

STATEMENT OF CASE ON BEHALF OF THE APPELLANT
The Town and Country Planning Appeals (Determination by Inspectors)
(Inquiries Procedure) (England) Rules 2000

APPELLANT: MULLER PROPERTY GROUP LTD.

APPEAL: Against the refusal of Reserved Matters for approval of access, appearance, landscaping, layout and scale following outline approval 14/1193C for the erection of 160 dwellings, car parking, public open space and associated works

LOCATION: Land south of Old Mill Road Sandbach Cheshire

LOCAL PLANNING AUTHORITY: Cheshire East Council

LOCAL PLANNING AUTHORITY APPLICATION REFERENCE: 21/2412C

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APPENDICES

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3: RM CHRONOLOGY

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1.0 INTRODUCTION

- 1.1 This rule 6 statement of case (the ‘SoC’) has been prepared on behalf of Muller Property Group Ltd (the “**Appellant**”) in respect of its appeal (the “**Appeal**”) submitted in respect of its site at Old Mill Road Sandbach (the “**Appeal Site**”). A description of the Appeal Site and surroundings is provided at section 2.
- 1.2 The Appeal is submitted against the decision of Cheshire East Council (“**CEC**”) to refuse approval of reserved matters for access, appearance, landscaping, layout and scale submitted under ref 21/2412C (the “**RM Application**”) for the erection of 160 dwellings, car parking, public open space and associated works pursuant to outline planning permission (ref14/1193C). A list of the RM Application documents as originally submitted is provided at Appendix 1 and a list of the additional documents/revisions/correspondence submitted during the life of the RM Application is provided at Appendix 2.
- 1.3 CEC refused the RM Application by a decision notice dated 8 August 2022 (the “**Refusal**”) pursuant to committee resolution on 27 July 2022 citing the following reasons for refusal:
- *“This is a prominent site in Sandbach. The Council has undertaken a Building for Life Assessment which finds that the proposed development does not result in the creation of a high quality, beautiful and sustainable place and on this basis the development should be refused. The proposed development is contrary to Policy SE1, SD1 and SD2 of the Cheshire East Local Plan Strategy, Policy H2 of the Sandbach Neighbourhood Plan and guidance contained within the NPPF (“**Reason 1**”).*
 - *The application site is of a very challenging topography in a prominent location. The application includes an engineered retaining walls/structures and minimal landscape mitigation. The development would not work with the flow and grain of the landscape and cause harm to the character and appearance of the area. This approach runs counter to the need to work with topography and landscape as described by the National Design Guide, Building for Life, the Cheshire East Borough Design Guide and Policies SD2, SE1 and SE4 of the Cheshire East Local Plan Strategy, PC2 of the Sandbach Neighbourhood Plan and guidance contained within the NPPF (“**Reason 2**”).*

- *The proposed Public Open Space is located adjacent to the A534 and is sited at a lower level to the proposed dwellings which generally back onto the open space. The proposed development does not integrate the open space/play area into the development and the area is likely to be the subject of anti-social behaviour. The proposed development is contrary to Policies SE6, SE1, SD1 and SD2 of the Cheshire East Local Plan Strategy, and Policy H2 of the Sandbach Neighbourhood Plan (“Reason 3”).*
- *The proposed development will result in a significant change to the character of footpath FP19 which would be heavily influenced by the urban character of the development, particularly where it runs along the spine road and through the open space. As a result, there would be conflict with Policies SE1 and CO1 of the Cheshire East Local Plan Strategy, Policy GR16 of the Congleton Local Plan, and Policy PC5 of the Sandbach Neighbourhood Plan as the development has not taken into account the existing footpath network, would not achieve a high-quality public realm that enhances conditions for pedestrians, would not be pleasant to access on foot (“Reason 4”).*
- *The proposed development does not provide a full mix of open market housing to help support a mixed, balanced and inclusive community. The proposed development is contrary to Policies SC4 of the Cheshire East Local Plan Strategy, H3 of the Sandbach Neighbourhood Plan (Second Edition) and HOU1 of the Cheshire East Site Allocations and Development Policies Document” (“Reason 5”).*

A copy of the Refusal is provided as part of the Appeal.

- 1.4 This SoC sets out the Appellant’s case for the Appeal.
- 1.5 A draft statement of common ground (“**SoCG**”) has been prepared and will be agreed by the Appellant and CEC setting out those matters relating to the appeal which are agreed by CEC and the Appellant and those matters which are in dispute in relation to the Appeal.
- 1.6 This SoC comprises the following sections:-
- Appeal Procedure;
 - Description of the Appeal Site and surroundings;
 - Planning history of the Appeal Site;

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- Description of the Appeal proposal;
 - Description of Development Plan and relevant planning policy/guidance;
 - Consultation Responses and Third Party Representations;
 - The Appellant's case in respect of the reasons for refusal;
 - Other Material Considerations – Benefits of the Proposal;
 - Planning Balance and Conclusion; and
 - Documents to be referred to in Appellant's Case.

