

CANNOCK CHASE SPECIAL AREA OF CONSERVATION (SAC) GUIDANCE TO MITIGATE THE IMPACT OF NEW RESIDENTIAL DEVELOPMENT (JULY 2022)

1. Background

1.1 East Staffordshire Borough Council (ESBC) 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 policy DP11 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 by consultants Footprint Ecology, together with that of partner Local Planning Authorities in the Cannock Chase SAC Partnership (Stafford Borough, Cannock Chase, Lichfield, East Staffordshire, Walsall Metropolitan Borough Council 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.

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. SAC Partners have therefore agreed to formally support the Footprint Ecology evidence base reports and acknowledge a 15km Zone of Influence. SSC, 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.

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 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 the 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 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 ESBC Planning Policy webpages -

1.8 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.

1.9 Natural England supports the use of Guidance to mitigate the impact of new residential development.

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 (Map 1) shows the area of East Staffordshire within 15km of the 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 & 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.

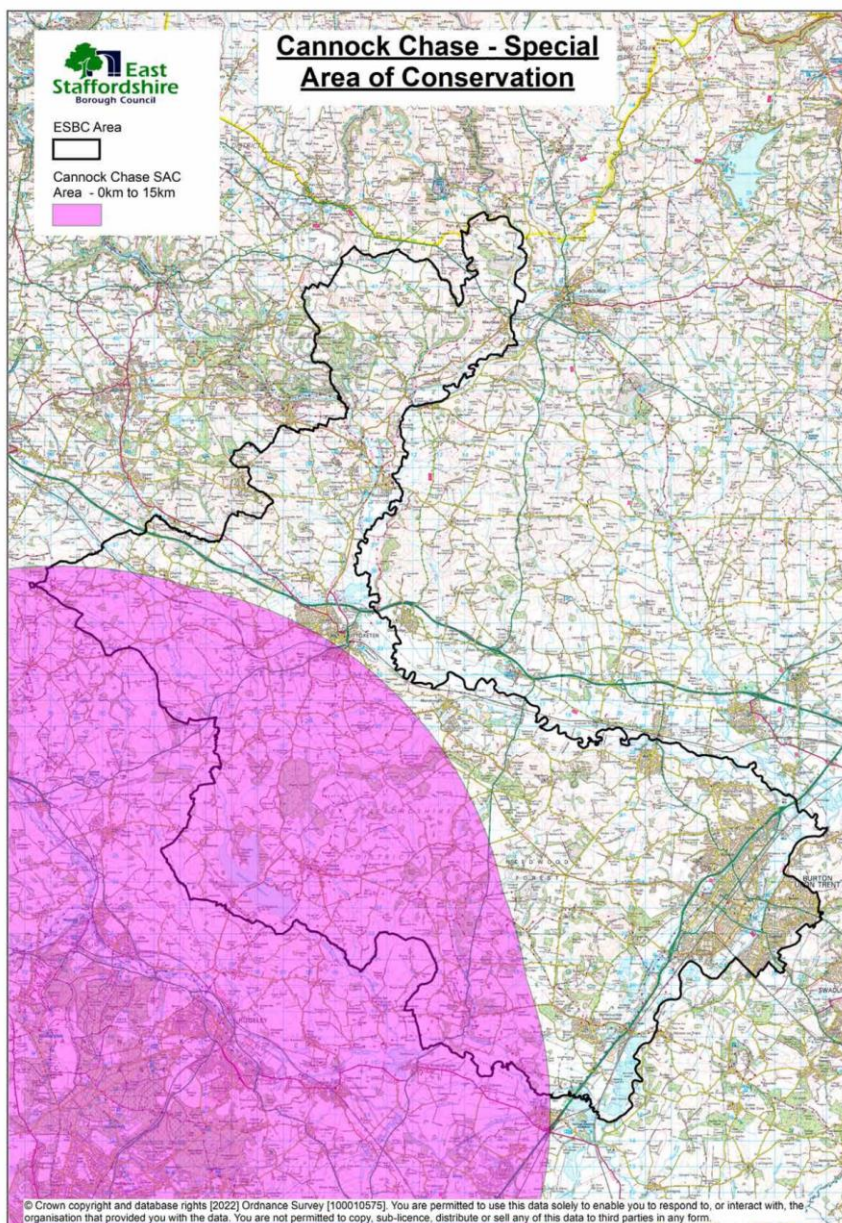
2.4 Prior approval and permitted developments, such as conversion of offices into new homes, are also affected by the Cannock Chase SAC requirement. The HRA process and consultation with Natural England must be undertaken before SSC can determine if a development is permitted development or if prior approval can be granted.

2.5 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, which is available at: <http://www.eaststaffsbc.gov.uk/planning/apply-for-permission/cannock-chase-sac>

2.6 Where a development is affected by the Cannock Chase SAC mitigation requirement, a Cannock Chase SAC HRA form, as set out in Appendix 1, must be completed and submitted with the planning application. This form will be used to consult Natural England.

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 Planning Team

Map 1. Map of the 15km Cannock Chase SAC zone in South Staffordshire



3. Analysis of SAC Mitigation Costs

3.1 The following table of mitigation measures and estimated costings has been prepared by independent consultants in collaboration with the Cannock Chase SAC Partnership to set out Detailed Implementation Plans relating to the Cannock Chase SAC.

