TOWN AND COUNTRY PLANNING ACT 1990

Land at Tattenhall Road, Tattenhall, Cheshire, CH3 9QX

LOCAL PLANNING AUTHORITY REERENCE:

25/01764/OUT

PLANNING INSPECTORATE REFERENCE:

6013490

STATEMENT OF THE LOCAL PLANNING AUTHORITY

1. Introduction

1.1 This statement relates to a non-determination appeal for an outline planning application for the erection of up to 110 residential dwellings (including affordable housing), introduction of structural planting and landscaping, public open space, sustainable urban drainage system and associated works.

1.2 The planning application, subject of this appeal, was validated by the Local Planning Authority (LPA) on the 9th July 2025. Four extensions of time were secured, the most recent expiring on the 30th June 2026. The non determination appeal was lodged on the 24th July 2026, prior to the Local Planning Authority determining the application.

1.3 This appeal statement concentrates on the principal issues that are considered by the LPA to be of significance to this appeal. It is requested that this statement is taken into account alongside Appendix A, Appendix B and Appendix C in unison with this statement.

1.4 Appendix A comprises the Council's Officer Report which would have formed the basis of the Council's assessment had the application been determined by the Local Planning Authority. The report provides a comprehensive assessment of the proposal against the Development Plan and other material considerations and is relied upon by the Council insofar as it is relevant to the matters in dispute at this appeal.

1.5 Appendix B is a draft Decision Notice which sets out the two putative reasons for refusal, as to why the Council would have refused planning permission, had the Council determined the application. The two putative reasons for refusal are below and constitute what the LPA considers to be the main issues for the appeal.

1. The failure to provide adequate information in respect of the ecological value of the site and proposed mitigation to be secured by the proposals together with a full and competent assessment in respect of measures in respect of biodiversity net gain. As such, the proposal is contrary to Policy N2 of the National Planning Policy Framework, the requirements of Schedule 7A of the Town and Country Planning Act 1990 (as amended) where applicable, and Policies ENV4 of the Cheshire West and Chester Local Plan (Part One) and DM44 of the Cheshire West and Chester Local Plan (Part Two).

2. In the absence of a secured planning obligation under section 106 of the 1990 Act to provide for appropriate contributions, and affordable housing (without adequate justification for its absence), there would be an unacceptable impact on local infrastructure and under provision of affordable homes. The application

would be contrary to policy STRAT11 and SOC1 of the Cheshire West and Chester Local Plan (Part One) and the NPPF.

1.6 Appendix C comprises a list of suggested conditions, should the Inspector be minded to allow the appeal.

1.7 To clarify, as detailed within Appendix A, the Council raises no objection to the proposed development on highways grounds (including access) and does not contend that the identified harm to character and appearance is such that it warrants consideration as a matter in dispute within this appeal.

2. The site and its surroundings

2.1 The site is located on the north-eastern fringes of the settlement of Tattenhall. It comprises an open field and a small number of existing buildings within the northeast corner of the site comprising stables and associated outbuildings. Overall, the site extends to 6.32 hectares.

2.2 The site is located on the western side of Tattenhall Road, which connects Tattenhall with the small hamlet of Newton-by-Tattenhall. To the south of the site is the residential estate of Greenlands, whilst to the north, east and west is open countryside. Separating the site from Greenlands is a small watercourse known as Keys Brook, and there are also a number of trees subject to Tree Preservation Orders along the watercourse corridor. The northern boundary of the site is marked by a farm access track and a hedgerow defines the western boundary. The site slopes gently upwards in a south to north direction. Overhead power lines cross the site in a northwest to southeast direction, which includes a wooden electricity distribution pole.

3. Planning History

13/01329/OUT. Outline permission for residential development of up to 30 dwellings, public open space, access and associated works. Refused February 2018. Appeal dismissed.
12/02352/OUT. Outline permission for residential development of up to 137 dwellings including public open space, access and associated works. Application refused October 2012; recommended to be allowed by the Planning Inspectorate, but appeal recovered by the Secretary of State and refused in 2017.
04/00553/OUT. Residential development to provide low cost housing. Refused May 2004

4. EIA Screening

4.1 As the appeal proposals are for urban development on a site of more than 5 hectares, the proposals fall under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Such projects only require an Environmental Impact Assessment (EIA) if the development is 'likely to have significant effects on the environment by virtue of factors such as its nature, size or location.'