2.0 APPEAL PROCEDURE

2.1 Having regard to the criteria in Annexe K of the Planning Inspectorate Procedural Guide: Planning Appeals - England (updated 21 December 2022), the Appellant considers the Appeal should be determined by way of public inquiry and is not appropriate to be dealt with by way of informal hearing for the reasons set out below.

2.2 The Appeal will involve complex technical evidence on matters such as site engineering/levels/site constraints and the implications of those matters for the Appeal proposals.

2.3 The Appeal will involve considerable professional/expert advice to address the reasons for refusal. The Appellant intends to call professional/expert evidence on matters relating to:-

- site engineering;
- urban design;
- landscape;
- housing mix; and
- planning.

- 2.4 There are clear differences between the opinions/views of CEC and its professional officers and those of the Appellant and its professional advisers and it will be necessary for that professional evidence to be tested through formal cross examination by Counsel.
- 2.5 The Appeal is not one which it can reasonably be expected that the parties will be able to present their cases without the need for an advocate to represent them.
- 2.6 The Appeal Site has a complex planning history.
- 2.7 The RM Application which is the subject of the Appeal has generated considerable local interest including over 57 representations from third parties/members of the public and objections from the local Town Council.
- 2.8 The Appellant's SoC has been prepared on the basis that the Appeal will be determined by way of public inquiry and proofs of evidence will be provided to address the Appellant's case in more detail. If the Planning Inspectorate determine the Appeal should be dealt with by way of informal hearing rather than public inquiry then the Appellant reserves the right to set out its written case in more detail than is contained in this SoC.

3.0 THE APPEAL SITE AND SURROUNDINGS

- 3.1 The Appeal Site which consists of 7.21ha of agricultural land is located to the east of the A534 and to the west of residential properties that front onto Palmer Road, Condliffe Close and Laurel Close.
- 3.2 The majority of the Appeal Site has the benefit of an extant full planning permission granted on appeal on 12 October 2020 (LPA ref 19/3784C) for the "erection of care home (class C2), 85 dwellings (class C3) and creation of associated access roads, public open space and landscaping – this is referred to in this SoC as the 2020 Full Permission.
- 3.3 Sandbach is classified as a Key Service Centre under Policy PG 2 of the adopted Cheshire East Local Plan Strategy ("**CELPS**") meaning it has a good range of facilities, services, employment areas and links to sustainable transport. The Appeal Site is therefore in a sustainable location in terms of its proximity to the town centre and accessibility to services and facilities.

- 3.4 The Appeal Site lies within the settlement boundary in the Sandbach Modification Neighbourhood Plan made on 21 March 2022 (“**SNP**”). Part of the Appeal Site lies within a wildlife corridor in the SNP. The Appeal Site is not within the Green Belt and is not subject to any other policy designations.
- 3.5 There are no Tree Preservation Orders on the Appeal Site although it does contain a number of trees and hedgerows which need to be considered as part of the design of development and open space.
- 3.6 There are a number of Public Rights of Way (“**PROW**”) which intersect the Appeal Site.

4.0 PLANNING HISTORY

4.1 The following planning history is considered relevant to the Appeal:

- 19/3784C - Full planning application for erection of a care home (class C2), 85 new dwellings (class C3) and creation of associated access roads, public open space and landscaping on part of the site – Approved on appeal on 12th October 2020 (the “**2020 Full Permission**”);
- 19/2539C - Hybrid planning application for development comprising: (1) Full application for erection of a discount foodstore (Class A1), petrol filling station (sui generis) and ancillary sales kiosk (class A1), drive-through restaurant (Class A3/A5), drive-through coffee shop (class A1/A3), offices (class A2/B1) and 2 no. retail ‘pod’ units (class A1/A3 /A5), along with creation of associated access roads, parking spaces and landscaping. (2) Outline application, including access, for erection of a care home (class C2), up to 85 new dwellings (class C3), conversion of existing building to 2 dwellings (class C3) and refurbishment of two existing dwellings, along with creation of associated access roads, public open space and landscaping – refused on appeal on 12th October 2020 (the “**2020 Hybrid Refusal**”);
- 14/1193C - Outline planning application for up to 200 residential dwellings, open space with all matters reserved – Approved by CEC on 12th October 2017 (the “**2017 Outline Permission**”); and
- 13/2389/C - Outline planning application for up to 200 residential dwellings, open space and a new access off the A534/A533 roundabout - Approved on appeal on 11th December 2014 (the “**2014 Outline Permission**”).

