

Meeting	<b>PLANNING COMMITTEE</b>
Time/Day/Date	4.30 pm on Tuesday, 9 June 2015
Location	Council Chamber, Council Offices, Coalville
Officer to contact	Democratic Services (01530 454512)

All persons present are reminded that the meeting may be recorded and by attending this meeting you are giving your consent to being filmed and your image being used. You are kindly requested to make it known to the Chairman if you intend to film or record this meeting.

The Monitoring Officer would like to remind members that when they are considering whether the following items are exempt information under the relevant paragraph under part 1 of Schedule 12A of the Local Government Act 1972 they must have regard to the public interest test. This means that members must consider, for each item, whether the public interest in maintaining the exemption from disclosure outweighs the public interest in making the item available to the public.

## AGENDA

Item	Pages
<b>1. APOLOGIES FOR ABSENCE</b>	
<b>2. DECLARATION OF INTERESTS</b>	
Under the Code of Conduct members are reminded that in declaring disclosable interests you should make clear the nature of that interest and whether it is pecuniary or non-pecuniary.	
<b>3. MINUTES</b>	
To confirm and sign the minutes of the meeting held on 14 April 2015	<b>5 - 12</b>
<b>4. PLANNING APPLICATIONS AND OTHER MATTERS</b>	
Report of the Head of Planning and Regeneration.	<b>13 - 16</b>



## Index of Applications to be Considered

Item	Application Number and Details	Recommendation	Page
<b>A1</b>	<b>13/00959/OUTM: Residential development for up to 42 dwellings (Outline - details of access included)</b>  Land At Spring Lane/Normanton Road Packington	<b>PERMIT Subject to a Section 106 Agreement</b>	<b>17 - 70</b>
<b>A2</b>	<b>13/01002/OUTM: Erection of 30 dwellings, including 8 affordable homes (Outline - access included)</b>  Land South Of Normanton Road Packington Ashby De La Zouch	<b>PERMIT Subject to a Section 106 Agreement</b>	<b>71 - 128</b>
<b>A3</b>	<b>14/01106/OUTM: Proposed development of 345 dwellings (use class C3), doctors surgery/health centre (use class D1), community centre (use class D1), access, associated infrastructure, open space, landscaping and play area (outline - all matters other than part access reserved)</b>  Land Laying To The West Of Whitehill Road And South Of Ibstock Road Ellistown	<b>REFUSE</b>	<b>129 - 158</b>
<b>A4</b>	<b>15/00196/FULM: Erection of 41 dwellings and associated infrastructure including the provision of play space and combined cycle and footpath (resubmitted 14/00520/FULM)</b>  Land At Wells Road And Willesley Road Ashby De La Zouch Leicestershire	<b>PERMIT subject to the signing of the Section 106 Agreement</b>	<b>159 - 182</b>
<b>A5</b>	<b>15/00083/OUTM: Residential development (up to 81 dwellings), associated open space, community and drainage infrastructure (Outline - access only) Re-submission of 14/00460/OUTM</b>  Land On The East Side Of Butt Lane Blackfordby	<b>PERMIT subject to a Section 106 Agreement</b>	<b>183 - 216</b>
<b>A6</b>	<b>14/01140/OUT: Erection of Residential Nursing Home (C2 Use) and formation of additional parking (outline - all matters reserved)</b>  Ibstock House 132 High Street Ibstock	<b>PERMIT</b>	<b>217 - 226</b>
<b>A7</b>	<b>15/00257/FUL: Erection of a radio transmission mast</b>  Summit Bardon Hill Copt Oak Road Markfield	<b>PERMIT</b>	<b>227 - 232</b>
<b>A8</b>	<b>15/00212/FUL: Erection of a Grain Storage Building</b>  Land At Scaffacre Farm From The Green To Unnamed Road At Top Merrill Grange Diseworth	<b>PERMIT</b>	<b>233 - 240</b>

**Index of Applications to be Considered**

<b>Item</b>	<b>Application Number and Details</b>	<b>Recommendation</b>	<b>Page</b>
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MINUTES of a meeting of the PLANNING COMMITTEE held in the Council Chamber, Council Offices, Coalville on TUESDAY, 14 APRIL 2015

Present: Councillor D J Stevenson (Chairman)

Councillors R Adams, G A Allman, J Cotterill (Substitute for Councillor N Smith), J G Coxon, D Everitt, T Gillard, J Houl, R Johnson, T Neilson, V Richichi (Substitute for Councillor J Bridges), M Specht, L Spence (Substitute for Councillor D Howe) and M B Wyatt

In Attendance: Councillors R D Bayliss, J Geary, T J Pendleton and S Sheahan

Officers: Mr C Elston, Mr D Gill, Miss E Mattley, Mr J Mattley, Mr A Mellor, Mrs M Meredith and Mr J Newton

### **118. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors J Bridges, D Howe, N Smith and R Woodward.

Councillor G Jones requested that as Councillor D Howe was retiring, a letter be sent to him thanking him for his contribution to the Planning Committee over the years and wishing him good luck in his recovery.

Councillor M Specht requested that a letter also be sent to Councillor R Woodward thanking him for his contribution to the Planning Committee over the years.

### **119. DECLARATION OF INTERESTS**

In accordance with the Code of Conduct, Members declared the following interests:

Councillors J Legrys, T Neilson and D J Stevenson declared that they had been lobbied without influence in respect of items A1, A2 and A3, application numbers 14/00445/FULM, 14/00931/FULM and 15/00063/FUL.

Councillors J G Coxon and M B Wyatt declared a non pecuniary interest in item A3, application number 15/00063/FUL as a member of the combined fire authority, which was previously the owner of building.

Councillors J Legrys and L Spence declared a pecuniary interest in item A3, application number 15/00063/FUL, as members of the Labour and Co-operative Party who would be in receipt of financial sponsorship in respect of their election expenses, and as the building was to be occupied by the Co-operative Society.

Councillor D J Stevenson commented that planning permission was given according to the use of the land, rather than a particular company.

### **120. MINUTES**

Consideration was given to the minutes of the meeting held on 10 March 2015.

Councillor M Specht referred to his statement on page 7 of the agenda in respect of item A3, application number 15/00072/OUT, as he felt the minutes did not reflect what he had said at the meeting. He requested that the minutes be amended to clarify that he had said he could not agree the site was unsustainable, and the fact that there was no footpath along Bakewell Way should not be a concern, as this was not a highway matter. He also did not feel that the reduced street lighting was a reason for refusal as Leicestershire

County Council had rolled out a programme of lights off in consultation with Parish Councils. He had also expressed concern about the traffic heading towards the A42 which would be a highway safety matter.

Councillor J Legrys referred to item A2, application number 14/00991/FULM, and thanked the officers for resolving this matter.

It was moved by Councillor J Legrys, seconded by Councillor R Johnson and

RESOLVED THAT:

Subject to the above amendment, the minutes of the meeting held on 10 March 2015 be approved and signed by the Chairman as a correct record.

## **121. PLANNING APPLICATIONS AND OTHER MATTERS**

Consideration was given to the report of the Head of Planning and Regeneration, as amended by the update sheet circulated at the meeting.

### **122. A1**

#### **14/00445/FULM: DEMOLITION OF EXISTING BUILDING AND ERECTION OF 26 NO. DWELLINGS AND ASSOCIATED INFRASTRUCTURE (AFFORDABLE HOUSING TO BE PROVIDED WITHIN APPLICATION REFERENCE 14/00444/FULM)**

Land Adjoining Greenacres Bosworth Road Measham

Officer's Recommendation: PERMIT Subject to a Section 106 Agreement

The Planning Officer presented the report to members.

Mrs C Cook, applicant's agent, addressed the meeting. She expressed support for the officer recommendation and considered the report to be balanced. She added that the applicant had worked hard with officers to ensure a high quality scheme. She advised that the number of dwellings had been reduced to accommodate ecological and biodiversity requirements. She added that all parties were in agreement with the proposed heads of terms in report. She stated that members would be aware of the application at New Street in respect of affordable housing. She advised that the applicant was currently working on alleviating the problems with this application and she was confident that these dwellings could be achieved. She believed that the report before members took account of the full range of NPPF policies. She concluded that the application site was in a sustainable location and was close to facilities; there were no outstanding issues and she hoped members would support the officer recommendation.

Councillor T Neilson felt that the application was premature given the link to the application on New Street. He added that the site was outside the limits to development and he felt that there had to be a very good reason to extend the limits to development further. He commented that the legal agreement linking the two applications was some sort of backroom deal. He stated that it was crucial that members consider and determine the applications concurrently to give assurance that the scheme was going to be deliverable and viable. He referred to a previous application in Measham where it was necessary to accept a commuted sum instead of affordable housing. He noted that although the legal agreement was in place, there was also reference in the update sheet to a commuted sum. He stated that there were all sorts of question marks which could all be dealt with by dealing with the applications concurrently.

It was moved by Councillor T Neilson and seconded by Councillor J Legrys that the application be deferred until the linked application at New Street was ready to be brought before the committee.

The Head of Planning and Regeneration advised that it was not the case that the application was premature simply because of the possibility within the Section 106 obligation to link the application to another site that was not at the same stage as this one. He added that flexibility was built into the legal agreement in order to guarantee the affordable housing provision.

The Chairman then put the motion to defer the application to the vote. The motion was declared LOST.

Councillor J G Coxon moved that the application be permitted in accordance with the officer recommendation as set out in the report. This was seconded by Councillor G Jones.

Councillor J G Coxon stated that he had to agree with the officers that this was a standalone application at end of the day and it ticked boxes. He stated that this was a good site with affordable housing provision, and he did not really think there was a reason to refuse it.

Councillor G Jones stated that he was happy to support the officer recommendation in this instance. He added that there was a lot of good work going on in and around Measham and he felt this complemented the adjacent site. He considered that the proposals would be good for Measham.

Councillor J Legrys reiterated that members had to consider what was before them and in this case he felt that there was a great deal of uncertainty, especially in respect of affordable housing, as this site did not contain any. He stated that there were too many uncertainties and he was not convinced that any affordable housing would actually be provided. He concluded that he could not support the recommendation.

Councillor G A Allman asked Councillor T Neilson to clarify what he meant by inferring a backdoor deal and how he could qualify this.

Councillor T Neilson clarified that he had stated that the legal agreement seemed to be a bit of a backroom deal given that members had not been involved at all.

Councillor M Specht stated that he would be supporting the officer recommendation and he believed there were actually 2 affordable units proposed for this site, so he considered it misguided to say that there was none. He added that the aerial view photo shown as part of the presentation was presumably from Google Earth, as the photo was out of date and the adjacent area was now built up. He concluded that the site was not as isolated as it appeared, and was more an extension of the village envelope.

Councillor L Spence noted that the original application was for 34 dwellings, which had now been reduced to 26. He noted that the update sheet showed that the affordable housing element had increased in number to 27 units and there was still an aspect of affordable housing to be agreed. With this in mind, he asked what scope there was to increase the number of dwellings based on this.

The Chairman advised that the site area would not increase, but more 4 bedroom houses could be split to provide smaller units.

In response to a question from Councillor L Spence, the Head of Planning and Regeneration advised that any further increase in the number of dwellings would require a variation application undertaken by way of a formal process. He explained that this could theoretically be delegated to officers or called in by a ward member for consideration by the Planning Committee.

The motion to permit the application was then put to the vote and declared CARRIED.

RESOLVED THAT:

The application be permitted in accordance with the recommendation of the Head of Planning and Regeneration.

**123. A2**

**14/00931/FULM: ERECTION OF 28 RESIDENTIAL UNITS WITH ASSOCIATED ACCESS AND PARKING**

Former Depot Highfield Street Coalville Leicestershire LE67 3BL

Officer's Recommendation: PERMIT Subject to a Section 106 Agreement

The Senior Planning Officer presented the report to members.

Councillor J Geary, ward member, addressed the meeting. He stated that the use of the site for affordable housing had to be welcomed as there was little affordable housing in Snibston South ward, and this development would improve the situation greatly. He expressed concern regarding the layout of the site, adding that he would certainly have liked to see more bungalows. He commented that the minimum density required was 40 dwellings per hectare, and this development offered 54.9 dwellings per hectare, so the developer certainly would have been able to include more bungalows and still meet the minimum density requirement. He added that the siting of the dwellings was also contentious due to the proximity of existing bungalows. He stated that the bungalows would be deprived of natural light as the new houses would cast a shadow. He added that to make matters worse, the developers would also plant trees there which could grow taller than the houses and cast more shadow. He referred to the comments of the Council's Urban Designer who suggested the scheme needed further work. He commented that boundary treatments should be agreed in consultation with the local ward member and he hoped that could be arranged.

Mr J Roberts, the applicant's agent, addressed the meeting. He stated that the scheme would provide 100% affordable housing and the applicant had worked closely with officers and taken on board their comments and requests. He added that the design reflected existing dwellings, there were no protected species found on the site and no objections from the statutory consultees. He stated that the scheme was a direct response to the shortfall in affordable housing, and provided a housing mix that met the needs of the local community. He stated that sufficient parking provision had been made and there were no highways concerns. In respect of the bungalows, he advised that the plots had been moved and lowered in response to the concerns raised, and officers considered the proposals to be acceptable in terms of residential amenity. He concluded that the proposals represented housing for local people which was fitting within the constraints of the site. He respectfully urged members to support the officer recommendation and provide much needed housing for Coalville.

Councillor R Johnson stated that he had called in the application due to the overlooking impacts on the site from Zetland Close and the land levels. He added that he and Councillor J Geary had requested that two bungalows be put at the rear of the site and felt that bungalows were needed. He referred to the comments from the Urban Designer on page 47 of the agenda which indicated that there was still further work to be done in terms of design and he asked why the application was before members without this work being completed.

Councillor R Johnson moved that the application be deferred until the requisite work on the design was completed. This was seconded by Councillor R Adams.



The Head of Planning and Regeneration advised that there were a number of amber indicators highlighted on page 47 of the agenda; however there was no objection from the Urban Designer as the design aspects could be secured by way of suitably worded conditions. He asked members to consider whether the proposals represented sustainable development of the site, or whether the issues were so unsatisfactory that they felt the application should not be determined today.

The Chairman then put the motion to defer the application to the vote. The motion was declared LOST.

It was moved by Councillor M Specht and seconded by Councillor G Jones that the application be permitted in accordance with the officer recommendation as set out in the report.

Councillor M Specht stated that he agreed with the comments regarding the bungalows. He commented that solar gain could save huge amounts on energy bills and he fully agreed that there should be a condition that there were two bungalows at that end of the site. He added that a landscaping condition could require a row of trees along this boundary. He referred to a row of trees in Coleorton which had been planted in close proximity to a row of dwellings, and the residents were up in arms about issues such as the height of trees, overshadowing and interfering with television reception. He stated that therefore he would like to see the condition regarding the hedgerow planting removed.

Councillor G Jones stated that he was happy to support the officer's recommendation. He commented that this was an ideal location for the housing needed in Coalville. He asked however that officers reconsider the square footage of what was being presented as there was an ideal opportunity to increase this.

Councillor J Legrys sought clarification as he believed that Councillor M Specht had moved a motion that had not been seconded to add a condition about the siting of the bungalows, and remove the condition relating to the hedgerow planting.

It was clarified that this was not a formal motion, but a wish list for the developer to note.

Councillor J Legrys moved an amendment to the motion that a condition be added to ensure that the dwellings at the top end of the site were bungalows, and the condition relating to hedgerow planting be removed. He commented that the site did need tidying up and the social housing was required, however he felt that it was necessary to be concerned about the neighbouring dwellings. He accepted that in the event of any development, someone would not be satisfied; however at the last Planning Committee meeting, the local member was given permission to negotiate with the developer regarding the orientation to one plot, which has proved successful. He also moved as part of his amendment that the plots near to Zetland Close be bungalows.

The Chairman asked members to bear in mind that in respect of the bungalows on Zetland Close, residents have asked for the concrete wall to be retained, and it would be quite dark in that corner in any case. He put it to members that they should refuse the application if they felt that a significant amendment was required.

Councillor J Legrys sought to raise a point of order in that a vote should be taken on the amendment.

The Legal Adviser clarified that in the event that an amendment to a motion was seconded, this would need to be voted on prior to dealing with the substantive motion.

Councillor R Johnson seconded the amendment put by Councillor J Legrys.

The Chairman then put the amendment to vote.

The voting having been tied, the Chairman exercised his casting vote and the motion was declared LOST.

The Chairman then referred members to the substantive motion as set out in the report.

Councillor T Neilson commented that this affordable housing was desperately needed in Coalville. He added that for many years the allocation had been deteriorating due to problems getting developers to put enough in to these schemes. He added that the Council were providing funding also, and as such he was disappointed that members' views were not being taken into account regarding the layout. He concluded that he could not support the proposals due to overshadowing.

Councillor D Everitt stated that he was going to support this, however having viewed the aerial view of the development site, he was quite concerned about the proximity of the wall to the corner of the bungalow.

Councillor J G Coxon referred to the application permitted at the last meeting which was not dissimilar to this. He commented that there was no talk of wanting bungalows on the perimeter then, and the Committee was not being consistent. He felt that the application and officer recommendation should be supported.

Councillor L Spence stated that this was a very difficult decision for him personally as he came to the meeting truly open minded and could see the case that it would be overshadowing on Zetland Close. He added that he was also conscious of the need for affordable housing. He concluded that with all that in mind, he felt that the impact of the overshadowing needed to be weighed against the need for affordable housing in the town, and he felt that need was greater. Therefore he felt he must support the application.

The Chairman then put the motion to the vote. The motion was declared CARRIED.

RESOLVED THAT:

The application be permitted in accordance with the recommendation of the Head of Planning and Regeneration.

**124. A3  
15/00063/FUL: DEMOLITION OF EXISTING FIRE STATION AND ERECTION OF A  
NEW RETAIL UNIT WITH ASSOCIATED CAR PARKING, LANDSCAPING AND SITE  
WORKS AND EXTERNAL LIGHTING**

Moira Fire Station Shortheath Road Moira Swadlincote Derby DE12 6AL

Officer's Recommendation: PERMIT

Having declared a pecuniary interest, Councillors J Legrys and L Spence left the meeting during consideration of this item and took no part in the debate or voting thereon.

The Planning and Development Team Manager presented the report to members.

Dr T Hyde, objector, addressed the meeting. He expressed concerns regarding loss of privacy, traffic volume, noise and residential amenity. He stated that the adjacent canal amenities were a great asset to the area and would be adversely impacted by the proposals. He added that footfall would increase, resulting in loss of privacy for residents. He stated that the traffic already caused a bottleneck, particularly at peak times. He referred to the other planned applications in the area. He stated that the proposals would

be a magnet attracting people from the surrounding area, particularly at peak times, and there was no traffic data publicly visible from actual traffic studies. He commented that Moira furnace regularly held events and the traffic volume would become too high. He stated that he had witnessed many cars speeding down that road, and the risk of serious collision was greatly increased as visibility was restricted due to the road profile. He added that there was a lack of parking provision.

Mr E Sutton, the applicant's agent, addressed the meeting. He stated that in principle, it was felt that a convenience store was an appropriate use of the site. He added that all comments had been taken on board and the elevations had been enhanced, which was welcomed by the planning officer. He advised that planning permission was given for the use of the site, but the applicant was legally tied in with the Co-operative Group, who had a reputation for supporting local communities. He added that the proposals would offer employment, providing 3 posts. He felt it was fair to say that the new store would help provide for a sustainable community given the limited local amenities, and would offer the local community a far greater amenity. He advised that according to the highways consultant, there had only been 6 accidents on this stretch of road in the last 9 years, none of which involved pedestrians or children. He added that parking spaces had been provided and there would be no on road manoeuvring during deliveries.

Councillor J G Coxon moved that the application be permitted in accordance with the officer's recommendation. He felt this was a sustainable site and an ideal site for retail use. He added that the proposals would provide an amenity for the village, at a time when most villages were declining in amenity. He commented that he had no qualms supporting this application as it would make the village more sustainable.

The motion to permit the application was seconded by Councillor J Hoult.

Councillor T Neilson commented that this was a good application. He stated that his only concern was about the non-sequential approach being taken and if the other unit down the road was also to go ahead, it would be overkill. However he welcomed the design and stated that he would support the application.

The Chairman then put the motion to permit the application to the vote.

The motion was declared CARRIED.

RESOLVED THAT:

The application be permitted in accordance with the recommendation of the Head of Planning and Regeneration.

**125. A4**

**15/01103/FUL: PROPOSED CONVERSION OF ATTACHED OUTBUILDING TO FORM ONE RESIDENTIAL DWELLING**

19 Main Street Breedon On The Hill Derby DE73 8AN

Officer's Recommendation: PERMIT

The Senior Planning Officer presented the report to members.

It was moved by Councillor G Jones, seconded by Councillor J Legrys and

RESOLVED UNANIMOUSLY THAT:

The application be permitted in accordance with the recommendation of the Head of Regeneration and Planning.

**126. A5**  
**15/00033/FUL: ERECTION OF A SINGLE STOREY FRONT EXTENSION**  
4 Gerrard Crescent Kegworth Derby DE74 2HQ

Officer's Recommendation: PERMIT

The Planning and Development Team Manager presented the report to members.

It was moved by Councillor J Legrys, seconded by Councillor G Jones and

RESOLVED UNANIMOUSLY THAT:

The application be permitted in accordance with the recommendation of the Head of Regeneration and Planning.

Councillor S Sheahan left the meeting at 4.55pm.

Councillor J Geary left the meeting at 5.24pm.

The meeting commenced at 4.30 pm

The Chairman closed the meeting at 5.40 pm

**APPENDIX B**

**Report of the Head of Planning and Regeneration  
To  
Planning Committee**

**9 June 2015**

**PLANNING & DEVELOPMENT REPORT**



## **PLANNING COMMITTEE FRONT SHEET**

### **1. Background Papers**

For the purposes of Section 100(d) of the Local Government ( Access to information Act) 1985 all consultation replies listed in this report along with the application documents and any accompanying letters or reports submitted by the applicant, constitute Background Papers which are available for inspection, unless such documents contain Exempt Information as defined in the act.

### **2. Late Information: Updates**

Any information relevant to the determination of any application presented for determination in this Report, which is not available at the time of printing, will be reported in summarised form on the 'UPDATE SHEET' which will be distributed at the meeting. Any documents distributed at the meeting will be made available for inspection. Where there are any changes to draft conditions or a s106 TCPA 1990 obligation proposed in the update sheet these will be deemed to be incorporated in the proposed recommendation.

### **3. Expiry of Representation Periods**

In cases where recommendations are headed "Subject to no contrary representations being received by ..... [date]" decision notices will not be issued where representations are received within the specified time period which, in the opinion of the Head of Planning and Regeneration are material planning considerations and relate to matters not previously raised.

### **4. Reasons for Grant**

Where the Head of Planning and Regeneration report recommends a grant of planning permission and a resolution to grant permission is made, the summary grounds for approval and summary of policies and proposals in the development plan are approved as set out in the report. Where the Planning Committee are of a different view they may resolve to add or amend the reasons or substitute their own reasons. If such a resolution is made the Chair of the Planning Committee will invite the planning officer and legal advisor to advise on the amended proposals before the a resolution is finalised and voted on. The reasons shall be minuted, and the wording of the reasons, any relevant summary policies and proposals, any amended or additional conditions and/or the wording of such conditions, and the decision notice, is delegated to the Head of Planning and Regeneration.

### **5. Granting permission contrary to Officer Recommendation**

Where the Head of Planning and Regeneration report recommends refusal, and the Planning Committee are considering granting planning permission, the summary reasons for granting planning permission, a summary of the relevant policies and proposals, and whether the permission should be subject to conditions and/or an obligation under S106 of the TCPA 1990 must also be determined; Members will consider the recommended reasons for refusal, and then the summary reasons for granting the permission. The Chair will invite a Planning Officer to advise on the reasons and the other matters. An adjournment of the meeting may be necessary for the Planning Officer and legal Advisor to consider the advice required

If The Planning Officer is unable to advise at Members at that meeting, he may recommend the item is deferred until further information or advice is available. This is likely if there are technical objections, eg. from the Highways Authority, Severn Trent, the Environment Agency, or other Statutory consultees.

If the summary grounds for approval and the relevant policies and proposals are approved by resolution of Planning Committee, the wording of the decision notice, and conditions and the Heads of Terms of any S106 obligation, is delegated to the Head of Planning and Regeneration.

## **6 Refusal contrary to officer recommendation**

Where members are minded to decide to refuse an application contrary to the recommendation printed in the report, or to include additional reasons for refusal where the recommendation is to refuse, the Chair will invite the Planning Officer to advise on the proposed reasons and the prospects of successfully defending the decision on Appeal, including the possibility of an award of costs. This is in accordance with the Local Planning Code of Conduct. The wording of the reasons or additional reasons for refusal, and the decision notice as the case is delegated to the Head of Planning and Regeneration.

## **7 Delegation of wording of Conditions**

A Draft of the proposed conditions, and the reasons for the conditions, are included in the report. The final wording of the conditions, or any new or amended conditions, is delegated to the Head of Planning and Regeneration.

## **8. Decisions on Items of the Head of Planning and Regeneration**

The Chairman will call each item in the report. No vote will be taken at that stage unless a proposition is put to alter or amend the printed recommendation. Where a proposition is put and a vote taken the item will be decided in accordance with that vote. In the case of a tie where no casting vote is exercised the item will be regarded as undetermined.

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**Residential development for up to 42 dwellings (Outline - details of access included)**

**Report Item No  
A1**

**Land At Spring Lane/Normanton Road Packington Ashby De La Zouch Leicestershire LE65 1WU**

**Application Reference  
13/00959/OUTM**

**Applicant:  
K Goodwin And B Moseley**

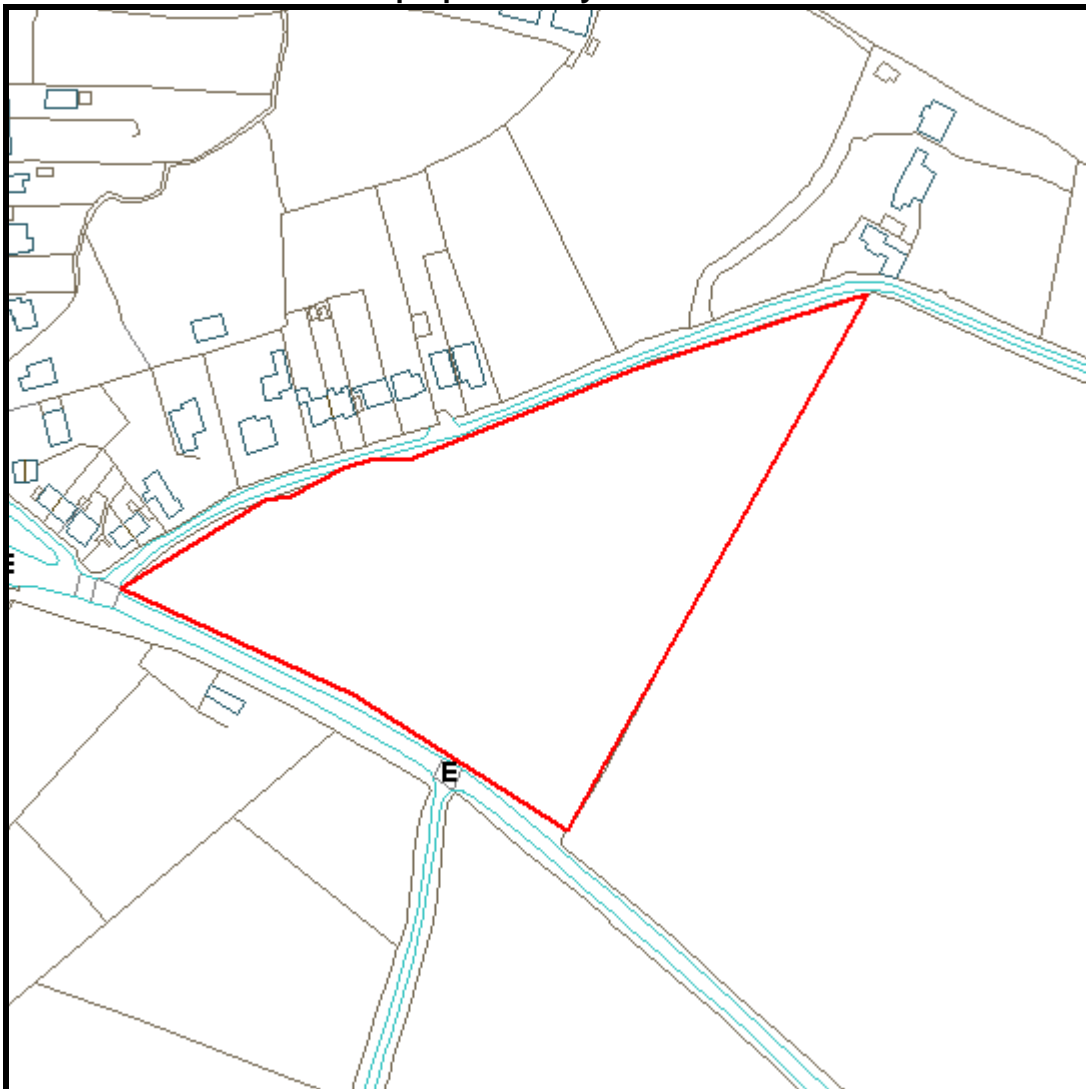
**Date Registered  
26 November 2013**

**Case Officer:  
Hannah Exley**

**Target Decision Date  
25 February 2014**

**Recommendation:  
PERMIT Subject to a Section 106 Agreement**

**Site Location - Plan for indicative purposes only**



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## EXECUTIVE SUMMARY

### Background

This application was previously reported to Members of the Planning Committee on 10 June 2014, with an officer recommendation of approval subject to the completion of a Section 106 agreement. The Agreement was completed and a decision notice was issued on 26 November 2014. Since then, a Judicial Review has been lodged against the decision made by the District Council and the decision has subsequently been quashed. The application proposal has been reconsidered by officers, having regard to current local and national policies and other material considerations and the following report has been prepared for Members consideration.

### Proposal

Outline planning permission is sought for the erection of 42 residential units including affordable housing and provision of sustainable urban drainage on a triangular piece of land at the corner of Spring Lane and Normanton Road, Packington.

The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Normanton Road and the centre point of the access would be approximately 90m from the junction with Spring Lane. Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application.

### Consultations

Members will see from the main report below that objections have been received, including from Packington Parish Council, with over 100 letters being received from members of the public. There are no technical objections raised by any of the statutory consultees.

### Planning Policy

The application site lies outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. Also material to the determination of the application, however, is the supply of housing in the context of the National Planning Policy Framework (NPPF).

### Conclusion

Whilst the site is a greenfield site outside Limits to Development, having regard to the site's general suitability for housing, with Packington considered to be a sustainable location for the level of development proposed, and the need to demonstrate and maintain a five year supply of housing land within the District, the proposals are considered to constitute sustainable development, and release of the site for residential development would be appropriate in principle.

The proposed development would be acceptable in terms of density, impact on countryside, the character of the area and the historic environment, impact on trees, residential amenities, transportation and highway safety issues, flood risk and drainage, ecological impacts and impact on the River Mease SAC and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of

the proposals on local facilities/services.

The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of such development as set out in that document. It is therefore recommended that planning permission be granted.

**RECOMMENDATION:- PERMIT, SUBJECT TO SECTION 106 OBLIGATIONS, AND SUBJECT TO THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main reports below which provide full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed reports.**

## MAIN REPORT

### 1. Background and Update

This application was previously reported to Members of the Planning Committee on 10 June 2014 (copy of report and update attached as Appendix to this agenda item) with an officer recommendation of approval subject to the completion of a Section 106 agreement. The S.106 agreement was completed and a decision notice was issued on 26 November 2014. At the time the Planning Committee resolved to grant planning permission, the Council did not have a five year housing land supply, although by the time the decision notice was issued, the position had changed and the Council was able to demonstrate a five year housing land supply. At the time of writing this report, the Council has a five year housing land supply. The decision to issue planning permission was challenged by way of a Judicial Review which was issued on 19th December 2014. The planning permission has subsequently been quashed by Order of the Court. The Judicial Review raised six grounds of challenge; the Council conceded one of those grounds, which was that it had raised a legitimate expectation that the matter would be reported back to the Planning Committee prior to the issue of the decision notice. For this reason, the Court Order quashing the planning permission was made with the consent of both parties.

Whilst the Council conceded only one ground for challenge, it should be noted that the Court gave the Claimants permission to bring the Judicial Review on all 6 grounds. The Council clearly respects this decision and for this reason, as well as for the avoidance of doubt as to the planning judgment exercised in relation to each ground,, this report will address all of the grounds for challenge that were raised.

The six grounds for challenge and the Council's position with regards to those grounds can be summarised as follows:

#### Ground One

*The Defendant failed to have regard to and apply the statutory test in accordance with section 66 of the Listed Buildings Act 1990 [sic], which requires special regard to be had to the desirability of preserving a listed building's setting contrary to the Court of Appeal's rulings in East Northamptonshire DC v Secretary of State for the Community and Local Government/Barnwell Manor Mid Energy Ltd v East Northamptonshire DC [2014] 1 P & CR 22.*

The District Council did not concede this point and considers that it fully assessed the impact of the proposed development on the historic environment; including having special regard to the desirability of preserving the setting of nearby listed buildings. This is addressed in more detail below.

#### Ground Two

*The Defendant in reaching the decision failed to take material considerations into account namely paragraph 17 of the NPPF which states that planning decisions should recognise the intrinsic value of the countryside and the need for a Transport Assessment in accordance with Department for Transport (DfT) Guidance as a consequence of the level of growth identified.*

The District Council considers that it had regard to Paragraph 17 and recognised the intrinsic value of the countryside in its assessment of the proposal as well as considering impacts on the local highway network. The District Council did not concede this ground for challenge and this point is addressed in more detail below.

Ground Three

*There was no screening opinion carried out and it was wrong to conclude that there were no significant environmental impacts based on the limited information provided. Further in applying or failing to apply various conditions to the respective permissions the Council have failed to take into account material considerations on the issue of the permission and consequentially failed to give adequate protection to European protected sites, species or other factors.*

The District Council carried out a screening opinion and no significant environmental impacts were identified. This was detailed in the original officer report, along with a comprehensive assessment of the potential impact of the proposed development on the protected species and the River Mease Special Area of Conservation. Appropriate conditions/notes to applicant were recommended to address matters raised by statutory consultees, which remain relevant. Consequently, the District Council did not concede this point which is addressed in more detail below.

Ground Four

*The Council acted irrationally in that there was a failure to give reasons for taking an inconsistent and irrational approach to cumulative impacts of the Scheme. Further in using an out of date and unadopted figure for growth and having no reasonable explanation as to how conclusions were properly reached as to cumulative impact of two such large proposals being granted when the new overall level of growth of 17.3% was not considered, the Council also acted irrationally.*

The Council did not concede this ground for challenge which is addressed in more detail below.

Ground Five

*The Council breached the statutory duties under s70(2) of the Town and Country Planning Act 1990 (as amended) and in s38 (6) of the Planning and Compulsory Purchase Act 2004 to have regard to "any other material considerations". The Council also failed to apply the approach in accordance with case of R(oao Kides) v South Cambridgeshire DC 2003 1 P&G CR 19. The approach adopted by the officer in this case in light of the acknowledged new material consideration of going from a position of having no 5YHLS to having one, falls far short of the test in Kides and he clearly erred in concluding that the matter should not be referred back to the committee for the reasons specified in the Grounds of Claim.*

The Council does not accept that there was a need to report the matter back to the Planning Committee for the reasons set out later in this report. When agreeing to quash the planning permission, the Council did not concede this point.

Ground Six

*The failure to report the matter back to committee was in breach of the legitimate expectation raised by the Council that it would do so, created by their letter of the 9th October to the Parish Council on this issue.*

It is on this ground that the District Council consented to quashing the planning permission.

**2. Publicity**

Neighbours have been re-notified

**3. Consultations**

The Parish Council have been re-notified.

#### 4. Summary of Representations Received

There is no statutory requirement to undertake re-consultation with local residents and consultees in cases where the nature of the application has not changed. This application has not changed in any way since its initial consideration in June 2014. In this case, however, the District Council decided that it would be in the interests of justice to re-consult consultees relevant to the issues raised in the grounds of challenge, the Parish Council and neighbouring residents who had been written to about the original application or who had made representations about the original application.

**Packington Parish Council** is strongly opposed to the application as it is out of proportion to what is expected in a small rural village and are outside the development boundary of the village. The Parish Council also believe that as the sole reason for granting the applications in 2014 was the dubious fact that the Authority could not meet a five year land supply figure the applications should be refused as the authority now demonstrates a healthy land supply figure.

A letter of objection has been received from those residents that brought the Judicial Review, which is summarised as follows:

- The application should be refused for the following reasons and in light of the fact that the Council can demonstrate it has a five year housing land supply such that full weight can be accorded to local plan policies that are compliant with the NPPF:
- The proposals will have an adverse impact upon the Grade II Listed Packington House which should be given special regard and weight.
- The proposals will have a significant impact on the landscape and the rural setting of Packington resulting in unnecessary housing development in the Countryside (outside adopted built development boundaries) which does not constitute sustainable development and is contrary to local plan Policy S3 and paragraphs 7 and 17 of the NPPF.
- The proposals will also result in the loss of the BMV agricultural land contrary to Policy S3 and paragraph 112 of the NPPF, and which also renders the development unsustainable.
- The proposals will have a disproportionate impact on the size of the village, relating poorly to the existing built form and harmful to the character and appearance of the countryside contrary to Policy E4 and the NPPF.
- The applicants have failed to carry out an adequate assessment of the highways impacts of the developments given the lack of Transport Assessments contrary to Government policy and guidance set out in DfT Guidance on Transport Assessments 2007.

The full contents of this letter have been made available to members of the Planning Committee.

In addition, a further 111 letters of neighbour representation have been received as a result of this process. Of the objections raised in those letters of representation, the majority had already been raised when the application was previously reported to, and given consideration by, Members in June 2014. Of those representations that raise new issues, they are as follows:-

- since the previous decision, circumstances have changed as the District Council now has a 5 year housing land supply and does not need this amount of new housing and

therefore, infill sites within the village should be the preferred approach to housing growth in the village and more weight should be given to the protection of the countryside;

- The proposals will have a disproportionate impact on the size of the village, relating poorly to the existing built form and harmful to the character and appearance of the countryside contrary to Policy E4 and the NPPF.
- the two housing proposals would increase the size of the village by 14% and 10% (24%) which is out of scale with the village;
- there is a large brownfield site within the village that is currently for sale and should be developed first;
- a similar housing development has been refused in Blackfordby on the ground that it was contrary to Policy S3 (outside limits to development) and was not sustainable;
- inadequate consultation with local residents about the judicial review process, quashing order and subsequent reconsideration of the application;
- the previous decision was made on out-of-date information with regard to housing land supply;
- the proposal is contrary to the approach set out in the Core Strategy/Local Plan which requires villages to contribute only a small number of additional houses;
- more detailed information is required about why the decisions were quashed;
- impacts on areas of special residential character which form the character of the settlement;
- housing as proposed would go against what the National Forest should be;
- a bombardment of solar farm applications and HS2 passing close to the village are also threats to our village life and countryside beyond;
- local knowledge should be considered above that of statutory consultees.

For details of the original representations received, Members are advised to refer to the original officer report and update sheet which are attached as addendums to this report. In summary, 74 letters were received from members of the public including FLOAT (Packington Flood Action Team). The objections cover several different issues, broadly but not exclusively relating to the principle and sustainability of the proposal, adequacy of existing services/infrastructure, highway safety, impact on nearby residents and the character of the settlement, flood risk and drainage and impact on the historic environment and ecology.

The full contents of all neighbour representations, both from this current application and the 2014 application, are available for Members to inspect on the case file.

## **5. Relevant Planning Policy**

The proposal has not changed so the relevant policies remain the same as previously reported to Committee (report attached for information).

## **6. Assessment**

### **GROUNDS OF CHALLENGE**

As set out above, notwithstanding that the District Council only conceded one ground for challenge, the District Council has considered all six grounds of challenge when preparing this report, as follows:-

Ground One - *Failure to have regard to and apply the statutory test in accordance with section 66 of the Listed Buildings Act 1990 (sic).*

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, when considering whether or not to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building, or its setting or any features of special architectural or historic interest that the building may possess.

The built fabric of the nearby listed building and any special features of the building would not be affected by the proposed development which lies beyond the curtilage of the listed building. The development site falls within the rural setting of the listed building and, therefore, the impact of the development on the setting of the listed building should be given special regard and requires consideration, and this is discussed further below.

The NPPF defines a heritage asset as a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest.

Paragraph 131 of the NPPF requires planning authorities to take account of:-

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

The District Council has fully assessed the impact of the proposed development on the historic environment and paid special consideration to the tests set out in the Act as set out below:-

The Packington Conservation Area lies approximately 275 metres to the west / 200 metres to the north west of the site and the nearest listed building is the Grade 2 listed Packington House lying approximately 30 metres to the north. The Conservation Area and listed building are designated heritage assets as defined in the NPPF. The site may also contain buried archaeological remains and, if so, these would also form a heritage asset.

The site is well separated from the Conservation Area by intervening residential development which is predominantly twentieth century. As a result, the site would not be highly visible within views of or from the Packington Conservation Area. The site is bounded by Normanton Road to the south of the site, leading from Heather Lane to the west. It is acknowledged that some glimpses of the site would be possible within views along Heather Lane/Normanton Road.

When having regard to the distances involved (as set out above) and the modern nature of the intervening twentieth century development, it is not considered that the development of the site for housing would adversely affect the setting of the Packington Conservation Area.

Packington House lies 30 metres to the north of the site and has the following listing description:

*"House of late C18 and early C19. Red brick with brick dentilled eaves and plain tile roof with end stacks. Twin span, one of each date. The present entrance front, the earlier, is of 3 storeys, Flemish bond, stone coped gables, and 3 sashes: 3/3 2nd floor and 6/6 below. Stucco lintels and stone sill bands. Early C20 bay to left of central simple doorcase and canopy with part glazed 6-panelled door and overlight. 3 storey 1 window extension to right: attic 4/8 sash with casements below. 1 storey extension to left. The rear front is of 3 storeys of 4 windows grouped vertically in projecting brick sections. 3/6 sashes, flat lintels, to 2nd floor, and 6/6 cambered lintels, below. Stone sills. Centre right section has round arched doorcase: tripartite*



*with narrow 3-pane light either side of 4-panelled door. Right end rendered; on left end extension with casements".*

When considering the three factors contained within the Act, the District Council is satisfied that the proposal would not affect the built fabric of this listed building. Consideration needs to be given, however, to the impact of the proposed development on the setting of Packington House. The building's setting is somewhat compromised to the immediate north by the presence of a modern two-storey dwelling but to the south and south east (including the application site), the rural setting of Packington House survives. The Conservation Officer advises that, whilst the proposed development would be unlikely to affect the setting of the Conservation Area, it could affect the rural setting of Packington House. However, given the outline nature of the proposal, the design and layout of the development would need to be approved at the Reserved Matters stage and, therefore, there would be an opportunity for the impact of the development to be reduced through the design and layout of any detailed proposals, as these would need to have due regard to the potential impact of development on the setting of this listed building. The application site narrows to a point at its most northern point opposite Packington House which would naturally constrain built development towards the north of the site. When having regard to the need to provide on-site tree planting and the triangular shape of the site, it is considered that the site is capable of accommodating the amount of development proposed without any significant adverse affects to the setting of this heritage asset. Indeed the indicative layout shows how the proposed development could be separated from the listed building through the provision of tree planting at the northern tip of the site.

Paragraph 128 of the NPPF states that local planning authorities should require applicants to describe the significance of any heritate assets affected, including any contribution made by their setting. The level of detail should be no more than is sufficient to understand the potential impact of the proposal on their significance. In this case, the applicant has submitted a Heritage Impact Statement which has been taken into account in the determination of the application.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local planning authorities in the consideration of whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 133 of the NPPF sets out that where a proposed development will lead to substantial harm to, or total loss of significance of, a designated heritage asset, local planning authorities should refuse consent unless a number of conditions are made out. In this case, the District council does not consider that the proposals will lead to the total loss of significance of Packington House or substantial harm to the building because the proposals would not directly affect the built fabric of Packington House and the development site lies beyond the curtilage of this listed building.

Paragraph 134 of the NPPF goes on to say that where the proposed development leads to less than substantial harm to a heritage asset, the harm caused should be weighed against the public benefits of the proposal.

As discussed above, it is considered that the proposal would fall within the rural setting of Packington House and Officers have given special regard to this when assessing the merits of this application. However, when having regard to the distance available between the site and the listed building and the constraining effect of the triangular nature of the site on the northern part of the site making it more suitable for planting/landscaping, it is considered that a positive design approach could be adopted as part of any Reserved Matters submission to ensure that adverse impacts on the setting of the listed building would be limited as a result of the

development of the proposed site.

It is therefore considered that whilst the proposal could be harmful to the significance of the heritage assets it is unlikely that this would involve substantial harm or total loss of significance for the reasons set out above. The proposals amount to less than substantial harm to the significance of the heritage assets and would not result in significant detriment to the special architectural or historic interest, character or setting of the nearby listed building and would not adversely affect the character and appearance of the Conservation Area, thereby sustaining the significance of these heritage assets.

As set out above, Paragraph 134 of the NPPF requires harm to designated heritage assets that is less than substantial to be weighed against the public benefits of the proposal, including securing its optimum viable use. The harm to the heritage assets is, in this case considered on balance to be outweighed by the provision of 42 new homes to contribute to maintaining the District's housing land supply which includes affordable homes, contributions towards improving capacity within existing public services and, under the River Mease DCS, which will improve the quality of the River Mease SAC.

Ground Two - *the Failure to take material considerations into account, namely (i) paragraph 17 of the NPPF which states that planning decisions should recognise the Intrinsic value of the countryside and (ii) the need for a Transport Assessment and the level of growth identified.*

The District Council has had regard to Paragraph 17 and recognises the intrinsic value of the countryside when assessing the proposal and its impact on the local highway network. These issues are considered in turn below:

*(i) Intrinsic Value of the Countryside*

When undertaking the original assessment of the development, paragraph 17 was not specifically referred to in the 'Assessment' section, it was referenced in the 'Relevant Planning Policy' section of the original officer report.

The District Council acknowledges that the site lies within the countryside which policy seeks to protect, and that the proposed development would be contrary to that policy. However, it also recognises that regard must be had to other relevant material considerations and, it is in these circumstances that a balanced judgement must be made.

Paragraph 17 of the NPPF sets out the key principles that should underpin planning policy and, amongst other things, requires local planning authorities to take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.

The District Council recognises that the site, along with the adjoining arable fields, provides the rural setting for the village. In considering the impact of the proposal on the character of the area, the District Council has considered the location and appearance of the site. The site is located within a natural hollow within the landscape as land rises towards the east/north-east away from the edge of the settlement of Packington. The triangular site is bordered on all sides by mature hedgerows interspersed with trees and, consequently, is afforded some existing natural screening and appears as a self-contained field (separated into paddocks). It does not form part of a larger parcel of land. It has also been necessary to consider the short and long distance views of the site and how the site lies within the topography of the wider landscape, along with its relationship with the existing built development.

The site is situated in very close proximity to the existing development situated on Spring Lane. When having regard to the proximity of the site to the existing development and settlement boundary, the topography of the surrounding landscape, existing trees/hedgerows along the site boundaries and the scope for mitigation in the detailed layout, design and landscaping of the scheme referred to above, the District council considers that the visual impacts of the proposals would be reasonable and that, notwithstanding the site's location outside Limits to Development, unacceptable impacts on the amenities of the surrounding area (countryside) would not be likely to arise.

Whilst the District council accepts that Paragraph 17 of the NPPF requires local planning authorities to recognise the "intrinsic character and beauty of the countryside", the same paragraph also requires it to support thriving rural communities. In this regard, the increase in local residents arising from the proposed development could support and sustain existing services and facilities available within the village.

Overall, the proposal is considered to comply with the provisions of Policy E4 and H7 of the Local Plan and the provisions of the NPPF (which would include paragraph 17).

*(ii) Need for a Transport Assessment and consequently the level of growth identified.*

With regard to the impacts of the proposed development on the local highway network, the DfT document referred to in the Grounds of Challenge and letter of objection was withdrawn in October 2014. The County Highways Authority has been consulted and has confirmed that, in accordance with Leicester County Council's '6C's Design Guide' a Transport Assessment is not required to assess the two residential schemes either alone or in combination. The County Highways Authority has considered the impact on the local highway network and has advised that the traffic movement on the road network in Packington is generally light and, given that any increased traffic arising out of this development would be greatly dispersed before it reached junctions on the network that are exceeding, at, or approaching, their capacity, queuing and congestion in the peak hours is unlikely to be of any concern as part of an assessment of the impact of the proposed traffic from the two residential schemes currently proposed on either side of Normanton Road, either alone or in combination. Therefore, the County Highways Authority raises no concerns in relation to the proposal on its own or in combination with the development proposed opposite adversely affecting the capacity of the village road network. The proposal is considered acceptable for the purposes of T3 and T8 of the Local Plan.

Ground Three - *(i) no screening opinion was carried out and it was wrong to conclude that there were no significant environmental impacts and (ii) in applying or failing to apply various conditions, the Council have failed to take into account material considerations and consequentially failed to give adequate protection to European protected sites, species or other factors.*

Each of these matters is discussed in turn below:

*(i) No screening opinion was carried out*

The proposal has been assessed in respect of the Environmental Impact Assessment (EIA) Regulations 2011 in order to establish whether the proposal constitutes EIA development. The EIA Regulations define EIA development as development which is either Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location. The proposed development is classed as development under paragraph 10(b) of Schedule 2 to the Regulations. However, when having regard to the selection criteria for screening Schedule 2 development which include the

characteristics and location of the development and the characteristics of potential impact, it has been concluded that this proposal does not constitute EIA development under the 2011 Regulations as its impacts, both on its own and cumulatively with the other major housing proposal to the southern side of Normanton Road (13/01002/OUTM) are not considered to be significant and can be considered as part of the planning application.

When the challenge in this case was considered by the High Court, the Judge took the view that this point was not arguable as screening opinions can be very brief and, subject to certain exceptions relating to reasoning, can only be judicially reviewed on a 'Wednesbury' basis. Essentially, this means that a challenge can only be made if the decision reached by the Local Planning Authority falls outside of the range of reasonable decisions open to the authority.

*(ii) failure to give adequate protection to European protected sites, species or other factors*

The District Council had due regard to the requirements of Paragraphs 109 and 118 of the NPPF in its consideration of the potential impact of the proposal on protected sites and species. In consultation with the County Ecologist, Natural England and the Environment Agency, the District Council has undertaken a comprehensive assessment of the potential impact of the proposed development on protected species and the River Mease Special Area of Conservation, and this is set out in the original officer report. No objection was raised by Natural England, the Environment Agency or the County Ecologist and the conclusions reached with respect to these issues remain valid. In terms of the River Mease SAC, it can be ascertained that the proposed development on the site will, either alone or in combination with other plans or projects, have no likely significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI. The grounds of challenge suggested that conditions were not imposed to provide a buffer strip between the development and the brook (a tributary of the River Mease) or to protect a rare plant on the site. However, the imposition of Condition 5 of the planning permission granted in November 2014 required an ecological/landscape management plan to be submitted, along with explanatory notes to applicant setting out requirements with respect to buffer zones and the conservation of the rare plant and the re-imposition of this condition and note to applicant will ensure that adequate protection continues to be given in this respect. The County Ecologist has re-confirmed that the conditions remain relevant and accurately reflects their advice.

Ground Four - *The Council acted irrationally in that there was a failure to give reasons for taking an inconsistent and irrational approach to cumulative impacts of the Scheme. Further in using an out of date and unadopted figure for growth and having no reasonable explanation as to how conclusions were properly reached as to cumulative impact of two such large proposals being granted when the new overall level of growth of 17.3% was not considered, the Council also acted irrationally.*

*Cumulative impact assessment and using an out-of-date and unadopted figure of growth*

It is appropriate to consider the scale of the proposed development compared to Packington so as to understand its potential impact upon the scale and character of the village.

In terms of likely future needs, the original officer report referred to the GL Hearn Leicester and Leicestershire Housing Requirements Study, which was used to inform the housing requirement in the now withdrawn Core Strategy and included information regarding future natural change across the district. This study projected that a 23.4% increase in housing was required across the District from 2006-2031, which was reflected in the now withdrawn Core Strategy.

In terms of likely future needs, the joint Strategic Housing Market Assessment (SHMA) 2014

undertaken on behalf of all of the Leicestershire local planning authorities has provided the District Council with an up-to-date objectively assessed annual housing requirement, equating to 350 dwellings per annum from 2011 to 2031. This SHMA projected that 17.3% growth in housing would be required across the District to meet housing need. This is an average figure for the District as a whole and therefore, it is considered that it will be appropriate for locations that are sustainable to accommodate a higher level of growth than other settlements. As set out above, Packington is considered to be a sustainable settlement (particularly when having regard to its relationship with Ashby) and it is considered to be capable of accommodating above average housing growth.

It is estimated that there are 324 properties in the village of Packington within its main built up area. The number of properties within Packington has been calculated using 2011 Census information from the Office of National Statistics, which is considered to be a reputable source of information. However, local objectors to the development estimate that there are 300 properties within the village of Packington and it is considered prudent to consider the level of growth in both scenarios.

On the basis of 324 properties, this proposal for 42 dwellings would represent a 12.96% increase in the number of dwellings within the village. The 42 proposed dwellings alongside the outstanding commitments for 3 dwellings would equate to a 13.88% growth in the village since 2011.

On the basis of 300 properties, this proposal for 42 dwellings would represent a 14% increase in the number of dwellings within the village. The 42 proposed dwellings alongside the outstanding commitments for 3 dwelling would equate to a 15% growth in the village since 2011.

In both scenarios, the proposed development on its own, and with existing commitments, would represent a lower level of growth anticipated in the SHMA than that for North West Leicestershire as a whole. As set out above, when having regard to the sustainability credentials of the site and settlement, it is considered that the settlement is capable of accommodating some housing growth for the District. It is not considered that the scale of growth as calculated in either scenario above would result in a significant increase in housing development within the village.

When considered cumulatively with commitments and the other major housing proposal for the village reported later on this agenda (a maximum of 75 dwellings), this would equate to a 23.15% (based on 324 properties) or 25% (based on 300) increase in new dwellings within the village, which would represent a higher level of growth anticipated for the village than proposed across the District as a whole in both the GL Hearn Study and the SHMA.

Whilst the level of growth is considerably higher than the District-wide figure contained in the SHMA, when having regard to the sustainability credentials of Packington (including its close relationship with Ashby), it is considered that Packington is capable of accommodating an above average level of housing growth for the District. In this context, it is not considered that the scale of growth would result in a significant increase in housing development within the village.

*Ground Five - The Council breached the statutory duties under s70(2) of the Town and Country Planning Act 1990 (as amended) and in s38 (6) of the Planning and Compulsory Purchase Act 2004 to have regard to "any other material considerations". The Council also failed to apply the approach in accordance with case of R(Kides) v South Cambridgeshire DC 2003 1 P&G CR 19. The approach adopted by the officer in this case in light of the acknowledged new material consideration of going from a position of having no 5YHLS to having one, falls far short of the*

*test in Kides and he clearly erred in concluding that the matter should not be referred back to the committee for the reasons specified in the Grounds of Claim.*

*Housing Land Supply and Limits to Development*

The NPPF requires that the Council should be able to identify a five year supply of housing land with an additional buffer of 5% or 20% depending on its previous record of housing delivery.

The five year supply of housing has been assessed against the joint Strategic Housing Market Assessment (SHMA) 2014 and the Local Planning Authority is currently able to demonstrate a five year supply, including a 20% buffer. Having regard to this and the approach set out in Paragraph 49 of the NPPF, saved Local Plan Policy S3 is, for the purposes of deciding this application, considered to be up-to-date in the context of Paragraph 49. It is accepted that this proposal would be contrary to Policy S3 of the Local Plan. However, given that the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements only up until the end of that Plan Period (i.e. to 2006), this needs to be taken into account when considering the weight to be applied to any conflict with this policy.

In addition, the NPPF's provisions do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF.

Having regard to the three dimensions of sustainable development, it was previously recommended in the original officer report and accepted by the Planning Committee that the contribution to the economic growth associated with the proposed development, together with appropriate contributions towards affordable housing, play area provision and the inclusion of appropriate contributions to local services would ensure that the scheme would sit well in terms of the economic and social dimensions. Insofar as the environmental role is concerned, whilst the proposed development would result in the development of land outside of the defined Limits to Development, the proposed development would not result in any unacceptable impacts on the natural, built or historic environment and, by virtue of its location, close to the existing built up area and associated services, and its accessibility to public transport, would perform reasonably well in terms of need to travel and the movement towards a low carbon economy.

It is accepted that the site lies outside limits to development, that Policy S3 of the Local Plan is not out of date and the Council can now demonstrate a five year land supply. However, there has been no material change in circumstances that would lead to a different conclusion in respect of the sustainability credentials of the site as previously reported to the Planning Committee in June 2014 and the proposal is still considered to constitute sustainable development in NPPF terms. Therefore, the existence of a five year housing land supply is not a reason for refusal of a sustainable development and given the need to maintain a five year supply of housing, it is considered that release of the site would still remain appropriate.

*R (Kides) v South Cambridgeshire District Council*

The tests contained in this case sets out that, faced with a change in the 5 year housing land supply, the planning officer ought to have reported this matter back to committee unless s/he was satisfied that members would have reached the same decision. For various reasons, the planning officer in this case reached the conclusion that members would, once again, approve the application.

In any event, the matter is now being reported back to committee due to the fact that the planning permission has been quashed and so the challenge on the basis of *Kides* falls away.

Grounds Six - *legitimate expectation to report the matter back to committee*

The District Council conceded Ground Six is made out and the application is being reported back to Planning Committee.

**OTHER MATTERS**

*Best and most versatile agricultural land*

One of the objections raised is based upon the loss of BMV agricultural land. This was considered in the original report and members are asked to have regard to the contents of that report in this regard. However, to summarise, the Council accepts that the proposed development would not sit particularly comfortably with the requirements of the NPPF and, in particular, the aims of paragraph 112. However, this would need to be weighed against other material considerations and, whilst there would be adverse impacts in this regard, these concerns would not be so significant as to outweigh the considerations in favour of the scheme. When given the overall conclusions in respect of whether the site constitutes sustainable development in NPPF terms, and given the need to maintain a five year supply of housing, it is considered that the potential agricultural land quality issue is not sufficient to suggest that planning permission should be refused, particularly given the relatively limited extent of the potential loss (i.e. 2.2ha).

*Section 106 Contributions*

In terms of the Section 106 contributions requested in the original officer report, from April 2015, no more than five obligations can be pooled by the charging authority to provide for the same item of infrastructure. Accordingly it will be necessary for the relevant consultees, in relation to the requests previously made, to demonstrate that no issues arise in respect of pooling (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

In terms of the request made by the Police, it is considered that, in principle, contributions towards policing may be capable of being justified in terms of satisfying the relevant NPPF and CIL Regulations tests. However, officers are of the view that, subject to the Police being able to demonstrate in a robust manner that the assumed levels of increased policing activity are appropriate given the scale of the proposed development, of the contributions previously requested, only those in respect of the start up equipment for additional staff and vehicles have the potential to satisfy the relevant NPPF and CIL tests. It would also be necessary for Leicestershire Police to demonstrate that no issues in respect of pooling would arise (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

*Original officer report/update sheet*

Where there has been no change in the District Council's consideration in respect of particular issues which have not been superseded by this report, the content of the original officer report/update sheet (attached) remains valid and Members should also take this into account in the determination of this application.

**RECOMMENDATION - PERMIT, subject to the signing of a S106 Agreement and subject to the previously imposed conditions.**

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# APPENDIX TO MAIN REPORT

PLANNING APPLICATIONS- SECTION A

Residential development for up to 42 dwellings (Outline - details of access included)

Report Item No  
A1

Land At Spring Lane/Normanton Road Packington Ashby De La Zouch

Application Reference  
13/00959/OUTM

Applicant:  
K Goodwin And B Moseley

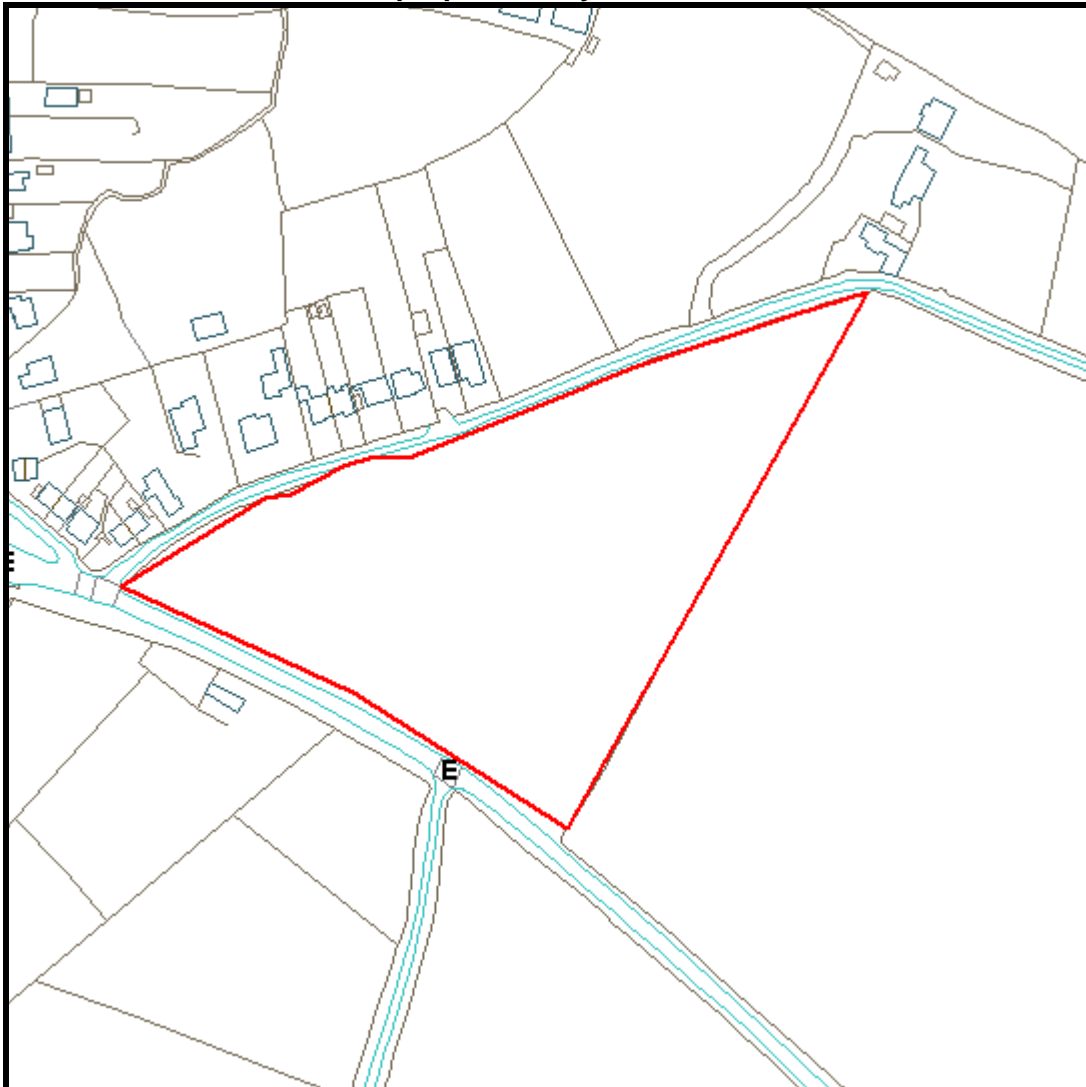
Date Registered  
26 November 2013

Case Officer:  
Hannah Exley

Target Decision Date  
25 February 2014

Recommendation:  
PERMIT Subject to a Section 106 Agreement

## Site Location - Plan for indicative purposes only



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## EXECUTIVE SUMMARY OF PROPOSALS

### Call In

The application falls to be determined by the Planning Committee as the application has been called in by Councillor Smith due to concern about access and the location of the site outside the settlement boundary.

### Proposal

Outline planning permission is sought for the erection of 42 residential units including affordable housing and provision of sustainable urban drainage on a triangular piece of land at the corner of Spring Lane and Normanton Road, Packington. The site is 2.2 hectares and currently used as pasture land and is situated on the south-eastern side of the settlement to the north side of Normanton Road. The application site is bordered on two sides by public highways and by open fields. The nearest residential properties are located to the east and north of the site, and are sited on the opposite side of Spring Lane facing the proposed development site.

The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Normanton Road and the centre point of the access would be approximately 90m from the junction with Spring Lane. Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application.

### Consultations

Members will see from the main report below that objections have been received, including from Packington Parish Council, with 73 letters being received from members of the public including FLOAT (Packington Flood Action Team). The objections cover several different issues, broadly but not exclusively relating to eg. the principle and sustainability of the proposal, adequacy of existing services/infrastructure, highway safety, impact on nearby residents and the character of the settlement, flood risk and drainage and impact on the historic environment and ecology.

The County Highway Authority initially objected on two grounds in relation to the sustainability of the site's location and absence of footways and street lighting in the vicinity of the site which in conjunction with additional vehicular movements would introduce additional dangers to road users. Following the submission of additional information the Highway Authority has withdrawn the reasons for refusal. Leicestershire Police also advises that policing is not included within the submitted Heads of Terms and, therefore, it raises a formal objection to the application on sustainability grounds and because the development is unacceptable without the necessary policing contribution.

### Planning Policy

The application site lies outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. This Policy now has to be considered as not being up-to-date in the context of the National Planning Policy Framework (NPPF) as the Council cannot currently demonstrate a five-year supply of deliverable housing sites.

### Conclusion

Whilst the site is outside the Limits to Development in the adopted Local Plan and constitutes greenfield land, as the Council cannot currently demonstrate a five-year supply of deliverable housing sites, its release for housing is considered suitable as Packington is a sustainable location for the level of development proposed for the site and the proposal would not result in a

significant increase in housing development within the village.

The proposed development would be acceptable in terms of density, impact on countryside, the character of the area and the historic environment, impact on trees, residential amenities, transportation and highway safety issues, flood risk and drainage, ecological impacts and impact on the River Mease SAC and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services.

The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of such development as set out in that document. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

**RECOMMENDATION:- PERMIT, SUBJECT TO SECTION 106 OBLIGATIONS, AND SUBJECT TO THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

The application falls to be determined by the Planning Committee as the application has been called in by Councillor Smith due to concern about access and the location of the site outside the settlement boundary.

Outline planning permission is sought for the erection of 42 residential units including affordable housing and provision of sustainable urban drainage on a triangular piece of land at the corner of Spring Lane and Normanton Road, Packington. The site is 2.2 hectares and is currently used as pasture land and is situated on the south-eastern side of the settlement to the north side of Normanton Road. The application site is bordered on two sides by public highways and by open fields on the other. The nearest residential properties are located to the east and north of the site, and are sited on the opposite side of Spring Lane facing the proposed development site.

The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Normanton Road and the centre point of the access would be approximately 90m from the junction with Spring Lane. The formation of the new access would require the removal of approximately 20m of existing hedgerow along Normanton Road.

Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application.

The outer boundaries of the site are predominantly occupied by mature hedgerows interspersed with trees. There are four existing vehicular access gates around the perimeter of the site with one off Normanton Road opposite the junction with Red Burrow Lane, one at the northern tip of the site off Spring Lane and two others along the western boundary off Spring Lane; one being adjacent to the existing stable buildings. The site is separated into four paddock areas by a hedgerow extending in a north-easterly direction across the site from Normanton Road and by post and rail fencing.

Land levels across the site rise in a north easterly direction with the lowest land levels being in the south western corner of the site at the junction of Spring Lane/Normanton Road and are highest at the northern tip of the site. Between these two points of the site, there would be an increase in land levels by up to 4.8 metres. Between the south eastern and the northern tip of the site, there would be an increase in land levels by up to 1.1 metre.

The site lies within the catchment area of the River Mease Special Area of Conservation. The Packington Conservation Area lies approximately 275 metres to the west of the site/ 200m to the north west of the site and the nearest listed building is the Grade 2 listed Packington House lying approximately 30 metres to the north. There are no protected trees on the site. There are no relevant planning history records for the site.

The proposal has been assessed in respect of the Environmental Impact Assessment (EIA) Regulations 2011. Whilst the proposal is classed as development under paragraph 10(b) of Schedule 2 to the Regulations it has been concluded that this proposal does not constitute EIA development under the 2011 Regulations as its impacts, both on its own and cumulatively with the other major housing proposal to the southern side of Normanton Road (13/01002/OUTM)

are not considered to be significant and can be considered as part of the planning application.

## 2. Publicity

25 no. neighbours have been notified (Date last notified 16 May 2014)

Site Notice displayed 12 December 2013

Press Notice published 11 December 2013

## 3. Consultations

Packington Parish Council consulted 2 December 2013

National Forest Company consulted 16 May 2014

LCC Development Contributions consulted 16 May 2014

NHS Leicester, Leicestershire And Rutland Facilities Managme consulted 16 May 2014

NWLDC Tree Officer consulted 16 May 2014

County Highway Authority consulted 16 May 2014

Police Architectural Liaison Officer consulted 16 May 2014

County Archaeologist consulted 13 February 2014

LCC ecology consulted 13 February 2014

Manager Of Housing North West Leicestershire District Council consulted 13 February 2014

NWLDC Urban Designer consulted 16 May 2014

LCC ecology consulted 16 May 2014

Manager Of Housing North West Leicestershire District Council consulted 16 May 2014

Environment Agency consulted 3 December 2013

Severn Trent Water Limited consulted 3 December 2013

Head of Environmental Protection consulted 3 December 2013

Natural England consulted 3 December 2013

NWLDC Conservation Officer consulted 3 December 2013

English Heritage- Ancient Monument consulted 3 December 2013

Building Control - NWLDC consulted 3 December 2013

Head Of Leisure And Culture consulted 3 December 2013

Police Architectural Liaison Officer consulted 3 December 2013

Development Plans consulted 13 December 2013

Highways Agency- Article 15 development consulted 4 February 2014

## 4. Summary of Representations Received

### Statutory Consultees

**Packington Parish Council** raises objection on the following grounds:

The site in question is a greenfield area and should be protected. If there is to be any development in the area, brownfield sites should be considered and greenfield sites should remain undeveloped. In addition, this particular location and proposed development is pushing the outer limits of Packington the wrong way.

Agreement to this application would open the flood gates to other greenfield sites being used for development which is not good planning, as how could further applications be refused if this one is granted. The proposal is unwarranted and inappropriate and would mean an increase of 15% to the size of the village. As it is, the school is at capacity regarding the space that there is available to them, and, therefore, there is no room to accommodate further numbers.

Currently, public transport is not adequate in Packington and consultation is underway for this to

be cut further, and, therefore, there will be an increase in car usage and more traffic.

In addition, there are issues with the access and road safety and drainage and flooding are a concern.

**The County Highway Authority** initially recommended refusal on two grounds:

(i) The Applicant has failed to demonstrate that their proposal will be in a location where services are readily and safely accessible by walking, cycling and public transport. Leicestershire County Council policy contained in the Local Transport Plan 3 seeks to deliver new development in areas where travel distances can be minimised, and genuine, safe and high quality choices are available (or can be provided) for people to walk, cycle and use public transport facilities and services nearby. The LTP3 reflects Government guidance contained in the NPPF.

(ii) Normanton Road lacks both footways and street lighting in the vicinity of the site. The development will introduce additional vehicular, pedestrian and cycle movements on Normanton Road to and from the new access position, including in the winter months in the hours of darkness. The proposal would introduce additional dangers to road users.

Following submission of additional information the County Highway Authority has withdrawn both reasons for refusal and has no objections subject to conditions and Section 106 requirements.

**Highways Agency** has no objections.

**The Environment Agency** has no objections subject to conditions.

**Natural England** has no objections subject to a River Mease developer contribution being secured in accordance with the River Mease Developer Contribution Scheme.

**Severn Trent Water** has no objection subject to conditions. STW has also confirms that there is capacity at the Packington Treatment Works to accommodate the proposed development.

**County Ecologist** initially recommended that the application be refused on the grounds of inadequate information about protected species and are plants. Following the submission of additional information, the County Ecologist has withdrawn their objection and has no objections subject to conditions.

**County Archaeologist** has no objections subject to conditions.

**English Heritage** advises that when having regard to statutory provisions, English Heritage does not need to be notified of the application.

**NWLDC Affordable Housing Enabler** advises that 30 percent of the dwellings proposed on the site will need to be affordable housing.

**NWLDC Urban Designer** considers that the indicative proposals offer the opportunity for Building for Life to be met in any future Reserved Matters application.

**Council's Tree Officer:** finds the submitted tree survey acceptable and makes a number of recommendations about landscaping of the site along and the level of information that would be required for a detailed application.

**NWLDC Environmental Protection** has no environmental observations and raises no objection.

**National Forest Company** advises that 20 percent of the site area should be woodland planting and landscaping and this will need to be secured through the S106 agreement.

**NHS England** have requested a contribution of £14,065.29 towards the Ashby Health Centre.

**Leicestershire County Council - Highway Transportation & Waste Management Authority** has not made a request for a contribution towards civic amenity sites.

**Leicestershire County Council Library Services Development Manager** have requested a contribution of £2760 towards additional resources at Ashby de la Zouch library.

**Leicestershire County Council Local Education Authority** have requested a contribution of £78,655.15 for the high school sector as there would be a deficit of 37 pupil places (5 created by the development) within high schools within a 3 mile walking distance of the site. A contribution of £80,762.70 is also sought for the upper school sector as there would be a deficit of 58 pupil places (5 created by the development) within upper schools within a 3 mile walking distance of the site.

No contribution is sought for the primary school sector as there currently an overall surplus for the area of 7 places when taking into account primary schools within a 2 mile radius of the site.

*Leicestershire Police* have requested a contribution of £20,795.00. Leicestershire Police also advises that policing is not included within the submitted Heads of Terms and therefore it raises a formal objection to the application on sustainability grounds and because the development is unacceptable without the necessary policing contribution.

No responses had been received from the Council's Leisure team at the time of writing this report.

### **Third Party Representations:**

All responses from statutory consultees and third parties are available for Members to view on the planning file.

72 letters of neighbour representation have been received, raising objection on the following grounds:

### **STRATEGIC PLANNING**

- concern about the level of schemes in other settlements within the District as a whole and the cumulative impact of this needs to be assessed;
- concern that the absence of a Core Strategy is being used as a free for all in planning applications but this does not make the site any more sustainable;
- there are more suitable brownfield sites within the village which could be developed to meeting housing requirements;
- there are more sustainable settlements within the District that should be considered for housing before Packington;
- there are two applications for residential development outside the village envelope and an assessment of the cumulative impact of these developments needs to be undertaken;
- the proposal in addition to the additional housing on the other side of Normanton Road are disproportionate to the size of the settlement;
- local people should plan the future of their community and they should decide where and

- how much development is needed;
- development should be spread across all the sustainable villages;
- undeveloped sites with planning permission in more sustainable places should be developed first;
- the proposal would not bring new employment to the area as most of the occupiers would commute to other settlements for work;
- people will have to travel outside the settlement to access services;
- Packington has 283 dwellings within the village boundary and another 49 dwellings would result in a 17% increase in the number of dwellings in the village which is significant for the village and is a disproportionate number for one site and the housing should be distributed more evenly throughout the settlement;
- development proposals for Ravenstone were spread over three sites and no-one site represented such a large increase in a single place as proposed here;

#### PRINCIPLE

- the site falls outside the limits to development and therefore, is contrary to policy;
- the land is agricultural and is a greenfield site which is not suitable for development;
- there is no need for market housing;

#### FLOOD RISK AND DRAINAGE

- there is already a flooding problem in the area at the junction of Normanton Road and Heath Lane, especially in the gardens on Heather Lane;
- there are springs dotted along Spring Lane and site is already waterlogged/floods (and can be dangerous in the winter when the standing water freezes);
- the Gilwiskaw Brook frequently floods into the gardens of properties on Mill Street and Homecroft Drive when it rains and the proposal will only increase surface water run-off and make this worse;
- local pasture land is saturated and developing the land will only increase surface-water run-off and increase the risk of flooding;
- a small pond on the site will be insufficient to prevent flooding;
- the River Mease (SAC) needs to be protected by restricting development that places demands on the already stretched sewage works;

#### INFRASTRUCTURE

- there is no capacity in the local primary school meaning that residents would need to take children outside the village by bus or car;
- there is no capacity within the secondary schools in Ashby;
- the local bus service is very limited and currently under review so may be reduced further, which would make residents of the development dependent on their private cars to reach services and work places outside the village;
- there is no capacity in the local GP surgeries in Ashby and Measham meaning that residents would need to travel further to see a doctor;
- for shopping needs, it is likely that residents of the development will use cars to travel rather than public transport or walking;
- inadequate infrastructure makes the site unsustainable;
- the proposal would not bring employment/social benefits to the village and the new dwellings will likely be occupied by commuters;
- the electricity supply to Packington is inadequate and the proposal will put a further strain on this service;
- water pressure within Packington is already low and the proposal will only exacerbate his problem;
- existing services within the village are at the upper end of the identified walking



distances and the site is on the least attractive side of the settlement for those wanting to access Ashby by foot or by cycle;

#### HIGHWAYS

- additional traffic generation and parking within the village;
- unsuitable access near a dangerous corner where there are no footpaths and poor lighting;
- dangers to pedestrians, especially school children walking where there are no pavements and crossing roads which are already busy and used by speeding motorists;
- the site access is close to multiple busy road junctions and additional vehicle movements will only make the existing situations worse;
- the proposal with the other development proposed would result in seven vehicular accesses within approximately 200 yards;
- inadequate provision for pedestrians and cyclists;
- Egress from Red Burrow Lane and Spring Lane are already difficult within limited visibility and increased traffic on Normanton Road will only exacerbate this;
- the site is poorly located for access to the village centre and major routes out of the village (A42/A511) which will increase traffic passing through the village,
- access to the A42 at Measham Road is already dangerous as five roads meet at this junction and the proposal will only make the existing situation worse;
- Normanton Road is already used as a short cut between the A511 and the A42 which generates additional traffic within the village;
- the adjoining highways are also already used daily by agricultural vehicles to/from local farms and vehicles visits the campsite at Hill Farm;
- any highway improvements proposed as part of the scheme would serve the proposed development not the village;
- the proposed uncontrolled pedestrian crossing to Spring Lane would extend in front of the access to an existing dwelling;
- the site plan does not show an extension to No.1 Spring Lane and therefore, is out of date;
- the proposed uncontrolled pedestrian crossing in front of No.1 Spring Lane will be unworkable;
- concern about whether adequate visibility can be obtained from the proposed access in the direction of Normanton le Heath given the vertical alignment of the road and the speed of traffic travelling in the village;
- concern that the proposed access, along with that proposed on the opposite side of the road as part of the other proposal for residential development could be dangerous;
- pedestrian access points are shown to Spring Lane which has no footways and so pedestrian share the carriageway with vehicles which is dangerous for road users;
- vehicles travel at high speeds along Spring Lane (which is narrow and has poor visibility in places) and introducing additional pedestrians onto it from the site will increase conflict between vehicles (including large farm vehicles and trail bikes) and pedestrians and create dangers to road users;

#### CHARACTER

- the development would alter the appearance and character of the village;
- the proposal will affect the views of the village on approach from Normanton le Heath;
- the scale of the development would be disproportionate to the size of the settlement;
- concern that the proposal would set a precedent for further development around the perimeter of the village;
- additional housing should be spread more evenly through the village on smaller sites to reflect the way villages grow organically and incrementally;

- views into the village will be dominated by housing;
- planning policy requires that the planning system should recognise the intrinsic character and beauty of countryside;
- a development of 49 houses of relatively uniform design in one large open site would be out of scale with the form and rural character and appearance of the village that has developed organically and incrementally over time;
- concern that 2.5 storey dwellings on rising land away from the village would be overly prominent and out of character with the scale and form of properties on Spring Lane;

#### RESIDENTIAL AMENITIES

- overlooking of and loss of privacy to properties on Spring Lane;
- the hedgerow along Spring Lane is not an adequate screen for the development in the winter months when the foliage is gone;
- concern that existing hedgerows will be removed which would further adversely affect neighbouring amenities;
- loss of sunshine to No. 1 Spring Lane;
- loss of views;

#### HISTORIC ENVIRONMENT

- impact on the Conservation Area;
- the site is important to the setting of the Grade II listed Packington House;

#### ECOLOGY/TREES

- the site supports nature and wildlife;
- a local wildflower planting initiative has been implemented around Spring Lane and is attracting wildlife;
- destruction of hedgerows and woodlands is a loss;
- planting as compensation for the landscape lost is little compensation;
- if permission is granted, the existing hedgerows around the site should be retained;

#### OTHER

- the village is already under threat of the HS2 which will cause disturbance and additional traffic within the village;
- additional homes within 1km of the HS2 route;
- noise and pollution;
- adversely affect rural lifestyle;
- local views should be taken into account (localism);
- concern about additional units being added at the detailed design stage should permission be granted;
- distress and upheaval for local residents, especially during the construction phase;
- an Environmental Statement is required given the location and context of the development;
- 30% affordable housing should be secured in line with the SPD as there is no viability argument to justify reducing in;
- the average agricultural land classification is an unconvincing argument as arable land is adjacent to the site;
- previous applications around Spring Lane have been rejected in the past;
- the supporting information is vague;
- both applications should be considered together;
- neighbours were not notified of significant changes.

## 5. Relevant Planning Policy

### National Planning Policy Framework (NPPF) - March 2012

The Department of Communities and Local Government published the National Planning Policy Framework (NPPF) on 27 March 2012. The NPPF brings together Planning Policy Statements, Planning Policy Guidance Notes and some Circulars into a single consolidated document.

The NPPF (paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Paragraph 17 sets out the 12 key principles that should underpin plan-making and decision-taking, which include:

- proactively drive and support sustainable economic development to deliver homes, business and industrial units, infrastructure and thriving local places that the country needs;
- always seek to secure high quality design and a good standard of amenity;
- take account of the different roles and character of different areas, including recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
- support the transition to a low carbon future in a changing climate;
- contribute to conserving and enhancing the natural environment and reducing pollution;
- encourage effective use of land by reusing land that is previously developed;
- conserve heritage assets in a manner appropriate to their significance;
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling;
- take account of and support local strategies to improve health, social and cultural wellbeing.

The following sections of the NPPF are considered relevant to the determination of this application:

"Paragraph 14 sets out the presumption in favour of sustainable development and, in respect of decision making, provides that, unless material considerations indicate otherwise, states that this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted."

"32. ...Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."

"47. To boost significantly the supply of housing, local planning authorities should:

- identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning

authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land..."

"49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

"54. Local planning authorities should in particular consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs."

"55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities."

"57. It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes."

"59. Local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally."

"61. Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment."

"100. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere."

"112. Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality."

"118. When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest; ...

- opportunities to incorporate biodiversity in and around developments should be encouraged..."

"119. The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined."

"123. Planning policies and decisions should aim to...avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development..."

"131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness."

"132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting...."

"133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss or all of four other criteria apply."

"134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."

"173. Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."

"203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition."

"204. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development."

#### **North West Leicestershire Local Plan:**

The East Midlands Regional Plan (RSS8) has now been revoked and therefore no longer forms

part of the development plan. The North West Leicestershire Local Plan forms the development plan and the following policies of the Local Plan are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application:

Policy S1 sets out 13 criteria which form the strategy for the adopted Local Plan.

Policy S3 sets out the circumstances in which development will be permitted outside Limits to Development.

Policy E2 seeks to ensure that development provides for satisfactory landscaped amenity open space and secures the retention of important natural features, such as trees.

Policy E3 seeks to prevent development which would be significantly detrimental to the amenities enjoyed by the occupiers of nearby dwellings.

Policy E4 seeks to achieve good design in new development.

Policy E7 seeks to provide appropriate landscaping in association with new development.

Policy E8 requires that, where appropriate, development incorporates crime prevention measures.

Policy E30 seeks to prevent development which would increase the risk of flooding and remove the extra discharge capacity from the floodplain of the River Mease.

Policy F1 seeks appropriate provision for landscaping and tree planting in association with development in the National Forest, and requires built development to demonstrate a high quality of design, to reflect its Forest setting.

Policy F2 states that the Council will have regard to the existing landscape character of the site and the type of development when seeking new planting.

Policy F3 seeks to secure implementation of agreed landscaping and planting schemes for new development by the imposition of planning conditions and/or the negotiation of a planning agreement.

Policy T3 requires development to make adequate provision for vehicular access and circulation and servicing arrangements.

Policy T8 sets out the criteria for the provision of parking associated with development. In relation to car parking standards for dwellings, an average of 1.5 spaces off-street car parking spaces per dwelling will be sought.

Policy H4/1 sets out a sequential approach to the release of land for residential development, and seeks to direct new housing towards previously developed land in accessible locations, well served by, amongst other things, public transport and services.

Policy H6 seeks to permit housing development which is of a type and design to achieve as high a net density as possible, taking into account a number of issues including housing mix, accessibility to centres and design.

Policy H7 seeks good quality design in all new housing development.

Policy H8 provides that, where there is a demonstrable need for affordable housing, the District Council will seek the provision of an element of affordable housing as part of any development proposal.

Policy L21 sets out the circumstances in which schemes for residential development will be required to incorporate children's play areas. Further guidance is contained within the Council's Play Area Design Guidance Note Supplementary Planning Guidance.

Policy L22 provides that major new development will only be permitted where adequate provision is made for open space for formal recreation use.

### **Other Guidance**

#### *Submission Core Strategy*

At a meeting of the Full Council on 29 October 2013, the District Council resolved to withdraw the Submission Core Strategy.

*The Conservation (Natural Habitats &c.) Regulations 2010* (the 'Habitats Regulations') provide for the protection of 'European sites', which include Special Areas of Conservation (SACs).

*Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System)* sets out the procedures that local planning authorities should follow when considering applications within internationally designated sites and advises that they should have regard to the EC Birds and Habitats Directive in the exercise of their planning functions in order to fulfil the requirements of the Directive in respect of the land use planning system. The Circular sets out a flow chart for the consideration of development proposals potentially affecting European sites.

*River Mease Water Quality Management Plan - August 2011* draws together all existing knowledge and work being carried out within the SAC catchment, along with new actions and innovations that will work towards the long term goal of the achievement of the Conservation Objectives for the SAC and bringing the SAC back into favourable condition.

*The River Mease Developer Contributions Scheme (DCS) - November 2012* is relevant to development which results in a net increase in phosphorous load being discharged to the River Mease Special Area of Conservation (SAC). It currently applies to all development which contributes additional wastewater via the mains sewerage network to a sewage treatment works which discharges into the catchment of the River Mease SAC.

*The Community Infrastructure Levy Regulations 2010* provide a legislative requirement that an obligation must meet the following tests:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development;
- fairly and reasonably related in scale and kind to the proposed development.

*The Technical Guidance to the National Planning Policy Framework - March 2012* provides additional guidance relating to flooding.

*National Planning Practice Guidance - March 2014* supplements the policies in the NPPF. The Guidance does not change national planning policy but offers practical guidance as to how such policies should be applied.

*NWLDC SPD for Affordable Housing - January 2011*

Key Principle AH2 provides that affordable housing will be sought on all sites of 15 or more dwellings in Ashby de la Zouch.

Key Principle AH3 requires a minimum of 30% of residential units to be available as affordable housing within Ashby de la Zouch.

*NWLDC SPG - Play Area Design Guidance - July 2002* sets out the relevant requirements in respect of children's play provision required in association with residential development.

*Packington Conservation Area Appraisal and Study SPG* identifies individual factors considered to have a positive impact on the character of the Conservation Area. These factors include principal listed buildings and unlisted buildings of interest in the vicinity of the site.

## **6. Assessment**

The main issues for consideration in the determination of this application relate to the principle and sustainability of the proposal, visual impact and its impact on the historic environment, trees, residential amenities, highway safety, drainage and flood risk, protected species/ecology and on the River Mease Special Area of Conservation, and the provision of affordable housing and developer contributions.

### **Principle of Development**

Insofar as the principle of development is concerned, and in accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance, includes the adopted North West Leicestershire Local Plan (2002 (as amended)).

In terms of the Local Plan, the site lies outside the Limits to Development, and Policy S3 sets out the circumstances in which development will be permitted outside Limits to Development. The development proposed would not meet the criteria for development in the countryside, and approval would therefore be contrary to the provisions of Policy S3. As explained further below, however, as a consequence of the Council currently being unable to demonstrate a five-year supply of housing land, Policy S3 can no longer be considered an up-to-date policy in the context of paragraph 49 of the NPPF as it is a general policy that constrains the supply of housing.

Notwithstanding the countryside location, and whilst the proposal would be contrary to the adopted Development Plan, therefore, in determining the application, regard must be had to other material considerations, including other policies, such as other Development Plan policies and national policies.

In terms of the Local Plan, Policy H4/1 identifies that, in releasing appropriate land for housing, the Council will have regard to:

- up-to-date housing land availability figures;
  - the latest urban capacity information;
  - the need to maintain an appropriate supply of available housing land;
  - lead times before houses will be expected to be completed and build rates thereafter;
- and
- other material considerations.

As with Policy S3, however, Policy H4/1 being a policy for the supply of housing, can no longer



be considered up-to-date due to the inability of the Council to demonstrate a five-year supply of housing land.

Whether or not this site would be considered "appropriate" is a matter of judgement. Insofar as the site's location is concerned, it is located adjacent to the existing built up area of the settlement and would not result in isolated development in the countryside.

In terms of the site's greenfield status, it is accepted that the site does not perform well. However, this issue needs to be considered in the context of the need to demonstrate and maintain a five year housing land supply in the District, and the need for sites to be released to meet this need. Given the need to provide significant areas of housing land as set out below, it is considered inevitable that greenfield land will need to be released in order to maintain a five year supply of deliverable sites, as well as (as in this case) land not allocated for housing development in the adopted Local Plan.

### *Housing Land Supply*

The NPPF requires that the Council should be able to identify a five year supply of housing land and include an additional buffer of 5% or 20% depending on previous performance in terms of delivery of housing. The appeal decision of May 2013 in respect of land south of Moira Road, Ashby de la Zouch, found that the "Sedgefield" approach should be used and that a buffer of 20% should be allowed for (an approach to assessing land availability also suggested as appropriate within the recently published National Planning Practice Guidance). On this basis, the District Council's most recent calculations indicate that the Council is only able to demonstrate a supply of 4.7 years which represents a significant shortfall vis-à-vis the requirements of the NPPF.

The consequences of an inability to demonstrate a five year supply are profound. Paragraph 49 of the NPPF advises that "Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites". Therefore the Council would not, in these circumstances, be able to rely on either Policy S3 or Policy H4/1 as they are "relevant policies" for the purposes of NPPF paragraph 49. Whilst members have previously been advised, on the basis of the Stephenson's Green High Court decision that Policy S3 should not be considered to be a relevant policy for the supply of housing and that accordingly the policy should not be considered to be out of date, a recent judgement from the most senior Judge in the Administrative Court (who is also a specialist Planning Judge) has qualified the position taken by the Judge in the Stephenson's Green case as a result of which it is no longer appropriate to rely on the latter decision.

In *South Northamptonshire Council -v-Secretary of State for Communities and Local Government* (10 March 2014) Mr Justice Ouseley, considering the meaning in paragraph 49 of the NPPF of policies "for the supply of housing", said this:

"46. That phraseology is either very narrow and specific, confining itself simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction, or alternatively it requires a broader approach which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner.

47. It is my judgement that the language of the policy cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions restrictive of where development should go. Such policies are

the obvious counterparts to policies designed to provide for an appropriate distribution and location of development. They may be generally applicable to all or most common forms of development, as with EV2, stating that they would not be permitted in open countryside, which as here could be very broadly defined. Such very general policies contrast with policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development".

Thus, whilst e.g. Green Wedge or Gap policies may not be caught by Paragraph 49, policies such as S3 and H4/1 that generally restrict development outside of settlement boundaries in open countryside clearly are. In these circumstances Members must be advised to consider both S3 and H4/1 as not being up-to-date policies. In any event, as the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements up until the end of the Plan Period (i.e. to 2006) less weight could have been attributed to any conflict with Policy S3 in the overall planning balance.

In addition, the NPPF's provisions do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF.

#### *Sustainability*

In terms of the sustainability of the site, Packington provides a range of day to day facilities, i.e. a primary school, shop, church, village hall, a public house, play area/recreation ground and some small-scale employment sites. There is also a limited public transport service; the No. 7 service currently provides a service Monday to Saturday (approximately every 1.5-2 hours) and serves Measham, Ashby de la Zouch, Atherstone and Nuneaton with a total of 11 buses running per day. The County Council has confirmed that the No.7 service will not be serving Packington going forward due to the No.19 service (Burton to Ashby) now providing an hourly service between Ashby and Measham via Packington from 0746 hrs to 1711 hrs Monday to Saturday.

In terms of distance to amenities, the Institute of Highways and Transportation (IHT) document 'Providing for Journeys on Foot' details the distance of 800 metres is considered to be the preferred maximum walking distance to a town centre with 400 metres acceptable and 200 metres being desirable. The Inspector in the Moira Road appeal referred to the DoT statistics which detail that the average trip length regularly undertaken by the population of Great Britain is, on average, walking about 1Km (0.62 miles), cycling about 4.5Km (2.8 miles) and by bus about 8Km (4.97 miles). Below are the approximate distances from the centre of the site to local facilities and services via the existing footway network:

- Bus Stop (outside the Bull and Lion pubic house) - 450 metres
- Primary School - 600m
- Shop - 750m
- Open Space (Measham Road playing field/play area) - 640 metres
- Village Hall - 750 metres
- Public House - 450 metres

The application site is well related to the services/facilities within the village, being within 800 metres (preferred maximum walking distance) of all of the above-mentioned services listed above. The existing highway network within Packington comprises of quiet residential streets and on this basis, it is considered that the quality of the walking experience would be high, which is likely to encourage walking in this location. Furthermore, in order to provide continuous

and improved connections to and from the site, it is proposed to construct a new 2 metre footway on the northern side of Normanton Road, extending from the site access up to the junction with Spring Lane to link the site with existing footway network. The level of services available within the village is considered to be reasonable for a rural village, although the public transport connectivity is considered to be relatively poor.

Ashby de la Zouch is located approximately 2.3km walking distance from the centre of the site, where amongst other services retail, secondary education, a library and GP surgeries can be found. There would be continuous footways available to facilitate pedestrian access to this nearby market town. Furthermore, it is considered that the short distance involved and the relatively low traffic flow along the routes available and local gradients, would encourage cycling. Indeed, the distance between the site and Ashby de la Zouch would also be within the average trip length for cycling (as outlined above).

Given the scale of the development, and when taking into account the site on the southern side of Normanton Road (totalling 72 dwellings), it is not considered that the proposal would result in unsustainable demands on local services and facilities, and contributions have been sought to provide additional capacity within schools, the library and a GP surgery at Ashby de la Zouch, to improve the recreational facilities within the village and to provide bus passes/travel packs and improve bus stops. There is nothing to suggest that the public house and shop would be adversely affected by an increase in residents and it may be the case that additional residents could support and sustain these and other services/facilities.

The site is equally well related to services when compared with the site on the southern side of Normanton Road. However, it is considered that on balance that and a reason for refusal on the grounds of Packington not being sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the other site off Normanton Road could not be justified, in particular having regard to the other material considerations set out in this report.

#### *Scale of Development and Cumulative Impacts*

It is appropriate to consider the scale of the proposed development compared to Packington so as to understand its potential impact upon the scale and character of the village.

In terms of likely future needs, the GL Hearn Leicester and Leicestershire Housing Requirements Study, which was used to inform the housing requirement in the now withdrawn Core Strategy, includes information regarding future natural change across the district. This Study projected that a 23.4% increase in housing was required across the District from 2006-2031, which was reflected in the now withdrawn Core Strategy.

It is estimated that there are 342 properties in the village of Packington within its main built up area. This proposal for 42 dwellings would represent a 12.2% increase in the number of dwellings within the village. The 42 proposed dwellings alongside the 5 new dwellings built since 2006 and the outstanding commitments for 1 dwelling would equate to a 14% growth in the village since 2006. Therefore, the proposed development on its own, and with additional dwellings/commitments, would represent a lower level of growth than that for North West Leicestershire as a whole. As such it is considered that the proposal would not result in a significant increase in housing development within the village.