4.2 The Secretary of State has issued a Screening Direction which confirms that, in exercise of the powers conferred by Regulations 14(1) and 7(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations, the proposed development does not constitute Environmental Impact Assessment (EIA) development.

5.0 Planning Policy

The policies of the following documents are considered to be relevant to this appeal

National Planning Policy Framework (NPPF)
Cheshire West and Chester Local Plan Part One (LP1)
Cheshire West and Chester Local Plan Part Two (LP2)
Cheshire West and Chester Council Supplementary Planning Document (SPD): Parking Standards
Tattenhall and District Neighbourhood Plan (TDNP)

6. The case of the Local Planning Authority

6.1 The appeal site lies outside the settlement boundary and therefore conflicts with the Council's spatial strategy which seeks to direct housing development towards settlements and restrict residential development in the countryside. Policies STRAT2, STRAT8, STRAT9 within The Cheshire West and Chester Local Plan (Part One) and Policy DM19 within The Cheshire West and Chester Local Plan (Part Two) are relevant in this regard.

6.2 It is acknowledged that the Council is currently unable to demonstrate a five-year supply deliverable housing sites and has less than a two-year housing land supply. Accordingly, NPPF DM Policy S5 is engaged and the Council accepts that the site is physically well related to an existing settlement (in compliance

with part j(i). The second half of this policy also requires development to be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure. This criterion is considered in the Planning Obligations and infrastructure section, and the summary of LPA position, below.

6.3 *Ecology and Biodiversity*

6.4 Policy ENV 4 of LP1 states that development should not result in any net loss of natural assets and should seek to provide net gains. The policy continues to state that sites will be protected from loss or damage taking account of impact on priority habitats and protected/priority species.

6.5 Policy DM 44 of LP2 states that development likely to have an impact on protected sites (statutory and non-statutory), protected/priority species, priority habitats or geological sites must be accompanied by an Ecological Assessment that complies with industry best practice and guidance, and:

- identifies the assets of biodiversity/geodiversity value on and within the vicinity of the site;
- evaluates the value and extent of the assets;
- assesses the likely expected impact of the development on assets of biodiversity/geodiversity value taking into account the mitigation hierarchy;
- identifies the net losses and gains for biodiversity/geodiversity, using a biodiversity metric calculation;
- identifies the options to enhance the value of the assets and contribute towards the borough's ecological network;

6.6 NPPF DM Policy N2 of the NPPF states that to contribute positively to the natural environment, and support nature's recovery, development proposals should; consider the environmental qualities of land proposed for development; take into account the quality of agricultural land; take suitable opportunities to connect to and strengthen ecological networks that extend beyond the site; conserve and enhance existing natural features of visual, historic or nature conservation value; use green infrastructure provided as part of the scheme and nature-based solutions to secure multiple benefits; minimise any adverse impacts on biodiversity and include features which support priority or threatened species and; ensure that green infrastructure and other features to support nature are located and designed to minimise risk of future failure.

6.7 ODPM Circular 06/2005 states that 'the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat'. The circular continues 'it is essential that the presence or otherwise of protected species, and the extent that they may be effected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'.

6.8 Section 40 of the NERC Act 2006 states “A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective”.

6.9 The application is accompanied by a Biodiversity Net Gain Feasibility Report, BNG Metric, and Preliminary Ecological Assessment. The Councils ecologist has reviewed the information made available.

6.10 The Council considers that protected habitats would not be adversely affected by the development as most mature trees are proposed for retention, additional tree and hedgerow planting is planned to be secured at reserved matters stage and possible indirect impacts of development on Keys Brook can be managed by a condition requiring the submission of a Construction Environmental Management Plan prior to commencement of development.

6.11 *Protected species*

6.12 All species of bat and their breeding sites or resting places (roosts) are protected under Regulation 43 of the Conservation of Habitats and Species Regulations 2017 (as amended) and Section 9 of the Wildlife and Countryside Act 1981.

6.13 Whilst the Council has considered the developments impact on reptiles, hedgehogs, brown hare and polecats, no evidence of the species were found on site and reasonable avoidance measures/precautionary working measures can be secured by condition.

