



Appeal Decisions

Inquiry Held on 10-13, 17 and 24-25 August 2020

Site visit made on 3 September 2020

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 12th October 2020

Appeal A - Ref: APP/R0660/W/20/3247881

Land south of Old Mill Road, Sandbach, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full and outline planning permission.
 - The appeal is made by Muller Property Group against the decision of Cheshire East Council.
 - The application Ref 19/2539C, dated 24 May 2019, was refused by notice dated 28 August 2019.
 - The development proposed is hybrid planning application for development comprising:
 - (1) Full application for erection of a discount foodstore (Class A1), petrol filling station (sui generis) and ancillary sales kiosk (class A1), drive-through restaurant (Class A3/A5), drive-through coffee shop (class A1/A3), offices (class A2/B1) and 2 no. retail 'pod' units (class A1/A3 /A5), along with creation of associated access roads, parking spaces and landscaping.
 - (2) Outline application, including access, for erection of a care home (class C2), up to 85 new dwellings (class C3), conversion of existing building to 2 dwellings (class C3) and refurbishment of two existing dwellings, along with creation of associated access roads, public open space and landscaping.
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Appeal B - Ref: APP/R0660/W/20/3249485

Land south of Old Mill Road, Sandbach, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Muller Property Group against the decision of Cheshire East Council.
 - The application Ref 19/3784C, dated 6 August 2019, was refused by notice dated 19 December 2019.
 - The development proposed is full planning application for erection of care home (class C2), 85 dwellings (class C3) and creation of associated access roads, public open space and landscaping.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed and full planning permission is granted for the erection of care home (class C2), 85 dwellings (class C3) and creation of associated access roads, public open space and landscaping at land south of Old Mill Road, Sandbach, Cheshire in accordance with the terms of the application, Ref

19/3784C, dated 6 August 2019, subject to the conditions set out in the attached schedule.

Procedural matters

3. For ease of reference I have referred to the different cases as Appeals A and B in this decision letter as set out in the headers. I have dealt with each appeal on its individual merits, but to avoid duplication, I have considered the proposals together in this document. Although there are two appeals, I use singular terms such as 'appellant' and 'appeal site' for ease of reading.
4. Appeal A includes some development (care home and dwellings) for which outline planning permission is sought. For this part of the development, details, except for the means of access, are reserved for subsequent approval. I have considered the appeal on this basis.
5. Unilateral undertakings (UU) were submitted during the inquiry. The UU for both appeals contain obligations under Section 106 of the Planning Act relating to affordable housing; education, highways and health care contributions; open space provision; ecological mitigation; and refuse collection. I return to the UU later.
6. The development proposed by Appeal A falls under Schedule 2 Part 10 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 as an urban development project exceeding the thresholds and criteria in Schedule 2 of the Regulations. An Environmental Statement (ES) was submitted by the appellant following the obtaining of a screening opinion from the Council.
7. Following the submission of the appeal, a request was made under Regulation 25 for further information relating to various impacts. The further information was provided and has formed part of the evidence publicised in advance of, and considered at, the inquiry.
8. The ES now complies with the above Regulations. The information provided is sufficient to enable the environmental impact of the proposed development to be assessed. The contents of the statement, comments received on it and all other environmental information submitted in connection with the appeal, including that given orally at the inquiry, have been taken into account in arriving at this decision.

Background and main issues

9. Appeal A was refused planning permission for six reasons. Appeal B was refused planning permission for four reasons. Since the applications were determined, the appellant and the Council have sought to narrow the areas of dispute through discussions and Statements of Common Ground (SOCG). The SOCG record that biodiversity issues can be addressed by mitigation and are therefore no longer a matter of dispute between the main parties.
10. Taking into account this background and the evidence before me, the main issues are:
 - (1) the effect on the character and appearance of the area (both appeals);
 - (2) whether the relocation of the footpaths would create a safe, accessible and pleasant environment (both appeals);
 - (3) whether the retail development would have a significant adverse impact on

- the vitality and viability of Sandbach Town Centre (Appeal A);
- (4) whether the commercial development would be accessible and well-connected to the town centre (Appeal A); and,
- (5) the effect of the car parking and servicing arrangements for the care home on highway safety (Appeal B).

Reasons

Planning context

11. The site has the benefit of an extant outline planning permission for residential development for up to 200 dwellings until April 2021. This permission followed on from the decision to allow an appeal in December 2014¹. The appellant would be highly likely to implement the residential development in the absence of an alternative permission. Therefore, a development of 200 dwellings represents a genuine fallback position.
12. The development plan insofar as it is relevant to these appeals comprises the Cheshire East Local Plan Strategy (CELPS), the Congleton Local Plan (CLP) and the Sandbach Neighbourhood Plan (SNP). Reflecting its recent planning history, the site lies within Sandbach's settlement boundary as defined by the SNP. New development, including housing and commercial development, is supported within the settlement boundary by Policy PC3 of the SNP. The policy does not define what commercial entails but given the clarity of retail policies in the National Planning Policy Framework (the Framework) and the CELPS it is not an omission of significance in this case.
13. There is also an emerging plan, the Cheshire East Site Allocations and Development Policies Document, but it has not yet been subject to examination so should be afforded limited weight. That said, I have not been made aware of any significant divergence of policy away from the existing development plan. The emerging plan shows the appeal site lying within the settlement boundary.

Character and appearance

14. The appeal site is a triangle of predominantly open agricultural land sloping up from the valley of the Arclid Brook to a ridge at Houndings Lane. The site does not fall within a valued landscape. However, it has intrinsic landscape character and visual qualities derived from the valley side topography, the irregular field pattern divided by hedgerows and mature trees, and the relationship of Fields Farm to the surrounding pasture. Its character, including its relative tranquillity, has not been significantly influenced or diminished by its proximity to the urban area. The site lies within the Landscape Character Area: Little Moreton within the Landscape Character Type 16: Higher Farms and Woods² and contains some of the key characteristics of the landscape type.
15. The site is reasonably well-contained by the surrounding topography and urban development. There is no evidence that the development would adversely impact on the wider countryside setting of the town to the south of Houndings Lane. Indeed, the location of the ridge around the lane and the absence of footpaths beyond would limit long distance views from the south. I agree with

¹ Appeal decision ref: APP/R0660/A/14/2212604 - Core Document (CD) G2

² Cheshire East Landscape Character Assessment dated May 2018

the Landscape and Visual Impact Assessment that the landscape value, susceptibility to change and sensitivity of the site are all medium overall.

16. The matters in dispute in relation to character and appearance principally arise from the changes to the landscape and topography within the site; and whether the proposals represent good design. I will deal with each appeal in turn as, although there are some common themes, the specific impacts of the detailed proposals for the commercial development (Appeal A) and housing (Appeal B) are for the most part distinct.
17. However, whatever the outcome of these appeals, the site's essentially rural character will change because of the fallback position and its location within the settlement boundary. Therefore, my assessment needs to take into account, as a baseline, the likely landscape and visual impacts of a development of 200 dwellings.

Appeal A – full application

18. The commercial development would be formed on a large (3 ha), gently sloping platform spanning across most of the site's width and depth. This would involve a major remodelling of the existing landform, with obliteration of a significant proportion of the valley slopes which run through the site from north-east to south-west and loss of the gentler sloping field up towards Fields Farm. The edges of the platform, above the deep narrowed valley to the west and close to the eastern boundary, would be formed by retaining structures with a height of up to about 7m on the western side and rising to around 5m on the eastern side. To the north of the petrol filling station (PFS) there would be a combination of a steep slope and a retaining wall. The length of the retaining structures would also be significant. For example, although ranging in height from 1m to about 5m, the eastern retaining structure would be some 300m long. In many places the retaining walls would need to be topped by safety railings or fencing.
19. The starkness and scale of the retaining walls could be mitigated by the choice of materials and planting both growing up and hanging down over the structures and in the foreground. This is illustrated by some of the visuals. The wall towards the eastern boundary would be screened to an extent by existing buildings and would not be read as a single structure due to its changing alignment and design. The existing shelter belt beyond the boundary and the narrowness of the valley would mean that much of the wall on the western side of the platform would not be prominent. Despite concerns about dieback and lack of a maintenance regime, the shelter belt, which is in public ownership, should continue to serve its screening function for many years to come.
20. However, notwithstanding these mitigating factors and the explanation for the approach in the Technical Notes, the extent of the reforming of the landscape and the size of the development platform and the retaining structures that result would, to my mind, be excessive. The commercial development would not work with the flow and grain of the landscape. This approach runs counter to the need to work with topography and landscape as described by the National Design Guide, Building for Life and the Cheshire East Borough Design Guide.

