
CHESHIRE EAST COUNCIL

SITE ALLOCATIONS AND DEVELOPMENT POLICIES DOCUMENT (SADPD):

EXAMINATION HEARING POSITION STATEMENT

ANWYL LAND LIMITED

REPRESENTOR ID: 1094384

CLIENT:
Anwyl Land Limited

DATE:
22 September 2021

Report Drafted By	Report Checked By	Report Approved By
BM	MH	MH
22.09.21	22.09.21	22.09.21

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1. INTRODUCTION

- 1.1 In preparation for the Hearings into the Site Allocations Development Plan Document (SADPD), which are due to open on 12 October 2021, the Inspector has provided an opportunity to submit a Hearing Position Statement. Any statement must relate specifically to the questions contained in the Matters, Issues and Questions for the Examination (MIQs) Part 1 Matters 1-7 and be relevant to originally submitted representations.
- 1.2 The deadline for receipt of Hearing Position Statements for Matters 1-7 is midday on Friday 24 September 2021.
- 1.3 This Hearing Position Statement is submitted in respect of Matter 2 – specifically Policy MID2 – in direct response to the following questions set out in the Inspector’s MIQs Part 1 (dated 27 August 2021):

23. Is the requirement that development proposals for Site MID 2 must provide for improvements to the surface of the canal towpath justified and consistent with the LPS and national policy? Would it be evident to a decision maker how proposals should retain the existing mature hedgerows on the boundary of the site, whilst also meeting the requirements of Policy INF 10, in particular criteria 1i, vi and vii?

2. BACKGROUND AND UPDATED POSITION SINCE PREVIOUS REPRESENTATIONS

- 2.1 Anwyl Land Limited (hereafter referred to as Anwyl) controls Site MID 2 and has been working collaboratively with Officers of the Council in respect of the delivery of the allocation. Anwyl strongly supports the proposed allocation of the land for residential development.
- 2.2 Anwyl together with its development partner Brenig Construction Limited is working towards lodging a joint full planning application with the Council in October 2021 and hence the Council and Inspector examining the emerging Plan can rest assured that if the site is allocated in the adopted Plan and planning permission is granted the development will be delivered in full within 5 years.
- 2.3 A number of pre-application meetings have been held with the Council, the most recent in February 2021, with a further submission being made to the Council on 14 September 2021.
- 2.4 A two-week public consultation exercise is due to commence on Monday 20 September 2021 notwithstanding the very limited objection to allocation of the site for residential development through the SADPD.
- 2.5 All technical reports required to support a detailed planning application are nearing completion and feedback received to date by all consultants working on the commission indicate no insurmountable technical obstacles to delivering residential development. An update can be provided on progress made, if this is helpful to the Inspector on the day of the relevant Hearing.

3. QUESTION 23 – CANAL TOWPATH IMPROVEMENTS

23.

IS THE REQUIREMENT THAT DEVELOPMENT PROPOSALS FOR SITE MID 2 MUST PROVIDE FOR IMPROVEMENTS TO THE SURFACE OF THE CANAL TOWPATH JUSTIFIED AND CONSISTENT WITH THE LPS AND NATIONAL POLICY? WOULD IT BE EVIDENT TO A DECISION MAKER HOW PROPOSALS SHOULD RETAIN THE EXISTING MATURE HEDGEROWS ON THE BOUNDARY OF THE SITE, WHILST ALSO MEETING THE REQUIREMENTS OF POLICY INF 10, IN PARTICULAR CRITERIA 1I, VI AND VII?

RESPONSE: CANAL TOWPATH IMPROVEMENTS

- 3.1 Site MID 2 comprises two parcels of land lying to the east and west of Croxton Lane (A530). The Trent and Mersey Canal lies to the north of both parcels of land and Croxton Lane crosses the canal via Bridge Number 173. There is no direct access to the canal from either parcel of land due to existing hedgerows, a difference in levels in respect of the eastern parcel of land, and due to an access road to the household waste recycling site in the case of the western parcel. However, the towpath is accessible from Croxton Lane (by the side of Bridge Number 172) and it runs a short distance from the northern boundary of both parcels of land. Moreover, the towpath can be accessed via Middlewich Foot Path No. 13 which traverses the eastern parcel of the allocation and provides a connection to the towpath a short distance to the south east.
- 3.2 There is no evidence in the supporting documents to the emerging Plan or the document itself regarding what is wrong with the existing towpath. We have visited the towpath on numerous occasions and have not identified any issues with it. To assist the Inspector photographs of the towpath were enclosed in our previous Representations (December 2020), although the Inspector is respectfully requested to visit the proposed allocation and towpath for himself. Additionally, it is not clear which stretch of towpath is being referred to, what works are required and what are the associated costs and what proportion of the costs the proposed development is expected to fund.

