

Cabinet – 7 September 2022

Cannock Chase Special Area of Conservation: Mitigation Strategy

Portfolio: Councillor A Andrew – Deputy Leader and Regeneration

Related portfolios None

Service Economy, Environment & Communities

Wards: All

Key Decision: Yes

Forward Plan: Yes

1. Aim

- 1.1 The aim is to agree the approach to meeting Walsall MBC's duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regs.) to ensure that planning application decisions which have an impact on Cannock Chase SAC comply with the Habitats Regulations.

2. Summary

- 2.1 To update Cabinet on measures to mitigate development impacts on Cannock Chase Special Area of Conservation (SAC).
- 2.2 To set out options and the risks and benefits of each option for a Cannock Chase SAC mitigation strategy.
- 2.3 Under the Conservation of Habitats and Species Regulations 2017 (as amended) public bodies are unable to approve or enact any plan or project which could adversely affect any SAC, either directly or indirectly, alone or in combination with other plans without considering these impacts and how to mitigate and avoid. This affects development management decisions as well as local plan preparation.
- 2.4 Evidence exists from the 1 April that new housing development within 15km of Cannock Chase SAC would likely have an adverse effect on the integrity of the SAC due to recreational impacts unless appropriate avoidance or mitigation measures are in place. Currently we have no mechanism to contribute to the recommendations of the Cannock Chase mitigation scheme through the partnership or authorisation from leaders to do so.
- 2.5 The SAC partnership mitigation strategy requires housing developments within 0-15 km of the SAC to make a small financial contribution to the Partnership (c. £290.58 per home), which is spent on a programme of mitigation measures (e.g. fencing, habitat restoration, visitor education, see **Appendix C**). These contributions effectively mitigate for the total harm caused by all housing

developments within 0-15 km Zone of Influence (including housing developments in Walsall not previously covered by the charge).

- 2.6 Currently, as Walsall MBC sits outside the Cannock Chase SAC Partnership and the Memorandum of Understanding (MoU) for its members, every planning application for one or more homes within 15km of the SAC is required to provide detailed evidence (a project specific Habitat Regulations Assessment) and separate Cannock Chase SAC mitigation package to avoid objections from Natural England and legal challenges. A Habitats Regulation Assessment (HRA) produced by a developer currently cannot rely on the footprint ecology evidence, which recommends a payment to the SAC partnership because we cannot collect without any agreed mechanism or approval to do so. If a HRA does not rely on this existing evidence, the developer would need to provide alternative evidence, which officers consider is unlikely to be robust enough to rebut existing visitor survey evidence, which took over a year to produce.
- 2.7 It will also be difficult to progress the Black Country Plan (BCP) through examination, as Natural England and other Partnership authorities would be likely to object on Duty to Cooperate and Tests of Soundness grounds. Ultimately, it is likely the BCP Inspector would require the participation of Wolverhampton and Walsall in the Partnership to ensure there are robust mechanisms in place to protect the SAC.
- 2.8 There are therefore two real options for Walsall Local Planning Authority and Council to consider:
- 2.9 Option One: Agree formal membership of the Cannock Chase SAC Partnership, adopt the HRA and agree the MoU to pay £290.58 per dwelling. This would allow Walsall Council to plan for housing growth without placing undue burdens on developers (the requirement under the Conservation of Habitats and Species Regulations to demonstrate there is no harm to the SAC would remain), and without objection from Natural England and other Partnership authorities.
- 2.10 Option Two: Develop a separate scheme to minimise contributions to the SAC, which could rely on a Suitable Alternative Natural Green Space (SANG). This approach would require officers to work with consultants and Natural England in a lengthy process to undertake further evidence gathering to establish an alternative suitable approach. Officers could present an independent arrangement at a future Cabinet meeting. There would be a delay in preparing such a scheme delaying approval of housing applications within the 15km of the SAC and the progress of a Development Plan. In the interim developers would need to produce their own HRA for each application. It is also likely that this alternative approach, which may rely on the purchase of land, and would result in a higher payment.

3. Recommendations

- 3.1 That Cabinet agree to formal membership of the Cannock Chase Special Area of Conservation Partnership, adopt the Habitats Regulation Assessment and agree the Memorandum of Understanding for developers to pay £290.58 per dwelling on new developments.