21. Some remodelling and retaining structures would be likely as a result of a housing development on the northern part of the site. However, as the floorplates of houses would be smaller scale and more adaptable to landform, a development platform of such a size would not be needed. Nor would the engineering structures need to be so large and extensive. That is not to say that a commercial development could not be successfully integrated into the landscape. But a finer grain layered approach would be required, rather than one which appears to have the objective of imposing a particular range of buildings with set floorspace all at a similar level on the site.
22. The commercial buildings proposed are of a fairly standard design with parking areas and access roads dominating the remainder of the platform. There is limited public realm. Some of the buildings are more responsive to local vernacular and materials. This is particularly the case with the office building. Other buildings such as the retail units, PFS kiosk and drive through facilities include some reference to local materials. But the foodstore is an 'off-the-peg' design. That said the use of a predominantly generic design approach to the buildings might work. But when added to the failure to respond to topography with the large development platform and significant use of engineering structures, the design approach would accentuate the impression that an 'anywhere' retail development would be imposed on the landscape.
23. The landscaping proposed would be of a higher standard than achieved on many such developments. However, the landscaping scheme would not mask the design failings described above.
24. Much of the scheme would be visible for those on the site and using the footpaths through it. Visitors to the southern part of the town centre and passers-by on the highway network would also be able to see into the site due to the need to punch through the vegetation to open up the site and form the enlarged roundabout and spine road. From this direction the PFS on the platform and the supporting structures would be particularly dominant. Occupiers of some of the neighbouring houses would also see elements of the scheme. The sensitivity of these receptors varies. Footpath users would be the most sensitive to change, but taking into account the fallback position, the residual landscape and visual effects would be moderately adverse.
25. The Sandbach Character Study³ indicates how Sandbach has grown but that commercial developments and the road network, particularly at gateways, have not responded to the fine grain and vernacular of the historic centre. I agree that the developments at Waitrose, Aldi/Mcdonalds and B & M are not of high quality and in the case of the first two, turn their back on the town. However, they were permitted some time ago in a different policy context. Poor design at one location does not justify poor design at another. The developments close to Junction 17 of the M6, including the refurbished PFS, are not in a comparable location.
26. Engineering structures have formed part of the historic development of Sandbach. For example, Old Mill Road is on the line of a former mill pond and has been constructed as a causeway. There are retaining structures apparent at the Waitrose and B & M sites and adjacent to the residential development to the west of the roundabout. However, whilst some engineering structures would be required to facilitate development, existing examples are of smaller

³ CD L3

scale, are located in a different context and were permitted some time ago, so do not justify the appeal proposals.

27. Due to the sharp fall in levels from the roundabout to the brook and valley bottom, it is inevitable that the spine road would be significantly above existing levels for the first section. The spine road would then maintain a gradual incline before it would tie in with existing ground levels towards the top of the valley slope. From that point onwards it would be close to existing ground levels. As a result, the road would be on an embankment for some distance into the site. It has been suggested that the access road should be closer to existing levels rather than on a raised embankment for such a length. However, there is insufficient evidence before me to suggest that a road following the existing levels more closely would work. On the basis of the evidence, that the spine road has been designed to ensure a reasonable gradient for all users and would reflect the nearby causeways of Old Mill Road and the A534, I consider that its level and alignment would be satisfactory.
28. The levels of the spine road would have implications for the way that the northern part of the site could be developed. However, the characteristics of the spine road should not dictate the level of all development served off it or how existing footpaths are incorporated into the scheme. The development overall should have more regard to the existing topography.
29. The spine road would be flanked by an avenue trees and shrub planting. The provision of sufficient rooting soil area for the avenue trees would be achievable and could be secured by condition. This design approach is acceptable.
30. The Council criticised the 'square' at the head of the spine road. However, it seems to me that, even though it is geometrically not a square and would not be enclosed on all sides, it would be a suitable design device. The square would be close to the offices and care home, would have some natural surveillance, would allow views out to the west and would incorporate attractive hard landscaping and street furniture as well as a public art feature which could pay respect to the ancient crosses of Sandbach. The square would be a pleasant and active part of the public realm.
31. Appeal A includes Fields Farm within its boundaries and proposes the retention of the farmhouse and brick barn. This in contrast to the existing permission which did not propose retaining any existing buildings. In Appeal B, the buildings are beyond the site. The farmhouse and brick barn appear to date from before 1800. They are non-designated heritage assets. They have been subject to some insensitive alterations, but refurbishment, reuse and removal of unsympathetic structures would represent a benefit. Although the nearby office building would be higher than the retained buildings, their overall setting would not be harmed.

Appeal B

32. The layout and design of the residential development, other than the care home, is not of concern to the Council. The impact of the residential development from Houndings Lane would be softened by the belt of open space incorporating existing and proposed landscaping. Similar impacts would also occur with the fallback position. Although formed on a second development

- platform, levels would not change significantly due to the existing relatively flat plateau. The exception is in the vicinity of the care home.
33. The care home, because of its large floorplate, would require some site remodelling where the landform falls away westwards from the plateau around Fields Farm. At the western edge of the site where the site boundary kinks and there is a sharp dip in the landform, the floorplate would be some 3m above existing levels.
34. However, these changes would be fairly localised. The retaining wall would be over a relatively short stretch of about 20m and would only reach a height of about 4m where the development has to negotiate the sharp dip referred to above. Gabion baskets would be also used for retention over about 35m but would be planted. In the context of the development overall, the landscape impacts resulting from the changes in topography and engineering structures would be limited. The changes would be experienced by those using the footpath, but for the reasons explained in paragraph 51, the visual impacts would be acceptable. The change in levels would also be visible from the square and spine road to the north. But, whilst the natural lie of the land would be replaced partly by engineered structures, the changes would generally replicate the existing steep valley slope, would be edged by the existing trees and hedgerow, including the sycamore tree (T12), and would be softened by planting within the care home grounds.
35. The care home building would have a wide span and significant depth. The depth would not result in a heavy roof as the use of a crown design reduces its height and mass. Although the elevations reflect the wide span, in reality the building would have a number of projecting wings and gables, breaks in the roof line and variety in materials, including the use of glazing. These elements would provide sufficient articulation and interest for the building. The scale and siting of the care home and the housing nearby would ensure that the development would respect any buildings retained at Fields Farm. A condition requiring that materials are agreed would ensure that the external envelope is of high quality.
36. The care home would front the square and spine road. One of the projecting wings would face towards the square and act as a header to the spine road. The design and scale of the wing reflects that of the care home overall. Whilst understated as a header building, it would align with the square and spine road and would not be seen in isolation in that it would form a backdrop to the development that takes place on the northern part of the site.
37. As discussed later, there may be some limited on-street parking in the vicinity of the care home. However, such activity would be unlikely to be at a level which would harm the appearance of the street scene. Occasional on-street parking is commonplace and would be visually acceptable.
38. The square is included within the proposals for Appeal B. For the reasons given in paragraph 30, this element of the scheme is appropriate.
39. The spine road and the footways and cycleway running parallel to it would be on the same alignment as Appeal A. The proposal for an avenue of trees would also replicate Appeal A. I acknowledge that the implication from the plans is that the spine road would be on an engineered embankment similar to Appeal A, but for the reasons set out in paragraphs 27 and 29 this approach

would be acceptable. Moreover, the design of the spine road could be modified depending on what development comes forward on the northern part of the site.

