finance to be spent in an unspecified or unrelated way. Moreover, the appellant in this case has "signed up" to the Policing Contribution, albeit under, it seems, protest. The evidence of Mr Thorley addresses this matter at Section 12 and his Appendix 10 is a paper on the topic that refers to a number of appeal decisions where a contribution to policing has not been supported, for example the appeal in Sapcote (Ref APP/T2405/A/11/2164413) in which the Inspector comments, in paragraph 41 of his decision, that... "it has not been shown, in the light of the statutory tests, that the contribution would be directly linked to the impacts arising from the appeal proposal."*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

290. *Equally, the material submitted by the Police Authority under cover of its letter of 6 August 2012 includes a number of appeal decisions pointing in the opposite direction, for example the appeal in Bottesford (Ref APP/Y2430/A/11/2161786) where the Inspector comments, in paragraph 68, that “there was also specific justification of the individual elements within this global sum directly related to the circumstances of the appeal proposal. Therefore the contribution does meet all three tests for CIL compliance.”*
291. *The Inspectors will have reached their own conclusions on the particular evidence and submissions put to them at appeal and I shall approach the evidence in this case in the same way, i.e. on its merits. It seems to me that the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services, for example. Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... “take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs”, can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, “safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.”*
292. *Adequate policing is so fundamental to the concept of sustainable communities that I can see no reason, in principle, why it should be excluded from the purview of S106 financial contributions, subject to the relevant tests applicable to other public services. There is no reason, it seems to me why police equipment and other items of capital expenditure necessitated by additional development should not be so funded, alongside, for example, additional classrooms and stock and equipment for libraries.*
293. *In this case, the planning obligation clearly sets out in its third schedule the items anticipated to be needed as a consequence of policing the proposed development alongside the existing settlement and apportioned accordingly. It seems to me to be sufficiently transparent to be auditable and at a cost equivalent to, perhaps (if 300 dwellings are constructed) £590.85 per dwelling, it does not equate to an arbitrary “roof tax” of the type complained of, whatever previous practice may have been.*
294. *For these reasons I am of the view that the ‘Police Authority Contribution’ is compliant with the CIL Regulations and that weight should therefore be accorded to it as a means of mitigating the predicted impact of the development.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/W0340/A/12/2189422

Appeal Decision: Allowed – 13 May 2013

Planning Inspector: Anthony Lyman BSc(Hons) DipTP MRTPI

Appellant: Shanley Homes Ltd

1055 & 1057 Oxford Road, Tilehurst, Reading, RG31 6YE

The development proposed is the demolition of the existing dwellings of 1055 and 1057 Oxford Road and the erection of 29 No. dwellings with associated access, parking, turning and landscaping.

Application: 12/02111/OUTMAJ – West Berkshire Council

13. A signed and dated s106 Unilateral Undertaking (UU) has been submitted relating to the provision of nine affordable dwellings on the site, and committing the appellants to various financial contributions regarding highway infrastructure; open space provision; library services; health care requirements; adult social care provision; education and equipment for Thames Valley Police. The Council has confirmed that the layout and mix of proposed affordable housing is appropriate, with which I agree. The Council has also submitted statements and topic papers justifying the need for the financial contributions which I have considered with regard to the statutory tests in regulation 122 of the Community Infrastructure Levy Regulations 2010. From the evidence submitted, the provisions of the UU fairly and reasonably relate to the development proposed and meet the tests. I have, therefore, accorded the UU appropriate weight.

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/X2410/A/12/2187470

Appeal Decision: Allowed - 15 April 2013

Planning Inspector: Paul E Dobsen MA (Oxon) DipTP MRTPI FRGS

Appellant: GEG Properties

Land at (the former) Rearsby Roses Ltd, Melton Road, East Goscote LE7 4YP

The development proposed is “erection of 60 dwellings following demolition of nursery buildings and formation of site access (revised scheme)”.

Application: P/12/1709/2 - Charnwood Borough Council

3. *Likewise, the main parties agree that the provision of some 18 dwellings as affordable housing (30% of 60, in accordance with the Council’s policy), together with various financial contributions towards local infrastructure - including payments to the Council, Leicestershire County Council and Leicestershire Police - would be met by the terms of a unilateral planning obligation [Doc 4], submitted at the hearing.*
35. *At the hearing the appellants tabled a signed and executed S106 unilateral planning obligation containing various clauses including: (in schedule 1) those relating to the provision of 18 units of affordable housing; (in schedule 2) the payment of monies to the Council comprising a health facilities contribution (approx. £14,000), a police contribution (approx. £25,000), and an open space contribution (approx. £42,000); and (in schedule 3) payments to Leicestershire County Council towards education (approx. £110,000) and transport (approx. £17,000); together with miscellaneous matters.*
36. *There was some discussion at the hearing as to the justification for some of the financial contributions sought. However, having regard to all the evidence to the hearing, and the criteria in para. 204 of the Framework, I am satisfied that all these provisions for infrastructure payments are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They also meet the 3 statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/F2415/A/12/2179844

Appeal Decision: Allowed - 14 February 2013

Planning Inspector: Kay Sheffield BA(Hons) DipTP MRTPI

Appellant: William Davis Limited

Land north of Bill Crane Way, Lutterworth, Leicestershire.

The application sought outline planning permission for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access without complying with a condition attached to planning permission Ref 11/00117/OUT, dated 23 January 2012.

Application: 12/00613/VAC - Harborough District Council

26. *The UU covenants in favour of the Council contributions in respect of the provision and maintenance of open space as part of the development and towards allotments, cemetery provision, policing services, medical facilities, recycling, community facilities and the provision of 30% of the units of affordable housing. The UU also covenants in favour of the Leicestershire County Council financial contributions towards education, public transport measures including bus stops, travel packs and bus passes, and library provision.*
27. *Whilst the Council and the County Council confirmed that the terms of the submitted UU were acceptable, the appellant questioned whether the contribution in respect of policing was compliant with the tests set out in the CIL Regulations. The appellant suggests that there is no evidence that the proposed development would result in a need for increased police resources. It is also argued that there should be no automatic assumption that the development should bear the cost of the provision of additional policing since the anticipated growth of such costs in this area could have been budgeted for and the new residents will generate Council Tax revenue.*
28. *However, it is recognised by both the County Council and the Council's guidance that a contribution towards policing could be triggered if there is a need arising from the development. The guidance therefore establishes the principle of a contribution although there needs to be clear evidence that the level of contribution would be justified having regard to the tests set out in the CIL Regulations.*
29. *The written evidence submitted by Leicestershire Police detailed the impact the proposed development would have on policing, forecasting the number of potential incidents and the anticipated effect this would have on staffing, accommodation, vehicles and equipment. In view of the requirement of national planning policy to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life, it is considered that, on the evidence before me, a contribution towards policing is necessary to make the development acceptable in planning terms.*
30. *Whilst the additional staff, accommodation, vehicles and equipment detailed by the Police could not be regarded as being for the exclusive use of the development, they would be necessary to*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

provide for the effective policing of and to attend incidents on the site. In addition the number of staff and level of resources required to police the development has been based on the number of incidents estimated to be generated by the site. In respect of policing services the UU makes provision for the payment of £426 per dwelling and this is the figure sought by Leicestershire Police. The level and range of the mitigation would therefore appear to be directly related to the development and also to be fairly and reasonably related in scale and kind to it.

- 31. I have had regard to the fact that the s106 Agreement, dated 18 January 2012, in respect of the existing outline planning permission makes provision for a contribution of £606 per dwelling for policing. The appellant has indicated that this agreement was concluded under time pressure and the police have had a change in policy since, under which only major developments would be targeted for contributions. However, the report also states that contributions would be pursued where a significant impact on policing is foreseen and can be quantified. It would appear that the most relevant implication of the change in policy is that the contribution required by the police in respect of this appeal was reduced following quantification of the anticipated effect of the development. This affirms my view that the UU before me meets the CIL tests.*
- 32. Reference has been made to a number of appeal decisions where it has been concluded that the police contributions failed to meet the tests and others where a contrary conclusion has been reached. However, I am not aware of the scope of the evidence provided in these cases and a comparison with the appeal cannot therefore be made.*
- 33. On the basis of the evidence before me, therefore, I am satisfied that the contribution towards policing set out in the UU is necessary, directly related to the development and fairly and reasonably related to it in scale and kind – as required by the tests set out in the CIL Regulations. I conclude the same with regard to the elements of the UU which are not in dispute and I have taken the UU into consideration in reaching my decision.*



Neutral Citation Number: [2014] EWHC 1719 (Admin)

Case No: CO/831/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN BIRMINGHAM

Birmingham Civil Justice Centre
Priory Courts
Birmingham

Date: 27/05/2014

Before :

MR JUSTICE FOSKETT

Between :

**The Queen (on the application of The Police and
Crime Commissioner for Leicestershire)**

Claimant

- and -

Blaby District Council

Defendant

-and-

- (1) **Hallam Land Management Limited**
- (2) **David Wilson Homes Limited**
- (3) **Davidsons Developments Limited**
- (4) **BDW Trading Limited**
- (5) **Leicestershire County Council**
- (6) **Martin Frank Spokes**
- (7) **Richard Thomas Spokes**
- (8) **Helen Joans Jones**
- (9) **Frances Alison Mark Hicks**
- (10) **The Trustees of the Will Trusts of Eric
Roderick Brook Drummond**

**Interested
Parties**

**Jenny Wigley and Thea Osmund-Smith (instructed by East Midlands Police Legal Services)
for the Claimant**

David Elvin QC (instructed by **Marrons Shakespeare LLP**) for the **Defendant**
Charles Banner (instructed by **King Wood & Mallesons SJ Berwin LLP**) for **Interested**
Parties 1-4 & 10

Alex Goodman (instructed by **Legal Services of Leicestershire County Council**) for
Interested Party (5)

Hearing date: 21 May 2014

Approved Judgment

Mr Justice Foskett:

Introduction

1. This case concerns a substantial development called the “New Lubbesthorpe” scheme to the south west of Leicester for which the Defendant, as local planning authority for the district, resolved on 1 November 2012 to grant planning permission subject to certain conditions and to the conclusion of a suitable agreement under section 106 of the Town and Country Planning Act 1990 (“the 1990 Act”) between certain parties.
2. The section 106 agreement was concluded on 13 January 2014 and outline planning permission was granted on 14 January 2014.
3. The Claimant’s Claim Form seeking judicial review of the grant of planning permission was issued on 24 February 2014. The focus of the proposed challenge is upon the effect and implications of the section 106 agreement so far as the Claimant is concerned. The section 106 agreement provides for its own termination if the planning permission is quashed (see paragraph 17.7 of the agreement).
4. On 21 March 2014 Hickinbottom J ordered that the application for permission to apply for judicial review be heard on 21 May 2014 on a “rolled-up” basis and gave various directions. On 16 April he gave the Claimant permission to amend his grounds. He was of the view that the resolution of the claim required expedition. The urgency arises because the funding of £5 million from the Department of Transport (derived from what are known as “Pinch Point monies” under the Department’s scheme to assist funding highways infrastructure) for the M1 motorway bridge required to implement the scheme may be at risk if not spent before 31 March 2015. Plans are already in place for the temporary closure of the M1 on Christmas Day 2014 to lower the main bridge span into place (see paragraphs 6 and 7 below).
5. The hearing did indeed take place on 21 May and all Counsel completed their submissions within the day.
6. Because of the urgency, this judgment has been prepared in a little over 24 hours after the conclusion of the hearing, is inevitably shorter than might otherwise have been the case and has not received the refinement it might have received if there had been longer to prepare it. Inevitably, I have had to focus on those aspects of the argument that, in my view, represent the strongest grounds for claiming the relief sought rather than dealing with all matters raised.

The nature of the development

7. The outline planning application submitted in February 2011 was for -

“... 4,250 dwellings, a mixed use district centre and two mixed use local centres featuring a supermarket, retail, commercial, employment, leisure, health, community and residential uses, non-residential institutions including a secondary school, primary schools and nurseries, an employment site of 21 hectares, open spaces, woodlands, new access points and associated facilities and infrastructure, and detailed proposals

for two new road bridges over the M1 motorway and M69 motorway, and two road access points from Beggars Lane and new accesses from Meridian Way, Chapel Green/Baines Lane and Leicester Lane.”

8. The site for the development is open and undeveloped land stretching over 394 hectares and is separated from Leicester by the M1 motorway. This explains the need for one of the two road bridges referred to in the outline application and to which reference was made in paragraph 4 above. The bridge is undoubtedly a key component in making this development possible.
9. According to the witness statement dated 13 March 2014 of Ms Lynne Stinson, a Project Manager within the Environment and Transport Department of the 5th Interested Party (Leicestershire County Council), the development will generate £159 million of investment in new infrastructure, buildings and new parks and other open spaces and approximately 1530 full-time equivalent jobs. It will, according to her statement, provide a significant proportion of the new housing identified in the Defendant’s Core Strategy (as amended) as needed in the district in the period to 2029.
10. Whether those claims are justified is not a matter for the court, but the fact that they are made in those terms indicates the scale of the proposed development. The aerial photographs demonstrate the substantial area of land involved and Miss Jenny Wigley, who appeared with Miss Thea Osmund-Smith for the Claimant, described the development as a “new town” which seems an appropriate description. It will take many years to complete if it proceeds. The identities of some of the Interested Parties will give an indication of the commercial interests at stake.

The concerns of the Claimant

11. It is obvious that a development of the nature described would place additional and increased burdens on local health, education and other services including the police force. The focus of this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without the necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages “sustainable development”: see, for example, paragraphs 17 of 79 of the National Planning Policy Framework (‘NPPF’). It is that that leads to the Claimant’s interest in these matters.
12. Needless to say, the Claimant does not challenge the principle of the proposed development, nor is the potential amount of the provision of funding for police services by the developers in issue, but the concerns that have led to this application derive from what Miss Wigley submits is (i) an alleged inadequate provision of certain aspects of such funding at appropriate times during the course of the development and (ii) a lack of a clear commitment in the section 106 agreement (to which the Claimant is not a party) that anything will in fact be paid by the developers for premises required by the police in order to serve the community created by the development.

13. The need to provide funding for police resources had, of course, been identified during the discussions leading to the grant of planning permission and, as I have indicated, agreement was reached on the amount that would be required and met by the developers. However, the Claimant contends that there were procedural deficiencies in the final stages of that process that left the police out of the relevant negotiations and ought to lead to the planning permission being quashed or that the result, so far as the funding of police resources is concerned, was irrational and should, accordingly, be quashed on that basis also. The focus, as I have said, is on when certain features of the funding should, in effect, come on-stream during the development and whether there is a sufficiently clear commitment as to funding for police premises.

14. When the resolution for the grant of planning permission was passed on 1 November 2012, the resolution contained the following provision:

“That planning application 11/0100/1/OX be referred to the Secretary of State as a departure under the Town and Country Planning (Consultation) (England) Direction 2009 as the application proposal is a departure to the Blaby District Local Plan (1999).

That consequent upon the Secretary of State deciding not to intervene planning permission be granted subject to:

The applicants entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the following:

...

- All CIL compliant capital infrastructures for Policing necessitated by the development and including officer equipment, communications, CCTV, vehicles and premises, the precise terms of this contribution to be settled by further negotiation.”

15. The reference to “CIL compliant capital infrastructures” related to the funding of police requirements through a planning obligation under section 106 of the 1990 Act, which in order to be “CIL compliant” must meet the tests specified in Regulation 122(2) of the Community Infrastructure Levy (‘CIL’) Regulations 2010. Those tests require that the sums are –

“(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.”