5.0 THE APPEAL PROPOSAL

- 5.1 The Appeal seeks reserved matters approval for access, appearance, landscaping, layout and scale for the erection of 160 dwellings, car parking, public open space and associated works pursuant to the 2017 Outline Permission.
- 5.2 The 2017 Outline Permission had been due to expire on 12th October 2020. However, the Business and Planning Act 2020 modified the Town and Country Planning Act to enable certain permissions in England which had lapsed or were due to lapse during 2020 to be extended due to the impact of the Coronavirus on the planning system and construction sector. The 2017 Outline Permission was therefore extended to 1 May 2021 by which time the RM Application had been submitted and validated.
- 5.3 Access and the onsite estate spine road which are proposed in the RM Application to be taken from the A534 are in line with the approved access and onsite estate spine road consented in the extant 2020 Full Permission. There are no objections from the local highway authority to the proposed access which is capable of serving the scale of the development included in the description of development.
- 5.4 The RM Application was submitted with a wealth of mandatory and supporting plans and reports to ensure a valid submission. A list of the documents submitted originally as part of the RM Application is provided at Appendix 1.
- 5.4 Following the validation of the RM Application, a number of revised packages of information to support the RM Application were submitted to CEC during the life of its determination. A list of the additional/revised documentation for the RM Application which was submitted before determination by CEC is provided at Appendix 2. A full chronology of the correspondence and information that was supplied to CEC for consideration is provided at Appendix 3.
- 5.5 The documents submitted on 15 July 2022 were not formally consulted upon by CEC but rather were the subject of the Planning Officer's opinion to reach the final conclusion on the RM Application's acceptability.
- 5.6 Following the determination of the RM Application by CEC the Appellant has prepared additional documents which together with the other documents listed in Appendix 4 the Appellant wishes to refer to in the Appeal.

6.0 PLANNING POLICY CONTEXT

6.1 Section 38 (6) of the *Planning and Compulsory Purchase Act (2004)* states that planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise.

Development Plan

6.2 The adopted development plan for the area comprises:-

- The Cheshire East Local Plan Strategy (**CELPS**) covering the period 2010 to 2030;
- The Cheshire East Site Allocations and Development Policies Document (**SADPD**);
and
- The Sandbach Modification Neighbourhood Plan made on 21 March 2022 (**SNP**).

6.3 The Refusal cited the following development plan policies:-

Reason 1

policies SE1, SD1 and SD2 of CELPS;
policy H2 of SNP

Reason 2

policies SD2, SE1 and SE4 of CELPS;
policy PC2 of SNP

Reason 3

policies SE1, SE6, SD1 and SD2 of CELPS;
policy H2 of SNP

Reason 4

policies SE1 and CO1 of CELPS;
policy PC5 of SNP;
policy GR16 of the Congleton Local Plan (saved policies)

Reason 5

Policy SC4 of CELPS;
Policy H3 of SNP;
Policy HOU1 of SADPD

At the time of the Refusal, the SADPD was still a draft plan and the saved policies of the Congleton Local Plan formed part of the development plan. On 14 December 2022, CEC adopted the SADPD which replaced the saved policies of the Congleton Local Plan. Policy GR16 of the Congleton Local Plan in Reason 4 is therefore no longer relevant. A similar policy INF1 is now included in the SADPD.

The following development plan policies are relevant to the Appeal:

Cheshire East Local Plan Strategy

- Policy SE1 – Design
- Policy SE4 – The Landscape
- Policy SE6 – Green Infrastructure
- Policy SD1 – Sustainable Development in Cheshire East
- Policy SD2 – Sustainable Development Principles
- Policy CO1 – Sustainable Travel and Transport
- Policy SC4 – Residential Mix
- Policy PG2 – Settlement Hierarchy

Site Allocations and Development Policies Document

- HOU1 - Housing Mix
- INF1 – Cycleways, Bridleways and Footpaths

Sandbach Modification Neighbourhood Plan

- Policy H2 – Design and Layout
- Policy H3 – Housing Mix and Type

- Policy PC2 – Landscape Character
- Policy PC5 – Footpaths and Cycleways

Other Material Considerations

6.4 The following national planning policies/guidance are relevant to the Appeal:

- National Planning Policy Framework;
- National Planning Policy Guidance; and
- National Design Guide.

Supplementary Planning Documents

6.5 The Cheshire East Borough Design Guide (May 2017).

7.0 CONSULTATION RESPONSES AND THIRD PARTY REPRESENTATIONS

The Appellant will respond to and address consultation responses including third party representations submitted on the RM Application/Appeal proposal and will demonstrate that there are no sustainable reasons why planning permission should not be granted for the Appeal proposals.

