



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	Cannock Chase Special Area of Conservation: Developer Contributions	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team 18 th of January '22	X
	Leader and Deputy Leaders 24 th of January '22	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group, 2 nd and 3 rd of February '22	
	Cabinet 14 th February 2022	
	Scrutiny Audit and Value for Money Council Services Committee [DATE] / Scrutiny Community Regeneration, Environment and Health and Well Being Committee [DATE]	



Is this an Executive Decision:	NO	Is this a Key Decision:	YES
Is this in the Forward Plan:	NO	Is the Report Confidential:	NO
If so, please state relevant paragraph from Schedule 12A LGA 1972:	[]		
<p>Essential Signatories:</p> <p>ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE</p> <p>Monitoring Officer: Chris Ebberley DateSignature</p> <p>Chief Finance Officer: Sal Khan DateSignature</p>			

**EAST STAFFORDSHIRE BOROUGH COUNCIL
Report to Cabinet**

Date: 14.2.22

REPORT TITLE: Cannock Chase Special Area of Conservation:
Developer Contributions

PORTFOLIO: **Planning**

HEAD OF SERVICE: **Sal Khan**

CONTACT OFFICER: **Philip Stephenson Ext. 1613**

WARD(S) AFFECTED: **All Wards**

1. Purpose of the Report

- 1.1 To recommend that a new charge is applied to residential proposals in the part of East Staffordshire Borough which is within a 15km radius of the Cannock Chase SAC. This is part of the Cannock Chase Special Area of Conservation (SAC) mitigation programme, which East Staffordshire are a part of, and which is to be brought into effect from 1 April 2022.
- 1.2 To provide approval for signing a Financial Agreement to enable Stafford Borough Council to administer funds on behalf of the Cannock Chase SAC Partnership and the other competent authorities.

2. Background

- 2.1 The Cannock Chase Special Area of Conservation (SAC) is designated under the Conservation of Habitats and Species Regulations 2017 (as amended), also known as the Habitat Regulations. This designation conveys the highest level of protection, reflecting its international significance. The area is also protected nationally as a Site of Special Scientific Interest (SSSI) and lies within the Area of Outstanding Natural Beauty (AONB). It supports species which are protected at a national and international level.
- 2.2 The key objective of the Cannock Chase Special Conservation Area (SAC) Partnership is to use statutory planning processes and specific site and visitor management measures to secure appropriate mitigation for the impacts on the Cannock Chase SAC of Development Plan policies and proposals

contained in individual planning applications and projects, thereby ensuring that the integrity of the Cannock Chase SAC is maintained and the requirements of the Habitats Regulations are met.

- 2.3 East Staffordshire Borough Council has a duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2017 (as amended) to ensure that planning application decisions comply with the Habitat Regulations and do not result in adverse effects on the integrity of the Cannock Chase Special Area of Conservation (SAC) which has internationally protected status under the Regulations for its unique heathland habitat. The duty is delivered through the Council's involvement in the Cannock Chase SAC Partnership and through the statutory planning process, with the Deputy Leader sitting on the Cannock Chase SAC Joint Strategic Board which makes key decisions on behalf of the Partnership.
- 2.4 Given the competent Local Planning Authorities are progressing new Local Plans in recent years, it has been necessary to update the Strategic Access Management and Monitoring Measures programme in order to demonstrate that future development proposals will meet the Habitat Regulations and therefore mitigate for recreational pressures. As a result two Detailed Implementation Plans have now been developed costing £7.8 million in total, with a Planning Evidence Based Review Stage 2 report setting out the implications for each local planning authority.
- 2.5 To meet the Conservation of Habitats and Species Regulations 2017 (as amended), from April 2022 planning consents for all new residential developments within the designated zone, including affordable houses, will be required to pay towards mitigation measures on the Cannock Chase SAC, either through a Unilateral Undertaking or a Section 106 agreement. Whilst the SAC contribution charge is paid by the developer on completion of the scheme, the Council makes a charge for processing Unilateral Undertakings and Section 106 agreements as part of the decision-making process, which is paid for by the developer.
- 2.6 This contributions regime has been in place at East Staffordshire in its latest iteration since 2016 [Cannock Chase Special Area of Conservation | ESBC \(eaststaffsbc.gov.uk\)](http://eaststaffsbc.gov.uk) however the latest study work of the group shows that in order to properly fund the management and monitoring proposals of the SAC into the future and mitigate the impact of increasing visits from new residential development, the area where developers will need to pay a charge on new residential development needs to be expanded to 15km, from 8km currently.