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- 3.3 Our previous Representations have noted that reference to towpath improvements for the Trent and Mersey Canal is made in the Council’s Infrastructure Delivery Plan Up-Date (IDP) dated July 2016 Up-Date; we provided an extract from the IDP at that time¹. The IDP noted that footpath improvements on the Trent and Mersey Canal are required from Middlewich towards Sandbach, but as previously stated, Sandbach lies to the south of Middlewich town centre so the requirements set out in the IDP cannot reasonably relate to an improvement between Site MID 2 (which lies at the northern point of the settlement) and the town centre. As far as we are aware, the Council has not updated the IDP – there is nothing contained in the Evidence Base on the Council’s website – and therefore the position relating to the IDP remains the same.
- 3.4 Our previous representations have also already submitted that funding for towpath improvements is a CIL matter and there is no need to repeat the point made previously here. However, if that is not accepted it is necessary to examine whether Policy MID 2 criterion 4 complies with the CIL Regulations.
- 3.5 The statutory basis for infrastructure improvements secured via Section 106 Agreements is set out in Regulation 122 of Community Infrastructure Regulations and requires that Section 106 Agreements can only be sought where they are: (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development. It should be noted that all three tests must be met for a Section 106 Agreement to be justified.
- 3.6 In relation to the statutory tests, we continue to submit that:
- a) A financial contribution would not be necessary to make the development acceptable in planning terms because there doesn’t appear to be any evidence that there is anything wrong with the towpath and any improvements to the towpath are being funded by CIL. In any event it would be impossible to determine what the effect of the development on the towpath would be.
 - b) A financial contribution would not be directly related to the development as the improvement to the towpath is for the benefit of the wider community and tourists and the improvement works would not arise directly as a result of this development; and

¹ Our Representation included an Extract from Appendix 4 (Page 37) IDP (July 2016 Up-date) – Physical Infrastructure Delivery Schedule.

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- c) The financial contribution would not be fairly and reasonably related in scale and kind to the development. This is because there is no evidence in the supporting documents to the emerging Plan or the document itself regarding what is wrong with the existing towpath. Additionally, it is not clear which stretch of towpath is being referred to, what works are required, what are the associated costs and what proportion of the costs the proposed development is expected to fund. In practice it would be impossible to determine what effect the development would have on the towpath.

3.7 In this case Criterion 4 of Policy MID 2 fails all 3 statutory tests; it would only need to fail one of the tests to be contrary to Regulation 122 of the Regulations. Having regard to the soundness tests set out in Paragraph 35 of the Framework Criterion 4 of Policy MID 2 is unsound because:

- It is not justified – it is not an appropriate strategy, reasonable alternatives exist (CIL) and it is not based on proportionate evidence.
- It is not consistent with national policy, in particular Paragraph 56 of the Framework which replicates the Regulation 122 tests set out above.

CONCLUSIONS: CANAL TOWPATH IMPROVEMENTS

3.8 There is no evidence presented by the Council which supports the vague and ambiguous wording in criterion 4 of Policy MID 2. The requirement for improvements to the quality of the towpath are therefore not justified nor are they consistent with the LPS or national policy.

3.9 Anwyl's objection would be addressed if Criterion 4 of Policy MID 2 was deleted.

4. QUESTION 23 – CONFLICT BETWEEN POLICIES MID 2 AND INF 10 1I, VI AND VII

23.

IS THE REQUIREMENT THAT DEVELOPMENT PROPOSALS FOR SITE MID 2 MUST PROVIDE FOR IMPROVEMENTS TO THE SURFACE OF THE CANAL TOWPATH JUSTIFIED AND CONSISTENT WITH THE LPS AND NATIONAL POLICY? WOULD IT BE EVIDENT TO A DECISION MAKER HOW PROPOSALS SHOULD RETAIN THE EXISTING MATURE HEDGEROWS ON THE BOUNDARY OF THE SITE, WHILST ALSO MEETING THE REQUIREMENTS OF POLICY INF 10, IN PARTICULAR CRITERIA 1I, VI AND VII?

RESPONSE: HEDGEROWS

- 4.1 Our previous Representations also raised objections to the wording of Policy INF 10 (Canals and Mooring Facilities). There is some correlation between Policy MID 2 and INF 10 as the proposed housing allocation at MID 2 sits adjacent to the canal. On adoption of the SADPD a planning application for the residential development of MID 2, would have to comply with provisions of Policy INF10 too. However, as we have already submitted it would simply not be practical to comply with every criteria of Policy MID 2 as well every criteria of Policy INF 10 due to the site-specific characteristics of the two parcels of land at Croxton Lane as noted above. The intentions of Policy INF 10 are wholly understood and Anwyl does not object to the principle of what the policy is seeking to achieve, however there is a clash between the two policies.
- 4.2 In respect of MID 2 criterion 1 the emerging scheme for the site retains the hedgerow adjacent to the towpath in its entirety along the boundary of the eastern parcel of land. The Council has made it quite clear in pre-application discussions that this is a priority. Moreover an undeveloped parcel of land is to be provided between the hedgerow and any residential dwellings.
- 4.3 The need for the hedgerow to be retained is wholly understood both in terms of protecting the hedgerow for its own sake and having regard to the setting of the Trent and Mersey Canal Conservation Area.
- 4.4 In respect of Policy INF10 1i use of the words “seek to” is somewhat different to actually requiring an action to be undertaken. Had it been the intention that all development must provide active frontage then the words “seek to” would not have been used.

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- 4.5 In the case of MID2 an active frontage to the canal (as might traditionally be seen in a town or village centre) could not be achieved due to the difference in levels and the intervening hedge (which is to be retained in its entirety). Furthermore, these matters preclude a connection to the towpath, although as noted above such connections are readily available nearby.
- 4.6 In respect of Policy INF10 criterion vii and bearing in mind the constraints of the site some level of natural surveillance can be achieved through the siting of dwellings but in many respects this is limited by the difference in level between the site and the towpath and the intervening hedgerow.

CONCLUSIONS: HEDGEROWS

- 4.7 To resolve the above, Policy INF 10 should be reworded to the following (our proposed new text underlined) to enable the decision maker to take into account the specific characteristics of a site and accept that not all development will be able, nor should it be necessary, to meet all of the criteria in cases where the decision makers agree it is not appropriate or possible:

'Policy INF 10

Canals and mooring facilities

1. Development proposals affecting the borough's canals should, where possible: