

CANNOCK CHASE SPECIAL AREA OF CONSERVATION (SAC)

GUIDANCE TO MITIGATE THE IMPACT OF NEW RESIDENTIAL DEVELOPMENT (May 2017)

1. Background

- 1.1 Lichfield District Council has a duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2010 (Habitat Regs.) to ensure that planning application decisions comply with the Habitats Regulations. Local Plan Strategy Policy NR7 safeguards the Cannock Chase Special Area of Conservation (SAC), which has been designated under the Regulations for its unique heathland habitat.
- 1.2 Evidence produced to inform the production of the Council's Local Plan Policy NR7, by consultants Footprint Ecology, together with that of partner Local Planning Authorities in the Cannock Chase SAC Partnership (Stafford Borough, Cannock Chase, South Staffordshire, East Staffordshire and Wolverhampton City Council), shows that the "in combination" impact of proposals involving a net increase of one or more dwellings within a 15 kilometre radius of the SAC would have an adverse effect on its integrity unless avoidance and mitigation measures are in place; with a significantly higher proportion of visitors coming from within 8km. Please see Map 1 for further information.
- 1.3 The effects arise from an increase in recreation over the local plan period and comprise the creation of new paths, path widening, erosion and nutrient enrichment from visitor use and vehicle emissions. Therefore the SAC Partnership has agreed to formally support the Footprint Ecology evidence base reports and acknowledge a 15km Zone of Influence, with financial contributions for the required mitigation being sought in the 0-8km Zone only.
- 1.4 Following the production of the Footprint Ecology evidence base, additional advice has been received from Natural England. This has directed the Cannock Chase SAC Partnership authorities to consider mitigating any likely significant effects through the provision of on-site mitigation measures, such as those set out in section 3 of this guidance note. The use of measures seeking to avoid significant effects, such as offsite Suitable Alternative Natural Greenspaces (SANGs), is not being pursued at this time. This is primarily due to uncertainties regarding their effectiveness and their relatively high cost when compared to on-site mitigation measures.
- 1.5 Policy NR7 states:

Policy NR7: Cannock Chase Special Area of Conservation

Before development is permitted it must be demonstrated that alone or in combination with other development it will not have an adverse effect whether

direct or indirect upon the integrity of the Cannock Chase Special Area of Conservation (SAC) having regard to avoidance or mitigation measures.

In particular, any development that results in a net increase in dwellings within a 15km radius of any boundary of Cannock Chase SAC (as shown on the Policies Map) will be deemed to have an adverse impact upon the Cannock Chase SAC unless or until satisfactory avoidance and/or mitigation measures have been secured.

The ongoing work by relevant partner authorities will develop a Mitigation and Implementation Strategy.

This may include contributions to habitat management; access management and visitor infrastructure; publicity, education and awareness raising; provision of additional recreational space within development sites where they can be accommodated and contributions towards off-site alternative recreational space where they cannot; and measures to encourage sustainable travel

- 1.6 The Council must ensure that decisions made on planning applications, and policies in the Local Plan, will avoid and mitigate recreation impacts on Cannock Chase SAC. If there are any likely significant effects, the Council is either unable to grant planning permission due to the restrictions of the Habitat Regs., or it must ensure there are appropriate mitigation measures in place. Given the evidence now available that one or more net dwellings would have an adverse effect on the SAC's integrity, the Council has introduced Guidance, as set out below, which includes a simple regime of financial contributions as an alternative to developers providing Habitats Regulations Assessment information to inform mitigation so as to prevent harm to the SAC.
- 1.7 This approach is being taken forward by all the Cannock Chase SAC Partnership authorities with housing still to be delivered in the 0-8km Zone of Influence.
- 1.8 There is also a range of existing SAC and visitor management expenditure outside of those detailed in this guidance note, much of which seeks to manage the impacts of existing visitor pressures on the SAC. These primarily arise from Staffordshire County Council in its role as a site owner and manager and include the following measures¹:
 - Country Park Infrastructure and Visitor Management and Maintenance (£290,000 per year)
 - SAC Habitat Management (£206,400 per year)
 - Volunteer Input to Infrastructure and Habitat Management (25,000 hours per year – equivalent to £268,000 per year)
 - Other measures within the Cannock Chase Area of Outstanding Natural Beauty (AONB) Management Plan and Visitor Mitigation Strategy
- 1.9 The mitigation measures detailed in section 3 of this guidance are directly targeted at mitigating impacts arising from new planning permissions and Local Plan policies, where these increase the number of residents within the Zone of Influence. Put