8.0 THE APPELLANT'S CASE ADDRESSING THE REASONS FOR REFUSAL

The Appellant has set out the main points of its case addressing the five reasons for refusal in sections 9 – 13 below. The Appellant reserves the right to expand on the points below to address matters raised by CEC in its statement of case and by third parties. Should the Planning Inspectorate decide the Appeal should be dealt with by way of hearing and not public inquiry, the Appellant should be afforded the opportunity to set out its case in writing in more detail.

9.0 REASON 1

9.1 Reason 1 states that a Building for Life Assessment undertaken by CEC finds that the Appeal Proposal does not result in the “*creation of a high quality, beautiful and sustainable place*” and that the proposed development is contrary to policies SE1, SD1 and SD2 of CELPS, policy H2 of the SNP and guidance contained within the NPPF.

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- 9.2 The Cheshire East Borough Design Guide SPD (May 2017) establishes that the Building for Life Assessment (BfL12) approach and process will be applied to all residential schemes above 10 units.
- 9.3 The 2021 version of the BfL is now used by CEC as part of its design tool kit to assess the design quality of site proposals.
- 9.4 BfL12 is primarily a best practice approach and it cannot therefore provide specific guidance to address site specific constraints such as the challenging topography at the Appeal Site. Nor is the BfL12 methodology a set of mandatory requirements, all of which must be passed for a scheme to be acceptable.
- 9.5 CEC's Urban Design Officer undertook an initial BfL assessment on the RM Application in July 2021. In October 2021, the Appellant submitted revisions/further information in respect of the RM Application to address the concerns raised by the Officer in his assessment.
- 9.6 A further BfL assessment was undertaken by the Urban Design Officer in December 2021 which made further comment/recommendations. The Appellant submitted further revisions in February and March 2022 to address those comments.
- 9.7 The Urban Design Officer undertook a further assessment in April 2021 on that revised information although this was not shared with the Appellant until 11 July 2022. Following receipt of the April assessment, the Appellant submitted further material on 15 July. No further BfL assessment was undertaken by the Urban Design Officer to take account of the information submitted by the Appellant in July before the RM Application was determined by CEC.
- 9.8 The above design process resulted in CEC's assessment of the RM Application changing from 10 amber and two green scores in December 2021 to eight amber and four green scores in April 2021.
- 9.9 As stated at paragraph 9.7 above no further BfL assessment was undertaken to take account of the revisions/information submitted by the Appellant in July 2022 before the RM Application was determined by CEC.
- 9.10 The Appellant has reviewed the Building for Life assessments undertaken by the Urban Design Officer. A table showing the Officer's December 2021 assessment, the Officer's April 2022 assessment and the Appellant's review is provided below.
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Date of Review	1 Connections	2 Facilities	3 Public Transport	4 Local Housing Requirement	5 Character	6 Working with site/context	7 well defined streets/spaces	8 East to find way around	9 Streets for all	10 Car Parking	11 Public / private spaces	12 External storage / amenity
23-12-21												
20-04-22												
Applicant Assessment												

9.11 The Appellant does not agree with CEC’s assessment. In particular, the Appellant does not consider that CEC has sufficient regard to the following:-

- the site constraints (notably in terms of topography) which are present on the Appeal Site;
- the fact that the principle of development has already been established in the 2017 Outline Permission; and
- the existence of the 2020 Full Permission in which a significant part of the Appeal Site has already been granted full planning permission.

The Appellant considers CEC should have adopted a more pragmatic approach to the determination of the RM Application having regard to the specific site constraints as it has done elsewhere in Cheshire East.

9.12 The Appellant will demonstrate that considerable attention and thought has been given to achieving a well designed place despite the inherent constraints of the Appeal Site.

9.13 The Appellant will demonstrate through its own review of CEC’s Building for Life Assessment that three amber scores and nine green scores is a more robust and accurate assessment of the Appeal proposals and that such a score constitutes a “good quality design” on the basis of the BfL guidance.

9.14 The Appellant will demonstrate that the Appeal proposal complies with policies SE1, SD1 and SD2 of the CELPS, policy 82 of the SNP and the guidance within the NPPF.

10.0 REASON 2

10.1 Reason 2 states “The Application Site is of a very challenging topography in a prominent location. The Application includes engineered retaining walls/structures and minimal landscape mitigation. The development would not work with the flow and grain of the landscape and cause harm to the character and appearance of the area. This approach

runs counter to the need to work with topography and landscape as described by the National Design Guide, Building for Life, the Cheshire East Borough Design Guide and Policies SD2, SE1 and SE4 of the Cheshire East Local Plan Strategy, PC2 of the Sandbach Neighbourhood Plan and guidance contained within the NPPF”.

10.2 It should be noted at the outset that, the Council’s landscape officer’s original and revised comments on the RM Application dated 29 July 2021, 23 December 2021 and 11 July 2022 were not included in the consultation responses of the officer’s report to committee (27 July 2022).