6.14 The preliminary ecological assessment (PEA) (April 2025) states that most of the trees on site are suitable for roosting bats, with one tree identified as having a potential roosting feature. This is based on a daytime tree inspection undertaken on the 31st October 2024.

6.15 One tree is proposed for felling to allow for the proposed access (identified as T18 in the supporting documentation) and whilst this is not the tree identified as the tree with potential roosting features, as the report states that most of the trees on site are considered to be suitable for roosting bats, the report recommends that all trees require further assessment for bat roost suitability. However, no subsequent report has been submitted.

6.16 There are existing buildings on the site (stables and outbuildings) which are proposed for demolition and have been identified by the Applicant’s ecologist as requiring further assessment for bat roost suitability. The Councils Biodiversity Officer comment stating that a bat survey on buildings and trees, and any further surveys or mitigation required following this, were required to be submitted for approval prior to determination of the application was made available on the Councils website on the 20th August 2025. This matter was discussed with the applicants agent within a meeting on the 13th November

2025. The Council agreed extensions of time (as detailed in paragraph 1.2 above) to provide the opportunity for the applicant to submit the additional assessment (in addition to other matters). No subsequent assessment has been submitted.

6.17 Great crested newts and their breeding sites or resting places are protected under Regulation 43 of the Conservation of Habitats and Species Regulations 2017 (as amended) and Section 9 of the Wildlife and Countryside Act 1981.

6.18 In terms of Great Crested Newts (GCN), Natural England Guidance (January 2022) entitled “Great Crested newts: advice for making planning decisions” states that “surveys of water bodies within 250 metres of the development are usually sufficient.” Developers may need to increase this to 500m if there are no obvious barriers to GCN dispersing into the wider environment.” Typically, ponds within 250m of the site are the criteria usually considered as standard when assessing development impacts, as is illustrated further in the aforementioned guidance in terms of impact assessment, where 250m from a site is the maximum range considered.

6.19 The PEA found one small ephemeral field pond on site and a further 6 ponds within 250m of the application site. This is based on a survey undertaken on the 31st October 2024. The Habitat Suitability Index (HSI) survey results for pond P1 showed that the pond had an "average" GCN habitat score to breed. Suitable habitat was identified on site to support foraging, commuting and hibernating amphibians including GCN. The PEA recommended further assessment of the on-site ephemeral pond and further 6 waterbodies within 250m of the site in the form of Habitat suitability assessments (HSI) and Environmental DNA (eDNA) surveys to confirm the likely presence/absence of GCN.

6.20 Alternatively, the applicant could propose to enter the Natural England GCN District Level Licensing (DLL) scheme, in lieu of traditional surveys and mitigation on site. To evidence that a site is registered with the GCN DLL, an Impact Assessment and Conservation Payment Certificate (IACPC), counter-signed and dated by Natural England, is required prior to determination of the application. The applicant has submitted neither a HSI and eDNA surveys nor an IACPC certificate.

6.21 In the scenario where bat roosts or GCN are found to be present, the Conservation of Habitats and Species Regulations 2017 (as amended) provide that a competent authority, including a planning authority must, in the exercise of any of their functions, have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions. Where a European protected species may be affected for the purpose of preserving public health or public safety, or other imperative reasons of

overriding public interest, Regulation 9 (1) and 9 (3) of The Conservation of Habitats and Species Regulations 2017 (as amended) requires all local planning authorities be satisfied that there is no satisfactory alternative and there will be no detriment to the favourable conservation status of the European protected species. The Three Derogation Tests must be considered prior to determination.

6.22 Reflecting the position in relation to bats, the same biodiversity consultation response published on the Council's website identified the need for additional Great Crested Newt survey work. The Council subsequently agreed a number of extensions of time to provide the applicant with the opportunity to undertake and submit the necessary assessment. No subsequent assessment has been submitted.

6.23 Badgers and their setts are protected under the Protection of Badgers Act 1992 and ODPM Circular 06/2005, which states that “the likelihood of disturbing a badger sett, or adversely affecting badgers’ foraging territory, or links between them, or significantly increasing the likelihood of road or rail casualties amongst badger populations, are capable of being material considerations in planning decisions.”