Conclusions

40. In conclusion, the commercial development forming part of Appeal A would have an unacceptable impact on the character and appearance of the area. There would be conflict with Policies SE1, SE4 and SD2 of the CELPS and Policies H2 and PC2 of the SNP in this regard because the development would not conserve and respond positively to the character of the area and its landscape or contribute to local distinctiveness. In terms of this issue, the unacceptable impacts would not be outweighed by the modest benefits arising from the refurbishment of Fields Farm.
41. Appeal B would be acceptable in relation to character and appearance and would comply with Policies SE1, SE4, SE5 and SD2 of the CELPS and Policies H2 and PC2 of the SNP in this regard because the development would conserve and respond positively to the character of the area and its landscape, contribute to local distinctiveness, and would preserve trees and hedgerows that provide a significant contribution to amenity.

Footpaths

42. The three public footpaths that cross the appeal site (Footpaths 17, 18 and 19), although influenced by the proximity of built development, are predominantly rural in character and are likely to be principally used for recreational purposes. For the most part they have value, not only because of their rural character, but also because they are on the doorstep of the town centre, close to residential areas and allow a convenient escape from the built-up area. Pleasant views can be obtained out towards a predominantly rural scene and back across to the town with countryside in the foreground.
43. In terms of frequency of use, Footpath 18, despite its lack of surfacing and lighting, appears to be the most well-trodden. As well as its recreational use, it also acts as a link between the adjacent housing estate and the town centre, albeit such use would be limited in the hours of darkness and in poor weather.
44. Footpaths 17 and 19 appear to be less well-used for recreational purposes and do not offer an obvious link between housing areas and the town centre. Moreover, Footpath 19 has an awkward entrance from Houndings Lane via a farmyard where access into the field is not clear. After leaving the farmyard there is no obvious track to follow as the route loops below a hedge near a telecoms mast. Footpath 17 is not easy to navigate as it involves tackling an overgrown stile. It also passes close to a ménage and through the former farmyard of Shields Farm part of which is now used for the storage of contractor's materials. This is not typical farmyard clutter. The route, for much of its length, is not pleasant.
45. The character of all three footpaths would change with the building of 200 homes on the site. Details of the residential development have not been approved. However, even if the footpaths were routed mainly through open space, they would no longer be in a predominantly countryside setting.
46. Appeal A shows Footpaths 18 and 19 being routed close to buildings or along the spine road as it passes through the commercial development. It is likely

that this would result in a more urban environment for these routes, overall, than if the site was developed solely for housing where they could be integrated into a more spacious public realm. For Appeal B, for the most part, the footpaths would pass through open space. Notwithstanding the wording of the decision notices, the Council's concern in relation to the residential development is the characteristics of the route of Footpath 19 as it passes below the care home. No concerns were raised at the inquiry about the realignment of Footpath 17 through the development which is understandable given its existing characteristics. The passage through residential avenues and the square would be an improvement on the existing route.

47. Footpath 18 would hug the eastern boundary of the site as it does at present. For some of its route it would be to the rear of the coffee shop and foodstore. Attempts have been made to ensure that the footpath corridor would not be too narrow, despite a few pinch points. The path would rise up so that it would be well above the floor level of the foodstore and small service yard. Some views would be available to the trees and townscape beyond the development, apart from when directly behind the coffee shop and foodstore.
48. However, despite the width of the corridor and height of the footpath, users would have a feeling of being hemmed in when behind the coffee shop and foodstore as fencing and high hedging to the neighbouring residential properties would be retained. The steep drop to the level of the foodstore, the need for safety railings and the proximity of the bulky foodstore building would exacerbate the perception of an uncomfortable over-engineered environment.
49. Natural surveillance would be limited over the stretch behind the foodstore and coffee shop. However, the existing route lacks surveillance at this point. Although the function of the path would change, I do not consider that surveillance and any risk of anti-social behaviour or crime are matters that have a significant bearing on my consideration of the footpaths issue. Surveillance elsewhere within the development would be acceptable.
50. For the southern part of the site between Houndings Lane Farm and the square, Footpath 19 was originally shown following its existing route outside the appeal site, below the hedge line. It was included within the development at the request of the Council to provide a more useable route for future occupiers of the development.
51. Footpath 19 would weave through the open space on the southern edge of the site, then run below the care home before entering the square and being routed parallel to the spine road. Again, the new route would be heavily influenced by urban features but would maintain views towards the west for the first part of its journey due to its relatively elevated position, albeit in places filtered by the existing hedge and trees. By the care home building, the route would be below fencing and stepped or sloping land connected to the care home. However, the grounds of the care home would be landscaped. Details of the fencing to the care home could be secured by condition so that it would be sensitive to the surrounding planting e.g. green mesh fencing. The existing hedge to the west would be retained. In places the footpath would be above a new retaining structure and safety fencing with the hedge below, but this is to ensure shallow gradients as the route negotiates localised changes in levels. The path would run through a green environment provided by existing and proposed landscaping.

52. In terms of the routing of Footpath 19 along the spine road, Circular 1/09⁴ indicates that revisions to routes *'should avoid the use of estate roads wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic'*. Along the spine road the path would need to cross three access points, including the entry and exit to the PFS. The route would be part of a relatively wide avenue and the paths either side of the spine road would be separated from the carriageway by tree-lined beds under planted with shrubs. But despite the attempts to green the route, users would be within an environment dominated by vehicular traffic, parking, engineered structures and commercial buildings. To the north of the PFS users would enjoy views across a landscaped area towards the town centre but there would be the need for safety railings due to the steep drop to the balancing pond below.
53. Circular 1/09 does not preclude the use of estate roads. However, in this case the formation of the large platform surrounded by engineering structures close to the western boundary has resulted in the need for Footpath 19 to be diverted through the development rather than for it to form a green link close to the valley bottom as part of the development's public realm.
54. A further footpath (No 50) joins the site at the northern end, close to where Footpaths 18 and 19 currently meet. Footpaths 50 and 18 would be at a similar level. But the plans do not detail how Footpath 19 would link with the other paths at this point given that the spine road is on an embankment above the level of the adjoining open space. This same issue occurs with both appeals in that with Appeal A, Footpath 19 would be on the embankment at this point, whereas with Appeal B, the path would be on the western side of the embankment. This is the consequence of providing a reasonable gradient on the spine road. The matter would be capable of being resolved by the provision of ramped links, details of which could be reserved by condition.
55. Overall, the proposals would result in a significant change in character for the footpaths. The value of the footpaths as recreational routes would be diminished. The new routes would be heavily influenced by the urban character of the development, particularly where running along the spine road and by the eastern boundary. A significant change in character would occur with a solely residential development. But it is likely that the change would be less drastic.
56. The proposals would allow access through the site for a wide range of users on hard surfaced and lit footways or via the combined pavements/cycleway by the spine road, all with suitable gradients. Parts of the layout would provide attractive settings for the footpaths. However, such improvements could be secured by a residential development or a more sensitive mixed-use development.
57. For the above reasons, although the relocation of most of the footpaths would create a safe and accessible environment for users, parts of the routes for Footpaths 18 and 19 would not be pleasant. The development would comply with Policy JLE1 of the SNP as it provides safe access for pedestrians. However, there would be conflict with Policies SE1 and CO1 of the CELPS, Policy GR16 of the CLP, and Policy PC5 of the SNP as the commercial development has not taken into account the existing footpath network, would

⁴ Rights of Way Circular (1/09) – DEFRA October 2009 (CD A5)

not achieve a high quality public realm that enhances conditions for pedestrians, would not be pleasant to access on foot, and parts of Footpaths 18 and 19 would be degraded. The Action Plan contained within Appendix 3 of the SNP indicates that footpaths should not just be pavements alongside roads. Whilst this part of the SNP does not comprise development plan policy, it is a material consideration.

