

CITY OF WOLVERHAMPTON
PLANNING GUIDANCE TO MITIGATE THE IMPACT OF
NEW RESIDENTIAL DEVELOPMENT ON CANNOCK CHASE
SPECIAL AREA OF CONSERVATION (SAC)

MARCH 2022

(Updated June 2023)

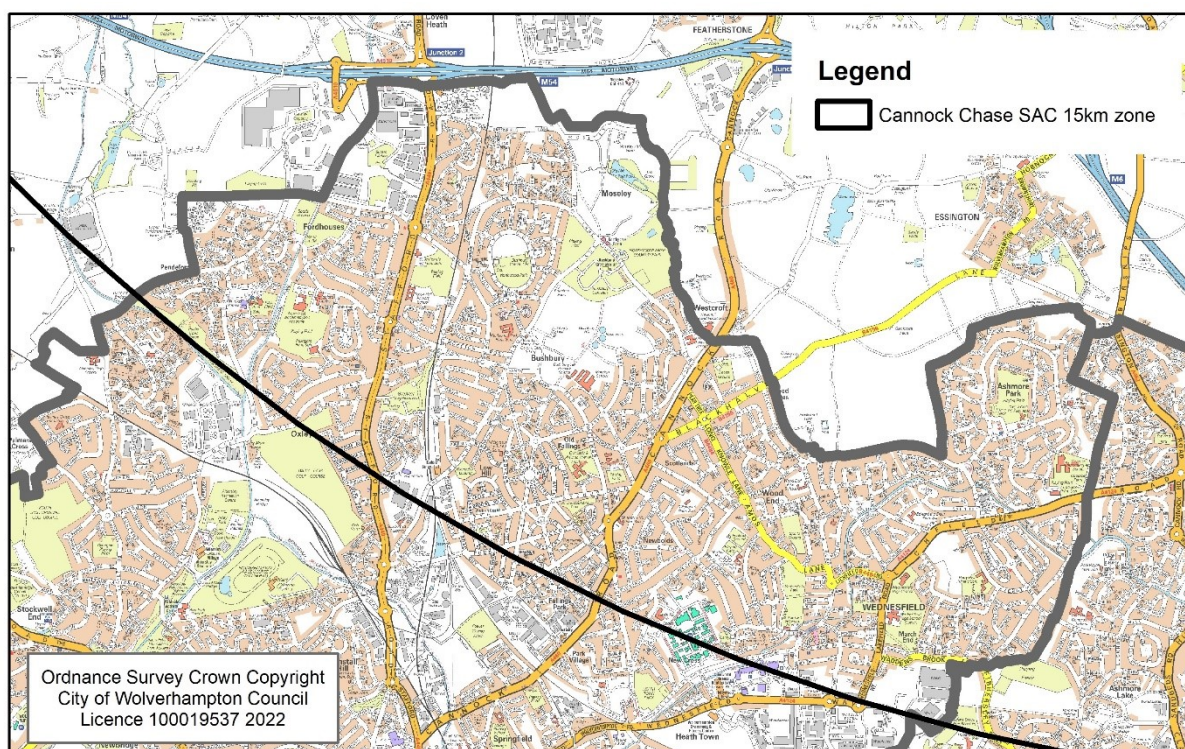
1. Background

- 1.1 City of Wolverhampton Council (CWC) 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.
- 1.2 Parts of Cannock Chase have been designated as a Special Area of Conservation (SAC) under the Habitats Regulations for its unique heathland habitat. Evidence shows that any developments which would increase the number of homes within a 15 kilometre radius of the Cannock Chase SAC are likely to generate visitors to the SAC and potentially harm habitat value unless mitigation measures are in place.
- 1.3 CWC must ensure that any planning decisions made will mitigate recreation impacts on Cannock Chase SAC. If there are any likely significant effects the Council must either refuse development or ensure there are appropriate mitigation measures in place.
- 1.4 CWC, together with other local authorities within the 15km radius of Cannock Chase SAC, have agreed to collect financial contributions from housing developments within the 15km zone and to spend these on a package of mitigation measures to mitigate harmful impacts on the SAC. This is a simple alternative to requiring each developer to provide Habitats Regulations Assessment information and mitigation proposals for each individual development.
- 1.5 CWC has produced this Guidance for developers of sites in Wolverhampton to explain which developments will be affected by the requirements and the process involved. **The Guidance should be read alongside other documents produced by the Cannock Chase SAC Partnership, including the most recent Cannock Chase SAC Partnership Frequently Asked Questions document, which are available on the CWC Planning Policy webpages (<https://www.wolverhampton.gov.uk/planning/planning-policies>).**

2. Which Developments are Affected?

- 2.1 Any development which would produce a net increase in the number of homes within 15km of Cannock Chase SAC will be required to undertake a Habitats Regulations Assessment (HRA) or make a financial contribution before development takes place. The map below shows the area of Wolverhampton within 15km of the SAC.