16. The relevance of the CIL tests will be apparent in due course.

17. The parties to the section 106 agreement concluded on 13 January 2014 were the Defendant, the County Council (the highway and education authority for the area), the Second, Fourth and Sixth-Tenth Interested Parties (collectively known as “the owner”) and the First and Third Interested Parties (the beneficiaries of certain charges and options for the site). The agreement runs to over 170 pages including appendices and contains extremely detailed provisions concerning the way in which the development would proceed.
18. The provision that has given rise to the concerns of the Claimant is at paragraph 2 of Schedule 3 to the Agreement which reads as follows:
 - “2.1 The Owner shall pay to the District Council the Police Service Equipment Contribution no later than Occupation of 2,600 Dwellings and shall not Occupy more than 2,600 Dwellings until it has paid the Police Service Equipment Contribution to the District Council.
 - 2.2 (Subject to the Owner and the District Council at that time agreeing or it having been determined in accordance with clause 23 that the contribution is necessary and if so its appropriate level having regard to the progress of the Development and the availability of Police Service facilities within the area and the appropriate relevant policy guidance at the time) the Owner shall pay the Police Service Premises Contribution to the District Council no later than the Occupation of 3,750 Dwellings and shall not Occupy more than 3,750 Dwellings until it has paid the Police Service Premises Contribution.”
19. The Police Service Equipment Contribution referred to in paragraph 2.1 is defined elsewhere in the agreement as “the sum of £536,834 towards police equipment” and the Police Service Premises Contribution referred to in paragraph 2.2 is defined as “a sum not to exceed £1,089,660 towards the acquisition of premises or extension to existing premises such sum to be ascertained in accordance with [paragraph 2.2] of the Third Schedule. Those sums are, of course, to be paid by the “owner” (in effect, the developers) to the Defendant which would then be responsible for paying them over to the Claimant. Reference to Clause 23 is to a provision entitled “Dispute Provisions” that provide for reference to an independent expert in the event of disputes arising under the agreement. That procedure would, of course, only be available to a party to the agreement which the Claimant was not. It should also be noted that the possibility of the police (or any other non-party) relying on the Contracts (Rights of Third Parties) Act 1999 was excluded by clause 17.2 of the agreement.
20. Whilst the figures referred to in relation to equipment and premises costs did reflect figures that had been discussed and agreed between the Claimant and the Defendant, the terms of paragraphs 2.1 and 2.2 as to the circumstances in which those sums would be paid had not been the subject of express agreement and, the Claimant would argue, resulted from an inadequate process of engagement by the Defendant with the issues affecting the services that the Claimant would be required to provide and led to provisions that are irrational.

21. So far as the Police Service Equipment Contribution is concerned, Miss Wigley contends that it is irrational that it should be paid only when 2,600 homes are occupied because the contribution sought and agreed was calculated on the basis of 4,250 homes being constructed (each of which would contribute rateably to costs of the additional demand on policing infrastructure) and yet 2,600 homes would have to be policed without any additional resources to do so before the payment was received. There would be several thousand residents *in situ* before the police received any contribution towards the equipment recognized as necessary to fulfill its tasks. In her Skeleton Argument she asserts that an analogous position in the education sphere would be asking hundreds of pupils generated by the development to wait a decade before providing them with somewhere to study.
22. In relation to the Police Service Premises Contribution, which is required to provide accommodation for the additional staff said to be required to deal with the policing issues of the development, the trigger provided in the agreement, subject to the terms set out in parentheses at the beginning of paragraph 2.2, is that it may be necessary to await the construction and occupation of 3,750 homes before any prospect of payment materializes. Miss Wigley submits that it cannot rationally be suggested that over £1 million towards additional police premises should be paid by the developers only when the final 500 homes in the development remain to be constructed. She says that an element of need for such services arises from the occupation of the first home, if not before, and she also raises the spectre of the real possibility that at that stage in the development no further homes will be built, the result being that the developers will avoid a liability to contribute to policing costs that will have been required from a much earlier stage and which the police, in order to fulfill their public role, will have to have met from other sources prior thereto. She also submits that the prefatory words in parentheses at the beginning of paragraph 2.2 mean (a) that the payment of any sum is contingent on agreement as to its necessity between the owner (as defined: see paragraph 17 above) and the Defendant and (b) that the level of any payment, even if agreed in principle, is uncertain and would be capped at the figure specified. In terms of the financing of premises pending receipt of such sum as may be paid under this provision, she says in view of the uncertainties that there would be no realistic prospect of borrowing against the commitment provided by the section 106 agreement.
23. She contrasts the provisions of the section 106 agreement relating to the police with the health care provision that affords an absolute commitment to pay the first of two sums agreed as necessary to expand an existing health centre on the occupation of no more than 150 houses and the second on the occupation of no more than 250 houses. Equally, funds for an onsite health centre are to be released on the occupation of 900 houses.
24. Those submissions are made by way of comment on the terms of paragraphs 2.1 and 2.2 as they stand. I will return to those submissions after dealing with the history that led to their formulation in those terms. That history is of importance to the way it is contended that public law grounds exist for the court to interfere in the way Miss Wigley submits is appropriate.

The background to the terms of the section 106 agreement affecting the police

25. It is first necessary to re-trace steps briefly to the resolution passed on 1 November 2012 (see paragraph 14 above).
26. As indicated above, this development proposal had been in gestation for a number of years before the resolution was passed. The police were involved in the negotiations prior thereto. The background from the perspectives of the parties involved is set out in the various witness statements and I need not deal with that background in detail. During the period of two years or so prior to November 2012 the view was taken by those representing the development interests in the site (and supported, at least to some extent, by the Defendant) that the sums sought by the police to be included as sums for which the developers should be liable were not CIL compliant (see paragraph 15 above). Sums in excess of £3 million were being sought. It seems that the view of the developers was that “an on-site police facility within the local community building would be more appropriate, relevant and beneficial to future residents” than what the police had in mind that stage. I need not go into details for present purposes, but that position obtained throughout 2012 and was reflected in the viability report prepared by DTZ on 20 September 2012 which was submitted as evidence to the Examination in Public session on 10 October 2012. It contained no allowance for contributions to police funding, but merely contained reference to the provision of community buildings on site to include a police presence.
27. In the run up to the planning committee meeting on 1 November 2012 there was something of an impasse, the Claimant maintaining the position that something over £3 million was required as the police contribution and the developers and the Defendant maintaining the position that this was excessive and not CIL compliant. Against that background the Claimant maintained an objection to any resolution in favour of the grant of planning permission. That impasse was resolved on the day of the meeting in a flurry of e-mails between the Claimant’s Finance Director and the Deputy Chief Executive of the Defendant in which the formula that became reflected in the resolution (the material parts of which are set out in paragraph 14 above) was agreed. The Deputy Chief Executive of the Defendant acknowledged that the intention behind the words was that “this is all up for negotiation in the future”.
28. That then is how matters were resolved at that stage. There was then a period during which it was necessary for the application to be considered by the Secretary of State. Discussions between the various parties were not actively renewed until the Secretary of State had indicated that he did not intend to call in the application. By the time that further discussions commenced in about March/April 2013, the potential of Pinch Point funding for the M1 bridge was “on the cards” and an application for such funding had been submitted to the Department of Transport.
29. On 10 April 2013 Mr Andrew Senior, the Lubbesthorpe project manager for the Defendant, told Mr Michael Lambert, the Growth and Design Officer employed by the Claimant, that “viability work” was continuing and that it would “inform the section 106 negotiations especially levels of affordable housing.” He told him that the section 106 agreement was being negotiated and that the level of affordable housing had been changed from that originally contemplated. He referred to the bid for Pinch Point funding and said that, if successful, it would “free up the developers’ funds” and help to deliver, amongst other things, the early completion of the “east-west spine road”. It is clear that there remained differences about the police funding. By an e-mail of 22 August 2013, following a meeting a few days earlier, Mr Senior offered

some thoughts on how the Claimant might set out its case for a police contribution. It reflected on the approach to deciding on the level of policing necessary and how the appropriate infrastructure was identified, particularly how it would “relate directly” to the development (cf. CIL requirement (b)). He cited as an example the issue of a police car that would spend some time at the development site and some time elsewhere and raised the question of apportionment. It was plainly designed to be (and I am sure was taken as) a helpful contribution to the discussions.

30. The e-mail contained this paragraph to which Mr David Elvin QC, for the Defendant, drew attention as part of his response to the Claimant’s arguments:

“The final element would be how any contribution was to be phased, for smaller developments this would not be much of an issue, given that Lubbethorpe would potentially have a 20 year delivery time the phasing of contributions would need to be established. I would suggest this was done, as with other services, on the basis of thresholds which identify when any existing capacity is used to trigger the extra resources, clearly once a trigger is reached a range of infrastructure would be required. There would be a range of triggers across the period of the building.”

31. Mr Lambert responded to that in a lengthy e-mail of 4 September 2013. I need not quote it all, but Miss Wigley referred to the following paragraph:

“**Viability.** We need to be guided by you on this however we remain concerned that policing attracts fair and reasonable consideration on a par with other services if the development cannot afford the infrastructure it will need. We have heard about your successes in attracting growth funds for road infrastructure and welcome these. We need to see please how this will reduce pressure on other necessary infrastructures and so we again ask for an up to date overview of this particularly if decisions have to be made about what will be delivered in relation to policing and other necessary infrastructures.”

32. Mr Senior acknowledged receipt of the lengthy e-mail and commented that the approach was “sound” but emphasised that his comments should not be taken to imply the support of the Defendant for any particular bid. Mr Lambert shortly afterwards asked for Mr Senior’s “guidance on viability” given the external funding for the road that was then on offer. Mr Senior’s reply was that it had not to-date been the claim of the applicants that “overall the scheme is unviable”, but he drew attention to the fact that they had pointed out that there is “a cost of up front infrastructure to be delivered which affects cash flow especially in Phase 1.” He said that over the life of the scheme “the additional funding will improve the overall viability of the scheme” and suggested that the Claimant prepare its bid and the issue of viability could be addressed if it was raised in due course.

33. Mr Lambert had been working up a new bid which was sent to the Defendant by means of a letter under cover of an e-mail of 27 September. I need not try to summarise it save to say that the total sum sought was just over £1.79 million, a

substantial reduction from the original bid. Notwithstanding that, Mr Senior challenged a number of the items comprising the list constituting the bid as not being CIL compliant. One such element was the element for “additional premises” which, he argued, had not been “fully justified”, but may be “capable of being supported” as the development proceeds. He suggested a review formula that would include discussions between the developers, the Defendant and the Claimant.

34. Mr Lambert responded to that in detail by an e-mail of 15 October 2013. Again, I need not deal with that in detail, but the paragraph dealing with the proposed review clause should be noted:

“We accept the need for review clauses but this cannot be to the extent that there is no commitment or quantum at the outset when [planning permission] is issued and we cannot accept that the owner or the [the local planning authority] will be determining what we need. Neither are responsible for delivering policing. We are, and know what we need. You are supposed to be planning at outline not putting it off. Imagine the response if this was the review mechanism for schools or health or anything else i.e. wait till schools are overcrowded or people can't access health to provide premises essential for delivery. That is not the approach of [the National Planning Policy Framework].”

35. A meeting took place on 23 October, attended *inter alia*, by Mr Rob Back, the Planning and Economic Development Group Manager of the Defendant. He wrote to Mr Lambert on 24 October in which he acknowledged that some of the items sought were now accepted as meeting the CIL tests, but still maintaining that some did not, or were not sufficiently evidenced for that purpose. The letter contained this paragraph towards its conclusion:

“You have also explained that the police would be happy to work with the developer to agree a phased contribution to the costs above in line with the rate of development on the site. This approach could be significant to assisting the developers cash flow and we will explore this with them in more detail. We would be grateful if you could confirm that this approach may be appropriate to all elements of the police infrastructure related to the site.”

36. Mr Lambert replied by letter of 28 October acknowledging that he appreciated that the Defendant was attempting to conclude the section 106 Agreement as soon as possible and that there was “a sense of urgency”. The paragraph dealing with the possible phasing of the police contribution reads as follows:

“There are two elements to phasing. First what we will need and when, and we have looked at this before for you. Indeed what I attach in relation to vehicles demonstrates this to an extent. As I said at our meeting we need to sit down and work through this. Second our willingness and goodwill to borrow against the Section 106 contract. The latter depends on the

contractual commitment, which we have asked for and haven't seen, and our goodwill. Our goodwill erodes the more our fully justified request is dismissed and changes offered without good reason."

37. There was a meeting on 31 October attended by Mr Back and others from the Defendant and Mr Lambert and the Finance Officer of the Claimant. Mr Back refers to it in his witness statement, but Mr Lambert does not. Mr Back says this about what was said:

"... we confirmed that the ... developers consortium was not claiming that the development was financially unviable and that the role of financial appraisal in relation to [the development] was limited to phasing and deliverability. In response it was explained by Mr Lambert that the police had the ability to borrow against a Section 106 obligation in order to enable the timely delivery of infrastructure."

38. The following day (1 November) Mr Senior sent an e-mail to Mr Lambert summarising the items that the Defendant considered should be included in the section 106 Agreement in relation to police funding. In fact a good deal of the bid previously made (see paragraph 33 above) was agreed, including the additional premises contribution in the sum previously claimed. There were some reductions in the bids for start up equipment, vehicles and Automatic Number Plate Recognition, but the list was as follows:

"Items for inclusion in the agreement

Start-up equipment	£71,388
Vehicles 3 off	£47,415
Additional radio transmitter	£350,000
Additional radio call capacity	£7,650
PND additions	£4,887
Additional call handling	£10,115
ANPR 4 off	£32,888
Mobile CCTV	£4,500
Hub equipment	£8,000
Total	£536,843

Trigger points for these items need to be agreed, usually based on number of occupations.”

39. That list was on a document attached to the e-mail and the balance of the document, which related to the premises element of the police contribution, read as follows:

“Extensions to existing premises to a maximum of £1,089,660

A review of the need for extensions to existing premises at the commencement of Phase 3 (or other agreed trigger point)

Agreed funds to be paid in the following stages

10% within 2 weeks of notice from the police confirming that are proceedings with extensions

10% within 2 weeks of agreed design stage

40% within 2 weeks of the issue of tender for the construction contract

40% within 3 months of commencement of construction.”

40. Mr Senior said that he had “included trigger points which you may wish to amend, but not for the equipment which I will need you to supply.”

41. Mr Lambert replied to this e-mail on 7 November 2013 stating the following at the outset:

“The main issue for us in this is the lack of developer commitment to premises I am afraid what is proposed virtually removes the covenant as far as our premises are concerned and having successfully made the case for this to your satisfaction, i.e. that what we seek will be necessary when this development is built, we can't then move away from this and come back to the developer at future points to make the case afresh.”

42. The e-mail continued with various suggestions based upon the premise that the developers commit to funding part of what the police needed as a covenant in the section 106 agreement and the review mechanism to apply to the rest. The suggestion, on this basis, was that the Claimant would build to accommodate 14 staff to serve the development and would “aim to start the project at the 1200 trigger”.

43. This e-mail was forwarded by Mr Senior to Mr Paul Burton, a Director of the 1st Interested Party, on 11 November who replied in the following terms:

“We discussed on Friday the terms you believe to have some weight under the CIL requirements. We reached agreement on those contributions following our discussion about the payment timing and the review of the premises. It appears that this compromise to move matters forward is not being accepted by

Michael Lambert and there may still be a risk of him JR proceedings.

As you know, my view and the view of the other consortium members is that these requests are unreasonable and I find it amazing that the Lubbethorpe scheme will generate the need for 14 staff. I would like to discuss tomorrow the possibility of the Police continuing to argue their case, potentially to the courts and whether we can secure an agreement from them that if they accept your proposals that they will agree to not to take the point any further. If not, I am not sure there is much advantage to the consortium to accept terms that they wholeheartedly disagree with. Something to discuss tomorrow with the solicitors.”

44. That e-mail referred to a meeting that had been held on 8 November and one to be held the following day which Mr Burton attended with a good number of others, including Mr Senior and Mr Back of the Defendant, at which the outstanding issues concerning the section 106 agreement were discussed and resolved.
45. I think I should record what each of those who attended says about those meetings because it would appear that it was the combined effect of those meetings that constituted the “decision” about the section 106 agreement that underlies the Claimant’s challenge in these proceedings.
46. Mr Senior said this:

“41. On 8 November 2013 a meeting was held between the Council and the development consortium the outcome of which was summarised in an email from Paul Burton of the consortium on 11 November The discussion referred to in the e-mail considered two issues; first the cash flow of the scheme and the cost of the infrastructure to be provided in phase 1 and secondly how the police request which the Council felt should be given some weight could be supported. It was proposed all the items except premises could come forward at the end of phase 2. The premises could then be subject to a review as part of a viability review at the beginning of phase 3. This review would consider whether the provision of affordable housing could be increased towards the Council’s aspiration of 25% across the whole site, the Council having accepted a reduction in affordable housing percentage to help facilitate the development. If the need for [police] premises was agreed at the time of the review, this would be funded.