4. Report detail – Know

- 4.1 The Cannock Chase SAC is protected as an area of international importance under the Conservation of Habitats and Species Regulations 2017 (as amended). The special features for which it is designated are its heathland and ancient woodland. Adverse impacts on the SAC can result from recreational walkers, dog walkers, cycling, horse riding and traffic/parking problems.
- 4.2 It has been identified that new housing development and visitor accommodation within 15km of the SAC has the ability to result in the above noted adverse impact due to increased visitors and usage (75% of visitors to the SAC are from within 15km of the designation). This area is known as the 15km 'Zone of Influence'.
- 4.3 Under the Habitat Regulations local authorities and other public bodies are required to avoid and mitigate harm on nationally protected SAC designations. The Cannock Chase SAC Partnership was established to ensure that those local authorities within the 'Zone of Influence' are meeting their legal duty to avoid and mitigate adverse impact on the designation.
- 4.4 The SAC Partnership is currently comprised of local authorities within the 15km Zone of Influence, where evidence previously indicated future levels of growth would impact on the designation. This includes Cannock Chase DC, City of Wolverhampton Council, East Staffordshire BC, Lichfield DC, South Staffordshire DC, and Stafford BC. These authorities currently secure financial contributions for developments within 8km of the SAC to collectively mitigate the impacts from new development (see **Appendix A**). Although not formal members Walsall Council planning officers have been attending the SAC Partnership Working Group meetings in light of the commissioning of the evidence base review and new housing growth identified in emerging local plans.
- 4.5 In July 2015, the City of Wolverhampton signed the existing Cannock Chase SAC Partnership MoU to allow planned housing growth within the 15km zone to progress in accordance with the regulations and with the support of Natural England and neighbouring authorities. The previous MoU was based on evidence from a 2012 Visitor Survey and 2013 Impacts Mitigation Study commissioned by the Partnership. Since this time, the City of Wolverhampton has attended the Cannock Chase SAC Partnership Officer Group meetings, and Walsall Council has been represented at the SAC Partnership Joint Strategic Board (JSB) meetings, which is a Councillor group.
- 4.6 Walsall Council did not sign the MoU and join the Partnership at that time as lower levels of housing were planned to take place within the 15km zone. However, following objections from Natural England and Partnership authorities, a side agreement between Walsall Council and the SAC Partnership was drafted during the examination of the Walsall Site Allocation Document (SAD) to ensure financial contributions from new development could be secured within the smaller area of 8km from the SAC (illustrated in **Appendix B**). These discussions were ultimately not resolved and the side agreement remains unsigned. Discussions that are more recent have focused on the evidence base review and the need for an updated scheme of mitigation.

- 4.7 There have been recent updates to the evidence base in light of new planned housing growth (identified in the Black Country Plan and other emerging plans). The Planning Evidence Base Review or PEBR report (prepared by Footprint Ecology) has reviewed the Zone of Influence and levels of future growth that might affect the Cannock Chase SAC. This has found that the 15km Zone of Influence remains appropriate (i.e. new housing development within 15km will have a recognised impact) and has considered two options for future mitigation regimes, both of which will require Walsall Council's involvement.
- 4.8 The Partnership Joint Strategic Board (JSB) on 4 August 2021 agreed the findings of the review and the proposed mitigation regime as the basis for a new Memorandum of Understanding (MoU). The JSB approved a charge equivalent to £290.58 per dwelling to be secured from new housing development within 15km of the SAC. Walsall did not vote in support of this mitigation regime.
- 4.9 A new MoU has now been signed between all parties who supported the mitigation regime and from the 1 April 2022 all housing development in these areas must make the SAC contribution.
- 4.10 Given the updated evidence, a change in Walsall planning policy from April 2022 (in the form of a new Development Plan Document) is required so that housing developments in the north of Walsall make a financial contribution to mitigate the harm caused by visitors to Cannock Chase SAC.

4.11 *Council Corporate Plan priorities*

- 4.12 The Council's Corporate Plan 2021-2022 sets out the Council's purpose along with the priorities, with the aim of reducing inequalities and maximising potential. Having a plan that looks to deliver development in the borough in the right locations directly links to the Council's priority of "economic growth for all people, communities and businesses". It also links to the Council's priority of ensuring "communities are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion" by ensuring we have a programme of plans that continue to identify land to meet our housing needs. Having a plan also supports the Council's priority of ensuring our residents have "increased independence, improved health and can positively contribute to their communities". Planning documents provide the mechanism for ensuring communities have access to opportunities, services and facilities, which can support healthy living and independence. The consultation process behind plan making also provides real opportunities for communities to engage in the future of the borough.

4.13 *Risk management*

- 4.14 SAC mitigation could make some development sites unviable, however mitigation is required to allow development to take place and new allocations in the Black Country Plan have already been viability tested at a charge of £240 per dwelling. Sites already unviable are so irrespectively of the mitigation charge.
- 4.15 Walsall would pay the largest overall contribution to ongoing mitigation despite proposing no development within the 8km zone for which 75% of frequent visitors originate.