3. Contribution to Corporate Priorities

- 3.1 The review of the SAC Partnership MOU and Financial agreement contributes to the following corporate priority and targets:
 - Priority: Value For Money Council

- Priority: Environment Health and Wellbeing
- Corporate Plan Target VFM38 Monitor Local Plan Performance – Consider Review of the Local Plan (October 2021)

3.1 Whilst there is no specific target related to the update of the SAC Partnership MOU and Financial agreement, having these in place is an important part of demonstrating mitigation of impacts on the Cannock Chase SAC. Without this evidence it would be difficult to successfully review the Local Plan.

4. Detailed information on this item

4.1 The Cannock Chase Special Area of Conservation (SAC) is designated under the Conservation of Habitats and Species Regulations 2017 (as amended), with the Cannock Chase Special Area of Conservation Partnership created through a Memorandum of Understanding, the current version being 2016. This provides a framework for coordination between statutory bodies having land use planning responsibilities in relation to the Cannock Chase SAC.

4.2 This Partnership approach provides simplicity for planners and developers, maintaining consistency in protection of the SAC from the significant effects of residential development through the delivery of a programme of mitigation. Other forms of development within the 0-15km zone which may give rise to additional visits to Cannock Chase SAC may need to carry out a Habitats Regulations Assessment (HRA). Participation in the developer contributions scheme is optional and if applicants do not wish to participate they will need to provide appropriate information to the Local Planning Authority to allow a bespoke Habitats Regulations Assessment.

4.3 In May 2016 a Memorandum of Understanding (MOU) was signed by each of the competent local authorities, including East Staffordshire Borough, setting out how the Cannock Chase SAC Partnership will take responsibility for a programme of measures to mitigate the impact of residential development on the Cannock Chase SAC. The agreement details how the partnership will work together to review, prepare and implement common plans and policies to protect the Cannock Chase SAC, and promote its understanding and appreciation.

4.4 The competent local authorities have also signed a Financial Agreement which results in the developer contributions being transferred to Stafford Borough Council twice a year (in April and October), in order to administer and co-ordinate spending of the funds on behalf of the Cannock Chase SAC Partnership.

4.5 The SAC Partnership subsequently developed the Strategic Access Management and Monitoring Measures plan (SAMMMs) which sets out how this mitigation would be achieved. The total cost of the SAMMMs is currently £1.9 million, aligned to the adopted Local Plans of the respective competent

authorities, funded through developer contributions made for each residential unit built within the agreed 'zone of influence' around the SAC.

- 4.6 The Council's duty, as a competent authority is delivered through involvement in the Cannock Chase SAC Partnership and set out in Detailed Policy 11 of the East Staffordshire Local Plan 2015.

“Local Plan 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.”

- 4.7 With the competent Local Planning Authorities in the Partnership progressing new Local Plans in recent years it has been necessary to update the Strategic Access Management and Monitoring Measures programme and extend the payment Zone of Influence from 0-8 km to 0-15 km. This additional area where charges can be levied is in order to demonstrate that the significant increase in future development proposals can meet the Habitat Regulations, and mitigate for recreational pressures.
- 4.8 As a result two Detailed Implementation Plans (DIPs) have now been developed on behalf of the Partnership costing £7.8 million in total, with a Planning Evidence Based Review Stage 2 report setting out the implications for each local planning authority.
- 4.9 This money is required for investment in Cannock Chase AONB and the SAC to protect the site by mitigating the impacts of recreational pressure; improvements to public access through enhanced infrastructure such as car parks, paths, signage, interpretation as well as measures to support visitor engagement and education. This goes beyond the current funding of £1.9 million that is available from the current local plans, so it was important to identify the level of contributions to be required in the future as the new Local Plans progress.
- 4.10 To provide this information the Planning Evidence Base Review (PEBR) Stage 2 report was commissioned by the Cannock Chase SAC Partnership to