6.24 In terms of badgers, the grassland and bunded area within the site provide good opportunities for sett creation and field evidence of badger was found in the bunded area on the western side of the site. The PEA recommends a badger survey to check for presence/absence of setts on site and land within 30m of the boundary. No subsequent report has been submitted.

6.25 Otters and their breeding sites or resting places are protected under Regulation 43 of the Conservation of Habitats and Species Regulations 2017 (as amended) and Section 9 of the Wildlife and Countryside Act 1981.

6.26 In terms of otters, The Key Brook is located directly adjacent to the southern site boundary and runs the full length of the site. The brook is bounded by trees and hedgerow and provides suitable habitat for otter and water vole. The PEA recommends further survey effort for both otter and should include 200m up and downstream of Keys Brook and 30m of the riparian corridor. No subsequent report has been submitted.

6.27 Water voles and places they use for shelter and/or protection are protected under the Wildlife and Countryside Act 1981.

6.28 In terms of water vole, the Keys Brook is located directly adjacent to the southern site boundary and runs the full length of the site. The brook is bounded by trees and hedgerow and provides suitable habitat for water vole. The PEA recommends further survey effort for water vole and should include two surveys

at least two months apart to confirm presence/absence of the species. No subsequent report has been submitted.

6.29 The grassland, ruderal vegetation, ephemeral pond and bunded area will be lost to facilitate the development, along with a section of hedgerow and all buildings, which provide suitable habitat for a range of protected species. It is considered reasonably likely that protected species will be present on site and affected by the development.

6.30 Reflecting the position in relation to bats and Great Crested Newts, the same biodiversity consultation response published on the Council's website also identified the need for additional assessments in regards to otters, water voles and badgers. The Council subsequently agreed a number of extensions of time to provide the applicant with the opportunity to undertake and submit the necessary assessments. No subsequent assessments have been submitted.

6.31 Where a European protected species may be affected for the purpose of preserving public health or public safety, or other imperative reasons of overriding public interest, Regulation 9 (1) and 9 (3) of The Conservation of Habitats and Species Regulations 2017 (as amended) requires all competent authorities in exercising any of its functions, to have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions. It follows that, if required, the competent authority should consider the Three Tests as set out in Regulation 55 (2) and 55 (9) (a) (b). It is important to note that whilst these obligations rested with the Council at the point of appeal for non-determination, this duty has now passed upon appeal to the Secretary of State.

6.32 Biodiversity Net Gain

6.33 The application is subject to statutory biodiversity net gain legislation under the Environment Act 2021. A minimum of 10% net gain in biodiversity is therefore required.

6.34 A metric and supporting information have been submitted, however a River Condition Assessment or condition assessment sheets for baseline habitats onsite have not been submitted to support the assessment. The metric also requires amendment, as strategic significance has not been applied correctly. In the Biodiversity Officers original comments, it was requested that the Ecological Network be used to apply strategic significance, however, since then, the Local Nature Recovery Strategy has been published in November 2025, so in line with guidance, planning applications considered after this date should use Table 7 (*Strategic significance categories applied to post-development interventions where a LNRS has been published*) of The Statutory Biodiversity Metric User Guide (3rd July 2025) by DEFRA and consult Page 27 of the User Guide, to apply strategic significance in the metric.

6.35 Whilst the submitted BNG metric shows a net gain in habitat and hedgerow units, the baseline information is not accurate as the adjacent brook has not been accounted for within the watercourse baseline.

6.36 This information is required in order to assess the appropriate balance expected between onsite gains, off-site gains and the use of statutory biodiversity credits for the development, taking account of the Biodiversity Gain Hierarchy, as well as the requirements for any conditions or legal agreements required to secure the enhancements for the 30-year period can be assessed. Until submission of the additional information, an assessment cannot be made as to whether the on-site habitat works satisfy the Council's significance thresholds, which are based on PPG guidance. It should be noted that where significance thresholds are met, the biodiversity net gains will be secured by condition or legal agreement, with a reporting and regulatory fee required in some cases. In the absence of this information, it is considered that the biodiversity gain condition is not capable of being successfully discharged.