¹ Approximate figures, provided October 2016

simply, they take account of other measures targeted towards the management of the SAC in the absence of new development (such as those set out above) and then consider what additional measures may be required as new development comes forward within the Zone of Influence.

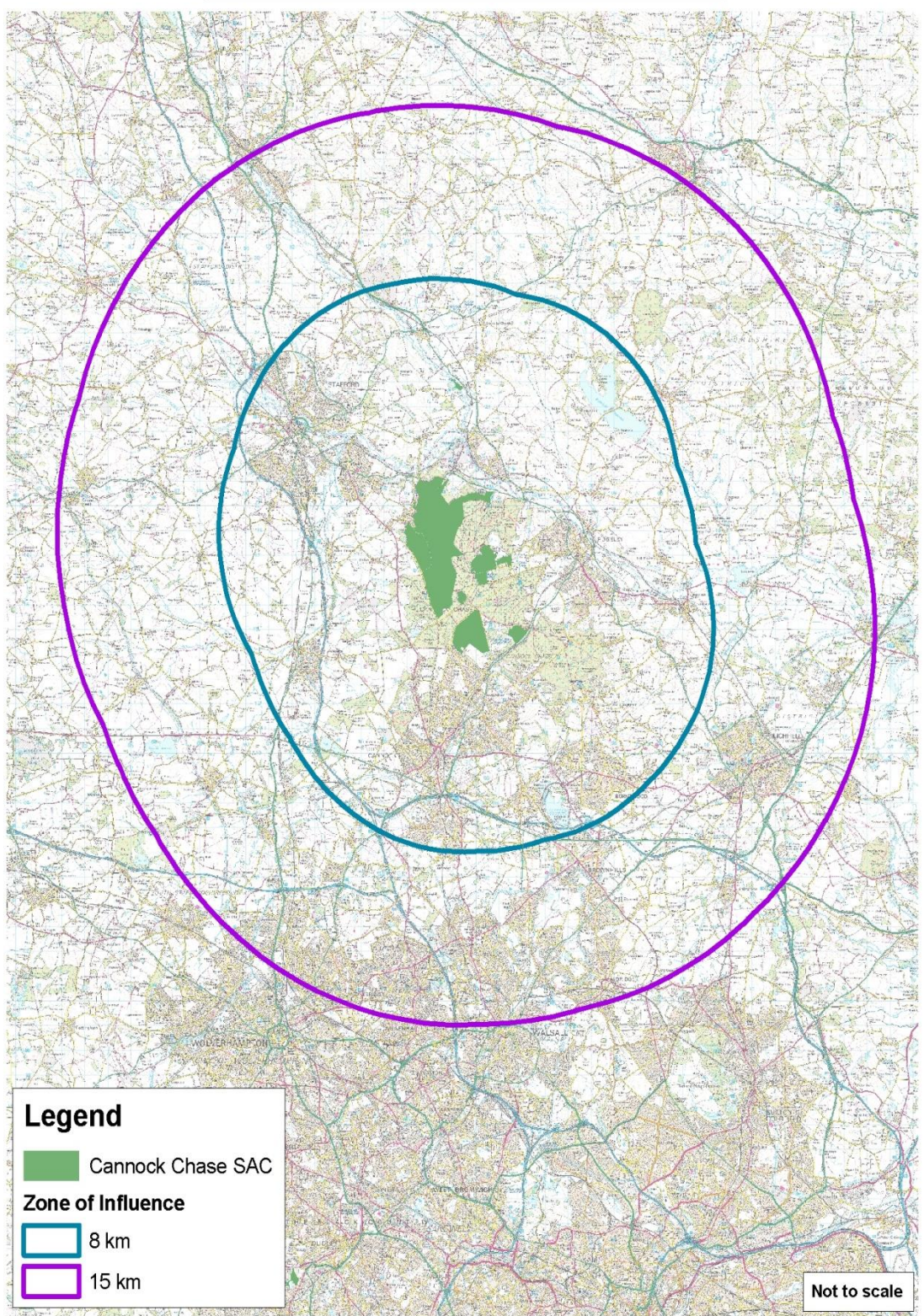
1.10 Natural England supports the use of Guidance to Mitigate the Impact of New Residential Development.