Retail impact

58. Sandbach is defined as a Key Service Centre in the CELPS. This puts the town in the second tier of town centres in the retail hierarchy of Cheshire East behind the principal towns of Crewe and Macclesfield. Within Key Service Centres there is to be a focus on the improvement of the convenience and comparison retail offer with town centres as the primary location for main town centre uses (Policy EG5 of the CELPS).
59. The extent of the town centre of Sandbach and the Primary Shopping Area (PSA) are defined by the SNP⁵. There are two foodstores within the town centre. Waitrose lies at the southern end of the PSA. Aldi is to the west of PSA in an edge of centre location. They are the largest foodstores in Sandbach and to an extent act as anchor stores for the town centre.
60. The town centre is reasonably healthy taking into account vacancy rates and footfall. Vacancies are well below the national average. The centre benefits from an attractive historic environment, the presence of a popular market and the availability of plenty of free parking, all of which encourage footfall. The COVID 19 pandemic has had some detrimental effects on the centre, resulting in a handful of closures and reduced footfall, but compared to many centres, it is holding up well.
61. The appeal site lies outside the town centre. The proposed retail floorspace would be more than 300m from the PSA and therefore in an out of centre location as defined by the Framework. That said, there are no sites in sequentially preferable locations that are available and suitable to accommodate the proposed development, including the discount foodstore (intended to be occupied by Lidl). Indeed, the site is the closest to the town centre that is available for a significant quantum of main town centre uses.
62. The proposal would not result in a significant adverse impact on any existing, committed or planned investment in Sandbach. The retail impacts of the development that are in dispute relate to town centre vitality and viability.
63. In terms of trade diversion in 2025, the design year, this is assessed as between 2.4% (appellant) and 5.3% (Council) based on diversion of convenience and comparison turnover from the PSA. The difference can mainly be attributed to the extent of diversion from the Waitrose store to the discount food operator. In this respect a higher diversion than that suggested by the appellant is more realistic even though Waitrose and a discount food operator such as Lidl tend to have a different customer profile. This is because of the offer provided by a new Lidl store with wide aisles and some higher end produce, such as freshly baked items. However, even if the trade diversion from Waitrose approached 15%, the overall impact on the PSA would only be around 5%.

⁵ The SNP refers to the PSA as the 'Principal Shopping Area' but, despite the inconsistent terminology, they are one and the same

64. Although the primary focus in terms of retail impact should be the PSA as confirmed by Secretary of State decisions at Southport⁶ and Handforth Dean⁷, it is also important to consider the wider town centre. Convenience shopping has a significant role in the town centre, with the proportion of such floorspace being above the national average. Currently, there are no out of centre foodstores in Sandbach. Impact on the convenience sector would be higher than the levels referred to above. Most of the diversion to the discount foodstore would be from Aldi. However, Aldi is significantly over trading and would continue to trade at or over benchmark figures. As the direct impact of the proposal would not result in the closure of Waitrose or Aldi, there is unlikely to be a significant effect on local consumer choice in the town centre.
65. In relation to indirect impacts, the issue is whether the proposal would result in a significant reduction in linked trips. This was acknowledged by the Inspector in the Southport case at paragraph 319 of her report and accepted by the Secretary of State. Linked trips to the town centre will be undertaken by some of those who shop in Waitrose and Aldi. As the stores would remain, those linked trips will continue. However, if less people shop at Waitrose and Aldi, then less people would undertake these linked trips. But the town centre is an attractive destination in its own right. The presence of Waitrose or Aldi is unlikely to be the primary reason that most people visit the town centre, albeit for many it may be one of the main reasons. This is confirmed by the 'sense check' on-street survey conducted by the appellant. Moreover, for many, as indicated by household survey data, their purpose will be to conduct their 'big shop' at Waitrose or Aldi and not visit the remainder of the town centre at all. This would not change should the appeal scheme be implemented.
66. Some who shop at the new Lidl would also undertake a linked trip to the town centre. The town centre and PSA are visible from the appeal site. My conclusions on connectivity suggest that, whilst not as short or straightforward as the links between the Waitrose and Aldi store entrances and the heart of the town centre, the route between the appeal site and town centre would ensure suitable connectivity and facilitate linked trips. In some ways the route would be comparable to the route between the B & M store entrance and the PSA. B & M lies within the town centre boundary and plays something of an anchor role, albeit to a lesser extent than Waitrose or Aldi. All in all, the proposal would be unlikely to result in a significant reduction in linked trips.
67. The proposal includes other retail and food and drink components as well as the foodstore. However, only the impact of the convenience floorspace (the foodstore and PFS kiosk) and resultant turnover have been considered in the statistical analysis as baseline data for food and drink operators is not available. Some of the other components could potentially compete with town centre outlets. However, the type of offer is distinct from that provided by the town centre, primarily targeted at passing car borne customers rather than town centre visitors. Therefore, the impact would be limited.
68. The above impacts are based on the foodstore being occupied by a discount retailer. Conditions limiting occupation in such a way have been imposed in

⁶ See CD J5

⁷ See ID14

the past⁸. There is no evidence before me to suggest that such a condition would be unlawful.

69. The effects of the pandemic are uncertain. However, on the basis of the predictions available to the inquiry, including those of the Bank of England⁹, the country is likely to be out of recession well before the assessment year of 2025, even with a second spike in infections and no smooth free trade deal with Europe. Convenience stores which have an important role in the town centre are likely to be more resilient. Although online shopping has seen a surge, there also appears to be a trend to shop more locally, away from larger urban areas. Town centres may need to adapt and change but that would be the case with or without the development.
70. There is no quantitative need for a new foodstore. However, the provision of an additional discount foodstore would increase consumer choice in the retail catchment, notwithstanding the similar offer in some respects provided by Lidl and Aldi. This is particularly the case given the overtrading at Aldi. These factors offer support for the foodstore in qualitative terms. Although out of centre, the appeal site offers the closest available location to the town centre for a foodstore of this nature.
71. In conclusion, a diversion of up to 5.3% from the PSA would not lead to a significant adverse trade impact. The indirect effects on linked trips would not be significant. Taking into account local circumstances, the two factors considered together would not result in the retail development proposed being likely to have a significant adverse impact on the vitality and viability of Sandbach Town Centre. As a result, there would not be conflict with Policy EG5 of the CELPS and paragraphs 89 and 90 of the Framework.
72. In referring to out of centre retail not having an adverse impact, Policy HC2 of the SNP sets a different test to that within the Framework and Policy EG5 of the CELPS. Whilst the development would have some adverse impact on the town centre, the weight to be given to Policy HC2 and the conflict with it is limited due to the policy's inconsistency with the Framework.

Accessibility and connectivity

73. The northern tip of the appeal site lies across Old Mill Road (the A533) from the southern edge of the town centre and the free long stay car park on Brookhouse Road. As noted above, there is already some intervisibility between the appeal site and the town centre and PSA. This would increase with the clearance of vegetation to allow the formation of the access into the site. In terms of the main component of the retail development itself, there would be about 500m between the entrance to the Lidl store and the PSA.
74. As a busy through route with a wide carriageway, the A533 provides something of a barrier between the appeal site and the town centre. In addition, there would be gradients to tackle within the appeal site and on Brookhouse Road or Old Mill Road for those walking and cycling between the appeal site and town centre.
75. However, the proposals involve the provision of a toucan crossing on Old Mill Road. Whilst not removing the perceived barrier, the facility would make it

⁸ By reference to ID16

⁹ ID4

easier for those shopping and working on the appeal site to cross the A533. The gradients involved in the journey would not be steep. The proposals for Brookhouse Road, involving resurfacing of the pavement, increased lighting, and speed bumps, would result in some modest improvements for pedestrians. There is some encroachment of vegetation onto the pavement at the moment but, from what I saw on site, a pavement width of about 2m would be achievable for most of the length of Brookhouse Road. Given the location of the site and the improved route, some linked trips would be undertaken.