6.37 Currently, the submitted Biodiversity Net Gain Metric has not been demonstrated to accord with the statutory metric requirements and, as such, cannot be relied upon as an accurate assessment of the development's biodiversity impacts or gains. Consequently, the metric is not considered acceptable and insufficient information has been provided to demonstrate compliance with Biodiversity Net Gain requirements.

6.38 Conclusion on Ecological matters

6.39 Taken as a whole, it cannot be confirmed that the development would not result in harm to protected species, nor has it been demonstrated that the biodiversity gain condition is not capable of being discharged. The application therefore does not comply with LP1 Policy ENV4, LP2 Policy DM44 of NPPF DM Policy N2.

6.40 It is noted that the Appellants own Appeal Statement confirms in paragraph 6.53 that "having regard to the recommendations of the PEA (CD 1.08) and the comments from the Biodiversity Team (CD 3.15) and Cheshire Wildlife Trust (25th July 2025) (CD3.04) the following survey work will be presented to the Inquiry: Water Vole Survey, Otter Survey, Badger Survey, Bat Transect Survey and Bat Emergence Survey and updated BNG metric including water habitat units."

6.41 It appears, therefore, that there is no dispute between the parties that the aforementioned surveys are required. However, it is notable that the Appellant's Statement makes no reference to Great Crested Newts, despite the Council identifying this species as one for which further survey work, and potentially mitigation measures, may be necessary. This omission does not assist in

demonstrating that the proposal would avoid adverse effects on protected species or that appropriate mitigation could be secured.

6.42 Accordingly, the submitted Biodiversity Net Gain Metric has not been demonstrated to accord with the statutory metric requirements and therefore the metric is not considered acceptable and insufficient information has been provided to demonstrate compliance with Biodiversity Net Gain requirements.

6.43 *Planning Obligations and Infrastructure and affordable housing*

6.44 Policy STRAT11 of LP1 states that development should facilitate the timely provision of additional facilities, services and infrastructure to meet identified need arising from the development in locations that are appropriate and accessible.

6.45 Policy SOC1 of LP1 states that affordable homes will be sought within all new residential development, and in the rural areas have a capacity of three or more dwellings or comprise an area of 0.1 hectares or more. The Council will seek the maximise the proportion of affordable housing provided up to a target of 30%.

6.46 In line with guidance set out in Annex A of the NPPF, it is considered that full weight should be afforded to Policies SOC1 and STRAT11 as they are consistent with the national decision-making policies in the NPPF.

6.47 Policy 4 of the Tattenhall Neighbourhood Plan requires new development to protect and support the village's local facilities by assessing its impact on services such as shops, community buildings, utilities, health services and schools, and by demonstrating how any additional pressure will be addressed. The policy aims to maintain the vitality of Tattenhall by encouraging proposals that enhance or diversify local services, including improvements to utilities.

6.48 NPPF DM Policy S5 sets out that certain forms of development should be approved outside of settlements unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in the NPPF.

6.49 One of the types of development listed (in part j) is where it would address an unmet housing need and where the development would be physically well-related to an existing settlement (as is the case here) and be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure.

6.50 NPPF DM Policy HC3 states that proposals for housing should provide for new or improved community facilities and public service infrastructure which are necessary for the development to be acceptable in planning terms, whether by direct provision or a contribution to off-site improvements.

6.51 The policy continue to state that planning conditions and obligations should be used to secure the timely delivery of community facilities and public service infrastructure required to serve new development, so that these facilities are available for use when the development (or an agreed proportion of the development) is first occupied or comes into use.

6.52 Paragraph 002 Reference ID: 23b-002-20190901of the PPG states that planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

6.53 Policy DM29 of LP2 states that development proposals should take every reasonable opportunity to promote and positively contribute to the health of the borough.

6.54 Whilst the application proposes the delivery of affordable dwellings in line with LP1 Policy SOC1, as matters stand, no completed planning obligation has been secured and in the absence of a completed planning obligation, the development fails to secure affordable housing which is necessary to make the development acceptable in planning terms.

6.55 The development would generate increased demand for and use of local health care services. The NHS Cheshire & Merseyside Group have assessed the development and have stated that a financial contribution is required. This will be calculated at reserved matters stage based on their standard local NHS development formula of £737 per 1 bed unit, £1052 per 2 bed unit, £1473 per 3 bed unit, £1842 per 4 bed unit and £2526 per 5 bed unit.