- 4.16 Planning obligations for discretionary contributions such as affordable housing may need to be reduced where developments are proven to be unviable and where gap funding is unavailable.
- 4.17 The consequences of not preparing a strategy of SAC mitigation or requiring a HRA for applications are as follows:
- a) Planning decisions would be refused for most new housing development within the 15km ZOI.
 - b) Natural England could impose a development moratorium preventing for residential development and visitor accommodation.
 - c) The Council cannot develop a sound Development Plan
- 4.18 The consequences of preparing an alternative strategy of SAC mitigation are as follows:
- a) The evidence and survey work required would take at least a year and would be costly to develop
 - b) Additional costs for applicants and developers in the interim to prepare bespoke HRA Appropriate Assessments and mitigation proposals. Developers may opt to undertake HRA and pay £290.58 directly to SAC Partnership, which under this option we cannot accept.
 - c) Any alternative approach using SANG's would likely result in mitigation payments which exceed £290.58.
 - d) Significant impact on resources and significant additional expenditure - staff diverted away from BCP and additional Counsel and consultant expenditure. The Ecology Officer we have would not be able to process all of the Appropriate Assessments we are likely to receive and would need to focus on this requiring external Ecology consultants to process applications.
 - e) Delay to BCP timetable because the HRA of the BCP cannot progress without an agreed approach written into policy.
 - f) Delay to neighbouring local authorities Development Plan preparation, which are in late stages of production.
 - g) Likely to affect Duty to Co-operate discussions and provision of housing and employment contributions for the BCP.

4.19 *Financial information*

- 4.20 There is no budgetary provision for the costs associated with developing our own Cannock Chase SAC mitigation strategy. Footprint Ecology are the leading experts in this field and would likely be required to assist with evidence gathering. Further counsel advice would also be required.
- 4.21 Developers are unable to use existing evidence on the impacts of Cannock Chase SAC and required to produce their own; we are already receiving non-determination appeals, which could result in cost claims, as well as requiring additional work to be completed by Development Management staff.
- 4.22 The mitigation costs themselves would be applied to any new dwelling within 15km of Cannock Chase SAC this could have implications for some sites on viability grounds, which in turn could place financial burden to the Council by way of enforcement action, as necessary.

4.23 Delays in the timetable means it is important to consider the implications of the commitments made to Government as part of the West Midlands Housing Deal. This requires Local Plans for both constituent and non-constituent local authorities 'to be updated, as necessary, by the end of 2019 to deliver and accommodate 215,000 homes by 2030/31'. A delay to the timetable is a risk to these commitments.

4.24 *Legal Implications*

4.25 Walsall MBC 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.

4.26 *Procurement Implications/Social Value*

4.27 To pursue an alternative scheme of mitigation would result in the procurement of a consultant to provide evidence of a SAC suitable mitigation scheme and external ecology consultants to assist with processing planning applications.

4.28 *Health and wellbeing implications*

4.29 Continued mitigation and protection of Cannock Chase SAC ensures that residents of Walsall can continue to access Cannock Chase AONB for leisure purposes to the benefit of their health and wellbeing without significant impacts on the Environment.

4.30 *Staffing implications*

4.30 None arising directly from this report. The Planning Policy Team in the Economy, Environment & Communities Directorate carry out work on the BCP with officers from the other authorities.

4.31 If a Walsall mitigation strategy is agreed, additional staff will be required to process affected planning applications.

4.32 *Reducing Inequalities*

4.33 Cannock Chase is designated as a SAC because of the extent of European Dry Heath habitat, for which it is regarded as one of the best areas in UK. The heathland is naturally relatively species-poor but here shows characteristics intermediate between the lowland heaths of southern England and the more montane heaths of upland Britain. Walsall residents are in close proximity to this SAC, which is within an Area of Outstanding Beauty. The mitigation for visitor impacts, including enhancements such as more accessible parking and path improvements would ensure ongoing available access, contributing to the health and wellbeing of all of our residents.

5. Decide

5.1 Agree formal membership of the Cannock Chase SAC Partnership, adopt the HRA and agree the MoU for developers to pay £290.58 per dwelling on new developments.

6. Respond

- 6.1 Subject to the approval of the recommendations, the next steps will be to:
- a) Inform the SAC Partnership and Natural England of our agreed strategy.
 - b) Adopt the payment policy and begin collecting payments as required.

7.0 Review

- 7.1 A future updated report will be presented to Cabinet relating to outcome of the agreed Cannock Chase SAC mitigation strategy.

