

# **CANNOCK CHASE SPECIAL AREA OF CONSERVATION (SAC) GUIDANCE TO MITIGATE THE IMPACT OF NEW RESIDENTIAL DEVELOPMENT 2018**

## **1. Background**

1.1 East Staffordshire Borough Council has a duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2010 (Habitat Regulations) to ensure that planning application decisions comply with the Habitats Regulations. Local Plan Detailed Policy 11 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 Detailed Policy 11, by consultants Footprint Ecology, together with that of partner Local Planning Authorities in the Cannock Chase SAC Partnership (Stafford Borough, South Staffordshire, Lichfield, Cannock Chase 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 SAC partners have agreed to formally support the Footprint Ecology evidence base reports and acknowledge a 15km Zone of Influence, with financial contributions 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 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 DP11 states:

## **DETAILED POLICY 11**

### **European Sites**

Development will only be permitted where it can be demonstrated that it will not lead (directly or indirectly) to an adverse effect upon the integrity of a European Site, alone or in combination with other plans or projects.

### **Cannock Chase Special Area of Conservation (SAC)**

All development that results in a net increase in dwellings within 15km of Cannock Chase SAC will be required to mitigate any adverse impacts upon the SAC in line with ongoing work by partner authorities to develop a Mitigation and Implementation Strategy. This may include contributions to access management and visitor infrastructure; publicity; education and awareness raising; The effective avoidance and/or mitigation of any identified adverse effects must be demonstrated and secured (e.g. by legal agreement) prior to approval of the development.

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 Regulations, 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 impact 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 that detailed in this guidance note, much of which seeks to manage the impacts of existing visitor pressures on the SAC. This primarily arises from Staffordshire County Council in its role as site owner and manager and includes the following measures<sup>1</sup>:

- 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)

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<sup>1</sup> Approximate figures, provided October 2016

- 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 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. Affect Types of Development**

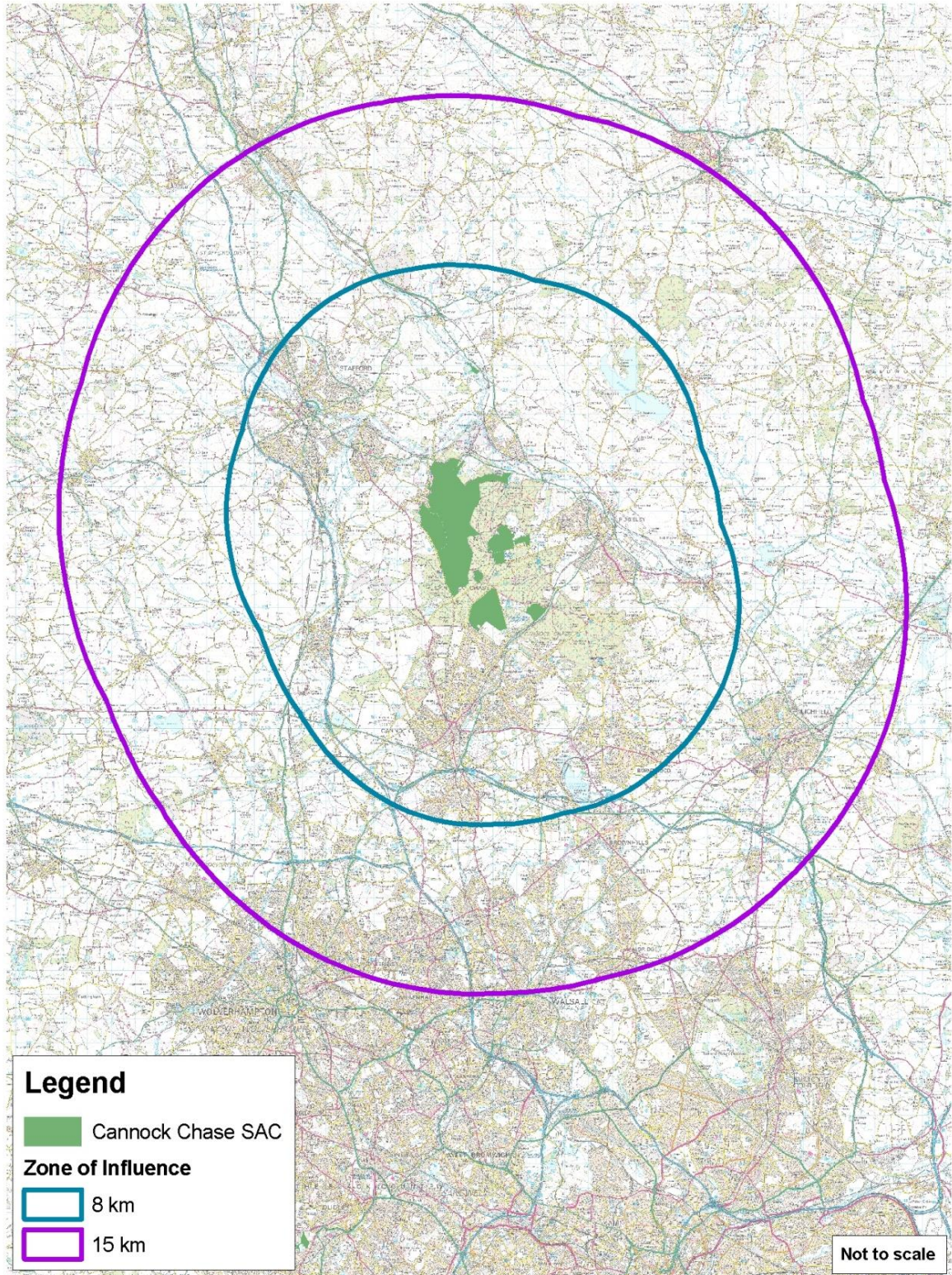
2.1 Having determined in the evidence and the adopted Local Plan policy that a net increase of one or more dwellings will have an adverse impact on the integrity of Cannock Chase SAC, the same principle applies to the exercise of “Permitted Development” rights to create additional dwellings. Therefore,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