6.56 Subject to securing a financial contribution towards public health provision through a S106 agreement, compliance with LP1 Policy STRAT11, LP2 Policy DM29 and Policy 4 of the Tattenhall Neighbourhood Plan and the NPPF has been demonstrated.

6.57 Policy SOC6 of the LP1 states that the Council will seek to protect, manage and enhance existing open spaces, sport and recreation facilities to provide a

network of diverse, multi-functional open spaces. Policy DM 35 of LP2 makes it clear that all new residential development of 11 units or more must make provision for open space.

6.58 The Green Infrastructure Officer advises that in line with the Council's Open Space Study on site provision must be made for play (126.50 sqm plus additional buffer for transitional space), amenity greenspace (2,530 sqm), and allotments (379.50 sqm). The indicative plan adequately demonstrates that these requirements can be met at reserved matters stage.

6.59 The following financial contributions are also required.

- £1,312.64 towards parks and recreation grounds (per dwelling)
- £185.96 towards play space youth (per dwelling)
- £81.23 towards cricket (per dwelling) (capital pitch sum)
- £32.26 towards hockey (per dwelling) (capital pitch sum)
- £425.09 towards football (per dwelling) (maintenance sum 10 years)

6.60 The applicant has agreed to secure on site public open space and the provision of the following sums towards open space through a S106 agreement.

- Youth Play (£19,852)
- Park and Recreation (140,138.90)
- Sports Pitch sum (£59,021)
- Sports Pitch Maintenance sum (£77,140)
- Sports Pitch Changing Facility sum (£84,138)

6.61 Subject to securing the required on-site open space provision and a financial contribution towards off site open space, the applicant would comply with LP1 Policy SOC6, and LP2 Policy DM35.

6.62 The Council's Education Team has no objection to the development subject to a financial contribution towards local education provision. The total amount payable would be calculated on receipt of a reserved matters application and the mechanism for calculating the amount should be secured by a Section 106 agreement.

6.63 The applicant has agreed to secure a financial contribution towards education provision through a forthcoming S106 agreement.

6.64 It is considered that the required contributions would meet the regulation 122 tests being necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

6.65 Overall the impacts arising from the development have been assessed by relevant consultees and the applicant has agreed to the principle of making financial contributions towards infrastructure provision, secured through a planning obligation. It is confirmed that these contributions would be directed towards mitigating the additional demand generated by the development. Having regard to the scale of the proposal, the mitigation secured and the proportionate nature of the impacts arising, it is considered that the development would not, in itself, result in unacceptable pressure on local infrastructure or materially exacerbate existing constraints. This is subject to securing on site open space and affordable housing (see below), and financial contributions towards education, open space and public health.

6.66 However, as matters stand, no completed planning obligation has been secured.

6.67 In the absence of a completed planning obligation, the development fails to mitigate its impacts on local education provision, public health infrastructure, and public open space.

6.68 In the absence of a completed planning obligation, the development also fails to secure affordable housing which is necessary to make the development acceptable in planning terms.

6.69 The Council considers these obligations necessary to make the development acceptable in planning terms.

6.70 Until an agreed and completed legal agreement is secured, the development would also fail to comply with the above Local Plan policies.

6.71 As set out above, Policy S5 j identifies development which would address an evidenced unmet housing need as a type of development which should normally be approved in the countryside. This is subject to the criteria set out at S5 j.i and includes that development would be of a scale which can be accommodated taking into account the existing or proposed infrastructure. In view of the above, considerations, it is not considered that the development falls within S5. j.

6.72 Paragraph 4 of Policy S5 states that development proposals which do not fall within one of the categories set out in this policy should only be approved in exceptional circumstances, where the benefits of the proposal would substantially outweigh the adverse effects, including to the character of the countryside and in relation to promoting sustainable patterns of movement. The Councils assessment in this regard is included in the “Summary of LPA position” below.

6.73 Further to this, the development also fails to comply with NPPF DM Policy HC3 as the development would not provide for public service infrastructure which are necessary for the development to be acceptable in planning terms.