76. Some elements of the scheme, particularly the PFS and its kiosk, the drive-through restaurant, the drive-through coffee shop and possibly the smaller retail units, would predominantly serve through and passing traffic. All these uses are provided with adjacent parking areas. Therefore, the majority of customers for these uses would arrive and leave by private vehicle. However, this would be the case wherever such uses were located. That said, the proximity of the development to the town centre, the offices within the scheme, and housing on and beyond the site, would allow some customers to walk or cycle to the kiosk, restaurant, coffee shop and small retail units. More so than if the development was further from the centre of the town and not as close to housing and some employment provision.
77. A significant proportion of the Lidl customers would also be car users. This would be typical of a store of this type in a market town like Sandbach and is reflected in the parking provided for the store. But walking and cycling would be reasonable alternatives as would use of the bus services that terminate at, and pass through, the town, including those that stop some 200m from the site, outside Waitrose. The design of the spine road would allow bus access into the site if this was considered appropriate in the future. Moreover, provision of the store in Sandbach would remove the need to undertake a longer car journey to a neighbouring town, such as Middlewich or Crewe to access a Lidl.
78. Whilst footpath connections through the site exist at present, the routes are rural in character and not conducive to everyday use for routine journeys because of the gradients, the presence of stiles and other obstacles, and the uneven and muddy ground over which they pass. Those with mobility issues or parents with children would be unlikely to use the footpaths as they are. Indeed, the existing routes are not usable for those with a wheelchair, mobility scooter, pushchair or indeed bicycle.
79. The development incorporates pedestrian links from the housing estate to the east and through the site, and a cycleway/footway alongside the spine road. These links would be Disability Discrimination Act compliant. As well as providing pedestrian and cycle links for new residents, shoppers and those employed on the site, the proposals would make the journey on foot and by cycle to the town centre shorter and easier for all residents of the existing housing areas to the east of the appeal site. The development would also allow a connection between the cycle route on Houndings Lane and the town centre.
80. The Inspector in the 2014 appeal decision considered that *'the site would have safe and reasonably convenient cycle and pedestrian links with the town centre'*. She was considering a solely residential development and therefore the proposals are not directly comparable. Moreover, there have been changes in development plan and national policy relating to accessibility since 2014.

However, the Inspector's findings, which took into account the provision of a toucan crossing across the barrier of Old Mill Road, reflect the reasonably good accessibility of the site.

81. Taking into account the previous appeal decision, the Council does not dispute the accessibility of the residential proposals on the southern part of the site. As the commercial development would be closer to the town centre, this reinforces the acceptability of the scheme as a whole in relation to the issue of accessibility, notwithstanding that the retail development would be out of centre. Paragraph 87 of the Framework does not exclude out of centre proposals, particularly in such circumstances.
82. I conclude that the commercial development would be on an accessible site which would be reasonably well connected to the town centre. There would be compliance with Policies SD1, SD2, CO1 and CO2 of the CELPS and Policies H5 and JLE1 of the SNP in this regard as the development would be in a sustainable and accessible location where there is a good range of services; would minimise trip generation insofar as it is realistic for a mixed development of this nature; be accessible by a choice of means of travel including public transport, walking and cycling; and provide good town centre linkages. Proper consideration has been given to the needs of pedestrians, cyclists and public transport users in accordance with Policies GR9, GR10 and GR13 of the CLP.

Car parking

83. The detailed proposals for the care home comprising part of Appeal B show accommodation in the form of bedrooms with en-suite facilities, not self-contained units. Therefore, the proposal is for a care home under Use Class C2, not an extra care facility under Class C3. The parking requirement based on the Council's recommended standards for a residential home or nursing home with 74 bedrooms would be 40 spaces. The proposal to provide 33 parking spaces would be below this requirement.
84. However, the site is close to the town centre and surrounding residential areas. Some staff and visitors would be able to walk or cycle to the care home or would arrive by public transport. Town centre car parks, including that on Brookhouse Road, would also be within walking distance. The appellant has undertaken surveys of other comparable care homes in Cheshire East which show peak parking accumulation at an average of 25 spaces, well within the 33 spaces provided. An Inspector considering an appeal in Wilmslow for a care home¹⁰ found that the same surveys justified parking levels below the standards. The appellant has also indicated that the level of parking is consistent with the requirements of the potential end user, a national care home provider.
85. The Council's parking standards are only to be applied where there is clear and compelling justification that it is necessary to manage the road network. It is unlikely that much on-street parking would occur. But if it did, the adjacent spine road, which would have a width of 6.7m, would provide space for two cars to pass a parked vehicle. The spine road would not be a through route. Traffic speeds on the spine road would not be great. Indeed, parked cars would have the effect of reducing speeds. The UU includes an obligation to fund a Traffic Regulation Order (TRO) in the event that the Local Highway

¹⁰ Appeal decision ref: APP/R0660/W/193230381 dated 28 October 2019

Authority (LHA) require such a measure to restrict parking on the highway. The TRO provides further comfort that there would be no implications for highway safety.

86. No separate area is provided for service vehicles such as refuse lorries. That said, a small ambulance bay, which could be used for turning, would be provided close to the main entrance. However, in the event that refuse collection by Council vehicles proves impractical, the UU contains a provision that the appellant would put in place arrangements for collection by a private refuse contractor using smaller vehicles.
87. For the above reasons, the effect of the car parking and servicing arrangements for the care home on highway safety would be acceptable. There would be compliance with Policy CO2 of the CELPS as there is no clear and compelling justification that adherence to the parking standards contained within Appendix C is necessary to manage the road network. There would also be compliance with the criterion within Policy H2 of the SNP relating to off-street parking.

Other matters

Highways

88. The development would be accessed by a new 5th leg off an enlarged roundabout at the A533/A534 junction. These proposals, together with the provision of the 6.7m wide spine road through the site and emergency access onto Houndings Lane, have been accepted by the Council as LHA.
89. The impact of the development on other junctions in and around Sandbach has also been assessed. The Transport Assessment (TA) indicated that these junctions would have sufficient spare capacity to accommodate the development or the development would not have a material impact on their operation in the assessment year of 2024. Likewise, the operation of the overall highway network would not be significantly affected by the development. Indeed, the improvements to the roundabout would increase its capacity, reducing queues and delays.
90. The LHA does not demur from these findings. I have not seen any evidence that would lead me to different conclusions.

Biodiversity

91. The Biodiversity SOCG indicate that mitigation in the form of the creation of on-site and off-site habitats would compensate for the impacts on the wildlife corridor. The off-site mitigation would comprise improvements to the habitat around Arclid Brook to the west of the A534, the extent of mitigation reflecting the scale of development proposed in Appeal B. The mitigation would be secured by the UU which includes an Ecological Mitigation Statement. There would be compliance with Policy SE3 of the CELPS, Policy NR4 of the CLP and Policies PC4 and JLE1 of the SNP in relation to biodiversity.
92. The effects on protected species have been considered. Subject to the imposition of conditions relating to lighting, the provision of a mammal ledge under the culvert and suitable fencing, species, including bats and otters, would not be adversely affected.

Air quality, light pollution and living conditions

93. The development has the potential to negatively impact on air quality. However, a range of measures to encourage use of non-polluting forms of travel are incorporated into the schemes, including footways and cycleways and electric vehicle charging points. Given the location of the development on valley slopes and a ridge, it would be necessary to ensure sensitive lighting. The siting of the development would ensure that the new buildings would not cause significant loss of outlook, privacy or light to adjoining residents.