42. On 12 November 2013, a meeting was held between the Council and solicitors representing the County Council, and development consortium respectively. At that meeting it was agreed to incorporate the above proposals into the Section 106 Agreement. The discussion at the meeting took into account the issues of viability, compliance by the requests with the CIL

Regulations and the decision to accept the proposal resulted from a balanced judgement as to how to deliver as much of the police request as possible, albeit not within the time scales that they had requested, and at the same time deliver a viable development.”

47. Mr Back said this:

“14. On 12th November 2013 the Council organised a meeting with representatives of the Lubbethorpe Consortium, Leicestershire County Council and legal representatives from each of the above. This meeting considered all elements of the ... S106 agreement including the proposed policing contribution. At the meeting Council officers explained that we accepted that some elements of the request made by [the police] were compliant with the relevant Community Infrastructure Regulations. At this time, the developer consortium did not agree with the Council’s position but Council officers were able to negotiate a favourable position for [the police] partly due to the need to achieve a completed agreement in order to realise the M1 bridge Pinch Point funding. The financial pressures on the early phases of the development and the overall priorities for Lubbethorpe were discussed as a result of which it was agreed that the policing contributions would need to be triggered from the end of the second phase of the development. At the end of this meeting all parties agreed that further substantive changes to the agreement would be minimised in order to commence the complex process of completing the agreement with all parties.

15. In the context of the meeting described above it became clear that we ought to communicate the end of the negotiation process, particularly as it was clear that some service providers would not be receiving everything that they had requested, and/or that monies would be provided at a date other than that requested. On this basis I wrote to [the police] on 18th November to confirm that the position we had communicated at an earlier stage of the process (1st November 2013) was the Council’s final position on this matter I note with some surprise that [the police] claim not to have received this letter. Whilst this is unfortunate, I take some comfort in the fact that the letter only reiterated the Council’s already communicated position in any event.

16. It is entirely understood and appreciated that the ... S106 agreement is not a facsimile of the contribution request submitted on behalf of [the police]; it is worth emphasising that the Council was fully aware of this situation when the application was reported to the Development Control Committee for determination and remained the case at the point the agreement was completed. ... the Report to Committee ...

states “It will noted that the request for funding from the Police has only been agreed to in part”. This report and the associated recommendation and resolution should have clearly set the expectations of [the police] in this matter. As the detail of the [the police] request was examined over the course of the following months there were multiple communications ... between the Council and [the police] that made it abundantly clear that the Council did not accept the full extent of the [police] request. There could have been no expectation on the part of [the police] of any other conclusion.”

48. Mr Burton said this:

“26. The meeting on 12 November ... was called to finalise the outstanding issues in the s.106 agreement and it was critical to the delivery of the M1 bridge. The structure and timing of at least two highways contributions were discussed and resolved at this meeting Both contributions were pushed back in the programme of delivery works to secure a contribution. There has been no suggestion by the local highways authority that this was inappropriate

27. I recall at the November 12th meeting that there was specific discussion about the outstanding requests for contributions on the part of the Leicester City Council and the Claimant. These two issues, in my mind, were very similar in nature in that I did not see a clear link between the requests and the acceptability in planning terms of the Scheme.

28. In relation to the contributions sought by the Claimant, the key points of the discussion were the relevance of these contributions to the Scheme, their negative effect on the precarious cash-flow position of the project in the early phases and on the overall viability, and the now urgent need to bring s.106 negotiations to a conclusion so as to secure planning permission in the light of the funding position in relation to the M1 bridge There was debate as to the level and timing of the various contributions leading to the provisions that were ultimately documented in the s.106 agreement.

29. The outcome of this discussion was that significant contribution would be made to the Police (notwithstanding my significant reservations as to their CIL compliance) on the proviso that it did not add to the existing very heavy burden of the already agreed financial contributions and infrastructure obligations to be undertaken at the early stage of the development, so as not to risk the viability or deliverability of the scheme. This was entirely consistent with other decisions taken that day, on both highways and the bus station

30. I recall the Defendant's officers being comfortable with the eventual position reached on not just the Claimants' obligations but also the overall package of planning obligations that were discussed."
49. On 15 November 2013, Mr Lambert e-mailed Mr Senior saying that he had not heard from him and expressing concern about the "premises commitment and whether what we suggest will be included in the agreement." If it was to be included then he would, he said, "come back on vehicles and training and triggers", but if not he would need to take advice on the next steps. He emphasised that the issue was "fundamental" for the Claimant.
50. Mr Senior replied later that day saying that "[we] have not finished the final wording but there is provision for premises and I will get back to you early next week with the wording." Mr Lambert replied shortly afterwards and again stressing the importance of the premises element of the contribution being "triggered and paid for in Phase 1" of the development. He said he could provide the triggers for the other items "pretty quickly".
51. The reality, of course, is that the decisions had been made by then.
52. An odd feature of this case is that the letter written by Mr Back to the Claimant's Finance Director dated 18 November 2013 (to which he referred in his witness statement) explaining the position was never received by the Claimant. Everyone accepts that was so and so do I: indeed there are communications from Mr Lambert to Mr Senior and others thereafter that would, in the ordinary course, have referred to the letter had it been received. The letter does, however, reflect a relatively contemporaneous justification for the decision reached and it is worth quoting the substantive paragraphs:

"As you will be aware from our e-mail of 1 November, we set out the contributions which we support and when these will be triggered. Following negotiations with the applicant, it has been agreed that the £536,834 will be paid at the end of the second phase of development. The agreement will contain a commitment towards premises and a payment up to a maximum of £1,089,660 towards the premises that are agreed following a review of the needs of the police at the time.

I am aware that these contributions and the associated triggers do not match those requested by your organisation however please be assured that we have sought to achieve the best result for Lubbethorpe and the wider community. The trigger points have been agreed with the applicants in the light of the full range of contributions that have been sought and the Council have sought to balance all of the infrastructure and funding requirements associated with this complex development.

We have previously explained the urgency and timescales involved with this matter and we have today agreed with the developer that no further changes to agreement will be sought.

To make further changes would potentially jeopardise the funding of the M1 bridge and would potentially impact the viability and deliverability of the whole development.”

53. Because this was not received, so far as the Claimant as concerned, there were no further communications from the Defendant on the section 106 agreement until it was sent in its concluded form under cover of an e-mail dated 29 January 2014.

The legal arguments

54. Before turning to the legal arguments, I should highlight a fact that Miss Wigley emphasises, namely, that there had never been any suggestion that the scheme was not viable, even before the £5 million of Department of Transport money became available. Mr Elvin and Mr Alex Goodman (for the 5th Interested Party) do not dispute that, but emphasise that it has always been the position of the development consortium that cash flow, particularly in the early stages of the development was a major issue.

55. I will address each of the Grounds advanced by Miss Wigley.

Ground 1

56. This is formulated as follows:

“The Council erred in failing to include provisions with the section 106 agreement to secure adequate and timely contributions towards policing so as to properly mitigate the adverse impact of the development. The Council also erred in failing to have regard to whether the section 106 agreement was adequate to achieve the necessary and required mitigation when it granted planning permission; the Agreement is fundamentally flawed and fails to achieve what is necessary to make the development acceptable in planning terms. No reasons have been given for the actions taken by the Council in respect of the Police contribution and why it has been dealt with differently to other contributions, and accordingly, the Council have acted irrationally.”

57. Miss Wigley says that the Defendant having agreed the principle of the police contribution, the legitimacy of the contributions vis-à-vis the CIL tests and the figures referred to in paragraphs 38 and 39 above, its task as planning authority, in accordance with the resolution of 1 November 2012, was to enter into a section 106 agreement “to secure” the provisions identified in the resolution which, of course, included the provisions concerning the police contribution. For the reasons summarised in paragraphs 20-24 above, she submits that, irrationally, this has not been achieved in relation to the premises contribution (because of the lack of commitment and the uncertainties) and neither has it been achieved in relation to the equipment contribution because rationally-derived trigger-points have not been identified. As to the latter (whilst it might also go to Ground 3), the submission is that the Defendant needed information from the police to enable it to define those trigger-points and failed to obtain it. She also submits, on the basis of what has been revealed

of the decision-making process leading to the section 106 agreement, that the necessary balancing exercise was neither rational nor fair.

58. Whilst she put the matter in a number of ways, the summary I have given above reflects the substance of this argument. She recognises the high threshold there is in this context for establishing such a ground of challenge: see, e.g., *R (Newsmith Stainless Ltd) v Secretary of State for the Environment* [2001] EWHC Admin 74, Sullivan J, as he then was, at [8].
59. Mr Elvin contends that the argument comes perilously close to a simple submission that the Defendant should have accepted the Claimant's approach and that no other rational course existed. That, he submits, is not sufficient and amounts to nothing more than a challenge to the planning merits of the considerations leading to the section 106 Agreement. He says that the evidence of those present at the meeting of 12 November 2013 demonstrates that those participating were aware of the Claimant's position, that it was taken into account along with the position of others and an assessment made of what was reasonable in the light of the cash flow issues that faced those endeavouring to put together the final, effective package of provisions to be incorporated in the section 106 Agreement. A planning judgment was reached that earlier trigger points for the financial contributions were not required to make the development acceptable and a material consideration was also not risking the timely delivery of the development itself.
60. Mr Goodman supports this approach and, in his Skeleton Argument, sought to characterise the argument that the decision was *Wednesbury* unreasonable and "hopelessly unarguable" and amounted to nothing more than "an impermissible quibble" about the merits of one relatively small factor within a very complex and far reaching decision."
61. I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble about a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would plainly be the "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.
62. I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide the police with a sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant.
63. However, the issue is whether the strength of the argument to that effect surmounts the very high threshold for establishing irrationality in the sense required for the challenge to be successful. I am unable to accept that they do cross this threshold.

Whilst I can understand that the Claimant may feel that its approach has simply been rejected by the developers because it is inconvenient and that its persistence has been an irritant, the evidence does suggest that the Defendant has considered the matter properly and has reached a rational and sustainable conclusion even if it is not one with which everyone would agree.

Ground 2

64. This is formulated thus:

“In all circumstances, given the size and significance of the development, and the failure to secure appropriate mitigation of the impact of the development, it was incumbent upon the Officers to either return to matter to Committee for determination or articulate their reasons for accepting the Agreement in the terms they did. In the absence of any reasons, the inference is that the Council have acted irrationally.”

65. As articulated orally by Miss Wigley, this was effectively a restatement of the proposition that the planning committee had directed the officers to negotiate a section 106 agreement that secured CIL compliant police contributions (see paragraph 57 above) and that they had not done so. This should, she submits, have resulted in the matter being referred back to the planning committee. As she put it in the Skeleton Argument, having regard to the wording of the committee resolution and, in particular, the way in which the “premises contribution” was to be dealt with under the section 106 agreement, it was incumbent on the officers to report back to the members their inability to act in accordance with the resolution and to explain their proposed alternative course. She submits that it cannot be said with any certainty that the members would have been satisfied with the proposed course of action.
66. The well-known case of *R (Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370 was referred to in this context as was the observation of the Court of Appeal in *R. (Dry) v West Oxfordshire DC* [2011] 1 P. & C.R. 16 at [16].
67. I do not really feel that this ground adds anything in real terms to the first ground (or indeed to Ground 3 that I will consider below). It does seem to me that Mr Elvin was right to submit that the resolution required the section 106 agreement to embrace “all CIL Compliant capital infrastructures for Policing”, that “the precise terms of this contribution [are] to be settled by further negotiation” and that this makes it clear that the committee envisaged that the further negotiations on this matter would be undertaken by the officers.
68. That, as it seems to me, is sufficient to dispose of this argument. In any event, in the particular circumstances of this case, whilst some questions might have been raised by members about the terms concerning the police contributions, it is fanciful to suggest that a scheme such as this would have foundered on such an issue. Given the new funding stream constituted by the Pinch Point funding, a resolution to defer the grant of permission pending further negotiations would, to my mind, have been so unlikely as to be a consideration that can safely be disregarded.

Ground 3

69. This is formulated thus:

“Furthermore, arising out of the correspondence, contact and agreement with the Council in this matter, the Police had a legitimate expectation that the Council would consult them on the level of and timing of the delivery of the contribution and that the outcome of those discussions would be represented in the Agreement.”

70. The foundation for this argument is the sequence of correspondence, meetings and other communications in the period running up to November 2013 to which I have referred above (see paragraphs 28-43 above).

71. There is, of course, a good deal of authority on the issue of legitimate expectation. I am quite prepared to accept for present purposes that a course of dealing between two parties in the kind of context with which this case is concerned can in some circumstances give rise to a legitimate expectation that some particular process will be followed by the public authority the subject of the challenged decision before the decision is taken. The course of dealing can be on such a basis that the necessarily “clear and unambiguous” representation upon which such an expectation is based may arise.

72. Did anything of that nature arise in this case? I do not think so. What one can see from the communications to which I have referred is a pattern of negotiation, in effect between the Claimant and the developers with the Defendant as the intermediary, where no unequivocal representation was made by the Defendant that could have led to an expectation that it would be consulted “on the level of and timing of the delivery of the contribution”. That having been said, however, there can be little doubt that the Defendant was aware of the Claimant’s view on the timing of the premises contribution which, in one sense, was the most significant part of what was required by way of infrastructure funding. The equipment contribution was discussed and the police could have given “chapter and verse” on that if they had chosen to do so prior to the final discussions between the Defendant and the developers. However, I do not see any basis for a specific obligation on the Defendant’s part to inquire about that.

73. There is no evidence to suggest that the way in which the Claimant’s position was handled during the prolonged negotiations towards the section 106 agreement was markedly different from that of the other parties who also engaged in the process whatever the ultimate outcome may have been. It seems to me that the accommodating approach of Mr Senior from August 2013 onwards was simply born of a desire to facilitate a smoothing of the passage towards a resolution of the impasse that otherwise existed and that it would be wrong to read it in any other way.

74. It seems to me that there was, at least initially, a difference of view about the approach to how the police contribution should be calculated (one apparently shared by others around the country at the time). That there was a revision of the approach during the negotiations is plain. That may have been aided by the decision in the Jelsoy Homes appeal to which Miss Wigley drew my attention. At all events, as it seems to me, there was nothing in what occurred during the various communications

that could reasonably have led the police to believe that it would be consulted on the specific terms of the section 106 agreement. As Mr Elvin submitted, the Claimant did make representations which the evidence suggests were considered. That, in my judgment, is as far as any legitimate expectation could take the Claimant.

Ground 4

75. This was added by a late amendment for which leave was granted by Hickinbottom J. As formulated it is as follows:

“The Council has breached Article 36 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.”

76. The acronym ‘DMPO’ is applied to this order.
77. The contention is that that Article 36(3)(b) required the “travelling draft” of the section 106 agreement to be placed on the local planning register and that the Defendant’s failure to do so invalidates the planning permission.
78. Article 36(3) is as follows:

(3) Part 1 of the register shall contain in respect of each such application and any application for approval of reserved matters made in respect of an outline planning permission granted on such an application, made or sent to the local planning register authority and not finally disposed of—

(a) a copy (which may be photographic or in electronic form) of the application together with any accompanying plans and drawings;

(b) a copy (which may be photographic or in electronic form) of any planning obligation or section 278 agreement proposed or entered into in connection with the application;

(c) a copy (which may be photographic or in electronic form) of any other planning obligation or section 278 agreement entered into in respect of the land the subject of the application which the applicant considers relevant; and

(d) particulars of any modification to any planning obligation or section 278 agreement.

79. This follows Article 36(2) which provides that “each local planning register authority shall keep, in [two] parts, a register of every application for planning permission relating to their area”.
80. Whilst I have had very little opportunity to give this issue mature consideration, I find it difficult to find within Article 36(3)(b) an obligation that “travelling drafts” of a section 106 agreement should be placed on the register. Mr Goodman submitted that Article 36 is not intended to require that every iteration of a document “under

construction” by negotiation must be put on the planning register and I am inclined to agree that that is so.