10.3 The Appellant will address the key elements of Refusal 2 as follows.

The Appeal Site’s Challenging Topography in a Prominent Location

10.4 The Appeal Site’s challenging topography is not actually a reason for refusal but an important contextual piece of information which has informed the design of the development and mitigation proposed. Through the grant of outline planning permission, twice (the 2014 Outline Permission and the 2017 Outline Permission), CEC accepts that the Appeal Site can be developed in principle for this quantum of residential development. Using the topography as a reason for refusal at reserved matters stage is a collateral attack on the outline permission.

10.5 In terms of the prominence of the Appeal Site, the Appellant considers the Appeal Site is in a geographically prominent location being situated close to the town centre which makes it a sustainable location.

10.6 In terms of visual prominence, the Appellant will demonstrate that the Appeal Site has a semi urban context and is well contained and well screened by existing landscaping. Reference will be made to the landscape and visual impact assessment (“LVIA”) approved and validated under the 2017 Outline Permission and the Sandbach Character Study (2019) prepared on behalf of the Appellant.

Inclusion of Engineered Retaining Walls/Structures and Minimal Landscape Mitigation

10.7 The Appeal proposals include some engineered retaining walls and structures. These are, however, limited to where they are necessary to address the significant site constraints and to enable workable plateaus for built development, to achieve effective

drainage solutions and to ensure that the proposed dwellings achieve accessibility standards, avoid unacceptable overlooking and can be satisfactorily drained.

- 10.8 The Appellant will refer to the Technical Notes listed in Appendix 4 which explain the site constraints to be addressed in the Appeal proposal. Through its proofs of evidence, the Appellant will also demonstrate that the final design has been influenced by specific design and technical requirements which new developments must take account of including the application of DDA, Building Regulations Part M principles, local highway and Design Manual for Road and Bridges principles.
- 10.9 The design has also had regard to the details of the access and spine road which have been approved in the 2020 Full Permission and with which the Appeal proposals are consistent. The vertical and horizontal alignment of those features dictate to a large degree the workable levels across the remainder of the Appeal Site to ensure that appropriate street frontages, pedestrian and cycle accessibility and interface can be achieved.
- 10.10 The existing slopes within the Appeal Site have been retained wherever possible and incorporated into open space and landscaped areas.
- 10.11 The Appellant will demonstrate that regard has also been had to the conclusions of the Inspector in the 2020 Hybrid Refusal which has resulted in the removal of the 5 metre and 7 metre retaining walls that were proposed in the 2020 hybrid scheme in favour of a more fine grained reprofiling of the Appeal Site. This has resulted in:-
- very limited sections of retaining walls which affect only 12 residential plots and with a height no greater than 1.7 metres around rear gardens; and
 - a retaining embankment along the north west boundary of the Appeal Site consisting of a slow rising embankment which is heavily landscaped to minimise its visual impact. Reference will also be made to the changes in levels along the north western boundary due to the construction of the A534 by-pass which resulted in the importation of fill and the creation of an engineered embankment.
- 10.12 The Appellant notes that the reference in the officer's report for the RM Application to 5 metre and 7 metre retaining walls is incorrect for the reasons set out at 10.11 above.

Minimal Landscape Mitigation

- 10.13 The officer's report in respect of the RM Application stated that the "*soft landscaping design proposals are disappointing*". Part of the justification for this comment is that the verges on the spine road are 2 metres wide rather than 3 metres sought in the Cheshire East Design Guide SBD. The officer's comments however fail to have regard to the details of the approved spine road layout in the 2020 Full Permission with which the Appeal Proposal is consistent.
- 10.14 The landscape proposals are consistent with the LVIA which was validated/approved as part of the 2017 Outline Permission and reflect the principles (aligned with Policies SE1 – Design and SC4 – Landscape of the CELPS) to achieve:-
- minimal disturbance to and loss to existing trees and hedgerows;
 - conservation and enhancement of areas of amenity in existing landscape to add value in ecological, multifunctional surface water and amenity terms; and
 - safeguarding wildlife corridors and provide links to the public open space.

Working with the Flow and Grain of the Landscape

- 10.15 The landscape strategy has evolved to take full account of the flow and grain of the landscape, working with the existing landscape features including land form, field plans, topography and existing trees and hedges.
- 10.16 The ecological corridor along the western boundary of the Appeal Site is being supplemented by the planting of high canopy tree species, understory native planting and wildflower grassland.
- 10.17 The existing hedgerows have been retained in the majority of locations and a number of additional native and ornamental hedges are proposed.
- 10.18 Tree species and typologies have been adopted to create a hierarchy across the Appeal Site with 452 additional trees proposed to be planted from extra heavy standard to semi mature sizes.