#### *Loss of Agricultural Land*

Also of relevance to the principle of releasing the site is the issue of loss of agricultural land. Whilst the site is currently in use as pasture land, the development of the site would result in an

irreversible loss to a non-agricultural use.

Paragraph 112 of the NPPF suggests that, where significant development of agricultural land is demonstrated to be necessary, poorer quality land should be used in preference to that of a higher quality. Having regard to the five year housing land supply issue as set out above, it would seem inevitable that greenfield land (much of which will be agricultural in terms of use) will need to be released. Best and Most Versatile (BMV) agricultural land is defined as that falling within in Grades 1, 2 and 3a of the Agricultural Land Classification (ALC). The supporting information accompanying the application indicates that the site would not be classified as BMV agricultural land. The Agricultural Land Classification maps indicate that the site falls within Class 3 but do not specify whether the land would fall within a 3a (BMV) or 3b (not BMV) classification.

If considering the scenario that the land is potentially BMV land, it is commonly accepted that the magnitude of loss of agricultural land is low where less than 20 hectares of BMV would be lost (with medium and high impacts defined as those resulting in loss of between 20 and 50ha, and those of 50ha and above respectively). The site is approximately 2.2 hectares in size. It is noted that the NPPF does not suggest that release of smaller BMV sites is acceptable. However, it nevertheless appears reasonable to have regard to the extent of the loss in the decision making process, which in this case would be small in scale but irreversible as there are no areas of open space/landscaping that would be large enough to accommodate an agricultural use in the future.

Nevertheless, if the site were to fall within Class 3a, it is not considered that the proposed development would sit particularly comfortably with the requirements of the NPPF and, in particular, the aims of paragraph 112. However, this would need to be weighed against other material considerations and, whilst there would be adverse impacts in this regard, these concerns would not be so significant as to outweigh the considerations in favour of the scheme. When considered in the context of the five year housing land supply issue, and the benefits of releasing the site to assist in maintaining such supply, it is considered that the potential agricultural land quality issue is not sufficient to suggest that planning permission should be refused, particularly given the relatively limited extent of the potential loss (i.e. 2.2ha).

*Conclusions in respect of the Principle of Development and Planning Policy*

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 applications are to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The site is outside Limits to Development in the adopted Local Plan and its development for housing would therefore be contrary to Local Plan Policy S3, a policy designed to protect the countryside for its own sake. For reasons which have been outlined above, however, this Policy cannot be considered as being up-to-date in the context of Paragraph 49 of the NPPF.

The site is equally well related to services when compared with the site on the southern side of Normanton Road. However, it is considered that on balance that and a reason for refusal on the grounds of Packington not being sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the other site off Normanton Road could not be justified, in particular having regard to the other material considerations set out in this report, including the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF) is an important material consideration.

Having regard to the three dimensions of sustainable development, it is accepted that the contribution to economic growth associated with the proposed development in terms of jobs and the creation of new households, coupled with the role played in contributing to housing land supply, its proximity to services/facilities, the provision of affordable housing and contribution towards play area provision and the inclusion of appropriate contributions to local services would ensure that the scheme would sit well in terms of the economic and social dimensions. Insofar as the environmental role is concerned, as set out in more detail below, the proposed development would not result in any unacceptable impacts on the natural, built or historic environment. Having regard to all of the above in the overall balance, it is considered that the proposal would be a sustainable form of development, and, therefore the proposed development of the site is acceptable in principle.

### **Access and Highway Safety**

All matters are reserved for subsequent approval except for access. Whilst the illustrative layout shows internal access roads and pedestrian links through the site, these would be a matter for the reserved matters stage(s).

The Highways Agency has no objection in relation to impact on the strategic highway network (M42/A42).

Concerns have been raised by local residents including the speeds of traffic, the suitability and capacity of the village road network to cope with the traffic generated by this and the other major housing schemes currently proposed, increased potential for conflict between vehicles and between vehicles and pedestrians, the adequacy of visibility from the proposed access and other nearby road junctions, the close proximity of the proposed access to a number existing road junctions and a sharp bend in the road and the proximity of the proposed access to that of the other proposed development on the opposite side of the road.

The County Highway Authority initially objected on two grounds relating to the site being in an unsustainable location and secondly, due to Normanton Road having inadequate footway and street lighting provision to accommodate the additional vehicular, pedestrian and cycle movements to and from the proposed access that would be generated by the proposed development.

Following submission of additional information concerning sustainability, an amended plan showing the provision of a new footway link and confirmation that street lighting details would be provided at the Reserved Matters stage (should permission be granted), the County Highways Authority has withdrawn its reasons for refusal relating to these matters. If approved, the County Highways Authority recommends that the proposal is subject to conditions and contributions to be secured in a legal agreement which are considered in a separate section below. The former of the Highway Authority's objections relating to sustainability is addressed earlier in this report.

Access to the proposed development site would be provided by a new single point of access off Normanton Road. The other existing vehicle access points off Spring Lane and Normanton Road would be closed. The access would be provided approximately 85 metres to the south east of the existing access at Spring Lane and 120 metre visibility splays would be achieved in both directions.

The County Highways Authority is satisfied that visibility can be provided in accordance with the guidance contained in the '6 C's Design Guide' taking into consideration the speed of vehicles in

both directions. The County Highways Authority has also confirmed that the proposed access has appropriate junction separation from other existing junctions and notwithstanding the bend, forward visibility to a right turning vehicle is appropriate. With regard to concerns about the location of the other proposed access opposite the site, the County Highways Authority has confirmed that spacing between the two proposed accesses is appropriate and so the proposal would not lead to demonstrable harm to highway safety.

The County Highways Authority has advised that when having regard to the generally lightly trafficked nature of the road network in Packington, and given that traffic would be greatly dispersed before it reached junctions on the network that are at, or approaching their capacity being exceeded, queuing and congestion in the peak hours is unlikely to be of any concerns as part of an assessment of the impact of the proposed traffic from the two residential schemes currently proposed on either side of Normanton Road, either alone or in combination. Therefore, the County Highways Authority raises no concerns in relation to the proposal on its own or in combination with the development proposed opposite adversely affecting the capacity of the village road network. The proposal is considered acceptable for the purposes of T3 and T8 of the Local Plan.

Based on the above it is considered that the proposal would not result in a severe impact on highway safety and as such it is considered that a highway safety reason for refusal could not be sustained in this case.

### **Neighbours' and Future Occupiers' Amenities**

As set out above, the site is proposed to be accessed via Normanton Road. Located on the south eastern edge of the settlement, this area of Packington is not heavily populated with residential dwellings and, therefore, it is not considered that the increased traffic using local roads generally as a result of the proposed development would lead to unacceptable impacts on residents' amenities. It is accepted that vehicles travelling towards the Ashby and Measham, as well as the A42 and A511 would pass through the village. In coming to this conclusion it is noted that the Council's Environmental Protection Team raise no objections to the proposed development in terms of noise or pollution.

In terms of the impacts on neighbouring occupiers arising from the proposed buildings themselves are concerned, this would need to be assessed at the reserved matters stage(s); notwithstanding the details shown on the illustrative layout, there would appear to be no reason in principle why up to 42 units could not be provided on the site in a manner which would not adversely impact upon neighbouring residential amenities.

### **Design**

The proposed scheme has been assessed by the District Council's Urban Designer, and rated in accordance with CABI's new Building for Life criteria which scores on the basis of red/amber/green rather than being a point based scoring system. The Council's Urban Designer reviewed the original proposals and considered that the indicative layout would fail to meet the Building for Life criteria. The Council's Urban Designer has been involved in extensive discussions with the applicant during the course of the application and a revised indicative layout plan has been submitted. The Council's Urban Designer considers that the amended indicative proposals establish good design principles for the layout of the proposed development, orientation of dwellings, arrangement of streets and spaces, neighbourhood connections and landscaping. The Urban Designer considers that subject to Building for Life 12 (BfL12) being used as a reference tool and assessment tool for the design development and assessment of any future Reserved Matters application, the scheme would offer a good standard of design as measured by BfL12 and would comply with the relevant Development

Plan policies and advice in the NPPF.

Concern has been raised about the development including 2.5 storey dwellings. It is considered that the scale of the proposed units would need to be carefully assessed at the reserved matters stage, should permission be granted, as the use of 2.5 storey units as indicated in the Design and Access Statement may not be appropriate in this location.

### **Density**

The NPPF states that local planning authorities should set their own approach to housing density to reflect local circumstances. Local Plan Policy H6 provides that residential development should meet a minimum density of 30 dwellings per hectare within locations well served by public transport and accessible to services. The former advice in PPS3 provided that net dwelling density includes those site areas which will be developed for housing and directly associated uses, including access roads within the site, private garden space, car parking areas, incidental open space and landscaping and children's play areas. Whilst this has now been superseded in the NPPF the methodology contained within it for working out net dwelling density would, in the absence of any other guidance in the NPPF or Local Plan, still be relevant.

The proposal results in a density of 19 dwellings per hectare for the whole site but clearly the net density would be lower when factoring in the landscaping, buffer zones, SUDS etc that would also need to be provided on-site.

When having regard to those parts of the site that would not be developed for housing or directly associated uses, along with the existing density of the surrounding area and the location of the development on the edge of the settlement, it is considered that a reduced density in comparison to that advised in Local Plan Policy H6 is acceptable in this instance.

### **Character of the Area and Visual Impact**

The application has been accompanied by limited information regarding the existing landscape and character and how the development would assimilate into its environs. The indication is that these details would be provided at the Reserved Matters stage should permission be granted. Nonetheless, these matters are pertinent to considerations at the outline stage and should be assessed.

Packington is located within an undulating agricultural landscape and site, along with the adjoining arable fields provide the rural setting for the village when travelling along Normanton Road. The proposed site is located within a natural hollow within the landscape as land rises towards the east/north-east away from the settlement. The triangular site is bordered on all sides by mature hedgerows interspersed with trees and, therefore, is afforded some existing natural screening. The site appears as a self-contained field (separated into paddocks) and does not form part of a larger parcel of land.

Development on the site would be most immediately visible from Normanton Road and Spring Lane (including public vantage points and private dwellings) which abut the site. Longer distance views of the site are available from public footpaths to the south of the village where land levels rise. However, the application site abuts the settlement boundary and development on the site would be viewed against the backdrop of existing development which (with the exception of a few properties) extends approximately half way across the north western site boundary along Spring Lane. Furthermore, the site is nestled within a hollow in the landscape which, along with existing landscaping would help mitigate against the visual impact of built development on this site.

When having regard to the proximity of the site to existing development and the settlement boundary, the topography of the surrounding landscape, existing soft landscaping and the scope for mitigation in the detailed layout, design and landscaping of the scheme, it is considered that, the visual impacts of the proposals would be reasonable and that, notwithstanding the site's location outside Limits to Development, unacceptable impacts on the amenities of the surrounding area would not be likely to arise.

The development of the site for housing would extend built development within the settlement up to the south eastern boundary of the site and, therefore, consideration would need to be given to enhancing soft landscaping in this area to reinforce the boundary. Land levels are at their highest adjacent to the eastern boundary and therefore, the siting, height and design of built development within the vicinity of this boundary would also need to be carefully considered at the detailed design stage.

Overall, therefore, subject to a Section 106 to secure National Forest planting, and subject to an appropriate form of development being proposed at the reserved matters stage(s), it is considered that the landscape and visual effects of the proposed development are acceptable for the purposes of Policies E4 and H7 of the Local Plan and the provisions of the NPPF.

### **Historic Environment**

The Packington Conservation Area lies approximately 275 metres to the west of the site/ 200m to the north west of the site and the nearest listed building is the Grade 2 listed Packington House lying approximately 30 metres to the north. The Conservation Area and listed building are designated heritage assets as defined in the NPPF. The site may also contain buried archaeological remains (discussed in the archaeology section below) and these would also form a heritage asset.

The site is well separated from the Conservation Area by intervening residential development. The site would not be highly visible within views of or from the Packington Conservation Area, although it is acknowledged that some glimpses of the site would be available within views along Heather Lane/Normanton Road. When having regard to the distances involved and the nature of the intervening twentieth century development, it is not considered that the development of the site for housing would adversely affect the setting of the Packington Conservation Area.

Packington House lies to 30 metres to the north of the site and has the following listing description:

*House of late C18 and early C19. Red brick with brick dentilled eaves and plain tile roof with end stacks. Twin span, one of each date. The present entrance front, the earlier, is of 3 storeys, Flemish bond, stone coped gables, and 3 sashes: 3/3 2nd floor and 6/6 below. Stucco lintels and stone sill bands. Early C20 bay to left of central simple doorcase and canopy with part glazed 6-panelled door and overlight. 3 storey 1 window extension to right: attic 4/8 sash with casements below. 1 storey extension to left. The rear front is of 3 storeys of 4 windows grouped vertically in projecting brick sections. 3/6 sashes, flat lintels, to 2nd floor, and 6/6 cambered lintels, below. Stone sills. Centre right section has round arched doorcase: tripartite with narrow 3-pane light either side of 4-panelled door. Right end rendered; on left end extension with casements.*

The proposal would not affect the built fabric of this listed building but consideration needs to be given to the impact of the proposed development on the setting of Packington House. The building's setting is compromised somewhat to the immediate north by the presence of a modern two-storey dwelling but to the south and south east (including the application site), the



rural setting of Packington House survives. The Conservation Officer advises that the proposal would be unlikely to affect the setting of the Conservation Area but development on the site could affect the rural setting of the nearby Grade II listed building; Packington House. However, given the outline nature of the proposal, there may be potential for the impact to be reduced in the detailed design of the layout. Therefore, any detailed design proposals for the site would need to have due regard to the potential impact of development on the setting of this listed building. The application site narrows to a point at its most northern point opposite Packington House which would naturally constrain built development towards the north of the site. When having regard to the need to provide on-site tree planting and the triangular shape of the site, it is considered that the site is capable of accommodating the amount of development proposed without adversely affecting the setting of this heritage asset. Indeed the indicative layout shows how the proposed development could be separated from the listed building through the provision of tree planting at the northern tip of the site.

It is therefore considered that the proposal could be harmful to the significance of the heritage assets but that this would be unlikely to involve substantial harm or total loss of significance for the reasons set out above. Therefore the proposals amount to less than substantial harm to the significance of the heritage assets and would not result in significant detriment to the special architectural or historic interest, character or setting of the nearby listed building and would not adversely affect the character and appearance of the Conservation Area, thereby sustaining the significance of these heritage assets.

Paragraph 134 of the NPPF requires less than substantial harm to designated heritage assets to be weighed against the public benefits of the proposal, including securing its optimum viable use. The harm to the heritage assets is in this case considered on balance to be outweighed by the provision of 42 new homes to contribute to the District's housing land supply (which is currently at less than five year supply) which includes affordable homes, contributions towards improving capacity within existing public services and under the River Mease DCS which will improve the quality of the River Mease SAC.

### **Archaeology**

Paragraph 129 of the NPPF requires local authorities to identify and assess the particular significance of heritage assets that may be affected by a proposal, and this assessment should inform the consideration of the impact of the proposal on a heritage asset in order to avoid or minimise conflict between the heritage assets conservation and any aspect of the proposal.

The Leicestershire and Rutland Historic Environment Record (HER), indicates that the development area lies in an area of archaeological interest, immediately adjacent to the medieval and post-medieval historic settlement core of Packington. Appraisal of the HER indicates that little or no previous archaeological investigation has been undertaken within the development area or in its vicinity, consequently, in the absence of site specific information, the County Archaeologist advises that it is difficult to evaluate the archaeological potential of the development site.

An appraisal of available aerial photographs suggests the presence or former presence of ridge and furrow earthworks within the site, indicating the site lies within the former extent of the openfield system that would have surrounded Packington through much of the medieval and post-medieval periods. The County Archaeologist advises that this indicates that the area has a low potential for significant medieval or later archaeological remains.

The villages of Leicestershire and the wider English Central Midlands, appear to have evolved alongside their open field systems, during the later 1st millennium AD, the earliest reference to

Packington comes from the Domesday Book (late 11th century), at which point it is in the possession of the St Mary's Abbey, Coventry. The village name, however, indicates an earlier Anglo-Saxon origin for the settlement, at a time when the landscape seems to have comprised a more dispersed scatter of hamlets and farmsteads. It is possible that elements of this earlier landscape survive with the application area. It should also be underlined that in the absence of evidence to the contrary, the presence of earlier Roman or prehistoric archaeological remains cannot be dismissed.

Buried archaeological evidence spanning the period from the prehistoric to the earliest evolution of the village (potential yet unidentified heritage assets) could be present within the development area. Paragraph 141 of the NPPF states that developers are required to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact of development. Therefore, the County Archaeologist has no objections to the proposal subject to the imposition of conditions for an appropriate programme of archaeological mitigation in order to safeguard any important archaeological remains potentially present on the site. Subject to conditions, it is considered that the proposal would comply with the provisions of the NPPF.

### **Trees**

The ecological assessment accompanying the application includes an arboricultural assessment of the site. There are 17 trees on the site and although none are protected by a Tree Preservation Order, 16 of the trees on the site have been identified as high quality specimens. A single ash tree along the Spring Lane boundary of the site has been identified as unsuitable for retention due to its poor health and condition. The trees are interspersed within the hedgerows which occupy the three boundaries of the site. The Council's Tree Officer has been consulted on the application and concurs with the assessment of trees on the site. The proposed means of access into the site would not affect the high quality trees within the site and it is considered that the site is of sufficient size to enable the site to be developed for 42 dwellings without adversely affecting the trees on the site.

### **Drainage and Flood Risk**

Concerns have been raised by residents in relation to the capacity of the local drainage network and the proposal contributing to existing flooding problems in the area.

The site lies within Flood Zone 1 and as it is over one hectare in size, a Flood Risk Assessment (FRA) has been submitted. The FRA considers the location of existing watercourses and tributaries, the contours of the land and surrounding land uses and concludes that there are no potential sources of flooding to the land that can be identified. With regard to flooding from the land, the FRA provides that the land does not cause flooding elsewhere at the present time as surface water is contained and absorbed to some extent and there is natural attenuation of flows towards the nearest brook. However, it is noted that without measures to attenuate and restrict flows, residential development could potentially increase the risk of flooding downstream. The FRA concludes that a Sustainable Urban Drainage System (SUDS) will be designed and incorporated in the layout of the proposed development at the Reserved Matters stage (should permission be granted), to ensure that the post development surface water run-off will not exceed that from the present use of the land, within the current required parameters.

The Environment Agency have been consulted on the application and considers the development to be at low risk of flooding and has no objections to the proposal subject to a condition concerning surface water drainage based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

Severn Trent Water has no objections subject to a condition relating to drainage details. Consideration of the capacity of STW's treatment works is set out below in the section relating to impact on the River Mease SAC. Natural England has no objections to the application proposals.

Given the lack of objection from Severn Trent Water and the Environment Agency it is considered that a reason for refusal relating to flood risk and capacity of the drainage system could be not justified.

**Impact on the River Mease Special Area of Conservation/SSSI**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC), which was designated in 2005. A tributary to the River Mease lies approximately 60m metres to the west of the site. The 2010 Habitat Regulations and Circular 06/2005 set out how development proposals within an SAC should be considered. Regard should also be had to national planning guidance in the NPPF. During 2009 new information came to light regarding the factors affecting the ecological health of the River Mease SAC, in particular that the river is in unfavourable condition due to the high level of phosphates within it. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Therefore an assessment of whether the proposal will have a significant effect on the SAC is required.

The River Mease Water Quality Management Plan (WQMP) has been drawn up to ensure there is no adverse impact on the SAC from further development and includes an action to establish a developer contribution framework to fund a programme of actions to restore and provide new benefits to the river. The River Mease Developer Contribution Scheme (DCS) has been produced to meet this action of the WQMP so that the costs of improving the quality of the water in the river are met by potential developers. The DCS advises that all new development which contributes additional wastewater to the foul water catchment areas of the treatment works within the SAC catchment area will be subject to a developer contribution. The DCS has been assessed against and is considered to meet the three tests of the 2010 Community Infrastructure Levy Regulations, which are also set out at paragraph 204 of the NPPF.

Local concern has been raised about the capacity of Severn Trent Water's receiving treatment works at Packington to accommodate the proposed development. The flows from the new dwellings need to be taken into account against the existing headroom at Packington. At March 2013, the capacity was available for 1076 dwellings but this is reduced by the number of dwellings that have already received a permit from Severn Trent Water and/or are under construction, and by the number of dwellings that have been granted planning permission. Taking these into account the capacity available at the treatment works is reduced. However, Severn Trent Water has advised that there is capacity available at Packington Treatment Works to accommodate the proposed development, especially given the impending closure of the Arla site in Ashby which will add approximately 1900 additional houses to the headroom figure in the 2013 capacity report, and as such raise no objection to the proposal.

When having regard to the existing use of the site, the proposal for 42 dwellings would increase the foul drainage discharge from the site and as such it is subject to the requirements of the DCS. The application proposes that foul drainage would be dealt with via the mains sewer system and confirms that the applicant will pay the required contribution under the DCS.

However a condition requiring that only a mains connection is used at the site would be required as the use of other means for foul drainage discharge could adversely affect the SAC. The site is 60 metres from the nearest tributary to the River Mease and therefore, there is unlikely to be

any direct impact on its channel and banks as it is separate from the site. It is proposed that surface water from all elements of the proposal will discharge into a sustainable urban drainage scheme on site to ensure that unnecessary water volume does not go to the sewage treatment plant and this can be required by condition. A condition requiring that only a mains connection is used at the site would also be required as the use of other means for foul drainage discharge could adversely affect the SAC.

Subject to the imposition of conditions concerning the storage and disposal of surface water run-off from the site, the Environment Agency are satisfied with the proposal. Natural England has no objections in relation to impact on the SAC/SSSI subject to a condition. Therefore, it can be ascertained that the erection of 42 dwellings on the site will not, either alone or in combination with other plans or projects, have a significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI.

### **Protected Species/Ecology**

The application submission was accompanied by an Ecological Assessment which found no evidence of protected species on the site or using the site, and therefore, concludes that the development of the site would have no adverse effect on protected species within the immediate and wider area.

The County Ecologist has been consulted on the application and originally raised objection to the proposal on the grounds of insufficient information about bats and the location of a locally rare plant on the site. Following a request for additional information, details of building and tree inspections for bats have been provided, along with details of the location of the rare plant and agreement that this will be retained. The County Ecologist has, subject to conditions, withdrawn the earlier objection to the proposal.

The County Ecologist has no concerns about the development in principle as there is a substantial buffer zone shown between the hedgerow occupying the eastern boundary of the site and built development, along which there are opportunities for habitat creation. In the absence of such a buffer, the hedgerows value as a linear wildlife corridor and habitat would be eroded, along with its landscape value. No objections are raised subject to the imposition of conditions in respect of the conservation of the rare plant (Deadly Nightshade), the timing of vegetation removal, provision of a buffer zone and appropriate landscaping species being selected.

The site lies within the catchment of the River Mease Special Area of Conservation (SAC) and consideration of the potential impacts of the development on this designated site have already been covered in the section above.

Natural England raises no objection to the proposed scheme. Therefore, subject to the imposition of suitably-worded conditions the submitted scheme is considered acceptable in ecological terms.

### **Developer Contributions**

Paragraphs 203 and 204 of the NPPF set out the Government's policy in respect of planning obligations and, in particular, provide that planning obligations should be:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the proposed development.

Equivalent legislative tests are contained within the Community Infrastructure Levy (CIL) Regulations 2010.

#### *Healthcare*

NHS England have sought £14,065.29 towards the costs of providing additional accommodation at Ashby Health Centre for additional patients arising from the development (30 dwellings). The North Street Practice currently has capacity to manage additional patients based on the current patient ratio split between the two practices. The applicant has confirmed their agreement to pay this developer contribution.

#### *Libraries*

Leicestershire County Council is seeking a contribution of £2760 to provide additional capacity at Ashby de la Zouch Library, which is the nearest library. The applicant has confirmed their agreement to pay this developer contribution. LCC has been re-consulted following the reduction in the number of dwellings proposed and any revised comments will be reported to Members via the update sheet.

#### *Education*

Leicestershire County Council is seeking the following contributions to provide additional places at the nearest schools where there is no capacity:

- a contribution of £78,655.15 is sought for the high school sector as there would be a deficit of 37 pupil places (5 created by the development) within high schools within a 3 mile walking distance of the site.
- a contribution of £80,762.70 is sought for the upper school sector as there would be a deficit of 58 pupil places (5 created by the development) within upper schools within a 3 mile walking distance of the site.

No contribution is sought for the primary school sector as there is currently an overall surplus for the area of 7 places when taking into account primary schools within a 2 mile radius of the site. The applicant has confirmed their agreement to pay this developer contribution. LCC has been re-consulted following the reduction in the number of dwellings proposed and any revised comments will be reported to Members via the update sheet.

#### *Play Area/Open Space*

Under the District Council's Play Area Supplementary Planning Guidance, on-site children's play provision is required at a rate of 20 square metres per dwelling. Given that 42 dwellings are proposed, this would require a play area of not less than 840 square metres. No on-site children's play area is proposed as part of this proposal and instead it is proposed to make a contribution towards the existing open space at the recreation ground off Measham Road of £1235 per dwelling (£51,870), which would allow the Parish Council some flexibility as to how the money is spent. The applicant has confirmed their agreement to the payment of a developer contribution.

The Council's SPG regarding children's play areas specifies that a commuted sum may be acceptable for sites that are within a reasonable walking distance of 400 metres. The distance to the existing play area/recreation ground is around 640 metres, which would be in excess of the 400 metres walking distance as suggested in the SPG. However, guidance in Building for Life indicates that a point should be awarded for community facilities (such as play areas) being within a short distance (defined as 800 metres), and the proposals would satisfy this criterion. Taking into account the alternative distance recommended under Building for Life (which the Council has adopted as a design quality indicator), it is considered that a commuted sum

towards upgrading and improving the existing play area in the village would be acceptable in this instance. An obligation relating to management plans for any open space, landscaping and SUDS to ensure that the land is properly established, maintained and managed in the future would also be required.

#### *Affordable Housing*

Under the Council's Affordable Housing SPD, 30% affordable housing is required on sites of 5 dwellings or more, and this would equate to 12.6 dwellings for the current proposal. The applicant is proposing that 10 of the dwellings be affordable, which would just fall short of the requirements of the SPD. The Council's Strategic Housing Team have been consulted on the application and have advised that they are satisfied with the reduced provision in this case, on the basis that the affordable housing provision includes two single storey units (two-bed) and they are provided as affordable rented properties.

#### *Highways Contributions*

The County Highway Authority has also requested the following contributions to encourage sustainable travel to and from the site, achieve modal shift targets, and reduce car use:

- (i) Travel Packs - to inform new residents from first occupation what sustainable travel choices are in the surrounding area;
- (ii) Six-month bus passes, two per dwelling (2 application forms to be included in Travel Pack and funded by the developer) - to encourage new residents to use bus services, to establish changes in travel behaviour from first occupation and promote usage of sustainable travel modes other than the car;
- (iii) Improvements to the two nearest bus stops (including raised and dropped kerbs to allow level access) - to support modern bus fleets with low floor capabilities - £3263.00 per stop;
- (iv) Information display cases at the two nearest bus stops - to inform new residents of the nearest bus services in the area - £120.00 per display.
- (v) contribution towards equipping the nearest bus stop(s) and suitable bus route with Real Time Information (RTI) system.

The Highway Authority has previously advised that the contributions are related to the new development as they seek to make bus services more attractive and encourage their use by future residents of the development, and to encourage behavioural shift in terms of travel choice at an early stage before car use becomes ingrained. Furthermore, the Highway Authority has considered that development would not be acceptable without these measures, as without them there is likely to be less use of buses and more car journeys. Consequently the development will be less sustainable, congestion on the network would increase, and the policies in LTP3 would not be complied with. Although the bus service is proposed to be reduced, a final decision has not been taken and in any case a bus service would still be available.

The Highway Authority also requests agreement of a construction traffic route which is considered to be necessary in this case given the site's proximity to residential areas and the village centre and that although existing weight restrictions are in place they would not prevent HGVs from passing through the village to access the site itself. The County Highways Authority also advises that the routing agreement will enable the Authority to prevent construction traffic from using unsuitable routes in the interests of highway safety. LCC has been re-consulted following the reduction in the number of dwellings proposed and any revised comments will be reported to Members via the update sheet.

#### *River Mease DCS*

A contribution under the River Mease DCS is required (as outlined earlier in the report) but an exact figure for the contribution cannot be determined at this stage (although the maximum

amount would be £14,868) as the number of bedrooms in each dwelling would not be finalised until reserved matters stage.

*Leicestershire Police Contribution*

The Police have identified that there is a lack of capacity in their existing infrastructure to accommodate the population growth and associated demands occasioned by the development which means that it is necessary for the developer of the site to provide a contribution so that this situation may be remedied. A contribution of £17,824 has been requested which would be divided between the following functions: -

- Start-up equipment
- Vehicles
- Additional radio call capacity
- PND additions
- Additional call handling
- ANPR
- Mobile CCTV
- Additional premises
- Hub equipment

With regard to the acceptability of police contributions per se, however, the issue is not one of principle. The issue is, rather, whether Leicestershire Police can demonstrate that either on-site or off-site infrastructure is necessary and directly related to the impact of the development which is being granted consent, and that any contribution would in fact be used in order to pay for infrastructure which would actually be delivered. It is in this respect that officers remain to be persuaded that such requests are CIL compliant.

Whilst officers acknowledge that such requests have been accepted by Inspectors and the Secretary of State as being CIL compliant in some recent appeal decisions in Leicestershire, and indeed the District (Inspectors and the Secretary of State have also reached a contrary view on other occasions), and that consistency in decision making is desirable as a matter of policy, a decision as to whether an obligation is directly related to a particular development is one that can only be made on its individual merits.

The continuing controversy surrounding policing contributions is, however, itself undesirable as it creates uncertainty both for Leicestershire Police and developers / landowners as to whether a request for a contribution is likely to be supported in any given case. The Leicestershire Authorities have therefore agreed jointly to seek an independent legal Opinion as to the correct approach to be adopted by Local Planning Authorities to such requests. It is expected that this Opinion will be received very shortly.

Pending the receipt of Counsel's Opinion, it is not possible to reach a conclusion on whether a policing contribution of some description (assuming more robust supporting evidence were provided) would meet with the CIL tests at this particular time. Should Counsel advise that Leicestershire Police requests such as this would be CIL compliant then the principle of requiring such contributions to be secured by way of Section 106 planning obligations would be accepted by the Council and the amount, if any, of such contribution would be determined by the Council having regard to all relevant considerations including any issues of viability that may be raised. Should the inclusion of policing contributions, when considered alongside other contributions, render a scheme unviable (or more unviable if already so), then a judgement will need to be made as to which (or which proportion of) contributions are most required in order to deliver a viable development which is still acceptable in overall planning terms.

*National Forest Company*

The applicants propose making on-site planting (or a combination of on and off-site planting) and there is scope at the reserved matters stage to ensure that this extends to 20% of the site area (which would need to equate to a total of 0.4 hectares). The National Forest Company welcomes the proposed National Forest Planting and other proposed habitat creation. This would be secured by a Section 106 agreement.

*Other Contributions*

No requests for contributions have been received from the Council's Leisure team and the County Council has advised that a contribution towards civic amenity sites is not required.

*Summary*

Overall, it is considered that the proposed obligations would comply with the relevant policy and legislative tests as set out in the NPPF and the CIL Regulations, and would represent appropriate contributions towards the infrastructure and other needs of the proposed development. The applicant has agreed to all of the above obligations in principle and the legal agreement would be negotiated following any resolution to grant planning permission. The District Council would continue negotiations with consultees and the applicants to ensure the appropriate level of contributions that have been sought could be secured through a S106 agreement.

**Other Matters**

The site lies approximately 800 metres to the east of the proposed route of HS2. Any potential adverse effects on residents would be expected to be limited due to mitigation measures to be included in the HS2 design having regard to the need to protect nearby dwellings. However, it is considered that only limited weight can be attributed to HS2 as a material planning consideration at this stage in HS2's development. The Government is currently consulting on the proposed Phase 2 (i.e. West Midlands to Manchester and Leeds) connections, and the route is not fixed at this time; Phase 2 is not currently subject to the safeguarding mechanism which applies to the Phase 1 (London to West Midlands) section.

In respect of the concerns raised in the letters of representation that have not been addressed above, impacts on views and lifestyle, the capacity of the electricity supply and broadband networks are not planning matters that can be taken into account in the determination of planning applications. Matters relating to noise and disturbance during construction works are covered by separate Environmental Health legislation. Other sites will be affected by a different set of circumstances and it is a fundamental tenet of the planning system that every application is determined on its own merits. If any further applications are submitted for the site then they will also be considered on their own merits. Consideration is given to all policies set out in the Local Plan and the NPPF when assessing planning applications.

**Conclusions**

As set out in the main report above, whilst the site is outside the Limits to Development in the adopted Local Plan and constitutes greenfield land, such general policies that restrain the supply of housing are to be considered as not up-to-date given the inability of the Council to demonstrate a five-year supply of deliverable housing land. Thus the site's release for housing is considered suitable and will contribute towards meeting the District Council's obligations in respect of housing land supply (and the approach taken in respect of such within the NPPF). Packington is a sustainable location for the level of development proposed for this site and the proposal would not result in a significant increase in housing development within the village.

It is considered that the site is of sufficient size to accommodate the number of units proposed, without resulting in any significant adverse effects on the character of the area and the historic



environment, trees and ecology, residential amenities, highway safety issues, flood risk, drainage or the River Mease SAC/SSSI, and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services.

The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of such development as set out in that document. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

**RECOMMENDATION, PERMIT, subject to the signing of the Section 106 Agreement and the following condition(s):**

- 1 Outline Permission
- 2 Submission of Reserved Matters
- 3 Reserved Matters to include finished floor levels/ground levels
- 4 Reserved Matters to include buffer zones of at least 5m from natural vegetation along the boundaries of the site which except for the proposed vehicular access point is to be retained
- 5 Approved plans
- 6 REM landscaping to include an ecological/landscape management plan
- 7 REM accompanied by a further Building for Life assessment
- 8 Retention of hedgerows
- 9 Details of surface water disposal including SUDS
- 10 Mains sewer system only
- 11 Tree Protection including protective fencing to RPA of trees/hedgerows to be retained on/overhanging the site, design and method statement for any works taking place within RPA and requirement for there to be no storage within areas of protective fencing.
- 12 Restriction on times for destruction and removal of vegetation (bird breeding)
- 13 Biodiversity management plan
- 14 Conservation of the Deadly Nightshade
- 15 Programme of archaeological work
- 16 Completion of archaeological site investigation and post investigation assessment
- 17 Off-site works to Normanton Rd (footways and street lighting) and gateway village entry

- treatment
- 18 Visibility splays
- 19 Access details and surfacing
- 20 Highway drainage
- 21 Obstructions to vehicular access - 7m set back distance
- 22 Access gradient
- 23 Construction traffic site management plan
- 24 No vehicular access from Spring Lane
- 25 Closure of existing accesses

**Notes to applicant**

- 1 Positive and proactive statement
- 2 County Highways Authority notes:
  - works in the highway
  - LCC Lead Local Flood Authority- SUDs
  - permits/agreements under the Highways Act
  - Section 38 agreement
  - highway boundary
  - CBR tests
- 3 The footpath link on the southern side of Normanton Road does not form part of the application submission and therefore, is not a requirement of this permission.
- 4 Advise of the County Ecologist dated 09 December 2013
- 5 Bats and breeding birds advisory notes
- 6 Coal Authority notes.
- 7 The Council's Urban Designer recommends a note to applicant to highlight that there would be an expectation from the Local Planning Authority that the scheme draws inspiration from the positive and distinctive characteristics of the village through layout, form and appearance (including materials). Consideration must also be afforded to the setting of the nearby listed building, key views into the site, the relationship of the site to Spring Lane and to softening the eastern boundary where it meets the open countryside beyond to avoid an abrupt end to built form within the village. The indicative layout of the outline application should inform future design development as these establish key design principles for the layout of the development, building orientation, structural landscaping and street types.

# UPDATE SHEET

## PLANNING COMMITTEE – 10<sup>th</sup> June 2014

To be read in conjunction with the  
Head of Regeneration and Planning's Report (and Agenda)

This list sets out: -

- (a) Additional information received after the preparation of the main reports;
- (b) Amendments to Conditions;
- (c) Changes to Recommendations

### MAIN REPORT

#### A1 09/00959/OUTM – Land at Spring Lane/Normanton Road, Packington

##### **Statutory Consultee Update:**

The following consultation responses have been received from statutory consultees in response to the amended plans showing 42 dwellings on the site:

County Highways Authority advises that their previous comments apply in full.

County Ecologist has no further comments to make.

Leicestershire County Council- Highway Transportation and Waste Management Authority advises that a request for a contribution towards civic amenity sites will not be required.

Leicestershire County Council Library Services have requested a revised contribution of £2450.

Leicestershire County Council Education Authority have requested a revised contribution of £137,679.05, which is broken down as follows:

- Primary School Sector; no contribution sought (Justification- when taking into account the proposed development, there would be a deficit of 14 school places but when having regard to other primary schools within a 2 mile walking distance of the development, there is an overall surplus of 7 spaces).
- High School Sector; a contribution of £67,929.45 is sought (Justification - when taking into account the proposed development, there would be a deficit of 65 school places and there are no other high schools within 3 miles of the development and therefore, a claim is justified).
- Upper School Sector; a contribution of £69,749.61 is sought (Justification - when taking into account the proposed development, there would be a deficit of 204 school

places and there are no other upper schools within 3 miles of the development and therefore, a claim is justified).

The applicant has confirmed their agreement to the revised contributions.

### **Third Party Representations Update:**

Two letters of neighbour representation has been received raising the following comments:

- the amended plan is a significant improvement on earlier submissions when having regard to its impact on No.1 Spring Lane but will be reconsidered at the reserved matters stage and so the revisions make little difference at the outline stage;
  - the Design and Access Statement has not been amended to reflect the change in numbers;
  - there are no employment opportunities in the immediate area and therefore, most vehicles using the development will travel across the village to access the M42 or the A511;
  - the site would be removed from the village and would change the boundary of the village resulting in its residents using the car to access services and causing additional congestion within the village;
  - the proposal is for too many houses within a clump on the extreme edge of the village;
  - the application should be refused, especially because the detail shown on the indicative plan does not form part of the application.
- 
- notwithstanding the minor reductions in numbers for both housing schemes, there is little change in the impact on the village or the adjacent countryside, this remains a large block of housing, divided by a road but nevertheless is seen as a single site at the furthest point from facilities in the village and from Ashby;
  - the assessment of the percentage increase is critically flawed as there are 300 (not 342) properties within the main built up area of the village and therefore, together the two major housing proposals would result in a 26% (not 22.5%) increase which exceeds that envisaged in the Core strategy;
  - the level of growth does not take into account a recent permission for 2 dwellings on Vicarage Lane or a site within the village that has recently been put on the market and could accommodate residential development and there are also figures emerging which show that the latest housing requirements are lower than was the case with the Core Strategy and so less numbers are needed across the district as a whole;
  - there are small sites within the village which can contribute to raising housing numbers in small numbers which together would add up to a reasonable contribution to housing numbers;
  - the shortage of housing land alone does not justify the loss of countryside as demonstrated by a recent appeal for a dwelling in the countryside and the current proposal should be refused.

In response to the additional third party comments raised that have not already been covered in the report within the Main Agenda, officers can advise Members as follows:

*-‘The assessment of the percentage increase is critically flawed’*

The number of properties within Packington has been recalculated using 2011 Census information from the Office of National Statistics (a reputable source of

information), which confirms that there are 324 properties within Packington. This has implications for the level of growth and revised calculations are provided below:

This proposal for 42 dwellings would represent a 12.9% increase in the number of dwellings within the village. The 42 proposed dwellings alongside the 5 new dwellings built since 2006 and the outstanding commitments for 1 dwelling would equate to a 14.8% growth in the village since 2006. Therefore, the proposed development on its own, and with additional dwellings/commitments, would represent a lower level of growth than that for North West Leicestershire as a whole. As such it is considered that the proposal would not result in a significant increase in housing development within the village.

*-The level of growth does not account for a recent permission for 2 dwellings'*

The application referred to has been recommended for approval subject to a S106 Agreement but this has not yet been completed and therefore, planning permission has not been issued for these dwellings.

*-The shortage of housing land alone does not justify the loss of countryside'*

The appeal decision referred to is for an isolated site located away from the nearest settlements of Melbourne and Kings Newton and is not considered to be directly comparable to the current application proposal.

#### **Other Updates:**

A letter has been received from Andrew Bridgen MP who provides the following comments on the application:

'... I have received a number of objections to the various Planning Applications from residents of the village and I understand over 70 were lodged with the Council. I have had the issues of the principle and sustainability of the proposal and associated flood risks raised in correspondence to me. I would ask that your committee consider all of these local objections to the application and whether this scale of house building is appropriate in the village.'

The applicant has verbally raised concern about the merits of the suggested Police contribution, given that no contribution has been sought by Leicestershire Police for the other housing site off Normanton Road which is reported elsewhere on this agenda.

Following clarification of the affordable housing being offered by the applicant, the affordable housing section found on page 48 of the main agenda is updated as follows:

Under the Council's Affordable Housing SPD, 30% affordable housing is required on sites of 5 dwellings or more, and this would equate to 12.6 dwellings for the current proposal. The applicant is proposing that 12 of the dwellings be affordable, including 8 affordable rented properties (comprising bungalows and houses) and 4 shared ownership properties (houses). The Council's Strategic Housing Team have been consulted on the application and have advised that they are satisfied with the proposal.

**RECOMMENDATION: NO CHANGE TO RECOMMENDATION.**

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**Erection of 30 dwellings, including 8 affordable homes  
(Outline - access included)**

**Report Item No  
A2**

**Land South Of Normanton Road Packington Ashby De La  
Zouch Leicestershire LE65 1WS**

**Application Reference  
13/01002/OUTM**

**Applicant:**

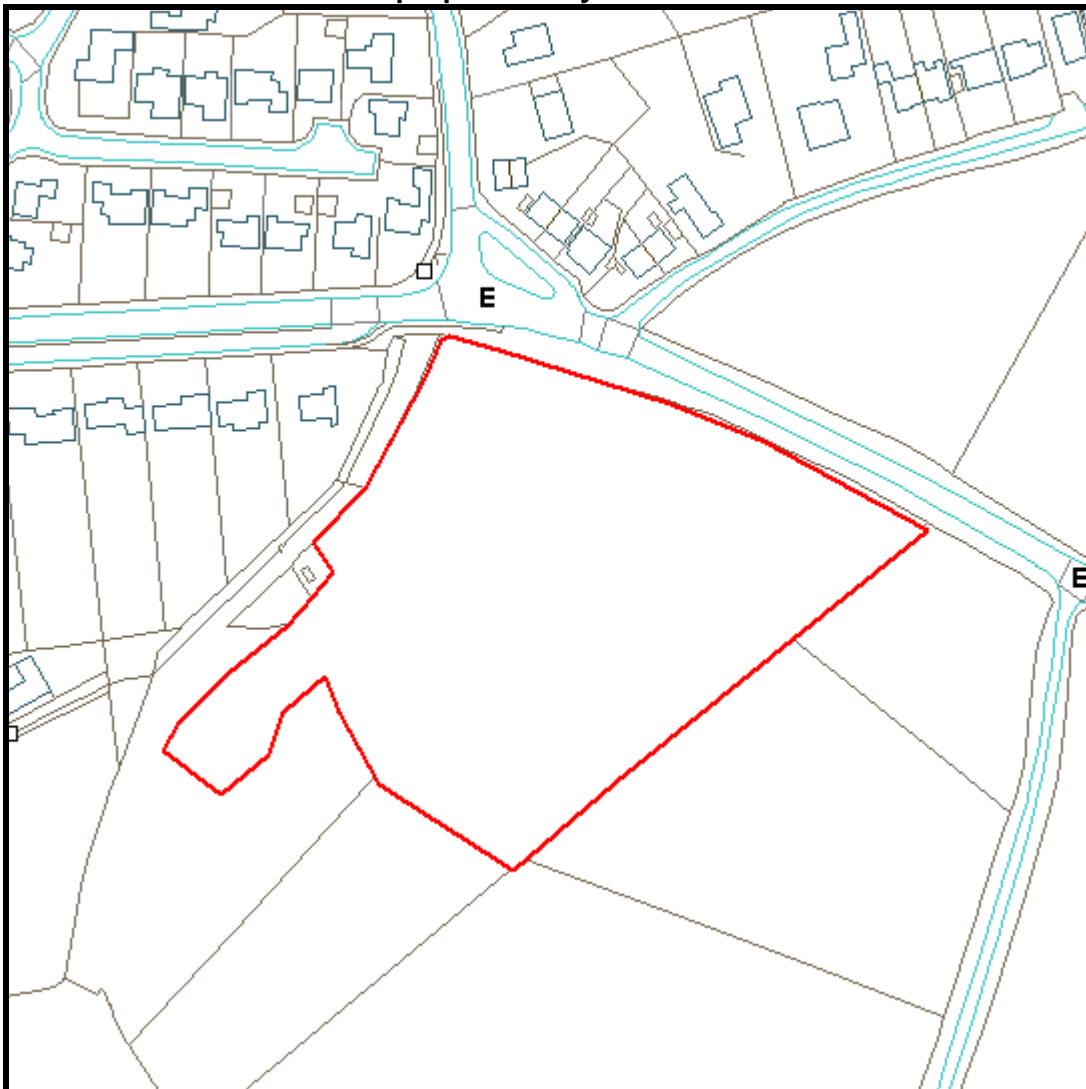
**Date Registered  
30 December 2013**

**Case Officer:  
Hannah Exley**

**Target Decision Date  
31 March 2014**

**Recommendation:  
PERMIT Subject to a Section 106 Agreement**

**Site Location - Plan for indicative purposes only**



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## **EXECUTIVE SUMMARY**

### **Background**

This application was previously reported to Members of the Planning Committee on 10 June 2014, with an officer recommendation of approval subject to the completion of a Section 106 agreement. The Agreement was completed and a decision notice was issued on 12 November 2014. Since then, a Judicial Review has been lodged against the decision made by the District Council and the decision has subsequently been quashed. The application proposal has been reconsidered by officers, having regard to current local and national policies and other material considerations and the following report has been prepared for Members consideration.

### **Proposal**

Outline planning permission is sought for the erection of 30 residential units including affordable housing and provision of a sustainable urban drainage system on 1.49 hectares of land currently in agricultural/equestrian use and is situated on the south-eastern side of Packington to the southern side of Normanton Road.

The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Normanton Road and the centre point of the access would be approximately 15m from the junction with Spring Lane which lies opposite the site. Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application.

### **Consultations**

Members will see from the main report below that objections have been received, including from Packington Parish Council, with 100 letters being received from members of the public. There are no technical objections raised by any of the statutory consultees.

### **Planning Policy**

The application site lies outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. Also material to the determination of the application, however, is the supply of housing in the context of the National Planning Policy Framework (NPPF).

### **Conclusion**

Whilst the site is a greenfield site outside Limits to Development, having regard to the site's general suitability for housing, with Packington considered to be a sustainable location for the level of development proposed, and the need to demonstrate and maintain a five year supply of housing land within the District, the proposals are considered to constitute sustainable development, and release of the site for residential development would be appropriate in principle.

The proposed development would be acceptable in terms of density, impact on the countryside, character of the area and the historic environment, impact on trees, residential amenities, transportation and highway safety issues, flood risk and drainage, ecological impacts and impact on the River Mease SAC and no other technical issues are considered to arise.



Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services.

The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of such development as set out in that document. It is therefore recommended that planning permission be granted.