81. At all events, Mr Elvin and Mr Goodman seem to me to have the complete answer to this allegation in this case, namely, that there is no evidence or even a claim that the Claimant checked the local planning register before the planning permission was granted and accordingly no prejudice could have arisen. If there was any failure to comply with Article 36(3)(b), it could have had no impact on the outcome of this case.
82. The evidential basis for the contention about the lack of material on the register is a witness statement of Rebecca Philips, a solicitor with the Derbyshire Constabulary, who made certain requests and enquiries of the Defendant’s planning office. However, there is a factual issue joined by virtue of Mr Senior’s second witness statement when he says that the various drafts of the section 106 agreements in question were available for inspection in hard form in the Council’s files on request. I cannot resolve any issues of fact on this application and, in any event for the reasons I have given, it is unnecessary to do so.

Conclusion

83. I have not been able to cover every nuance of the arguments advanced. However, I am of the view that the grounds of challenge to the grant of planning permission do not succeed.
84. I repeat that, looked at objectively, there are features of the way the police contribution in this case was dealt with in the section 106 agreement that are not very satisfactory and, as I have said, some legitimate criticisms seem to me to be open to the formulation of the trigger mechanism. I rather suspect that, irrespective of the outcome of this case, the issue of the timing of the police contributions will have to be re-visited before the development proceeds too far to ensure that those who are considering purchasing properties on the development will have the reassurance that it will be properly and efficiently policed. However, that does not amount to, or evidence the need for, a conclusion at this stage that what was agreed between the Defendant and the developers was irrational or that there was anything unfair about the way the Defendant dealt with the issue.
85. The case was dealt with as a “rolled up” hearing. Mr Elvin is quite right to say that a claimant in such a situation should not be given permission to apply for judicial review “just because everyone is present at the hearing”. A “rolled up” hearing is often directed when there is a need for expedition and that is plainly why Hickinbottom J directed such a hearing in this case. The other aspect to the position advanced by Mr Elvin is that merely because a claimant loses at a “rolled up” hearing does not mean that permission to apply for judicial review should not be granted.
86. If this case had not been as urgent as it is and a judge had applied his or her mind to the usual considerations at the permission stage, I believe the Claimant would probably have overcome the relatively low threshold of “arguability” on Grounds 1 and 3, but not on grounds 2 and 4. Accordingly, I grant permission on Grounds 1 and 3, although I dismiss the substantive claims, but I refuse permission to apply for judicial review on Grounds 2 and 4.

87. I would express my appreciation to all Counsel for their assistance, both in their oral submissions and in writing.

Permission to appeal

88. Because of the urgency and because of my non-availability in the next few weeks, it was agreed at the conclusion of the hearing that I should assume that any losing party would wish me to consider the issue of permission to appeal. It would be convenient for me to do so here.
89. This arises in relation to grounds 1 and 3 (because I have refused permission on grounds 2 and 4 and the normal route is a direct application to the Court of Appeal in relation to such grounds). Whilst I have treated grounds 1 and 3 as having crossed the arguability threshold for the purposes of permission to apply for judicial review, having heard the full argument I was satisfied that the grounds should not succeed. I am of the view that there is no realistic prospect of success on an appeal if pursued and, accordingly, I refuse permission to appeal.
90. Again, it was agreed by all parties that I should exercise my power effectively to foreshorten any period for seeking permission to appeal from the Court of Appeal. I will direct that any Appeal Notice seeking permission to appeal must be lodged within 7 days of the hand down of this judgment, that the notice must be served on all other parties and that an application in writing for an expedited consideration of the issue of permission to appeal must be made by the Claimant. It would, of course, be open to the other parties to make representations on this issue if so advised.
91. Arrangements will have been made for the final form of this judgment to be handed down on my behalf by a judge sitting in Birmingham during the week beginning 26 May and the 7-day period will commence on that day.



Neutral Citation Number: [2016] EWHC 2979 (Admin)

Case No: CO/2673/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2016

Before :

MR JUSTICE GREEN

Between :

Jelson Limited

Claimant

- and -

**Secretary of State for Communities and Local
Government (1)**

Hinckley and Bosworth Borough Council (2)

Defendant

Mr Lockhart-Mummery QC (instructed by **Shakespeare Martineau**) for the **Claimant**
Ms Blackmore (instructed by **Government Legal Department**) for the **First Defendant**
Ms Osmund-Smith (instructed by **Solicitor to Hinckley & Bosworth Borough Council**) for
the **Second Defendant**

Hearing date: 1st November 2016

Approved Judgment

MR JUSTICE GREEN :

A. Introduction: The Issue – “FOAN”

1. This case concerns a dispute over the calculation of “Full Objectively Assessed Need” for housing or “FOAN”. This is a measure of the theoretical need that a local authority has for housing. It is required to be set by local authorities in accordance with paragraph [47] of the National Planning Policy Framework (“NPPF”). It is an important figure because it is used as a benchmark against which the “need” for a particular proposed development is measured, subject to the processes described below. I have described FOAN as a theoretical figure because once the FOAN is calculated in practice it is then modified to take account of relevant policy considerations. In practice the FOAN will almost always exceed the housing requirement figure that is set once policy is applied. For this reason FOAN has been termed a “policy-off” figure and the housing requirement ultimately fixed has been termed a “policy-on” figure. The policy on housing requirement will (or should) be worked out in the context of the preparation of a Local Plan. Problems however arise when there is no up-to-date Local Plan.
2. On the 12th May 2014 Jelson Limited (“the Claimant”) applied to Hinckley and Bosworth Borough Council (“HBBC”) for planning permission for residential development and associated infrastructure in relation to land off Sherborne Road, Burbage, Leicestershire. On the 12th November 2014 HBBC rejected the application and the Claimant appealed, by way of public inquiry, to the Inspector. By a decision made on the 4th May 2016 (“the Decision”) the appeal was refused. A central issue at the inquiry was whether HBBC could establish that it had a five year supply of housing for the purposes of paragraph [47] NPPF. The Council argued that it could demonstrate a supply sufficient to meet demand for a period in excess of five years. The Claimant, however, argued that there was a supply of significantly less than five years. The nub of the dispute between the parties centred upon identification of a figure, or range of figures, as to the relevant numerical requirement. The Claimant argued that if HBBC was unable to demonstrate a supply of five years or more that this would have been a significant material consideration in favour of allowing the appeal (taking into account the presumption in favour of grant in paragraph [14] NPPF). In her Decision the Inspector held that there was, in fact, sufficient housing land in Hinckley and Bosworth to meet the housing needs for the following five years.
3. It is common ground that at the time of the inquiry HBBC had not adopted a new Local Plan since the coming into effect of the NPPF in March 2012. The Core Strategy (“CS”) had been adopted in 2009 and this set out a housing requirement of 450 dwellings per annum (“dpa”). HBBC did not contend that the CS contained an assessment of or figure for FOAN in line with the requirement in paragraph [47] NPPF. Nonetheless HBBC argued that the evidence before the inquiry supported a conclusion that there was a housing requirement of 450 dpa.
4. In Ground I the Claimant contends: (a) that the Inspector failed to have due regard and/or to understand the requirements of paragraph [47] NPPF; and/or (b) that she failed to understand and follow the principles of the Court of Appeal in *City and District of St Albans v Hunston Properties and SSCLG* [2013] EWCA Civ 1610 (“*Hunston*”) and that of the High Court in *Gallagher Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1238, affirmed on appeal [2014]

EWCA Civ 1610 (“*Gallagher*”); and/or (c) that the Inspector failed to give proper reasons for concluding that there was a five year supply; and/or (d) that in any event the Inspector’s approach to the identification of the FOAN was irrational and confused.

5. In Ground II the Claimant contends that the Inspector erred in not addressing and/or giving reasons for her conclusion that the Claimant make a contribution to the costs to be incurred by the police in providing additional police services to meet incremental demand for policing arising from the new development.

B. Legal and Policy Framework

(i) The test on appeal

6. The case comes before the Court by way of statutory application pursuant to section 288 Town and Country Planning Act 1990 (“TCPA 1990”). The legal principles which fall to be applied on such an application are well established. They are summarised in the judgment of Lindblom J, as he then was, in *Bloor Homes East Midlands Limited v SSCLG* [2014] EWHC 754 (Admin) at paragraph [19]. Because, one way or another, most are raised in this case, I set out the summary in full below:

“19. The relevant law is not controversial. It comprises seven familiar principles:

(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to “rehearse every argument relating to each matter in every paragraph” (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter* (No. 2) [2004] 1 WLR 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A

local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] PTSR 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the

judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145).”

(ii) Evidential considerations relating to the assessment of a FOAN

7. The approach that inspectors should apply to the evidential tasks confronting them when assessing the FOAN has been considered on a number of occasions in recent case law. In *Shropshire Council et ors v BDW Trading et ors* [2016] EWHC 2733 (Admin) Mrs Justice Lang was confronted with an Inspector’s decision which stated:

“It is therefore clear that there is no recent evidence in line with the above requirements of the Framework and the PPG that offers any reliable support to the CS housing requirement, which is, in my view out-of-date being based on the RSS. Further, the Council accept that it is not suggested that the CS housing requirement will be the FOAN for their plan review and that the evidence will ultimately tell what their FOAN is. This confirms that the Council are not at the current time sure what its FOAN is and that this work is yet to be undertaken. In such circumstances, I consider that if the Council does not have a FOAN, then it does not have a robust housing requirement and therefore it must follow that it cannot demonstrate it has a five year housing land supply...”

8. In view of this the Inspector did not go on to assess the evidence and determine, for the purpose of resolving the issue arising, what a workable FOAN was. This omission was challenged. Shropshire Council argued:

“The Claimant submitted that the Inspector erred in failing to engage with the evidence in respect of the FOAN or the Claimant's ‘housing requirements’, as referenced in bullet points 1 and 2 of NPPF 47. He was required to exercise his judgment on this issue, doing the best he could on the available evidence, even if it was unsatisfactory. In this case, there was sufficient material to enable him to do so, whether or not he could identify precise figures. He was also required to explain his reasons for arriving at his conclusions, which he failed to do.”

9. Mrs Justice Lang agreed with this submission. She held:

“21. There is substantial authority in support of the Claimant's submission that, in an appeal concerning housing development, an Inspector must address the issues of housing requirements and housing supply in his decision as they are likely to be material considerations and his judgment on those issues is an essential part of the application of the NPPF.”

10. The conclusion that she arrived at is consistent with: *South Northamptonshire Council v Secretary of State for Communities and Local Government & Ors* [2014] EWHC

573 (Admin) at paragraph [19] per Ouseley J; *West Berkshire District Council v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 267 (Admin) at paragraph [52] per Supperstone J; and, *(Gladman) v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 683 (Admin) at paragraph [7(v)] per Patterson J.

11. In *Shropshire (ibid)* Mrs Justice Lang summed up the authorities in the following way:

“27. In my judgment ... Inspectors generally will be required to make judgments about housing needs and supply. However, these will not involve the kind of detailed analysis which would be appropriate at a Development Plan inquiry. The Inspector at a planning appeal is only making judgments based on the material before him in the particular case, which may well be imperfect. He is not making an authoritative assessment which binds the local planning authority in other cases.”

12. In paragraphs [28] – [30] she set out various observations about the evidence collation process which, in my view, are pragmatic and sensible and accord with good administrative practice and with case law.
13. I summarise these points as follows: (a) an Inspector is required to make judgments as to the Claimant's current FOAN or housing requirements and its housing supply in order to decide the issues in an appeal; (b) paragraph [49] NPPF requires the Inspector to form his/her own judgment on the equation between housing needs and housing supply based upon the relevant evidence provided by the local planning authority and any other parties to the inquiry; (c) where a Local Plan is outdated other sources of information can and should be considered; (d) where there is no robust recent assessment of full housing needs, the household projections published by the DCLG should be used as the starting point; (e) an inspector must do the best possible with the material adduced and if needs be the Inspector must make the best of an unsatisfactory situation, making a choice between unsatisfactory sources; (f) if an Inspector is unable to identify a specific figure a bracket or range or an approximate uplift on the departmental projections suffice; (g) an inspector is not required to undertake the kind of detailed analysis which would be appropriate at a Development Plan inquiry; (h) an Inspector deciding an appeal on the best evidence available is not making a finding that is an authoritative assessment which binds the local planning authority in other cases; (e) in an exceptional case where the evidence before the Inspector is so lacking that it is impossible to perform an assessment the inspector must say so and give reasons to explain why it was not possible to determine a working FOAN figure or range.

(iii) Relevant provisions of the NPPF and Policy Guidance

14. The relevant policy and guidance material which applies to the setting of a “FOAN” is principally found in section 6 of the NPPF entitled “*Delivering a wide choice of high quality homes*”. This introduces the concept of the “full objectively assessed need” for market and affordable housing in a “housing market area”. These are the “FOAN” and the “HMA” concepts. Paragraphs [47] and [49] provide as follows:

“47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15; for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

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

15. In the section of the NPPF entitled “*Plan-making*” under the heading “*Housing*”, paragraph [159] urges local planning authorities to have a clear understanding of housing needs in their area and requires them to prepare a “*Strategic Housing Market Assessment*” (“*SHMA*”). It provides:

“159. Local planning authorities should have a clear understanding of housing needs in their area. They should:

- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the

scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:

— meets household and population projections, taking account of migration and demographic change;

— addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and

— caters for housing demand and the scale of housing supply necessary to meet this demand;

● prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.”

16. Guidance makes clear that the setting of figures for a FOAN is not an exact science and no single approach will provide a definitive answer. Local authority plan makers should avoid expending significant resources on primary research but should, instead, seek guidance from secondary data. The most important source is housing projections produced by the DCLG. This is trend based data. It will need adjustment to take account of local conditions. This is made clear in formal guidance which is provided in PPG2(a)-014-20140306. Some relevant paragraphs from this Guidance are set out below:

“Housing and economic development needs assessments

Methodology: assessing housing need

Paragraph: 014 Reference ID: 2a-014-20140306

What methodological approach should be used?

Establishing future need for housing is not an exact science. No single approach will provide a definitive answer. Plan makers should avoid expending significant resources on primary research (information that is collected through surveys, focus groups or interviews etc and analysed to produce a new set of findings) as this will in many cases be a disproportionate way of establishing an evidence base. They should instead look to rely predominantly on secondary data (eg Census, national surveys) to inform their assessment which are identified within the guidance.

Revision date: 06 03 2014

Paragraph: 015 Reference ID: 2a-015-20140306

What is the starting point to establish the need for housing?

Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need.

The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.

The household projections are trend based, ie they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour.

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing. As household projections do not reflect unmet housing need, local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply.

Revision date: 06 03 2014

Paragraph: 016 Reference ID: 2a-016-20150227

How often are the projections updated?

The Government's official population and household projections are generally updated every two years to take account of the latest demographic trends. The most recent published Household Projections update the 2011-based interim projections to be consistent with the Office for National Statistics population projections. Further analysis of household formation rates as revealed by the 2011 Census will continue during 2015.

Wherever possible, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. A meaningful change in the housing situation should be

considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued.

The 2012-2037 Household Projections were published on 27 February 2015, and are the most up-to-date estimate of future household growth.

Revision date: 27 02 2015 See revisions

Related policy

National Planning Policy Framework

- Paragraph 17, bullet 1

Paragraph: 017 Reference ID: 2a-017-20140306

Can adjustments be made to household projection-based estimates of housing need?

The household projections produced by the Department for Communities and Local Government are statistically robust and are based on nationally consistent assumptions. However, plan makers may consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to the underlying demographic projections and household formation rates. Account should also be taken of the most recent demographic evidence including the latest Office of National Statistics population estimates.

Any local changes would need to be clearly explained and justified on the basis of established sources of robust evidence.

Issues will vary across areas but might include:

- migration levels that may be affected by changes in employment growth or a one off event such as a large employer moving in or out of an area or a large housing development such as an urban extension in the last five years
- demographic structure that may be affected by local circumstances or policies eg expansion in education or facilities for older people

Local housing need surveys may be appropriate to assess the affordable housing requirements specific to the needs of people in rural areas, given the lack of granularity provided by secondary sources of information.