Perceived Harm to Character and Appearance

- 10.19 The proposed design has sought to respect the existing landscape and surrounding character of the Appeal Site whilst taking account of the site constraints.
- 10.20 Engineered solutions (retaining walls) are required in some locations to overcome the challenging topography. These however have been minimised and designed to minimise localised visual impacts and provide a sensitive landscape solution.
- 10.21 Reference is made to the SCP Technical Note – Plot Levels Difference Review Rev C listed at Appendix 4. That document demonstrates that 101 of the proposed dwellings will sit within a level difference of 0.5 metres of existing levels with the remaining 59 dwellings being within 1 metre level difference of existing. The Appellant will argue that this is not uncommon for any development site let alone a site such as the Appeal Site with a challenging topography.
- 10.22 The Appellant will also refer to the 3D aerial views, flythrough and Sandbach Character Study (2019) listed at Appendix 4 which demonstrate that the Appeal Proposal will not result in any material harm to the character and appearance of the area.
- 10.23 The Appellant will demonstrate that the Appeal proposals comply with policies SD2, SE1 and SE4 of the CELPS, policy PC2 of the SNP, the Cheshire East Borough Design Guide, the National Design Guide, Building for Life and guidance contained within the NPPF.

11.0 REASON 3

- 11.1 Reason 3 states *“The proposed Public Open Space is located adjacent to the A534 and is sited at a lower level to the proposed dwellings which generally back onto the open space. The proposed development does not integrate the open space/play area into the development and the area is likely to be the subject of antisocial behaviour. The proposed development is contrary to Policies SE6, SE1, SD1 and SD2 of the Cheshire East Local Plan Strategy and Policy H2 of the Sandbach Neighbourhood Plan”*.
- 11.2 The Appellant will demonstrate that the open space within the Appeal proposal is:-
- well integrated into the development; and
 - is not likely to be the subject of a antisocial behaviour.

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- 11.3 The officer's report to committee suggests that the NEAP which forms part of the Appeal proposal is not well integrated because it is not centrally located.
- 11.4 The topographical constraints of the Appeal Site mean there are very limited locations capable of accommodating a NEAP (taking account of its requirements in terms of scale, use and offset/buffer from residential properties). The Appellant will refer to the SCP Level Philosophy Technical Note Rev C listed at Appendix 4.
- 11.5 The Appellant will submit that locating the NEAP centrally within the Appeal Site, having regard to the 30 metre set back between the NEAP activity zone and residential properties, would result in a significantly less efficient use of land contrary to the NPPF.
- 11.6 The Appellant will demonstrate that the Appeal proposal achieves an appropriate balance between working with the topography, achieving appropriate drainage design and flood mitigation and securing a public right of way network within a safe environment and will not lead to antisocial behaviour.
- 11.7 The public open space (including the NEAP) is located in the western portion of the Appeal Site forming part of the wider green infrastructure which comprises a designated wildlife corridor, local green gap, areas of woodland priority habitat network and woodland improvement. The NEAP and open space will therefore be accessible to a greater number of residents including those using the public right of way network around the town of Sandbach.
- 11.8 The Appellant will demonstrate that the location of the open space/NEAP will not lead to antisocial behaviour. The location of the NEAP at a slightly lower level than the neighbouring residential properties will assist in overlooking of the open space/NEAP providing increased opportunities for natural surveillance. Similarly the public right of way network running through this part of the Appeal Site will also assist natural surveillance.
- 11.9 The open space/NEAP is therefore well integrated into the development providing a positive addition to the development in an appropriate location that has been designed to work with the topographical constraints of the Appeal Site and wider green infrastructure whilst reducing the likelihood of antisocial behaviour.
- 11.10 The Appellant will demonstrate that the Appeal proposal therefore accords with policies SE6, SE1, SD1 and SD2 of the CELPS and policy H2 of the SNP.

