



Department for Levelling Up,  
Housing & Communities

Mr Grant Anderson  
Hill Dickinson  
50 Fountain Street  
Manchester  
M2 2AS

Our ref: APP/R0660/W/22/3313892  
Your ref: 21/2412C

*Sent by email only:*  
[grant.anderson@hilldickinson.com](mailto:grant.anderson@hilldickinson.com)

29 April 2024

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY MULLER PROPERTY GROUP  
LAND SOUTH OF OLD MILL ROAD SANDBACH  
APPLICATION REF: 21/2412C**

*This decision was made by the Minister of State for Local Government, Simon Hoare MP,  
on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Phillip J G Ware BSc DipTP MRTPI, who held a public local inquiry between 12 and 14 September, and 3 and 4 October 2023, into your client's appeal against the decision of Cheshire East Council to refuse your client's application for reserved matters approval (pursuant to outline planning permission ref 14/1193C) of access, appearance, landscaping, layout and scale related to the erection of 160 dwellings, car parking, public open space and associated works in accordance with application ref: 21/2412C, dated 28 April 2021.
2. On 12 April 2023, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal is allowed and approval is given to the details pursuant to condition No 1 of planning permission Ref (14/1193C) dated 12 October 2017.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

Department for Levelling Up, Housing & Communities  
Emma Hopkins, Decision Officer  
Planning Casework Unit  
3rd Floor Fry Building  
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London SW1P 4DF

Email: [PCC@levellingup.gov.uk](mailto:PCC@levellingup.gov.uk)

## **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the ES update submitted on 2<sup>nd</sup> June 2023 in response to the Regulation 22 notification issued by the Secretary of State under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 requiring further environmental information to be submitted in respect of the appeal. Having taken account of the Inspector's comments at IR3, the Secretary of State is satisfied that the ES combined with the ES Update complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

## **Procedural matters**

6. In December 2023 the revised National Planning Policy Framework (the Framework) was published. The main parties were asked for comments on this and responses from the main parties were taken into account by the Inspector (IR5). The Secretary of State does not consider that publication of the Framework raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. The Secretary of State has not received any further representations from parties since recovering this appeal.

## **Policy and statutory considerations**

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the Cheshire East Local Plan Strategy (CELPS); the Cheshire East Site Allocations and Development Policies Document (SADPD); and the Sandbach Modification Neighbourhood Plan (SNP). The Secretary of State considers that relevant development plan policies include those referred to in IR15.
9. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance (the Guidance), and the Cheshire East Borough Design Guide (2017), which was also agreed to be relevant during the Inquiry.

## *Emerging plan*

10. Cheshire East Council is consulting on an issues paper for a New Local Plan for Cheshire East at the present time, therefore, there is no emerging plan to which weight can be given.

## Main issues

11. The Secretary of State agrees that the main issues are those set out by the Inspector at IR79.

### *Effect of the proposal on the character and appearance of the area.*

12. The Secretary of State agrees with the Inspector's analysis at IR80 that the detailed design of the dwellings and many aspects of the layout are entirely satisfactory and will create an attractive environment.
13. The Secretary of State agrees with the Inspector's view at IR81 that the site is in no way out of the ordinary and is not argued to be a valued landscape in terms of the Framework. He further agrees with the Inspector's conclusion at IR82 and for the reasons given in that paragraph, that there was no evidence presented at the Inquiry to justify the statement that the site is particularly prominent. The Secretary of State notes the planning history of the site, as set out in IR83, and the implications of this as set out in IR84, that whatever the detail of the development, it is clear that the natural lie of the land would be partly changed by engineering works aimed at regrading the land. He agrees with the Inspector's conclusions at IR85 that the landscape impacts resulting in the changes of topography and engineering structures would be limited. He further agrees that although the regrading would be apparent from within the development, the scheme would respect the flow of the landscape to a considerable extent and would not harm landscape character.
14. The Secretary of State notes the issues highlighted regarding the long straight spine road at IR 86 and IR87 and agrees with the Inspector's view at IR88 that there is no evidence to suggest that the layout of the spine road would lead to harmful layout consequences for the remainder of the development.
15. The Secretary of State agrees with the Inspector's view at IR92 that Building for Life (BFL) can be a useful tool to encourage careful assessment and development of schemes and that it is inherently a matter of professional opinion. He also agrees with the Inspector at IR93 that brevity is not necessarily a valid criticism of the appellant's Design and Access Statement.
16. Overall, for the reasons given at IR80-94 the Secretary of State agrees with the Inspector's conclusions at IR95 that the proposed changes to the landscape and topography of the site, the configuration of the main spine road and various matters relating to the landscaping of the development do not individually or cumulatively diminish from the quality of the scheme and would not conflict with CELPS policies SE1, SD1 or SD2, or with SNP policy H2. However, the Secretary of State does not share the Inspector's view that the proposal represents an imaginative piece of design. He affords a moderate positive weight to the accordence of the design of the proposal with local design policies.
17. The Secretary of State notes the quantum of tree and hedgerow planting referred to at IR89. The Secretary of State agrees with the Inspector's conclusion at IR90 that the mix of private and public realm planting would achieve a satisfactory balance and that the appeal scheme provides a satisfactory mix of locations for trees. The Secretary of State gives limited positive weight to the new trees and lengths of hedgerow planting proposed within the appeal scheme.

*The extent to which the proposed open space/Neighbourhood Area of Play (NEAP) would be sufficiently integrated with the development so as to discourage anti-social behaviour.*

18. For reasons set out in IR98 -101, the Secretary of State agrees with the Inspector that the open space and NEAP would be at one edge of the development and that there would be less passive surveillance than might be the case on other more central locations (IR98). He also agrees that direct overlooking would be comparatively limited and the extent of passive surveillance would be relatively limited (IR99). The Secretary of State considers that there is some prospect of additional surveillance from the proposed footpath (IR100). He also however agrees with the Inspector at IR101 that the lack of evidence of antisocial behaviour at other open space in the area does not entirely overcome the concern expressed by the Council and the police at the location of these facilities.
19. The Secretary of State agrees with the Inspector at IR102 that were the open space and the NEAP more centrally located within the development it is likely that there would be greater passive surveillance and a greater propensity to use the areas for the purposes for which they are designed, however, he also agrees with Inspector that this this would result in a significant reduction in the amount of housing to be provided due to the need to have a buffer between the NEAP and the dwellings. The Secretary of State agrees with the Inspector's conclusion at IR103 that the location of the NEAP and open space, whilst not ideal, does not detract significantly from the proposal and does not conflict with CELPS policies SE6, SE1, SD1 and SD2, or SNP Policy H2. Taking the above into account the Secretary of State applies a neutral weight to the position of the NEAP and open space.

*The effect of the proposal on the users of footpath 17*

20. For the reasons given at IR104 and 105, the Secretary of State agrees with the Inspector that the footpath connections through the site are essentially rural footpaths with the consequence that they are not conducive to everyday use for routine journeys nor are they suitable for those with mobility issues. He further agrees that development of the site will inevitably change the experience for those walking the footpaths and that this change would apply not only to footpath 17 but to the other footpaths affected by the proposal.
21. The Secretary of State notes that it was clarified at the Inquiry that footpath 17 continues to perform a useful function (IR106) and that diversion of the footpath in part alongside the proposed spine road would not result in its extinguishment (IR107).
22. For the reasons given at IR108 and 109, the Secretary of State agrees with the Inspector that proposed footpath 17 would be well lit, surfaced and usable by all sections of the community and that this benefit would apply to the entirety of the footpath and not just the section alongside the spine road. He further agrees that the proposal would improve the experience of those using the footpath but acknowledges, like the Inspector, that this improved experience would be balanced against no longer moving through rural surroundings. The Secretary of State therefore affords this benefit limited weight.
23. The Secretary of State agrees with the Inspector's conclusion that the proposal would comply with CELPS policy SE1 and SNP policy PC5.