Revision date: 06 03 2014 See revisions

Paragraph: 018 Reference ID: 2a-018-20140306

How should employment trends be taken into account?

Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate and also having regard to the growth of the working age population in the housing market area. Any cross-boundary migration assumptions, particularly where one area decides to assume a lower internal migration figure than the housing market area figures suggest, will need to be agreed with the other relevant local planning authority under the duty to cooperate. Failure to do so will mean that there would be an increase in unmet housing need.

Where the supply of working age population that is economically active (labour force supply) is less than the projected job growth, this could result in unsustainable commuting patterns (depending on public transport accessibility or other sustainable options such as walking or cycling) and could reduce the resilience of local businesses. In such circumstances, plan makers will need to consider how the location of new housing or infrastructure development could help address these problems.

Revision date: 06 03 2014

Paragraph: 019 Reference ID: 2a-019-20140306

How should market signals be taken into account?

The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Prices or rents rising faster than the national/local average may well indicate particular market undersupply relative to demand. Relevant signals may include the following:

- Land Prices

Land values are determined by the demand for land in particular uses, relative to the supply of land in those uses. The allocation of land supply designated for each different use, independently of price, can result in substantial price discontinuities for adjoining parcels of land (or land with otherwise similar characteristics). Price premiums provide direct information on the shortage of land in any locality for any particular use.

- House Prices

Mix adjusted house prices (adjusted to allow for the different types of houses sold in each period) measure inflation in house prices. Longer term changes may indicate an imbalance between the demand for and the supply of housing. The Office for National Statistics publishes a monthly House Price Index at regional level. The Land Registry also publishes a House Price Index and Price Paid data at local authority level.

- Rents

Rents provide an indication of the cost of consuming housing in a market area. Mixed adjusted rent information (adjusted to allow for the different types of properties rented in each period) shows changes in housing costs over time. Longer term changes may indicate an imbalance between demand for and supply of housing. The Office for National Statistics publishes a monthly Private Rental Index.

- Affordability

Assessing affordability involves comparing house costs against the ability to pay. The ratio between lower quartile house prices and the lower quartile income or earnings can be used to assess the relative affordability of housing. The Department for Communities and Local Government publishes quarterly the ratio of lower quartile house price to lower quartile earnings by local authority district.

- Rate of Development

Local planning authorities monitor the stock and flows of land allocated, permissions granted, and take-up of those permissions in terms of completions. Supply indicators may include the flow of new permissions expressed as a number of units per year relative to the planned number and the flow of actual completions per year relative to the planned number. A meaningful period should be used to measure supply. If the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. The Department for Communities and Local Government publishes quarterly planning application statistics.

- Overcrowding

Indicators on overcrowding, concealed and sharing households, homelessness and the numbers in temporary accommodation demonstrate un-met need for housing. Longer term increase in the number of such households may be a signal to consider increasing planned housing numbers. The number of households accepted as homeless and in temporary

accommodation is published in the quarterly Statutory Homelessness release.

Revision date: 06 03 2014

Paragraph: 020 Reference ID: 2a-020-20140306

How should plan makers respond to market signals?

Appropriate comparisons of indicators should be made. This includes comparison with longer term trends (both in absolute levels and rates of change) in the: housing market area; similar demographic and economic areas; and nationally. A worsening trend in any of these indicators will require upward adjustment to planned housing numbers compared to ones based solely on household projections. Volatility in some indicators requires care to be taken: in these cases rolling average comparisons may be helpful to identify persistent changes and trends.

In areas where an upward adjustment is required, plan makers should set this adjustment at a level that is reasonable. The more significant the affordability constraints (as reflected in rising prices and rents, and worsening affordability ratio) and the stronger other indicators of high demand (e.g. the differential between land prices), the larger the improvement in affordability needed and, therefore, the larger the additional supply response should be.

Market signals are affected by a number of economic factors, and plan makers should not attempt to estimate the precise impact of an increase in housing supply. Rather they should increase planned supply by an amount that, on reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period.

The list of indicators above is not exhaustive. Other indicators, including those at lower spatial levels, are available and may be useful in coming to a full assessment of prevailing market conditions. In broad terms, the assessment should take account both of indicators relating to price (such as house prices, rents, affordability ratios) and quantity (such as overcrowding and rates of development).

Revision date: 06 03 2014.”

C. The Inspector's Decision and the evidence relied upon

17. In this section I address two principal matters. First, the SHMA which was relied upon by HBBC and by the Inspector to identify a range of figures for housing need which was then used as a benchmark for measuring the “need” for the proposed development. Second, the reasoning adopted by the Inspector.

(i) The Leicester and Leicestershire Strategic Housing Market Assessment Report, June 2014 (“the SHMA”)

18. In her Decision the Inspector relied, as a central and important source of data, upon the Leicester and Leicestershire Strategic Housing Market Assessment Report, June 2014 (“the SHMA”). The Report was prepared by consultants instructed on behalf of the various relevant authorities. It is appropriate to start by describing the methodology applied by the consultants to the exercise. The consultants explained that they had undertaken a comprehensive assessment of potential population and household growth. The starting points for the projections developed, in accordance with the PPG, were the latest (2011-based) CLG Household Projections updated to take account of the latest population data and to ensure that household formation rates did not project forward the recent falling trend in household formation brought about by the economic recession. The projections indicated a need for an average of 3,626 dpa to 2036 (with a slightly higher average of 3,774 dpa to 2031) across the Leicester and Leicestershire HMA. In line with the PPG the consultants tested these figures to see whether an additional uplift was required to respond to market signals and improve housing affordability, to enhance the delivery of affordable housing to meet identified needs, and to support some degree of growth in jobs at a local level. The consultants considered the state of the housing market including prices and transactions and whether there were signs of recovery. They also considered the level of housing needed to support baseline full costs of employment growth and differentiated local patterns of living and working and, in the light of their conclusions upon these matters, made some localised adjustments to assess housing need at a local authority level. Taking into account these factors the SHMA identified a need for between 3,630 – 4,060 homes per annum to 2036 across the HMA. The lower end of the range supported demographic projections whilst the higher end of the range supported strong delivery of both market and affordable housing taking account of the need for affordable housing and market signals and relative rates of economic growth in different parts of the area.

19. In an Executive Summary the authors set out a table entitled “*Conclusions regarding Overall Housing Need*”:

	Housing Need to 2031		Housing Need to 2036	
	Lower	Upper	Lower	Upper
Leicester	1250	1350	1230	1330
Blaby	360	420	340	400
Charnwood	810	820	770	780
Harborough	415	475	400	460
Hinckley & Bosworth	375	450	350	420
Melton	200	250	195	245
NW Leicestershire	285	350	270	330
Oadby & Wigston	80	100	75	95
Leicester & Leicestershire Total	3,775	4,215	3,630	4,060

(Emphasis added)

20. For the purpose of this judgment it is convenient to highlight at this early juncture two particular sets of figures which are set out in bold in the table above. First the range for HBBC (for the period to 2031) was 375-450. This was the range ultimately chosen by the Inspector to represent the FOAN. But it is also important for reasons which I set out later in some detail (see paragraphs [54ff] below) to observe that the equivalent range for Oadby & Wigston was 80-100. This is because in separate litigation that range was rejected by an Inspector and his findings were later upheld by both the High Court and by the Court of Appeal. The reasoning which led to the approval of the Inspector’s alternative figure in that case is of some material significance to the analysis in the present case.
21. The conclusions, as set out in the table, did not take into consideration land supply, development or infrastructure constraints and the SHMA makes clear that local authorities would need to consider these issues in deriving a “*policy on*” distribution of housing provision i.e. a figure which is not the actual assessed need but a figure which is considered to be actually deliverable and which therefore takes into account a variety of policy criteria which might constrain the higher actual need figure. As such the figures in the SHMA purportedly amounted to a “*policy off*” assessment of housing need. I explain the significance of “*policy off*” and “*policy on*” more fully in paragraph [41] below. The SHMA also drew conclusions concerning the need for different types of homes. It identified that 21% of the need for affordable housing could be met by intermediate equity-based products with 79% of need for rented affordable housing (either at social or affordable rent levels). Taking into account expected changes to population structure, existing housing mix and market evidence, the SHMA identified strategic targets with a mix of housing needed within the HMA against which delivery could be monitored. The recommendations regarding the sizes of home need were incorporated into the following table:

	1-bed	2-bed	3-bed	4+ bed
Market	5-10%	30-35%	45-50%	10-15%
Affordable	35-40%	30-35%	20-25%	5-10%
All Dwellings	15-20%	30-35%	35-40%	10-15%

22. The needs of specified groups were considered, including elderly households, students, BME household and families. The SHMA indicated the need for between 240 – 720 additional housing units to be specialist accommodation across the HMA to meet the needs of the “older person” population each year. It further identified the need for 222 residential care bed spaces per annum.
23. Chapter 9 of the Report, in relation to “*Overall Housing Need*” makes clear that the “policy off” overall housing need would take into account both affordable and market housing. It described the approach adopted in paragraphs [9.4] – [9.7]:

“9.4 The NPPF sets out that plans should be prepared on the basis of meeting full needs for market and affordable housing. Planning Practice Guidance sets out that the latest national projections should be seen as a starting point but that authorities may consider sensitivity testing projections in response to local circumstances and the latest demographic evidence.

9.5 In accordance with the Planning Practice Guidance, the 2011-based Sub-National Population Projections (SNPP) and related CLG Household Projections have formed the starting point for our assessment. When extended beyond 2021, these projections indicate household growth of 3,335 households per annum across the HMA between 2011 and 2031 and 3,159 between 2011 and 2036. However these projections assume that household formation rates seen over the 2001-11 period continue moving forward. These trends arguably build in a degree of suppression of household formation, a point which is acknowledged by CLG in the Planning Practice Guidance on Assessment of Housing and Economic Development Needs.

9.6 Against this context a sensitivity analysis has been developed exploring different projections of household formation rates and to take account of the latest migration data. This analysis concludes that the most appropriate means of projecting household formation would be based on the midpoint between the household formation rates in the 2008 and 2011 Household Projections. These updated projections indicate a need for 3,774 households per annum between 2011 and 2031 and 3,626 between 2011 and 2036. This represents a robust starting point for assessing housing needs in Leicester and Leicestershire based on population trends.

9.7 The guidance then sets three key tests which should be applied in order to identify whether there is a case to adjust the starting point. We see these tests as:

- Do market signals point to a need to increase housing supply in order to address affordability and high demand?
- Is there a need to increase overall housing supply in order to boost delivery of affordable homes to meet identified needs?
- Is there evidence that an increase in housing supply is needed to ensure a sufficient labour supply to support forecast economic and employment growth in different parts of the HMA?”

24. In defining the FOAN for housing in an HMA the consultants adopted the following approach:

“9.20 We have sought to draw the range of evidence together to define objectively-assessed need for housing. In doing so we have followed the following approach:

- Define the base level of need with regard to the demographic projections;
- Consider the case for adjustments in response to market signals. This points to a case for upwards adjustment in Melton and Harborough Districts;
- Compare the demographic projections against the proportionate economic-led projections in regard to the scope to encourage local living and working;
- Overlay the affordable housing evidence in regard to the % supply based on the demographic projections needed to support full affordable housing delivery;
- Identify the higher level of the range to take account of the market signals, economic evidence and affordable housing need.”

25. I turn now to Table 84 which is central to the dispute in this case. Paragraph [9.22] draws together, in Table 84, the consultants’ conclusions over the period 2011-2031. It is in the following form:

“The table below draws together our conclusions over the 2011-31 period. We consider that housing need over the 2011-31 period would fall between 3,775 – 4,215 homes per annum across the HMA. Local authority level figures are shown in the table.

Table 84: OAN Conclusions 2011-2033

Homes Per Annum 2011-2031	Demographic-Led Household Projections to 2031	Higher Market Affordability Pressures	Supporting Proportionate Economic Growth	Affording Housing Need Per Annum	Affordable Need as % Demographic-Led Projection	OAN Range	
Leicester	1,249		1,057	527	42%	1,250	1,350
Blaby	356		388	352	99%	360	420
Charnwood	814		690	180	22%	810	820
Harborough	415	✓	454	212	51%	415	475
Hinckley & Bosworth	375		467	248	66%	375	450
Melton	202	✓	253	74	36%	200	250
NW Leicestershire	284		372	212	75%	285	350
Oadby & Wigston	79		173	163	206%	80	100
LLPA	3,774		3,854	1,966	52%	3,775	4,215

The figures for HBBC are set out in the column headed “OAN Range”. They are 375-450. The equivalent figures for Oadby are 80-100.

(ii) The Inspector’s decision (“the Decision”)

26. I turn from the SHMA to the reasoning adopted by the Inspector in her Decision. In the text below I summarise, in relatively narrative form, the Decision. I have, where appropriate, added references to the evidence which was referred to in the Decision.
27. The Inspector commenced her analysis by recording that local planning authorities were required to use their evidence base to ensure their Local Plans met the FOAN for market and affordable housing in the housing market area, in accordance with paragraph [47] NPPF. She observed that the HBBC Core Strategy (“CS”) was adopted in 2009, predating the publication of the NPPF in 2012. The CS target was to deliver 9,000 dwellings up to 2026, i.e. 450 units per annum. This requirement, however, was derived from the East Midland Regional Plan which had been revoked. That particular plan based its dwelling targets upon 2004 household projections; in consequence, the CS requirement was not the FOAN and was therefore inconsistent with the NPPF. In paragraph [6] the Inspector therefore sought an alternative source of data. In this she turned to the SHMA:

“6. The starting point for the calculation of OAN is demographic calculations based on the most recent, available population projections. This is made clear in paragraph 159 of the Framework which states that the strategic housing market assessment (SHMA) should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which meet household and population projections, taking account of migration and demographic change. The Council, together with the

other Leicestershire district and borough councils and Leicester City Council, commissioned a SHMA which was published in June 2014.”

28. In paragraph [7] the Inspector identified the demographic calculations which resulted in the total number, expressed as a range, of people and households likely to live in the HMA during the relevant period irrespective of the type of dwelling which they might require. She stated that *“those needs”* (which included affordable housing) *“are the products of separate and different calculations and assessments. In theory, they are included within the total population arising from population projections and a demographic methodology and should be consistent with them”*.
29. In paragraph [8] the Inspector identified that the principal dispute between the parties was whether affordable housing need was required to be fully *“met”* by the FOAN. I emphasise the phrase *“met”* because, as I discuss later, the Claimant alights upon this word as one of the pieces of evidence said to prove that the Inspector misdirected herself to the test to be applied. She recorded, albeit in outline, the Claimant’s contention that the FOAN arising from the SHMA was a constrained *“policy-on”* figure and that, in consequence, the upper end of the range was not properly identified as it should be in an unconstrained, *“policy-off”* FOAN. She recorded the position of HBBC in the following terms:
- “8. ... On the other hand, the Council concurs with the guidance set out in the Planning Advisory Service’s technical advice note on the matter³. This describes those factors which should not contribute to OAN as being ‘below the line’; they are matters which should not be included in the OAN calculation but which should be taken into account at a later stage when formulating provision targets. The technical advice note argues that affordable housing need is not measured in a way that is directly comparable with OAN and should not be a constituent of it; affordable housing should thus be below the line and a policy consideration.”
30. In paragraph [9] the Inspector identified the relevant figures. Based upon demographic led household projections the bottom end of the FOAN range for HBBC up to 2031 was 375. This is set out in the first substantive column in Table 84 of the SHMA cited at paragraph [19] above. The Inspector then stated that due to the mechanism by which the vast majority of affordable housing was delivered (i.e. as a percentage of all residential schemes over a threshold of units, and subject to viability) it was always necessary to consider whether to increase the number of dwellings required overall in order to maximise the provision of affordable housing. She observed that this measure, which is referred to in the PPG (see paragraph [16] above), was a policy decision and was therefore appropriately calculated *“outside”* of the FOAN. The Inspector recorded that in HBBC the number of homes needed to support proportionate economic growth was identified in the SHMA as 467. This can be seen from the fourth column in Table 84 (*supra*) and the affordable housing need (in the fifth column) was 248 per annum. In order to support the provision of additional affordable housing, and a growth in employment/labour supply, therefore, the top end of the range was identified at 450. She said: *“... that is therefore a policy-on figure”*.