7. Summary of LPA Position

7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

7.2 The development would result in some harm as a consequence of it conflicting with the strategy of the Plan concerning the provision and development of new housing, this harm is afforded limited. The NPPF is a material consideration of critical importance. The Council can only presently demonstrate a housing land supply of 1.6 years. Annex A of the NPPF states that development plan policies (or parts of those policies) which are materially inconsistent with national decision-making policies in this Framework should be given very limited weight.

7.3 NPPF DM Policy S5 sets out that certain forms of development should be approved outside of settlements unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in the NPPF.

7.4 One of the types of development listed is where it would address an unmet housing need and where the development would be physically well-related to an existing settlement (as is the case here) and be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure.

7.5 As set out above, the development would result in harm as a consequence of conflicting with Local Plan Policy STRAT11 and NPPF DM HC3 as the development fails to mitigate its impacts on local education provision, public health infrastructure and public open space. Until an agreed and completed s.106 legal agreement is secured, the development would not be a type of development comply with NPPF DM Policy S5 part j (i).

7.6 On this basis, Paragraph 4 of Policy S5 states that development proposals which do not fall within one of the categories set out in this policy should only be approved in exceptional circumstances, where the benefits of the proposal would substantially outweigh the adverse effects, including to the character of the countryside and in relation to promoting sustainable patterns of movement.

7.7 As matters stand, the development would also result in biodiversity and ecology harm. This is on the basis that the applicant has failed to submit sufficient ecological and biodiversity information to enable the Local Planning Authority

to fully assess the likely impacts of the proposed development on habitats, protected species and biodiversity interests. In the absence of adequate survey information and supporting evidence, the Authority cannot be satisfied that the development would conserve and enhance biodiversity, avoid harm to protected species, or achieve any required biodiversity gains.

7.8 As such, the proposal is contrary to Policy N2 of the National Planning Policy Framework, the requirements of Schedule 7A of the Town and Country Planning Act 1990 (as amended) where applicable, Policies ENV4 and STRAT11 of LP1, Policy DM44 of LP2 and the Tattenhall Neighbourhood Plan.

7.9 NPPF Policy N2 states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or, as a last resort, compensated for, then the development should be refused. Accordingly, the weight afforded to the failure to demonstrate there would not be unacceptable harm to features of ecological interest is afforded substantial weight.

7.10 In addition the development has not made provision for the delivery of affordable housing by way of a S106 legal agreement. The failure to secure affordable housing is afforded substantial adverse weight.

7.11 Taking into account the identified harm to biodiversity and the failure to mitigate impacts against local infrastructure and secure affordable housing, it is not considered that there are exceptional circumstances which would justify the granting of planning permission in this instance.

7.12 The application demonstrates that a good quality design and suitable levels of amenity for both future and existing residents could be safeguarded through the approval of reserved matters. Subject to conditions being imposed, the proposal would not give rise to any significant adverse impacts on the operation of the local highway network, local landscape character, the health and well-being of residents, or flood risk.

7.13 This notwithstanding, Appendix B is a draft decision notice which sets out the two putative reasons for refusal, as to why the Council would have refused planning permission, had the Council determined the application. The two putative reasons for refusal are;

1) The failure to provide adequate information in respect of the ecological value of the site and proposed mitigation to be secured by the proposals together with a full and competent assessment in respect of measures in respect of biodiversity net gain. As such, the proposal is contrary to Policy N2 of the National Planning Policy Framework, the requirements of Schedule 7A of the Town and Country Planning Act 1990 (as amended) where applicable, and Policies

ENV4 of the Cheshire West and Chester Local Plan (Part One) and DM44 of the Cheshire West and Chester Local Plan (Part Two).

2) In the absence of a secured planning obligation under section 106 of the 1990 Act to provide for appropriate contributions, and affordable housing (without adequate justification for its absence), there would be an unacceptable impact on local infrastructure and under provision of affordable homes. The application would be contrary to policy STRAT11 and SOC1 of the Cheshire West and Chester Local Plan (Part One) and the NPPF.

7.14 For the reasons set out above, it is respectively requested that the appeal be dismissed. However, and without prejudice to that position, should the Inspector be minded to allow the appeal, it is requested that any permission granted be subject to the conditions contained within Appendix C and the prior completion of a planning obligation securing all necessary mitigation and infrastructure requirements.