12.0 REASON 4

- 12.1 Reason 4 states *“The proposed development will result in a significant change to the character of footpath FP19 which would be heavily influenced by the urban character of the development, particularly where it runs along the spine road and through the open space. As a result, there would be conflict with Policies SE1 and CO1 of the Cheshire East Local Plan Strategy, Policy GR16 of the Congleton Local Plan, and Policy PC5 of the Sandbach Neighbourhood Plan as the development has not taken into account the existing footpath network, would not achieve a high quality public realm that enhances conditions for pedestrians, would not be present to access on foot”*.
- 12.2 The existence of the 2017 Outline Permission means that the character of the Appeal Site and the context within which footpath 19 sits will inevitably change significantly as a result. The change in the character of the Appeal Site and the context within which footpath 19 sits has also been accepted in the 2020 Full Permission.
- 12.3 The Appellant does not disagree that the proposed development will result in a significant change to the character of footpath 19 which will be heavily influenced by the urban character of the development. This, however, would be the case even if footpath 19 were to remain wholly on its current alignment. The starting point is that the principle of change to footpath 19 is accepted. It must also be the case that change is not necessarily harmful.
- 12.4 The Appellant will demonstrate that of the 527 metres of footpath 19 which lie within the Appeal Site, 15% is to be retained along its current alignment, 24% is to be diverted within areas of public open space, 22% is to be diverted through open space in the southern part of the Appeal Site with only 30% being diverted along the spine road which includes 2 metres of treeline/landscape verges either side of the carriageway.
- 12.5 The Appellant will demonstrate that the existing footpath 19 has a number of constraints/difficulties and is not a pleasant experience. This conclusion was accepted by the inspector in the Appeal Decision of the 2020 Full Permission. Indeed the inspector recognised in relation to the 2020 Full Permission that the realignment and design around footpath 19 would allow access through the Appeal Site for a wide range of users on hard surfaced and lit footways or via combined pavements/cycle ways by the spine road, with suitable gradients.

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- 12.6 The Appellant will submit that in the same way the Appeal proposals will result in enhancements to the existing public rights of way/FP19 within the Appeal Site with new surfacing, overlooking, good lighting and good connectivity to the open countryside routes beyond the Appeal Site. The Appellant will argue that this will make the route of FP19 more attractive and desirable to existing and future users.
- 12.7 The Appellant will demonstrate that the footpath network as set out in the proposed development, including the partial diversion of FP19, is compliant with policies SE1 and CO1 of the CELPS, policy PC5 of the SNP and the previous policy GR16 of the Congleton Local Plan (now replaced by policy INF1 of the SADPD).

13.0 REASON 5

- 13.1 Reason for Refusal 5 states: *“The proposed development does not provide a full mix of open market housing to help support a mixed, balanced and inclusive community. The proposed development is contrary to Policies SC4 of the Cheshire East Local Plan Strategy, H3 of the Sandbach Neighbourhood Plan (2nd Edition) and HOU1 of the Cheshire East Site Allocations and Development Policies document”*.
- 13.2 It is the Appellant’s case that Reason 5 is unsubstantiated, CEC’s professional planning officers having set out in the officer’s report to committee that the proposed housing mix is considered to be acceptable.
- 13.3 The Appellant’s evidence will discuss the development plan including policy SC4 of the CELPS, policy H3 of the SNP, policy HOU1 of the SADPD as well as the supporting evidence and will demonstrate why the Appeal proposals are acceptable.
- 13.4 Whilst the proposed housing mix in the Appeal scheme diverges from the starting point set out at Figure 8.1 of the SADPD as it does not include two bed open market dwellings (NB it does include two bed affordable dwellings) and includes a greater proportion of four bed dwellings, the Appeal Scheme contains a wide range of dwelling types including smaller three and four bed house types that offer more flexible living accommodation when compared with a similar sized two or three bedroom house types.
- 13.5 The Appeal proposal will also address demand from households with more constrained budgets through the proposed shared ownership two bedroom dwellings that will provide an affordable route to home ownership.

- 13.6 The Appeal proposal provides a range of open market dwellings and the Appellant will argue that this will support a mixed, balanced and conclusive community, having regard to the latest evidence since the coronavirus pandemic. The Appellant will demonstrate that the Reason 5 is unfounded and that the proposed development complies with the relevant Development Plan policies for housing mix.

14.0 OTHER MATERIAL CONSIDERATIONS - BENEFITS OF THE PROPOSAL

Impact on Local Amenity

- 14.1 CEC's Design Guide offers guidance on appropriate separation distances for residential development which have been adhered to in the Appeal scheme in respect of both proposed dwelling to dwelling, and the relationship between proposed and existing dwellings. As such, there are no concerns in respect of amenity.

Highways

- 14.2 Both the location of the access to the Appeal Site and the internal arrangement of the spine road through the Appeal Site have already been approved in the extant Full 2020 Permission which was granted on appeal. The current appeal scheme is broadly similar with the approved scheme. The internal road design is consistent with CEC's road design standards for adoption and considered to be acceptable. The level of car parking and cycle provision parking has also been provided in accordance with CEC's standards. As such, no highway objections were raised in respect of RM Application.
- 14.3 As part of the development package, works are to be undertaken outside of the Appeal Site which will improve the current highway situation. The existing roundabout at the site access is to be enlarged and a fifth arm added to serve the Appeal Site. These works have been previously approved as part of the 2014 Outline Permission and the 2020 Full Permission and are accepted by CEC as being necessary not only to serve the Appeal Site but also to facilitate other allocated development in the area. Therefore, the benefits of the roundabout improvement go beyond the needs of this development alone and provide very significant benefits in the planning balance. Indeed, the queues and delays at the improved roundabout would be less when the development is completed than they are today. This was confirmed by the Inspector at the appeal in 2020 for the 2020 Full Permission, who reported that *'the operation of the overall highway network would not be significantly affected by the development. Indeed, the improvements to the roundabout would increase its capacity, reducing queues and delays'*.