2.2 Other types of residential development for those receiving supportive living, such as extra care schemes and specialist housing could also result in increased pressure on Cannock Chase SAC. The Council will assess each of these applications to establish the likely impact of the scheme on the SAC. The Council may accept variations on the financial contribution based on evidence that the pressure each application will exert on the SAC is less than standard because of the type of residential development proposed. 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



### 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.

<b>SAMMM Measure</b>	<b>Cost £</b>	<b>Dur-ation</b>	<b>Explanatory comments</b>
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.
<b>SAMMM Total</b>	<b>1970</b>	<b>Years 1-15</b>	

### 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 SAMMM cost requirement per authority (over housing related plan period)	Monies already collected or committed	Monies left to collect for SAMMM 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				
SAMMM 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 on 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)

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<sup>2</sup> See Appendix 1

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 East Staffordshire**

4.1 East Staffordshire Borough Council will therefore implement a charge for any net dwelling of £230 plus legal costs. A Section 106 Unilateral Undertaking is included in Appendix 1 for use; however parties should take their own independent legal advice in entering into such an agreement.

***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 2010***

Appendix 1

**EAST STAFFORDSHIRE BOROUGH 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

Relating to:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX *(include address of application site)*

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



**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 2010**

**THIS UNDERTAKING** is made as a Deed on the \_\_\_\_\_ day of \_\_\_\_\_ 2017

**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:**

EAST STAFFORDSHIRE BOROUGH COUNCIL ("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 **XXXXXXXXXXXXXXXXXXXX** 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;

***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 2010***

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

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 **"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

2.9 **"the Land"** means the land at **XXXXXXXXXXXXXXXXXXXX** shown, for the purposes of identification and edged red on the attached plan annexed hereto

2.10 **"the Planning Permission"** means the planning permission to be granted pursuant to the Application and annexed hereto

2.11 **"the Cannock Chase Special Area of Conservation Contribution"** means £230 per dwelling Index Linked to be paid towards East Staffordshire Borough Council 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

***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 2010***

- 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 **XXXXXXXXX** 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

***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 2010***

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 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

***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 2010***

**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**

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

***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 2010***

**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

**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 Planning Services Manager 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.

**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 2010**

- 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.

Executed as a Deed by the said )

XXXXXXXXX )

In the presence of: )

Signature of Witness .....

Witness Name (BLOCK CAPITALS) .....

Witness Address .....

.....

Witness Occupation .....

Executed as a Deed by the said )

XXXXXXXXXXXXX )

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 2010***

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 2010***

**IMPLEMENTATION NOTICE**

**NOTICE TO EAST STAFFORDSHIRE BOROUGH 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: .....

***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 2010***

Notice is hereby given to East Staffordshire Borough 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:

East Staffordshire Borough Council