*Whether the mix of housing is appropriate having regard to local housing need and the need to create mixed and balanced communities*

24. The Secretary of State agrees with the Inspector at IR110 that the development plan policies state that new development should provide a mix of housing sizes to support the creation of mixed, balanced and inclusive communities, which reflect national policy. The Secretary of State notes at IR111-112 that Table 8.1 of Policy HOU 1 of the CELPS provides an indicative housing mix, which provides that 28% of market housing should be 1 or 2 bed homes, whereas the appeal scheme is exclusively for three and four bedroom houses. He further notes at IR113 that, as accepted by the Council, the figures in the Table are only indicative, and it shows a need for larger house types as part of the mix.
25. For the reasons given at IR111-116, the Secretary of State agrees with the Inspector's conclusions that it would not be reasonable for to expect every development to provide a mix directly in line with the indicative table (IR114), and further agrees that that the proposed open market mix complies with CELPS Policy SC4, SNP Policy H3 and SADPD Policy HOU1 and would provide an appropriate mix of housing types for the local community in line with national policy (IR116). He agrees with the Inspector's conclusion at IR123 that the proposed housing mix would meet an element identified in the Council's illustrative table, albeit not meeting the indicative mix. The Secretary of State affords neutral weight to the proposed housing mix.

### **Planning conditions**

26. The Secretary of State has had regard to the Inspector's analysis at IR120 -121, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex A should form part of his decision.

### **Planning balance and overall conclusion**

27. For the reasons given above, the Secretary of State considers that the appeal scheme complies or does not conflict with CELPS policies SE1, SE6, SD1 SD2, SC4, SADPD policy HOU1 and SNP policies H2, H3 and PC5 of the development plan, and he concludes that the appeal scheme is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
28. Weighing in favour of the proposal is the consistency of the design with local design policies which carries moderate weight, the provision of new trees and lengths of hedgerow planting which carries limited weight and the benefits for the users of Footpath 17 which carries limited weight.
29. The Secretary of State has given neutral weight to the location of the public open space and NEAP and the proposed housing mix.
30. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.
31. The Secretary of State therefore concludes that the appeal should be allowed.

## **Formal decision**

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants reserved matters approval subject to the conditions set out in Annex A of this decision letter for reserved matters approval of access, appearance, landscaping, layout and scale related to the erection of 160 dwellings, car parking, public open space and associated works pursuant to outline planning permission ref 14/1193C in accordance with application ref: 21/2412C, dated 28 April 2021.
33. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.

## **Right to challenge the decision**

34. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990. A copy of this letter has been sent to Cheshire East District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Emma Hopkins*

Emma Hopkins  
Decision officer

*This decision was made by Minister for Local Government, Simon Hoare MP, on behalf of the Secretary of State, and signed on his behalf*

## Annex A List of conditions

1. The development hereby approved shall be carried out in accordance with the following plans:

23219 D008 Rev BB Site Layout  
23219 D009 Rev H Affordable Housing Scheme  
23219 D010 Rev H Phasing Plan  
23219 D011 Rev U Proposed Colour Site Plan  
D012 rev F Character Areas  
23219 D013 Rev H Boundary Treatment Plan  
23219 D016 Rev E Hedgerow Plan  
23219 D017 Rev D PROW existing and Proposed  
MUL2103 LMP01 Rev A Landscape Management Plan  
MUL2103 PP01.00 Rev G Planting Plan and Schedule  
MUL2103 PP01.01 Rev G Planting Plans Sheet 1  
MUL2103 PP01.02 Rev G Planting Plans Sheet 2  
MUL2103 PP01.03 Rev G Planting Plans Sheet 3  
MUL2103 PP01.04 Rev G Planting Plans Sheet 4  
MUL2103 PP01.05 Rev G Planting Plans Sheet 5  
MUL2103 PP01.06 Rev G Planting Plans Sheet 6  
MUL2103 PP01.07 Rev G Planting Plans Sheet 7  
MUL2103 PP01.08 Rev G Planting Plans Sheet 8  
MUL2103 PP01.09 Rev G Planting Plans Sheet 9  
MUL2103 PP01.10 Rev G Planting Plans Sheet 10  
MUL2103 PP01.11 Rev G Planting Plans Sheet 11  
SCP/13111/F07 rev B Location Plan  
SCP – 18217 – 0000 – 001 – Rev C – Levels Plan Sheet 1  
SCP – 18217 – 0000 – 002 – Rev C – Levels Plan Sheet 2  
SCP – 18217 – 0000 – 001 – Rev D – Cross Section Location Plan Sheet 1  
SCP – 18217 – 0000 – 002 – Rev D – Cross Section Location Plan Sheet 2  
SCP – 18217 – SK02 – Rev D Cross Sections A – A to C – C  
SCP – 18217 – SK03 – Rev C Cross Sections D – D to F – F  
SCP – 18217 – SK08 – Rev A Cross Sections G – G to J – J  
SCP – 18217 – SK09 – Rev B Cross Sections K – K to L – L  
SCP – 18217 – SK10 – Rev B Cross Sections N – N to M – M  
SCP – 18217 – SK11 – Rev A Cross Sections O – O to P – P  
23219 L100 House Type A1 and A2 Floor Plans Rev A  
23219 L101 House Type A1 and A2 Elevations Rev A  
23219 L102 House Type B  
23219 L103 House Type C  
23219 L104 House Type D  
23219 L105 House Type E  
23219 L106 House Type F  
23219 L107 House Type H  
23219 L108 House Type J

23219 L109 House Type K  
23219 L110 House Type K + Floor Plans  
23219 L111 House Type K + Elevations  
23219 L112 House Type M Floor Plans  
23219 L113 House Type M Elevations  
23219 L114 House Type P  
23219 L115 House Type S Floor Plans  
23219 L116 House Type S Elevations  
23219 L117 House Type T  
23219 L118 Garage Plans and Elevations  
23219 L119 House Type H Alternative Elevations  
23219 L120 House Type P Alternative Elevations  
23219 L121 House Type T Alternative Elevations  
23219 L123 House Type F+  
23219 L124 House Type J+  
23219 L125 Rev A Type M plus Floor Plans  
23219 L126 Rev A Type M plus Elevations

Reason: For the avoidance of doubt.

2. Prior to the commencement of development, a plan to show the design, layout, and equipment to be used within the Neighbourhood Equipped Area for Play (NEAP) shall be submitted to the Local Planning Authority for approval in writing. The scheme shall include:
- Four fixed items of equipment (including one multi-unit) which are suitable for use by children of early school age (2-14 years old)
  - Four fixed items of play equipment for use by older children
  - All equipment shall be designed and laid out to meet relevant safety standards (Fields in Trust)
  - Details of safety surfacing, fencing and seating

The approved details shall be implemented prior to the first occupation of 50% of the dwellings within the development hereby approved.

Reason: To ensure that adequate and suitable play space is provided.

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.

Reason: In the interests of protected species.



4. 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.

Reason: To ensure a satisfactory river crossing.

5. Notwithstanding the approved plans and prior to the first use of any facing or roofing materials a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed before the relevant dwelling is first occupied. The boundary treatment shall be carried out in accordance with the approved details and permanently retained unless otherwise first approved in writing by the Local Planning Authority

Reason: To ensure adequate and appropriate treatment of boundaries.

6. Prior to the installation of any lighting details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The lighting scheme should reflect the Bat Conservation Trust Guidance Note 08/18 (Bats and Artificial Lighting in the UK) and should consider both illuminance (lux) and luminance (candelas/m<sup>2</sup>). It should 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 1lux light spill on those features. The scheme should also include a modelled lux plan, and details of:

- Proposed lighting regime
- Number and location of proposed luminaires
- Luminaire light distribution type
- Lamp type, lamp wattage and spectral distribution
- Mounting height, orientation direction and beam angle
- Type of control gear

Reason: To safeguard biodiversity.

7. Prior to the use of any facing or roofing materials, a scheme to include 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.

Reason: To encourage the use of non-car transport to the site.

8. The development shall not be occupied until the access/roundabout/highway improvements and toucan crossing as shown on plan reference 190480/00000/001 Rev A have been constructed in accordance with that plan.

Reason: To ensure that a safe and suitable access is provided.

9. No development involving the use of any facing or roofing materials shall take place until samples of the materials to be used in the construction of external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of the appearance of the development.

10. Notwithstanding the approved plans and prior to the first occupation of the development a plan indicating the proposed surfacing hard materials to be installed on the development shall be submitted to and approved in writing by the Local Planning Authority. The surfacing materials shall be carried out in accordance with the approved details and permanently retained unless otherwise first approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the development.