**RECOMMENDATION:- PERMIT, SUBJECT TO SECTION 106 OBLIGATIONS, AND SUBJECT TO THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main reports below which provides full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed reports.**

## MAIN REPORT

### 1. Background and Update

This application was previously reported to Members of the Planning Committee on 10 June 2014 (copy of report and update sheet attached as Appendix to this agenda item) with an officer recommendation of approval subject to the completion of a Section 106 agreement. The S.106 agreement was completed and a decision notice was issued on 12 November 2014. At the time the Planning Committee resolved to grant planning permission, the Council did not have a five year housing land supply, although by the time the decision notice was issued, the position had changed and the Council was able to demonstrate a five year housing land supply. At the time of writing this report, the Council has a five year housing land supply. The decision to issue planning permission was challenged by way of a Judicial Review which was issued on 19th December 2014. The planning permission has subsequently been quashed by Order of the Court. The Judicial Review raised six grounds of challenge; the Council conceded one of those grounds, which was that it had raised a legitimate expectation that the matter would be reported back to the Planning Committee prior to the issue of the decision notice. For this reason, the Court Order quashing the planning permission was made with the consent of both parties.

Whilst the Council conceded only one ground for challenge, it should be noted that the Court gave the Claimants permission to bring the Judicial Review on all 6 grounds. The Council clearly respects this decision and for this reason, as well as for the avoidance of doubt as to the planning judgment exercised in relation to each ground, this report will address all of the grounds for challenge that were raised.

The six grounds for challenge and the Council's position with regards to those grounds can be summarised as follows:

#### Ground One

*The Defendant failed to have regard to and apply the statutory test in accordance with section 66 of the Listed Buildings Act 1990 [sic], which requires special regard to be had to the desirability of preserving a listed building's setting contrary to the Court of Appeal's rulings in East Northamptonshire DC v Secretary of State for the Community and Local Government/Barnwell Manor Mid Energy Ltd v East Northamptonshire DC [2014] 1 P & CR 22.*

The District Council did not concede this point and considers that it fully assessed the impact of the proposed development on the historic environment; including having special regard to the desirability of preserving the setting of nearby listed buildings. This is addressed in more detail below.

#### Ground Two

*The Defendant in reaching the decision failed to take material considerations into account namely paragraph 17 of the NPPF which states that planning decisions should recognise the intrinsic value of the countryside and the need for a Transport Assessment in accordance with Department for Transport (DfT) Guidance as a consequence of the level of growth identified.*

The District Council considers that it had regard to Paragraph 17 and recognised the intrinsic value of the countryside in its assessment of the proposal as well as considering impacts on the local highway network. The District Council did not concede this ground for challenge and this point is addressed in more detail below.

Ground Three

*There was no screening opinion carried out and it was wrong to conclude that there were no significant environmental impacts based on the limited information provided. Further in applying or failing to apply various conditions to the respective permissions the Council have failed to take into account material considerations on the issue of the permission and consequentially failed to give adequate protection to European protected sites, species or other factors.*

The District Council carried out a screening opinion and no significant environmental impacts were identified. This was detailed in the original officer report, along with a comprehensive assessment of the potential impact of the proposed development on the protected species and the River Mease Special Area of Conservation. Appropriate conditions/notes to applicant were recommended to address matters raised by statutory consultees, which remain relevant. Consequently, the District Council did not concede this point which is addressed in more detail below.

Ground Four

*The Council acted irrationally in that there was a failure to give reasons for taking an inconsistent and irrational approach to cumulative impacts of the Scheme. Further in using an out of date and unadopted figure for growth and having no reasonable explanation as to how conclusions were properly reached as to cumulative impact of two such large proposals being granted when the new overall level of growth of 17.3% was not considered, the Council also acted irrationally.*

The Council did not concede this ground for challenge which is addressed in more detail below.

Ground Five

*The Council breached the statutory duties under s70(2) of the Town and Country Planning Act 1990 (as amended) and in s38 (6) of the Planning and Compulsory Purchase Act 2004 to have regard to "any other material considerations". The Council also failed to apply the approach in accordance with case of R(oao Kides) v South Cambridgeshire DC 2003 1 P&G CR 19. The approach adopted by the officer in this case in light of the acknowledged new material consideration of going from a position of having no 5YHLS to having one, falls far short of the test in Kides and he clearly erred in concluding that the matter should not be referred back to the committee for the reasons specified in the Grounds of Claim.*

The Council does not accept that there was a need to report the matter back to the Planning Committee for the reasons set out later in this report. When agreeing to quash the planning permission, the Council did not concede this point.

Ground Six

*The failure to report the matter back to committee was in breach of the legitimate expectation raised by the Council that it would do so, created by their letter of the 9th October to the Parish Council on this issue.*

It is on this ground that the District Council consented to quashing the planning permission.

**2. Publicity**

Neighbours have been re-notified.

**3. Consultations**

Packington Parish Council re-notified.

#### 4. Summary of Representations Received

There is no statutory requirement to undertake re-consultation with local residents and consultees in cases where the nature of the application has not changed. This application has not changed in any way since its initial consideration in June 2014. In this case, however, the District Council decided that it would be in the interests of justice to re-consult consultees relevant to the issues raised in the grounds of challenge, the Parish Council and neighbouring residents who had been written to about the original application or who had made representations about the original application.

Packington Parish Council is strongly opposed to the application as it is out of proportion to what is expected in a small rural village and is outside the development boundary of the village. The Parish Council also believes that, as the sole reason for granting the applications in 2014 was the dubious fact that the Authority could not meet a five year land supply figure, the applications should be refused as the authority now demonstrates a healthy land supply figure.

A letter of objection has been received from those residents that brought the Judicial Review, which is summarised as follows:

- The application should be refused for the following reasons and in light of the fact that the Council can demonstrate it has a five year housing land supply such that full weight can be accorded to local plan policies that are compliant with the NPPF:
- The proposals will have an adverse impact upon the Grade II Listed Packington House which should be given special regard and weight.
- The proposals will have a significant impact on the landscape and the rural setting of Packington resulting in unnecessary housing development in the Countryside (outside adopted built development boundaries) which does not constitute sustainable development and is contrary to local plan Policy S3 and paragraphs 7 and 17 of the NPPF.
- The proposals will also result in the loss of the BMV agricultural land contrary to Policy S3 and paragraph 112 of the NPPF, and which also renders the development unsustainable.
- The proposals will have a disproportionate impact on the size of the village, relating poorly to the existing built form and harmful to the character and appearance of the countryside contrary to Policy E4 and the NPPF.
- The applicants have failed to carry out an adequate assessment of the highways impacts of the developments given the lack of Transport Assessments contrary to Government policy and guidance set out in DfT Guidance on Transport Assessments 2007.

The full contents of this letter have been made available to members of the Planning Committee.

In addition a further 107 letters of neighbour representation have been received as a result of this process, and of the objections raised, the majority were considered when the application was previously reported to Members in 2014. The following additional representations have been received:

- since the previous decision, circumstances have changed as the District Council now has a 5 year housing land supply and does not need this amount of new housing and therefore, infill sites within the village should be the preferred approach to housing

- growth in the village and more weight should be given to the protection of the countryside;
- the two housing proposals would increase the size of the village by 14% and 10% (24%) which is out of scale with the village;
  - there is a large brownfield site within the village that is currently for sale and should be developed first;
  - a similar housing development has been refused in Blackfordby on the ground that it was contrary to Policy S3 (outside limits to development) and was not sustainable;
  - inadequate consultation with local residents about the judicial review process, quashing order and subsequent reconsideration of the application;
  - the previous decision was made on out-of-date information with regard to housing land supply;
  - the proposal is contrary to the approach set out in the Core Strategy/Local Plan which requires villages to contribute only a small number of additional houses;
  - more detailed information is required about why the decisions were quashed;
  - impacts on areas of special residential character which form the character of the settlement;
  - housing as proposed would go against what the National Forest should be;
  - a bombardment of solar farm applications and HS2 passing close to the village are also threats to our village life and countryside beyond.

For details of the original representations received, Members are advised to refer to the original officer report and update sheet which are attached as addendums to this report. In summary, 72 letters were received from members of the public including FLOAT (Packington Flood Action Team). The objections cover several different issues, broadly but not exclusively relating to the principle and sustainability of the proposal, adequacy of existing services/infrastructure, highway safety, impact on nearby residents and the character of the settlement, flood risk and drainage and impact on the historic environment and ecology.

The full contents of all neighbour representations, both from this current application and the 2014 application, are available for Members to inspect on the case file.

## 5. Relevant Planning Policy

The proposal has not changed, and relevant policies are the same as set out in the original report to Committee (attached for information).

## 6. Assessment

### GROUNDS OF CHALLENGE

As set out above, notwithstanding that the District Council only conceded one ground of appeal, the District Council's consideration of all six grounds of challenge and how these have been addressed is set out below:

*Ground One - Failure to have regard to and apply the statutory test in accordance with section 66 of the Listed Buildings Act 1990 [sic] which requires special regard to be had to the desirability of preserving a listed building's setting*

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, when considering whether or not to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building, or its setting or any features of special architectural or historic interest that the building may possess.

The NPPF defines a heritage asset as a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest.

Paragraph 131 of the NPPF requires planning authorities to take account of:-

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

The District Council has fully assessed the impact of the proposed development on the historic environment and paid special consideration to the tests set out in the Act as set out below:-

The Packington Conservation Area lies approximately 200 metres to the west of the site/ 180m to the north west of the site and the nearest listed building is the Grade 2 listed Packington House lying approximately 300 metres to the north. The Conservation Area and listed building are designated heritage assets as defined in the NPPF. The site may also contain buried archaeological remains and these would also form a heritage asset.

The site is well separated from the Conservation Area by intervening residential development which is predominantly twentieth century. The site would not be highly visible within views of or from the Packington Conservation Area, although it is acknowledged that some glimpses of the site would be available within views along Heather Lane/Normanton Road. When having regard to the distances involved and the nature of the intervening twentieth century development, it is not considered that the development of the site for housing would adversely affect the setting of the Packington Conservation Area.

Packington House lies to 300 metres to the north of the site and has the following listing description:

*"House of late C18 and early C19. Red brick with brick dentilled eaves and plain tile roof with end stacks. Twin span, one of each date. The present entrance front, the earlier, is of 3 storeys, Flemish bond, stone coped gables, and 3 sashes: 3/3 2nd floor and 6/6 below. Stucco lintels and stone sill bands. Early C20 bay to left of central simple doorcase and canopy with part glazed 6-panelled door and overlight. 3 storey 1 window extension to right: attic 4/8 sash with casements below. 1 storey extension to left. The rear front is of 3 storeys of 4 windows grouped vertically in projecting brick sections. 3/6 sashes, flat lintels, to 2nd floor, and 6/6 cambered lintels, below. Stone sills. Centre right section has round arched doorcase: tripartite with narrow 3-pane light either side of 4-panelled door. Right end rendered; on left end extension with casements".*

When considering the three factors contained within the Act, the District Council is satisfied that the proposal would not affect the built fabric of this listed building but consideration needs to be given to the impact of the proposed development on the setting of Packington House. The building's setting is somewhat compromised to the immediate north by the presence of a modern two-storey dwelling but to the south and south east, the rural setting of Packington House survives. As such, any detailed design proposals for the site at Reserved Matters stage would need to have due regard to the potential impact of development on the setting of this listed building.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local planning authorities in the consideration of whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 133 of the NPPF sets out that where a proposed development will lead to substantial harm to, or total loss of significance of, a designated heritage asset, local planning authorities should refuse consent unless a number of conditions are made out.

Paragraph 134 of the NPPF goes on to say that where the proposed development leads to less than substantial harm to a heritage asset, the harm caused should be weighed against the public benefits of the proposal.

It is considered that the proposal would fall within the rural setting of Packington House and Officers have given special regard to this when assessing the merits of this application. The application site is separated from the listed building by Normanton Road, Spring Lane and a triangular piece of land. Both the application site and the field opposite (which is also being considered for residential development) are bordered by mature hedgerows interspersed with trees. When having regard to the distances involved, the topography of the land and the intervening vegetation, it is considered that the site is capable of accommodating the amount of development proposed without having a significant adverse affect to the setting of this heritage asset. Furthermore, with a positive design approach as part of any Reserved Matters submission, it is also considered that the proposal either alone or in combination with the proposed development on the northern side of Normanton Road (also being considered by Members on this agenda) would ensure that no significant adverse impacts on the setting of the listed building would ensue as a result of the development.

It is therefore considered that the proposal could be harmful to the significance of the heritage assets but that this would be unlikely to involve substantial harm or total loss of significance for the reasons set out above. Therefore, the proposals amount to less than substantial harm to the significance of the heritage assets and would not result in significant detriment to the setting of the nearby listed building and would not adversely affect the character and appearance of the Conservation Area, thereby sustaining the significance of these heritage assets.

Paragraph 134 of the NPPF requires less than substantial harm to designated heritage assets to be weighed against the public benefits of the proposal. The harm to the heritage assets is, in this case, considered on balance to be outweighed by the provision of 30 new homes to contribute to maintaining the District's housing land supply which includes affordable homes, contributions towards improving capacity within existing public services and under the River Mease DCS which will improve the quality of the River Mease SAC.

*Ground Two - the District Council, in reaching the decision, failed to take material considerations into account, namely (i) paragraph 17 of the NPPF which states that planning decisions should recognise the Intrinsic value of the countryside and (ii) the need for a Transport Assessment and the level of growth identified.*

The District Council considers that it had regard to Paragraph 17 and recognised the intrinsic value of the countryside in its assessment of the proposal and considered impacts on the local highway network and these issues are considered in turn below:

*(i) Intrinsic Value of the Countryside*

When undertaking the original assessment of the development, paragraph 17 was not specifically referred to in the 'Assessment' section, it was referenced in the 'Relevant Planning Policy' section of the original officer report.

The District Council acknowledges that the site lies within the countryside which policy seeks to protect, and that the proposed development would be contrary to that policy. However, it also recognises that regard must be had to other relevant material considerations and, it is in these circumstances that a balanced judgement must be made.

Paragraph 17 of the NPPF sets out the key principles that should underpin planning policy and, amongst other things, requires local planning authorities to take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.

The District Council recognises that Packington is located within an undulating agricultural landscape and the site, along with the adjoining arable fields provide the rural setting for the village when travelling along Normanton Road, as well as forming part of the edge to the village's main built up area. The proposed site is located within a dip in the landscape as land rises towards the east away from the settlement. The site forms part of a larger field and to the rear of the application site, land levels drop in a south westerly direction before rising again in the fields beyond. The site is bordered on three sides by mature hedgerows interspersed with trees and, therefore, is afforded some existing natural screening. The southern boundary is currently open but the southern boundary of the wider field of which the site forms part is occupied by a mature hedgerow interspersed with trees which provides some natural screening, albeit at a lower level than the application site.

The site is most prominent in views from Normanton Road, Heather Lane and the southern end of Spring Lane. The site is currently well screened along the highway boundary but glimpses of the site (and the open countryside beyond) are available through the two vehicular access points along the site's frontage where there is a break in the hedgerow. Glimpses of the site are also available from Redburrow Lane to the east of the site (which is on higher ground) where there are breaks in the hedgerow, although the site would be separated from Redburrow Lane by a field. Longer distance views of the site are available from public footpaths to the south of the village where land levels rise. The existing properties fronting Heather Lane are also visible from the footpath network to the south of the site.

The site and its boundary treatments are important elements of the setting and approach to the village. Hedgerows/trees form strong boundaries and most of the frontage hedgerow along Normanton Road could be retained, which would assist with screening the development. The boundary hedgerows create a strong sense of enclosure to the site and form an important part of the character of the village and the layout could be designed to ensure they are not significantly adversely affected.

Development would be prominent in views from the public footpaths to the south of the site due to the lack of boundary treatment and land levels. However, some screening is provided by other intervening landscaping and it is considered that the layout could be designed to ensure that a landscaping strip is provided along the southern edge of the site to provide screening for the development and soften the edge of the built development on the site.

Some of the hedgerow/trees along the site's frontage would be lost to allow for the formation of the vehicular access, therefore, opening up views into the site and making development on the site more prominent in immediate views from within the village.



The application site abuts the settlement boundary and development on the site would be viewed against the backdrop of existing development or adjacent to existing built development and therefore, would not appear an isolated development in the countryside. The extent of the application site (excluding the balancing pond area) would relate reasonably well to the rear boundaries of existing residential properties fronting Heather Lane, although it is accepted that the development of the site for housing would have a more built up appearance than the current rear gardens of these properties.

Whilst the site contributes to the form and setting of the village and its semi-rural character in this location, in close and long range views the sensitivity of the site is limited, as it is effectively a large open field with no particularly distinctive characteristics.

Therefore having regard to all of the above considerations (including the proximity of the site to existing development and the settlement boundary, the topography of the surrounding landscape, existing soft landscaping and the scope for mitigation in the detailed layout, design and landscaping of the scheme), whilst there would be moderate and localised harm to the countryside it is considered that it would be limited and not be so significantly detrimental to justify a reason for refusal based on the proposal resulting in an adverse impact on the character of this locality and the countryside.

Whilst the District council accepts that Paragraph 17 of the NPPF requires local planning authorities to recognise the "intrinsic character and beauty of the countryside", the same paragraph also requires it to support thriving rural communities. In this regard, the increase in local residents arising from the proposed development could support and sustain existing services and facilities available within the village.

Overall, therefore, subject to a Section 106 to secure National Forest planting, and subject to an appropriate form of development being proposed at the Reserved Matters stage(s), it is considered that the landscape and visual effects of the proposed development are acceptable for the purposes of Policies E4 and H7 of the Local Plan and the provisions of the NPPF (which would include paragraph 17).

*(ii) Need for a Transport Assessment and consequently the level of growth identified.*

With regard to the impacts of the proposed development on the local highway network, the DfT document referred to in the Grounds of Appeal was withdrawn in October 2014. The County Highways Authority has confirmed that, in accordance with Leicester County Council's '6C's Design Guide', a Transport Assessment is not required to assess the two residential schemes either alone or in combination. The County Highways Authority has considered the impact on the local highway network and has advised that when having regard to the generally lightly trafficked nature of the road network in Packington, and given that traffic would be greatly dispersed before it reached junctions on the network that are at, or approaching their capacity being exceeded, queuing and congestion in the peak hours is unlikely to be of any concerns as part of an assessment of the impact of the proposed traffic from the two residential schemes currently proposed on either side of Normanton Road, either alone or in combination. Therefore, the County Highways Authority raises no concerns in relation to the proposal on its own or in combination with the development proposed opposite adversely affecting the capacity of the village road network. The proposal is considered acceptable for the purposes of T3 and T8 of the Local Plan.

Ground Three - *(i) no screening opinion carried out and it was wrong to conclude that there were no significant environmental impacts and (ii) in applying or failing to apply various conditions, the Council have failed to take into account material considerations and consequentially failed to give adequate protection to European protected sites, species or other*

factors.

Each of these matters is discussed in turn below:

*(i) No screening opinion was carried out*

The proposal has been assessed in respect of the Environmental Impact Assessment (EIA) Regulations 2011 in order to establish whether the proposal constitutes EIA development. The EIA Regulations define EIA development as development which is either Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location. The proposed development is classed as development under paragraph 10(b) of Schedule 2 to the Regulations. However, when having regard to the selection criteria for screening Schedule 2 development which include the characteristics and location of the development and the characteristics of potential impact, it has been concluded that this proposal does not constitute EIA development under the 2011 Regulations as its impacts, both on its own and cumulatively with the other major housing proposal to the southern side of Normanton Road (13/01002/OUTM) are not considered to be significant and can be considered as part of the planning application.

When the challenge in this case was considered by the High Court, the Judge took the view that this point was not arguable as screening opinions can be very brief and, subject to certain exceptions relating to reasoning, can only be judicially reviewed on a 'Wednesbury' basis. Essentially, this means that a challenge can only be made if the decision reached by the Local Planning Authority falls outside of the range of reasonable decisions open to the authority.

*(ii) failure to give adequate protection to European protected sites, species or other factors*

The District Council had due regard to the requirements of Paragraphs 109 and 118 of the NPPF in its consideration of the potential impact of the proposal on protected sites and species. In consultation with the County Ecologist, Natural England and the Environment Agency, the District Council has undertaken a comprehensive assessment of the potential impact of the proposed development on protected species and the River Mease Special Area of Conservation, and this is set out in the original officer report. No objection was raised by Natural England, the Environment Agency or the County Ecologist and the conclusions reached with respect to these issues remain valid. In terms of the River Mease SAC, it can be ascertained that the proposed development on the site will, either alone or in combination with other plans or projects, have no likely significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI. Condition 5 of the planning permission granted in November 2014 required the submission of an ecological/landscape management plan and the re-imposition of this condition will ensure that adequate protection is given to European protected species. The County Ecologist has re-confirmed that the conditions remain relevant and accurately reflects their advice.

*Ground Four - is that the Council acted irrationally in that there was a failure to give reasons for taking an inconsistent and irrational approach to cumulative impacts of the Scheme. Further in using an out of date and unadopted figure for growth and having no reasonable explanation as to how conclusions were properly reached as to cumulative impact of two such large proposals being granted when the new overall level of growth of 17.3% was not considered, the Council also acted irrationally.*

*Cumulative impact assessment and using an out-of-date and un-adopted figure of growth*

It is appropriate to consider the scale of the proposed development compared to Packington so as to understand its potential impact upon the scale and character of the village.

In terms of likely future needs, the original officer report referred to the GL Hearn Leicester and Leicestershire Housing Requirements Study, which was used to inform the housing requirement in the now withdrawn Core Strategy and included information regarding future natural change across the district. This study projected that a 23.4% increase in housing was required across the District from 2006-2031, which was reflected in the now withdrawn Core Strategy.

The joint Strategic Housing Market Assessment (SHMA) 2014 undertaken on behalf of all of the Leicestershire local planning authorities has provided the District Council with an up-to-date objectively assessed annual housing requirement, equating to 350 dwellings per annum from 2011 to 2031. This SHMA projected that 17.3% growth in housing would be required across the District to meet housing need. This is an average figure for the District as a whole and therefore, it is considered that it will be appropriate for locations that are sustainable to accommodate a higher level of growth than other settlements. As set out above, Packington is considered to be a sustainable settlement (particularly when having regard to its relationship with Ashby) and it is considered to be capable of accommodating above average housing growth.

It is estimated that there are 324 properties in the village of Packington within its main built up area. The number of properties within Packington has been calculated using 2011 Census information from the Office of National Statistics, which is considered to be a reputable source of information. However, local objectors to the development estimate that there are 300 properties within the village of Packington and it is considered prudent to consider the level of growth in both scenarios.

On the basis of 324 properties, this proposal for 30 dwellings would represent a 9.25% increase in the number of dwellings within the village. The 30 proposed dwellings alongside the outstanding commitments for 3 dwelling would equate to a 10.18% growth in the village since 2011.

On the basis of 300 properties, this proposal for 30 dwellings would represent a 10% increase in the number of dwellings within the village. The 30 proposed dwellings alongside the outstanding commitments for 3 dwelling would equate to a 11.00% growth in the village since 2011.

In both scenarios, the proposed development on its own, and with additional dwellings/commitments, would represent a lower level of growth than that for North West Leicestershire as a whole. As set out above, when having regard to the sustainability credentials of the site and settlement, it is considered that the settlement is capable of accommodating some housing growth for the District. It is not considered that the scale of growth as calculated in either scenario above would result in a significant increase in housing development within the village.

When considered cumulatively with the other major housing proposal for the village reported earlier on this agenda (a maximum of 75 dwellings), this would equate to a 23.15% (based on 324 properties) or 25%(based on 300) increase in new dwellings within the village, which would represent a higher level of growth anticipated for the village than proposed across the District as a whole in both the GL Hearn Study and the SHMA.

Whilst the level of growth is considerably higher than the District-wide figure contained in the SHMA, when having regard to the sustainability credentials of Packington (including its close relationship with Ashby), it is considered that Packington is capable of accommodating an

above average level of housing growth for the District. In this context, it is not considered that the scale of growth would result in a significant increase in housing development within the village

*Ground Five - that the Council breached the statutory duties under s70(2) of the Town and Country Planning Act 1990 (as amended) and in s38 (6) of the Planning and Compulsory Purchase Act 2004 to have regard to "any other material considerations". The Council also failed to apply the approach in accordance with case of R(oao Kides) v South Cambridgeshire DC 2003 1 P&G CR 19. The approach adopted by the officer in this case in light of the acknowledged new material consideration of going from a position of having no 5YHLS to having one, falls far short of the test in Kides and he clearly erred in concluding that the matter should not be referred back to the committee for the reasons specified in the Grounds of Claim.*

#### *Housing Land Supply and Limits to Development*

The NPPF requires that the Council should be able to identify a five year supply of housing land with an additional buffer of 5% or 20% depending on its previous record of housing delivery.

The five year supply of housing has been assessed against the joint Strategic Housing Market Assessment (SHMA) 2014 and the Local Planning Authority is currently able to demonstrate a five year supply, including a 20% buffer. Having regard to this and the approach set out in Paragraph 49 of the NPPF, saved Local Plan Policy S3 is therefore, for the purposes of deciding this application, considered to be up-to-date in the context of Paragraph 49. It is accepted that this proposal would be contrary to Policy S3 of the Local Plan. However, given that the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements only up until the end of that Plan Period (i.e. to 2006), this needs to be taken into account when considering the weight to be applied to any conflict with this policy.

In addition, the NPPF's provisions do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF.

Having regard to the three dimensions of sustainable development, it was previously recommended in the original officer report and accepted by the Planning Committee that the contribution to the economic growth associated with the proposed development, together with appropriate contributions towards affordable housing, play area provision and the inclusion of appropriate contributions to local services would ensure that the scheme would sit well in terms of the economic and social dimensions. Insofar as the environmental role is concerned, whilst the proposed development would result in the development of land outside of the defined Limits to Development, the proposed development would not result in any unacceptable impacts on the natural, built or historic environment and, by virtue of its location, close to the existing built up area and associated services, and its accessibility to public transport, would perform reasonably well in terms of need to travel and the movement towards a low carbon economy.

It is accepted that the site lies outside limits to development, that Policy S3 of the Local Plan is not out of date and the Council can now demonstrate a five year land supply. However, there has been no material change in circumstances that would lead to a different conclusion in respect of the sustainability credentials of the site as previously reported to the Planning Committee in June 2014 and the proposal is still considered to constitute sustainable development in NPPF terms. Therefore, the existence of a five year housing land supply is not a reason for refusal of a sustainable development and given the need to maintain a five year supply of housing, it is considered that release of the site would still remain appropriate.

*R (Kides) v South Cambridgeshire District Council*

The tests contained in this case sets out that, faced with a change in the 5 year housing land supply, the planning officer ought to have reported this matter back to committee unless s/he was satisfied that members would have reached the same decision. For various reasons, the planning officer in this case reached the conclusion that members would, once again, approve the application.

In any event, the matter is now being reported back to committee due to the fact that the planning permission has been quashed and so the challenge on the basis of Kides falls away.

Grounds Six - legitimate expectation to report the matter back to committee

The District Council conceded Ground Six is made out and the application is being reported back to Planning Committee.

**OTHER MATTERS**

*Best and most versatile agricultural land*

One of the objections raised is based upon the loss of BMV agricultural land. This was considered in the original report and members are asked to have regard to the contents of that report in this regard. However, to summarise, the Council accepts that the proposed development would not sit particularly comfortably with the requirements of the NPPF and, in particular, the aims of paragraph 112. However, this would need to be weighed against other material considerations and, whilst there would be adverse impacts in this regard, these concerns would not be so significant as to outweigh the considerations in favour of the scheme. When given the overall conclusions in respect of whether the site constitutes sustainable development in NPPF terms, and given the need to maintain a five year supply of housing, it is considered that the potential agricultural land quality issue is not sufficient to suggest that planning permission should be refused, particularly given the relatively limited extent of the potential loss (i.e. 2.2ha).

*Section 106 Contributions*

In terms of the Section 106 contributions requested in the original officer report, from April 2015, no more than five obligations can be pooled by the charging authority to provide for the same item of infrastructure. Accordingly it will be necessary for the relevant consultees, in relation to the requests previously made, to demonstrate that no issues arise in respect of pooling (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

*Original officer report/update sheet*

Where there has been no change in the District Council's consideration in respect of particular issues which have not been superseded by this report, the content of the original officer report/update sheet remains valid and Members should also take this into account in the determination of this application.

**RECOMMENDATION - PERMIT, subject to the signing of a S106 Agreement and subject to the previously imposed conditions.**

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# APPENDIX TO MAIN REPORT

PLANNING APPLICATIONS- SECTION A

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**Erection of 30 dwellings, including 8 affordable homes  
(Outline - access included)**

**Report Item No  
A2**

**Land South Of Normanton Road Packington Ashby De La  
Zouch Leicestershire**

**Application Reference  
13/01002/OUTM**

**Applicant:**

**Date Registered  
30 December 2013**

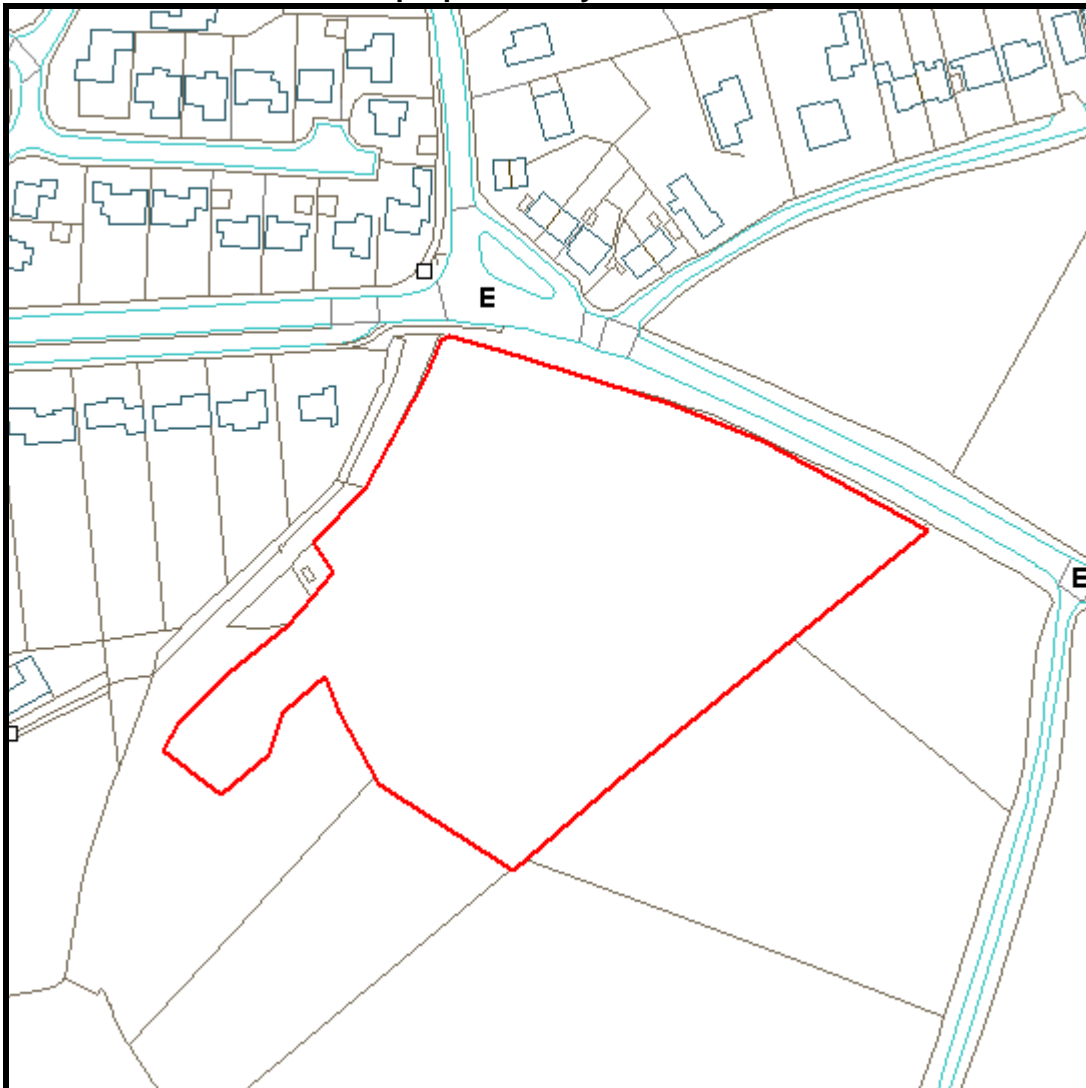
**Case Officer:  
Hannah Exley**

**Target Decision Date  
31 March 2014**

**Recommendation:  
PERMIT Subject to a Section 106 Agreement**

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## Site Location - Plan for indicative purposes only



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## EXECUTIVE SUMMARY OF PROPOSALS

### Call In

The application is reported to the Planning Committee to enable the cumulative impact of the development, along with another current proposal to be assessed. It is also considered to be a matter of local concern.

### Proposal

Outline planning permission is sought for the erection of 30 residential units including affordable housing and provision of a sustainable urban drainage system. The site is 1.49 hectares and is currently in agricultural/equestrian use and is situated on the south-eastern side of the settlement to the southern side of Normanton Road. The application site is bordered by a public highway to the north, open fields to the east and south and by residential development to the west. The western boundary of the site abuts a stream, which is a tributary of the River Mease.

The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Normanton Road and the centre point of the access would be approximately 15m from the junction with Spring Lane which lies opposite the site. Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application.

### Consultations

Members will see from the main report below that objections have been received, including from Packington Parish Council, with 71 letters being received from members of the public including FLOAT (Packington Flood Action Team). The objections cover several different issues, broadly but not exclusively relating to eg. the principle and sustainability of the proposal, adequacy of existing services/infrastructure, highway safety, impact on nearby residents and the character of the settlement, flood risk and drainage and impact on the historic environment and ecology.

No objections have been received from any of the statutory bodies consulted on the application.

### Planning Policy

The application site lies outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. This Policy now has to be considered as not being up-to-date in the context of the National Planning Policy Framework (NPPF) as the Council cannot currently demonstrate a five-year supply of deliverable housing sites.

### Conclusion

Whilst the site is outside the Limits to Development in the adopted Local Plan and constitutes greenfield land, as the Council cannot currently demonstrate a five-year supply of deliverable housing sites, its release for housing is considered suitable as Packington is a sustainable location for the level of development proposed for the site and the proposal would not result in a significant increase in housing development within the village.

The proposed development would be acceptable in terms of density, impact on the countryside, character of the area and the historic environment, impact on trees, residential amenities, transportation and highway safety issues, flood risk and drainage, ecological impacts and impact on the River Mease SAC and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services.



The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of such development as set out in that document. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

**RECOMMENDATION:- PERMIT, SUBJECT TO SECTION 106 OBLIGATIONS, AND SUBJECT TO THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

The application is reported to the Planning Committee to enable the cumulative impact of the development, along with another current proposal to be assessed. It is also considered to be a matter of local concern.

Outline planning permission is sought for the erection of 30 residential units including affordable housing and provision of sustainable urban drainage system. The site is 1.49 hectares and is currently in agricultural/equestrian use and is situated on the south-eastern side of the settlement to the southern side of Normanton Road. The application site is bordered by a public highway to the north, open fields to the east and south and by residential development to the west. There is also existing residential development opposite the site fronting Normanton Road and Spring Lane. The western boundary of the site abuts a stream, which is a tributary of the River Mease.

The application is in outline at this stage with details of means of access is included for consideration. Vehicular access into the site would be off Normanton Road and the centre point of the access would be approximately 15m from the junction with Spring Lane which lies opposite the site. The formation of the new access would require the removal of some of the existing hedgerow along Normanton Road. The indicative layout shows that 17m of hedgerow would need to be removed to provide both the vehicular access and a continuous footpath link from the site up to Heather Lane.

Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application.

The northern and eastern boundaries of the site are predominantly occupied by mature hedgerows interspersed with trees. The western boundary of the site which abuts the stream is occupied by more informal groupings of tree/hedgerow planting. The site forms part of a larger field which is separated into three areas by post and rail fencing, and therefore, the southern boundary of the application site is currently open. The southern boundary of the wider field (which is occupied by hedgerow planting interspersed with trees) lies approximately 90m to the south of the application site when excluding the proposed balancing pond. There are currently two existing vehicular accesses to the site off Normanton Road.

Land levels across the site rise in a north easterly direction with the lowest land levels being in the south western corner of the site and the highest at the northern eastern corner of the site adjacent to Normanton Road. Between these two points of the site, there would be an increase in land levels by up to 3 metres. Along the site frontage, there would also be an increase in land levels by 3m from west to east.

The site lies within the catchment area of the River Mease Special Area of Conservation and a tributary of the River Mease follows the western boundary of the site. The Packington Conservation Area lies approximately 200 metres to the west of the site/ 180m to the north west of the site and the nearest listed building is the Grade 2 listed Packington House lying approximately 300 metres to the north. There are no protected trees on the site.

#### *Planning History Summary:*

12/00733/FUL - Erection of 'Agricultural Style' building to provide secure storage and formation

of new access (Permitted)

10/00976/FUL - Erection of stables and covered way for keeping of horses and change of use of the land for keeping of horses (Permitted)

03/00301/FUL - Erection of stables and field shelter including change of use of field for keeping of horses (Permitted)

99/0174 - Change of use of land to a tennis club involving the erection of a pavilion, formation of three hardsurfaced courts and car parking and access onto Normanton Road (Refused for reasons relating to the poor physical relationship between the site and the settlement, impact on the character/amenities of the area and concern about precedent)

93/00589 - Erection of one dwelling (in the north western corner of the site) (Outline) (Refused for reasons relating to the development being beyond the settlement boundaries, impact of character/amenities of the area and highway safety) (Appeal lodged and dismissed)

81/0391 - Erection of single storey dwelling (Outline) (Refused for reasons relating to the development being beyond the settlement boundaries, impact of character/amenities of the area, highway safety and concern about precedent) (Appeal lodged and dismissed)

77/1504 - Erection of one dwelling (Outline) (Refused for reasons relating to the development being beyond the settlement boundaries, impact of character/amenities of the area, highway safety and concern about precedent)

The proposal has been assessed in respect of the Environmental Impact Assessment (EIA) Regulations 2011. Whilst the proposal is classed as development under paragraph 10(b) of Schedule 2 to the Regulations it has been concluded that this proposal does not constitute EIA development under the 2011 Regulations as its impacts, both on its own and cumulatively with the other major housing proposal to the southern side of Normanton Road (13/01002/OUTM) are not considered to be significant and can be considered as part of the planning application.

## 2. Publicity

29 no. neighbours have been notified (Date of last notification 14 May 2014)

Site Notice displayed 21 January 2014

Press Notice published 22 January 2014

## 3. Consultations

Packington Parish Council consulted 6 January 2014

County Highway Authority consulted 17 March 2014

Environment Agency consulted 14 January 2014

Severn Trent Water Limited consulted 14 January 2014

Head of Environmental Protection consulted 14 January 2014

Natural England consulted 14 January 2014

NWLDC Tree Officer consulted 14 January 2014

County Archaeologist consulted 14 January 2014

LCC ecology consulted 14 January 2014

NWLDC Urban Designer consulted 14 January 2014

LCC Development Contributions consulted 14 January 2014

NHS Leicester, Leicestershire And Rutland Facilities Managme consulted 14 January 2014

Development Plans consulted 14 January 2014

Head Of Leisure And Culture consulted 14 January 2014

Manager Of Housing North West Leicestershire District Council consulted 14 January 2014

Police Architectural Liaison Officer consulted 14 January 2014

LCC ecology consulted 11 March 2014

National Forest Company consulted 14 May 2014

County Planning Authority consulted 23 May 2014  
Highways Agency- Article 15 development consulted 4 February 2014

#### 4. Summary of Representations Received

##### **Statutory Consultees**

**Packington Parish Council** raises objection on the following grounds:

- site is unsuitable, located outside the settlement boundary and would be a physical intrusion that would be detrimental to the character and beauty of the village;
- the site is continually waterlogged in winter and the proposal will exacerbate flooding problems in the area;
- the proposal is too large and would be out of keeping with the village;
- concern about highway safety including pedestrian safety, junction congestion, speeding incoming traffic from Normanton le Heath, proximity of existing and proposed road junctions;
- impacts on the SSSI Gilawiskaw Brook which is 3-400m away and its tributary which runs alongside the site;
- concern about the capacity of the local sewerage treatment works to accommodate the development;
- more traffic and pollution and inadequate public transport serving the settlement;
- concern about the capacity of local primary and secondary schools to accommodate the development;
- the Localism Bill says that 'Local people should plan the future of their community and they should decide how much development is needed' and this proposal has raised concerns from many residents and an action committee has been set up to object to the proposal;
- it is not a sustainable development and will detract from the village;
- growth within the village should be small-scale development across a number of sites.

**The County Highway Authority** considers that the site does have a reasonable level of services within a convenient walking distance and Ashby de la Zouch is relatively accessible by cycling. No objection is raised subject to conditions and Section 106 requirements.

**Highways Agency** has no objections.

**The Environment Agency** has no objections subject to conditions.

**Natural England** has no objections subject to conditions and a River Mease developer contribution being secured in accordance with the River Mease Developer Contribution Scheme.

**Severn Trent Water** no comments have been received. Any comments received will be reported to Members via the update sheet.

**County Ecologist** initially raised concern about the adequacy of information submitted with respect to badgers and trees with bat potential. Following the provision of additional information, the County Ecologist has removed her initial objection to the proposal.

**County Archaeologist** has no objections subject to conditions.

**NWLDC Affordable Housing Enabler** advises that they are satisfied with the level of affordable housing being proposed subject to a specified housing type and tenure being agreed. The applicant's agent has confirmed agreement to these specifications.

**NWLDC Urban Designer** is satisfied that the indicative layout as shown would meet the requirements of Building for Life 12 and, that the site could be developed in line with local design policies and advice in the NPPF.

**Council's Tree Officer:** Following the submission of a tree survey and revised plans the Council's Tree Officer raises concern about the impact of the proposed vehicular access on frontage trees.

**NWLDC Environmental Protection** has no environmental observations and raises no objection.

**National Forest Company** advises that 20 percent of the site area should be woodland planting and landscaping unless an off-site planting developer contribution is agreed and this will need to be secured through the S106 agreement.

**NHS England** have requested a contribution of £10,093.91 towards the Ashby Health Centre.

**Leicestershire County Council - Highway Transportation & Waste Management Authority** has not made a request for a contribution towards civic amenity sites.

**Leicestershire County Council Library Services Development Manager** have requested a contribution of £2140 towards additional resources at Ashby de la Zouch library.

**Leicestershire County Council Local Education Authority** have requested a contribution of £62,566.60 for the high school sector as there would be a deficit of 28 pupil places (4 created by the development) within high schools within a 3 mile walking distance of the site. A contribution of £64,243.06 is also sought for the upper school sector as there would be a deficit of 119 pupil places (4 created by the development) within upper schools within a 3 mile walking distance of the site. No contribution is sought for the primary school sector as there currently an overall surplus for the area of 8 places when taking into account primary schools within a 2 mile radius of the site.

No responses had been received from the Council's Leisure team or Leicestershire Police at the time of writing this report.

#### **Third Party Representations:**

All responses from statutory consultees and third parties are available for Members to view on the planning file.

71 letters of neighbour representation have been received, raising objection on the following grounds:

#### **STRATEGIC ISSUES:**

- the absence of a core strategy is being used as a free for all in planning applications and there needs to be a cumulative impact assessment of all the recent development proposals for housing in the village/district to review the potential impacts of the proposed developments in the area;
- it should be for the local strategic planning process to determine future policy on the location of housing land supply and not speculative development;
- growth should be in-line with that envisaged in the Core Strategy for rural settlements;
- concern about the level of schemes in other settlements within the District as a whole

- and the cumulative impact of these need to be assessed;
- there are more suitable brownfield sites within the village which could be developed to meeting housing requirements;
- there are more sustainable settlements within the District that should be considered for housing before Packington;
- there are two applications for residential development outside the village envelope and an assessment of the cumulative impact of these developments needs to be undertaken;
- the proposal in addition to the additional housing on the other side of Normanton Road are disproportionate to the size of the settlement;
- local people should plan the future of their community and they should decide where and how much development is needed;
- development should be spread across all the sustainable villages;
- undeveloped sites with planning permission in more sustainable places should be developed first;

PRINCIPLE:

- the site falls outside the limits to development and therefore, is contrary to policy;
- the land is agricultural and is a greenfield site which is not suitable for development;
- brownfield sites within the village should be considered before greenfield sites are developed;

SUSTAINABILITY:

- insufficient infrastructure meaning that residents will need to commute out of the village to reach services and facilities (secondary schools, doctors, shopping);
- notwithstanding the close proximity of the bus stop to the site, public transport provision is limited to and from the village both in terms of frequency and destinations;
- the proposal will increased carbon footprint of the village;
- there are no job opportunities in the village and the development of the site would not bring employment to the area and therefore, the properties would attract commuters;
- the site is not big enough to provide much needed investments in the schools and health services in the village but cumulatively the developments may be and, this should be considered.
- the development would not accord with the sustainability objectives of the NPPF;
- the Highways Report incorrectly states that Packington has a few shops but it has one on High Street;
- there is no capacity in the local primary school meaning that residents would need to take children outside the village by bus or car;
- there is no capacity within the secondary schools in Ashby;
- the local bus service is very limited and currently under review so may be reduced further, which would make residents of the development dependent on their private cars to reach services and work places outside the village;
- there is no capacity in the local GP surgeries in Ashby and Measham meaning that residents would need to travel further to see a doctor;
- inadequate infrastructure makes the site unsustainable;
- the proposal would not bring employment/social benefits to the village and the new dwellings will likely be occupied by commuters;
- should permission be granted, developer contributions should be sought for additional school, healthcare and recreation facilities;
- the electricity supply to Packington is inadequate and the proposal will put a further strain on this service;
- water pressure within Packington is already low and the proposal will only exacerbate this problem;

NEED:

- the site offers minimal social housing;
- there is no need for affordable housing to be provided;
- the suitability of the proposed affordable housing is queried;

FLOODING AND DRAINAGE:

- the proposal will increase surface water run-off and exacerbate existing flooding problems in the area, especially in the gardens off Heather Lane where residents have to use sandbags around their properties;
- there is a watercourse in close proximity of the site which already floods in heavy rain and concern is raised about increased surface-water run-off from the site which will contain hardsurfaced areas;
- if approved, previous flood defence work will be undermined;
- the development would use agricultural land;
- local pasture land is saturated and developing the land will only increase surface-water run-off and increase the risk of flooding;
- the proposal would put a strain on the existing local sewerage works;
- a lake on the site would make very little difference;
- concern about the whether the level of attenuation required to offset the development is achievable and therefore, will make existing flooding problems worse;
- concern about impact on the River Mease SAC and SSSI as the Gilwiskaw Brook which is a tributary of the River Mease runs through the village;
- concerns about the impact on the River Mease SAC/SSSI given the limited capacity of the existing local treatment works;

DESIGN/VISUAL AMENITIES:

- the development will negatively affect the appearance of the village on approach from Normanton le Heath, as well as the character of the village due to the current size of the village in relation to the proposed development;
- the views of the village from the north is also likely to be blighted in the future by the HS2 development;
- the proposal would change the rural nature of the village and would be out of scale and character with the village;
- the proposal would make a 16% increase upon the current size of the village;
- organic growth of infill plots within the settlement would be more appropriate;
- green planting to offset the landscape that will be lost would be little compensation and would take years to mature;
- whilst unwelcome, the extension of the village in this location is more acceptable visually than the proposed Spring Lane development which would overlook existing properties;
- the design of the properties should reflect the variety of housing that exist within the village and contributes to its character;

HIGHWAY SAFETY:

- the development is on the opposite side of the village to access local services and also those in Ashby and Measham and will result in increased traffic going through the village;
- additional road traffic volumes from the development will compound existing road and pedestrian safety issues associated with the A511 at rush hour, the Junction at the end of Measham Road, and the junctions with Spring Lane and Redburrow Lane where visibility is already poor and at the bottom of Normanton Road where there is a narrow and dangerous bend in the road;

- increased traffic volumes due to poor bus service;
- local roads are poorly lit, unsuitable and dangerous for increased traffic due to narrow sections, on-street parking and blind bends and vehicles already travel in excess of the speed limit;
- additional traffic creates dangers for vulnerable pedestrians, eg children
- the proposal will make existing rat-running problems worse and increase dangers to road users;
- if permitted, the developer should pay for traffic calming measures within the village;
- concern about the safety of an increased number of pedestrians crossing Normanton Road;
- close proximity of the access to an existing junctions is dangerous;
- a cumulative assessment of the highway implications of the various proposed residential development should be undertaken;
- lack of pedestrian footways to enable the safe passage of pedestrians from the site to the village;
- additional dangerous from construction traffic;
- additional conflict with agricultural traffic, as well as camping/caravan traffic;
- egress from Red Burrow Lane and Spring Lane are already difficult within limited visibility and increased traffic on Normanton Road will only exacerbate this;
- the site is poorly located for access to the village centre and major routes out of the village (A42/A511) which will increase traffic passing through the village,
- access to the A42 at Measham Road is already dangerous as five roads meet at this junction and the proposal will only make the existing situation worse;
- Normanton Road is already used as a short cut between the A511 and the A42 which generates additional traffic within the village;
- the adjoining highways are also already used daily by agricultural vehicles to/from local farms and vehicles visiting the campsite at Hill Farm;
- any highway improvements proposed as part of the scheme would serve the proposed development not the village;
- unsuitable access near a dangerous corner where there are no footpaths and poor lighting;
- the proposal with the other development proposed would result in seven vehicular accesses within approximately 200 yards;
- a new footway is proposed within the highway on land within the ownership of LCC and any requirements for the development should be accommodated within the site;
- a traffic survey is required;
- there are already difficulties parking in High Street;

#### ECOLOGY:

- a local wildflower planting initiative has been implemented within the vicinity of the site and is attracting wildlife;
- loss of hedgerows/tree planting;

#### HISTORIC ENVIRONMENT:

- the proposal would be contrary to Policy E9 due to its impact on the Packington Conservation Area;

#### RESIDENTIAL AMENITIES:

- No.1 Spring Lane is sited at the junction with Normanton Road and is the property that will be most affected by the two proposals for residential development off Normanton Road due to its corner position as it will be surrounded by new housing and be affected by traffic noise;



OTHER:

- concern that approval would set a precedent for further development;
- the development would cause stress and upheaval to local residents, particularly those neighbouring the site;
- upheaval and distress to the local community;
- is it correct that an environmental statement is not required?;
- the application does not have regard to the well-being of residents but is centred on developer profits;
- loss of agricultural land;
- planning permission should only be granted agricultural land that is classified grade 3;
- both applications for housing development in Packington should be considered at the same time and their cumulative impacts should be assessed;
- noise and disturbance during construction and from additional traffic generally;
- concern about changes to the number of dwellings proposed in any subsequent reserved matters applications, should permission be granted;
- neighbours were not notified of significant changes.