Table 1: Detailed Implementation Plan Mitigation Measures

Item of Works	Amount remaining to be funded
Resources/events for Engagement Key Stages 1-2 (2020-2040)	£99,195
Resources/events for Engagement Key Stages 3-4 (2020-2040)	£99,195
Resources/events for Engagement with key visitor groups (2020-2040)	£30,000
Creation of Central Website and hosting until 2040	£10,500
Special Project, Forestry England Visitor/mountain bike centre south of A460	£25,000
Special Project, Marquis Drive Masterplan	£25,000
Special Project, Museum of Cannock Chase, Community Hub	£25,000
Circular routes created at each main Car Park: pathworks	£90,000
Orientation panel in each main car-park showing main promoted routes, replacement after 10 years	£15,800
Additional staffing to increase face-to face engagement, (equivalent to 3 full time posts 2020-2040)	£2,364,000
Special Project. Chase Rd	£25,000
Close Car Parks	£150,000
Material (temporary signs etc.) to close damaging habitat fragmentation desire lines	£10,000
New road signs to replace existing ones	£75,000
Installation of Car Park Charging Machines	£70,000
Cost to maintain improved car-parks 2020-2040	£704,900
Circular routes created at each main Car Park: way-markers, replacement after 10 years	£18,750
Circular routes created at each main Car Park: finger posts, replacement after 10 years	£30,300
Orientation panel in each main car-park showing main promoted routes, replacement after 10 years	£22,000
CC SAC Team Admin Assistant (part time, 2020-2040)	£420,000
CC SAC SAMMM Delivery Officer (2020-2030)	£400,000
Project manager/Project officer post	£765,000
Monitoring: visitor survey at 5 year intervals	£160,000
Monitoring: Automated counters (15 counters)	£90,000
Contingency (10%)	£572,464
	£6,297,104

3.2 The table below identifies the planned housing growth within the 0-15 km Zone of Influence around Cannock Chase SAC.

Table 2: Calculating the rates of developer contribution in the 0-15km Zone

Local Authority in the 15km ZOI of the Cannock Chase SAC	Housing Numbers proposed in the 15km ZOI from April 2022 (excluding sites with planning permission)	Percentage (%) of total housing delivery	Monies to collect for the DIPs*
South Staffordshire	4,205	19.4	£1,221,878
Cannock Chase	2,378	11	£690,993
City of Wolverhampton	1,364	6.3	£396,348
East Staffordshire	155	0.7	£45,040
Lichfield	851	3.9	£247,281
Stafford	5,412	25	£1,572,605
Walsall	7,306	33.7	£2,122,959
TOTAL	21,671		
DIPs Cost	£6,297,104		

3.3 Should the estimated costings for the proposed mitigation measures be the subject of refinement as a consequence of monitoring and emerging evidence, the rates will be recalculated as part of an ongoing process of review.

3.4 Provided that the individual authorities deliver the required cost per authority (as per the table above) to the SAC Partnership, it is at the discretion of each authority to determine how to implement the charging requirement.

4. Cannock Chase SAC Mitigation Payments in South Staffordshire

4.1 South Staffordshire Council (SSC) will require a payment of £290.58 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 2023 onwards, in line with the All Items Group (Item reference CHAW) of the Retail Prices Index published by HM Government Office for National Statistics. ESBC may also make a charge for the administration costs of entering into the relevant legal agreement required to secure this financial contribution.

4.2 SSC will require the developer to enter into either a S106 agreement or a Unilateral Undertaking in order to secure the contribution. The template Unilateral Agreement provided in Appendix 2 is recommended for developments of less than 10 homes, as these are unlikely to require a Section 106 Agreement. However, parties should take their own independent legal advice before entering into such an agreement.

4.3 In order to meet the requirements of the Habitats Regulations, any legal agreement must ensure that the financial contribution is paid before 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

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 of the Conservation of Habitats and Species Regulations 2010

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.)

THIS UNDERTAKING is made as a Deed on the _____ day of _____ 20xx

BY:

1. PARTIES

- (1) **XXXXXXXXXXXXXXXXXXXXXXXXXXXXX** (name and address of owner(s) of the application site), of XXXXXXXXXXXXXXXXXXXXXXXX ("the Owner(s)")
- (2) **XXXXXXXXXXXXXXXXXXXXX** (name and address of charge/mortgagee) of XXXXXXXXXXXXXXXXXXXXXXXX ("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

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- 2.2 **"the Application"** means the planning application numbered XXXXXXXXXXXXXXXXXXXX
- 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 **"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 **£290.58** per dwelling Index Linked to be paid towards East Staffordshire Borough Council to mitigate the

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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 **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

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- 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 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 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

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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 2010

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

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:

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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.
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)

XXXXXXXX)

In the presence of:)

Signature of Witness

Witness Name (BLOCK CAPITALS)

Witness Address

.....

Witness Occupation

Executed as a Deed by the said)

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

XXXXXXXXXXXXX)

In the presence of:)

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

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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:

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:

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East Staffordshire Borough Council