2. Permitted Development

2.1 Having determined in the evidence and the adopted Local Plan Strategy policy that a net increase of one or more dwellings will have an adverse impact on the integrity of Cannock Chase SAC, the same principle applies to the exercise of "Permitted Development" rights to create additional dwellings. Therefore, financial contributions will also be required from such development. Please contact the Council for further information.

Map 1. Map of the zones around Cannock Chase SAC
- 8km and 15km are the Partnership agreed zones

Cannock Chase SAC Zones of Influence



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3. **Analysis of SAC Mitigation Costs**

3.1 The following table of mitigation measures and estimated costings has been prepared by Natural England in collaboration with the Cannock Chase SAC Partnership to set out proposed Strategic Access Management and Monitoring Measures (SAMMM) relating to Cannock Chase SAC.

| SAMM Measure | Cost £ | Duration | Explanatory comments |
|---|---------------|-----------------|--|
| Project initiation: business plan; agreement of partner responsibilities (Memorandum); recruitment of project staff. | 50 | Year 0 | A simple assumption that there is a cost in employing the Lichfield DC project team for project initiation. |
| Staff: one full-time project manager and one full-time visitor engagement officer | 1400 | Years 1 to 10 | Project manager £40k salary plus overheads = £80K. Engagement officer salary £30K, plus overheads = £60K. Costs dependent on managing body. These staff set up and manage all consultancy and other contracts, and undertake all engagement work above |
| Engagement of three of four key sectors: walkers and dog walkers; cyclists; horse riders. Development of volunteering and education programmes. Promotional and interpretation material | 30 | Years 1 to 10 | Cost here only includes the promotional and interpretation material, which would consist largely of web-based material. The other cost of sector engagement is staff time and is adequately built into the figures above. |
| Strategies: an overarching strategy for visitors and nested strategies for car parking, track and footpath management and each visitor sector, plus a monitoring strategy | 135 | Years 2 and 3 | Consultancy costs. Overarching strategy including monitoring £50K, car parking £40K, each of three visitor sectors £15K. |
| Physical management: improvement of paths and tracks; implementation of parking plan; way marking and on-site interpretation panels | 255 | Years 1 to 15 | Contract costs. Paths and tracks: quoted cost £10 per m; 1km a year for 10 years; followed by 100m a year for 5 years. Assume implementation of a parking plan will be cost neutral (funded by car park charges) for car park closures. Allow approx. £100k for car park construction or modification (see note below). Panels and way marking £50K. |
| Monitoring | 100 | Years 4 to 15 | Consultancy costs. Two repeats of the aerial survey of paths and tracks, £10K each to include ground truthing and targeted biological monitoring as necessary. Two visitor surveys 40K each. |

| | | | |
|------------|------|------------|--|
| SAMM Total | 1970 | Years 1-15 | |
|------------|------|------------|--|