## 5. Relevant Planning Policy

### National Planning Policy Framework (NPPF) - March 2012

The Department of Communities and Local Government published the National Planning Policy Framework (NPPF) on 27 March 2012. The NPPF brings together Planning Policy Statements, Planning Policy Guidance Notes and some Circulars into a single consolidated document.

The NPPF (paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Paragraph 17 sets out the 12 key principles that should underpin plan-making and decision-taking, which include:

- proactively drive and support sustainable economic development to deliver homes, business and industrial units, infrastructure and thriving local places that the country needs;
- always seek to secure high quality design and a good standard of amenity;
- take account of the different roles and character of different areas, including recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
- support the transition to a low carbon future in a changing climate;
- contribute to conserving and enhancing the natural environment and reducing pollution;
- encourage effective use of land by reusing land that is previously developed;
- conserve heritage assets in a manner appropriate to their significance;
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling;
- take account of and support local strategies to improve health, social and cultural wellbeing.

The following sections of the NPPF are considered relevant to the determination of this application:

"Paragraph 14 sets out the presumption in favour of sustainable development and, in respect of decision making, provides that, unless material considerations indicate otherwise, states that this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting

permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted."

"32. ...Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."

"47. To boost significantly the supply of housing, local planning authorities should:

- identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land..."

"49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

"54. ... Local planning authorities should in particular consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs."

"55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities."

"57. It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes."

"59. Local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally."

"61. Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment."

"100. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere."

"112. Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.

"118. When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
  - proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest; ...
- ...- opportunities to incorporate biodiversity in and around developments should be encouraged..."

"119. The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined."

"123. Planning policies and decisions should aim to...avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development..."

"131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness."

"132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting...."

"133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss or all of four other criteria apply."

"134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."

"173. Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of

development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."

"203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition."

"204. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development."

**North West Leicestershire Local Plan:**

The East Midlands Regional Plan (RSS8) has now been revoked and therefore no longer forms part of the development plan. The North West Leicestershire Local Plan forms the development plan and the following policies of the Local Plan are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application:

Policy S1 sets out 13 criteria which form the strategy for the adopted Local Plan.

Policy S3 sets out the circumstances in which development will be permitted outside Limits to Development.

Policy E2 seeks to ensure that development provides for satisfactory landscaped amenity open space and secures the retention of important natural features, such as trees.

Policy E3 seeks to prevent development which would be significantly detrimental to the amenities enjoyed by the occupiers of nearby dwellings.

Policy E4 seeks to achieve good design in new development.

Policy E7 seeks to provide appropriate landscaping in association with new development.

Policy E8 requires that, where appropriate, development incorporates crime prevention measures.

Policy E30 seeks to prevent development which would increase the risk of flooding and remove the extra discharge capacity from the floodplain of the River Mease.

Policy F1 seeks appropriate provision for landscaping and tree planting in association with development in the National Forest, and requires built development to demonstrate a high quality of design, to reflect its Forest setting.

Policy F2 states that the Council will have regard to the existing landscape character of the site and the type of development when seeking new planting.

Policy F3 seeks to secure implementation of agreed landscaping and planting schemes for new development by the imposition of planning conditions and/or the negotiation of a planning agreement.

Policy T3 requires development to make adequate provision for vehicular access and circulation and servicing arrangements.

Policy T8 sets out the criteria for the provision of parking associated with development. In relation to car parking standards for dwellings, an average of 1.5 spaces off-street car parking spaces per dwelling will be sought.

Policy H4/1 sets out a sequential approach to the release of land for residential development, and seeks to direct new housing towards previously developed land in accessible locations, well served by, amongst other things, public transport and services.

Policy H6 seeks to permit housing development which is of a type and design to achieve as high a net density as possible, taking into account a number of issues including housing mix, accessibility to centres and design.

Policy H7 seeks good quality design in all new housing development.

Policy H8 provides that, where there is a demonstrable need for affordable housing, the District Council will seek the provision of an element of affordable housing as part of any development proposal.

Policy L21 sets out the circumstances in which schemes for residential development will be required to incorporate children's play areas. Further guidance is contained within the Council's Play Area Design Guidance Note Supplementary Planning Guidance.

Policy L22 provides that major new development will only be permitted where adequate provision is made for open space for formal recreation use.

### **Other Guidance**

#### *Submission Core Strategy*

At a meeting of the Full Council on 29 October 2013, the District Council resolved to withdraw the Submission Core Strategy.

*The Conservation (Natural Habitats &c.) Regulations 2010* (the 'Habitats Regulations') provide for the protection of 'European sites', which include Special Areas of Conservation (SACs).

*Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System)* sets out the procedures that local planning authorities should follow when considering applications within internationally designated sites and advises that they should have regard to the EC Birds and Habitats Directive in the exercise of their planning functions in order to fulfil the requirements of the Directive in respect of the land use planning system. The Circular sets out a flow chart for the consideration of development proposals potentially affecting European sites.

*River Mease Water Quality Management Plan - August 2011* draws together all existing knowledge and work being carried out within the SAC catchment, along with new actions and innovations that will work towards the long term goal of the achievement of the Conservation Objectives for the SAC and bringing the SAC back into favourable condition.

*The River Mease Developer Contributions Scheme (DCS) - November 2012* is relevant to development which results in a net increase in phosphorous load being discharged to the River Mease Special Area of Conservation (SAC). It currently applies to all development which contributes additional wastewater via the mains sewerage network to a sewage treatment works which discharges into the catchment of the River Mease SAC.

*The Community Infrastructure Levy Regulations 2010* provide a legislative requirement that an obligation must meet the following tests:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development;
- fairly and reasonably related in scale and kind to the proposed development.

*The Technical Guidance to the National Planning Policy Framework - March 2012* provides additional guidance relating to flooding.

*National Planning Practice Guidance - March 2014* supplements the policies in the NPPF. The Guidance does not change national planning policy but offers practical guidance as to how such policies should be applied.

*NWLDC SPD for Affordable Housing - January 2011*

Key Principle AH2 provides that affordable housing will be sought on all sites of 15 or more dwellings in Ashby de la Zouch.

Key Principle AH3 requires a minimum of 30% of residential units to be available as affordable housing within Ashby de la Zouch.

*NWLDC SPG - Play Area Design Guidance - July 2002* sets out the relevant requirements in respect of children's play provision required in association with residential development.

*Packington Conservation Area Appraisal and Study SPG* identifies individual factors considered to have a positive impact on the character of the Conservation Area. These factors include principal listed buildings and unlisted buildings of interest in the vicinity of the site.

## **6. Assessment**

The main issues for consideration in the determination of this application relate to the principle and sustainability of the proposal, visual impact and its impact on the historic environment, trees, residential amenities, highway safety, drainage and flood risk, protected species/ecology and on the River Mease Special Area of Conservation, and the provision of affordable housing and developer contributions.

### **Principle of Development**

Insofar as the principle of development is concerned, and in accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance, includes the adopted North West Leicestershire Local Plan (2002 (as amended)).

In terms of the Local Plan, the site lies outside the Limits to Development, Policy S3 sets out the circumstances in which development will be permitted outside Limits to Development; the development proposed would not meet the criteria for development in the countryside, and approval would therefore be contrary to the provisions of Policy S3. As explained further below, however, as a consequence of the Council currently being unable to demonstrate a five-year

supply of housing land, Policy S3 can no longer be considered an up-to-date policy in the context of paragraph 49 of the NPPF as it is a general policy that constrains the supply of housing.

Notwithstanding the countryside location, and whilst the proposal would be contrary to the adopted Development Plan, therefore, in determining the application, regard must be had to other material considerations, including other policies, such as other Development Plan policies and national policies.

In terms of the Local Plan, Policy H4/1 identifies that, in releasing appropriate land for housing, the Council will have regard to:

- up-to-date housing land availability figures;
  - the latest urban capacity information;
  - the need to maintain an appropriate supply of available housing land;
  - lead times before houses will be expected to be completed and build rates thereafter;
- and
- other material considerations.

As with Policy S3, however, Policy H4/1 being a policy for the supply of housing, can no longer be considered up-to-date due to the inability of the Council to demonstrate a five-year supply of housing land.

Whether or not this site would be considered "appropriate" is a matter of judgement. Insofar as the site's location is concerned, it is located adjacent to the existing built up area of the settlement and would not result in isolated development in the countryside.

In terms of the site's greenfield status, it is accepted that the site does not perform well. However, this issue needs to be considered in the context of the need to demonstrate and maintain a five year housing land supply in the District, and the need for sites to be released to meet this need. Given the need to provide significant areas of housing land as set out below, it is considered inevitable that greenfield land will need to be released in order to maintain a five year supply of deliverable sites, as well as (as in this case) land not allocated for housing development in the adopted Local Plan.

#### *Housing Land Supply*

The NPPF requires that the Council should be able to identify a five year supply of housing land and include an additional buffer of 5% or 20% depending on previous performance in terms of delivery of housing. The appeal decision of May 2013 in respect of land south of Moira Road, Ashby de la Zouch, found that the "Sedgefield" approach should be used and that a buffer of 20% should be allowed for (an approach to assessing land availability also suggested as appropriate within the recently published National Planning Practice Guidance). On this basis, the District Council's most recent calculations indicate that the Council is only able to demonstrate a supply of 4.7 years which represents a significant shortfall vis-à-vis the requirements of the NPPF.

The consequences of an inability to demonstrate a five year supply are profound. Paragraph 49 of the NPPF advises that "Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites". Therefore the Council would not, in these circumstances, be able to rely on either Policy S3 or Policy H4/1 as they are "relevant policies" for the purposes of NPPF paragraph 49. Whilst members have previously been advised, on the basis of the Stephenson's Green High Court decision that Policy S3 should not be considered to be a relevant policy for

the supply of housing and that accordingly the policy should not be considered to be out of date, a recent judgement from the most senior Judge in the Administrative Court (who is also a specialist Planning Judge) has qualified the position taken by the Judge in the Stephenson's Green case as a result of which it is no longer appropriate to rely on the latter decision.

In *South Northamptonshire Council -v-Secretary of State for Communities and Local Government* (10 March 2014) Mr Justice Ouseley, considering the meaning in paragraph 49 of the NPPF of policies "for the supply of housing", said this:

"46. That phraseology is either very narrow and specific, confining itself simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction, or alternatively it requires a broader approach which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner.

47. It is my judgement that the language of the policy cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development. They may be generally applicable to all or most common forms of development, as with EV2, stating that they would not be permitted in open countryside, which as here could be very broadly defined. Such very general policies contrast with policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development".

Thus, whilst e.g. Green Wedge or Gap policies may not be caught by Paragraph 49, policies such as S3 and H4/1 that generally restrict development outside of settlement boundaries in open countryside clearly are. In these circumstances Members must be advised to consider both S3 and H4/1 as not being up-to-date policies. In any event, as the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements up until the end of the Plan Period (i.e. to 2006) less weight could have been attributed to any conflict with Policy S3 in the overall planning balance.

In addition, the NPPF's provisions do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF.

#### *Sustainability*

In terms of the sustainability of the site, Packington provides a range of day to day facilities, i.e. a primary school, shop, church, village hall, a public house, play area/recreation ground and some small-scale employment sites. There is also a limited public transport service; the No. 7 service currently provides a service Monday to Saturday (approximately every 1.5-2 hours) and serves Measham, Ashby de la Zouch, Atherstone and Nuneaton with a total of 11 buses running per day. The County Council has confirmed that the No.7 service will not be serving Packington going forward due to the No.19 service (Burton to Ashby) now providing an hourly service between Ashby and Measham via Packington from 0746 hrs to 1711 hrs Monday to Saturday.

In terms of distance to amenities, the Institute of Highways and Transportation (IHT) document 'Providing for Journeys on Foot' details the distance of 800 metres is considered to be the



preferred maximum walking distance to a town centre with 400 metres acceptable and 200 metres being desirable. The Inspector in the Moira Road appeal referred to the DoT statistics which detail that the average trip length regularly undertaken by the population of Great Britain is, on average, walking about 1Km (0.62 miles), cycling about 4.5Km (2.8 miles) and by bus about 8Km (4.97 miles). Below are the approximate distances from the centre of the site to local facilities and services via the existing footway network:

Bus Stop (outside the Bull and Lion pubic house) - 450 metres  
 Primary School - 600m  
 Shop - 750m  
 Open Space (Measham Road playing field/play area) - 640 metres  
 Village Hall - 750 metres  
 Public House - 450 metres

The application site is well related to the services/facilities within the village, being within 800 metres (preferred maximum walking distance) of all of the above-mentioned services listed above. The existing highway network within Packington comprises of quiet residential streets and on this basis, it is considered that the quality of the walking experience would be high, which is likely to encourage walking in this location. Furthermore, in order to provide continuous and improved connections to and from the site, the indicative layout shows a new footway on the southern side of Normanton Road, extending from the site access up to the junction with Heather Lane to link the site with existing footway network. The level of services available within the village is considered to be reasonable for a rural village, although the public transport connectivity is considered to be poor.

Ashby de la Zouch is located approximately 2.3km walking distance from the centre of the site, where amongst other services retail, secondary education, a library and GP surgeries can be found. There would be continuous footways available to facilitate pedestrian access to this nearby market town. Furthermore, it is considered that the short distance involved and the relatively low traffic flow along the routes available and local gradients, would encourage cycling. Indeed, the distance between the site and Ashby de la Zouch would also be within the average trip length for cycling (as outlined above).

Given the scale of the development, and when taking into account the site on the northern side of Normanton Road (totalling 72 dwellings), it is not considered that the proposal would result in unsustainable demands on local services and facilities, and contributions have been sought to provide additional capacity within schools, the library and a GP surgery at Ashby de la Zouch, to improve the recreational facilities within the village and to provide bus passes/travel packs and improve bus stops. There is nothing to suggest that the public house and shop would be adversely affected by an increase in residents and it may be the case that additional residents could support and sustain these and other services/facilities.

The site is equally well related to services when compared with the site on the northern side of Normanton Road. On balance, it is considered that and a reason for refusal on the grounds of Packington not being sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the other site off Normanton Road could not be justified, in particular having regard to the other material considerations set out in this report.

*Scale of Development and Cumulative Impacts*

It is appropriate to consider the scale of the proposed development compared to Packington so as to understand its potential impact upon the scale and character of the village.

In terms of likely future needs the GL Hearn Leicester and Leicestershire Housing Requirements Study which was used to inform the housing requirement in the now withdrawn Core Strategy includes information regarding future natural change across the district. This Study projected that a 23.4% increase in housing was required across the District from 2006-2031, which was reflected in the now withdrawn Core Strategy.

It is estimated that there are 342 properties in the village of Packington within its main built up area. This proposal for 30 dwellings would represent an 8% increase in the number of dwellings within the village. The 30 proposed dwellings alongside the 5 new dwellings built since 2006 and the outstanding commitments for 1 dwelling would equate to a 10.5% growth in the village since 2006. Therefore, the proposed development on its own, and with additional dwellings/commitments, would represent a lower level of growth than that for North West Leicestershire as a whole. As such it is considered that the proposal would not result in a significant increase in housing development within the village.

When considered cumulatively with the other major housing proposal for the village reported earlier on this agenda (a maximum of 72 dwellings), this would equate to a 21% increase in new dwellings within the village, which would represent a higher level of growth anticipated for the villages than proposed across the District as a whole in the GL Hearn Study. When taking into account new dwellings/commitments this growth increases to 22.5% and 22.8% respectively.

Whilst the level of growth is lower than District-wide figure, it is higher than that envisaged for smaller settlements within the Core Strategy. However, when having regard to the sustainability credentials of Packington and its close relationship with Ashby, it is considered that this level of cumulative development (growth) for Packington is considered acceptable. Members are advised that the level of growth is not dissimilar to that recently approved at Appleby Magna. Packington has a similar level of services within the village but is also well related to Ashby de la Zouch where more services can be found.

#### *Loss of Agricultural Land*

Also of relevance to the principle of releasing the site is the issue of loss of agricultural land. Whilst the site is currently in use as pasture land, the development of the site would result in an irreversible loss to a non-agricultural use.

Paragraph 112 of the NPPF suggests that, where significant development of agricultural land is demonstrated to be necessary, poorer quality land should be used in preference to that of a higher quality. Having regard to the five year housing land supply issue as set out above, it would seem inevitable that greenfield land (much of which will be agricultural in terms of use) will need to be released. Best and Most Versatile (BMV) agricultural land is defined as that falling within in Grades 1, 2 and 3a of the Agricultural Land Classification (ALC). The agent has confirmed that the land would be assigned to Class 3b and therefore, would not be classified as BMV agricultural land. The Agricultural Land Classification maps indicate that the site falls within Class 3 but do not specify whether the land would fall within a 3a (BMV) or 3b (not BMV) classification.

If considering the scenario that the land is potentially BMV land, it is commonly accepted that the magnitude of loss of agricultural land is low where less than 20 hectares of BMV would be lost (with medium and high impacts defined as those resulting in loss of between 20 and 50ha, and those of 50ha and above respectively). The site is approximately 1.49 hectares in size. It is noted that the NPPF does not suggest that release of smaller BMV sites is acceptable. However, it nevertheless appears reasonable to have regard to the extent of the loss in the decision making process, which in this case would be small in scale but irreversible as there are

no areas of open space/landscaping that would be large enough to accommodate an agricultural use in the future.

Nevertheless, if the site were to fall within Class 3a, it is not considered that the proposed development would sit particularly comfortably with the requirements of the NPPF and, in particular, the aims of paragraph 112. However, this would need to be weighed against other material considerations and, whilst there would be adverse impacts in this regard, these concerns would not be so significant as to outweigh the considerations in favour of the scheme. When considered in the context of the five year housing land supply issue, and the benefits of releasing the site to assist in maintaining such supply, it is considered that the potential agricultural land quality issue is not sufficient to suggest that planning permission should be refused, particularly given the relatively limited extent of the potential loss (i.e. 1.49ha).

*Conclusions in respect of the Principle of Development and Planning Policy*

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 applications are to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The site is outside Limits to Development in the adopted Local Plan and its development for housing would therefore be contrary to Local Plan Policy S3, a policy designed to protect the countryside for its own sake. For reasons which have been outlined above, however, this Policy cannot be considered as being up-to-date in the context of Paragraph 49 of the NPPF.

The site is equally well related to services when compared with the site on the northern side of Normanton Road. However, it is considered that on balance that and a reason for refusal on the grounds of Packington not being sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the other site off Normanton Road could not be justified, in particular having regard to the other material considerations set out in this report, including the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF) is an important material consideration.

Having regard to the three dimensions of sustainable development, it is accepted that the contribution to economic growth associated with the proposed development in terms of jobs and the creation of new households, coupled with the role played in contributing to housing land supply, its proximity to services/facilities, the provision of affordable housing and contribution towards play area provision and the inclusion of appropriate contributions to local services would ensure that the scheme would sit well in terms of the economic and social dimensions. Insofar as the environmental role is concerned, as set out in more detail below, the proposed development would not result in any unacceptable impacts on the natural, built or historic environment. Having regard to all of the above in the overall balance, it is considered that the proposal would be a sustainable form of development, and, therefore the proposed development of the site is acceptable in principle.

**Access and Highway Safety**

All matters are reserved for subsequent approval except for access. Whilst the illustrative layout shows internal access roads and pedestrian links through the site, these would be a matter for the reserved matters stage(s).

The Highways Agency has no objection in relation to impact on the strategic highway network (M42/A42).

Concerns have been raised by local residents including the speeds of traffic, the suitability and capacity of the village road network to cope with the traffic generated by this and the other major housing schemes currently proposed, increased potential for conflict between vehicles and between vehicles and pedestrians, the adequacy of visibility from the proposed access and other nearby road junctions, the close proximity of the proposed access to a number existing road junctions and a sharp bend in the road and the proximity of the proposed access to that of the other proposed development on the opposite side of the road.

The County Highway Authority has been consulted on the application and raised no objections subject to conditions and contributions to be secured in a legal agreement which are considered in a separate section below.

Access to the proposed development site would be provided by a new single point of access off Normanton Road. The other existing vehicle access at the junction of Heather Lane and Normanton Road would be closed. The access would be provided approximately 24 metres to the south east of the existing access at Spring Lane and full visibility splays would be achieved in both directions due to the depth of the highway verge at this point.

The County Highways Authority is satisfied that visibility can be provided in accordance with the guidance contained in the '6 C's Design Guide' taking into consideration the speed of vehicles in both directions. The County Highways Authority has also confirmed that the proposed access has appropriate junction separation from other existing junctions. With regard to concerns about the location of the other proposed access opposite the site, the County Highways Authority has confirmed that spacing between the two proposed accesses is appropriate and so the proposal would not lead to demonstrable harm to highway safety.

The County Highways Authority has advised that when having regard to the generally lightly trafficked nature of the road network in Packington, and given that traffic would be greatly dispersed before it reached junctions on the network that are at, or approaching their capacity being exceeded, queuing and congestion in the peak hours is unlikely to be of any concerns as part of an assessment of the impact of the proposed traffic from the two residential schemes currently proposed on either side of Normanton Road, either alone or in combination. Therefore, the County Highways Authority raises no concerns in relation to the proposal on its own or in combination with the development proposed opposite adversely affecting the capacity of the village road network. The proposal is considered acceptable for the purposes of T3 and T8 of the Local Plan.

Based on the above it is considered that the proposal would not result in a severe impact on highway safety and as such it is considered that a highway safety reason for refusal could not be sustained in this case.

### **Neighbours' and Future Occupiers' Amenities**

Located on the south eastern edge of the settlement, this area of Packington is not heavily populated with residential dwellings and, therefore, it is not considered that the increased traffic using local roads generally as a result of the proposed development would lead to unacceptable impacts on residents' amenities. It is accepted that vehicles travelling towards the Ashby and Measham, as well as the A42 and A511 would pass through the village. In coming to this conclusion it is noted that the Council's Environmental Protection Team raise no objections to the proposed development in terms of noise or pollution.

In terms of the impacts on neighbouring occupiers arising from the proposed buildings

themselves are concerned, this would need to be assessed at the reserved matters stage(s); notwithstanding the details shown on the illustrative layout, there would appear to be no reason in principle why up to 30 units could not be provided on the site in a manner which would not adversely impact upon neighbouring residential amenities.

### **Design**

The proposed scheme has been assessed by the District Council's Urban Designer, and rated in accordance with CABE's new Building for Life criteria which scores on the basis of red/amber/green rather than being a point based scoring system. The Council's Urban Designer reviewed the original proposals and considered that the indicative layout would fail to meet the Building for Life criteria. The Council's Urban Designer has been involved in extensive discussions with the applicant during the course of the application and a revised indicative layout plan has been submitted. The Council's Urban Designer considers that the amended indicative proposals establish good design principles for the layout of the proposed development, orientation of dwellings, arrangement of streets and spaces, neighbourhood connections and landscaping. The Urban Designer considers that subject to Building for Life 12 (BfL12) being used as a reference tool and assessment tool for the design development and assessment of any future Reserved Matters application, the scheme would offer a good standard of design as measured by BfL12 and would comply with the relevant Development Plan policies and advice in the NPPF.

### **Density**

The NPPF states that local planning authorities should set their own approach to housing density to reflect local circumstances. Local Plan Policy H6 provides that residential development should meet a minimum density of 30 dwellings per hectare within locations well served by public transport and accessible to services. The former advice in PPS3 provided that net dwelling density includes those site areas which will be developed for housing and directly associated uses, including access roads within the site, private garden space, car parking areas, incidental open space and landscaping and children's play areas. Whilst this has now been superseded in the NPPF the methodology contained within it for working out net dwelling density would, in the absence of any other guidance in the NPPF or Local Plan, still be relevant.

The proposal results in a density of 23.4 dwellings per hectare for the whole site but clearly the net density would be lower when factoring in the landscaping, buffer zones, SUDS etc that would also need to be provided on-site.

When having regard to those parts of the site that would not be developed for housing or directly associated uses, along with the existing density of the surrounding area and the location of the development on the edge of the settlement, it is considered that a reduced density in comparison to that advised in Local Plan Policy H6 is acceptable in this instance.

### **Character of the Area and Visual Impact**

The application has been accompanied by limited information regarding the existing landscape and character and how the development would assimilate into its environs. The indication is that these details would be provided at the Reserved Matters stage should permission be granted. Nonetheless, these matters are pertinent to considerations at the outline stage and should be assessed.

Packington is located within an undulating agricultural landscape and the site, along with the adjoining arable fields provide the rural setting for the village when travelling along Normanton Road, as well as forming part of the edge to the village's main built up area. The proposed site is located within a dip in the landscape as land rises towards the east away from the settlement.

The site forms part of a larger field and to the rear of the application site, land levels drop in a south westerly direction before rising again in the fields beyond. The site is bordered on three sides by mature hedgerows interspersed with trees and, therefore, is afforded some existing natural screening. The southern boundary is currently open but the southern boundary of the wider field of which the site forms part is occupied by a mature hedgerow interspersed with trees which provides some natural screening, albeit at a lower level than the application site.

The site is most prominent in views from Normanton Road, Heather Lane and the southern end of Spring Lane. The site is currently well screened along the highway boundary but glimpses of the site (and the open countryside beyond) are available through the two vehicular access points along the site's frontage where there is a break in the hedgerow. Glimpses of the site are also available from Redburrow Lane to the east of the site (which is on higher ground) where there are breaks in the hedgerow, although the site would be separated from Redburrow Lane by a field. Longer distance views of the site are available from public footpaths to the south of the village where land levels rise. The existing properties fronting Heather Lane are also visible from the footpath network to the south of the site.

The site and its boundary treatments are important elements of the setting and approach to the village. Hedgerows/trees form strong boundaries and most of the frontage hedgerow along Normanton Road could be retained, which would assist with screening the development. The boundary hedgerows, which create a strong sense of enclosure to the site and form an important part of the character of the village and the layout could be designed to ensure they are not significantly adversely affected.

Development would be prominent in views from the public footpaths to the south of the site due to the lack of boundary treatment and land levels. However, some screening is provided by other intervening landscaping and is it considered that the layout could be designed to ensure that a landscaping strip is provided along the southern edge of the site to provide screening for the development and soften the edge of the built development on the site.

Some of the hedgerow/trees along the site's frontage would be lost to allow for the formation of the vehicular access, therefore, opening up views into the site and making development on the site more prominent in immediate views from within the village.

The application site abuts the settlement boundary and development on the site would be viewed against the backdrop of existing development or adjacent to existing built development and therefore, would not appear an isolated development in the countryside. The extent of the application site (excluding the balancing pond area) would relate reasonably well to the rear boundaries of existing residential properties fronting Heather Lane, although it is accepted that the development of the site for housing would have a more built up appearance than the current rear gardens of these properties.

Whilst the site contributes to the form and setting of the village and its semi-rural character in this location, in close and long range views the sensitivity of the site is limited, as it is effectively a large open field with no particularly distinctive characteristics.

Therefore having regard to all of the above considerations (including the proximity of the site to existing development and the settlement boundary, the topography of the surrounding landscape, existing soft landscaping and the scope for mitigation in the detailed layout, design and landscaping of the scheme), whilst there would be moderate and localised harm to the countryside it is considered that it would be limited and not be so significantly detrimental to justify a reason for refusal based on the proposal resulting in an adverse impact on the

character of this locality and the countryside.

Overall, therefore, subject to a Section 106 to secure National Forest planting, and subject to an appropriate form of development being proposed at the reserved matters stage(s), it is considered that the landscape and visual effects of the proposed development are acceptable for the purposes of Policies E4 and H7 of the Local Plan and the provisions of the NPPF.

### **Historic Environment**

The Packington Conservation Area lies approximately 200 metres to the west of the site/ 180m to the north west of the site and the nearest listed building is the Grade 2 listed Packington House lying approximately 300 metres to the north. The Conservation Area and listed building are designated heritage assets as defined in the NPPF. The site may also contain buried archaeological remains (discussed in the archaeology section below) and these would also form a heritage asset.

The site is well separated from the Conservation Area by intervening residential development. The site would not be highly visible within views of or from the Packington Conservation Area, although it is acknowledged that some glimpses of the site would be available within views along Heather Lane/Normanton Road. When having regard to the distances involved and the nature of the intervening twentieth century development, it is not considered that the development of the site for housing would adversely affect the setting of the Packington Conservation Area.

Packington House lies to 300 metres to the north of the site and has the following listing description:

*House of late C18 and early C19. Red brick with brick dentilled eaves and plain tile roof with end stacks. Twin span, one of each date. The present entrance front, the earlier, is of 3 storeys, Flemish bond, stone coped gables, and 3 sashes: 3/3 2nd floor and 6/6 below. Stucco lintels and stone sill bands. Early C20 bay to left of central simple doorcase and canopy with part glazed 6-panelled door and overlight. 3 storey 1 window extension to right: attic 4/8 sash with casements below. 1 storey extension to left. The rear front is of 3 storeys of 4 windows grouped vertically in projecting brick sections. 3/6 sashes, flat lintels, to 2nd floor, and 6/6 cambered lintels, below. Stone sills. Centre right section has round arched doorcase: tripartite with narrow 3-pane light either side of 4-panelled door. Right end rendered; on left end extension with casements.*

The proposal would not affect the built fabric of this listed building but consideration needs to be given to the impact of the proposed development on the setting of Packington House. The building's setting is compromised somewhat to the immediate north by the presence of a modern two-storey dwelling but to the south and south east, the rural setting of Packington House survives. Any detailed design proposals for the site would need to have due regard to the potential impact of development on the setting of this listed building.

The application site is separated from the listed building by Normanton Road, Spring Lane and a triangular piece of land. Both the application site and the field opposite (which is also being considered for residential development) are bordered by mature hedgerows interspersed with trees. When having regard to the distances involved, the topography of the land and the intervening vegetation, it is considered that the site is capable of accommodating the amount of development proposed without adversely affecting the setting of this heritage asset. Furthermore, it is also considered that the proposal either alone or in combination with the proposed development on the northern side of Normanton Road (also being considered by Members) would not adversely affect the setting of this heritage asset.

It is therefore considered that the proposal could be harmful to the significance of the heritage assets but that this would be unlikely to involve substantial harm or total loss of significance for the reasons set out above. Therefore, the proposals amount to less than substantial harm to the significance of the heritage assets and would not result in significant detriment to the special architectural or historic interest, character or setting of the nearby listed building and would not adversely affect the character and appearance of the Conservation Area, thereby sustaining the significance of these heritage assets.

Paragraph 134 of the NPPF requires less than substantial harm to designated heritage assets to be weighed against the public benefits of the proposal, including securing its optimum viable use. The harm to the heritage assets is in this case considered on balance to be outweighed by the provision of 30 new homes to contribute to the District's housing land supply (which is currently at less than five year supply) which includes affordable homes, contributions towards improving capacity within existing public services and under the River Mease DCS which will improve the quality of the River Mease SAC.

### **Archaeology**

Paragraph 129 of the NPPF requires local authorities to identify and assess the particular significance of heritage assets that may be affected by a proposal, and this assessment should inform the consideration of the impact of the proposal on a heritage asset in order to avoid or minimise conflict between the heritage assets conservation and any aspect of the proposal.

The Leicestershire and Rutland Historic Environment Record (HER), indicates that the proposed development lies in an area of potential archaeological interest, adjacent to the medieval and post-medieval historic settlement core of Packington. Whilst appraisal of the HER indicates that little or no previous archaeological investigation has been undertaken within or in the vicinity the development area, the peripheral situation of the site, supported by consideration of aerial photographic evidence indicates that the site lies within the open fields surrounding the historic village.

Appraisal of available aerial photographs suggests the presence or former presence of ridge and furrow earthworks within the site, indicating the site lies within the former extent of the openfield system that would have surrounded Packington through much of the medieval and post-medieval periods. The County Archaeologist advises that this indicates that the area has a low potential for significant medieval or later archaeological remains.

The villages of Leicestershire and the wider English Central Midlands, appear to have evolved alongside their open field systems, during the later 1st millennium AD, the earliest reference we have to Packington comes from the Domesday Book (late 11th century), at which point it is in the possession of the St Mary's Abbey, Coventry. The village name, however, indicates an earlier Anglo-Saxon origin for the settlement, at a time when the landscape seems to have comprised a more dispersed scatter of hamlets and farmsteads. It is possible that elements of this earlier landscape survive with the application area. It should also be underlined that in the absence of evidence to the contrary, the presence of earlier Roman or prehistoric archaeological remains cannot be dismissed

Buried archaeological evidence spanning the period from the prehistoric to the earliest evolution of the village (potential yet unidentified heritage assets) could be present within the development area. Paragraph 141 of the NPPF states that developers are required to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact of development. Therefore,



the County Archaeologist has no objections to the proposal subject to the imposition of conditions for an appropriate programme of archaeological investigation and recording in order to safeguard any important archaeological remains potentially present on the site. Subject to conditions, it is considered that the proposal would comply with the provisions of the NPPF.

### **Trees**

An arboricultural report has been provided during the course of the application, which considers the implications of the development of the site on 7 trees along the site frontage around the proposed access position. All but one of these trees are located outside the boundaries of the site, within the public highway. The tree within the site (identified as T1) lies to the west of the proposed access position and is identified as being in poor condition with limited life expectancy. The remaining six trees (T2-T7) are located just outside the site within the highway and are identified as trees of low to moderate condition with two (T5 and T6) being unsuitable for retention due to structural defects.

The current vehicular access to the site comprising a hardsurfaced splayed track lies between trees T3 and T4 and therefore, to some extent, the roots of these trees will already have been affected by these works. The proposed access position would require the removal of tree T3 and would encroach into the root protection areas of trees T2 and T4 where the root protection zone extends outside the canopy of the tree and the highway construction works would be required under/close to the canopy of the tree. All of these trees are identified within the submitted tree survey as being in moderate physiological condition with a life expectancy of 20 years.

None of the trees that would be affected are formally protected by a Tree Preservation Order and therefore, could be removed by the County Highways Authority (the current land owners) at any time. There is potential for the access/highway works to affect the trees but the extent to which this would affect their life expectancy is unknown.

Notwithstanding alterations to the indicative layout to show how pedestrian access could be amended to reduce works in the highway, the Council's Tree Officer raises concern about the loss of tree T3 and the potential impacts arising from proposed access upon trees T2 and T4. However, the concerns of the Tree Officer have to be weighed against other material considerations and, whilst there would be some adverse impacts in this regard, these concerns would not be so significant as to outweigh the considerations in favour of the scheme. When considered in the context of the five year housing land supply issue, and the benefits of releasing the site to assist in maintaining such supply, it is considered that the potential loss of/harm to unprotected trees is not sufficient to suggest that planning permission should be refused.

### **Drainage and Flood Risk**

Concerns have been raised by residents in relation to the capacity of the local drainage network and the proposal contributing to existing flooding problems in the area.

The site lies within Flood Zone 1 and as it is over one hectare in size, a Flood Risk Assessment (FRA) has been submitted. With regard to flooding of the land, the FRA provides that as the site is not at risk of fluvial flooding in storm events up to 1 in 100 years which means that the site has an estimated annual probability of flooding of less than a 0.1% chance in any given year and is appropriate for development. Hydraulic modelling also shows that the development on the site would be located beyond the extents of flood zones 2 and 3 for the watercourse flowing adjacent to the site. The vulnerability of the development to flooding from all other sources, such as pluvial, sewerage, groundwater and artificial water bodies has been assessed

and found to pose only a low risk to the development, subject to mitigation measures being implemented.

With regard to flooding from the land, the FRA provides that the primary flood risk generated by the new development is most likely to be the risk posed to others by surface water run-off. The existing site is greenfield with no hardsurfaced areas and does not benefit from an existing surface water drainage network. Therefore, surface water conveys overland towards the watercourse flowing alongside the western boundary of the site. The proposed development of the site would include impermeable areas, which would generate larger flows and volumes of run-off. Therefore, it is recommended that surface water drainage arrangements for any development on the site should be such that the volumes and peak flows of surface water leaving the site are no greater than greenfield rates of run-off. The FRA provides that the development would mimic surface water flows from the undeveloped site and discharge post development flows into the watercourse adjacent to the site. Drainage on the site would be designed in accordance with sustainable principles and attenuation will store flows up to the 1 in 100 year (+30% climate change allowance) event and limit outflows to Greenfield discharge rates.

The Environment Agency have been consulted on the application and considers the development to be at low risk of flooding and has no objections to the proposal subject to a condition concerning surface water drainage based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development. They have also advised that there should be no raising of ground levels or the storage of materials within the 100 year flood plain extent and that there should be no buildings, structures or alterations to ground levels within 4m of the top of the bank of any watercourse,

Severn Trent Water has been consulted on the application but no comments have been received. A chasing request has been made and should any comments be received, they will be reported to Members via the update sheet. Consideration of the capacity of STW's treatment works is set out below in the section relating to impact on the River Mease SAC. Natural England has no objections to the application proposals.

Given the lack of objection from the Environment Agency it is considered that a reason for refusal relating to flood risk and capacity of the drainage system could be not justified.

### **Impact on the River Mease Special Area of Conservation/SSSI**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC), which was designated in 2005. A tributary of the River Mease runs alongside the western boundary of the site and the River Mease itself is within 200m of the site. The 2010 Habitat Regulations and Circular 06/2005 set out how development proposals within an SAC should be considered. Regard should also be had to national planning guidance in the NPPF. During 2009 new information came to light regarding the factors affecting the ecological health of the River Mease SAC, in particular that the river is in unfavourable condition due to the high level of phosphates within it. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Therefore an assessment of whether the proposal will have a significant effect on the SAC is required.

The River Mease Water Quality Management Plan (WQMP) has been drawn up to ensure there is no adverse impact on the SAC from further development and includes an action to establish a developer contribution framework to fund a programme of actions to restore and provide new benefits to the river. The River Mease Developer Contribution Scheme (DCS) has been produced to meet this action of the WQMP so that the costs of improving the quality of the water

in the river are met by potential developers. The DCS advises that all new development which contributes additional wastewater to the foul water catchment areas of the treatment works within the SAC catchment area will be subject to a developer contribution. The DCS has been assessed against and is considered to meet the three tests of the 2010 Community Infrastructure Levy Regulations, which are also set out at paragraph 204 of the NPPF.

Local concern has been raised about the capacity of Severn Trent Water's receiving treatment works at Packington to accommodate the proposed development. The flows from the new dwellings need to be taken into account against the existing headroom at Packington. At March 2013, the capacity was available for 1076 dwellings but this is reduced by the number of dwellings that have already received a permit from Severn Trent Water and/or are under construction, and by the number of dwellings that have been granted planning permission. Taking these into account the capacity available at the treatment works is reduced. However, it has been confirmed that there is capacity available at Packington Treatment Works to accommodate the proposed development, especially given the impending closure of the Arla site in Ashby which will add approximately 1900 additional houses to the headroom figure in the 2013 capacity report, and as such raise no objection to the proposal.

When having regard to the existing use of the site, the proposal for 30 dwellings would increase the foul drainage discharge from the site and as such it is subject to the requirements of the DCS. The application proposes that foul drainage would be dealt with via the mains sewer system and confirms that the applicant will pay the required contribution under the DCS.

However a condition requiring that only a mains connection is used at the site would be required as the use of other means for foul drainage discharge could adversely affect the SAC. The western boundary of the site abuts a stream which feeds into the Gilwiskaw Brook which is a tributary of the River Mease and as shown on the indicative layout, there is sufficient space within the site to accommodate the proposed number of dwellings with a 5m buffer zone along the western boundary between properties and the stream in order to prevent any direct impact on its channel and banks. The Environment Agency has confirmed that there should be a 4m buffer from the top of the bank of the stream where no new buildings or raising of levels should occur, and therefore, this would need to be controlled by condition.

It is proposed that surface water from all elements of the proposal will discharge into a sustainable urban drainage scheme on site to ensure that unnecessary water volume does not go to the sewage treatment plant and this can be required by condition. Subject to the imposition of conditions concerning the storage and disposal of surface water run-off from the site, the Environment Agency are satisfied with the proposal.

Natural England has no objections in relation to impact on the SAC/SSSI subject to a condition. Therefore, it can be ascertained that the erection of 30 dwellings on the site will not, either alone or in combination with other plans or projects, have a significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI.

### **Protected Species/Ecology**

The application submission was accompanied by an Ecology Report which found no evidence of protected species on site but noted that some of the larger trees around the site may offer potential roost sites for bats and may require further survey work if they are to be removed/pruned. The report found that an inspection of the newer building on the eastern side of the site may also be required prior to demolition works and recommended that works involving the removal of vegetation/buildings that may be potential nesting sites for breeding

birds should be undertaken outside the breeding season. The report also concluded that the eastern section of the hedgerow fronting the site was found to meet the criteria for a Local Wildlife Site (LWS) but the grassland on the site would not meet LWS criteria.

The County Ecologist has been consulted on the application and initially raised concern about the lack of consideration given to badgers within the Ecology Report. The applicant's ecological consultant has since confirmed that although not mentioned specifically within the report, they were included within the field survey and as no signs of badger use were found on the site and covered in the report by the phrase 'no evidence of other protected species was found on the site'. The County Ecologist is satisfied that no further badger surveys are required at this time but as they are known within the vicinity of the site, an updated badger survey should be provided prior to development commencing on site.

The County Ecologist has raised concern about the removal of trees which may have bat roosting potential. The agent has advised that two of the trees recommended for removal within the arboricultural report which have deadwood and decay present, have potential for roosting bats. The consulting ecologist advises that a precautionary bat survey would need to be undertaken prior to the felling of the trees to ensure that protected species are not adversely affected by the development. Should the further survey demonstrate that there would be a loss of bat habitat, the agent has suggested a condition requiring the creation of additional habitat as mitigation.

The County Ecologist has been consulted on this issue but a response had not been provided at the time of writing this report. Any comments received will be reported to Members via the update sheet.

The site lies within the catchment of the River Mease Special Area of Conservation (SAC) and consideration of the potential impacts of the development on this designated site have already been covered in the section above.

Natural England raises no objection to the proposed scheme. Therefore, subject to the imposition of suitably-worded conditions the submitted scheme is considered acceptable in ecological terms.

### **Developer Contributions**

Paragraphs 203 and 204 of the NPPF set out the Government's policy in respect of planning obligations and, in particular, provide that planning obligations should be:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the proposed development.

Equivalent legislative tests are contained within the Community Infrastructure Levy (CIL) Regulations 2010.

### *Healthcare*

NHS England have sought £10,093.91 towards the costs of providing additional accommodation at Ashby Health Centre for additional patients arising from the development. The North Street Practice currently has capacity to manage additional patients based on the current patient ratio split between the two practices. No issues have been raised with regard to the cumulative impacts on healthcare provision of the proposal and the other major housing application for Packington reported elsewhere in this agenda. The applicant has confirmed their agreement to pay this developer contribution.

*Libraries*

Leicestershire County Council is seeking a contribution of £2140 to provide additional capacity at Ashby de la Zouch Library, which is the nearest library. The applicant has confirmed their agreement to pay this developer contribution. LCC has been re-consulted following the reduction in the number of dwellings proposed and any revised comments will be reported to Members via the update sheet.

*Education*

Leicestershire County Council is seeking the following contributions to provide additional places at the nearest schools where there is no capacity:

- a contribution of £62,566.60 is sought for the high school sector as there would be a deficit of 28 pupil places (4 created by the development) within high schools within a 3 mile walking distance of the site.
- a contribution of £64,243.06 is sought for the upper school sector as there would be a deficit of 119 pupil places (4 created by the development) within upper schools within a 3 mile walking distance of the site.

No contribution is sought for the primary school sector as there is currently an overall surplus for the area of 13 places when taking into account primary schools within a 2 mile radius of the site. The applicant has confirmed their agreement to pay this developer contribution.

LCC has been re-consulted following the reduction in the number of dwellings proposed and their comments are awaited. Furthermore, the District Council has sought to clarify the position in terms of any cumulative impact from the two major housing schemes considered on this Agenda to ensure any resulting school deficit could be met through an appropriate financial contribution. Any revised comments will be reported to Members via the update sheet.

*Play Area/Open Space*

Under the District Council's Play Area Supplementary Planning Guidance, on-site children's play provision is required at a rate of 20 square metres per dwelling. Given that 30 dwellings are proposed, this would require a play area of not less than 600 square metres. No on-site children's play area is proposed as part of this proposal and instead it is proposed to make a contribution towards the existing open space at the recreation ground off Measham Road of £1235 per dwelling (£37,050), which would allow the Parish Council some flexibility as to how the money is spent. The applicant has confirmed their agreement to pay this developer contribution.

The Council's SPG regarding children's play areas specifies that a commuted sum may be acceptable for sites that are within a reasonable walking distance of 400 metres. The distance to the existing play area/recreation ground is around 640 metres, which would be in excess of the 400 metres walking distance as suggested in the SPG. However, guidance in Building for Life indicates that a point should be awarded for community facilities (such as play areas) being within a short distance (defined as 800 metres), and the proposals would satisfy this criterion. Taking into account the alternative distance recommended under Building for Life (which the Council has adopted as a design quality indicator), it is considered that a commuted sum towards upgrading and improving the existing play area in the village would be acceptable in this instance. An obligation relating to management plans for any open space, landscaping and SUDS to ensure that the land is properly established, maintained and managed in the future would also be required.

*Affordable Housing*

Under the Council's Affordable Housing SPD, 30% affordable housing is required on sites of 5 dwellings or more, and this would equate to 9 dwellings for the current proposal. The applicant is proposing that 8 of the dwellings be affordable, which would just fall short of the requirements of the SPD. The Council's Strategic Housing Team have been consulted on the application and have advised that they are satisfied with the reduced provision in this case, on the basis that the affordable housing provision includes two single storey units (two-bed), there are no age restrictions attached to these properties and they are provided as affordable rented properties.

*Highways Contributions*

The County Highway Authority has also requested the following contributions to encourage sustainable travel to and from the site, achieve modal shift targets, and reduce car use:

- (i) Travel Packs - to inform new residents from first occupation what sustainable travel choices are in the surrounding area;
- (ii) Six-month bus passes, two per dwelling (2 application forms to be included in Travel Pack and funded by the developer) - to encourage new residents to use bus services, to establish changes in travel behaviour from first occupation and promote usage of sustainable travel modes other than the car;
- (iii) Improvements to the two nearest bus stops (including raised and dropped kerbs to allow level access) - to support modern bus fleets with low floor capabilities - £3263.00 per stop;
- (iv) Information display cases at the two nearest bus stops - to inform new residents of the nearest bus services in the area - £120.00 per display.
- (v) contribution towards equipping the nearest bus stop(s) and suitable bus route with Real Time Information (RTI) system.