Background papers

The SAC is supported by a range of evidence documents that are published on the Stafford Borough Council web site at [Cannock Chase Special Area of Conservation \(SAC\) | Stafford Borough Council \(staffordbc.gov.uk\)](http://Cannock Chase Special Area of Conservation (SAC) | Stafford Borough Council (staffordbc.gov.uk))

Authors

Stuart Crossen
Planning Policy Team leader
☎ 01922 652704
✉ stuart.crossen@walsall.gov.uk

Alison Ives
Head of Planning & Building Control
☎ 07385 348298
✉ alison.ives@walsall.gov.uk

Simon Neilson
Executive Director

Councillor Andrew
Portfolio Holder

Date

Date

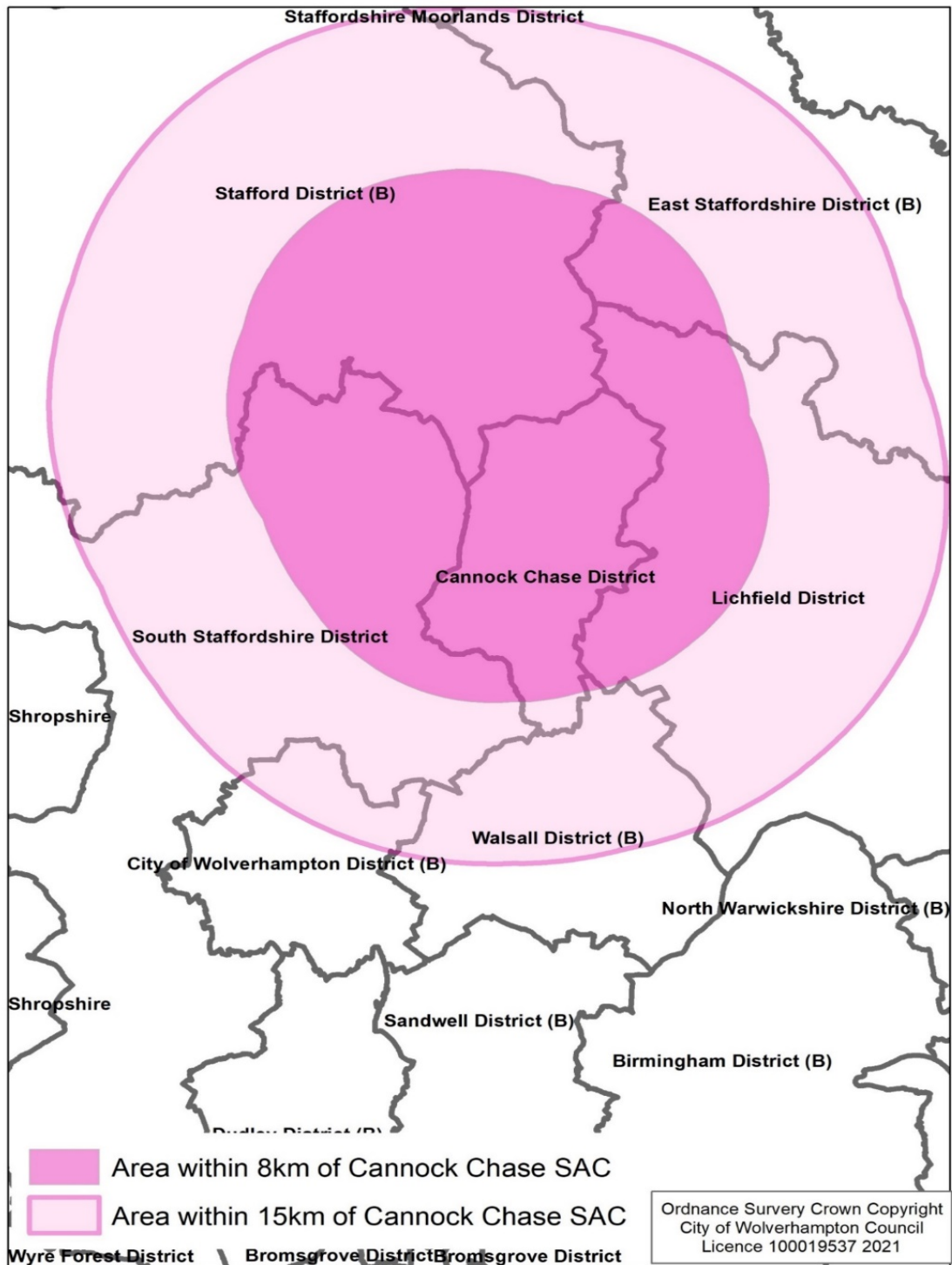
APPENDIX A

The following table identifies the planned housing growth and proportion of contributions collected from each authority within the 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*
Stafford	5,412	25	£1,572,605
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
Walsall	7,306	33.7	£2,122,959
TOTAL	21,671		
Total Cost	£6,297,104		

Map 1 below illustrates the extent of the 15km Zone of Influence. This shows the north of Walsall Borough falls within 8-15 km of the SAC, with a small area falling within the 8km zone.

Map 1 Cannock Chase SAC – 8km and 15km zones



APPENDIX C

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 (DIPs) relating to the Cannock Chase SAC.

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