31. In paragraph [10] she stated that there was no dispute but that there was a significant need for affordable housing in HBBC and that the most recent analysis was the SHMA which put the figure at approximately 250 dpa (see the fifth column, which sets out a figure of 248). She stated that in increasing the demographic produced figure of 375 to 450, which amounted to a 20% uplift, specifically to provide for affordable housing and economic growth the FOAN “properly” took account of that need.
32. The Inspector then addressed the Claimant’s principal argument which was that the top end of the FOAN range should be at least 980 dpa since this was the figure identified in Table 48 of the SHMA as the total amount of housing necessary to deliver the indicated housing need under current policy. Table 48 is contained within paragraph [6.63] of the SHMA Report. It is set out in the following terms:

Table 48

LA	Affordable Need	Affordable Housing Policy	Affordable Housing Policy (Mid-Point)	Annual Housing Need	Total Housing Required Based on Current Policy
Leicester	496	15 – 30%	23%	2,157	53,925
Blaby	349	10 – 30%	20%	1,396	34,900
Charnwood	174	30%	30%	696	17,400
Harborough	208	30%	30%	832	20,800
Hinckley & Bosworth	245	20 – 40%	30%	980	24,500
Melton	71	40%	40%	176	4,400
NW Leicestershire	209	20 – 30%	25%	836	20,900
Oadby & Wigston	160	10 – 30%	20%	800	20,000
LLLPA	1,913			7,873	196,825

(Emphasis added)

33. For present purposes (the issue is analysed in detail below) the salient figures (in bold in the table above) to note from this table are (i) the “Annual Housing Need” figure of 980 for HBBC; and (ii) the equivalent Annual Housing Need figure of 800 for Oadby. The 980 figure is important because it was a key part of the Claimant’s case that in relation to HBBC the SHMA recorded that there was an Annual Housing Need of 980 houses and that the Inspector therefore erred in failing to give this objectively arrived at figure any weight or credence at all. The 800 figure for Oadby is important because it is the equivalent of the 980 figure for HBCC. It is of relevance to this case because in the Oadby litigation the 800 figure was rejected as being relevant to FOAN so that, by parity of reasoning, if that is so for Oadby it should equally be so for HBCC, and as such throws the Claimant’s key argument into doubt.

34. The Inspector rejected the argument based upon the 980 figure robustly. She described it as “*Clearly impracticable and unreasonable*”. She came to this conclusion by extrapolating that 980 dba represented a requirement of 196,825 units in the HMA as a whole. This amounted to: “... *a considerable, inconsistent and thus unjustifiable increase on the 75,000 or so dwellings calculated from household projections to be needed by 2031*”. The important point to observe here is the discrepancy of the 980 dpa figure with the figures based on household projections.
35. Of the figure of 980 dpa for housing needs set out in Table 48 the Inspector concluded:
- “11. ... The 980 figure identified in the SHMA is thus purely theoretical although it could be used as a pointer to further policy adjustments, such as a change in the percentage of affordable housing required. Significant issues in the area such as shortcomings in housing provision, including affordable housing, should be addressed through the Local Plan.”
36. The Inspector benchmarked her conclusion that Table 84, which included the 450 dpa figure, was appropriate by reference to population projections produced subsequent to the SHMA. The SHMA figure was based upon 2011 data (see paragraph [18] above). The new population projections were for 2012. Analysis of these demonstrated a need for 364 dpa in HBBC derived from the total figure for Leicestershire. The Inspector stated that this was lower than the bottom end of the SHMA FOAN but was generally consistent with it. The Inspector thus stated:
- “12. ... In my opinion the figure confirms the Council’s approach and validates the CS housing provision of 450 dwellings which is about 24% above that needed to meet demographic increases.”
37. In paragraph [13] the Inspector stated that it was not her role, in the Decision, to identify an alternative FOAN. She did record, however, that the Appellant had calculated that, all things being equal, the housing land supply would fall below five years where the FOAN was 539 dpa. That figure would represent a 44% uplift on the 375 demographically-led household projection which, in the Inspector’s opinion, would represent a considerable number of additional affordable dwellings. She therefore stated that had she (hypothetically) considered that the 450 dpa housing requirement was inadequate or “*wanting*” it would still not have been necessary to increase that figure beyond the 539 threshold whereby a five year supply was unavailable. The significance of this is that it is a good deal lower than the Claimant’s figure of 980 for inclusion in the FOAN range.
38. In paragraphs [14] – [16] the Inspector cited various authorities. In particular she recited that in the Oadby litigation (*Oadby & Wigston Borough Council v SSCLG, and, Bloor Homes Limited* [2015] EWHC 1879 (Admin) per Hickinbottom J (“*Oadby*”)) the Court had found that the Inspector, in that case, had been entitled to exercise his planning judgment upon the basis of the evidence before him when arriving at the conclusion that the range for Oadby arising from the Leicestershire SHMA, i.e. the same document that was before the present Inspector, was “*policy-on*” and that it therefore failed properly to reflect the affordable housing need and the need generated by economic factors. The Inspector observed that a significant difference

between that case and the one before her was that in Oadby the Council's housing requirement figure of 80 – 100 dpa was well below the SHMA affordable housing need of 160 dpa. That judgment of the High Court in *Oadby* was subsequently endorsed by the Court of Appeal: [2016] EWCA Civ 1040 (27th October 2016).

39. Finally, the Inspector noted that in the Charnwood CS Examination concluded in September 2015, in the light of a thorough assessment, the Inspector there had recorded that the SHMA provided an up-to-date and robust assessment of housing need for the HMA and that the HBBC FOAN of 375 – 450 was a component of that overall figure.
40. In paragraphs [53] – [55] the Inspector set out her overall conclusions for dismissing the appeal:

“53. I have found that there is a five year supply of housing land in the Borough at this time; relevant policies for the supply of housing are not, therefore, considered out-of-date. In these circumstances it is not necessary for me to determine which those policies are. The proposed development would not protect or preserve the open landscape to the east of Burbage which, whilst not specifically designated, is an important setting for the village and separates it from the M69 corridor.

54. The benefits of the proposed development include the provision of market and affordable housing in an area where the latter is much needed. The site is also close to the village centre, where there are local services, and within easy reach of Hinckley town centre by public transport. New public open space would be created and there would be other social and economic benefits such as additional support for local facilities and businesses. Nonetheless, these benefits are not sufficient to outweigh the harm to the landscape. I do not agree that the proposal would improve access to the countryside.

55. I am aware that Burbage is part of Hinckley Sub Regional Centre and that the CS strategy is that the majority of housing will be located in and around it. The positive aspects of the scheme, including the benefits referred to above and also factors such as the lack of harm to ecological interests or the living conditions of nearby occupiers, make it consistent with several CS policies, as will be the case with the vast majority of proposed development. Since this proposal is clearly contrary to CS Policy 4, which is most relevant to proposals in Burbage and thus most important in this case, compliance with other, more general policies carries little weight. The proposed development would therefore be contrary to the development plan as a whole. I have taken into account all the matters raised but found no compelling arguments to allow the appeal.”

D. Ground I: Analysis

(i) FOAN is “policy-off”: The distinction with “policy-on”

41. The starting point for analysis is the distinction between “policy-on” and “policy-off”. In this case the nub of the Claimant’s argument (the details of which are set out at paragraph [46] – [51] below) is that the Inspector should have been calculating a “policy-off” FOAN but, in fact, wrongly calculated a constrained “policy-on” figure and in so doing misapplied relevant guiding principles. In *Gallagher (ibid)* in the High Court at paragraph [37] Hickinbottom J. made three observations about the process of establishing housing need which provide an explanation for the distinction which has emerged as between policy “on” and “off”. These were approved of by the Court of appeal in that case and, more recently, have been further approved of by the Court of Appeal in *Oadby* (see paragraph [38] above). In particular it is now well established that FOAN is closely related to relevant demographic, trend based projections; but that the ultimate “housing requirement” may well be quite different to FOAN in that it is modified, and often constrained, by policy considerations. This has led, as I have already observed (cf paragraph [1] above), to FOAN being described as “*policy off*” and housing requirement as “*policy on*”. The three observations of Hickinbottom J, which reflect these distinctions, were as follows:

"(i) Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. ...

(ii) Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but it is not necessarily the same. An objective assessment of housing need may result in a different figure from that based on purely demographics ...

(iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a "policy on" figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured."

(ii) The judgment of the Court of Appeal in *Oadby*

42. Before turning to the particular issues arising in this case it is necessary to say a word about the judgment of the Court of Appeal in *Oadby*. The Court of Appeal was concerned with the self-same SHMA that is in issue in this case and which was relied upon by the Inspector. The Appellant Council appealed the order of Hickinbottom J dismissing its application under section 288 of the TCPA 1990 against the decision of the inspector allowing an appeal of the developer against the council's refusal of an application for outline planning permission for a development of up to 150 dwellings on land at Oadby in Leicestershire. Hickinbottom J. rejected the council's challenge to the decision on all grounds. The central issue in the appeal was whether the judge erred in holding that the Inspector had not misinterpreted paragraphs [47], [49], [157], [158] and [159] NPPF. In giving judgment Lindblom LJ observed that this was a case upon its facts and did not raise novel issues of points of principle. Nonetheless because of its strong evidential resonance in the present case it is of more than passing interest. It is also an informative case in that it highlights the robust deference that the Courts attach to the genuine planning judgments of Inspectors and, in particular, it exemplifies the workings of the statement in the PPG (see paragraph [16] above) that the calculation of FOAN is not an exact science.
43. The general tenor of the judgment is that, in accordance with well established principles, the judgment of an Inspector is not to be easily interfered with. If a conclusion is one of judgment the hurdle represented by irrationality is a very high one.
44. The judgment is also informative in that it highlights a number of evidential issues which reflect the principles that I have summarised at paragraph [13] above. An Inspector can, but need not, accept the analysis in an SHMA. So for instance an Inspector when confronted with an SHMA for a HMA is not bound to accept the apportionment in the SHMA as between different local authority areas if the Inspector considers that the criteria for apportionment are not adequate, bearing in mind that the analysis in a SHMA has not been subject to the sort of thorough testing that would occur in the formulation of a Local Development Plan (cf paragraphs [38] – [42]).
45. The NPPF is a broad statement of national policy and it requires an exercise of evaluative judgment when being applied to particular, local, decisions. The Court stated: *“This should come as no surprise to those familiar with the basic principles governing claims for judicial review and statutory applications seeking orders to quash planning decisions. As this appeal shows very well, the NPPF contains many broadly expressed statements of national policy, which, when they fall to be applied in the making of a development control decision, will require of the decision-maker an exercise of planning judgment in the particular circumstances of the case in hand.”* (ibid paragraph [33]).

(iii) The Claimant's submissions

46. I turn now to the Claimant's submissions. Mr Lockhart-Mummery QC started his submissions on behalf of the Claimant with four propositions.
47. First, in this case where there is no post-NPPF housing need requirement set out in a Local Plan the duty of the Inspector is to determine a “policy-off” (i.e. unconstrained)

figure for the number of dwellings to meet need for both market and affordable housing (to then be set against supply).

48. Second the theoretical figure is to be identified in full because FOAN is a “full” figure. It is not a figure to be “*met*” or actually “*provided*” which is the “*policy on*” figure which should come later in the Local Plan.
49. Third, in the present case the CS figure of 450 (see paragraph [27] above) is accepted by all concerned not to be the FOAN. However it was no coincidence that the Inspector arrived at a figure of 450 as the upper end of the FOAN range because in fact the Inspector had not derived a proper FOAN figure but had, in substance, simply adopted the old, irrelevant CS figure.
50. Fourth, the SHMA with its identification of 450 in Table 84 is a “*policy on*” figure and therefore not reliable. Mr Lockhart-Mummery QC based this submission upon the judgment of the High Court in *Oadby* (endorsed by the Court of Appeal) where Hickinbottom J held that the SHMA for Leicester incorporated various “*policy on*” considerations and that therefore the Inspector in that case had been right to adjust the SMHA based figures in order to arrive at an end figure which was not the same as that in the SHMA. At first instance Hickinbottom J had held that the SHMA was “*policy-on*” in two key respects. First, the figures used by Oadby BC were based upon its policy decision not to accommodate additional workers drawn to its area by increased employment opportunities. The Judge said that this was a “*policy-on*” consideration because “... *it affects adjacent areas who would be expected to house those additional commuting workers*”, (ibid paragraph [34(i)]). He said that it might be policy off if there was evidence or a development plan or an agreement between the authorities to the effect that adjacent authorities agreed to increase their housing accommodation accordingly. But there was no such evidence. Second, he referred to the fact that the SHMA took into account the availability of private rented accommodation which did not meet the definition of affordable housing and this was therefore also a “*policy-on*” consideration (ibid paragraph [34(ii)]). Mr Lockhart-Mummery QC, armed with these examples, contended that the SHMA was (in essence) systematically flawed because its figures were not pure “*policy-off*”.
51. Mr Lockhart-Mummery QC dissected the Decision of the Inspector and he highlighted various passages in which he argued that it could be seen that the Inspector had applied a thoroughly muddled approach to the calculation of FOAN in which she had variously confused “*policy-on*” with “*policy-off*”, had taken account of data sources which themselves were confused and misleading, and had ignored highly relevant data which directly correlated to the total housing need for the area.

(iv) The proper approach to the interpretation of the Inspector’s Decision

52. Notwithstanding the considerable forensic skill which this analytical exercise was conducted I do not agree with the analysis or the conclusion of Mr Lockart-Mummery QC. In coming to my own conclusion it is important that I stand back and apply to the Decision a substance over form analysis. The Inspector’s decision is, with respect to her, quite dense. She uses professional shorthand to describe ideas and concepts and she cross refers, without elaborating, to different sources for both the evidence she relies upon and the policy guidance she considers to be relevant. I remind myself that such decisions are to be read and understood in their context and it is the task of the

Court to avoid semantic nit picking. I also bear in mind that the audience is a sophisticated and professional audience which will (or should) understand the short hand that the Inspector uses and which will also have an understanding of the relevant legislative and policy framework and context. In the text below I have highlighted the main criticism of the Decision and my response.

(v) “Met”: Decision paragraph [8]

53. Mr Lockhart-Mummery QC argued that the Inspector erred when she said in paragraph [8] (see above at paragraph [29]) that a main area of dispute between the parties was whether affordable housing need “*should be fully met by the FOAN*”. It was argued that by using the expression “*met*” she was confusing an affordable housing *requirement* with the (“*policy-on*”) *meeting* of that requirement. In my view this is far too unforgiving an approach to interpretation. It is clear from the Decision read fairly as a whole that the Inspector was seeking to establish a working “policy off” FOAN for the purpose of resolving the dispute before her and she was doing this in accordance with demographically led, trend based, projections which took account of affordable housing need. There was in my view no confusion between absolute (policy off) need and actual (policy on) fulfilment.

(vi) The Inspector erred in ignoring the figure of 980 dpa for Annual Housing Need in Table 48: The dog that did not bark

54. The Claimant next argued that the upper end of the FOAN range should have been 980 or even more. They take this figure from Table 48 SHMA which is set out at paragraph [32] above. They argue that since in the SHMA this figure of 980 is under the heading “Annual Housing Need” then it is an objectively derived basis for housing need and to ignore it or reject it in the cursory way that the Inspector did and thereby not to use it as part of the FOAN range was irrational and/or reflected a misdirection and misunderstanding of the NPPF. In his reply submissions Mr Lockhart-Mummery QC clarified that it was not his case that the Inspector was *bound* to accept that figure but, rather, that she was required to take it into account.
55. I do not accept Mr Lockhart-Mummery QC’s analysis of the 980 figure.
56. First, the 980 figure is derived from Table 48 SHMA. This is not a figure based upon demographic, trend-based, projections indicating the likely number and type of future households (See the articulation by Hickinbottom J above at paragraph [41]). It is a much looser and imprecise calculation premised upon affordable need and as such is not calculated according to the methodology identified in paragraph [159] NPPF and in the relevant Guidance.
57. Second, it will be seen that, in Table 48 (paragraph [32] above), the Annual Housing Need in HBBC of 980 has been determined to be exactly four times (4X) the “Affordable Need” figure (in column 2) of 245; put another way HBBC apply a precise 25% figure to “Annual Housing Need” to arrive back at the affordable need figure. It was explained by counsel for HBBC, and not challenged by the Claimant, that the 980 figure was very much a policy based figure which flows from the choice of the percentage or figure to be used to describe the relationship between affordable housing and Annual Housing Need. That multiplier or percentage could vary for all

sorts of perfectly rational yet transient policy considerations. It was for this reason that it was not a figure which could, sensibly, be used as part of a FOAN calculation.