The Highway Authority has previously advised that the contributions are related to the new development as they seek to make bus services more attractive and encourage their use by future residents of the development, and to encourage behavioural shift in terms of travel choice at an early stage before car use becomes ingrained. Furthermore, the Highway Authority has considered that development would not be acceptable without these measures, as without them there is likely to be less use of buses and more car journeys. Consequently the development will be less sustainable, congestion on the network would increase, and the policies in LTP3 would not be complied with.

The Highway Authority also requests agreement of a construction traffic route which is considered to be necessary in this case given the site's proximity to residential areas and the village centre and that although existing weight restrictions are in place they would not prevent HGVs from passing through the village to access the site itself. The County Highways Authority also advises that the routing agreement will enable the Authority to prevent construction traffic from using unsuitable routes in the interests of highway safety. The applicant has confirmed their agreement to the requested developer contributions/requirements. LCC has been re-consulted following the reduction in the number of dwellings proposed and any revised comments will be reported to Members via the update sheet.

*River Mease DCS*

A contribution under the River Mease DCS is required (as outlined earlier in the report) but an exact figure for the contribution cannot be determined at this stage (although the maximum amount would be £10,620) as the number of bedrooms in each dwelling would not be finalised until the reserved matters stage.

*National Forest Company*

The application site extends to 1.49ha and the National Forest Planting Guidelines require 20% of the site area to be for woodland planting and landscaping. This would equate to an area of 0.29ha and would need to be secured through a Section 106 agreement as either on-site, off-site or by way of a financial contribution equating to £5,800. The applicant's agent has confirmed agreement to the inclusion within a S106 agreement of a requirement for the provision of planting as set out by the National Forest Company.

*Other Contributions*

No requests for contributions have been received from Leicestershire Police, the Council's Leisure team and the County Council has advised that a contribution towards civic amenity sites is not required.

*Summary*

Overall, it is considered that the proposed obligations would comply with the relevant policy and legislative tests as set out in the NPPF and the CIL Regulations, and would represent appropriate contributions towards the infrastructure and other needs of the proposed development. The applicant has agreed to all of the above obligations in principle and the legal agreement would be negotiated following any resolution to grant planning permission. The District Council would continue negotiations with consultees and the applicants to ensure the appropriate level of contributions that have been sought could be secured through a S106 agreement.

**Other Matters**

The site lies approximately 800 metres to the east of the proposed route of HS2. Any potential adverse effects on residents would be expected to be limited due to mitigation measures to be included in the HS2 design having regard to the need to protect nearby dwellings. However, it is considered that only limited weight can be attributed to HS2 as a material planning consideration at this stage in HS2's development. The Government is currently consulting on the proposed Phase 2 (i.e. West Midlands to Manchester and Leeds) connections, and the route is not fixed at this time; Phase 2 is not currently subject to the safeguarding mechanism which applies to the Phase 1 (London to West Midlands) section.

In respect of the concerns raised in the letters of representation that have not been addressed above, impacts on views and lifestyle, the capacity of the electricity supply and broadband networks are not planning matters that can be taken into account in the determination of planning applications. Matters relating to noise and disturbance during construction works are covered by separate Environmental Health legislation. Other sites will be affected by a different set of circumstances and it is a fundamental tenet of the planning system that every application is determined on its own merits. If any further applications are submitted for the site then they will also be considered on their own merits. Consideration is given to all policies set out in the Local Plan and the NPPF when assessing planning applications.

**Conclusions**

As set out in the main report above, whilst the site is outside the Limits to Development in the adopted Local Plan and constitutes greenfield land, such general policies that restrain the supply of housing are to be considered as not up-to-date given the inability of the Council to demonstrate a five-year supply of deliverable housing land. Thus the site's release for housing is considered suitable and will contribute towards meeting the District Council's obligations in respect of housing land supply (and the approach taken in respect of such within the NPPF). Packington is a sustainable location for the level of development proposed for this site and the proposal would not result in a significant increase in housing development within the village.

It is considered that the site is of sufficient size to accommodate the number of units proposed, without resulting in any significant adverse effects on the character of the area and the historic environment, trees and ecology, residential amenities, highway safety issues, flood risk, drainage or the River Mease SAC/SSSI, and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services.

The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of such development as set out in that document. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

**RECOMMENDATION, PERMIT, subject to the signing of the Section 106 Agreement and the following condition(s):**

- 1 Outline permission
- 2 Submission of Reserved Matters
- 3 Reserved Matters to include finished floor levels/ground levels
- 4 Reserved Matters to include buffer zones of at least 5m from natural vegetation along the boundaries of the site which except for the proposed
- 5 Approved plans
- 6 REM landscaping to include an ecological/landscape management plan
- 7 Updated badger survey (pre-commencement)
- 8 Bat survey of all felled trees
- 9 REM accompanied by a further Building for Life assessment
- 10 Retention of hedgerows
- 11 Details of surface water disposal including SUDS
- 12 Construction management statement for the site (pollution management) to protect the River Mease
- 13 Development in accordance with FRA and specified mitigation measures
- 14 No raising of ground levels or storage within 100 year floodplain
- 15 No buildings (including sheds, cycle storage or garages), structures (including gates,



- walls and fences) or raising of ground levels within 4m of the top of any bank of any river/watercourse
- 16 Mains sewer system only
  - 17 Tree Protection including protective fencing to RPA of trees/hedgerows to be retained on/overhanging the site, design and method statement for
  - 18 Restriction on times for destruction and removal of vegetation (bird breeding)
  - 19 Bat survey of trees to be felled
  - 20 Programme of archaeological work
  - 21 Completion of archaeological site investigation and post investigation assessment
  - 22 Off-site works to Normanton Rd (footways and street lighting) and gateway village entry treatment
  - 23 Access details and surfacing
  - 24 Highway drainage
  - 25 Obstructions to vehicular access - 7m set back distance
  - 26 Access gradient
  - 27 Construction traffic site management plan
  - 28 Closure of existing accesses

**Notes to applicant**

- 1 Positive and proactive statement
- 2 County Highways Authority notes:
  - works in the highway
  - LCC Lead Local Flood Authority- SUDs
  - permits/agreements under the Highways Act
  - Section 38 agreement
  - highway boundary
  - CBR tests
- 3 Advice of the County Ecologist
- 4 Bats and breeding birds advisory notes
- 5 Coal Authority notes.
- 6 The Council's Urban Designer recommends a note to applicant to highlight that there would be an expectation from the Local Planning Authority that the scheme draws inspiration from the positive and distinctive characteristics of the village through layout, form and appearance (including materials). Consideration must also be afforded to the setting of the nearby listed building, key views into the site, the relationship of the site to Normanton Road and to softening the boundaries where it meets the open countryside beyond to avoid an abrupt end to built form within the village. The indicative layout of the outline application should inform future design development as these establish key

- design principles for the layout of the development, building orientation, structural landscaping and street types.
- 7 Advice of the Environment Agency dated 31 January 2014.

# UPDATE SHEET

## PLANNING COMMITTEE – 10<sup>th</sup> June 2014

To be read in conjunction with the  
Head of Regeneration and Planning's Report (and Agenda)

This list sets out: -

- (a) Additional information received after the preparation of the main reports;
- (b) Amendments to Conditions;
- (c) Changes to Recommendations

### MAIN REPORT

#### A2 09/01002/OUTM – Land to the south of Normanton Road, Packington

##### Statutory Consultee Update:

The following consultation responses have been received from statutory consultees in response to the amended plans showing 30 dwellings on the site:

Severn Trent Water Ltd – no comments have been received.

Coal Authority were consulted following a request from the County Planning Authority. The Coal Authority has confirmed that the site is not within a defined Development High Risk Area and therefore, a risk assessment is not required. A Standing Advice note to applicant is recommended and this is already including within the officer report found in the Main Agenda.

County Highways Authority has advised that following a recent review of fees and costings for Real Time Information (RTI) systems, and more certainty over bus service provision within Packington (a new commercial service is to operate), a revised developer contribution of £5840 is now sought.

Leicestershire County Council- Highway Transportation and Waste Management Authority advises that a request for a contribution towards civic amenity sites will not be required.

Leicestershire County Council Library Services have requested a revised contribution of £1830.

Leicestershire County Council Education Authority has requested a revised contribution of £137,679.05, which is broken down as follows:

- Primary School Sector; no contribution sought (Justification- when taking into account the proposed development, there would be a deficit of 12 school places but when having regard to other primary schools within a 2 mile walking distance of the development, there is an overall surplus of 9 spaces).
- High School Sector; a contribution of £53,628.51 is sought (Justification - when taking into account the proposed development, there would be a deficit of 64 school places and there are no other high schools within 3 miles of the development and therefore, a claim is justified).
- Upper School Sector; a contribution of £55,065.48 is sought (Justification - when taking into account the proposed development, there would be a deficit of 203 school places and there are no other upper schools within 3 miles of the development and therefore, a claim is justified).

The applicant has confirmed their agreement to the revised contributions.

A cumulative assessment has been provided by the County Education Authority, which considers whether the existing schools could accommodate the educational needs expected from both of the housing developments proposed for Packington (a total of 72 dwellings). They have advised as follows:

- Primary School Sector; no contribution sought (Justification- when taking into account the proposed development, there would be a deficit of 21 school places but when having regard to other primary schools within a 2 mile walking distance of the development, there is an overall surplus/deficit of 0 spaces).
- High School Sector; a contribution of £121,557.96 is sought (Justification - when taking into account the proposed development, there would be a deficit of 68 school places and there are no other high schools within 3 miles of the development and therefore, a claim is justified).

This contribution would be used to accommodate the capacity issues created by the proposed development by improving and remodelling or enhancing existing facilities at Ashby Ivanhoe College.

- Upper School Sector; a contribution of £124,815.09 is sought (Justification - when taking into account the proposed development, there would be a deficit of 207 school places and there are no other upper schools within 3 miles of the development and therefore, a claim is justified).

This contribution would be used to accommodate the capacity issues created by the proposed development by improving and remodelling or enhancing existing facilities at Ashby School.

In conclusion, the County Education Authority are satisfied that the cumulative educational impacts arising from both developments can be accommodated with developer contributions.

### **Third Party Representations Update:**

One letter of neighbour representation has been received raising the following comments:

- notwithstanding the minor reductions in numbers for both housing schemes, there is little change in the impact on the village or the adjacent countryside, this remains a large block of housing, divided by a road but nevertheless is seen as a single site at the furthest point from facilities in the village and from Ashby;

- the assessment of the percentage increase is critically flawed as there are 300 (not 342) properties within the main built up area of the village and therefore, together the two major housing proposals would result in a 26% (not 22.5%) increase which exceeds that envisaged in the Core strategy;
- the level of growth does not take into account a recent permission for 2 dwellings on Vicarage Lane or a site within the village that has recently been put on the market and could accommodate residential development and there are also figures emerging which show that the latest housing requirements are lower than was the case with the Core Strategy and so less numbers are needed across the district as a whole;
- there are small sites within the village which can contribute to raising housing numbers in small numbers which together would add up to a reasonable contribution to housing numbers;
- the shortage of housing land alone does not justify the loss of countryside as demonstrated by a recent appeal for a dwelling in the countryside and the current proposal should be refused.

In response to the additional third party comments raised that have not already been covered in the report within the Main Agenda, officers can advise Members as follows:

In response to the additional third party comments raised that have not already been covered in the report within the Main Agenda, officers can advise Members as follows:

*-‘The assessment of the percentage increase is critically flawed’*

The number of properties within Packington has been recalculated using 2011 Census information from the Office of National Statistics (a reputable source of information), which confirms that there are 324 properties within Packington. This has implications for the level of growth and revised calculations are provided below:

This proposal for 30 dwellings would represent a 9.2% increase in the number of dwellings within the village. The 30 proposed dwellings alongside the 5 new dwellings built since 2006 and the outstanding commitments for 1 dwelling would equate to a 11% growth in the village since 2006. Therefore, the proposed development on its own, and with additional dwellings/commitments, would represent a lower level of growth than that for North West Leicestershire as a whole. As such it is considered that the proposal would not result in a significant increase in housing development within the village.

When considered cumulatively with the other major housing proposal for the village reported earlier on this agenda (a maximum of 72 dwellings), this would equate to a 22% increase in new dwellings within the village, which would represent a higher level of growth anticipated for the villages than proposed across the District as a whole in the GL Hearn Study. When taking into account new dwellings/commitments this growth increases to 23.7% and 24% respectively.

This revised figure (representing the level of growth) is slightly higher than that envisaged for the District as a whole and it is higher than that envisaged for smaller settlements within the Core Strategy. However, even if a development takes the scale of growth in a settlement over that which was envisaged district wide in the Core Strategy, this should not be a reason for refusal on its own (particularly as no weight can be attached to the provision of the Core Strategy). A particular adverse impact would have to be demonstrated.

The application has been considered on site and by statutory consultees and found to be acceptable in terms of its impacts on the countryside, the setting and character of the settlement, highway safety etc. Furthermore, when having regard to the sustainability credentials of the sites, the proposals would represent a sustainable form of development as advocated in the NPPF.

It is considered that this level of cumulative development (growth) for Packington is considered acceptable and therefore, the revised calculations do not change the recommendation to the Planning Committee.

*-The level of growth does not account for a recent permission for 2 dwellings'*

The application referred to has been recommended for approval subject to a S106 Agreement but this has not yet been completed and therefore, planning permission has not been issued for these dwellings.

*-The shortage of housing land alone does not justify the loss of countryside'*

The appeal decision referred to is for an isolated site located away from the nearest settlements of Melbourne and Kings Newton and is not considered to be directly comparable to the current application proposal.

#### **Other Updates:**

A letter has been received from Andrew Bridgen MP who provides the following comments on the application:

' . . . I have received a number of objections to the various Planning Applications from residents of the village and I understand over 70 were lodged with the Council. I have had the issues of the principle and sustainability of the proposal and associated flood risks raised in correspondence to me. I would ask that your committee consider all of these local objections to the application and whether this scale of house building is appropriate in the village.'

As a result of a technical error, the report provided in the main agenda does not provide the applicant's details, which are as follows:

- Mr S Brassington and Mr S Bryan

**RECOMMENDATION: NO CHANGE TO RECOMMENDATION.**



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Proposed development of 345 dwellings (use class C3), doctors surgery/health centre (use class D1), community centre (use class D1), access, associated infrastructure, open space, landscaping and play area (outline - all matters other than part access reserved)

Report Item No  
A3

Land Laying To The West Of Whitehill Road And South Of Ibstock Road Ellistown Leicestershire

Application Reference  
14/01106/OUTM

Applicant:  
Gladmans Developments Ltd

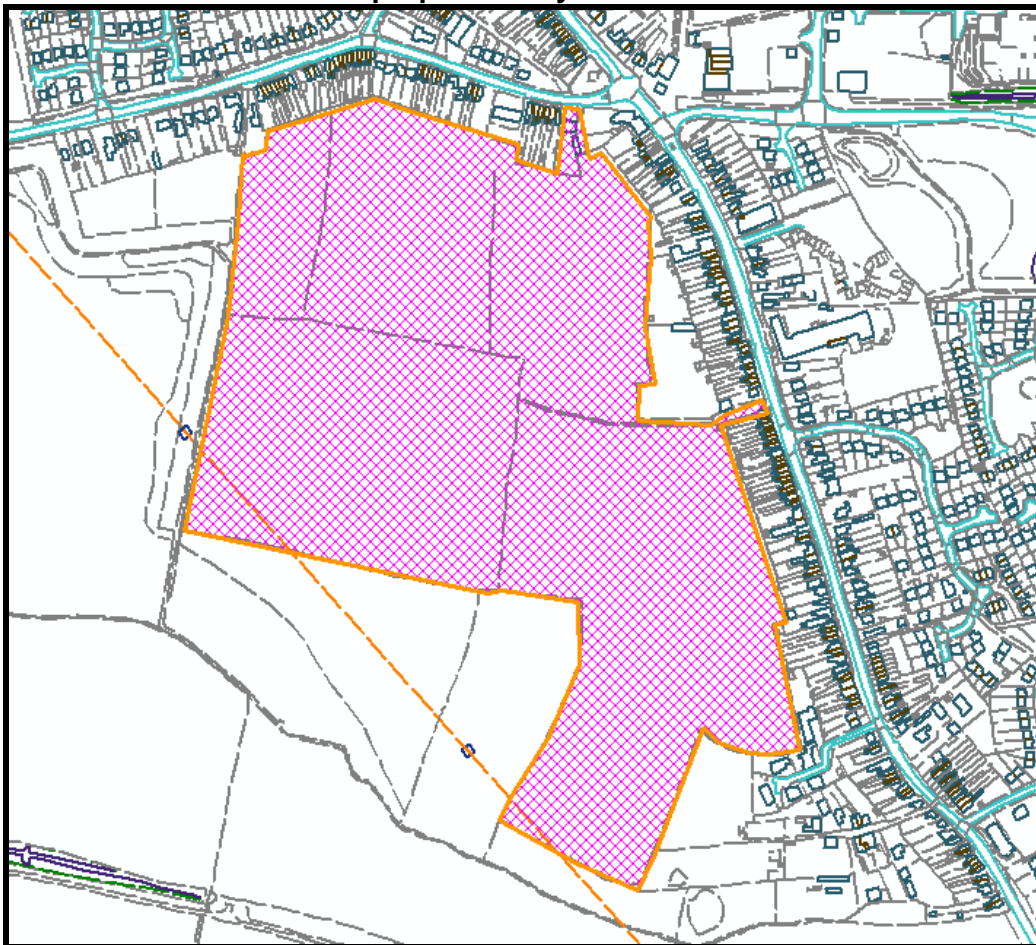
Date Registered  
26 November 2014

Case Officer:  
James Knightley

Target Decision Date  
25 February 2015

Recommendation:  
REFUSE

Site Location - Plan for indicative purposes only



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## **Executive Summary of Proposals and Recommendation**

### **Proposal**

This application seeks outline planning permission for residential development of up to 345 dwellings and associated development.

### **Consultations**

Members will see from the main report below that objections have been received in respect of the proposals (including from Ellistown and Battleflat Parish Council); insofar as other statutory consultees, are concerned, comments in respect of mineral sterilisation and highway issues have been received from Leicestershire County Council.

### **Planning Policy**

The application site lies outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. Also material to the determination of the application, however, is the supply of housing in the context of the National Planning Policy Framework (NPPF).

### **Conclusion**

The report below indicates that, whilst the site is a greenfield site outside Limits to Development, and notwithstanding its significant scale in relationship to the existing extent of Ellistown, having regard to the site's proximity to the built up area of the village and the need to demonstrate and maintain a five year supply of housing land within the District, the proposals would not necessarily be unacceptable in this regard. However, development of the site would sterilise a known mineral resource contrary to national and local planning policies, there are a number of unresolved technical issues in respect of transportation, and the application as submitted does not provide for appropriate contributions to infrastructure required to support the scheme. On this basis, the proposals would not be considered to constitute sustainable development.

### **RECOMMENDATION:-**

#### **REFUSE**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

This is an outline planning application for residential development of a site of 19.68 hectares (principally in agricultural use) for up to 345 dwellings and associated development on land to the south of Ibstock Road and west of Whitehill Road in Ellistown. The application as originally submitted proposed the erection of up to 400 dwellings, but has been amended during the course of its consideration by the Local Planning Authority. In addition to the proposed dwellings, permission is also sought for a doctors' surgery / health centre, a community centre, and landscaping / public open space / children's play.

The site is adjacent to various other uses, including other agricultural land, existing residential development (to the north and east on Ibstock Road and Whitehill Road respectively) and woodland. The Ibstock brickworks is located further to the west.

Vehicular access is proposed to be provided by way of a new priority access from Ibstock Road, formed by way of demolition of the existing dwelling to no. 5 Ibstock Road, and located approximately 35 metres from the Midland Road / Whitehill Road / Ibstock Road mini-roundabout which, along with the adjacent Beveridge Lane / Whitehill Road mini-roundabout, would be reconfigured in association with the development. In terms of other matters of access (and including non-vehicular routes into the site, and vehicular, cycle and pedestrian routes through the site), these are reserved for consideration at the reserved matters stage(s), although an illustrative masterplan and a development framework plan indicate proposed pedestrian connections to the adjacent rights of way network and to Whitehill Road via an existing vehicular access between nos. 90 and 100 Whitehill Road (with this access also serving as an emergency vehicular access to the site).

### 2. Publicity

224 no. neighbours have been notified. (Date of last notification 09 December 2014)

Site Notice displayed 15 December 2014

Press Notice published 17 December 2014

### 3. Consultations

Ellistown And Battleflat Parish Council  
 County Highway Authority  
 Environment Agency  
 Severn Trent Water Limited  
 Head of Environmental Protection  
 NWLDC Tree Officer  
 County Archaeologist  
 LCC ecology  
 NWLDC Urban Designer  
 National Forest Company  
 County Planning Authority  
 LCC Development Contributions  
 NHS Leicester, Leicestershire And Rutland Facilities Management  
 NWLDC Development Plans  
 Head Of Leisure And Culture

Manager Of Housing North West Leicestershire District Council  
Police Architectural Liaison Officer  
LCC/Footpaths  
NWLDC Footpaths Officer  
Highways Agency  
Head Of Street Management North West Leicestershire District  
National Grid UK  
Sport England- loss of playing field  
NWLDC Urban Designer

#### 4. Summary of Representations Received

**Ellistown and Battleflat Parish Council** comments as follows:

- Proposals out of scale with the existing village
- Access issues given existing road structure limitations and proximity to the roundabout
- Increased traffic / congestion
- Insufficient infrastructure to accommodate existing population let alone the increased population (the primary school is full, there is no community centre, youth club or medical centre and there are few shops)
- Loss of agricultural land / countryside
- Emergency access inadequate
- Insufficient affordable housing

Further to its above comments in respect of the community centre issue, the Parish Council has clarified its position. It advises that, whilst the Parish Council considers that provision of a community centre is one of its biggest priorities and would be vastly beneficial to the Parish, the delivery of such a facility would not outweigh the other material considerations / concerns listed above.

**Environment Agency** has no objections subject to conditions

**Highways Agency (now Highways England)** has no objections

**Leicester-Shire and Rutland Sport** requests a developer contribution of £329,572 in respect of sport facilities

**Leicestershire County Council Highway Authority** objects on the basis of the failure to demonstrate an appropriate and safe form of development and, in particular, in respect of the proposed site access and nearby mini-roundabouts

**Leicestershire County Council Highway Transportation & Waste Management Authority** requests a developer contribution of £22,556 in respect of civic amenity facilities at Coalville Civic Amenity site

**Leicestershire County Council Local Education Authority** requests developer contributions of £2,247,782.98 in respect of additional provision in the primary, high, upper and special school sectors

**Leicestershire County Council Library Services Development Manager** requests a developer contribution of £10,410 in respect of library facilities at Ibstock Library

**Leicestershire County Council Landscape Officer** has no comments

**Leicestershire County Council Ecologist** has no objections subject to conditions

**Leicestershire County Council Mineral Planning Authority** considers that, having regard to the requirements of Policy MDC8 of the adopted Leicestershire Minerals Development Framework Core Strategy and Development Control Policies, the arguments made for the development by the applicants do not constitute an "overriding need" which would warrant the sterilisation of a proven mineral resource

**Leicestershire County Council Rights of Way Officer** has no objections subject to financial contributions to upgrading rights of way within the local area being made

**Leicestershire Police** objects unless a developer contribution of £124,436 in respect of policing is provided

**National Forest Company** has no objections subject to conditions and subject to Section 106 obligations

**National Grid** has no objections

**NHS England (Leicestershire and Lincolnshire Area)** requests a healthcare contribution of £60,133.63

**North West Leicestershire District Council Cultural Services Officer** advises that, if the right of way to the west of the site remains on its current route, no footpath diversion would be necessary

**North West Leicestershire District Council Environmental Health** has no objections subject to conditions

**Severn Trent Water** has no objections subject to conditions

**Sport England** supports the proposals subject to provision of on-site sports facilities (or a contribution to facilities off-site) if there is evidence of an identified need

### **Third Party Representations**

12 representations have been received, objecting on the following grounds:

- Loss of on-street car parking (and including as a result of proposed yellow lines to the site access) - if approved, rear parking should be provided to existing dwellings
- Lack of consultation prior to application's submission - application is a "done deal"
- Notifications sent out in pre-Christmas period
- Insufficient access
- Proposals would turn village into a town
- Increased traffic / congestion
- Contrary to Leicestershire Local Transport Plan 3 and adopted Structure Plan
- Increased confusion from proposed roundabout works
- Adverse impact on highway safety
- Speed limit should be reduced on Whitehill Road
- Loss of view
- Too close to existing properties

- New housing not affordable
- Proposals are driven by greed and Council Tax
- Adverse impact on the area
- Insufficient school and healthcare capacity
- Loss of greenfield land
- Loss of agricultural land
- Insufficient ecological reports
- Proximity of high voltage electricity lines
- Concerns over material on the applicants' website
- Misleading photographs in submitted landscape assessment and Design and Access Statement
- Insufficient information in submitted ground investigation report
- District Council has a five year supply of housing
- Application should not be determined prior to Parish Council producing its own policies

In addition, representations have been received on behalf of Ibstock Brick, objecting on a number of grounds, including the following:

- Development would sterilise a significant brick clay resource
- Contrary to the objectives of the NPPF, Planning Practice Guidance and Mineral Safeguarding in England - Good Practice Advice
- Contrary to Policies MCS10 and MDC8 of the Leicestershire Minerals Development Framework Core Strategy and Development Control Policies
- Applicants rely too much on their own assessment of housing need
- Need for housing does not outweigh mineral sterilisation issues, nor does the existence of other clay resources within the minerals safeguarding area

## 5. Relevant Planning Policy

### National Policies

#### *National Planning Policy Framework*

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Save where stated otherwise, the policies of the North West Leicestershire Local Plan as listed in the relevant section below are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application.

The following sections of the NPPF are considered relevant to the determination of this application:

- Paragraph 14 (Presumption in favour of sustainable development)
- Paragraph 17 (Core planning principles)
- Paragraph 32 (Promoting sustainable transport)
- Paragraph 34 (Promoting sustainable transport)
- Paragraph 47 (Delivering a wide choice of high quality homes)
- Paragraph 49 (Delivering a wide choice of high quality homes)
- Paragraph 57 (Requiring good design)
- Paragraph 59 (Requiring good design)
- Paragraph 61 (Requiring good design)

Paragraph 100 (Meeting the challenge of climate change, flooding and coastal change)  
Paragraph 101 (Meeting the challenge of climate change, flooding and coastal change)  
Paragraph 103 (Meeting the challenge of climate change, flooding and coastal change)  
Paragraph 112 (Conserving and enhancing the natural environment)  
Paragraph 118 (Conserving and enhancing the natural environment)  
Paragraph 123 (Conserving and enhancing the natural environment)  
Paragraph 131 (Conserving and enhancing the historic environment)  
Paragraph 135 (Conserving and enhancing the historic environment)  
Paragraph 142 (Facilitating the sustainable use of minerals)  
Paragraph 144 (Facilitating the sustainable use of minerals)  
Paragraph 173 (Ensuring viability and delivery)  
Paragraph 203 (Planning conditions and obligations)  
Paragraph 204 (Planning conditions and obligations)

**Adopted North West Leicestershire Local Plan (2002)**

Save for those parts of the site in the vicinity of the proposed accesses to Ibstock Road and Whitehill Road, the application site is outside Limits to Development as defined in the adopted North West Leicestershire Local Plan.

Policy S2 - Limits to Development  
Policy S3 - Countryside  
Policy E2 - Landscaped Amenity Open Space  
Policy E3 - Residential Amenities  
Policy E4 - Design  
Policy E6 - Comprehensive Development  
Policy E7 - Landscaping  
Policy E8 - Crime Prevention  
Policy F1 - National Forest General Policy  
Policy F2 - National Forest Tree Planting  
Policy T3 - Highway Standards  
Policy T8 - Parking  
Policy H4/1 - Housing Land Release  
Policy H6 - Housing Density  
Policy H7 - Housing Design  
Policy H8 - Affordable Housing  
Policy L21 - Children's Play Areas  
Policy L22 - Formal Recreation Provision

**Other Policies**

**North West Leicestershire District Council Affordable Housing SPD**

Key Principle AH2 provides that affordable housing will be sought on all sites of 15 or more dwellings in the Greater Coalville area (which includes Ellistown and Battleflat for the purposes of the SPD).

Key Principle AH3 requires a minimum of 20% of residential units to be available as affordable housing within the Greater Coalville area.

**North West Leicestershire District Council Play Area Design Guidance SPG**

The District Council's Play Area Design Guidance SPG sets out the relevant requirements in respect of children's play provision required in association with residential development.

**Leicestershire Minerals Development Framework - Core Strategy and Development Control Policies**

Policy MCS10 - Resource Management

Policy MDC8 - Safeguarding Mineral Resources

**6. Assessment****Principle of Development**

Insofar as the principle of development is concerned, and in accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance, includes the adopted North West Leicestershire Local Plan (2002 (as amended)).

In terms of the adopted North West Leicestershire Local Plan, the majority of the site is outside Limits to Development. Policy S3 sets out the circumstances in which development will be permitted outside Limits to Development; the development proposed would not meet the criteria for development in the countryside, and approval would therefore be contrary to the provisions of Policy S3. Notwithstanding the countryside location, and whilst the proposals would be contrary to the adopted Development Plan, in determining the application, regard must be had to other material considerations, including other policies, such as national policies and other Development Plan policies.

*Housing Land Supply and Limits to Development*

The NPPF requires that the Council should be able to identify a five year supply of housing land with an additional buffer of 5% or 20% depending on its previous record of housing delivery.

In terms of the minimum amount of housing required to be provided within the District as a whole, a Strategic Housing Market Assessment (SHMA) undertaken on behalf of all of the Leicestershire Local Planning Authorities has provided the District Council with an up-to-date objectively assessed annual housing requirement, equating to 350 dwellings per annum. The approach used in the SHMA to establishing this Objectively Assessed Need (OAN) was supported by the Inspector who determined the appeal in respect of a site at Lower Packington Road, Ashby de la Zouch, issued in October 2014 and, based on the findings of the Inspector regarding the appropriate method of calculating supply, the District Council's latest housing supply trajectory indicates that, using the approach of the above annualised requirement with a 20% buffer, the District is currently able to demonstrate a five year supply.

For their part, and notwithstanding the Lower Packington Road appeal Inspector's findings, the applicants advise in their Planning Statement that they have serious concerns regarding the methodology used in the SHMA and suggest that "no weight should be given to this SHMA as the methodology upon which it has been prepared is flawed". As such, the applicants do not accept the Local Planning Authority's position in respect of housing land need and have provided their own assessments of OAN. In brief, their submissions contend that the District has an OAN of 13,916 dwellings to 2031, equating to an annual requirement of 696 dwellings (as compared to the SHMA undertaken on behalf of the Leicestershire authorities which calculates a range of annual requirements (based on various assumptions regarding growth), the highest



of which is 350 per annum). Having regard to this assumed annual requirement of 696 dwellings, the applicants calculate that the District's supply is 2.18 years. Whilst the content of this document is noted, a SHMA is a document produced by a Local Planning Authority, the District Council's document has been prepared in collaboration with the other authorities within the Leicester and Leicestershire Housing Market Area accordance with the relevant national guidance, and officers consider it should accordingly be afforded due weight. As such, and when having regard to the OAN as established by that work and the ongoing approval and delivery of housing within the District, officers remain satisfied that, at this time, a five year supply of housing land can be demonstrated.

Having regard to the above and to the approach set out in Paragraph 49 of the NPPF, Local Plan Policy S3 is considered to be up-to-date in the context of Paragraph 49. However, given that the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements only up until the end of that Plan Period (i.e. to 2006), this needs to be taken into account when considering the weight to be applied to any conflict with this policy.

In addition, notwithstanding the principles contained in Paragraph 17 of the NPPF which highlights the need to recognise the intrinsic character and beauty of the countryside, the NPPF's provisions do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF. Further consideration of the proposals' compliance with the three dimensions of sustainable development is set out in more detail in this report.

*Accessibility of Site to Services and Local Plan Policy H4/1*

Policy H4/1 of the Local Plan relating to the release of land for housing states that a sequential approach should be adopted. Whilst a sequential approach is outdated in the context of the NPPF, the sustainability credentials of the scheme would still need to be assessed against the NPPF.

Insofar as the site itself is concerned, and whilst it is located outside Limits to Development, it is considered to be well related to the existing built up area of the village, although the range of services within Ellistown itself is not particularly extensive. In terms of public transport, the nearest westbound and northbound bus stops are located adjacent to the vehicular and pedestrian site accesses to Ibstock Road and Whitehill Road respectively as indicated on the submitted plans (albeit the associated eastbound and southbound stops are slightly more distant). These stops provide for daytime services six days per week to Coalville (every 10 minutes approx) as well as Leicester and Hinckley (hourly approx), although no services are available in the evening / overnight or on Sundays.

In terms of the site's greenfield status, it is accepted that the site does not perform well. However, this issue needs to be considered in the context of the need to demonstrate and maintain a five year housing land supply in the District, and the need for sites to be released to meet this need. Given the need to provide significant areas of housing land as set out below, it is considered inevitable that greenfield land will need to be released in order to maintain a five year supply of deliverable sites, as well as (as in this case) land not allocated for housing development in the adopted Local Plan.

Having regard to the three dimensions of sustainable development, it is accepted that the contribution to the economic growth associated with the proposed development, together with appropriate contributions towards affordable housing would ensure that the scheme would, to a

degree, sit well in terms of the economic and social dimensions. However, consideration also needs to be given to the implications on these roles insofar as mineral safeguarding is concerned (and as set out in more detail below). Insofar as the environmental role is concerned, whilst the proposed development would result in the development of land outside of the defined Limits to Development, as set out in more detail below, the proposed development would not result in any unacceptable impacts on the natural, built or historic environment and, by virtue of its location, close to the existing built up area and associated services, and its accessibility to public transport for the majority of the working week, would perform reasonably well in terms of need to travel and the movement towards a low carbon economy. Again, however, the issue of mineral safeguarding is relevant, given the environmental role of sustainable development which seeks to use natural resources prudently.

#### *Scale of Development*

Insofar as the scale of the proposed development (and, hence, its impact on the character of the village as a whole) is concerned, it is noted that the joint Leicestershire authorities' SHMA referred to above projected that 17.3% growth in housing would be required across the District to meet housing need. This is an average figure for the District as a whole and, therefore, it is considered that it would be appropriate for settlements that perform better in terms of access to services and public transport etc. to accommodate a higher level of growth than others. As set out above, Ellistown has a reasonable level of access to such services.

At the time of the 2011 Census data, Ellistown and Battleflat had a total of 1,060 households (representing a population of 2,626). On the basis of a proposal for 345 dwellings, this would represent an increase in the total number of households of approximately 33% within the Parish (and, hence, slightly less than this in the context of the village itself). Whilst this would clearly be a significant increase in the overall number of properties within the settlement, it is not considered that, having regard to the character of the village as a whole, this concern would, in itself, represent a reason to refuse the application, particularly when considering the overall accessibility of the village, and the relationship of the proposed scheme to the built form of the existing village.

#### *Non-Residential Proposals*

In addition to the proposed housing, other, non-residential, development is proposed, including a proposed health centre and a community centre. Insofar as the principle of these uses is concerned, it is considered that the same planning policy principles would, in general, apply (i.e. whilst being located outside Limits to Development contrary to Local Plan Policy S3, regard needs to be had to other material considerations including, not least, the provisions of the NPPF).

Whilst such facilities would ideally be located within a central location within the village, they would in any event not be located in an unacceptably remote location from, say, existing dwellings to the northern end of Ellistown and, as such, it is not considered that the proposals are unacceptable in that context.

As such, the view is taken that, overall, the same approach should be taken to the principle of development for the non-residential elements of the scheme as that taken in respect of the proposed housing.

#### *Mineral Safeguarding*

The site lies within a clay Mineral Safeguarding Area. National policy, as set out in the NPPF,

provides as follows:

"142 Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation."

"144 When determining planning applications, local planning authorities should:  
...- not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes..."

Further advice is also contained within the DCLG's Planning Practice Guidance which, in particular, provides in paragraph Reference ID 27-005-20140306 that, when determining planning applications, District Councils should do so in accordance with development policy on minerals safeguarding, and take account of the views of the mineral planning authority on the risk of preventing minerals extraction. The Planning Practice Guidance also refers to advice as contained within the British Geological Survey's publication "Mineral safeguarding in England: good practice advice".

Insofar as Development Plan policy is concerned, this is set out in Leicestershire County Council's "Leicestershire Minerals Development Framework - Core Strategy and Development Control Policies", including the following policies:

Policy MCS10 "The strategy for resource management is to:

- safeguard deposits of sand and gravel, limestone, igneous rock, shallow coal, fireclay, brickclay, gypsum, building and roofing stone in Leicestershire that are of current or future economic importance and significant infrastructure such as rail linked facilities:
  - (i) through the identification of Mineral Safeguarding Areas in the Site Allocations Development Plan Document;..."

Policy MDC8 "Planning permission will not be granted for any form of development within a Mineral Safeguarding Area that is incompatible with safeguarding the mineral...unless:

- the applicant can demonstrate to the satisfaction of the Local Planning Authority that the mineral concerned is no longer of any value or potential value; or
- the mineral can be extracted satisfactorily prior to the incompatible development taking place; or
- the incompatible development is of a temporary nature and can be completed and the site restored to a condition that does not inhibit extraction within the timescale that the mineral is likely to be needed; or
- there is an overriding need for the incompatible development; or
- it constitutes 'exempt development', namely householder applications; development already allocated in a statutory plan; infilling in existing built up areas."

Concerns have been raised in respect of the application by Leicestershire County Council in its capacity as Mineral Planning Authority and by Ibstock Brick (which owns and operates the existing brickworks and quarry to the west of the application site). Under the provisions of a Review of Old Mineral Permissions (ROMP) issued by Leicestershire County Council in April 2015 under the Environment Act 1995, mineral extraction is authorised to be undertaken on that site until February 2061 (ref. 2014/ROMPEIA/0250/LCC).

In support of the application, the applicants' consultants comment that, in order for the mineral resource to be considered valuable, it has to be technically and economically feasible to extract it from beneath the ground, and suggest there are two options available to extract it, namely (i) for the site to be purchased by Ibstock Brick and the brick clay extracted from beneath it as part of an extension to the existing quarrying and brick-making facilities located to the west; or (ii) for another brick-making or quarrying company to purchase the site and open a new quarry to access the minerals currently safeguarded beneath the site. However, they consider there are a number of significant constraints which would indicate that any extraction work on the study site would be severely impacted (whether as part of an extension or whether considered as a standalone development), and including the presence of high voltage overhead cables that cross the site and the close proximity of residential properties along the northern and eastern site boundaries. In any event, they argue, the significant resource on the site adjacent is likely to take until 2059 to extract in any event and, as such, whilst they accept that there is a mineral resource present beneath the site, the technical and planning constraints associated with extracting the resource render it of no value.

For its part, the Mineral Planning Authority does not accept that the mineral resource can be considered to have no value and, in the light of subsequent comments received from the applicants, takes the view that, of the bullet points listed under Policy MDC8 which list the circumstances in which development incompatible with safeguarded mineral resources will be permitted, the development could only potentially be justified under the fourth one (i.e. that there is an overriding need for the incompatible development). Whilst, as set out above, the applicants take the view that the Local Planning Authority is unable to demonstrate a five year supply of housing, this position is not accepted by officers. Even if the Local Planning Authority were unable to demonstrate a five year supply, however, it is not considered that, in itself, this would represent an overriding reason why development should be permitted which would clearly conflict with national and local policies which seek to protect future mineral resources. It is also considered that neither the absence of any imminent proposals to work the mineral, nor the presence of other clay resources elsewhere, would render its sterilisation at this time acceptable. Having regard to the impacts on the sterilisation of this resource, the view is taken that, overall, the proposals cannot be considered to represent sustainable development.

### **Detailed Issues**

In addition to the issues of the principle of development, consideration of other issues relevant to the application is set out in more detail below.

### **Landscape and Visual Impact**

The application is accompanied by a Landscape Visual Impact Assessment, as well as a Tree Survey and Arboricultural Assessment.

The Landscape Visual Impact Assessment considers the site's context in relation to surrounding development / landscape, and considers the impact upon a total of 18 viewpoints, primarily views close to the application site, with all but one falling within a 1km distance of the middle of the site.

In terms of the impacts upon these 18 viewpoints, these are predicted at three principal phases (namely during construction, following completion, and at 15 years following construction) as follows (and expressed in terms of significance and residual impact (following mitigation)):

*Construction Phase:*

Negligible 7  
 Minor Adverse 8  
 Moderate Adverse 3

*Year 0 (following completion):*

Negligible 7  
 Minor 1  
 Minor Adverse 7  
 Moderate Adverse 3

*Year 15:*

Minor Beneficial 1  
 Negligible 12  
 Minor Adverse 5

Insofar as mitigation assumed is concerned, this is identified within the Landscape Visual Impact Assessment as including:

- Retention and strengthening of boundary treatment with "gapping up" of existing hedgerow and tree planting
- Retention of existing topography and the introduction of a new built form of similar height as the site's built context
- Provision of green open space with tree planting
- Buffer planting within the development within front and rear gardens
- Maintenance of existing vegetated boundaries managed to a greater height than currently
- Buffer planting to the western and south western boundaries (to filter and screen views from the public footpath)

It is noted that the submitted Landscape Visual Impact Assessment focuses on the more localised impacts of the scheme, and suggests that visual receptors within the wider landscape scene would be less affected due to screening and filtering by topography and the mature landscape setting which, it suggests, limits and contains the development. Whilst the Assessment does not contain any more detailed analysis to demonstrate this position, it is not considered unreasonable, and the general conclusions as set out within the Assessment are accepted. On the basis of the above analysis of the impacts on the viewpoints assessed, whilst it is considered that there would clearly be a significant change to the existing open agricultural character of the site, an unacceptable visual impact on its immediate surroundings or the wider area is unlikely subject to appropriate mitigation being provided for at the reserved matters stage(s).

In terms of retained / proposed planting, the site is within the National Forest, and the scheme's performance vis-à-vis the relevant National Forest standards is set out under the relevant section below. There are a number of trees on the site (primarily located within hedgerows which cross the site) and, whilst a reserved matter, the illustrative masterplan would suggest that the majority of the vegetation would be capable of being retained in the event that the reserved matters proposals took the form indicated. Whilst the configuration of the proposed vehicular access as shown on the illustrative masterplan does not tally fully with the detailed access plan, the proposed access arrangement would not, in any event, appear to necessitate significant loss of vegetation, with any tree loss associated with the Ibstock Road access likely to be limited to those within Retention Category C. Whilst, on the basis of the originally submitted illustrative masterplan, a Category B eucalyptus was shown as being removed, this

now appears to be proposed to be retained on the updated masterplan.

Overall, in respect of issues relating to Landscape and Visual Impact, therefore, the view is taken that the proposals are acceptable.

### **Means of Access and Transportation**

As set out above, details of that part of the access relating to the vehicular access from Ibstock Road are included as part of the outline proposals; all other access details are reserved for subsequent approval. In addition, the application also proposes alterations to the existing Midland Road / Whitehill Road / Ibstock Road and Beveridge Lane / Whitehill Road mini-roundabouts which, the applicants' transport consultants, advise, would increase the capacity of those roundabouts.

The application is accompanied by a Transport Assessment as well as a Framework Travel Plan; both documents were amended during the course of the application following dialogue with the County Highway Authority. These provide that the whole of Ellistown is situated within the 2km walking catchment from the site, providing access to a number of local amenities (including a school, a nursery, a supermarket and a post office), that further facilities are available within a 5km cycling catchment (including facilities in Coalville, Ibstock and Bardon Hill), and that the village is served by frequent bus services (and as already assessed under Principle of Development above). The submitted Framework Travel Plan also includes a number of potential measures designed to reduce future residents' reliance on the car. For its part, the County Highway Authority generally accepts the accessibility findings of the Transport Assessment and Framework Travel Plan, but notes that the proposed pedestrian access to Whitehill Road would need to be secured (e.g. by way of a condition in the event the application were permitted) in order to secure the scheme's stated accessibility. In addition, the County Highway Authority also notes that, whilst it had previously raised the possibility of the provision of a crossing to the nearby school with the applicant, there is no mention of this in the final Transport Assessment submitted by the applicant. The County Highway Authority also advises that, in order to secure the relevant accessibility, the following would need to be secured (presumably by way of conditions and / or a Section 106 obligation):

- Cycle parking for dwellings;
- Travel Packs (which can be provided by the County Highway Authority if required at a cost of £52.85 per pack)
- Bus passes for each employee of the medical centre (which can be provided by the County Highway Authority if required at a cost of £350.00 per pass)
- i-Trace monitoring fee (£11,337) required in order to enable monitoring of the proposed Travel Plan

#### *Ibstock Road Site Access*

In terms of the proposed site access, the County Highway Authority advises that the PICADY assessment of the site access / Ibstock Road junction shows that the junction would operate within capacity with the development and other committed developments

It also advises that the applicant has also considered a right turn ghost island as part of the site access but, due to the constraints of the highway and the likely distribution of traffic (i.e. the majority of inbound trips to the site would be left turners), this is not necessary; this position has, the County Highway Authority advises, been confirmed by the 2011 Census data / trip distribution and the preliminary PICADY modelling outputs. The County Highway Authority has however raised a number of issues / concerns with the original site access for the development, including the lack of residents' parking if the proposed TRO was implemented (see below), and

visibility issues for vehicles exiting the site due to parked vehicles on Ibstock Road.

In light of the County Highway Authority's comments, the applicant has provided a revised access drawing for further checks but, despite on-going discussions between the County Highway Authority and the applicant, the County Highway Authority advises that it remains unable to support the proposed access arrangements. In particular, based on driven speeds, the County Council advises that visibility splays of 2.4m x 43m are required at the site access whereas visibility to the left is currently restricted due to on-street parking.

In order to address this, the applicant proposes a Traffic Regulation Order (TRO) (i.e. yellow lines) either side of the new junction to protect the visibility splays at the new junction, indicated on the submitted access plan as extending approximately 31m to the west of the centre of the new access road (i.e. outside nos. 7 to 15 (odds) Ibstock Road), and approximately 16m to the east, as well as along the first 13m (approx.) of the new access itself. Concerns have been raised by some neighbouring residents in respect of this element of the proposals to the effect that the formation of the proposed access (and the associated implementation of such a TRO) would reduce the availability of on-street parking. Whilst there is no right for individual householders to park their vehicles on the public highway outside of their property, the applicants propose to provide additional car parking which, it is understood, would be intended for use by residents of existing properties on Ibstock Road. On the basis of the illustrative masterplan, parking is shown indicatively to the rear of nos. 7 to 15 Ibstock Road or, on the development framework plan, within an area to the west of this. However, on the submitted access plan, three on-road spaces are shown to either side of the new access road.

For its part, the County Highway Authority advises that, whilst the TRO proposal could be acceptable to the County Council, unless it were extended to the opposite side of the site access, there would be the potential for conflict with other vehicles queuing at the Midland Road / Whitehill Road / Ibstock Road roundabout. Insofar as the proposed provision of on-street car parking is concerned, the County Council advises that, whilst this would accommodate the displaced parking from Ibstock Road, the County Highway Authority could not support a residents' permit scheme due to the small number of vehicles involved. Furthermore the Highway Authority advises that it has concerns regarding the enforceability of having these parking bays allocated to Ibstock Road residents if a residents' parking scheme was unable to be implemented and whether, in practice, the designated parking spaces would be so used (given that, based on past experience, residents prefer to continue to park in a location where they can see their vehicles).

#### *Ellistown Mini-Roundabout Junctions*

Insofar as other junctions are concerned, and, in particular, the proposed works at the mini-roundabouts, the amended Transport Assessment suggests that, with the improvement scheme in place, the Midland Road / Whitehill Road / Ibstock Road junction would operate better than in the base case, but that the Beveridge Lane / Whitehill Road junction would operate with excess queuing. The applicants' consultants suggest that a contribution be made towards a "substantial" improvement scheme at the junction, but it is not clear what level of contribution is proposed, what measures this contribution would be intended to secure, whether the mitigation scheme is deliverable, and whether it would actually provide the degree of mitigation required. Insofar as the County Highway Authority is concerned, it notes that the Road Safety Audit (RSA) undertaken in respect of the submitted mitigation scheme had raised safety concerns, but that the amended scheme had not resolved a number of these issues.