review the estimates of increases in visitor growth and provide costs and information to update the strategic approach to mitigation for recreation impacts on the SAC (please see appendices). As part of the PEBR report, there has been a review of the levels of likely housing growth over the period 2020-2040, a review of the geographic scope of the strategy ('zone of influence'), a review of mitigation measures necessary and their costs. The review has also provided options on how costs could be apportioned to the anticipated growth.

- 4.11 The PEBR Stage 2 report identified that a total of £6,297,104 would need to be collected from April 2022 across the 15 km Cannock Chase SAC Zone of Influence (ZOI) in order to deliver the mitigation requirements, to be provided by 21,671 new residential units that will be constructed, both allocated and unallocated. This is based on data provided by the SAC Partnership of indicative estimates of likely growth. Based on this information the Cannock Chase SAC Partnership's Joint Strategic Board agreed, in August 2021 to adopt a single-tariff approach, where all residential units within the 15km ZOI are charged the same tariff of £290.58.
- 4.12 The existing MOU and Financial agreement were signed by the Council in 2016. This revised MOU and financial agreement will need to be signed for East Staffordshire to remain within the partnership and continue to meet the habitats regulations in this regard.

5. Financial Considerations

This section has been approved by the following member of the Financial Management Unit: Anya Murray

- 5.1 There are no direct financial costs to the Council from implementing the new Cannock Chase SAC charging regime on developers. Nevertheless it should be noted that additional fee income will be generated through the processing of Section 106 agreements and Unilateral Undertakings from April 2022.
- 5.2 The MOU projects that £45,000 of contributions will be collected for the SAC partnership from development in East Staffordshire between 2022 and 2040.
- 5.3 There is a possible financial risk arising from the financial indemnity within the MOU and financial agreement that the council could incur costs associated with the employment of the SAC's officers. Currently the SAC employs two officers, one is a full time project officer the other is an engagement officer. Both roles are directly employed by Stafford Borough Council, and neither has any power to employ anyone else without the project board agreeing to this. The SAC Partnership will continue to make decisions, through the JSB, about funding projects and staffing costs based on the amount of money received. There is the potential for more staff to be employed by the SAC going forward, with one potential scenario involving the recruitment of a team of up to seven staff between now and 2040.

- 5.4 In the normal course of business, the costs of hiring and paying these employees is paid for through the monies collected by the SAC partnership from developer contributions. However, if these monies were insufficient (which is unlikely because the SACs receipts are large in comparison with the costs of these posts) then the authorities within the partnership would need to each split the bill for the costs.
- 5.5 It is also unclear if all possible abnormal employment costs that might arise from the employment of the SAC officers could be met from the developer contributions pot the SAC holds, since the pot is intended to be used for administration and upkeep of the SAC rather than things like redundancy or unfair dismissal payments etc. Stafford Borough Council have determined that they do not want these potentially unlimited costs to fall solely upon themselves as the employing authority.
- 5.6 However the level of risk associated may be mitigated by the number of partners involved in the agreement who are signatories (seven local authorities) and the fact that Clause 10.4 of the financial agreement allows that 'Any party may terminate this Agreement at any time by giving the other parties no less than three (3) months' notice in writing.' As the equivalent financial indemnity is also written into the MOU, this may not have the desired effect.
- 5.7 The principle of this liability, although with different wording has also existed since 2016 in the partnership agreement (Pg.8.5 Key Commitments) and so far this has not arisen.
- 5.8 East Staffordshire Borough Council officers will regularly monitor the progress of SAC Officer Roles to identify any issues as they arise and flag up and seek to mitigate any emerging problems that may lead to such liability. All other indemnities created by the agreement have been reviewed through legal advice and deemed by them to be adequate and acceptable.
- 5.9 ESBC asked the SAC partnership to consider altering this liability to be limited to around forty thousand pounds. However the partnership rejected this and have continued to advance the agreement as is through their own council's democratic structures with unlimited liability.
- 5.10 To remain in partnership with the SAC agreement the charging structure must be in place from all signatory authorities to commence collection by April 2022.
- 5.11 Therefore, to remain on track to agree the MOU and Financial Agreement ESBC will seek to gain insurance against such liability paid for out of existing planning resources. Preliminary investigation indicates that such insurance is available but its cost and efficacy will need to be considered before purchase as part of a separate decision. Without this, the potential of an unlimited liability financial indemnity remains. This risk would not be proportionate to the amount of money ESBC is looking to collect on behalf of the partnership.