Planning balance

Appeal A

94. Substantial harm would arise from the layout and design of the commercial development and moderate harm from the way that it deals with the routing of Footpaths 18 and 19. No other significant harm would arise.
95. Set against this harm are the significant economic and social benefits that would arise from the housing and commercial development. Economic benefits would include construction and operational jobs and local spend from those living on the site. Social benefits would arise from the provision of the housing, particularly the care home and affordable housing, the increased consumer choice arising from the foodstore and other retail and food outlets, and the improved links through the site and via the toucan crossing. The evidence demonstrates that there would be a significant need for care home places by the time of its projected opening¹¹. There would also be some modest environmental benefits from the refurbishment of the non-designated heritage assets at Fields Farm and the offsite biodiversity enhancements.
96. However, the weight to be given to the benefits needs to take into account that those that arise from the housing would also be delivered by the fallback permission and Appeal B. Indeed, with the fallback, more market and affordable housing would be provided, albeit not the care home. Like the Crewe appeal¹², the existence of alternative schemes with similar or more housing diminishes the weight to be given to the benefits. Moreover, as there is no objection to the principle of some commercial development on the site, economic and social benefits might be realised by a retail led scheme which achieves a well-designed place.
97. The proposal lies within the settlement boundary of Sandbach, is the only available site for a commercial development of this scale and would comply with Policies CO2, EG5, SD1 and SE3 of the CELPS, Policies GR9, GR10, GR13 and NR4 of the CLP, Policies H5, JLE1, PC3 and PC4 of the SNP and some elements of Policies CO1 and SD2 of the CELPS and Policy H2 of the SNP. However, the proposal conflicts with development plan policies relating to design, landscape and footpaths, notably Policies SE1, SE4, CO1 and SD2 of the CELPS, Policy GR16 of the CLP and Policies H2, PC2 and PC5 of the SNP. In terms of the decisive issues, these are the most important policies.
98. The Framework's exhorts that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Despite compliance

¹¹ HPC Care Needs Assessment March 2020

¹² Appeal decision ref: APP/R0660/W/18/3208977 dated 21 May 2019 – CD L16

with several policies, there would be conflict with the dominant landscape and design policies and the development plan overall. The proposal would also be contrary to Policy HC2 of the SNP but for the reasons given in paragraph 72, I attribute limited weight to this conflict.

99. Material considerations, including the benefits outlined above, do not outweigh the harm and conflict with the development plan or indicate that the determination should be other than in accordance with the development plan. The appeal should fail.

Appeal B

100. No unacceptable harm would result from the Appeal B proposals. Significant economic and social benefits would arise from provision of the care home and the market and affordable housing. There would also be some environmental benefits from the offsite biodiversity enhancements which represent a net gain. There would be compliance with the development plan overall. Planning permission should be granted.

Obligations

101. In view of my findings above, I have only considered whether the obligations contained within the UU for Appeal B meet the legal and policy tests. The obligations contained within the UU relating to the provision of affordable housing, education and health care contributions, open space provision and management and ecological mitigation are not disputed by the appellant. The education and health care contributions would ensure that schools and medical provision would be able to expand to meet the needs of future residents. These obligations are supported by development plan policy as set out in the Community Infrastructure Levy (CIL) Compliance Statement and are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind.
102. Taking into account my findings on the parking and servicing issue, it has been demonstrated that the obligations relating to the TRO and refuse collection are necessary.
103. The Council is seeking a contribution of £200,000 to the costs of the highway improvement scheme (HIS) between The Hill junction and the Old Mill Roundabout. The HIS is contained within the Council's Infrastructure Delivery Plan as a Priority 1 Scheme. Latest figures show costings of about £1.6m¹³.
104. The HIS includes enlarging the Old Mill Roundabout and the provision of a toucan crossing. Both would be delivered by the appeal proposal, comprise a significant proportion of the overall scheme costs, and would be a lot more than the financial contributions towards the scheme made by other nearby developments.
105. The TA has assessed the impacts of the appeal proposal on capacity of The Hill junction based on the HIS going ahead. However, no distinction has been made between the quantum of development in Appeals A and B in asking for a contribution. I note that in the 2014 appeal the contribution was only £120,000 when the whole site was to be developed. Appeal B relates to just over 50% of the site and does not include any commercial development but

¹³ ID13

would still deliver the roundabout improvements and toucan crossing which form part of the HIS. Therefore, it has not been demonstrated that the highway contribution of £200,000 is necessary.

106. The UU contains an obligation requiring the provision of a Local Equipped Area for Play (LEAP) or Neighbourhood Equipped Area for Play (NEAP) within the open space provided in connection with the residential development. The provision of a NEAP is supported by the Congleton Supplementary Planning Guidance Note¹⁴ (SPG) and an Interim Policy Note of September 2008 which updates the SPG. Although these are residual documents from a previous authority, there is no other more recent detailed guidance published. Moreover, the provision of a NEAP would equate to providing a Local Area for Play, a LEAP and making a contribution to a Multi-Use Games Area which is the suite of young people's play provision recommended by the Fields in Trust Standards for a development of 85 dwellings. I was not made aware of any similar provision nearby.
107. I conclude that the obligations contained within the UU for Appeal B are justified in accordance with the CIL Regulations and are reasons for granting planning permission, apart from the highway contribution to which I have afforded no weight. Therefore, with this exception, they should take effect. In particular, a NEAP rather than LEAP shall be provided, and the TRO contribution and Care Home Refuse Collection obligations shall take effect as provided for by Clauses 15.4 and 15.5 of the UU.

Conditions

108. In granting planning permission for Appeal B, I have considered the conditions provided by the main parties and discussed at the inquiry against the advice within the Framework and the Planning Practice Guidance. I have amended some of the conditions for clarity and consistency.
109. I have imposed a condition (no. 2) relating to the approved plans for certainty. Condition nos. 3, 8, 15 and 16 relating to biodiversity and protected species are necessary to minimise impacts on and provide net gains (paragraph 91 and 92 refer). Tree protection and management, ground levels, design details, materials, and hard and soft landscaping need to be secured by condition nos. 4, 5, 12, 14, 22, 23 and 24 in the interests of the character and appearance of the area and the accessibility of the development (paragraphs 29, 30, 51 and 54 refer).
110. Controls on construction, the excavation and movement of materials such as soils, and contamination, are required in the interests of the living conditions of residents and the environment generally (condition nos. 6, 7, 11, 17, 26 and 27). Safeguards relating to drainage and flood risk are needed to prevent flooding and pollution (conditions nos. 9 and 28). Conditions 10, 18, 19, 20, 21 relating to the crossing of Arclid Brook, charging points, the off-site highway works, cycle parking and pedestrian and cycle links are imposed to ensure a safe and accessible development which encourages use of sustainable travel modes.
111. Archaeological investigation is necessary to ensure that any items of interest are recorded (condition 13). Noise mitigation is required to ensure a suitable

¹⁴ Revised SPG Note 1; Provision of Public Open Space in New Residential Developments (October 2003)

living environment for future occupiers which would be secured by condition no 25. Condition no 29 would control the use of the care home, as use of the building for extra care would have different implications for parking.

112. Conditions relating to biodiversity, tree protection and works, construction and material management, drainage, contamination, ground levels, archaeology and some of the design details, need to be discharged pre-construction as they are matters that require investigation or need to be in place before works commence; or are details that will affect the layout. These pre-commencement conditions have been agreed in writing by the appellants.
113. The possibility of a condition being imposed requiring the retention of the Fields Farm buildings was discussed at the inquiry as they are within the control of the appellant. However, whilst desirable, such a condition would not be necessary to make the development acceptable. It is a matter that can be considered when further proposals come forward for the remainder of the site.