For its part Leicestershire County Council advises that, following initial comments, the applicant submitted revised models for the mini roundabouts and, although the revised models included

previously omitted pedestrian flows, the approach to modelling these junctions includes errors in the way the models have been tested. The County Council advises that the Whitehill Road / Beveridge Lane Capacity Assessments indicate that Beveridge Lane in the 2014 Base PM peak experiences fairly long queues and associated delays, and that this situation continues to get worse in the 2026 Base + Committed Development PM scenario. There is also a problem in the 2026 Base + Committed Development Scenario in the AM peak on Whitehill Road. In addition, the ARCADY 2014 assessment of the Midland Road / Whitehill Road / Ibstock Road junction shows that the Whitehill Road arm experiences long delays in the PM peak due to the high volume of queuing traffic, and the situation in the 2026 Base scenario shows longer delays / queues on the Whitehill Road arm again in the PM peak; Ibstock Road also shows significant delays with the associated queues. Due to the obvious interaction between the site access and the double mini roundabouts, the County Highway Authority advises that it is imperative that the impact of the development be robustly assessed and fully understood, and the County Council requires further modelling to be carried out to confirm these junctions could work together. At this stage the County Highway Authority is not satisfied that this has been done and therefore cannot support the proposal. Whilst officers have requested an additional extension of time to determine the application, the applicants are not agreeable to extending the determination date beyond 10 June 2015.

*B585 West Lane / A511 Shaw Lane Junction*

Due to its strategic location, the increase in committed development, and the proposed traffic from this development, the County Highway Authority advises that there are large queue lengths and delays predicted at this junction in 2026. As a junction identified as part of the District Council's Transportation Contributions Strategy, the County Highway Authority advises therefore that, if planning permission is granted, contributions ought to be sought towards improvements at this junction in line with this strategy.

*Central Road / Grange Road / Midland Road / Ashburton Road (Hugglescote Crossroads)*

In addition to the submitted junction assessments, the County Highway Authority advises that the applicants have considered the impact of the development on the Hugglescote Crossroads. Having regard to the County Highway Authority's LinSig model of the junction, it advises that, although the development would have an impact on the County Highway Authority's preferred mitigation scheme at Hugglescote Crossroads, it would be able to accommodate the additional traffic. It also notes that the Crossroads is already operating over capacity, and that the impact of this proposed development has been demonstrated to be material. As a junction identified as part of the District Council's Transportation Contributions Strategy, the County Highway Authority advises therefore that, if planning permission is granted, contributions ought to be sought towards improvements at this junction in line with this strategy.

*Strategic Highway Network*

Insofar as the strategic highway network is concerned, whilst the (then) Highways Agency (now Highways England) has identified potential impacts at M1 Junction 22, it notes that there is a commitment by the County Council to improve M1 Junction 22 and A42 Junction 13 using Growth Deal funding, and no objection is therefore raised, although an appropriate contribution to highways infrastructure under the Council's Transportation Contributions Strategy is expected.

*Pedestrian Access*

In terms of the accessibility of the site generally, this is considered in more detail under Principle of Development above. Whilst not part of the access proposals submitted at this outline stage,



the illustrative masterplan indicates that non vehicular links to adjacent land would be anticipated at the reserved matters stage. Public right of way N61 passes to the western boundary of the site, and connects beyond the site boundary to other rights of way (including rights of way N62, N101 and Q80, providing amenity routes connecting the site with land elsewhere in the vicinity). Leicestershire County Council's Rights of Way Officer considers that, having regard to potential increased use of the local rights of way network, a financial contribution ought to be provided towards upgrading of them. However, no sum has been suggested nor, in officers' view, has any appropriate evidence been provided to demonstrate that the existing routes could not accommodate the development without being upgraded.

For the reasons set out above, therefore (and, in particular, in respect of the concerns raised regarding the proposed site access and the impacts on the Ellistown mini-roundabouts), the applicants have failed to address satisfactorily the concerns of the County Highway Authority and, furthermore, appear unwilling to agree to a further extension of time in order to enable these issues to be addressed. As such, and on the basis of the application as submitted, the proposed development is considered unacceptable in terms of Means of Access and Transportation issues.

### **Ecology**

The application is supported by an Ecological Appraisal of the site. This provides that there are no statutorily designated sites within 2km of the application site; in terms of non-statutory designation, three candidate Local Wildlife Sites are located within 1km of the application site (the closest being Ellistown Tip and Railway Triangle (490m from the site)). A number of Parish / District Level sites are also noted within the Appraisal as being within 1km of the site but, having regard to the distance and barriers between these sites and the development, the Appraisal concludes that it is unlikely that the proposals would have a detrimental impact on them and, as such, that the presence of these non-statutory designated sites is not a constraint to development.

Insofar as protected or notable species are concerned, the Ecological Appraisal considers the impacts on badgers, bats, birds, great crested newts, reptiles and water voles. No significant evidence in respect of use of the site by badgers, reptiles or water voles was found. In terms of bats, although the suitability of the site's habitat for use by bats was identified, activities were found to be low. The Appraisal suggests that the impacts on bat commuting and foraging habitat would not be unacceptable, and could be limited by mitigation such as appropriate retention of / provision of additional suitable trees and hedgerows, appropriate use of lighting and bat boxes. Similarly, the impacts on birds could, the Assessment indicates, be mitigated by way of undertaking of clearance works outside of the breeding season, retention / planting of suitable landscaping, and provision of bird boxes. In respect of great crested newts, two ponds are located a short distance beyond the southern boundary of the application site, but have not been surveyed due to access permission constraints. However, terrestrial survey work has been undertaken with great crested newts being identified in this area, and mitigation is proposed, including the provision of a great crested newt receptor site, including translocation and the erection of temporary amphibian fencing.

Subject to conditions designed to ensure the appropriate mitigation is secured, no objections are raised by Leicestershire County Council's Ecologist, and the proposals are therefore considered to be acceptable in terms of their ecological impacts, subject to the imposition of suitably-worded conditions.

### **Geo-Environmental Conditions**

A Phase 1 Desk Study and Ground Investigation has been submitted with the application which provides an assessment of the site's ground conditions, and indicates that, based on historic land uses and its current operational use, the overall risk from land contamination at the site would be low for the current development, and low to moderate for a re-developed site, but would need to be confirmed by appropriate intrusive investigation, testing and assessment of the results of the investigation; no objections are raised by the District Council's Environmental Protection team in respect of contamination issues.

### **Heritage Issues**

The application is supported by an Archaeological Desk Based Assessment; this Assessment also includes consideration of designated heritage assets in the vicinity.

Insofar as designated assets are concerned, the Assessment concludes that there are no Conservation Areas or scheduled monuments within the vicinity of the site, and no impacts would therefore arise on any such features. Insofar as listed buildings are concerned, whilst the Assessment notes the presence of Pickering Grange Farmhouse (Grade II) within the locality, this is nevertheless approximately 700m from the application site and, when taking into account the intervening topography, no impact on its setting is considered likely.

In terms of non-designated assets, no identified ones are located within the application site. Insofar as yet to be discovered archaeology is concerned, the Assessment indicates that the site is considered to have potential for low numbers of Prehistoric stone artefacts (of, at most, local interest only) and a low / nil potential for significant evidence dating to all other periods.

It is therefore considered that the proposed development would be acceptable in terms of heritage issues; no representations have been received from the County Archaeologist.

### **Flood Risk and Drainage Issues**

The submitted documents include a Flood Risk Assessment and Surface Water Drainage Strategy together with a Foul Drainage Analysis document.

Insofar as flood risk is concerned, the Environment Agency flood zone maps indicate that the site lies within fluvial Flood Zone 1; on this basis it is considered that the sequential test would be satisfied.

In terms of other sources of flood risk, the Flood Risk Assessment considers the potential flooding impacts from surface water, groundwater, sewers and reservoirs / canals / ponds. Of these, it is noted that a small part of the site includes areas at risk of surface water flooding and, including small sections of the site within the 1 in 30 year event. Mitigation measures are therefore recommended to address this issue, and the illustrative layout indicates that the most vulnerable areas would not be likely to contain built development.

As referred to above, the Flood Risk Assessment document includes a Surface Water Drainage Strategy. This proposes a range of SUDS measures surface water mitigation measures designed to mimic flows from the undeveloped site for storms up to the 1 in 100 year (+30% allowance for climate change) return period event.

Insofar as foul drainage is concerned, the submitted Foul Drainage Analysis document indicates this is proposed to be discharged to the existing public foul sewer on Whitehill Road. Having

regard to the topography of the site, in order to achieve this, the Foul Drainage Analysis document indicates that a pumping station is likely to be required.

No objections are raised by the Environment Agency or Severn Trent Water and, overall, in terms of flood risk or drainage issues, therefore, it is considered that, subject to the implementation of appropriate measures to reflect the proposed foul and surface water drainage strategies, the scheme is acceptable, and would be capable of provide for appropriate drainage solutions to accommodate the proposed development.

### **Residential Amenity**

In terms of amenity issues, the impacts of the proposed development need to be considered both in terms of the impacts on the future living conditions of residents of the proposed development, having regard to the site's location, as well as on existing residents arising from the proposed development. These are considered in turn below.

In terms of future residents' amenities, it is noted that the site is located adjacent to the existing Ibstock Brick quarry and brickworks site. Under the provisions of the current ROMP consent, there are limitations on the operation of the quarry site relating to hours of quarrying activities, use of the haul road, and blasting; within the authorised working hours (0700 - 1900 Mondays to Fridays and 0700 - 1400 on Saturdays), noise levels are not allowed to exceed specified levels at identified nearby dwellings.

The current application is supported by a Noise Screening Assessment, together with a subsequently submitted Noise Assessment. These have regard to noise predictions set out in the noise report submitted in support of a 1998 application submitted on behalf of Ibstock Brick, and subsequent noise monitoring data from 2008; two of the monitoring locations referred to (151 Ibstock Road, Ellistown and Clay Lane, Ellistown) are, the applicants' noise consultants consider, relevant / comparable to the current application site. Having regard to the mitigation provided by a bund to the northern and eastern boundaries of the quarry site, the applicants' consultants consider that noise from the quarry is unlikely to exceed the relevant levels, although suggest that some additional noise mitigation measures may need to be proposed at the reserved matters stage, and recommend within the Noise Assessment the provision of acoustic screening to gardens on the western and southern parts of the proposed residential development, as well as acoustic glazing to some properties. Insofar as the impacts on the amenities of future occupiers from the use of the proposed non-residential development are concerned, the applicants' consultants conclude that no significant noise issues would be likely, and no mitigation is proposed in this regard (although, again, suggest that additional measures may be required depending on the nature of the reserved matters scheme).

For its part, the District Council's Environmental Protection team raises no objections in principle subject to details of the final design, layout and acoustic treatments as referred to in the submitted reports being provided in accordance with details first agreed by the Environmental Protection Team.

In addition to the noise climate issues identified above, however, are the issues of potential disturbance from vehicular movements to and from (and, potentially, within) the site. As noted above, the application includes details of the proposed site access from Ibstock Road, and the submitted Noise Screening Assessment considers the impacts from this new route. The Assessment suggests that, having regard to the absence of windows facing the proposed access, no significant noise would arise. Whilst this analysis does not take account of other potential areas where disturbance could arise (e.g. rear gardens adjacent to the access road

etc), it is not considered that an unacceptable loss of amenity would be likely to arise by virtue of the additional movements. Similar concerns could also conceivably arise in respect of use of the indicative access to Whitehill Road (although the effects would, in normal circumstances, be limited to pedestrian use). Again, whilst some increased activity alongside residents' private amenity space would appear likely, it is not considered that undue loss of amenity would be likely to result.

In terms of the impacts on neighbouring occupiers arising from the proposed buildings themselves, whilst an illustrative masterplan has been submitted, all matters other than the proposed Ibstock Road access are reserved for subsequent approval. The illustrative masterplan indicates that built development would be located adjacent to a number of residential properties to areas to the north and east of the application site, including properties on Ibstock Road, Whitehill Road and Old School Close. Clearly, careful consideration would need to be given to any detailed proposals for these and other areas of the site submitted at the reserved matters stage(s) so as to ensure that an appropriate relationship between existing and proposed dwellings were provided. However, there is no reason to suggest that the eventual form of development proposed at the reserved matters stage(s) would necessarily result in undue loss of amenity to adjacent occupiers, and the scheme is, at this outline stage, acceptable in this regard.

### **Loss of Agricultural Land**

The site is currently in agricultural use, and the proposed development would result in an irreversible loss of this land to non-agricultural use.

Paragraph 112 of the NPPF suggests that, where significant development of agricultural land is demonstrated to be necessary, poorer quality land should be used in preference to that of a higher quality. Having regard to the five year housing land supply issue as set out above, it would seem inevitable that land outside Limits to Development (much of which will be agricultural in terms of use) will need to be released. Best and Most Versatile (BMV) agricultural land is defined as that falling within in Grades 1, 2 and 3a of the Agricultural Land Classification.

The application is also accompanied by an assessment of the agricultural quality of the application site, indicating the following distribution of land quality:

Grade 3a:	2.2ha (12% of the agricultural land)
Grade 3b:	16.5ha (86% of the agricultural land)
Grade 4:	0.4ha (2% of the agricultural land)
Other land:	0.4ha

On this basis, approximately 11% of the application site as a whole would be BMV and, therefore, contrary to the thrust of the NPPF in this regard. The applicants' Planning Statement suggests that, whilst the loss of agricultural land to other uses is regrettable, "the impact of such loss should be considered against the potential benefits that would accrue from the development of the land for residential, primarily the boost to housing supply and the associated economic benefits that would arise from this, including significant job creation, investment in the local and District economy, the construction impacts, the New Homes Bonus, and the increase in open space and landscaping". Whilst such issues could be capable of constituting material considerations, for the reasons already set out under Principle of Development above, however, officers do not consider that, overall, the proposals represent sustainable development.

In terms of the loss of agricultural land, however, it is considered relevant to have regard to the extent of the loss. Whilst the NPPF does not suggest that release of smaller BMV sites is

acceptable, it nevertheless appears reasonable to have regard to the extent of the loss in the decision making process. Given the extent of the area falling within BMV grades (i.e. 2.2ha), the extent of the harm caused to the supply of BMV land would not, in itself, be very large, but it is nevertheless considered that the loss of this higher quality agricultural land would weigh against the proposals in assessing whether the scheme constitutes sustainable development, and in the overall planning balance.

Notwithstanding this issue, however, and whilst it is not considered that the proposed development sits particularly comfortably with the requirements of the NPPF (and, in particular, the aims of Paragraph 112), it is not considered that the loss of BMV land would, in itself, represent a reason to refuse permission in this case.

### **Design**

The application is supported by a Design and Access Statement (and including a Building for Life assessment) setting out the applicants' proposals, and explaining the approach taken in terms of design. Having reviewed the illustrative proposals and the Design and Access Statement, however, the District Council's Urban Designer had raised concerns regarding the illustrative scheme and, subsequently, an updated illustrative scheme (including the reduced number of dwellings) was submitted. In respect of the revised proposals, the District Council's Urban Designer's Building for Life assessment identifies a number of areas which would need addressing as part of the reserved matters proposals and, of the 12 Building for Life questions, 9 are identified as only achieving an "amber" rating at this stage.

However, the District Council's Urban Designer is satisfied that, subject to conditions (and including in respect of the need to secure a Design Code), his assessment demonstrates that the development offers the potential to secure a good standard of design if it were to progress to a reserved matters application (and for the identified "ambers" to be upgraded to "greens").

Overall in respect of design, therefore, whilst, at this outline stage, a number of improvements would need to be made to the proposals in order to secure a good standard of design, the submitted information is sufficient to demonstrate that, in principle, and subject to appropriate measures being incorporated within the detailed scheme, a suitable form of development in terms of design could be achieved.

### **Other Matters**

#### **Developer Contributions**

Paragraphs 203 and 204 of the NPPF set out the Government's policy in respect of planning obligations and, in particular, provide that planning obligations should be:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the proposed development.

Equivalent legislative tests are contained within the Community Infrastructure Levy (CIL) Regulations 2010.

The relevant developer contributions requested (save for those already referred to in respect of access / transportation above) are listed below.

*Affordable Housing*

The applicants propose to make an affordable housing contribution of 20% (i.e. 69 dwellings assuming a 345 unit development) as per the Local Planning Authority's current requirements for the Ellistown area for a scheme of this scale.

In terms of tenure, the District Council's Affordable Housing Enabler advises that, under the District Council's Affordable Housing SPD, a split of 79% rented and 21% intermediate housing would be required but, in order to aid viability, suggests a 70% rented and 30% intermediate housing. The precise nature of the contribution in terms of house type / size tenure etc would need to be resolved pursuant to the Section 106 agreement but, on the basis that it is proposed to make a policy-compliant contribution, the proposed development is considered acceptable in this regard.

*Children's Play, Public Open Space and Sports Provision*

The illustrative masterplan shows a proportion of the site given over to landscaping, retained and proposed tree / hedgerow planting and other open space, and it is the applicants' intention that the open space includes an on-site equipped children's play area. In terms of the extent of the equipped parts of the play area, on the basis of the illustrative details as shown on the development framework plan which shows two "woodland" play areas, this would be in the order of 1,430 square metres. Under the Local Planning Authority's Play Area Design Guidance SPG, children's play areas should be provided at a rate of 20 square metres per dwelling. Therefore, for a development of 345 dwellings, an area for children's play of 6,900 square metres would normally be required. Whilst this would represent a significant shortfall in this regard, the extent of the "play area" in its general terms (which is the figure to which the SPG relates) is normally calculated in its wider sense and, when taking into account the other landscaped open space proposed within the site, there would appear no reason why the minimum requirements of the SPG could not be comfortably met.

In terms of the range of equipment necessary, for developments of this number of dwellings, Local Plan Policy L22 and the District Council's SPG requires that the needs of children up to the age of 14 should be provided for, including a minimum of 8 types of activity, as well as a "kickabout" area. In addition, formal recreation open space (e.g. sports pitches) should also be provided for. On the basis of the submitted illustrative layout, it is noted that an area identified as a "Bowling Green / MUGA" of approximately 1,600 square metres is included which could, it would seem, be the "kickabout" area but, if intended to constitute the formal recreation open space contribution, would appear likely to be significantly smaller than the size of the facility expected under the adopted SPG policy which is based on the six acre standard, requiring 1.6ha for every 1,000 population. The applicants' Planning Statement (originally drafted in respect of the application for up to 400 dwellings prior to the application's amendment) suggests that the proposals would generate around 960 new residents, indicating an open space requirement of approximately 2.4 ha, but a total of 3.95ha of public open space would be provided, and suggest that Local Plan Policy L21 would therefore be complied with (although it is noted that the policy relevant to formal recreation provision is, in fact, Policy L22). It is not considered that, given the specific requirements of Policy L22 and the Play Area Design Guidance Note SPG, these requirements would be fully met by the proposals but, when taking account of the overall extent of public open space generally, the proposals are not considered to be unacceptable in this regard.

In addition, it is noted that comments in respect of sporting provision have been received from both Sport England and Leicester-Shire and Rutland Sport.

For its part, Sport England comments that it would support provision of on-site or contributions to off-site facilities if there was evidence to show that there was an identified need. Leicester-Shire and Rutland Sport requests a developer contribution of £329,572 towards additional facilities at Hermitage Leisure Centre. In support of the request, it is suggested that the Leisure Centre is situated approximately 3.8 miles from the development site and any increase in population is likely to have a direct impact on usage of the leisure centre facilities given its proximity. Leicester-Shire and Rutland Sport advises that the leisure centre has provision of a six court sports hall, a six lane swimming pool (25m), a health and fitness suite and an artificial grass pitch. The swimming pool is, it advises, serviced by wet side changing rooms that are in poor repair and in need of investment. It advises that the requested contribution, calculated based on Sport England guidance, would provide a base line sum from which the Local Authority would be able to invest in sports facilities at the leisure centre site, and draws attention to previously-identified shortfalls in facilities within the North West Leicestershire area as a whole.

In officers' view, it is not considered that the Leicester-Shire and Rutland Sport contribution request would meet the relevant NPPF and CIL tests outlined above. Whilst it is accepted that some increased use of the leisure centre would seem likely as a result of the development, no detailed analysis has been provided demonstrating either the likely extent of this increased use (which would need to have regard to factors such as proportion of residents likely to use the various leisure centre facilities, accessibility / distance of the site from the facilities, and the availability (or otherwise) of other publicly or privately provided services), or the ability (or otherwise) for existing facilities to accommodate some or all of the additional users anticipated. Once this had been provided, it would, officers consider, be necessary to demonstrate what the contribution sought would be proposed to be spent on, how those works would mitigate any identified shortfalls arising from the proposed residential development, and what they would be expected to cost. In the absence of this information, it is not considered that a contribution could be reasonably required. Whilst Sport England indicates that it would support a contribution where a particular need has been identified, the Local Planning Authority does not at present have such evidence and, therefore, it is not considered that any such additional sport facility requests could be justified at this time.

#### *National Forest planting*

The applicants' proposals include the provision of 2ha of on-site National Forest planting as part of their wider landscaping and public open space proposals and, having regard to the relevant standard of 30% woodland planting, confirm that a financial contribution would be made in respect of the shortfall vis-à-vis the standard. Further to subsequent dialogue between the applicants and the National Forest Company, a sum based on the standard National Forest off-site planting costings has been agreed (£78,000). The proposals are therefore considered appropriate in this regard.

#### *Education*

In respect of the proposed education contributions, Leicestershire County Council comments as follows:

##### Primary School Requirements:

The site falls within the catchment area of Ellistown Primary School. The school has a net capacity of 262 and 639 pupils are projected on the roll should this development proceed; a deficit of 377 places. There are currently 312 pupil places at this school being funded from Section 106 agreements for other developments in the area which reduces the deficit at this

school to 65 (including a surplus of 18 pupil places and a deficit of 83 places created by this development).

The County Council also refers to one other primary school within a two mile walking distance of the development, namely Hugglescote Primary School. Taking this school and other Section 106 contributions into account, the overall deficit including all schools within a two mile walking distance of the development is 118 pupil places and, in order to provide the additional primary school places anticipated by the proposed development, the County Council requests a contribution for the primary school sector of £1,001,798.03. The County Council advises that Ellistown Primary School occupies a very constrained site and, as such, it may need to use the contributions towards provision of a new school.

#### High School Requirements:

The site falls within the catchment area of Ibstock College. The College has a net capacity of 705 and 879 pupils are projected on roll should this development proceed; a deficit of 174 places. Taking other Section 106 contributions into account, the overall deficit is 28 (of which a surplus of 7 is existing and a deficit of 35 would be created by this development). There are no other high schools within a three mile walking distance of the site and, in order to provide the additional high school places anticipated by the proposed development, the County Council requests a contribution for the high school sector of £491,594.68. The County Council advises that this contribution would be used to accommodate the capacity issues created by the proposed development by improving, remodelling or enhancing existing facilities at Ibstock College.

#### Upper School Requirements:

The site falls within the catchment area of King Edward VII Science and Sport College. The college has a net capacity of 1,193 and 1,386 pupils are projected on roll should this development proceed; a deficit of 193 places. There are no Section 106 places being funded at this school from other developments in the area, nor are there other upper schools within a three mile walking distance of the site, and the County Council requests a contribution for the upper school sector of £633,253.02. The County Council advises that this contribution would be used to accommodate the capacity issues created by the proposed development by improving, remodelling or enhancing existing facilities at King Edward VII Science and Sport College.

#### Special School Requirements:

The Local Education Authority advises that an education contribution is requested for Special Schools for developments of 250 houses or more and that this development generates 1 primary and 2 secondary SEN pupils, equating to a contribution requirement of £121,137.25. Additional information in respect of any existing capacity in SEN sector schools serving the site has been requested from Leicestershire County Council in support of this request; any response received from the County Council will be reported on the Update Sheet.

The applicants' Planning Statement indicates generally an intention to make a contribution towards education to mitigate the impact of the development where demonstrated. Save for the additional information awaited in respect of special schools, it is considered that appropriate justification has been provided by the Local Education Authority but, at the of preparing this report, the applicants had not confirmed whether they were agreeable to making the education contributions requested. However, in view of the general stated intention to make a contribution, it is not recommended at this stage that the issue represent a reason for refusal in that, in the event that members were minded to permit the application, the issue could be resolved through the Section 106 negotiation process.



*Library Services*

Leicestershire County Council advises that an additional 497 plus users of Ibstock Library are anticipated to be generated by the proposed development, requiring an additional 1,197 items of lending stock (plus reference, audio visual and homework support material), and a contribution of £10,410 is therefore sought by the County Council. The applicants have been requested to confirm whether or not they would be willing to make the contribution requested but, at the time of preparing this report, had not confirmed that they would be. As matters stand, therefore, it must be assumed that the making of this contribution does not form part of the applicants' proposals and, as such, approval of the scheme would not secure appropriate contributions towards mitigating the impacts of the development on library services.

*Civic Amenity*

Leicestershire County Council advises that an additional 95 tonnes of municipal waste per annum are anticipated to be generated by the proposed development, and, in order to accommodate this additional capacity at the Coalville Civic Amenity site, a contribution of £22,556 is sought by the County Council. The applicants have been requested to confirm whether or not they would be willing to make the contribution requested but, at the time of preparing this report, had not confirmed that they would be. As matters stand, therefore, it must be assumed that the making of this contribution does not form part of the applicants' proposals and, as such, approval of the scheme would not secure appropriate contributions towards mitigating the impacts of the development on civic amenity services.

*Healthcare*

As set out above, the application seeks permission for a range of uses, including a doctors' surgery / health centre. The applicants have, however, clarified that it would not be their intention to deliver the proposed surgery themselves, but would intend for the Section 106 to provide the land for this use. Whether or not the surgery was ever provided, therefore, would appear to be a business decision for an appropriate provider as and when interest in such a venture were to arise.

For its part, however, NHS England comments that, in order to mitigate the impacts on healthcare services from the additional residents, it would be seeking to expand existing GP surgeries rather than building a new facility as part of the proposed housing development. In particular, it requests a developer contribution of £60,133.63 in respect of surgery expansion (with Hugglescote and Ibstock surgeries being identified as the closest practices which, the NHS confirms, are currently at capacity). The applicants have been requested to confirm whether or not they would be willing to make the contribution requested but, at the time of preparing this report, had not confirmed that they would be. As matters stand, therefore, it must be assumed that the making of this contribution does not form part of the applicants' proposals and, as such, approval of the scheme would not secure appropriate contributions towards mitigating the impacts of the development on healthcare services.

*Contributions sought by Leicestershire Police*

Leicestershire Police requests a developer contribution of £124,436 in respect of policing as set out in the consultation response above. The contribution sought comprises:

Start up equipment / training	£14,109
Vehicles	£8,770

Additional radio call capacity	£880
Police National Database	£448
Additional call handling	£804
ANPR	£4,111
Mobile CCTV	£750
Additional premises	£93,874
Hub equipment	£690

It is considered that, in principle, contributions towards policing may be capable of being justified in terms of satisfying the relevant NPPF and CIL Regulations tests. In terms of the increased level of police activity associated with the proposed development, Leicestershire Police advises that the scheme would result in 628 additional calls, 80 emergency events, 47 non-emergency events and 40 additional recorded crimes per year. Whilst officers have no alternative data in respect of these levels of activity, officers are concerned that the level of additional calls on Police time assumed to be associated with this development of up to 345 dwellings could be somewhat excessive and, as such, the scale and kind of contributions sought may not be fairly and reasonably related to this development. Insofar as the various individual elements of the requested policing contribution are concerned, however (and putting the issue raised above to one side), it is considered as follows:

**Start up equipment / training:**

It is accepted that, in principle, such a contribution could be reasonable.

**Vehicles:**

It is accepted that, in principle, such a contribution could be reasonable.

**Additional radio call capacity:**

The process of improving radio cover / capacity is, it seems, an ongoing process and would appear to occur regardless of the development going ahead.

**Police National Database:**

The process of improving capacity of the Police National Database is, it seems, an ongoing process and would appear to occur regardless of the development going ahead.

**Additional call handling:**

It is accepted that, in principle, such a contribution could be reasonable.

**ANPR:**

It is not accepted that the proposed development would justify the installation of ANPR CCTV systems (and that, in the development's absence, ANPR would not be required). If there is a need to provide ANPR coverage of this area because of existing crime figures, the cameras should, it is considered, be provided regardless. It is not considered clear why the addition of these dwellings to the village would suggest that such a system would be required when, in the absence of the development, it was not.

**Mobile CCTV:**

It is not accepted that the proposed development would justify the installation of mobile CCTV systems (and that, in the development's absence, mobile CCTV would not be required). If there is a need to provide mobile CCTV coverage of this area because of existing crime figures, the cameras should, it is considered, be provided regardless. It is not considered clear why the addition of these dwellings to the village would suggest that such a system would be required when, in the absence of the development, it was not.

Additional premises:

The contribution request from Leicestershire Police provides that, within North West Leicestershire, policing is delivered from Coalville LPU premises, and that occupation of premises is maintained at capacity. Contributions are sought for Coalville LPU, plus the Basic Command Unit (BCU) at Loughborough and the Force HQ at Enderby. Insofar as Coalville LPU is concerned, Leicestershire Police advises that occupation is maximised but constrained by its age and condition. Replacement to existing needs is, Leicestershire Police advises, being planned although it is suggested that the proposed development would create a need for additional floorspace. The District Council is also advised that a replacement facility at Loughborough has recently been completed and that this would need to be extended to accommodate staff to cover the proposed development; extension of the Force HQ would also, Leicestershire Police suggests, be required to serve the proposed development, and the request also suggests that the remainder of the premises contribution be directed towards other, unspecified, force-wide premises serving North West Leicestershire. Whilst Leicestershire Police maintains that additional floorspace is required at all of these locations to serve the proposed residential development, it would appear unlikely that a development of this scale would result in such a level of increased employment so as to necessitate extensions to accommodation at all three sites, notwithstanding that Leicestershire Police confirms that all facilities are maintained at capacity. It is not considered that the force has demonstrated that there is definitely no capacity to accommodate additional staff, nor that its various sites would actually be extended to meet any additional accommodation requirement directly attributable to the development in hand.

Hub equipment:

No information has been submitted which indicates that the existing hub (located in Ashby de la Zouch) and equipment would, as a result of the development, be over-capacity.

On this basis, therefore, officers are of the view that, subject to the Police being able to demonstrate in a robust manner that the assumed levels of increased policing activity are appropriate given the scale of the proposed development, contributions in respect of the start up equipment / training, vehicles and call handling have the potential to satisfy the relevant NPPF and CIL tests. It would also be necessary for Leicestershire Police to demonstrate that no issues in respect of pooling would arise (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

The applicants have been requested to confirm whether or not they would be willing to make the contribution requested but, at the time of preparing this report, had not confirmed that they would be. As matters stand, therefore, it must be assumed that the making of this contribution does not form part of the applicants' proposals and, as such, approval of the scheme would not secure appropriate contributions towards mitigating the impacts of the development on policing services (insofar as those elements identified above as meeting the relevant NPPF and the CIL Regulations tests are concerned, and providing that appropriate evidence can be provided to support Leicestershire Police's assumptions on the likely levels of increased policing activity attributable to the proposed development).

*Other Contributions*

It is noted that the applicants intend to provide a community centre in association with the proposed development, and suggest that this be secured by way of a Section 106 obligation. In terms of the tests for contributions as set out in the NPPF and the CIL Regulations, any such contribution would, amongst others, be required to be necessary to make the proposed

development acceptable in planning terms. The applicants consider that the provision of this community centre would be a positive element of the scheme and would provide a range of community benefits, with the centre available for use for a range of functions, and including indoor sport and Parish Council use. Given that it is proposed to be provided by way of a Section 106 obligation, it is presumably the applicants' view that it needs to be provided in order to render the proposed development acceptable in planning terms. In officers' view, it is clear that there would be a number of benefits to the village from the provision of such a facility, and would be a positive factor in terms of the social role of sustainable development. In terms of the weight to be attributed to this facility as a material consideration, the Parish Council advises that, whilst it considers that provision of a community centre would be "vastly beneficial" to the Parish, the delivery of such a facility would not, in its view, outweigh the other concerns it has raised. In officers' view, whilst the contribution that such a facility could make to the proposed development's performance as sustainable development (and, in particular, in respect of the social role) would be positive, the positive contribution in this regard would not be sufficient to outweigh the other considerations relevant to the scheme's sustainable development credentials, and the development would remain unsustainable overall by what would be, in officers' view, a significant degree.

Insofar as the various developer contributions are concerned, the view is taken that, save where indicated otherwise above, the proposed obligations would comply with the relevant policy and legislative tests as set out in the NPPF and the CIL Regulations.

### **Conclusions**

As set out in the main report above, whilst the site is outside Limits to Development as defined in the adopted North West Leicestershire Local Plan, and constitutes greenfield land, this in itself is not considered to represent a reason in principle why its development for the purposes proposed would be unacceptable given its location adjacent to the existing settlement and its associated services. However, approval of the development would, it is considered, sterilise an identified safeguarded mineral resource, contrary to the principles set out in national and local policies designed to protect such finite resources, necessary to provide for materials required to facilitate future development. The scheme is also, as submitted, considered to be unacceptable in terms of transportation and highway safety issues (and, in particular, in respect of the proposed means of vehicular access and the safe and efficient operation of the nearby mini-roundabouts). Furthermore, as matters stand, the proposals would not include for appropriate contributions in respect of associated infrastructure (including mitigation for the impacts of the proposed development in terms of library facilities, civic amenity, healthcare and policing). Overall, therefore, the proposals would not be considered to constitute sustainable development, and refusal is recommended.

### **RECOMMENDATION- REFUSE, for the following reason(s):**

- 1 The site is located within an identified clay Mineral Safeguarding Area. Paragraph 14 of the National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development; Paragraph 7 defines sustainable development (and including its economic and environmental dimensions) and also provides that the planning system needs to perform economic and environmental roles, including in respect of identifying and coordinating development requirements and using natural resources prudently. Paragraph 144 of the NPPF provides that Local Planning Authorities should not normally permit other development proposals in Mineral Safeguarding Areas where they might

constrain potential future use for these purposes. Policy MDC8 of the adopted Leicestershire Minerals Development Framework - Core Strategy and Development Control Policies provides that planning permission will not be granted for any form of development within a Mineral Safeguarding Area that is incompatible with safeguarding the mineral unless one or more of a number of exception criteria apply. The development of the site for the purposes proposed in the absence of any associated proposals to work the mineral would lead to the sterilisation of the resource, not constituting sustainable development, and contrary to the policies and intentions of the NPPF and the Leicestershire Minerals Development Framework.

- 2 Paragraph 32 of the National Planning Policy Framework (NPPF) requires that all developments that generate significant amounts of movement be supported by a Transport Statement or Transport Assessment. It also provides that plans and decisions should take account of whether, amongst others, safe and suitable access to the site can be achieved for all people, and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Policy T3 of the adopted North West Leicestershire Local Plan requires development to make adequate provision for vehicular access and circulation and servicing arrangements. The application as submitted provides insufficient information to demonstrate that an appropriate and safe vehicular access would be provided to the proposed development and that the proposals would have an acceptable impact on the safe operation of the nearby double mini-roundabouts. Therefore, if permitted, the proposal would result in an unacceptable form of development and could lead to dangers for road users, contrary to the policies and intentions of the NPPF and the North West Leicestershire Local Plan.
  
- 3 Paragraph 14 of the National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development; Paragraph 7 defines sustainable development (and including its economic dimension) and also provides that the planning system needs to perform an economic role, including in respect of provision of infrastructure. The application as submitted does not include for appropriate contributions in respect of associated infrastructure (including mitigation for the impacts of the proposed development in terms of library facilities, civic amenity, healthcare and policing), not constituting sustainable development, contrary to the policies and intentions of the NPPF.

### Notes to applicant

- 1 Planning permission has been refused for this proposal for the clear reasons set out in this decision notice. The Local Planning Authority acted pro-actively through positive engagement with the applicant in an attempt to narrow down the reasons for refusal but fundamental objections could not be overcome. The Local Planning Authority has therefore acted pro-actively in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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Erection of 41 dwellings and associated infrastructure including the provision of play space and combined cycle and footpath (resubmitted 14/00520/FULM)

Report Item No  
A4

Land At Wells Road And Willesley Road Ashby De La Zouch Leicestershire

Application Reference  
15/00196/FULM

Applicant:  
Mrs Hannah Guy

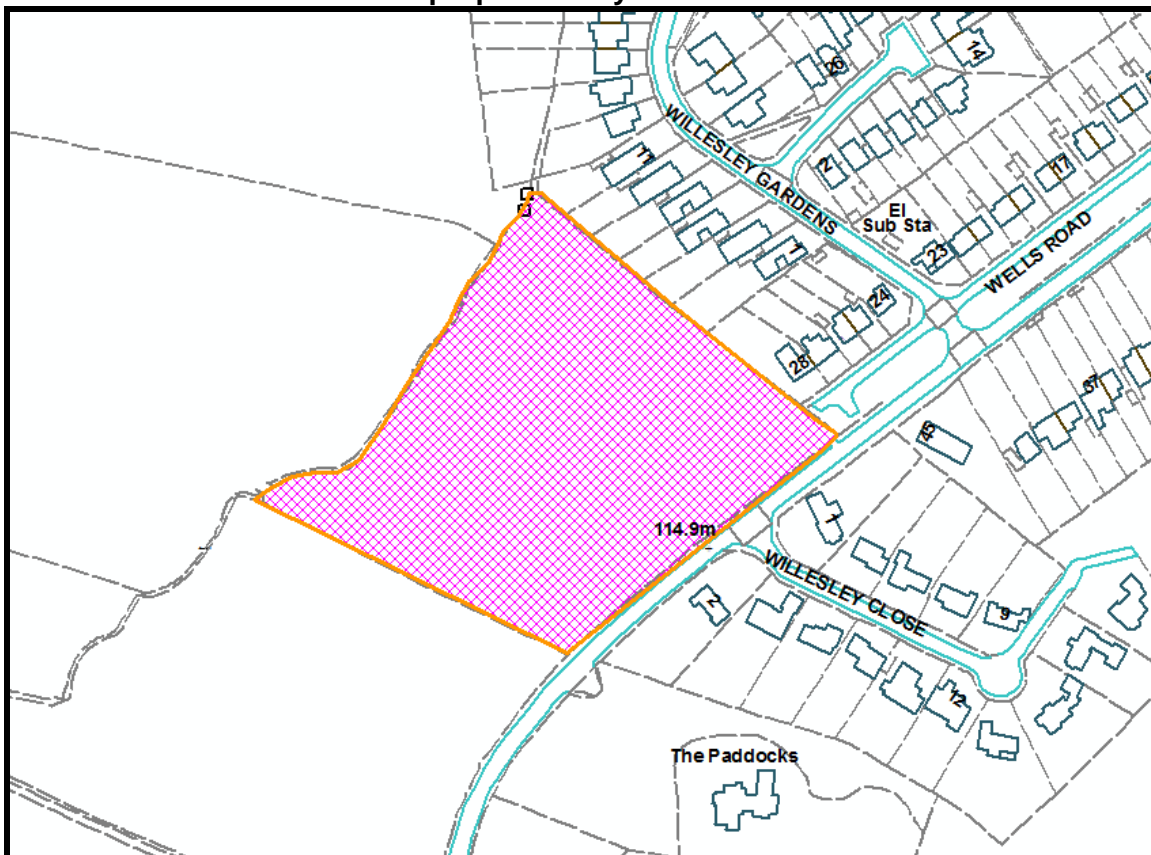
Date Registered  
6 March 2015

Case Officer:  
Ebony Mattley

Target Decision Date  
5 June 2015

Recommendation:  
PERMIT subject to the signing of the Section 106 Agreement

Site Location - Plan for indicative purposes only



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## **Executive Summary of Proposals and Reasons for Approval**

### **Reason for Call In**

The application is reported to the Planning Committee, as it is an application of public interest and raises matters which should be referred to the Planning Committee for consideration.

### **Proposal**

This application seeks full planning permission for forty-one dwellings, comprising twenty-nine open market dwellings and twelve affordable dwellings at land at Willesley Road, Ashby.

Access to the site would be from Willesley Road to the east of the site and a combined pedestrian/cycle route is proposed from the north east corner of the site with Willesley Gardens, to the northern boundary of the site.

### **Consultations**

Members will see from the main report below that there are 97 objections to the scheme, and an objection from Ashby Town Council. There are no other objections raised from statutory consultees.

### **Planning Policy**

The application site is located outside the Limits to Development as defined in the adopted North West Leicestershire Local Plan. Also relevant, is the District's housing land requirements, and the need as set out in the National Planning Policy Framework, (NPPF) to demonstrate a five year supply.

### **Conclusion**

Planning permission has previously been refused for an identical scheme, at this site at Planning Committee in November 2014. The applicant has submitted additional information to seek to overcome the previous reason for refusal.

Whilst the site is further from services, than the desired standards, it is considered that given the comparable distances with the site at South of Moira, Road and Ashby and at land Between Burton Road and Moira Road, Shellbrook, that a strong case has been made concerning the sustainability of the site.

The NPPF specifically states that decision takers should consider housing applications in the context of the presumption in favour of sustainable development. Based on the above discussions, the proposed scheme is considered to comply with the core principles of the NPPF, and thus in principle, the development is considered acceptable.

The proposed development would be acceptable in terms of density, layout and scale, trees, residential amenities, highway safety, flood risk and drainage, archaeological, ecological impacts and impact on the River Mease SAC/SSSI and no other technical issues have arisen. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services. There are no other relevant material planning considerations that indicate planning permission should not be granted.



It is therefore recommended that planning permission be granted, subject to conditions and the signing of the S106 Agreement.

**RECOMMENDATION: PERMIT, subject to the signing of the Section 106 Agreement and imposition of conditions.**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

This application seeks full planning permission for forty-one dwellings, comprising twenty nine open market dwellings and twelve affordable dwellings at land at Willesley Road, Ashby.

Members are advised that this application was previously considered at the November 2014 Planning Committee, where the application was refused, based upon its un-sustainable location, remote from services and contrary to Saved Policy S3 of the Local Plan and the overarching intentions of the NPPF. Accordingly in seeking to overcome the previous reason for refusal, the applicant has submitted a sustainability statement and iso-distance plans to show services and approved development within Ashby, in support of their application.

For the avoidance of doubt the number of plots on site is 35, but the overall number of individual units is 41, resultant of the eight, 1 bedroomed affordable units.

The open market dwellings are made up of 2 x two beds, 16 x three beds, 11 x four beds, with the affordable comprising 8 x one beds, 2 x two beds and 2 x three beds.

The scheme proposes areas of play space and a balancing pond to the north-west border of the site. Access to the site would be from Willesley Road to the south east of the site and a combined pedestrian/cycle route is proposed from the south east corner of the site with Willesley Gardens, to the north-west boundary of the site. The combined pedestrian/cycle route is then proposed to be extended beyond the site to the Hicks Lodge Cycle Centre (which is to be secured through the Section 106 Agreement.) A separate agricultural access is also proposed from the site to the north- west boundary.

One ash and two lime trees are sited close to the access point with the two lime trees proposed to be removed to facilitate the access. An informal, un-designated footpath runs to the north east boundary of the site parallel to the rear gardens of Willesley Gardens. The site is in arable, agricultural use and is located outside Limits to Development, as identified in the North West Leicestershire Local Plan 2002.

The application is accompanied with an Arboricultural Assessment, Archaeological Desk Based Assessment and Field Walking Survey, Building for Life 12 Assessment, Draft Heads of Terms, Design and Access Statement, Ecological Appraisal, Flood Risk Assessment, Geophysical Survey Report, Landscape and Visual Appraisal, Planning Statement, Site Sustainability Appraisal, Transport Statement

#### Planning History:-

14/00520/FULM - Erection of 41 dwellings and associated infrastructure including the provision of play space and combined cycle and footpath - Refused - 07.11.2014.

72/4243/02 - Erection of dwellings and formation of access - Refused - 07.09.72.

### 2. Publicity

142 no. neighbours have been notified.

Press Notice published 18 March 2015

Site Notice displayed 12 March 2015

### 3. Consultations

LCC ecology  
 County Highway Authority  
 NWLDC Urban Designer  
 NWLDC Tree Officer  
 LCC/Footpaths  
 LCC Development Contributions  
 Ashby de la Zouch Town Council  
 NWLDC Footpaths Officer  
 County Planning Authority  
 Environment Agency  
 County Archaeologist  
 National Forest Company  
 Manager Of Housing North West Leicestershire District Council  
 NHS Leicester, Leicestershire And Rutland Facilities Management  
 Severn Trent Water Limited  
 Natural England  
 Police Architectural Liaison Officer  
 Head of Environmental Protection  
 Head Of Leisure And Culture  
 Development Plans

### 4. Summary of Representations Received

#### Statutory Consultees:

**Ashby Town Council** raise objection on the following grounds:-

- Not consistent with the character and appearance of the local landscape
- Outside of the established urban area of Ashby, open countryside and at the heart of the National Forest
- The location has been given the landscape quality of 9 which is the highest value of all the sites in Ashby
- Not in accordance with the NPPF in terms of achieving and delivering sustainable development and conserving and enhancing the natural and historic environment
- Concerns regarding the ingress and egress from Willesley Road and the County Council has installed speed bumps indicating that there are concerns with speeding
- Streetscenes are out of character with the surrounding area, poor and unsympathetic design

**Natural England** has confirmed that the proposal is not likely to have a significant effect on the River Mease Special Area of Conservation and therefore raises no objection, subject to condition. Natural England has also confirmed that the scheme will not impact upon the River Mease Site of Special Scientific Interest (SSSI) and therefore raises no objection subject to the imposition of conditions.

**Severn Trent Water** raises no objection, subject to condition.

**The Environment Agency** raises no objection, subject to condition.

**National Forest Company** has confirmed that a surfaced footpath and cycleway through the

site and the adjoining field to the cycle centre would be acceptable as a contribution towards the National Forest from this development.

**The County Highway Authority** raises no objection subject to the imposition of planning conditions.

**The County Footpaths Officer** is supportive of the route proposed for the cycleway within the site and beyond.

**The County Archaeologist** considers that the site has low archaeological potential and consequently no further archaeological requirements have been recommended.

**The County Ecologist** raises no objection subject to conditions.

**NWLDC Affordable Housing Enabler** is satisfied with the provision and tenure of the proposed affordable units on site.

**NWLDC Environmental Protection** has no environmental observations.

**NWLDC Urban Design Officer** has confirmed that subject to the imposition of conditions, the scheme would perform positively against Building for Life and would therefore be consistent with the Council's aspirations.

**NWLDC Tree Officer** raises comments in respect of the positioning of plots in relation to existing trees.

### **Third Party Representations**

97 letters of objection have been received raising the concerns around the following areas-

- a) Principle of development, contrary to policies and un-sustainable and preference for brownfield first
- b) Impact upon the character and landscape - given the high landscape quality of 9
- c) High density, intensive form of development
- d) The streetscenes are completely out of character with the surrounding area and adjacent properties
- e) Highway Safety
- f) Existing inadequate infrastructure/services/amenities to accommodate the development
- g) Drainage and Floodrisk
- h) Wildlife
- i) Assumptions and misleading information within the reports
- j) Modification order to register the existing footpath/cycletrack through the site is currently awaiting determination by the County Council.
- k) Noise and discomfort to existing residents and disruption during construction
- l) A revised assessment of the water course should be undertaken
- m) De-valuation of property prices - what compensation will residents receive?
- n) It is irrational not to make the TPO as soon as possible
- o) The National Forest's minimum requirements of 20% of the site are not met
- p) A designated children's play area is included but no mention of an enforceable commitment for its maintenance which would evoke safety issues.
- q) In a dismissed appeal in Warwickshire - this did not have a formal landscape designation. The Inspector stated concluded that overall the site has value in landscape

- terms and as a consequence of being valued locally
- r) In a dismissed appeal in Gloucestershire - The Inspector stated concluded that although the site was not covered by special landscape designation, its intrinsic attractiveness and easy access for the public gave it some value
  - s) Packington Nook has many similarities and the appeal site was not in a sustainable location and no need for the development in that location to meet any specific economic needs. This site is even further away from the town centre facilities, key services and employment and is not required for economic need

All responses from statutory consultees and third parties are available for Members to view on the planning file.