6. Risk Assessment and Management

- 6.1 The main risks to this Report and the Council achieving its objectives are as follows.
- 6.2 The continuation of East Staffordshire within the SAC partnership and agreement of the MOU and Financial Agreement means that Habitats impacts from residential development on the SAC are actively mitigated and achieves the Councils objectives of Environment, Health and Wellbeing
- 6.3 Negative (Threats): Failure to continue within the SAC partnership and agreement of the MOU and Financial Agreement would mean that the Authority would have to assess each application in regard to its impact on the SAC and its Habitat mitigation measures. This would be very resource intensive and may not be practical.
- 6.8 The risks do not need to be entered in the Risk Register.

7. Legal Considerations

*This section has been approved by the following member of the Legal Team:
Glen McCusker – Interim Solicitor*

- 7.1 Failure to agree the MOU and Financial Agreement would leave the Council vulnerable to legal action if the Habitats Regulations were not in some other way complied with to provide suitable mitigation for the Cannock Chase Special Area of Conservation.
- 7.2 The Council has a legal requirement to comply with the Conservation of Habitats and Species Regulations 2017 (as amended), through the process of preparing policies for the New Local Plan as well as delivery of new development through the Development Management team in addition to being subject to relevant Planning Acts and Regulations. Failure to agree to the partnership's MOU and Financial Agreement could make it difficult to demonstrate that the SAC habitat impacts had been properly mitigated at East Staffordshire's next Development Plan examination.

8. Equality and Health

- 9.1 The subject of this Report is not a policy, strategy, function or service that is new or being revised which has a direct health or equality impact. An equality and health impact assessment is not required.

9. Human Rights

- 9.1 There are no Human Rights issues arising from this Report.

10. Sustainability (including climate change & change adaptation measures)

- 10.1 Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures)? Yes

- 10.2 Ensuring compliance with habitat mitigation measures in the Special Area of Conservation is an important sustainability action.
- 10.3 Negative (threats) if the SAC Partnership is not maintained and the MOU and Financial Agreement isn't signed, then this could have a detrimental impact on the preservation and mitigation of harm to the SAC. This would have negative environmental impacts.

11 Recommendation

- 11.1 That the new developer contribution charge of £290 per dwelling unit is brought into effect from 1 April 2022 to mitigate impacts on the SAC for new residential proposals in East Staffordshire Borough, within a 15 km Zone of Influence from the Cannock Chase Special Area of Conservation
- 11.2 That delegated authority is given to the Deputy Leader in consultation with the Planning Manager to agree and sign the revised Cannock Chase SAC Memorandum of Understanding and to agree and sign the final version of the draft Financial Agreement on behalf of East Staffordshire Borough Council, following on from the Cannock Chase SAC Memorandum of Understanding being entered into.

12 Appendices

- 12.1 SAC Partnership Financial Agreement, SAC Partnership MOU 2022