11. The approved landscaping scheme as shown on the following plans:

MUL2103 LMP01 Rev A Landscape Management Plan  
MUL2103 PP01.00 Rev G Planting Plan and Schedule  
MUL2103 PP01.01 Rev G Planting Plans Sheet 1  
MUL2103 PP01.02 Rev G Planting Plans Sheet 2  
MUL2103 PP01.03 Rev G Planting Plans Sheet 3  
MUL2103 PP01.04 Rev G Planting Plans Sheet 4  
MUL2103 PP01.05 Rev G Planting Plans Sheet 5  
MUL2103 PP01.06 Rev G Planting Plans Sheet 6  
MUL2103 PP01.07 Rev G Planting Plans Sheet 7  
MUL2103 PP01.08 Rev G Planting Plans Sheet 8  
MUL2103 PP01.09 Rev G Planting Plans Sheet 9  
MUL2103 PP01.10 Rev G Planting Plans Sheet 10  
MUL2103 PP01.11 Rev G Planting Plans Sheet 11

shall be completed in accordance with the following:

- All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority
- 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 (excluding hard surfaces)
- All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations
- 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

Reason: To ensure appropriate landscaping of the development.

12. 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:

- Volume and type of material to be excavated
- Volume and type of material to be used for infilling
- Volume proposed to be imported (if any) and number of HGV movements associated with imported materials
- An up to date topographical survey of existing and proposed levels superimposed on one plan
- Handling methods (i.e. location, period and height of stockpiling), any seeding if stockpiled for a significant period and other dust suppression methods
- Noise controls for excavation works. Any material movements shall only be implemented in accordance with the approved MMP

Reason: In the interests of the impact upon the highway, residential amenity, the treatment of soils and the impact upon the landscape.



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# Report to the Secretary of State for Levelling Up, Housing and Communities

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Date 29 January 2024

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**TOWN AND COUNTRY PLANNING ACT 1990**

**CHESHIRE EAST COUNCIL**

**APPEAL BY MULLER PROPERTY GROUP**

Inquiry held on 12 – 14 September and 3 – 4 October 2023

Land south of Old Mill Road, Sandbach

File Ref: APP/R0660/W/22/3313892

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**ABBREVIATIONS**

BfL	Building for Life
CEDG	Cheshire East Design Guide
CELPS	Cheshire East Local Plan Strategy (2017)
DAS	Design and Access Statement
ES	The original Environmental Statement
ES Update	The Environmental Statement ES Update (June 2023)
GPDO	Article 3 of the General Planning Development Order 2015
NEAP	Neighbourhood Equipped Area of Play
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
PROW	Public Right of Way
SADPD	Cheshire East Site Allocations and Development Policies Document (2022)
SNP	Sandbach Modification Neighbourhood Plan (2022)
SOCG	Statement of Common Ground
The Outline Permission	The 2017 outline permission to which these reserved matters relate

**File Ref: APP/R0660/W/22/3313892**  
**Land south of Old Mill Road, Sandbach**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to approve details required by a condition of a planning permission.
- The appeal is made by Muller Property Group against the decision of Cheshire East Council.
- The application Ref 21/2412C, dated 28 April 2021, sought approval of details pursuant to condition no.1 of a planning permission Ref 14/1193C, granted on 12 October 2017.
- The application was refused by notice dated 8 August 2022.
- The details of the approved development show the erection of 160 dwellings together with car parking, public open space and associated works.
- The details for which approval is sought are: access, appearance, landscaping, layout and scale.

**Summary of Recommendation:** That the appeal is allowed and approval is given to the details pursuant to condition No 1 of planning permission Ref (14/1193C) dated 12 October 2017.

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### Procedural matters

1. A virtual Case Management Conference (CMC) was held and a note was produced on 6 March 2023. This dealt only with procedural matters.
2. The appeal was recovered for decision by the Secretary of State on 12 April 2023. The reason for recovery was that the appeal involves a proposal for residential development of over 150 units or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply, and create high quality, sustainable, mixed and inclusive communities.
3. An Environmental Statement (ES) pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 was submitted in respect of the 2017 Outline Permission. On 9 March 2023 the Secretary of State issued a Regulation 22 notification requiring further environmental information to be submitted in respect of the current appeal. The further information was submitted by way of an update to the ES (ES Update) on 2 June 2023.<sup>1</sup> It was confirmed before the inquiry that the ES Update can be regarded as satisfactory in terms of Schedule 4 of the EIA Regulations.
4. The Inquiry sat for five days, commencing on 12 September 2023. An unaccompanied visit was undertaken to the site and the surrounding area on 5 October 2023, based on an agreed route.
5. In December 2023 the revised National Planning Policy Framework was published. The main parties were asked for any comments on this, and responses from both have been taken into account.<sup>2</sup>

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<sup>1</sup> CD 12

<sup>2</sup> Docs 11 and 12

## **The site and the surrounding area**

6. The appeal site comprises 7.21ha of sloping open agricultural land. It is situated to the east of the A534 and to the west of residential areas in Palmer Road, Condliffe Close and Laurel Close. The site slopes down towards the A534 and towards the south. In various locations, the slopes are considerable.<sup>3</sup>
7. The site includes an existing farm (Fields Farm) with Hounding's Lane Farm situated further south outside the site boundary.
8. There are a number of Public Rights of Way (PROW) which intersect the site.

## **Relevant planning history**

9. In December 2014, planning permission was granted on appeal for up to 200 residential dwellings, open space and a new access.<sup>4</sup>
10. In October 2017 planning permission was granted for up to 200 residential dwellings, open space with all matters reserved. (The Outline Permission). The current appeal relates to the approval of details pursuant to this outline permission.<sup>5</sup> (Should these reserved matters not be approved, this permission lapses.)
11. In October 2020 planning permission was granted on appeal for the erection of a care home, 85 new dwellings and the creation of associated access roads, public open space and landscaping on part of the site. Also in October 2020 planning permission was refused on appeal for a hybrid proposal for a discount food store, petrol filling station, drive-through restaurant and coffee shop, offices, retail 'pods', a care home, up to 85 new dwellings and related development.<sup>6</sup>

## **The proposal**

12. The appeal seeks approval of reserved matters of access, appearance, landscaping, layout and scale related to the erection of 160 dwellings, car parking, public open space and associated works pursuant to the 2017 Outline Permission. 30% of the dwellings would be affordable.
13. During the course of the application and the appeal various amendments were made to the proposal. These did not alter the fundamental scheme and are summarised in the Statement of Common Ground (SOCG).<sup>7</sup> The broad layout of the proposal is shown on the following plan.

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<sup>3</sup> Site plan CD 1.17

<sup>4</sup> CD 9.1

<sup>5</sup> CD 4.1

<sup>6</sup> CD 9.2

<sup>7</sup> CD 10.4 para 4.4



(Taken from DAS for illustrative purposes only – not final scheme)

14. Footpath 19, which runs across the site, would be diverted as shown below.





### Planning policy context

15. The development plan comprises the Cheshire East Local Plan Strategy (CELPS)<sup>8</sup>; the Cheshire East Site Allocations and Development Policies Document (SADPD)<sup>9</sup>; and the Sandbach Modification Neighbourhood Plan (SNP)<sup>10</sup>. The SOCG includes a list of development plan policies agreed by the parties to be relevant.<sup>11</sup>
16. The Cheshire East Borough Design Guide (2017) is also agreed to be relevant.<sup>12</sup>
17. In terms of national planning policy and guidance, the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) are material considerations.

<sup>8</sup> CD 5.1

<sup>9</sup> CD 5.2

<sup>10</sup> CD 5.3

<sup>11</sup> CD 10.4 Para 5.3

<sup>12</sup> CD 6.4

## Agreed and disagreed matters between the appellant and the Council

18. A Statement of Common Ground (SOCG) has been concluded between the appellant and the Council. This, and other sources, helpfully agree areas of agreement and disagreement.
19. The following main matters are agreed between the Council and the appellant (other matters are also set out in the SOCG):
- The policies contained within the CELPS, SADPD and SNP are consistent with the Framework and are up-to-date.
  - The site is in a sustainable location in relation to CELPS policies PG2 and SD1 and related to the fact that the site is within the settlement boundary as defined in the SNP.
  - The site has the benefit of an outline planning permission for residential development (the Outline Permission).
  - There are no residential amenity concerns as between proposed dwellings, nor between the proposed and existing dwellings on the adjoining land.
  - There are no objections to the proposed access, and it is capable of serving the proposed scale of the development.
  - As part of the proposal the existing roundabout at the site access is to be enlarged and a fifth arm added to serve the proposed development. These works have been previously approved as part of the earlier permissions, and are accepted by the Council as being necessary.
  - The Environment Agency and United Utilities have been consulted as part of this proposal and have raised no objection subject to the imposition of the planning conditions included in the Outline Permission<sup>13</sup>.
  - There was a dispute at the Inquiry as to whether the spine road through the development had been 'fixed' by previous approvals. This was resolved by an agreed note between the parties which provided that the specific alignment and location of the spine road (and the reservation of the southern part of the site for a care home) was not legally fixed. The issue is whether it is reasonable, as a matter of planning judgement, to treat these aspects as being defined parameters within which the current appeal should be determined. The note also confirms that the demolition of Fields Farm is granted by Article 3 of the General Planning Development Order (GPDO) 2015.<sup>14</sup>
  - Two matters were agreed during the inquiry in relation to Public Rights of Way (PROW), due to disputes between the main parties. Firstly it was agreed that the diversion of a footpath along the new estate road – adopted or unadopted - would not result in the automatic extinguishment of the PROW. Secondly it was agreed that the section of footpath 19 within the Houndings