58. Third, confirmation of these conclusions comes from the fact that the Annual Housing Need figure in Table 48 was not relied upon in the High Court and in the Court of Appeal in *Oadby*. There is for this reason a real probative significance in the dog that did not bark: The *Oadby* case concerned exactly the same SMHA as is in issue in this case and it also involved an analysis of the figures in Tables 48 and 84. As such there is an “Annual Housing Need” figure for Oadby which equates to the 980 figure for HBBC. In the case of Oadby the figure is 800 (see at paragraph [32] above). If Mr Lockhart-Mummery QC is correct in his elevation of the 980 figure in relation to HBBC into a figure of signal importance for the calculation of FOAN in relation to HBS then, *a fortiori*, the figure of 800 should equally have loomed large in the analysis in *Oadby*. Yet it did not.
59. Mr Lockhart-Mummery QC argued that, in effect, “Homer nodded”. For inexplicable reasons the parties in that case, and the Court, overlooked the 800 figure and no doubt if his team had been arguing the *Oadby* case they would have relied upon the 800 figure. As such there was no significance at all in the dog that did not bark.
60. Ms Blackmore for the Secretary of State and Ms Osmund Smith for HBCC in the light of this undertook a forensic deconstruction of the point, which to my mind is wholly convincing. They pointed out that the 800 figure had in fact briefly emerged in the *Oadby* case only to be rapidly and deliberately submerged. This is clear from the judgment of Hickinbottom J where he recorded that in the SHMA the authors had not applied a percentage figure to housing need to arrive at a sensible FOAN because to have done so do so would have created an annual housing need figure of 800dpa which “*was clearly unrealistic and unviable*” ([2015] EWHC 1879 at paragraph [26(i)]). The Judge cross-referred to the SHMA itself (at paragraphs [6.80]) where the authors acknowledged that a total housing need figure based upon the assessment of affordable housing was “*unrealistic*”. Thus it is not correct to say that the 800 figure was not part of the analytical fabric of the *Oadby* case. It was, but it was discarded as irrelevant: Homer did not nod. This is the context in which the Court of Appeal then came to endorse the Judge’s finding that the Inspector acted correctly in finding that a figure of 147 sufficed as the FOAN for the purpose of the decision. It is worth setting out paragraphs [47] and [48] of the judgment of the Court of Appeal because they formerly endorse the 147 figure which is, plainly, a very far cry from a figure of 800:

“47.Faced with making his own assessment of the appropriate level of housing need to inform the conclusion he had to draw under the policy in paragraph 49 of the NPPF, and doing the best he could in the light of the evidence and submissions he had heard, the inspector adopted an approximate and “indicative” figure of 147 dwellings per annum (paragraphs 33 and 34 of the decision letter), making no “specific allowance” for affordable housing (paragraph 35). Again, his conclusions embody the exercise of his own planning judgment, and I see no reason to interfere with them. He might simply have adopted a rounded and possibly conservative number to represent the global need for market and affordable housing in the council’s area, such as the figure of 150 dwellings per annum, which in

closing submissions for Bloor Homes Ltd. was said to be well below the actual level of need, or a higher figure closer to the 173 dwellings per annum referred to in the Strategic Housing Market Assessment. I accept that. But as Hickinbottom J. concluded, I do not think the court could conceivably regard the inspector's figure of 147 dwellings per annum as irrational, or otherwise unlawful.

48. Taken as a whole, therefore, the inspector's approach was in my view consistent with the decision of this court in *Hunston Properties Ltd.*, and lawful.”

61. To further place the judgment into context the figure of 147 which was upheld was itself derived from the part of Table 84 which the Inspector in the present case takes a her point of departure. It is true that the “147” figure is not *itself* found in Table 84 but that is because the Inspector did not agree with the way in which the figures had been computed for Oadby in Table 84 so carried out his own assessment and modified the figure in the SHMA to arrive at the new figure. But the important point is that the logic used by the Inspector in the *Oadby* case, endorsed by the Courts, is the same logic as has been used by the Inspector in the present case. And both Inspectors rejected the “Annual Housing Need” figure set out in Table 48 (the Inspector in *Oadby* adopting a figure of 147 and the Inspector in this case expressly rejecting the 980 figure). The rejection of the 800 figure in *Oadby* was rational and sound, just as the rejection by the Inspector of the 980 figure in paragraph [11] of her decision is rational and sound in this case. When set in the above context it is plain that the Inspector was well within the legitimate scope of her judgment to conclude that the use of a 980 figure was “*clearly impractical and unreasonable*” (see paragraph [34] above).
62. In short the Inspector addressed herself to the 980 figure. She did not ignore it. But she did reject it upon the basis of her assessment that it was impractical and unreasonable. When measured against the analysis of the equivalent figure in *Oadby* and when it is understood that the 980 figure is not based upon a computational methodology that it is the norm for assessing FOAN, her view is mainstream, rational and correct.

(vii) Did the Inspector use unreliable sources and ignore affordable housing?

63. The Claimant next complains that the Inspector took into account unreliable evidence sources. In my judgment the Inspector applied a perfectly adequate test relying upon an adequate body of evidence. The approach she adopted was consistent with the approach to evidence collation and appraisal approved of in case law: See paragraph [13] above.
64. The relevant guidance makes it clear that there is no universally approved way of calculating FOAN and that the answer in each locality will be dependent upon local condition and the exigencies of the available evidence. Indeed, authorities are urged to rely upon secondary sources and not primary sources upon the basis that to conduct own-research would not be a proportionate use of resources: See paragraph [16] above.

65. In this case Ms Blackmore for the Secretary of State described the data sources before the Inspector as “*a messy basket of evidence*” and “*a large and somewhat unwieldy basket of evidence*”. The approach adopted by the Inspector can be summarised as follows:
- i) First she analysed the figures in Table 84 of the SHMA based on demographic trend based population figures which she explained how, in her view, the range set out there (of 375-450) was arrived at (Decision paragraphs [9] – [10])
 - ii) Then she rejected the Claimants figure of 980 which rejection I have concluded was entirely proper.
 - iii) Next she observed that the SHMA was based upon 2011 data. So the Inspector then examined the 2012 population projections. This data showed a 364 dpa for the HBBC area which was lower than the figures in the SHMA FOAN but was “*generally consistent with it*” (Decision paragraph [12]).
 - iv) Then she found that the 2012 data confirmed the 450 figure in the SHMA and in the CS which she noted was “*about 24% above that needed to meet demographic increases*”.
 - v) Next she benchmarked her conclusion against a figure of 539dpa which was the point at which the Claimants calculated in their evidence to her that the housing land supply would fall below the five year threshold. So, taking the Claimant’s figures as accurate, she concluded that on her assessment of the range there was an ample safety margin: See paragraph [37] above.
 - vi) Finally, she pointed out that in another Inspector’s decision which she treated as comparable for the purpose (See Decision paragraph [17] - Charnwood) the Inspector had treated the SHMA as up to date and robust.
66. In my view this approach was rational and well within the Inspector’s ordinary margin of judgment. I should deal briefly with a number of particular criticisms made by the Claimant.
67. It is said that in relying upon the CS figure of 450, when it was common ground that the CS was pre-NPPF and non-FOAN, the Inspector was in fact applying an incorrect and non-NPPF compliant methodology. I reject this argument. The Inspector compared her conclusions about the FOAN range with the CS simply as a possible benchmarking exercise. This is clear from Decision paragraph [12]. She accepted that the CS was not a FOAN but as a matter of logic this did not render it wholly inadmissible as a piece of evidence which could then be used to calculate, independently, the FOAN. So, for instance, if the 2009 figures had remained valid and not subject to change over time then there is no reason why that fact should not be accorded at least *some* proper degree of probative weight. I reject the suggestion that in using the CS as a benchmark the Inspector was improperly using that figure as the FOAN.
68. Next it is said that because the Inspector referred a document entitled “Objectively Assessed Need and Housing Targets Technical Advice Note” (July 2015, 2ed) which

suggested that affordable housing was a “*below the line*” (i.e. “policy-off”) this proved that she had treated affordable housing as extrinsic to her assessment of the FOAN. This was because case law has now made clear that the FOAN was a measure of total housing need which necessarily included affordable housing and is “policy-off”. As to this it is true that in the Decision the Inspector does refer to the Technical Advice (in Decision paragraph [8] and footnote [3]). This is not an official document and the relevant paragraphs cited do appear not to be consistent with case law. But this is in my view a classic illustration of the need to avoid directing an overly finely tuned forensic microscope at the reasoning in the decision. It would, of course, have been better had the Inspector either not referred to the Advice at all or recognised that it was (at least arguably) inconsistent with case law. But when one stands back it is not clear that she was doing any more than reciting an argument made to her. But more importantly, when one examines the approach actually taken it is clear that she did not ignore affordable housing from the FOAN.

69. The Inspector is also criticised for saying in Decision paragraph [13]: “*It is not my role in this decision to identify an alternative FOAN*”. It is argued by reference to *Oadby* in the Court of Appeal that it is precisely the Inspector’s job to calculate the FOAN where there is no up-to-date Local Plan (cf e.g. Paragraphs [38ff]). I am not entirely certain what the Inspector meant by this since she *did* go on and determine a FOAN range which in the circumstances she held to be sufficient for the task before her i.e. determining the appeal. I suspect she was saying no more than that she did not have to decide upon a definitive FOAN but that she did have to calculate a FOAN range sufficient to enable her to resolve the dispute arising before her on the appeal which is a proper approach to take: see paragraph [13] of this judgment above. Her conclusion in paragraph [13] of the Decision that her selected range was well below the figure that would put having a five year supply in jeopardy is consistent with this. But be that as it may this is an immaterial objection which does not go to the root of the Decision.

E. Conclusion on Ground I

70. In conclusion on Ground I it is my judgment that the Inspector’s Decision was squarely within the scope of the margin of discretion or judgment which must be accorded an Inspector in circumstances such as these. The application on this ground fails.

F. Ground II: Failure on the part of the Inspector to ensure that potential section 106 contributions to Leicestershire Police complied with regulation 122 of the Community Infrastructure Levy Regulations 2010

(i) The regulatory framework

71. Pursuant to Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (“the Regulations”), a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is (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. Paragraphs [203] – [206] NPPF address planning conditions and obligations. They provide that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of

conditions or planning obligations but that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph [204] states that planning obligations should only be sought where they meet conditions which, in essence, mirror those in Regulation 122(2). Paragraph [206] states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

(ii) The reasoning in the Decision

72. In the present case Leicestershire Police (“LP”) sought a significant monetary contribution under Section 106 upon the basis that the proposed development would give rise to additional demands upon police services. The Inspector concluded that the LP had demonstrated adequately that the sums requested were to be spent upon a variety of essential equipment and services the need for which arose directly from the new households occupying the proposed developments. She set out her reasons in paragraphs [44] – [47] of the Decision. The reasons were in the following terms:

“44. Leicestershire Police (LP) has demonstrated adequately that the sums requested would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, therefore, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework’s core planning principle of supporting local strategies to improve health, social and cultural well being and delivering sufficient community facilities and services to meet local needs.

45. In respect of compliance with CIL Regulation 123(3) the proposed spending has been apportioned to individual projects and procurement, such as property adaptation and a contribution towards a vehicle, in order to ensure no need for the pooling of contributions. In addition a clause of the undertaking which, in requiring written confirmation prior to payment that it would only be spent where there were no more than four other contributions, would provide a legal mechanism for ensuring full compliance with Reg. 123(3).

46. Evidence was submitted in the form of two maps with types of criminal incidents plotted on them. The first of these shows that there were several burglaries and thefts in the housing area adjacent to the appeal site during the year up to July 2014. The second map covers a larger area, this time in Blaby, and indicates a steady rate of incidents, mainly forms of stealing, in all types of residential area. I have no reason to believe that levels of crime differ significantly between Hinckley/Burbage and Blaby.

47. I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence gives credence to the additional calls and demands on the police service predicted by LP.”

(iii) The Claimant’s submission

73. The Claimant argued, during the planning appeal, that as the population of an area increased so the overall rate of crime in a police area, and hence the demands placed upon resources, declined. This proposition was advanced upon the basis of official, statistical, information and was set out in a proof of evidence adduced on behalf of the Claimant.
74. For their part LP accepted that in the Leicester, Leicestershire and Rutland areas crime was at its lowest point for many years said to be due “... *to the excellent efforts of the police and its partners*”.
75. LP, in its evidence, produced two maps the purpose of which was to establish that there was a pattern of crime in new housing estates. The Claimant did not challenge that evidence but LP did not, so it was argued, generate any evidence to establish that increased levels of housing produced more crime and, in consequence, increased demand upon services in the relevant LP area.
76. In the course of argument Mr Lockhart-Mummery QC said that the nub of the Claimant’s objection was that the Inspector had failed properly to address the Claimant’s evidence. He said that had the Inspector, acting properly within the scope of her margin of discretion and judgment, addressed but rejected the evidence, then the Claimant could have no objection. However, he argued, that there was no evidence that this analytical process had ever occurred since the Decision did not address the Claimant’s evidence. He thus contended that the Inspector misdirected herself as to the evidence and/or had failed to give proper reasons for her Decision.

(iv) Analysis

77. I do not accept this submission.
78. First, it must be remembered that the Inspector had already dismissed the appeal and she was dealing with disputes relating to contributions upon an alternative basis only. In the circumstances it is not reasonable to have expected a detailed exegesis of the sort that might possibly have been expected had this been the true crux of the issue.
79. Second, and in any event, in my judgment her reasons were perfectly adequate. There was no reason for her to do other than explain why she accepted the evidence of LP. The Inspector was clearly aware of all the evidence because it had been tendered in the course of a public inquiry before her and had been the subject of cross examination, debate and submissions. The gist of the Inspector’s reasons are adequately set out in paragraphs [44] – [47] (see above). She records that LP has adequately demonstrated that the sums would be spent on equipment and services which arose “... *directly from the new households occupying the proposed*

development". Accordingly she concluded, in terms of causality, that there was a proper nexus between the expenditure and the new development. She also records that the proposed spending was properly attributed between individual projects and procurement such as property adaptation and contributions towards a vehicle in order to prevent a need for pooling of contributions. She also observed that there was a clause of the undertaking which required written confirmation prior to payment that it would only be spent where there was no more than four other contributions which, she concluded, provided a legal mechanism for ensuring compliance with the Regulations of 123(3). She accepted the evidence tendered in the form of the two maps which she found established a "*steady rate of incidents*" in the Blaby area which she considered to be an adequate comparable. She also referred to predicted increases in calls and demands.

80. I have read all of the evidence placed before this Court which is said to be relevant to the issue. This includes, *inter alia*, a statement from Mr Michael Lambert on behalf of LP which sets out the justification for the contribution. In a section entitled "*The policing impact of 73 additional houses at the site*", Mr Lambert explains why, in the view of LP, the overnight population of the proposed development would be 170 persons and that, in terms of the relevant counterfactual, that represented an increase over demand "*from what is currently open fields*". Mr Lambert cited empirical data based upon existing crime patterns and policing demand and deployment from nearby residential areas which established the direct and additional impacts of the development upon local policing. That data established that there would be an incremental demand in relation to such matters as: calls and responses per year *via* the police control centre; an increase in annual emergency events within the proposed development; additional local non-emergency events which trigger follow-up with the public; additional recorded crimes in the locality based upon beat crime and household data and a proportionate increase in anti-social behaviour incidents; an increase in demand for patrol cover; and, an increase in the use of vehicles equating to 12% of an additional vehicle over a six year period. I have set out merely examples of the incremental costs which would be incurred by the development. It is apparent from Mr Lambert's report that the increase in cost is primarily of a variable nature; but there are some elements of fixed costs which need to be covered as well. Reading the document as a whole there can be no doubt but that LP tendered sufficient evidence to justify the Inspector's conclusions.
81. In short, the reasons given by the Inspector were brief but sufficient; and the evidence base before the Inspector, and adduced before the High Court, establishes that there was an ample evidence base upon which the Inspector was entitled to base her conclusion.