Calculating the rates of developer contributions in the 0-8km ZOI

The table below identifies the planned housing growth within the 0-8km Zone of Influence around Cannock Chase SAC within the current development plans of the local authorities in the 0-8km Zone during the 0-15 year period

| Local Authority in 0-8km ZOI of Cannock Chase SAC | Housing numbers in 0-8km ZOI | Percentage (%) of total housing delivery | Proportion of SAMM cost requirement per authority (over housing related plan period) | Monies already collected or committed | Monies left to collect for SAMM delivery |
|---|------------------------------|--|--|---------------------------------------|--|
| South Staffordshire Council | 150 | 1.8 | £34,785 | £0 | £34,785 |
| Cannock Chase District Council | 1700 | 20.0 | £394,232 | £20,000 | £374,232 |
| Lichfield District Council | 1715 | 20.2 | £397,710 | £96,500 | £301,210 |
| Stafford Borough Council | 4900 | 57.7 | £1,136,315 | £414,550 | £721,765 |
| East Staffordshire Borough Council | 30 | 0.4 | £6,957 | £0 | £6,957 |
| Walsall Metropolitan Borough Council | 0 | 0.0 | £0 | £0 | £0 |
| TOTAL | 8495 | | | | |
| SAMM cost | 1970000 | | | | |

3.2 Should the estimated costings in the Strategic Access Management and Monitoring Measures (SAMMM) above be refined through the monitoring and review process and emerging evidence, the rates will be recalculated as part of the ongoing review. Other types of development and windfall housing sites not included in the above table have the potential to impact upon the SAC and these will continue to need to be assessed and mitigated for on an individual basis through discussions with Natural England and/or the local authority.

3.3 It is at the discretion of each authority within the 0-8km ZOI how to deliver their individual total mitigation monies required to the SAC Partnership. Provided that the individual authorities deliver the required cost per authority (as per the table above) to the SAC, it is their discretion how to implement charging and therefore approaches within each authority may differ.

4. Cannock Chase SAC Mitigation Payments in Lichfield

4.1 Lichfield District Council will therefore implement a charge for any net dwelling of **£178.60** and administration costs of £100 in entering into that agreement.

- 4.2 Lichfield District Council is a Community Infrastructure Levy (CIL) Charging Authority.
- 4.3 Regulation 123 of the CIL Regulations sets out the need for local authorities to produce a list of 'relevant infrastructure' which will be funded in whole or part by the CIL. Lichfield District Council's Regulation 123 list adopted on 21st February 2017 includes part of the Strategic Access Management and Monitoring Measures (SAMMM), i.e. measures for preventing harm to the Cannock Chase SAC as agreed by the Cannock Chase SAC Partnership. As such for CIL liable developments, CIL will fund the mitigation for new residential development which forms part of the adopted Local Plan Strategy within the 0-15km zone.
- 4.4 The CIL Governance arrangements provide a framework for the allocation of the CIL monies levied and were agreed at Full Council on 12th July 2016. The agreed Governance states that the Council will 'ring fence' CIL monies for the Cannock Chase SAC based on the proportion of planned housing provision within 0-8km of Cannock Chase SAC.
- 4.5 Non CIL liable developments ie. those types of residential development not on the CIL Charging Schedule or exempt and within the 0-8km zone of influence will be required to satisfy the Habitats Regulation by contributing via S106 towards elements of the SAMMM which have been omitted from the Regulation 123 list. A Unilateral Agreement is included in Appendix 1 for use, however parties should take their own independent legal advice in entering into such an agreement.
- 4.6 The purpose of these planning obligations is to ensure that appropriate mitigation measures are in place to give the Council the legal authority to grant planning permission under the Habitat Regs.

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

Appendix 1

LICHFIELD DISTRICT COUNCIL

UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements under the Conservation of Habitats and Species Regulations 2017
Relating to:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX *(include address of application site)*

Planning Application Reference: XXXXXXXX *(planning application no.)*

Lichfield District Council
District Council Offices
Frog Lane
Lichfield
WS13 6YZ

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

THIS UNDERTAKING is made as a Deed on the _____ day of _____ 2016

BY:

1. PARTIES

- (1) **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** (*name and address of owner(s) of the application site*), of **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** ("the Owner(s)")
- (2) **XXXXXXXXXXXXXXXXXXXX** (*name and address of charge/mortgagee*) of **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** ("the Chargee")

TO:

LICHFIELD DISTRICT COUNCIL of Frog Lane, Lichfield, WS13 6YZ ("the Council")