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<sup>13</sup> There is no need to reimpose these conditions

<sup>14</sup> CD 17.2

Lane farmyard has been obstructed by a building for more than 15 years, and an alternative route has been permitted informally by the owners.<sup>15</sup>

20. The parties agree that the main areas of dispute can be usefully summarised as follows:

- The effect on the character and appearance of the area, having regard to the design and layout of the proposal, topography and landscaping.
- The extent to which the proposed open space/Neighbourhood Area of Play (NEAP) would be sufficiently integrated with the development so as to discourage anti-social behaviour.
- The effect of the proposal on the users of footpath 19.
- Whether the mix of housing is appropriate having regard to local housing need and the need to create mixed and balanced communities.

### **The case for the appellant**

21. This section is based substantially on the closing submissions, together with the evidence at the Inquiry.<sup>16</sup>

#### Background and layout/design matters

22. The site is not a greenfield site without planning history. It is within the settlement boundary and has the principle of development established since 2014, and again by the Outline Permission in 2017, which included consideration of topography and access issues. In 2020 permission was granted for a care home and housing on the southern part of the appeal site, and various matters were again considered in 2020.
23. One element of a reason for refusal describes the appeal site as a 'prominent site in Sandbach'. This description is wholly unjustified and, in any case, even if correct it would not necessitate a higher design solution. Were it to be a correct description – and this was weakly supported by the Council's evidence - it is unlikely that the various permissions would have been granted.
24. The site is also not a blank canvas in terms of the constraints imposed by its topography. Implementation of a redevelopment permission would inevitably change the character of the area, including the experience of those using the footpaths close to or on the site. It has also been clear throughout that the development of the site will inevitably include an engineering solution – with consequent effects on landscape character. A balance needs to be struck between the effects on topography and the need for a feasible engineering solution. To an extent this is accepted by the Council.
25. At the appeal stage the Council criticised the Design and Access Statement (DAS), as being insufficient. The form and content of a DAS is not prescribed or advised in statute, policy or guidance, and there is no requirement to show that alternative approaches have been considered. In any event the appellant has

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<sup>15</sup> CD 17.3

<sup>16</sup> Doc 10

clearly shown the detail that has been considered in relation to the appeal scheme.

26. There was a difference between the parties as to whether the spine road was fixed by the 2017 Permission. Although this matter is now resolved, and it is agreed that there is no legal requirement to locate the spine road as illustrated in the 2017 planning permission, it is difficult to envisage a materially different solution. This is a non-issue.
27. Overall the Council places great reliance on the illustrative layout which accompanied the 2017 Permission. This is an unrealistic approach as it was only an illustration of how a scheme might come forward and was prepared without any engineering input. The current scheme has been informed by expert engineering advice and it has been clearly demonstrated that the previous illustrative layout would be significantly more challenging and would result in a greater change to the landform. In any event it has been clearly demonstrated that large areas of retaining structures would be necessary to facilitate the illustrative scheme – these are replaced by earth embankments in the current proposal to reduce visual impact. All the reinforced earth retaining walls necessary in the illustrative proposal are omitted and 76% of the development would be at or near existing site levels in the current scheme (with the exception of the western plots where the gradients are particularly challenging).
28. The Council refers to the proposed landscaping as 'minimal'. In fact the scheme includes over 400 new trees including 106 semi mature trees along the spine road. Although around 150 metres of existing hedgerow would be removed this would be replaced by over a kilometre of mixed native hedgerows within public areas, together with further planting in front of individual plots.
29. The Council also criticises that fact that some of the proposed trees would be located in front gardens. There is no suggestion that these would not be of public benefit and the criticism focusses on the allegation that they could be removed. In fact experience shows that trees in front gardens, where an occupier has chosen to purchase/rent a property with this feature, may be better maintained than those in public areas. One further specific point raised by the Council was that it would be unwise to rely on existing vegetation outside the site alongside the A534. This concern is entirely speculative as there is no indication that this tree belt is under any threat.
30. The use of the Building for Life (BfL) assessment was debated at the inquiry. Although this is a useful tool it is only one approach to a proper consideration of the analysis of a scheme. Although such an assessment is required by policy, there are no set numbers which lead to a conclusion that a design is unacceptable. The assessment is an exercise to provoke discussion within a design team – as has happened – and not a tick box exercise. It cannot supplant an overall planning judgement and is inevitably a subjective matter. In the appellant's opinion the assessment leads to 9 "greens" and 3 "ambers" - an excellent score for such a challenging site.
31. The development plan and the revised NPPF seek a high standard of design, and national policy now includes the word 'beautiful'. The importance of good design has been firmly in the appellant's mind throughout, and the quality of the proposal reflects this. The main criticism by the Council relates to the spine road

– which would be an attractive avenue fronted by houses, and which would form part of a legible street pattern.

#### Open space and the NEAP

32. The quantum of open space is not the subject of complaint by the Council, and the alleged harm relates particularly to the location of the NEAP and surrounding open area. This concern is based on the assumed propensity, because of the location, for there to be antisocial behaviour.
33. However the Council has put forward no evidence of antisocial behaviour at other open spaces in the area. The proposed location has a considerable benefit in that substantial engineering works are not required – to the benefit of the scheme overall.
34. The location of the NEAP slightly below the neighbouring dwellings, and close to the Public Right of Way (PROW), will provide passive surveillance. In particular there would be overlooking from plots 134, 136, 137 and 138 from both ground and 1st floor levels and from the PROW itself.
35. In any event, given the topography of the site, if the NEAP were located more centrally, the need for segregation from residential properties would reduce the amount of land available for much needed housing.

#### The effect on footpath 19

36. The Council's concern relates only to footpath 19.<sup>17</sup> The effect on the various footpaths on or close to the site was a matter dealt with in previous decisions - in that the Outline Permission clearly envisaged substantial change to the landscape and to the experience of those using the footpaths on or close to the site.
37. Particularly in terms of surfacing and accessibility, using footpath 19 is not a particularly pleasant experience. The diverted footpath would allow access by a range of users, in a well-lit and well surfaced area, at a suitable gradient.
38. The initial concern of the Council stemmed from the position that diversion of the footpath partly along the spine road would lead to its extinguishment – and this clearly influenced the Council's position at the start of the inquiry. However, as agreed during the inquiry, this suggested extinguishment is not automatic, and there is no reason why a PROW should not run in part along the pavement.
39. There was also an issue which the Council raised at the inquiry related to whether footpath 19 was a dead end. However this matter was resolved with information about a permissive path at Houndings Farm, and it is clear that the footpath is and would continue to be of some use.

#### Housing mix

40. The proposed market housing mix was not a criticism raised in the officers' report. It comprises 53% three-bedroom dwellings and 47% four-bedroom dwellings with a wide variety in house types.

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<sup>17</sup> Other parties expressed generalised issues related to the other footpaths

41. The policy position, set out principally in SADPD policy HOU 1, is entirely accepted as the start point, but it allows for greater flexibility than the Council's case implies. In any event census data shows that Sandbach households are generally smaller than the national picture, but occupy larger houses. There is a weak link between household size and dwelling size.
42. In addition the Council's evidence predates the pandemic and does not allow for trends towards increased working from home. The policy applies across the whole of the authority area, and is a very blunt tool to be applied to individual sites.