14.4 In addition to the roundabout improvement, a contribution to the junction improvement of Old Mill Lane/The Hill would be made. This contribution is agreed to be £120,000.

14.5 In relation to the combination of the two highway improvements set out above, the Inspector commented in the appeal decision for the 2020 Full Permission that the off-site highway improvements '*comprise a significant proportion of the overall scheme costs, and would be a lot more than the financial contributions towards the scheme made by other nearby developments*'. This adds further weight to the argument that the highway benefits of the development provide very significant weight in favour of the development in the planning balance.

Flood Risk and Drainage

14.6 The Environment Agency and United Utilities have been consulted as part of the RM Application and have raised no objection to the proposed development in relation to flood risk/drainage, subject to the imposition of planning conditions which are included in the 2017 Outline Permission to which this RM Application is pursuant.

Public Health

14.7 Matters in relation to contaminated land and associated remediation, air quality impacts, noise and construction impacts were all dealt with as part of the 2017 Outline Planning Permission with relevant conditions to which the RM Application would need to adhere.

Delivery of New Housing

14.8 Whilst the Appeal proposals relate to the acceptability of the reserved matters details pursuant to the 2017 Outline Permission, approval of the Appeal proposal will inevitably facilitate the delivery of much needed open market and affordable housing in a sustainable location.

Economic Benefits

14.9 Approval of the Appeal proposal will deliver direct economic benefits for the local economy during the construction phase.

Conditions

14.10 The draft conditions will be a matter for discussion at the appeal inquiry. A set of draft recommended conditions based on consultee comments received during the

determination of the RM Application and based on previous permissions is provided at Appendix 5.

15.0 PLANNING BALANCE/CONCLUSION

15.1 The Appeal proposals are compliant with the relevant policies of the development plan when considered in overall terms and as such planning permission should be granted for the Appeal proposals.

15.2 The Appeal proposals are also consistent with other design and policy guidance.

15.3 Even if it is considered that there are aspects of the Appeal proposals which are not fully development plan compliant there are significant benefits arising from the Appeal proposals and these material considerations outweigh any perceived harm such that planning permission should be granted in any event.

15.4 The principle of development is clearly established on the Appeal Site through the development plan, the planning history and in particular the 2017 Outline Permission pursuant to which the Appeal proposal are mad and also the 2020 Full Permission.

15.5 The Appellant respectfully requests that the Appeal is allowed.

16.0 DOCUMENTS TO BE REFERRED TO BY THE APPELLANT

16.1 The documents to be referred to as part of the Appellant's case include but are not limited to the following:-

- Original Planning Application Documents as set out in Appendix 1;
- Post Submission Application Documents and Correspondence as set out in Appendix 2;
- Reserved Matters Chronology at Appendix 3;
- Outline Planning Application (ref 14/1193C) Documents;
- Decision Notice dated 8 August 2022 refusing the RM Application;
- Committee Papers and Officer's Reports to Committee on 27 July 2022;
- Other relevant planning decisions as set out in section 4 of this statement of case;

- Planning Policy and Other Material Considerations;
 - Correspondence with CEC/third parties in relation to the Appeal proposal;
 - Relevant Caselaw and appeal decisions; and
 - Additional Documents listed at Appendix 4.
- 16.2. The Appellant reserves the right to add to/amend its case and the evidence relied on in the light of CEC's statement of case and/or any matters raised by third parties during the appeal process.
- 16.3 The Appellant reserves the right to expand the details of its case if the Planning Inspectorate determines that the Appeal should be determined by way of hearing rather than public inquiry.

17.0 APPLICATION FOR COSTS

- 17.1 The Appellant is minded to make a costs application given the circumstances in which CEC determined the RM Application including but not limited to:-
- CEC's failure to provide the Urban Design Officer's BfL Assessment of April 2022 until 11 July 2022 and the failure to provide an update by the Urban Design Officer to the BfL Assessment to take account of the information submitted on 15 July 2022 before the RM Application was determined by Committee; and
 - Reason 5 was contrary to the professional officer's advice.
- 17.2 In the opinion of the Appellant, this conduct has the potential to be found unreasonable and had CEC acted differently this Appeal may not have been necessary. As the Appellant has yet to see CEC's case in support of the Refusal and the professional evidence upon which it relies, the Appellant will not make an application at this stage but respectfully requests the right to do so having reviewed CEC's case and evidence.