Conclusions

114. For the above reasons, Appeal A should be dismissed, and Appeal B should be allowed subject to conditions.

Mark Dakeyne

INSPECTOR

Attached

1. Schedule of conditions for Appeal B
2. Appearances
3. List of plans and documents submitted during the inquiry

1. SCHEDULE – CONDITIONS FOR APPEAL B

Standard time limit

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

Details and drawings subject to the permission

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Application Boundary (Location Plan) – 019-008-RM-P001 Rev B
Planning Layout – 019-008-P013 Rev F
Planning Layout – Inset of Housing Area 019-008-P014
Parameters Masterplan – 019-008-RM-P002 Rev D
Building Zones and Proposed Levels – SCP/190484/D001 Rev A
Proposed Sections Plan View – SCP/190484/D002 Rev A
Proposed Levels and Sections – SCP/190484/D003
Proposed Long Sections – SCP/190484/D004
Proposed Drainage Strategy Plan – SCP/190484/D005 Rev A
Proposed Drainage Strategy Plan – SCP/190484/D006 Rev C
Contribution Areas Plan – SCP/190484/D007 Rev A
Care Home Cross-Section Sheet 1 of 3 SCP/190484/D08 Rev A
Care Home Cross-Section Sheet 2 of 3 SCP/190484/D09 Rev A
Care Home Cross-Section Sheet 3 of 3 SCP/190484/D10 Rev A
Proposed Highway Improvement Scheme SCP/15057/SK01 Rev A
Planting Plan Schedule & Specification – SAN1906 PP01.00 Rev B
Planting Plan Sheet 1 – SAN1906 PP01.01 Rev B
Planting Plan Sheet 2 – SAN1906 PP01.02 Rev B
Planting Plan Sheet 3 – SAN1906 PP01.03 Rev B
Planting Plan Sheet 4 – SAN1906 PP01.04 Rev B
Planting Plan Sheet 5 – SAN1906 PP01.05 Rev B
Planting Plan Sheet 6 – SAN1906 PP01.06 Rev B
Planting Plan Sheet 7 – SAN1906 PP01.07 Rev B
Planting Plan Sheet 8 – SAN1906 PP01.08 Rev B
New Crosses Square – SAN1906 SK01
Extra Care – Ground Floor Plan – 1906_04 E-010 Rev A
Extra Care – First Floor Plan – 1906_04 E-011 Rev A
Extra Care – Elevations – 1906_04 E-020
House Type A – 1906_04 HT-001
House Type C – 1906_04 HT-002
House Type D – 1906_04 HT-003
House Type E – 1906_04 HT-004
House Type F – 1906_04 HT-005
House Type G – 1906_04 HT-006
House Type H – 1906_04 HT-007
House Type J – 1906_04 HT-008
House Type K – 1906_04 HT-009
House Type M – 1906_04 HT-010
House Type N – 1906_04 HT-011
House Type P – 1906_04 HT-012
House Type Peninsular – 1906_04 HT-013

Pre-commencement conditions

- 3) Prior to the commencement of development, detailed proposals for the incorporation of a mammal ledge under the culvert and suitable protective fencing to limit the risk of otters crossing the road shall be submitted to, and approved in writing by, the local planning authority. The development shall only proceed in accordance with the approved details. The mammal ledge and protective fencing shall be provided and available by the time of completion of the culvert works.
- 4) (a) Prior to the commencement of development or other operations being undertaken on site in connection with the development hereby approved, a scheme for the protection of the retained trees produced in accordance with BS5837:2012 (Trees in relation to design, demolition and construction - Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, shall be submitted to, and approved in writing by, the local planning authority. No development or other operations shall take place except in accordance with the approved protection scheme.
(b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening, or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
(c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
(d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.
- 5) Prior to the commencement of development or other operations being undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening, or any operations involving the use of motorised vehicles or construction machinery), a detailed Arboricultural Method Statement shall be submitted to, and approved in writing by, the local planning authority. The Method Statement shall include measures to protect T12 (sycamore) and its Root Protection Area. No development or other operations shall take place except in complete accordance with the approved Method Statement. Such Method Statement shall include full details of the following:
 - a) Implementation, supervision and monitoring of the approved Tree Protection Scheme.
 - b) Implementation, supervision and monitoring of the approved Tree Work Specification.
 - c) Implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected in the approved Tree Protection Scheme.
 - d) Timing and phasing of arboricultural works in relation to the approved development.

- 6) Prior to the development commencing, a Construction Environmental Management Plan (CEMP) for the development hereby permitted shall be submitted to, and approved in writing by, the local planning authority. The CEMP shall include:
- a) The hours of construction work and deliveries;
 - b) The parking of vehicles of site operatives and visitors;
 - c) Loading and unloading of plant and materials;
 - d) Storage of plant and materials used in constructing the development;
 - e) Wheel washing facilities;
 - f) Details of any piling required including method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, and means of ensuring prior notification to the occupiers of potentially affected properties;
 - g) Details of the responsible person (e.g. site manager/office) who could be contacted in the event of complaint;
 - h) Mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - i) Waste Management including no burning of materials on site during demolition/construction; and,
 - j) A scheme to minimise dust emissions arising from construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.
- No development shall take place except in accordance with the approved CEMP.
- 7) Prior to the commencement of development, a Material Management Plan (MMP) shall be submitted to, and approved in writing by, the local planning authority. The MMP shall include the following:
- a) Volume and type of material to be excavated;
 - b) Volume and type of material to be used for infilling;
 - c) Volume proposed to be imported (if any) and number of HGV movements associated with imported materials;
 - d) An up to date topographical survey of existing and proposed levels superimposed on one plan;
 - e) Handling methods (i.e. location, period and height of stockpiling), any seeding if stockpiled for a significant period and other dust suppression methods; and,
 - f) Noise controls for excavation works
- Any material movements shall only be implemented in accordance with the approved MMP.
- 8) Prior to the commencement of development, detailed proposals for the creation of on-site habitats, including wildflower grassland and native species hedgerows, including a timetable for implementation, informed by the proposals detailed in the Ecological Mitigation Statement prepared by Harris Lamb dated 30th April 2020, shall be submitted to, and approved in writing by, the local planning authority. The approved features shall be implemented in accordance with the approved timetable.

- 9) No development shall take place until an overall detailed strategy/design limiting the surface water runoff generated by the proposed development, associated management/maintenance plan and managing overland flow routes for the site, has been submitted to, and approved in writing by, the local planning authority. The drainage design shall also include information about the design storm period and intensity (1 in 30 and 1 in 100 (+40% allowance for Climate Change)) and any temporary storage facilities included. The development shall only be implemented in accordance with the approved detailed strategy/design.
- 10) Prior to the commencement of development detailed plans outlining the design and methodology for construction of the 'Arclid Brook Crossing' shall be submitted to, and approved in writing by, the local planning authority. The development shall only be implemented in accordance with the approved detailed design and methodology.
- 11) No development (other than agreed demolition and site clearance works) shall commence until:
 - (a) An updated Phase I Preliminary Risk Assessment has been submitted to, and approved in writing by, the local planning authority and, if required:
 - (b) A Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by, the local planning authority;
 - (c) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the local planning authority.The remedial scheme shall be carried out in accordance with the approved Remediation Strategy unless otherwise agreed in writing by the local planning authority.
- 12) Prior to the commencement of the development, details of existing ground levels, proposed ground levels and the level of proposed floor slabs shall be submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) No development shall take place within the application site 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 to, and approved in writing by, the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.
- 14) Notwithstanding the details shown on the plans hereby approved, prior to commencement of development, details of the following shall be submitted to, and approved by, the local planning authority:
 - (a) The fencing to the care home boundaries;
 - (b) The tree types in the residential area;
 - (c) The pits for the avenue trees; and,
 - (d) The junction of Footpaths 18, 19 and 50 in the vicinity of the spine road.The proposed works shall be carried out in accordance with the approved plans.