#### Other matters

43. At a very late stage in the appeal process, the Council raised an issue related to the Nationally Described Space Standards (NDSS). This had not been referenced in the reasons for refusal or the Statement of Case, and only briefly in written evidence. At the inquiry, after some discussion and additional evidence, the Council specifically stated that this matter was not a further reason for refusal and that the authority adopted a neutral stance.
44. Furthermore the Council has never suggested that the internal arrangement of any house type would be inadequate. The difference between the parties only relates to the description of the units rather than their functionality. It is not an issue for this appeal.
45. Finally it is noted that there were references in evidence and third party representations to housing land supply. It should be noted that the principle of housing development on this site is established and this matter is not relevant to the current appeal.

#### **The case for the Council**

46. This section is based substantially on the closing submissions, together with the evidence at the Inquiry.<sup>18</sup>

#### Background and layout/design matters

47. The clear start point for the appellant was that the alignment of the spine road was in some way fixed by the illustrative plans previously submitted. Their approach to the design and layout of the reserved matters was based on that erroneous position.
48. The spine road as previously indicated, and slavishly transposed into the current proposal, showed a straight and unimaginative road running through much of the site. This may have been necessary if the development were (as before in one proposal) a large floorplate commercial development, but it is entirely inappropriate for a housing development and leads to various negative consequences for the scheme.
49. It is agreed that the topography of the site is difficult, but the indicative plans accompanying the 2017 Outline Permission adopted a more considered approach

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<sup>18</sup> Doc 9

to the layout. In particular the extent of the currently proposed regrading results in a very significant slope in places.

50. The scheme has been insufficiently thought through, with consequent harmful effects on the character and appearance of the area. This lack of careful consideration is illustrated by the number of amendments which have had to be made to the scheme, after the Council highlighted discrepancies and problems. The DAS ran to only 10 pages, failed to show the evolution of the development or show how any different designs or layouts were considered. Nor is there any evidence to explain why the previous indicative scheme was discounted. Given the difficulty of the site, this is an important omission, and the appellant accepted that no alternatives were in the written evidence before the inquiry.
51. The appellant's overall position seemed to be that the current proposal is better than the layout previously considered. But, even were this to be accepted, this is not an argument to justify allowing the current appeal.
52. The development plan, at CELPS policy SE 1 requires that proposals achieve Building for Life (BFL) 12 or as updated. Whilst it is accepted that this policy does not mandate a specific requirement for a certain number of "greens" it is a most useful tool. The Council's assessment concludes that there are 4 "greens", 7 "amber" and 1 "red". It is noteworthy that the red mark relates to the way in which the proposal works with the site and its context – a fundamental concern. This is because although it is evident that any development on the site is going to involve some regrading the extent currently proposed is excessive and would harm the character and appearance of the site.
53. Again referring to the inadequacies of the appellant's plans, it is noteworthy that the landscaping close to the main road is inadequate, particularly given the presence of a pipeline easement. It is unreasonable to rely on existing landscaping and screening of the appeal site, when the retention of these features cannot be guaranteed.
54. Of particular concern is the number of trees (around 80), intended to be a public amenity feature, but which would be located in private gardens. There are about 80 of these, and they would be much more susceptible to removal than those set in the public realm. The Cheshire East Design Guide (CEDG) suggests that primary and secondary avenues will have trees in the public realm, whereas planting on streets/lanes trees will frequently/normally be planted in front gardens instead. If more trees were located in the public realm they could be better protected and maintained.<sup>19</sup>
55. Overall, the appeal scheme would not achieve the creation of a high quality and beautiful place and would conflict with the development plan and very recently revised national policy.

#### Open space and the NEAP

56. The proposed open space and NEAP would be in a sunken part of the site, bordered by hedges and trees with the main road beyond. There would be a steep bank towards the rear of the nearest houses above. Because of the

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<sup>19</sup> CD 6.5

location and gradients it would be poorly overlooked and benefit from limited passive surveillance.

57. Even the limited overlooking which might occur from the adjoining houses would be from bedrooms, which tend not to be used during the day. The argument that the footpath itself would contribute to passive surveillance is entirely circular as people would be potentially deterred from using the footpath itself because of fear of antisocial behaviour. The comments of the Cheshire Police Designing Out Crime Officer are telling in this regard.<sup>20</sup>
58. One unusual line of questioning by the appellant related to the distinction between antisocial behaviour and criminal activity. In some specific respects there may well be a difference but in planning terms the reduction of either is a legitimate objective.
59. An additional point is that as neither the open space nor the NEAP is centrally located within the development – in fact located towards the edge – neither feature would be readily accessible or attractive to potential users. As with other aspects of the current scheme, there are inherent problems which were not in the previous indicative layout and the appellant did not put any evidence to the inquiry to explain the change.

#### The effect on footpath 19

60. The Council's concern is solely related to the effect on footpath 19. As an initial point it is accepted that there is an informal permissive path at Houndings Farm, which means that the footpath is not a dead end. In fact it is a useful part of the local footpath network.
61. It is inevitable that some rerouting of the footpath would be necessitated as a result of the development. However the proposed alignment of footpath 19 in part along the spine road would be a radical and harmful change to the footpath which would deter users. In addition to this disadvantage, instead of two metre wide verges on either side of the footpath (as in the previous indicative layout) there would be a tree planted verge on one side and private front gardens on the other - a much less attractive layout.
62. The Sandbach Footpath Group put forward an alternative, which would radically reduce reliance on the spine road. However the appellant did not really explain why this was not considered.
63. Overall the proposed diversion should only be permitted if it is no less convenient than the existing route (SADPD policy INF 1 and SNP policy PC5). In this case the proposal would result in a worsening of convenience.

#### Housing mix

64. SADPD policy HOU 1 provides that housing developments should deliver a range and mix of house types which respond to needs and demands, and Table 8.1 provides that 28% of market housing should be one or two bed homes. This is an important element of development plan policy.

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<sup>20</sup> CD 11.16



65. The open market housing would be exclusively three and four bedroom houses, which is contrary to the Table and policy. The Council accepts that the Table is only indicative but the proposed departure from it is unjustified, especially given that the SADPD is recently adopted.
66. The appellant's argument that there is an increasing propensity to work from home is flawed given the amount of under-occupation in Sandbach. The appellant's evidence as to the increase in home working was based on material gathered during the pandemic. There may be an increased desire for larger homes but this does not necessarily translate into an increased ability to afford a larger property.
67. The appellant points out that the housing mix policy extends across the whole authority area, which is correct – but then suggests that other sites can make up the imbalance in the mix on the appeal site. However it would not be sensible to adopt this position, nor does the policy suggest that this is the correct approach. It would set a dangerous precedent.
68. The revised NPPF emphasises the need to provide an appropriate mix of housing types for the local community. The appeal scheme does not accord with this approach and conflicts with the development plan.

#### Other matters

69. It is common ground that, although the revised NPPF updates the approach to the provision of housing, this does not impact on the issues in this appeal. The local housing needs figure shows an 11.6 year supply at March 2022.

#### **Written representations**

70. A number of written objections were lodged to the proposal at the application and appeal stages.<sup>21</sup> In addition to the main issues considered in this report a number of these related to matters (including traffic, sustainability, the effect on local services, pollution, the loss of green space and the lack of housing need) which were addressed by the Outline Permission and are beyond the scope of this appeal.
71. The Sandbach Footpath Group objected to the application and suggested that footpath 19 should be diverted to the west of the site through the green corridor.<sup>22</sup>

#### **Conditions**

72. A discussion was held before the inquiry between the appellant and the Council regarding potential conditions if the appeal were to be successful. These conditions are discussed below.

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<sup>21</sup> All included as CD 13 and on the Council's website

<sup>22</sup> The group did not formally appear at the inquiry but were present and were able to provide some useful local knowledge of the footpath.

## Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

### Policy position

73. The development plan comprises the Cheshire East Local Plan Strategy (CELPS); the Cheshire East Site Allocations and Development Policies Document (SADPD); and the Sandbach Modification Neighbourhood Plan (SNP)<sup>23</sup>. The SOCG includes a list of development plan policies agreed by the parties to be relevant and these will be considered below [15].
74. The Cheshire East Borough Design Guide (2017) is also agreed to be relevant [16].
75. Both parties agreed that these development plan documents are up to date and relevant to this appeal [19].
76. The National Planning Policy Framework (2023) and National Planning Practice Guidance (NPPG) are material considerations.