Map 1 Area of Wolverhampton within 15km of Cannock Chase SAC



- 2.2 The types of development affected include new homes arising through the conversion of existing buildings, houses in multiple occupation, sheltered accommodation and care homes falling within Use Class C3 and gypsy and traveller pitches.
- 2.3 Hotels, holiday lets and camping and caravan sites will also need to undertake a Habitats Regulations Assessment (HRA) or provide a financial contribution, if they could generate visitors to Cannock Chase SAC.
- 2.4 Prior approval and permitted developments, such as conversion of offices into new homes, are also affected by the Cannock Chase SAC requirement. The HRA process must be undertaken before CWC can determine if a development is permitted development or if prior approval can be granted.
- 2.5 Changes of use to residential that would normally be permitted development (subject to a prior approval process) are not permitted development in the SAC, because:
- Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2,

subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017;

- Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat. Permitted development cannot be lawfully begun until the developer has made a Regulation 77 application and the Council has approved it.

- 2.6 Further detail on developments affected by the requirement and the prior approval / permitted development process can be found in the current Cannock Chase SAC Partnership Frequently Asked Questions document.
- 2.7 If the developer wishes to undertake a Habitats Regulations Assessment rather than make use of the financial contributions system further advice can be provided by the City Planning Team.

3. How are Payments Calculated and Secured?

- 3.1 For all payments made between 1 April 2023 and 31 March 2024 **City of Wolverhampton Council (CWC) will require a payment of £329.83 for each net new home created through development within 15km of Cannock Chase SAC. This figure will be subject to an annual increase which will apply each 1st April from 2024 onwards**, in line with the All Items Group (Item reference CHAW) of the Retail Prices Index published by HM Government Office for National Statistics.
- 3.2 In order to meet the requirements of the Habitats Regulations, the payment must be made to CWC before commencement of development.
- 3.3 For major developments which are subject to a Section 106 (S106) agreement, the S106 agreement will include the requirement to make the Cannock Chase SAC payment, including any annual increases (see para 3.1).
- 3.4 For smaller developments which would not otherwise require a S106 agreement, a condition will be attached to the planning permission requiring a Unilateral Undertaking to be completed before commencement of development. This condition must be discharged by making an application to the Planning Team before development can take place. A recommended template Unilateral Agreement is provided in the Appendix to this guidance. However, parties should take their own independent legal advice before entering into such an agreement.
- 3.5 For prior approval and permitted developments, the developer will be required to enter into a Unilateral Undertaking to secure the Cannock Chase SAC payment at Regulation 77 application stage (see para 2.5 above).
- 3.6 Where a legal agreement is required to secure the payment CWC will charge for the administration costs of entering into the legal agreement. For a Unilateral Undertaking, applicants will be required to pay CWC legal costs of £100.

Appendix 1 Template Unilateral Undertaking

CITY OF WOLVERHAMPTON 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 2010 (as amended) Relating to:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (include address of application site)

Planning Application Reference: XXXXXXXX (planning application no.)

Legal Services
City of Wolverhampton Council
Civic Centre
St. Peter's Square
Wolverhampton
WV1 1SH

THIS UNDERTAKING is made as a Deed on the day of

2022

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:

CITY OF WOLVERHAMPTON COUNCIL of Civic Centre, St. Peter's Square, Wolverhampton, WV1 1SH ("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 xx/xxxxx/xxx

2.3 "the Charge" means a legal charge dated XXXXXXXXXXXXXXX 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 "Dwelling" means any dwelling (including a house, flat or bungalow) permitted to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly;

2.7 "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

2.8 "Index Linked" means increased (if appropriate) each 1 April in proportion to movements in the Index between the date of this Agreement and the date the particular payment is made

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

2.12 "the Planning Permission" means the planning permission to be granted pursuant to the Application

2.12 "the Cannock Chase Special Area of Conservation Contribution" means the sum of £329.83 per Dwelling which shall be Index Linked and shall be paid towards XXXXXXXXXXXXXXXXXXXX to 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

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 XXXXXXXX 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 15km 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 are entered into for the purpose of securing compliance with the Conservation of Habitats and Species Regulations 2010 (as amended).

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 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. OBLIGATIONS

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

7. COSTS

7.1 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

8. THE CHARGE

8.1 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

9. INVALIDITY

9.1 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.

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

10.1 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

11. OTHER MATTERS

11.1 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

11.2 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

11.3 This Undertaking shall be registered as a Local Land Charge

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 Head of City Planning 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 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 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.

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

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

Signature of Witness

Witness Name (BLOCK CAPITALS)

Witness Address

Witness Occupation

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

Signature of Witness

Witness Name (BLOCK CAPITALS)

Witness Address

Witness Occupation

Executed as a DEED by [the CHARGE]

in the presence of: Director Director/Secretary

.....

Annex 1

IMPLEMENTATION NOTICE

NOTICE TO CITY OF WOLVERHAMPTON COUNCIL ON COMMENCEMENT OF DEVELOPMENT

Planning Permission Reference:

Development Site:

Description of Development:

Date of Unilateral Undertaking:

Notice is hereby given to City of Wolverhampton 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:

City Planning
City of Wolverhampton Council
Civic Centre
St. Peter's Square
Wolverhampton
WV1 1SH