G. Conclusion

82. For all the above reasons the application does not succeed.

£/m2 study

Description: Rate per m2 gross internal floor area for the building Cost including prelims.

Last updated: 14-Jan-2023 05:56

➤ Rebased to 1Q 2023 (368; forecast) and North West Region (100; sample 942)

Maximum age of results: Default period

Building function (Maximum age of projects)	£/m ² gross internal floor area						Sample
	Mean	Lowest	Lower quartiles	Median	Upper quartiles	Highest	
New build							
374. Police stations (20)	2,668	2,142	2,670	2,707	2,785	2,983	6
374.1 Police admin/control buildings (15)	2,743	2,263	2,453	2,464	3,061	3,475	5
374.2 Police patrol bases with vehicle bays (10)	2,120	-	-	-	-	-	1
374.3 Police patrol bases without vehicle bays (30)	2,507	-	-	-	-	-	1
374.4 Police stations with social and welfare services (15)	3,326	-	-	-	-	-	1
Horizontal extension							
374. Police stations (25)	2,704	2,044	-	2,796	-	3,182	4
374.1 Police admin/control buildings (20)	2,477	2,453	-	2,470	-	2,509	3
374.2 Police patrol bases with vehicle bays (10)	2,068	-	-	-	-	-	1
Vertical extension							
374. Police stations (40)	1,632	1,260	-	-	-	2,003	2
Fitting out new building							
374.3 Police patrol bases without vehicle bays (15)	2,372	-	-	-	-	-	1
Rehabilitation/Conversion							
374. Police stations (25)	2,137	1,293	1,473	1,667	2,050	4,200	5
374.1 Police admin/control buildings (15)	1,277	919	-	1,256	-	1,676	4

Development Control
Halton Borough Council
Municipal Buildings
Kingsway
Widnes

26th January 2023

FAO Andrew Plant

Re application 22/005543/OUTEIA, Sandymoor South Phase 2

Dear Mr Plant

My Council have asked me to make the following observations on this application.

There appear to be several parts of the application which do not conform to National Planning Policy Framework viz.

The proposal does not appear to be trying to create *healthy and safe communities*, as required by section 8.92 of National Planning Policy Framework (NPPF) 2021, since the proposed development would reduce the ability of pedestrians and cyclists to travel from the Sandymoor South area to Daresbury.

The proposal does not promote sustainable transport, as specified in section 9 of the NPPF 2021. The development is based upon car use and there are no obvious attempts to integrate the proposal with existing local bus routes, train routes (despite a train track running through the middle of it) and pedestrian routes (since updates from rail authorities indicates that they are considering *closing* the existing level crossing on Red Brow Lane to prevent pedestrians using it due to the proposed development. Reducing sustainable transport is not promoting sustainable transport.

On the point above, section 9.104 of the NPPF 2021 states that 'Transport issues should be considered from the earliest stages of plan-making and development proposals, so that...'opportunities to promote walking, cycling and public transport use are identified and pursued'. Given the lack of any sensible pedestrian or cycling routes being proposed between Sandymoor South and Daresbury, and the absence of plans for public transport to Sandymoor South, these transport issues do not appear to have been considered in accordance with the NPPF 2021.

The proposal does not reflect all of the planning policy requirements in section 9.106 of NPPF 2021. The wording of the framework implies that items a-f should all be met but, for example, expectations such as aligning 'strategies and investments for supporting sustainable transport and development patterns' and 'provide for attractive and well-designed walking and cycling networks' have not been met.

17 Robert Street, Northwich, Cheshire CW8 1DSN

Clerk: Arthur Neil

Email: clerk@sandymoorparishcouncil.gov.uk

Telephone: 07393 328473

Website: sandymoorparishcouncil.gov.uk

In section 7.88 of the NPPF 2021 it states that "When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre". The Sandymoor South site is not well-connected to Runcorn town centre, so it does not look like this part of the planning policy framework has been followed.

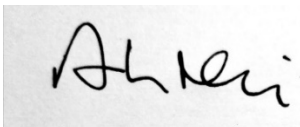
In addition, the Parish Council is concerned that there is not provision for young people. We have previously asked Homes England about the potential for outdoor gym, youth shelters or other facilities and are disappointed that these are not included in the plan. We would like to see land and funding made available for this.

On 10th January the government confirmed plans to ensure new developments in England have to adopt new sustainable drainage systems (SUDS) designed to reduce the risk of flooding and water pollution by curbing the use of impermeable services and better replicating natural drainage patterns. The current application, given the timeline, should be able to ensure that it complies with emerging guidance in this area.

The traffic survey used to defend any traffic infrastructure is inappropriate as it was undertaken during the pandemic when significant numbers were working from home. Even now, traffic levels are believed to be only just reaching pre-pandemic levels. Another survey should be carried out to test the assumptions in the application.

Sandymoor is woefully short of local services. The Parish council believe that there should be land set aside for dentists and GPs.

Yours faithfully



Arthur Neil

Clerk to the Council

17 Robert Street, Northwich, Cheshire CW8 1DSN

Clerk: Arthur Neil
Telephone: 07393 328473

Email: clerk@sandymoorparishcouncil.gov.uk
Website: sandymoorparishcouncil.gov.uk



HOUSE OF COMMONS
LONDON SW1A 0AA

2nd December 2022

Andrew Plant
Divisional Manager – Planning and Development
Halton Borough Council
Municipal Building
Kingsway
Widnes
Cheshire
WA8 7QF

Our Ref: MA27147/[[CaseworkerInitials]]

Dear Andrew,

Formal Submission of Comments 22/00543/OUTEIA

I wish to submit my comments in relation to planning application “22/00543/OUTEIA” in my capacity as Member of Parliament for Weaver Vale.

I have a number of concerns in relation to this particular development which can be categorised into the following categories: tenure, infrastructure, education and green homes.

Members of the Committee will be aware of the current housing waiting list for social housing in the Borough. I believe this development will have a minimal impact on addressing this bulging waitlist. Whilst a provision of 20% affordable housing is committed as per the DALP’s requirements, this would represent a sum of 50 properties, of which only 25 would be for “affordable or social rent”. As per the submitted designs and master plan for this application, it would suggest that this affordable housing target would be met through blocks of apartments rather than family housing.

The main basis of my concerns for this development relates to infrastructure. Indeed, reading the Socio-Economic statement submitted as part of this application also highlights such concerns. The development will not be within walking distance of any health facilities. The nearest facility is Murdishaw Health Centre, a 2.5km walk. At present, Murdishaw Health Centre records a ratio of 6,833 patients per FTE GP. The current national target is 1,800 patients per FTE GP. Within Homes England’s own documents, it is admitted that the 2,277 residents projected to reside at the proposed development will place additional demand upon the local healthcare facilities. Murdishaw Health Centre is located within one of the most deprived wards in the borough and has complex health needs. This addition of residents would render the practice unsustainable and pose a health risk to residents.

In an attempt to mitigate these concerns, Homes England suggests that a unit within the new Sandymoor Local Centre could be utilised. However, having seen the size of the retail units at the site, this would not be suitable based on space alone.

Another concern is the impact the development would have on flood risk within Sandymoor. In late November this year, the Wharford Farm balancing pond was utilised. Despite the controlled outflow into Keckwick Brook, this still led to the flooding of Bog Wood, constituents’ gardens and rendered a key cycle route out of use. This is not the first occasion that this has happened. I fail to see that if the current infrastructure cannot be managed effectively, the additional pressure of 250 homes and the wider Wharford Farm site will only lead to further flooding events for existing residents in Sandymoor.

I would also like to raise the matter of primary school provision, on which there seems to be conflicting information. I have been informed by Halton Borough Council that the development in the wider context of future sites too would be able to be accommodated under existing primary school places in the Borough.

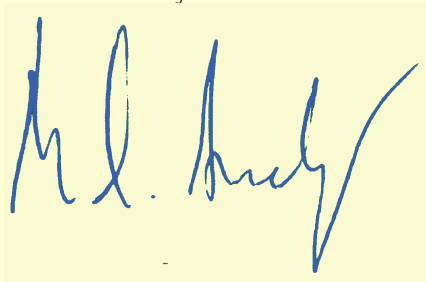
However, this appears contrary to the social economic statement submitted by Homes England as part of this application. It states, "Considering the assessment above, despite the surplus in primary school places, **the expected demand arising for primary school places of up to 121 could not be met locally.** As a result, it is anticipated that the proposed development will have a **minor adverse, long-term, permanent effect on the provision of primary school places at the local level.**"

The conflicting information on a matter as important as this is concerning. I am aware that a site in Sandymoor has been allocated for a primary school if needed. However, I take question with the phrase "is needed" on several grounds. Firstly, my worry is that if a school is needed, this will only be constructed after the residential sites have been developed. In addition, if existing provision is enough to meet this demand, how local will these school places be? Sandymoor already suffers from lacking public transport options. Moreover, to suggest that Sandymoor as a community does not warrant its own primary school is demeaning to residents and demonstrates a clear lack of foresight in considering the number of homes that could be developed in this area based on the DALP.

A number of other consulted agencies have expressed their concerns about the impact of the proposed development. Of note are comments by Network Rail as to the future of Norton Crossing on the basis that developments do take place. In surmising, Network Rail has indicated that due to increased residents, the existing crossing would not be safe and would need to be closed. This crossing is well used by residents both for recreation and commuting and is also a key part of the Council's cycle network. Network Rail has provided costing options for replacements, both of which run into millions of pounds. I would note that any replacement needed should form a key component of the relevant Section 106 funding.

As of this year, Halton Borough Council has formally adopted a climate change policy. Contained within this policy is a need to improve the sustainability of residential properties. I am concerned to see that as part of this application, little consideration appears to have been given to ensuring that these properties would be in the highest energy efficiency ratings possible. Within this, reassurances are also needed over the installation of heat pumps, PV solar & electric vehicle charging. A failure to ensure this will mean that these new homes will then require retrofitting, which could bare additional costs onto the local authority in the future.

Yours sincerely



Mike Amesbury
Labour MP for Weaver Vale

Kathryn Brindley

From: Andrew Plant
Sent: 09 November 2022 14:14
To: Kathryn Brindley; Dev Control
Subject: FW: Ref. Sandymoor South Norton North Ward /Windmill Hill Avenue East

Follow Up Flag: Follow up
Flag Status: Flagged

To be added to CSD and taken into account

Regards

andy

-----Original Message-----

From: E
Sent: 07 November 2022 13:13
To: Andrew Plant
Subject: Ref. Sandymoor South Norton North Ward /Windmill Hill Avenue East

Dear Andrew,

As a local resident and elected member to HBC, living in Norton North Ward.

Access to my home is from Windmill Avenue East. I object strongly to the above submission.

Transport

Access to the Sandymoor Development will be primarily from Windmill Hill Avenue East, This will cause even more problems than are already in existence.

There have been several accidents, one accident was fatal, Windmill Hill Avenue East Is a difficult Winding Road with the only Access in and out from The Waters Edge Estate, Woolfall Avenue Estate and Parkland Estate, Primrose Brook Estate and the Norton Village Estate, plus the Massive development of Norton Cross.

St Berteline's school children are having to cross this busy road which is already a Massive Hazard.

Kind regards

Ellen

Ellen Cargill Labour Councillor
Halton Castle Ward

Kathryn Brindley

From: Andrew Plant
Sent: 06 December 2022 16:49
To: Kathryn Brindley
Cc: DCFiling; Dev Control
Subject: FW: Sandymoor South

[Please see below](#)

Regards

[andy](#)

From: Geoff Logan
Sent: 06 December 2022 16:45
To: Andrew Plant
Subject: Sandymoor South

[Andrew](#)

Please find my response to the consultation on Sandymoor South planning application below

[Geoff Logan \[Resident of Sandymoor and Cllr for Norton North\]](#)

[Sandymoor South planning Comments](#)

[Primary Sub-Station](#)

I wish to raise concern that the planned boundaries for the Sandymoor South development have been altered since the initial consultation proposals were published in October 2021. The original boundary for Sandymoor South stopped at the Warrington to Chester railway viaduct. The latest proposals now reserve 1.3 hectares of land within the Wharford Farm scheme for a new primary sub-station.

The Wharford Farm development does not form part of the submission for the Sandymoor South scheme as it is to form part of a separate submission in 2023.

The assessment and quotations provided within the Buro Happold Utilities Report are based on an electrical allowance of 4.598kW per property and use the 850 properties across both Sandymoor South and Wharford Farm as the basis for the electricity requirement calculation.

The quotation provided by Mssrs. SP Energy Networks details a primary substation sized at 2.6MVA at a cost of circa £3.5m (October 2020 prices).

A number of the supplementary reports that consider the effects of Sandymoor South and Wharford Farm together also make a case for the situation should Sandymoor South be taken forward in isolation should Wharford Farm not proceed. The Utilities Report does not do this.

It may be argued that a primary substation for Sandymoor South would be much smaller than that detailed within the report at approximately 1.0MVA for the 250 properties depending upon the diversity level applied. The connected load being in the region of 750KVA, possibly less given that a number of the properties will be apartments without heat pumps.

As such I would request that the submission is not approved until the Utilities report is redrafted to detail the requirements for a smaller substation, sized to accommodate Sandymoor South alone. The substation should be located wholly within the Sandymoor South site. The site boundary between the developments should be redrawn as it was shown in the Initial Consultation documentation published in October 2021.

It should also be clarified that the developer should pay all costs associated with the provision of electrical infrastructure works and that neither Halton Borough Council or any of its existing residents should contribute to these assets for which they will derive no benefit. (383)

Kathryn Brindley

From: Andrew Plant
Sent: 17 November 2022 09:59
To: Peter Lloyd-Jones
Cc: Geoffrey Logan - Cllr; Irene Bramwell
Subject: RE: Sandymoor planning application

Follow Up Flag: Follow up
Flag Status: Flagged

Peter

Any objection raised, including those outlined below, will be taken into account in determining the application.

The application will be determined by the Committee.

In respect of the health centre the application has not been determined. I will speak to the case officer and see where we are up to with it. We do have a back log of applications due to resource issues.

Regards

Andrew

-----Original Message-----

From: Peter Lloyd-Jones
Sent: 16 November 2022 23:12
To: Andrew Plant
Cc: Geoffrey Logan - Cllr ; Irene Bramwell
Subject: Sandymoor planning application

Andrew

A resident has contacted me raising a number of issues.

I regard two salient ones to be firstly whether the agent's estimated traffic increase figures for Windmill Hill Avenue East will be checked by the Council. They are disputed.

Secondly will any assessment be carried out as to the capacity of both Barnfield Avenue and WHAve to cope with the council's estimated increase traffic, if there are a further 250 plus 600 houses are built on Sandymoor? It seems reasonable to expect each house on average will have between one and a half and two cars. I also note the proposed use of the currently barred roadway off WHAve between Newburgh and Ledston leading to a bridge over the canal. If approved, this in itself will create significant increased traffic, including construction vehicles along WH Ave.

The houses are proposed to be built as to no more than fifty a year. Is it envisaged that the Committee will impose such a condition in any approval.

Myself and my ward colleagues are concerned about the flood risks, not least in the context of the growth of climate change. Will the Committee require ground investigations to be carried out? They were some fifteen years ago in connection with the proposed siting of Ormiston Bolingbroke Academy school. The results were such as to cancel the proposed build!

We assume the application will be dealt with by the Committee, and not under delegated authority by planning officers.

I am making enquiries as to the proposed enhancement of the Murdishaw Health Centre. I believe a planning application was lodged last June. Has it yet been dealt with, and, if so, was it approved?

Best regards
Peter

Sent from my iPad