### Agreed matters

77. There are a number of areas of agreement between the parties, set out in the Statement of Common Ground (SOCG), in notes prepared during the inquiry, and the evidence [18].
78. The key agreed matters which affect the consideration of this appeal are:
- The site is within the Sandbach settlement boundary.
  - Planning permission has been granted for the development of the appeal site by up to 200 residential dwellings and open space, with all matters reserved [11]. This permission is extant and the current appeal relates to the reserved matters (condition 1 of that decision).
  - This permission, and other decisions set out above [9, 10], establish the principle of development, and specifically housing development up to 200 units.
  - The site has a varied and sloping topography, and this will affect any development [6, 24, 49].
  - There are a number of matters which are therefore not issues in this appeal, which might otherwise be expected to be in play on a proposal for the development of a greenfield site. Importantly these include housing land supply, the point of access and highway safety, and drainage and flood risk [19].
  - In relation to the layout of the scheme (the first issue below), it was agreed in a note during the inquiry that the position and configuration of the spine road running through the development was not legally fixed by earlier permissions. However some witnesses took the view that it was reasonable to treat this alignment as an accepted parameter [19].

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<sup>23</sup> CD 5.3

- In relation to the proposed rerouting of footpath 19 (the third issue below), it was agreed that the proposed rerouting partly alongside the spine road would not automatically mean that the Public Right Of Way (PROW) would be extinguished [19]. This had been the Council's position, although the parties differ as to whether this route would be desirable.

#### Main considerations

79. Based on the policy, evidence, and the areas of dis/agreement, the main considerations in this case are:
- The effect of the proposal on the character and appearance of the area, having particular regard to the design and layout of the proposed scheme, the topography of the site and the proposed landscaping.
  - Whether the proposed open space and Neighbourhood Equipped Area of Play (NEAP) would be sufficiently integrated with the proposed built development so as to discourage anti-social behaviour.
  - The effect of the development on the amenities of users of public footpath 17.
  - Whether the mix of market housing is appropriate, having regard to local housing need and the need to create mixed and balanced communities.

#### Layout and design

80. The Council's objections relate to aspects of the layout of the proposed housing and some specific elements of the landscaping – not to the detailed design of the housing. There is no reason to disagree with that position and the detailed design of the dwellings and many of the aspects of the layout are entirely satisfactory and will create an attractive environment.
81. The appeal site in its present form has a relatively tranquil quality, stemming from the valley side undulating topography, the irregular field pattern divided by hedgerows and mature trees. Despite its proximity to the built-up area of Sandbach and a major road, it retains a relatively tranquil character. That said, it is in no way out of the ordinary and is not argued to be a valued landscape in NPPF terms.
82. As an initial point, the parties disagree as to whether the site is considered a 'prominent location in Sandbach' as alleged in the refusal. The Council did not present any evidence related to the particular prominence of the site or any evidence that the proposal would adversely impact on the wider countryside setting of the town. There is nothing to justify the statement that it is particularly prominent.
83. In any event the land is not a greenfield site with no history. Planning permissions have been granted for development [9-11], and these developments clearly envisaged considerable changes to the landscape. This is uncontested.
84. With this background, whatever the detail of the development, it is clear that the natural lie of the land would be partly changed by engineering works aimed

at regrading the land. This was clearly shown – in different forms - in previous illustrative layouts and is self-evidently necessary when one looks at the existing landform. In the case of the appeal scheme the appellant's clear expert engineering evidence demonstrated that the proposal has as little impact on the landform as possible [24, 27]. For the Council to criticise the current proposal on the basis of the effect on these engineering works is unconvincing given the history of permissions on the site. In addition the authority did not put forward any evidence to suggest that less intrusive approaches could be adopted or raise any technical engineering criticism of the appeal scheme.

85. Overall the landscape impacts resulting from the changes in topography and engineering structures would be limited. Although the regrading would be apparent, especially from within the development, the scheme would respect the flow of the landscape to a considerable extent and would not harm landscape character.
86. Another aspect of the layout which was the subject of criticism by the authority was the comparatively straight spine road running through the length of the development and serving residential areas on either side.
87. From the evidence it does appear that the appellant's starting point may have been – incorrectly - that the spine road was a fixed element which had been previously approved [19]. Although it was subsequently agreed that this is not the case, this criticism of the appellant's position on that basis does not go anywhere.
88. What matters is whether the proposed spine road is, in itself or in relation to the consequences for other elements of the layout, unacceptable in visual terms. The Council's position was that a straight spine road through the development was in itself unattractive and unimaginative. However there is no persuasive evidence to support that position and many attractive modern and historic developments include straight central roads. Nor is there anything to suggest that the layout of the spine road would lead to harmful layout consequences for the remainder of the development.
89. Turning to the landscape qualities of the proposal, the quantum of this was described by the authority as 'minimal'. But this does not sit comfortably with the landscaping proposals which include some 400 new trees and considerable lengths of hedgerow planting.
90. Specific criticism was raised to the fact that a significant proportion of the new trees fronting highways would be planted in private front gardens rather than in the public realm. The Council argued, factually correctly, that there would be no control to prevent these being removed and the authority alleged that this was likely. For the appellant it was stated that trees planted within the public realm were more subject to maintenance and vandalism issues. However neither party put forward specific evidence to support their position, and it is considered that the mix of private and public realm planting would achieve a satisfactory balance. In coming to that conclusion it is noted that the Cheshire East Design Guide [54] suggests that primary and secondary avenues will have trees in the public realm. However this is guidance only and the appeal scheme incorporates a satisfactory mix of locations.

91. The lower (western) area of the development would be screened from the main road by an existing line of trees and vegetation. The Council correctly noted that these lie outside the appeal site and therefore their retention and maintenance cannot be guaranteed. However there is no suggestion at all that this tree belt is under threat and no indication of any proposed road widening. It is therefore not unreasonable to rely in part on the retention of this boundary vegetation.
92. Both parties discussed the use of Building for Life (BfL). It is considered that this can be a useful tool to encourage careful assessment and development of schemes. However BfL is inherently a matter of professional opinion and the approach does not mandate a particular score which a scheme has to achieve in order to be acceptable. In any event from the discussion at the inquiry it is considered that the appellant's position is more realistic and, in particular, the attribution by the Council of a 'red' score was unduly harsh for reasons already given.
93. The authority criticised the appellant's Design and Access Statement (DAS) as being inadequate. It is certainly relatively brief, and it is true that it does not explain the generation and rejection of alternatives in any detail. However there is no guidance on the content of a DAS and brevity is not necessarily a valid criticism.
94. It may be realistic to criticise the scheme, as the Council does, on the basis of the number of modifications to it to correct matters raised by the authority. It is certainly true that there were quite a number of changes, none of which were material to the overall scheme, and this is perhaps surprising. However such minor amendments are often part of redevelopment proposals and are not in themselves indicative of any lack of care on the part of the appellant. In any event, even were it to be concluded that this was the case, what matters is the quality of the final proposal.
95. Overall the changes to the landscape and topography, the configuration of the main spine road, and various matters related to the landscaping of the development do not individually or cumulatively diminish from the quality of the scheme. Rather the proposal represents an imaginative piece of design dealing with what is accepted to be a difficult site. It would not conflict with CELPS policies SE 1, SD 1 or SD 2, which deal with the need for well-designed developments which conserve landscape character, or with SNP policy H2, which similarly seeks high standards of design and layout.

*The proposed open space and Neighbourhood Equipped Area of Play (NEAP)*

96. The quantum of open space, located in various areas of the development but particularly on the western side around the NEAP [13], is not the subject of complaint by the Council. There is no reason to query the overall amount of open space provided as part of the development.
97. The Council's concern relates particularly to the location of the NEAP and associated open area on the western side of the site [13]. A footpath would drop down to this level and there would be some housing to the east and northeast. This area is at a lower level than most of the site, as the land falls away to the road to the west.

98. This concern is based on the assumed propensity, because of the location, for there to be antisocial behaviour. It is certainly true that the open space and the NEAP would be at one edge of the development, and that there would be less passive surveillance than might be the case in other more central locations.
99. There would be a steep bank to the rear of the nearest houses above, and depending on how the landscaping flourished, direct overlooking would be comparatively limited. The parties do not agree the extent of passive surveillance, but from the plans it is clear that this would be comparatively limited and, in the main, from first floor windows only. Under these circumstances the extent of passive surveillance would be relatively limited.
100. The appellant suggested that additional surveillance of the NEAP and the open space would also result from those using the footpath. This is a slightly circular argument as, were there to be antisocial behaviour in the area, this might in turn deter people from using the footpath. However some weight is given to this aspect.
101. It is correct, as emphasised by the appellant, that no evidence of antisocial behaviour at other open spaces in the area has been put forward. However that does not entirely overcome the concern expressed by the Council and by the police at the location of these facilities.
102. Were the open space and the NEAP more centrally located within the development it is likely that there would be greater passive surveillance and a greater propensity to use the areas for the purposes for which they are designed. But this would result in a significant reduction in the amount of housing to be provided due to the need to have a buffer between the NEAP and dwellings.
103. Overall the location of these facilities, whilst arguably not ideal, does not detract significantly from the proposal. On this basis the development does not conflict with CELPS policies SE 6, SE 1, SD 1 and SD 2 of the Cheshire East Local Plan Strategy, or SNP Policy H2.