2. DEFINITIONS

In this Undertaking (except where the content otherwise requires):

- 2.1 "**the Act**" means the Town and Country Planning Act 1990
- 2.2 "**the Application**" means the planning application numbered **XXXXXXXXXXXXXXXXXXXX**
- 2.3 "**the Charge**" means a legal charge dated **XXXXXXXXXXXX** and made between the Owner (1) and the Chargee (2) by which the Land became charged with the repayment of certain monies to the Chargee
- 2.4 "**Commencement of the Development**" means the earliest date upon which any material operations are begun in accordance with the provisions of Section 56(4) of the Act save for the purposes of this Undertaking none of the following operations shall constitute a material operation:-
- 2.4.1 site preparation works;
 - 2.4.2 archaeological investigations;
 - 2.4.3 site investigation works (including environmental investigations)
 - 2.4.4 works of demolition and "Commence the Development" shall be construed accordingly.
- 2.5 "**the Development**" means the development to be authorised by the Planning Permission.
- 2.6 "**the Index**" means the All Items Group (Item reference CHAW) of the Retail Prices Index published by HM Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or in default of agreement fixed by the President for the time being of the Law Society on the application of any party) shall be used

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

- 2.7 **"Index Linked"** means increased (if appropriate) in proportion to movements in the Index between the date of this Agreement and the date the particular payment is made
- 2.8 **"the Interim Guidance"** means the Cannock Chase Special Area of Conservation Mitigation of Impact of Residential Development Interim Guidance.
- 2.9 **"Implementation Notice"** means the notice in writing to be served upon the Council by the Developer/Owner notifying it of Commencement of Development annexed hereto
- 2.10 **"the Land"** means the land at **XXXXXXXXXXXXXXXXXXXX** shown, for the purposes of identification and edged red on the attached plan annexed hereto
- 2.11 **"the Planning Permission"** means the planning permission to be granted pursuant to the Application and annexed hereto
- 2.12 **"the Cannock Chase Special Area of Conservation Contribution"** means £**XXXXXXXXXX** Index Linked to be paid towards works required in relation to interpretation and way marking mitigate the adverse impact of recreational activities on the integrity of the Cannock Chase Special Area of Conservation

3. INTERPRETATION

- 3.1 References to the masculine, feminine and neuter genders shall include the other genders
- 3.2 References to the singular include the plural and vice versa unless the contrary intention is expressed
- 3.3 References to natural persons are to include corporations and vice versa
- 3.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in interpretation
- 3.5 The expressions "the Owner", "the Chargee" and "the Council" shall include their respective successors in title and assigns
- 3.6 A reference to a clause, paragraph or schedule is (unless the context otherwise requires) a reference to a clause, paragraph or schedule of this Undertaking
- 3.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction
- 3.8 Where in the Undertaking a party includes more than one person any obligations of that party shall be joint and several
- 3.9 Any reference in this Undertaking to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statute
- 3.10 This Undertaking will only take effect in the event that the development is not community infrastructure levy liable

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

4. RECITALS

- 4.1 The Owner owns the freehold interest in the Land and is registered as proprietor of it with Title Absolute at HM Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number **XXXXXXXXXX** at the date of this Undertaking
- 4.2 The Council is the local planning authority for the purposes of the Act for the Land
- 4.3 The Owner has by the Application applied to the Council for approval to carry out the Development
- 4.4 The Land is situated within 0-8km of Cannock Chase Special Area of Conservation.
- 4.5 The purpose of the planning obligations set out in the First Schedule to this Deed is to avoid and mitigate any impact which the Development might otherwise have upon the integrity of the Cannock Chase Special Area of Conservation
- 4.6 The obligations in this Undertaking are in accordance with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and not for the purpose of granting planning permission but rather for the Council to secure compliance with the Conservation of Habitats and Species Regulations 2010. For the avoidance of doubt the planning obligations in this Deed shall be enforceable by the Council even though they do not constitute a reason for granting planning permission pursuant to Regulation 123 of the Community Infrastructure Levy Regulations 2010.