Prior to use/occupation conditions

- 15) Prior to the installation of any lighting, details of the proposed lighting scheme (in accordance with the Bat Conservation Trust/Institute of Lighting Professionals Guidance Note 08/18 (Bats and Artificial Lighting in the UK)) shall be submitted to, and approved in writing by, the local planning authority. The scheme shall include dark areas and avoid light spill upon bat roost features, bat commuting and foraging habitat (boundary hedgerows, trees, watercourses etc.) aiming for a maximum of 1 lux light spill on those features. The scheme shall also include a modelled lux plan, and details of:
 - (a) Proposed lighting regime;
 - (b) Number and location of proposed luminaires;
 - (c) Luminaire light distribution type;
 - (d) Lamp type, lamp wattage and spectral distribution;
 - (e) Mounting height, orientation direction and beam angle; and,
 - (f) Type of control gear.The approved scheme shall be implemented as part of the development.
- 16) Prior to the use of facing or roofing materials, a strategy for the incorporation of features to enhance the biodiversity value of the proposed development shall be submitted to, and approved in writing by, the local planning authority. The submitted strategy shall include proposals for the provision of features for nesting birds including house sparrow and roosting bats (as specified in the Cheshire East Design guide), gaps in garden fences to facilitate the movement of hedgehogs, brash/deadwood piles, a wildlife pond and native species planting. The proposals shall be installed in accordance with approved details prior to the completion of the development and thereafter retained.
- 17) A Verification Report prepared in accordance with the approved Remediation Strategy, where required in connection with condition no 11, shall be submitted to, and approved in writing by, the local planning authority, prior to the occupation of any phase of the development.
- 18) Prior to first occupation of the development, the developer shall provide Electric Vehicle Infrastructure to the following specification including plans demonstrating the location of each unit:

Residential dwellings: A single Mode 3 compliant Electric Vehicle Charging Point per dwelling with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW charging or the best available given the electrical infrastructure.

Care home: Two Mode 3 compliant (minimum) Fast Electric Vehicle Charging Points with cabling provided for a further two units (to enable the easy installation of further units) for use by staff and visitors.

The infrastructure shall thereafter be maintained and operational in perpetuity.
- 19) The development shall not be occupied until the access/roundabout/highway improvements and toucan crossing as shown on plan reference SCP/15057/SK01 Rev A have been constructed in accordance with that plan.
- 20) Prior to the first occupation of the development, details of covered secure cycle parking to serve the development shall be submitted to, and approved

in writing by, the local planning authority. The cycle parking shall be provided, in accordance with the approved details, before each dwelling or the care home to which the cycle parking relates are occupied and shall thereafter be retained.

- 21) Prior to the use of any facing or roofing materials, a scheme to include the provision of improved pedestrian/cycle infrastructure within the site including the provision of pedestrian/cycle links onto Houndings Lane and Laurel Close together with a timetable for implementation shall be submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented in accordance with the approved details and timetable.
- 22) No development involving the use of any facing or roofing materials shall take place until details of such materials have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 23) Notwithstanding the approved plans and prior to the use of any surfacing/hard landscaping or street furniture on the development, details of the surfacing/hard landscaping and street furniture, including any public art features in New Crosses Square, shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.

Implementation Conditions

- 24) The approved landscaping plans referred to in condition 2 shall be completed in accordance with the following:
 - a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of each phase of the development hereby approved, or in accordance with an alternative programme agreed in writing by the local planning authority.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936 (Specification for Nursery Stock). All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428: 1989 (Code of Practice for General Landscape Operations).
 - c) All new tree planting shall be positioned in accordance with the requirements of Table A.1 of BS5837:2012 (Trees in relation to design, demolition and construction - Recommendations).
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
- 25) The noise mitigation measures recommended within the Noise Impact Assessment Reference AC104455-1R7 dated 4 November 2019 shall be implemented in full prior to the occupation of the care home and each residential dwelling. The agreed mitigation measures shall thereafter be retained.

- 26) Any soil or soil forming materials to be brought to site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to importation to site. If soil is so imported, prior to the occupation of the relevant phase, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the local planning authority.
- 27) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the local planning authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made, and appropriate remediation implemented in accordance with a scheme to be submitted to, and approved in writing by, the local planning authority.
- 28) The development hereby permitted shall be carried out in accordance with the recommendations of the approved Flood Risk Assessment and Drainage Strategy (AMO/190484/FRA rev 2 – prepared by SCP) dated July 2019.
- 29) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), the care home shall only be used in accordance with the approved plans and for use solely within Use Class C2 of the Use Classes Order and for no other purpose including for any other purpose within that Use Class, including Extra Care.

2. APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Morgan of Counsel	Instructed by James Thomas, Senior Planning and Highways Solicitor, Cheshire East Council
He called	
Heather Lindley-Clapp MRTPI	Associate Director, Nexus Planning
Neil Jones BSc MSc Dip TE CIHT CMIT	Principal Development Officer, Cheshire East Council
Ian Dale BSc (Hons) MPhil MLI MIC For	Environmental Planning Manager, Cheshire East Council
Dr Darren Price BA (Hons) BArch PHD PGCE	Place Art
Daniel Evans BA (Hons) MCD MRTPI	Principal Planning Officer, Cheshire East Council

FOR THE APPELLANT:

Paul Tucker of Queens Counsel	Instructed by Patrick Downes, Harris Lamb
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Assisted by Philip Robson and
Freddie Humphreys of Counsel

They called

Tim Price BA (Hons) MTCP MRTPI	Director, Savills
Peter Todd BSc (Hons) MSc MCIHT	Technical Director, SCP
Paul Gray BA (Hons) BLA CMLI	PGLA Landscape Architects
Roger Lomas BA (Hons) BLA CMLI	E*SCAPE Urbanists
Patrick Downes BSC (Hons) MRICS	Director, Harris Lamb

INTERESTED PERSONS:

Councillor Sam Corcoran	Cheshire East Councillor
Councillor Mike Benson	Cheshire East Councillor
Matthias Bunte	Cycling UK and South East Cheshire Cycling Action Group

3. LIST OF PLANS AND DOCUMENTS SUBMITTED DURING THE INQUIRY

- ID1 Appellant's opening statement
- ID2 Council's opening statement
- ID3 Statement from Matthias Bunte
- ID4 BBC News Article dated 6 August 2020 submitted by the appellant
- ID5 Savills Shopping Centre and High Street Spotlight Q2 2020 submitted by the appellant
- ID6 Comments on ES addendum from Mr Dale submitted by the Council
- ID7 Comparative Summary Tables – Landscape submitted by the appellant
- ID8 Response to ES questions submitted by the appellant
- ID9 Care Home cross-sections SCP 190484-D08 Rev A, SCP 190484-D09 Rev A and SCP 190484-D10 Rev A submitted by the appellant
- ID10 Note from Mr Gray on Landscape Sensitivity submitted by the appellant
- ID11 Response from Mr Dale on Landscape Sensitivity Note submitted by the Council
- ID12 Amended plans for drive-thru restaurant, PFS kiosk and foodstore 8511s/50D, 8511s/100F and 8511s/251B submitted by the appellant
- ID13 Revised estimate of costs for highway scheme Old Mill Rd/Hill Junction submitted by the Council
- ID14 Joint note on the methodology for assessing retail impact
- ID15 Secretary of State decision and Inspector's report – Land off Audlem Road, Stapeley, Nantwich submitted by the appellant
- ID16 The Groceries Market Investigation (Controlled Land) Order 2010 submitted by the appellant
- ID17 Amended coloured elevations for foodstore 8511s/252B submitted by the appellant
- ID18 Response to revised highway improvement works costings (email of 25 August) submitted by the appellant
- ID19 List of conditions for Appeal A agreed between the appellant and the Council
- ID20 List of conditions for Appeal B agreed between the appellant and the Council
- ID21 Appeal B – revised site location 019-008-RM-P001 Rev B
- ID22 Closing submissions for the Council
- ID23 Closing submissions for the appellant
- ID24 Addendum to closing submissions for the appellant
- ID25 Skelmersdale Ltd Partnership v West Lancashire Borough Council [2016] EWCA Civ 1260 submitted by the appellant

- ID26 Completed Unilateral Undertaking for Appeal A dated 1 September 2020 submitted by the appellant
- ID27 Completed Unilateral Undertaking for Appeal B dated 1 September 2020 submitted by the appellant

Richborough Estates