*The consequences for the users of footpath 17*

104. There are footpath connections through the site at the moment. Given the current character of the area these are essentially rural footpaths - with the consequence that they are not conducive to everyday use for routine journeys nor are they suitable for those with mobility issues. That is not to say that they are unattractive or unusable by a significant part of the population.
105. The approved development of the site will inevitably change the experience for those walking the footpaths. This is true of the outline planning permission, other approvals, and of the details which are the subject of this appeal. That change would apply not only to footpath 17 but also to the other footpaths affected by the proposal. A number of local residents have objected to the current scheme on the basis of the effect on other footpaths, but it is reiterated that the outline planning permission envisaged a significant change to the character of the area.
106. One initial point to address is the suggestion that footpath 17 was effectively a dead end in that it had been blocked some years ago by the construction of a farm building. If that were the case its utility would be considerably reduced.

However it was usefully clarified at the inquiry that an informal permissive path has been established around the building and this means that the footpath continues to serve a useful function [19].

107. The area of concern for the Council in their written evidence appeared to focus largely on the assumption that if (as proposed) the footpath were diverted in part alongside the proposed spine road [19] this would inevitably mean that the Public Right Of Way (PROW) would be extinguished. The appellant took a different view on that matter and it was subsequently agreed in a note that, although the Council maintained its concern about this type of footpath, there was no automatic extinguishment. It is clear from the Council's written evidence that this incorrect understanding of the position was a major element in their objection to the scheme.
108. The Council's remaining concern was that a PROW running along a public footpath next to a road would be unacceptable. However such a footpath would be well lit, surfaced, and usable by all sections of the community. On that basis it is considered that the proposal would in fact improve the experience of those using the footpath - albeit that they would no longer be moving through rural surroundings. This benefit would apply to the entirety of the footpath and not just the section alongside the spine road.
109. On that basis the proposal would provide clear benefits for users of the footpath and would comply with CELPS policy SE 1 and SNP policy PC5 – which state that proposals to divert a PROW should provide clear and demonstrable benefit for the wider community.

#### *Housing mix*

110. The CELPS and the SNP, at policies SC 4 and H3 respectively, state that new development should provide a mix of housing sizes to help support the creation of mixed, balanced and inclusive communities. This approach reflects national policy - but no mix is specified in these policies.
111. This approach is also found in the CELPS at policy HOU 1. In addition Table 8.1 provides an indicative housing mix, stated to be intended to assist the Council in determining whether a proposal provides for an appropriate housing mix. The supporting text notes that the mix of housing coming forward on sites will vary dependent on several site and market factors.
112. This Table provides that 28% of market housing should be one or two bed homes. The current proposal is exclusively three and four bedroom houses (53% three-bedroom and 47% four-bedroom).
113. However, as accepted by the Council [65], the figures in the Table are only indicative, and it shows a need for larger house types as part of the mix. The appellant refers to a suggested increasing propensity to work from home following the pandemic and an element of under-occupation in the area. However neither party has submitted recent evidence to show the effect of the pandemic – although reference to effects were made by both parties.
114. In addition, the indicative dwelling mix in Table 8.1 applies across the whole of the local authority area, and no evidence has been produced to indicate what developments have provided since the adoption of the policy and indicative mix.

It would not be reasonable to expect every development to provide a mix directly in line with the indicative Table.

115. The appellant has submitted a number of appeal decisions suggesting that a degree of flexibility is appropriate. However the policy position in these cases is different, as is the proposed mix. These decisions add very little to the consideration of this appeal.
116. Overall, the policy and related Table allows for greater flexibility than the Council's position implies, and it is concluded that the proposed open market mix complies with the policies summarised above and would provide an appropriate mix of housing types for the local community in line with national policy.

#### *Other considerations*

117. A number of other considerations were raised by local residents [70, 71] in writing at the application and appeal stages. However, aside from matters covered in this report, the majority of these covered matters determined by the Council at the outline stage and which are not the subject of this report. In particular these included the loss of open countryside and the access into the site.
118. One matter which was raised by the Council was the number of amendments which the appellant had made to the scheme up to the appeal. It was alleged that this showed inadequate consideration of the site and the proposal. This was touched on briefly above. However, although the number of amendments was relatively high it was by no means exceptional. In any event it could equally be taken to reflect the appellant responding to matters of concern to the Council and local residents. This is not a matter which weighs in the balance.
119. The Council raised the issue of Nationally Described Space Standards [43] although this was not part of a reason for refusal, or referenced in the Statement of Case of the authority. It was mentioned briefly in the Council's evidence and this generated two rebuttal proofs. However at the Inquiry the Council confirmed that it did not form a new reason for refusal and that the authority was neutral [43]. In any case it has not been suggested that any of the units was internally inadequate, and that the matter related only to how the units were described. This is not a matter to be weighed in the planning balance.

#### *Conditions*

120. A wide range of conditions formed part of the Outline Permission. However there remain some issues which can properly form part of the conditions at this stage. The appended conditions, with reasons, were discussed and agreed between the parties before and during the Inquiry. These agreed conditions, with only minor typographical alterations, are appended to this report.
121. In particular they cover the details of elements, such as the NEAP, which could not have been addressed at the outline stage.



*Planning balance and conclusion*

122. The backdrop to this appeal, which relates solely to the details of a proposal pursuant to the Outline Permission, is that the approved scheme would generate a significant quantum of housing, in line with national and local policy.
123. In relation to the layout and design shown on the detailed plans it is considered that the scheme represents an imaginative and carefully considered design approach dealing with a difficult site. The location of the open space and the NEAP, whilst arguably not ideal, does not detract significantly from the proposal. In relation to the effect on footpath 17 there are clear benefits for users. The proposed housing mix, would meet an element identified in the Council's illustrative Table, albeit not meeting the indicative mix.
124. Overall the proposal would integrate into the wider surroundings and would deliver a high quality scheme.

**Recommendation**

125. That the appeal is allowed and the reserved matters are approved, subject to conditions.

*P. J. G. Ware*  
Inspector

Richborough

### **Recommended Conditions and Reasons**

1. The development hereby approved shall be carried out in accordance with the following plans:

23219 D008 Rev BB Site Layout  
23219 D009 Rev H Affordable Housing Scheme  
23219 D010 Rev H Phasing Plan  
23219 D011 Rev U Proposed Colour Site Plan  
D012 rev F Character Areas  
23219 D013 Rev H Boundary Treatment Plan  
23219 D016 Rev E Hedgerow Plan  
23219 D017 Rev D PROW existing and Proposed  
MUL2103 LMP01 Rev A Landscape Management Plan  
MUL2103 PP01.00 Rev G Planting Plan and Schedule  
MUL2103 PP01.01 Rev G Planting Plans Sheet 1  
MUL2103 PP01.02 Rev G Planting Plans Sheet 2  
MUL2103 PP01.03 Rev G Planting Plans Sheet 3  
MUL2103 PP01.04 Rev G Planting Plans Sheet 4  
MUL2103 PP01.05 Rev G Planting Plans Sheet 5  
MUL2103 PP01.06 Rev G Planting Plans Sheet 6  
MUL2103 PP01.07 Rev G Planting Plans Sheet 7  
MUL2103 PP01.08 Rev G Planting Plans Sheet 8  
MUL2103 PP01.09 Rev G Planting Plans Sheet 9  
MUL2103 PP01.10 Rev G Planting Plans Sheet 10  
MUL2103 PP01.11 Rev G Planting Plans Sheet 11  
SCP/13111/F07 rev B Location Plan  
SCP – 18217 – 0000 – 001 – Rev C – Levels Plan Sheet 1  
SCP – 18217 – 0000 – 002 – Rev C – Levels Plan Sheet 2  
SCP – 18217 – 0000 – 001 – Rev D – Cross Section Location Plan Sheet 1  
SCP – 18217 – 0000 – 002 – Rev D – Cross Section Location Plan Sheet 2  
SCP – 18217 – SK02 – Rev D Cross Sections A – A to C – C  
SCP – 18217 – SK03 – Rev C Cross Sections D – D to F – F  
SCP – 18217 – SK08 – Rev A Cross Sections G – G to J – J  
SCP – 18217 – SK09 – Rev B Cross Sections K – K to L – L  
SCP – 18217 – SK10 – Rev B Cross Sections N – N to M – M  
SCP – 18217 – SK11 – Rev A Cross Sections O – O to P – P  
23219 L100 House Type A1 and A2 Floor Plans Rev A  
23219 L101 House Type A1 and A2 Elevations Rev A  
23219 L102 House Type B  
23219 L103 House Type C  
23219 L104 House Type D  
23219 L105 House Type E  
23219 L106 House Type F  
23219 L107 House Type H  
23219 L108 House Type J  
23219 L109 House Type K