5. STATUTORY AUTHORITY AND LEGAL EFFECT

- 5.1 This Undertaking shall constitute a planning obligation for the purposes of and made pursuant to Section 106 of the Act
- 5.2 The obligations of the Owner in this Undertaking are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority
- 5.3 Subject to clause 5.4 the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under it to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person
- 5.4 No person shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking after they shall have parted with all interest in the Land or the part in respect of which such

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest

- 5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation, gas governor or pumping station
- 5.6 If the Planning Permission expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Undertaking shall forthwith determine and cease to have effect
- 5.7 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking
- 5.8 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by the Council under the Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority

6. CONDITION PRECEDENT

The planning obligations contained in this Undertaking shall not be enforceable until the grant of the Planning Permission by the Council

7. OBLIGATIONS

The Owner further covenants, agrees and declares in respect of the Land as set out in Schedule 1 of this Undertaking

8. COSTS

The Owner agrees to pay to the Council on the signing of this Undertaking their reasonable costs and disbursements incidental to the approval and completion of this Undertaking

9. THE CHARGE

The Chargee for itself and its successors in title consents to the Owner entering into this Undertaking and covenants with the Council that in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Undertaking so far as the same remain to be observed and performed

10. INVALIDITY

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

It is agreed and declared that if any clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of the Undertaking shall remain in full force and effect provided severance from this Undertaking is possible.

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Undertaking shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council and to the specific person executing this Undertaking as the Owner and its successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights or enforcement in respect of any matter contained in this Undertaking

12. OTHER MATTERS

12.1 The Owner shall indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained in this Undertaking

12.2 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Undertaking and shall cite the number and clause of this Undertaking to which it relates

12.3 This Undertaking shall be registered as a Local Land Charge

IN WITNESS of which the Owner and the Chargee has executed this deed and have delivered it upon dating the day and year first before written

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

**SCHEDULE 1
OWNER'S OBLIGATIONS**

The Owner covenants with the Council with the intent that these are planning obligations for the purposes of Section 106 of the Act:

1. Following the grant of Planning Permission to permit the Council's Director of Place and Community and any person or persons authorised by him access to the Land or any part of it at all reasonable times on reasonable notice and in compliance with the Owner's reasonable requirements and to permit him or them to inspect the Development and all materials intended for use in it
2. To serve on the Council [and the County Council] the Implementation Notice no later than 14 days prior to the anticipated Commencement of the Development.
3. Not to Commence Development until the Implementation Notice has been served on the Council [and the County Council of the anticipated Commencement of Development.
4. Prior to Commencement of Development to pay the Cannock Chase Special Area Conservation Contribution to the Council.
5. Not to Commence the Development until the Cannock Chase Special Area of Conservation Contribution has been paid to the Council.
6. The identified scheme (to which the contribution is made) may be changed in whole or part by written agreement between the parties to the Unilateral Undertaking.

Executed as a Deed by the said)
XXXXXXXX)
In the presence of:)

Signature of Witness
Witness Name (BLOCK CAPITALS)
Witness Address
.....
Witness Occupation

Executed as a Deed by the said)
XXXXXXXXXXXX)
In the presence of:)

Signature of Witness
Witness Name (BLOCK CAPITALS)
Witness Address

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

Witness Occupation

.....
.....

Executed as a DEED by [the)

CHARGE])

in the presence of:)

Director

Director/Secretary

Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017

IMPLEMENTATION NOTICE

NOTICE TO LICHFIELD DISTRICT COUNCIL ON COMMENCEMENT OF DEVELOPMENT

Planning Permission Reference:

Development Site:

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Description of Development:

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Date of Unilateral Undertaking:

Notice is hereby given to Lichfield District Council that works to implement the above planning permission will commence on

Signed:

For and on behalf of :

Contact name and telephone no.

Contact e-mail address:

Date:

Complete and send this Notice to the address below together with the Contribution:

Lichfield District Council
Development Management
Frog Lane
Lichfield
WS13 6YZ

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