23219 L110 House Type K + Floor Plans  
23219 L111 House Type K + Elevations  
23219 L112 House Type M Floor Plans  
23219 L113 House Type M Elevations  
23219 L114 House Type P  
23219 L115 House Type S Floor Plans  
23219 L116 House Type S Elevations  
23219 L117 House Type T  
23219 L118 Garage Plans and Elevations  
23219 L119 House Type H Alternative Elevations  
23219 L120 House Type P Alternative Elevations  
23219 L121 House Type T Alternative Elevations  
23219 L123 House Type F+  
23219 L124 House Type J+  
23219 L125 Rev A Type M plus Floor Plans  
23219 L126 Rev A Type M plus Elevations

Reason: For the avoidance of doubt.

2. Prior to the commencement of development, a plan to show the design, layout, and equipment to be used within the Neighbourhood Equipped Area for Play (NEAP) shall be submitted to the Local Planning Authority for approval in writing.

The scheme shall include:

- Four fixed items of equipment (including one multi-unit) which are suitable for use by children of early school age (2-14 years old)
- Four fixed items of play equipment for use by older children
- All equipment shall be designed and laid out to meet relevant safety standards (Fields in Trust)
- Details of safety surfacing, fencing and seating

The approved details shall be implemented prior to the first occupation of 50% of the dwellings within the development hereby approved.

Reason: To ensure that adequate and suitable play space is provided.

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.

Reason: In the interests of protected species.

4. 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.

Reason: To ensure a satisfactory river crossing.

5. Notwithstanding the approved plans and prior to the first use of any facing or roofing materials a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed before the relevant dwelling is first occupied. The boundary treatment shall be carried out in accordance with the approved details and permanently retained unless otherwise first approved in writing by the Local Planning Authority

Reason: To ensure adequate and appropriate treatment of boundaries.

6. Prior to the installation of any lighting details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The lighting scheme should reflect the Bat Conservation Trust Guidance Note 08/18 (Bats and Artificial Lighting in the UK) and should consider both illuminance (lux) and luminance (candelas/m<sup>2</sup>). It should 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 1lux light spill on those features. The scheme should also include a modelled lux plan, and details of:
  - Proposed lighting regime
  - Number and location of proposed luminaires
  - Luminaire light distribution type
  - Lamp type, lamp wattage and spectral distribution
  - Mounting height, orientation direction and beam angle
  - Type of control gear

Reason: To safeguard biodiversity.

7. Prior to the use of any facing or roofing materials, a scheme to include 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.

Reason: To encourage the use of non-car transport to the site.

8. The development shall not be occupied until the access/roundabout/highway improvements and toucan crossing as shown on plan reference 190480/00000/001 Rev A have been constructed in accordance with that plan.

Reason: To ensure that a safe and suitable access is provided.

9. No development involving the use of any facing or roofing materials shall take place until samples of the materials to be used in the construction of external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of the appearance of the development.

10. Notwithstanding the approved plans and prior to the first occupation of the development a plan indicating the proposed surfacing hard materials to be installed on the development shall be submitted to and approved in writing by the Local Planning Authority. The surfacing materials shall be carried out in accordance with the approved details and permanently retained unless otherwise first approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the development.

11. The approved landscaping scheme as shown on the following plans:

MUL2103 LMP01 Rev A Landscape Management Plan  
MUL2103 PP01.00 Rev G Planting Plan and Schedule  
MUL2103 PP01.01 Rev G Planting Plans Sheet 1  
MUL2103 PP01.02 Rev G Planting Plans Sheet 2  
MUL2103 PP01.03 Rev G Planting Plans Sheet 3  
MUL2103 PP01.04 Rev G Planting Plans Sheet 4  
MUL2103 PP01.05 Rev G Planting Plans Sheet 5  
MUL2103 PP01.06 Rev G Planting Plans Sheet 6  
MUL2103 PP01.07 Rev G Planting Plans Sheet 7  
MUL2103 PP01.08 Rev G Planting Plans Sheet 8  
MUL2103 PP01.09 Rev G Planting Plans Sheet 9  
MUL2103 PP01.10 Rev G Planting Plans Sheet 10  
MUL2103 PP01.11 Rev G Planting Plans Sheet 11

shall be completed in accordance with the following:

- All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority
- 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 (excluding hard surfaces)
- All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations
- 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

Reason: To ensure appropriate landscaping of the development.

12. 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:

- Volume and type of material to be excavated
- Volume and type of material to be used for infilling
- Volume proposed to be imported (if any) and number of HGV movements associated with imported materials
- An up to date topographical survey of existing and proposed levels superimposed on one plan
- Handling methods (i.e. location, period and height of stockpiling), any seeding if stockpiled for a significant period and other dust suppression methods
- Noise controls for excavation works. Any material movements shall only be implemented in accordance with the approved MMP

Reason: In the interests of the impact upon the highway, residential amenity, the treatment of soils and the impact upon the landscape.

**\_\_\_\_\_End of conditions\_\_\_\_\_**

Richborough

**APPEARANCES****MULLER PROPERTY GROUP**

Jonathan Easton KC counsel for the appellant He called:	
Stephen Carmody BSc (Hons) CEng MICE FCIHT	Director at Singleton Clamp and Partners Limited
Aaron Davis MSc RTPI (Assoc)	Senior Associate, David Lock Associates
Paul Gray BA(Hons) BLA CMLI	Director, PGLA Landscape Architects
Joe Mattin BSc (Hons) BArch (Dist) RIBA ACI Arb MAPM	Managing Director, Bower Mattin and Young Ltd
Heather Pugh BA MAMRTPI	Planning Partner, David Lock Associates
Jamie Roberts MPlan MRTPI	Tetlow King Planning
Peter Todd BSc(HONS) MSC MCIHT	Technical Director, SCP

**CHESHIRE EAST COUNCIL**

Matthew Fraser counsel for the local planning authority He called:	
Daniel Evans BA(Hons) MCD MRTPI	Planning Team Leader
Richard Cowley BA(Hons), Grad Dip LA, MA Arch Urb	Principal Landscape Officer
Dr Darren Price BA(Hons) BArch DCE	Private consultant and Place ART

**INTERESTED PERSONS**

Richard Vicary	Sandbach Footpath Group
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**INQUIRY DOCUMENTS**

Doc 1	Appellant's opening (CD 15.1)
Doc 2	Council's opening (CD 15.2)
Doc 3	Joint note in relation to 'fixed' constraints (CD 17.2)
Doc 4	Conditions – with note related to matters in dispute (CD 10.5)
Doc 5	Joint note on Public Rights of Way matters (CD 17.3)
Doc 6	Supplementary proof of Heather Pugh – Nationally Described Space Standards (CD 11.19)
Doc 7	Supplementary proof of Joe Mattin – Nationally Described Space Standards (CD 11.18)
Doc 8	Note of a meeting (26/7/23 regarding plans (CD 17.4)
Doc 9	Council's closing statement (Unnumbered CD)
Doc 10	Appellant's closing statement (Unnumbered CD)
Doc 11	Council's submission on revised NPPF

## CORE DOCUMENTS

Core Documents are available at:

[https://www.cheshireeast.gov.uk/planning/view\\_a\\_planning\\_application/view\\_a\\_planning\\_application.aspx](https://www.cheshireeast.gov.uk/planning/view_a_planning_application/view_a_planning_application.aspx)

Use reference 21/2412C

NB The updated CD list is to be found at item 9

Richborough





# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](http://www.gov.uk/dluhc)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.