## 5. Relevant Planning Policy

### National Planning Policy Framework (NPPF) - March 2012

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Save where stated otherwise, the policies of the North West Leicestershire Local Plan as listed in the relevant section below are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application.

The following sections of the NPPF are considered relevant to the determination of this application:

- Paragraph 14 (Presumption in favour of sustainable development)
- Paragraph 32 (Promoting sustainable transport)
- Paragraph 34 (Promoting sustainable transport)
- Paragraph 47 (Delivering a wide choice of high quality homes)
- Paragraph 49 (Delivering a wide choice of high quality homes)
- Paragraph 54 (Delivering a wide choice of high quality homes)
- Paragraph 57 (Requiring good design)
- Paragraph 59 (Requiring good design)
- Paragraph 61 (Requiring good design)
- Paragraph 64 (Requiring good design)
- Paragraph 100 (Meeting the challenge of climate change, flooding and coastal change)
- Paragraph 101 (Meeting the challenge of climate change, flooding and coastal change)
- Paragraph 103 (Meeting the challenge of climate change, flooding and coastal change)
- Paragraph 109 (Conserving and enhancing the natural environment)
- Paragraph 112 (Conserving and enhancing the natural environment)
- Paragraph 118 (Conserving and enhancing the natural environment)
- Paragraph 119 (Conserving and enhancing the natural environment)
- Paragraph 110 (Conserving and enhancing the natural environment)
- Paragraph 123 (Conserving and enhancing the natural environment)
- Paragraph 129 (Conserving and enhancing the natural environment)
- Paragraph 203 (Planning conditions and obligations)
- Paragraph 204 (Planning conditions and obligations)

### **North West Leicestershire Local Plan:**

The application site is outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. The following Local Plan policies are relevant to this application:

Policy S1 sets out 13 criteria which form the strategy for the adopted Local Plan.

Policy S3 - Countryside

Policy E2 - Landscaped Amenity Open Space

Policy E3 - Residential Amenities

Policy E4 - Design

Policy E7 - Landscaping

Policy E8 - Crime Prevention

Policy F1 - National Forest General Policy

Policy F2 - Tree Planting

Policy F3 - Landscaping and Planting

Policy T3 - Highway Standards

Policy T8 - Parking

Policy H4/1 - Housing Land Release

Policy H6 - Housing Density

Policy H7 - Housing Design

Policy H8 - Affordable Housing

Policy L21 - Children's Play Areas

### **Other Guidance**

National Planning Practice Guidance - March 2014.

The Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations').

Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System.

River Mease Water Quality Management Plan - August 2011.

River Mease Development Contributions Scheme - November 2012.

### **North West Leicestershire District Council Affordable Housing SPD**

Key Principle AH2 provides that affordable housing will be sought on all sites of 15 or more dwellings in Ashby.

Key Principle AH3 requires a minimum of 30% of residential units to be available as affordable housing within Ashby de la Zouch.

### **North West Leicestershire District Council Play Area Design Guidance SPG**

The District Council's Play Area Design Guidance SPG sets out the relevant requirements in respect of children's play provision required in association with residential development.

### **6Cs Design Guide (Leicestershire County Council)**

The 6Cs Design Guide sets out the County Highway Authority's requirements in respect of the design and layout of new development.

## **6. Assessment**

The main considerations with regards to this application are the principle of development and assessing the previous reason for refusal, density, layout and design, impact upon residential amenity, highway considerations, public footpaths and cycle routes, impact upon trees, protected species/ecology, archaeology, drainage and flood risk, the impact upon the River Mease Special Area of Conservation/SSSI, developer contributions and other matters.

### **Principle of development and assessing the previous reason for refusal**

Members are advised that planning permission was refused at the November 2014 Planning Committee for the following reason:-

*"Paragraph 14 of the National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development; Paragraph 7 defines sustainable development (and including its environmental dimension) and also provides that the planning system needs to perform an environmental role, including in respect of protecting and enhancing our natural environment and using natural resources prudently. Policy S3 of the Adopted North West Leicestershire Local Plan sets out the circumstances in which development outside of Limits to Development would be acceptable. The introduction of residential development on this un-developed site, outside Limits to Development, remote from services would constitute unsustainable development, contrary to the policies and intentions of the NPPF and Saved Policy S3 of the North West Leicestershire Local Plan."*

### **Residential development on an "un-developed site, outside Limits to Development"**

Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance, includes the adopted North West Leicestershire Local Plan (2002 (as amended)).

The application site lies outside the Limits to Development of Ashby, as defined by the proposals map of the adopted Local Plan and therefore falls to be considered against Saved Policy S3 of the Local Plan. In applying weight to any conflict with Policy S3 in the overall planning balance, it is important to bear in mind the fact that the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements only up until the end of that Plan Period (i.e. to 2006). It is therefore considered inevitable that greenfield land will need to be released in order to maintain a five year supply of deliverable sites, as well as (as in this case) land not allocated for housing development in the adopted Local Plan.

Saved Policy H4/1 is also of relevance and identifies the criteria for in releasing "appropriate" land for housing. The settlement boundary of Ashby runs along the rear gardens of Willesley Gardens incorporating Willesley Close and 'The Paddocks' to the south, accordingly the application site abuts the settlement boundary along its north east, east and south east boundaries. The site is therefore bordered by residential development to two boundaries - to the north east by Willesley Gardens and to the south east by Willesley Close and does not extend or encroach any further to the south of the settlement of Ashby, than Willesley Close.

As the Authority is able to demonstrate a five year supply of housing, including an additional 20% buffer, Saved Policies S3 and H4/1 are considered to be relevant and in date, in the context of Paragraph 49 of the NPPF (subject to the weight to be attached to Policy S3 as a material consideration being adjusted having regard to the plan period issue as set out above).

Insofar as the site's location is concerned, whilst the site it is located outside of Limits to Development, the site is well related to the settlement boundary, is bounded by existing development, as set out above and is not therefore considered to be an isolated development in the countryside.

### **Sustainability credentials of the site**

In seeking to overcome the previous reason for refusal, the applicant has provided a site sustainability appraisal and iso-distance plans to show services and approved development within Ashby, in support of their application.

*The site sustainability appraisal is broken up into four main parts, social, economic, environmental and recent appeal decisions and states:-*

- o The social role considers the transport connectivity, play facilities and education and retail services. The iso-distance locates the application site within the wider context and denotes recently approved application sites which share comparable distance from Ashby town centre.*
- o The economic role sets out the economic benefits arising from the application site, including direct and indirect employment and anticipation annual expenditure for retail (£436,102) and leisure (£285,397) and generation for council tax (£58,999) and the new homes bonus payment (£353,994).*
- o The environmental role discusses the site surveys on site and the proposed use of sustainable drainage solutions, tree planting and open space and concludes that there are no adverse impacts with regards to the environment that significantly and demonstrably outweigh the benefits of the scheme.*
- o In respect of the three listed appeal decisions, the applicant states that for many key services, this application site has less than half the travel distances associated with the Iveshead Road, Shepshed (APP/X2410/A/12/2177327) appeal site, and that the Inspector within that appeal indicated that it is not as simple as dismissing a site on its sustainability credentials, based solely on walking distances from 1 or more key services.*
- o Within the appeal example at West Haddon, Northamptonshire (APP/Y2810/A/14/2222311) the Inspector stated in making reference to methods for assessing distance from key services "Such, standards and the use of national survey, must be applied with some caution and viewed in the context of local circumstance."*
- o Within the final allowed appeal example - Land South of Moira Road, Ashby (APP/G2435/A/13/2192131) the applicant states that there are many similarities with the application site -with both lying approximately 1km for the town centre, a walk of 10-15 minutes and most of the urban area of Ashby, including the secondary schools within 2km and employment and superstore falling with 3km of the site. The Department of Transport statistics show the average trip length regularly undertaken is on average 1km for walking, 4.5 km for cycling and 8km for buses and is therefore concluded that this site is within easy walking or cycling distance of all of the town's facilities.*

In assessing the contents of the applicant's sustainability assessment outlined above, the following comments have been reached by Officers:



In terms of distance to amenities, the Institute of Highways and Transportation (IHT) document 'Providing for Journeys on Foot' details the distance of 800 metres is considered to be the preferred maximum walking distance to a town centre with 400 metres acceptable and 200 metres being desirable.

Below are the approximate distances from the site to local facilities and services via the existing footway network:-

- o Bus Stop - 465 metres
- o Western Park, via Packington Nook Lane - 675 metres
- o Primary School - 790 metres
- o Public House, Tamworth Road - 900 metres
- o Play Space (to the west of Ridgeway Road) - 950 metres
- o Town Centre boundary 1,050 metres
- o Market Street - 1,480 metres

Whilst the bus stop, park and primary school are the only amenities within the maximum preferred walking distance, the bus stop is in close proximity to the site, 465 metres to the northern side of Tamworth Road and an hourly bus service runs along Tamworth Road which provides access to the facilities within the town centre. There is also an existing footpath along the southern side of Willesley Lane which runs the entire length to the junction with Tamworth Road and there are also footpaths on both the north and south side of Tamworth Road into the town centre. The scheme seeks to provide its own on-site play space, and there is an area of equipped play space and larger area of play at Western Park which is accessed via Willesley Road, straight on to Tamworth Road and then via Packington Nook Lane, being located approximately 675 metres away. Furthermore, the scheme itself also seeks to promote walking and cycling, by providing a combined footpath and cycle route within the site. This is proposed to continue beyond the site, to the Hicks Lodge Cycle Centre, with the applicant willing to enter into a Section 106 Agreement to provide and surface this route. This will provide both future occupiers and existing residents in Ashby access to the Hicks Lodge Cycle Centre.

The County Highway Authority (CHA) have also commented upon transport sustainability within this application, stating that the site is well served by an existing network of footways for pedestrians and is accessible for cyclists, the Primary School is at a walking distance of less than 800 metres and the nearest bus stops are at approximately 400 to 460 metres from the site.

In respect of the Lower Packington Road appeal decision, the Inspector concluded, that with the 1km distance from the town centre, with significant gradients and no dedicated cycle routes close to the appeal site, and with a limited and infrequent bus service running past the site, many people would rely heavily on their cars for trips even to buy one or two, small everyday items.

In comparison, whilst the distance to the town centre is similar, there are a range of services and amenities in closer proximity, along Tamworth Road to this site, with the nearest shop to purchase one or two, small everyday items being approximately a 11.5 - 12 minute walk, with the route into the town centre being predominantly flat (with the exception of a slight rise in gradients between Wells Road and the junction with Tamworth Road). There is also an hourly - Monday to Saturday bus service, with the bus stop approximately a 4.5 minute walk away.

Consideration should also be given to the appeal decision at land South of Moira Road, Ashby,

where the Inspector stated that the site was about 1km to the town centre, a walk of 10-15 minutes, and most of the urban area of Ashby lay within 2km of the site, with employment areas and the superstore, being within about 3 km of the site. The Inspector concluded that, that site was within walking or cycling distance of all the town's facilities and the site was to be in a sustainable location. Furthermore at Planning Committee in December 2014, it was resolved to grant planning permission (subject to the S106 Agreement) at land between Burton Road And Moira Road, Shellbrook (ref: 14/00578/OUTM) which is between 1-1.4km distance from Ashby town centre, which is comparable with the distance from this site with the town centre.

The CHA has stated whilst the town centre of Ashby de la Zouch is at a distance of less than 1.5 Km from the site, this is a greater distance than would normally be considered to be acceptable, given 1 Km which has been considered to be an acceptable walking distance by previous Planning Inspectors' appeal decisions and, given that there is a much greater provision of employment, education and services in Ashby than in many towns and villages, it may be that some walking journeys would be made. In addition, the CHA has confirmed that there is a stronger argument to be had that the site is very attractively located for cycling trips and that this has to be given some weight.

In response to the applicant's other appeal decisions outside the District, it is not considered that they carry any significant weight in the determination of this application.

Ashby provides a good and wide range of day to day services and facilities which meet the day-to-day needs of Ashby as well as some of the surrounding villages, which has been supported in recent appeal decisions. These include primary schools, a secondary school, a good range of shops, leisure facilities and library, health centre as well as recreational facilities, public houses and employment opportunities.

The provisions of the NPPF do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF.

- o Economic - in this respect developments should contribute towards building a strong competitive economy through ensuring that sufficient land of the right type is available to support growth, and by coordinating development requirements, including the provision of infrastructure. It is considered that the development would benefit the local economy through both the creation of jobs for the construction of the development itself, as well as securing financial contributions for the provision and maintenance of local infrastructure. Accordingly the site is considered to be consistent with the 'economic role'.
- o Social - in this respect, developments should support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations, and by creating a high quality built environment. The development would provide both open market and 12 affordable units, appealing to a wider spectrum within the local market, thus increasing local market choice and appealing to groups whom may have otherwise been excluded from the locality.
- o Environmental - to fulfil this role development should protect and enhance the natural, built and historic environment. As part of this biodiversity should be improved, natural resources should be used more prudently, waste and pollution should be minimised, and development should help mitigate, and adapt to climate change. The site is located outside the limits to development, but is well related to the existing settlement.

Furthermore, as set out in the report below, it is considered that the proposal would not be contrary to the aims of protecting or enhancing the natural and historic environment. Accordingly the site is considered to be consistent with the 'environmental role'.

The NPPF specifically states that decision takers should consider housing applications in the context of the presumption in favour of sustainable development. Based on the above discussions, the proposed scheme is considered to comply with the core principles of the NPPF, and thus in principle, the development is considered acceptable.

The applicant has submitted additional information to seek to overcome the previous reason for refusal, and whilst the site is further from services, than the desired standards, it is considered that given the comparable distances with the site at South of Moira, Road and Ashby and at land Between Burton Road and Moira Road, Shellbrook, that a strong case has been made concerning the sustainability of the site.

### **Loss of Agricultural Land**

Paragraph 112 of the NPPF suggests that, where significant development of agricultural land is demonstrated to be necessary, poorer quality land should be used in preference to that of a higher quality. Best and Most Versatile (BMV) agricultural land is defined as that falling within in Grades 1, 2 and 3a of the Agricultural Land Classification (ALC). The applicant has confirmed that the land would be assigned to Class 3, however the Agricultural Land Classification does not specify whether the land would fall within a 3a (BMV) or 3b (not BMV) classification.

Whilst, the NPPF does not suggest that the release of smaller BMV site is acceptable, it is commonly accepted that the magnitude of loss of agricultural land is low where less than 20 hectares of BMV would be lost and therefore given the relatively limited extent of the potential loss of the site, at 1.54 hectares, it is considered that the potential agricultural land quality issue is not sufficient to sustain a reason for refusal in this case.

### **Density, Layout and Design**

For the avoidance of doubt there is no change to the density, layout or design of the dwellings and therefore consideration of these matters remains as per the previous application ref: 14/00520/FULM. In this respect, the Committee did not include density, layout of design in the reason for refusal.

The Council's Urban Design Officer has confirmed that subject to the imposition of conditions, the scheme would perform positively against Building for Life and would therefore be consistent with the Council's aspirations.

It is considered that the range of terraced, semi-detached and detached properties of 2, 3 and 4 bedroom configuration and 2 and 2.5 storey proportions adds interest and provides strong attractive street scenes, softened by the variation in architectural detailing, materials, surfacing, boundary treatments, trees and landscaping. As such the scheme is considered to be in accordance with Saved Policy E4 of the Local Plan and overarching intentions of the NPPF.

### **Impact upon Residential Amenity**

There are no changes to the layout and therefore the consideration of positioning and distances to neighbouring residential properties remains as per the previous application ref: 14/00520/FULM. In this respect, the Committee did not include impact upon residential amenity

in the reason for refusal.

It is considered that there are sufficient distances to ensure no significant adverse impacts, in terms of loss of privacy, light and overbearing impacts between proposed plots and existing neighbouring properties. For the avoidance of doubt windows serving bathrooms and en-suites are to be fitted with obscure glass, secured by the imposition of a planning condition.

In summary, the proposal is considered to have minimal impacts upon amenity of existing neighbouring or future neighbouring residents. As such the scheme is considered to be in accordance with Saved Policy E3 of the Local Plan.

### **Highway Considerations**

There is no change to the vehicular access or pedestrians connections and therefore consideration of these matters remains as per the previous application ref: 14/00520/FULM. In this respect, the Committee did not include highway safety in the reason for refusal.

There is a mixture of frontage and side parking and single and double detached garages. All plots open market and affordable have at least two car parking spaces, with the exception of the one bed affordable units, which have one space each and two visitor spaces between them. For the avoidance of doubt all 2 bed properties (8 plots) have two parking spaces, with all other 3 and 4 bed properties having three parking spaces and all garages have sufficient internal dimensions.

The scheme has been considered by the County Highway Authority (CHA) who raises no objection, subject to conditions including off site works.

In summary, subject to the imposition of conditions it is considered that the scheme is acceptable in relation to Saved Policies T3 and T8 of the Local Plan.

### **Public Footpaths and Cycle Routes**

There is no change to the proposed combined pedestrian and cycle route, nor has the Modification Order been passed and consideration of these matters therefore remains as per the previous application ref: 14/00520/FULM. In this respect, the Committee did not include the impact upon the existing footpath in the reason for refusal.

There are no formal, designated public footpaths running through the site, however a route has been used historically and informally to the north east periphery of the site, running parallel with the rear gardens of Willesley Gardens. An application, dated 15 April 2014 was submitted by local residents to Leicestershire County Council for a Modification Order (ref: P114) to seek a Public Right of Way consistent with the existing informal route, as described. The County Council are currently proceeding with the preparatory work associated with the making of the Modification Order, prior to preliminary consultations being carried out with interested parties.

In respect of the impact of the scheme on the current route used by residents, given that the route is not a designated footpath, then no weight can be given to the impact of the development on this route.

The applicant proposes a combined pedestrian and cycle route within the scheme, with the route also extending to the field to the north of the site. The applicant has made a commitment that this route will be formally offered as a formal Public Right of Way and Cycle Route for

access to Hicks Lodge and would be willing to enter into a Section 106 Agreement to secure the route, width and appropriate surfacing. The National Forest and Leicestershire County Council Footpath Officer have been consulted upon this and are fully supportive of the route proposed, providing the route links outside the development site to the Hicks Lodge cycle routes.

As such, whilst the route through the site, would not be exactly the same as the one currently informally used by local residents, through the Modification Order, the scheme does seek to provide a formally designated route through the site and beyond the site to the north, for access to the Hicks Lodge Cycle Centre.

### **Impact upon Trees**

The impact upon the two lime trees has been rigorously considered by the previous application, including alternative vehicular access positions, in order to seek to secure their retention. However, the Committee did not include impact upon the trees in the reason for refusal.

As previously reported, overall it was considered that to insist upon the lime trees retention would be to the detriment of highway safety and accordingly on balance, the amenity value the lime trees added was not sufficient to outweigh the potential highway safety implications, in this case.

Accordingly this application proposes the same access point as that previously considered and the Tree Officer raises the same comments in respect of the positioning of plots in relation to existing trees and proposed trees.

It is considered that specific conditions in respect of proposed planting can be imposed and "no-dig" construction to ensure no significant adverse impacts upon the trees T4, T5 and T13.

### **Protected Species/Ecology**

Consideration of these matters therefore remains as per the previous application ref: 14/00520/FULM. In this respect, the Committee did not include impact upon protected in the reason for refusal.

The application has been accompanied by an Ecological Appraisal, which has been considered by the County Ecologist. The County Ecologist has confirmed that they have the same comments, as those provided within the original application, which is no objection, subject to the imposition of planning conditions.

### **Archaeology**

Consideration of these matters therefore remains as per the previous application ref: 14/00520/FULM. In this respect, the Committee did not include archaeology in the reason for refusal.

The application has been accompanied by an Archaeological Desk Based Assessment and Field Walking Survey. The application has been considered by the County Archaeologist who is satisfied that development has low potential impact upon buried remains, and that there are no other recorded heritage assets likely to be detrimentally affected by the proposals, and therefore confirms that the application warrants no further archaeological involvement.

## **Drainage and Flood Risk**

The Committee did not consider flooding to be an issue of concern and therefore was not included in the previous reason for refusal.

The site lies within Flood Zone 1 as defined by the Environment Agency as having a low probability of flooding (less than 1 in 1,000 annual probability in any year). An unnamed ditch forms the site's western boundary and a small drain flows along the site's northern boundary.

The scheme proposes an open attenuation pond, in addition to permeable paving within private parking areas.

The application has been accompanied by a Flood Risk Assessment (FRA), which has been considered by statutory consultees, all of which raise no objections, subject to the imposition of planning conditions.

The scheme has been considered by the Environment Agency who raises no objection subject to the imposition of the condition requiring the development to be undertaken in accordance with the details provided within the FRA, including the provision of sustainable drainage solutions.

## **Impact on the River Mease Special Area of Conservation/SSSI**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Therefore an assessment of whether the proposal would have a significant effect on the SAC is required. The River Mease Developer Contribution Scheme (DCS) has been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). The DCS advises that all new development which contributes additional wastewater to the foul water catchment areas of the treatment works within the SAC catchment area will be subject to a developer contribution. The DCS is considered to meet the three tests of the 2010 CIL Regulations and paragraph 204 of the NPPF.

When having regard to the existing agricultural use of the site, the proposal for 41 dwellings would increase the foul drainage discharge from the site and as such it is subject to the requirements of the DCS.

The flows from the new dwellings will need to be taken into account against the existing headroom at Packington Treatment Works, which serves Ashby de la Zouch. At March 2015 capacity as available, taking into consideration dwellings that have consent and/or are under construction, which at the time of writing, totalled 2663 dwellings and therefore sufficient capacity exists for the 41 dwellings proposed.

Natural England has considered the scheme and raise no objections in relation to impact on the SAC/SSSI subject to conditions. Therefore based on the above it can be ascertained that the proposal site would not, either alone or in combination with other plans or projects, have a significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI.

## **Developer Contributions**

Paragraphs 203 and 204 of the NPPF set out the Government's policy in respect of planning obligations and, in particular, provide that planning obligations should be:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the proposed development.

Equivalent legislative tests are contained within the Community Infrastructure Levy (CIL) Regulations 2010.

### **Affordable Housing**

Under the Council's Affordable Housing SPD, 30% affordable housing is required on sites of 15 dwellings or more, and this would equate to 12.3 dwellings for the current proposal. The scheme proposes 12 affordable units in total comprising 8 x 1 bedroomed units, 2 x 2 bedroomed dwellings and 2 x 3 bedroomed dwellings and the Council's Strategic Housing Team is satisfied with the proposed affordable housing provision.

### **Play Space**

The Council's Play Area Supplementary Planning Guidance (SPG) states that the Council will not seek any additional provision where existing play areas, within 400 metres walking distance, satisfy the needs of the area, including the proposed development. In this instance, whilst an existing play space would fall within 400 metres of the site, given the route that users (children) would need to take along existing footpaths, to access the play space, the site would be well in excess of 400 metres, and therefore on-site provision should be provided.

Under the Council's SPG, on-site children's play provision is required at a rate of 20 square metres per dwelling. Given that 41 dwellings are proposed, this would require a play area of not less than 820 square metres. The scheme provides in excess of the policy requirement.

A scheme for the play provision will be secured through the Section 106 Agreement. An obligation relating to management plans for any open space, landscaping and SUDS to ensure that the land is properly established, maintained and managed in the future would also be required.

### **River Mease DCS**

A contribution under the River Mease DCS is required (as outlined earlier in the report) but an exact figure for the contribution cannot be determined at this stage, as the code levels (or equivalent) of the dwellings has not been finalised. A Section 106 agreement would be worded as such to allow flexibility based on the equivalent construction code levels.

### **Other Developer Contributions**

As a result of the Developer Contributions consultation, the following contributions have been requested:-

Leicestershire County Council (Libraries) request £1,240 towards additional resources at Ashby de-la Zouch Library.

Leicestershire County Council (Education) request a contribution of £119,054.26 for Ashby Willesley Primary School; a contribution of £73,292.30 for Ivanhoe College and a contribution of £75,256.16 for Ashby School.

Leicestershire County Council (Highways) request:-

- o Travel Packs; to inform new residents from first occupation what sustainable travel choices are in the surrounding area (can be supplied by LCC at £52.85 per pack).
- o Six-month bus passes, two per dwelling (2 application forms to be included in Travel Packs and funded by the developer); to encourage new residents to use bus services, to establish changes in travel behaviour from first occupation and promote usage of sustainable travel modes other than the car
- o Improvements to the nearest bus stop (Tamworth Road outside Loudoun House), including raised and dropped kerbs to allow level access, to support modern bus fleets with low floor capabilities. At £3263.00 per stop.
- o Information display case at a nearest bus stop; to inform new residents of the nearest bus services in the area. At £120.00 per display.

NWLDC Head of Leisure and Culture has requested a developer contribution of £39,335 for investment in a new wellbeing centre at Hood Park Leisure Centre.

The National Forest request a surfaced footpath and cycleway through the site and the adjoining field to the cycle centre as shown on the 'Indicative Cycle Plan Improvement Plan'.

NHS England (Leicestershire and Lincolnshire Area) request a contribution of £13,734.34 towards the costs of supporting a new surgery for the Ashby Health Centre practice.

No requests for contributions have been received from Leicestershire Police and the County Council has advised that a contribution towards civic amenity sites is not required.

### **Assessment of Financial Requests**

A contribution of £39,335 is requested for investment in a new wellbeing centre at Hood Park Leisure Centre. The project estimate of £750,000 would be for a wellbeing facility but there is no breakdown of specific costs which would be relevant to this specific development proposal. Furthermore, no evidence base has been submitted with the request to set out how the proposed development would generate the need for the wellbeing facility i.e. how it is specifically relevant to the proposed development.

As a new medical centre has already been approved (ref: 14/00080/FULM) at Burton Road, Ashby and the funding secured it is not considered that NHS England have demonstrated that this is required to make the development acceptable and is not therefore considered to meet the tests, as set out in Paragraph 204 of the NPPF.

On consideration of the other requests received in respect of this application, it is considered that the following meet the tests, and the applicant has confirmed that they would be willing to enter into an agreement to secure the following contributions:-

- o Affordable Housing (12 units)
- o Play and Open Space (on-site)
- o Education (£267,602.72)
- o Libraries (£1,240)
- o River Mease
- o Transport (Travel Packs, Bus Passes, Bus Stop Improvements, Information Display Cases)
- o National Forest (Footpath and Cycleway)



Notwithstanding the above, from April 2015, no more than five obligations can be pooled by the charging authority to provide for the same item of infrastructure. Accordingly it will be necessary for the relevant consultees, in relation to the above mentioned requests to demonstrate that no issues arise in respect of pooling (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

## **Other Matters**

### **Letters of Representation**

In respect of other objections received which have not already been addressed within the report above:-

A right to a view and de-valuation of property prices are not material planning considerations.

In respect of the concerns raised regarding the similarities with the Packington Nook development, and comments raised in respect of 'valued landscapes' in the Warwickshire appeal site and Gloucestershire appeal site, each case it considered on its own merits.

At a meeting of the Full Council on 29 October 2013, the District Council resolved to withdraw the Submission Core Strategy. Accordingly no weight can be attributed to the policies contained with the Core Strategy for the purposes of determining applications.

An application was refused in 1972 (ref: 72/4243/02) for residential development. The approved Ashby de-la Zouch Town Map and the approved County Development Plan have subsequently been replaced since 1972 and as such carry no weight in the determination of this application. Furthermore, the County Highway Authority have considered this scheme and do not consider that there is any reason to sustain a highway objection.

## **Conclusions**

In conclusion, as set out in the main report above, the applicant has submitted additional information to seek to overcome the previous reason for refusal, and whilst the site is further from services, than the desired standards, it is considered that given the comparable distances with the site at South of Moira, Road and Ashby and at land Between Burton Road and Moira Road, Shellbrook, that a strong case has been made concerning the sustainability of the site.

The proposed development would be acceptable in terms of density, layout and design, impact on trees, residential amenities, transportation and highway safety issues, flood risk and drainage, archaeology, ecological impacts and impact on the River Mease SAC and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services. It is therefore recommended that planning permission be granted, subject to conditions and the signing of the S106 Agreement.

### **RECOMMENDATION, PERMIT, subject to the signing of the Section 106 Agreement and the following conditions:-**

- 1 The development shall be begun before the expiration of three years from the date of this permission.

*Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).*

- 2 The proposed development shall be carried out strictly in accordance with the following plans, unless otherwise required by a condition of this permission:

Planning Layout, Drawing No. SL/01 (Scale 1:500); Alnwick + (Semi) Drawing No. BC/ALNWICK/ASHBY; Alnwick/Hanbury (Terrace) Drawing Nos. BC/ALNWICKT/ASHBY; Hanbury Plus House Type (Semi) Drawing No. BC/HAN/ASHBY; Knightsbridge House Type Drawing No. BC/KNIG/ASHBY; Leicester House Type Drawing No. BC/LEIC/ASHBY; 1160 House Type Drawing No. BC/1160/ASHBY; Marlborough House Type Drawing No. BC/MARB/ASHBY; Mayfair House Type Drawing No. BC/MAY/ASHBY; Whitehall House Type Drawing No. BC/TWHIT/ASHBY; Whitehall + House Type Drawing No. BC/TWHIT/ASHBY; 1 Bed Flat Drawings No. BC/FLAT/ASHBY; 1160 House Type Drawing No. BC/1160/ASHBY; 1010 House Type Drawing No. BC/1010/ASHBY; Single garage Drawing No. BC/SGARAGE/ASHBY and Double garage Drawing No. BC/DGARAGE/ASHBY received by the Local Planning Authority on 6 March 2015.

*Reason: To determine the scope of this permission.*

- 3 Notwithstanding the submitted plans, nor Condition 2 above, no building shall be erected on site above damp proof course level until details/samples (as appropriate) of the:-

- a) bricks, roofing materials and render
- b) doors and windows including porches and door surrounds, as well as doors to proposed garages)
- c) eaves and verges
- d) rain water goods
- e) windows and doors (including heads and cills)
- f) chimneys
- g) colour finish of utility boxes

have been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the works shall be implemented in accordance with the approved details.

*Reason - To ensure that the works are executed in an appropriate manner given the prominence of the site.*

- 4 Notwithstanding the submitted plans, prior to first occupation of any dwelling, a lighting scheme for all communal open space and parking areas are submitted and agreed to in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details, prior to the first occupation of any dwelling.

*Reason: To ensure that the development provides for a satisfactory form of design, in the interests of safeguarding against actual and fear of crime and anti-social behaviour.*

- 5 Notwithstanding the submitted plans, nor Condition 2 above, no building shall be erected on site above damp proof course level until a detailed scheme for the boundary treatment of the site including the precise details of the treatment of the demarcation of all public realm facing boundaries that will be a minimum of 1.2.m high comprising of

either railings with hedging, dwarf walls with railings, or dwarf walls have been submitted to and agreed in writing by the LPA. The development shall be carried out in accordance with the agreed details. The development hereby permitted shall not be occupied until such time as the approved scheme has been implemented in full (unless an alternative timescale is first agreed in writing by the Local Planning Authority). Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no gates, fences, walls or other means of enclosure (other than any approved pursuant to this condition) shall be erected, unless planning permission has first been granted by the Local Planning Authority.

*Reason: To preserve the amenities of the locality, in the interests of highway safety, to ensure that there is a clear and robust demarcation between public and private spaces and to ensure an appropriate form of design.*

- 6 No building shall be erected on site above damp proof course level until a detailed landscaping scheme, including the retention of existing trees and hedgerows and mitigation planting for the loss of trees, has been submitted to and approved in writing by the Local Planning Authority. The eight proposed trees along Street 1 shall be semi-mature trees of a minimum height of 5.5m and girth of 25-30cms, with focal trees adjacent plots 1, 25 and 26 and lime tree mitigation planting to the frontage shall be super semi-mature trees of a minimum height of 7.0 and girth of 40-45cms. The approved scheme shall be implemented in the first planting and seeding season following the first occupation of the first dwelling hereby approved unless an alternative implementation programme is first agreed in writing with the Local Planning Authority. Any tree or shrub which may die, be removed or become seriously damaged shall be replaced in the first available planting season thereafter and during a period of 5 years from the first implementation of the approved landscaping scheme or relevant phase of the scheme, unless a variation to the landscaping scheme is agreed in writing with the Local Planning Authority.

*Reason: To ensure satisfactory landscaping is provided within a reasonable period and a reasonable period for the replacement of any trees and shrubs.*

- 7 Notwithstanding the submitted plans, nor Condition 2 above, no building shall be erected on site above damp proof course level until such time as a detailed scheme for all surfacing of the access, driveways, parking areas and footpaths has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be undertaken in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

*Reason: To preserve the amenities of the locality.*

- 8 Notwithstanding the submitted plans, nor Condition 2 above, prior to the first occupation of the 10th dwelling details of the proposed bridge/structures to connect the site with the adjacent field to the north west of the site have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the 10th dwelling.

*Reason: To enable the Local Planning Authority to retain control over the external appearance, in the interests of the amenities of the area.*

- 9 No building shall be erected on site above damp proof course level until a scheme that makes provision for waste and recycling storage across the site shall first be submitted to and approved in writing to the Local Planning authority. The details should address accessibility to storage facilities for residents/collection crews, and adequate collection point space at the adopted highway boundary. The scheme shall be implemented in accordance with the approved details.

*Reason: To ensure that the development provides for a satisfactory form of design, in the interests of amenity.*

- 10 No development shall commence until precise details of the finished ground levels on the site and the finished floor levels of the buildings in relation to an existing datum point have been submitted to and agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with the agreed details.

*Reason: To ensure the development takes the form envisaged by the Local Planning Authority.*

- 11 No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the development is first brought into use.

*Reason: To ensure that the development is provided with a satisfactory means of foul water drainage.*

- 12 Notwithstanding condition 19 no development shall commence until drainage plans and surface water drainage management and monitoring plan have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the development is first brought into use.

*Reason: To ensure that the development is provided with a satisfactory means of surface water drainage management and monitoring as to reduce the risk of creating or exacerbating a flooding problem; to prevent an adverse impact on the River Mease Special Area of Conservation.*

- 13 No development shall commence until details for off-site highway work being a junction table at the Willesley Close/Willesley Road junction have been submitted to and approved in writing by the Local Planning Authority and no dwelling shall be occupied until the scheme has been constructed in accordance with the approved details.

*Reason: To reduce vehicle speeds on the approach to the site access.*

- 14 No development shall commence until details for off-site highway works being provision of a footway from the southern side of Wells Road to a suitable crossing point with drop kerbs and tactile paving on Willesley Road, have been approved in writing by the Local Planning Authority, and no dwelling shall be occupied until the scheme has been constructed in accordance with the approved details.

*Reason: To ensure a safe pedestrian route to the footway on the southern side of Willesley Road.*

- 15 No development shall commence on the site until such time as a construction traffic/site

traffic management plan, including wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

*Reason: To reduce the possibility of deleterious material (mud, stones etc.) being deposited in the highway and becoming a hazard to road users, and to ensure that construction traffic/site traffic associated with the development does not lead to on-street parking problems in the area.*

- 16 Before first occupation of any dwelling hereby permitted visibility splays of 2.4 metres by 43 metres shall be provided at the junction of the access with Willesley Road. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.

*Reason: To afford adequate visibility at the access/junction to cater for the expected volume of traffic joining the existing highway network and in the interests of general highway safety.*

- 17 Before first occupation of any dwelling hereby permitted, the respective car parking provision and any turning space shall be made within the curtilage, in accordance with the approved plans. The parking spaces and turning space so provided shall not be obstructed and shall thereafter permanently remain available for car parking and turning.

*Reason: To ensure adequate off street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking problems in the area.*

- 18 Before first occupation of any dwelling hereby permitted, drainage shall be provided within the site such that surface water does not drain into the Public Highway and thereafter shall be so maintained.

*Reason: To reduce the possibility of surface water from the site being deposited in the highway causing dangers to highway users.*

- 19 The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) revision 3, dated May 2014 Ref. R/C1409.001.03, under by Hydrock, including the mitigation measures detailed within it. The mitigation measures shall be fully implemented prior to the occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or with any other period that may be subsequently agreed in writing by the Local Planning Authority.

*Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site, to assist in the achievement of good water quality status for the River Mease, to reduce the risk of flooding from blockages and to ensure maintenance access.*

- 20 Should development not commence for two years since the last survey (April 2014) an updated badger survey will be required to be submitted to and approved by the Local Planning Authority.

*Reason: In the interests of protected species on the site.*

- 21 The windows serving bathrooms, en-suites and WCs shall be glazed with obscure glass to Pilkington Standard 3 (or equivalent) and shall be non or top opening only and thereafter be retained unless planning permission has first been granted by the Local Planning Authority.

*Reason: To ensure that the development is not detrimental to the privacy and amenities of the existing and future occupiers.*

- 22 No development shall commence until a scheme providing a tree protecting plan for all retained trees, identified within the submitted Arboricultural Assessment (May 2014) and a method statement of "no dig" design is first submitted to and approved in writing by the Local Planning Authority in respect of conditions T4, T5 and T13. All works shall be carried out in accordance with the approved details and timetable.

*Reason: To ensure that existing trees are adequately protected during construction in the interests of the visual amenities and character of the area.*

### **Notes to applicant**

- 1 In respect of Condition 3, the applicant is advised that render will be traditionally applied rough cast render. Monocouche and/or the use of plastic beading will not be permitted. The applicant is advised that porches and door surrounds must be constructed of timber that is either painted or stained. Full of partial UPVC porch structures and/or door surrounds will not be acceptable. UPVC windows and doors shall be of a cream or olive green finish.
- 2 In respect of Condition 5, the Local Planning Authority will be likely to require the submitted details to provide for, amongst the others, the following: a plan indicating the type of boundary treatment to be employed and where landscaping is proposed to demarcate public and private space, a photographic illustration of the proposed species.
- 3 All works within the limits of the highway with regard to the access shall be carried out to the satisfaction of the Highways Manager- (telephone 0116 3050001).

You will be required to enter into a suitable legal Agreement with the Highway Authority for the off-site highway works before development commences and detailed plans shall be submitted and approved in writing by the Highway Authority. The Agreement must be signed and all fees paid and surety set in place before the highway works are commenced.

If the roads within the proposed development are to be adopted by the Highway Authority, the Developer will be required to enter into an agreement under Section 38 of the Highways Act 1980 for the adoption of the roads.

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Residential development (up to 81 dwellings), associated open space, community and drainage infrastructure (Outline - access only) Re-submission of 14/00460/OUTM

Report Item No  
A5

Land On The East Side Of Butt Lane Blackfordby Derby

Application Reference  
15/00083/OUTM

Applicant:  
Mr Guy Mansfield

Date Registered  
5 February 2015

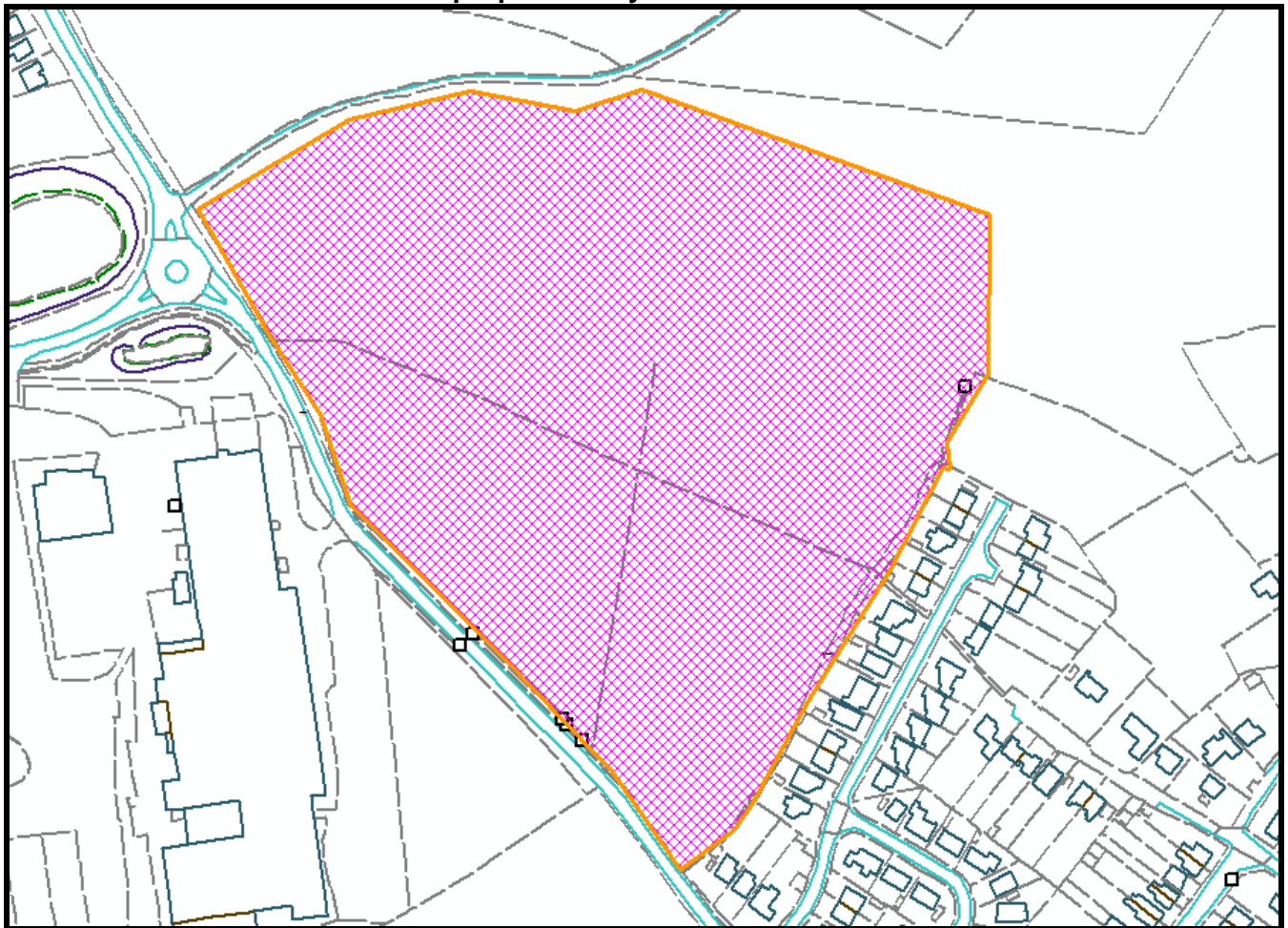
Case Officer:  
Ebony Mattley

Target Decision Date  
7 May 2015

Recommendation:  
PERMIT subject to a Section 106 Agreement

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Site Location - Plan for indicative purposes only



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## **Excutive Summary of Proposals and Reasons for Approval**

### **Reason for Call In**

The application is reported to the Planning Committee, as it is an application of public interest and raises matters which should be referred to the Planning Committee for consideration.

### **Proposal**

This application seeks outline planning permission for up to eighty-one dwellings, on land at east of Butt Lane, Blackfordby.

The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Butt Lane and the centre point of the access would be approximately 30m from the eastern boundary of the site which abuts neighbouring residential development.

Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application. However, the extent of the built development on the indicative layout does reflect the submitted parameters plan which is for consideration and shows the area within which built development is proposed.

### **Consultations**

Members will see from the main report below that there are 79 objections to the scheme, and an objection from Ashby Town Council. There are no other objections raised from statutory consultees.

### **Planning Policy**

The application site is located outside the Limits to Development as defined in the adopted North West Leicestershire Local Plan. Also relevant, is the District's housing land requirements, and the need as set out in the National Planning Policy Framework, (NPPF) to demonstrate a five year supply.

### **Conclusion**

The NPPF specifically states that decision takers should consider housing applications in the context of the presumption in favour of sustainable development. Based on the above discussions, the proposed scheme is considered to comply with the core principles of the NPPF, and thus in principle, the development is considered acceptable.

Paragraph 14 of the NPPF requires an assessment to be undertaken to establish whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole.

When having regard to the information presented by the applicant in seeking to overcome the previous reason for refusal, the sustainability credentials of the settlement and the site, comparable Planning Committee decisions and appeal decisions along with the fact that the site is well related to existing built development and the Limits to Development, on balance it is considered that a strong case has been made concerning the sustainability of the site.



The proposed development would be acceptable in terms of density, design, impact upon the heritage assets, trees, residential amenities, highway safety, coal mining and land contamination, flood risk and drainage, ecological impacts and impact on the River Mease SAC/SSSI and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services. There are no other relevant material planning considerations that indicate planning permission should not be granted.

It is therefore recommended that planning permission be granted, subject to conditions and the signing of the S106 Agreement.

**RECOMMENDATION - PERMIT, APPROVE SUBJECT TO SECTION 106 OBLIGATIONS AND THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

Outline planning permission is sought for the erection of up to 81 residential units. The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Butt Lane and the centre point of the access would be approximately 30 metres from the eastern boundary of the site which abuts neighbouring residential development. The formation of the new access which measures 10 metres in width (excluding radii and visibility splays) would require the removal of some of the existing hedgerow along Butt Lane.

Members are advised that an application for the same development proposal was previously considered at the December 2014 Planning Committee, where the application was refused, based upon its un-sustainable location, remote from services and therefore contrary to Saved Policy S3 of the Local Plan and the overarching intentions of the NPPF. Accordingly in seeking to overcome the previous reason for refusal, the applicant has provided a 'response to the previous reason for refusal' at section 7 of their submitted Planning Statement and a 'Local Facility Proximity Plan', in support of their application.

Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application. However, the extent of the built development on the indicative layout does reflect the submitted parameters plan which is up for consideration and shows the area within which built development is proposed.

The site is 7.4 hectares and is currently in agricultural use and is situated on the western side of the settlement to the northern side of Butt Lane. The application site is bordered by a public highway to the south-west, open fields to the north/ north-west and by residential development to the south east. Vehicular access to the site is currently via the existing vehicular access to Blackfordby House Farm off Butt Lane.

Land levels across the site rise in a northerly direction with the lowest land levels being adjacent to the public highway (Butt Lane) in the south eastern corner of the site and the highest being towards the north of the site. Between these two points of the site, the increase in land levels is approximately 11.5 metres.

The site lies within the catchment area of the River Mease Special Area of Conservation and the Blackfordby Conservation Area lies approximately 90 metres to the east of the site and the nearest listed buildings are the Grade II listed Butt Cottage lying approximately 65m to the south east of the site and the Grade 2 listed Well Cottage lying approximately 225 metres to the east. There are no protected trees on the site.

The site is located outside Limits to Development, as identified in the North West Leicestershire Local Plan 2002.

#### Planning History:-

14/00460/OUTM - Residential development (up to 81 Dwellings), associated open space (incorporating community infrastructure), drainage infrastructure (outline - access included) - Refused - 03.12.2014.

## 2. Publicity

100 no neighbours have been notified. (Date of last notification 5 March 2015)

Press Notice published 11 March 2015

Sire Notice published 13 March 2015

## 3. Consultations

Ashby De La Zouch Town Council consulted 5 March 2015  
Head of Environmental Protection  
LCC ecology  
LCC Development Contributions  
County Highway Authority  
Environment Agency  
Severn Trent Water Limited  
Natural England  
NWLDC Tree Officer  
County Archaeologist  
LCC Flood Management  
NWLDC Conservation Officer  
National Forest Company  
NHS Leicester, Leicestershire And Rutland Facilities Management  
Development Plans  
Head Of Leisure And Culture  
Manager Of Housing North West Leicestershire District Council  
Police Architectural Liaison Officer  
LCC/Footpaths  
NWLDC Footpaths Officer  
Coal Authority  
County Planning Authority  
Derbyshire County Council  
South Derbyshire District Council

## 4. Summary of Representations Received

*Statutory consultees:*

**Ashby de la Zouch Town Council** raise objection on the following grounds:-

- The application is for up to 81 dwellings which will increase the size of the village by 20% and there are no facilities within the village to support such an increase;
- The application site is outside of the designated village limits and absorbs Blackfordby into Woodville;
- There are serious traffic problems within the village which will be exacerbated by additional car journeys generated by this proposed development. A traffic survey in 2005 identified more than 10,000 vehicles used Butt Lane in the period of the survey;
- The footpaths within the village are very poor;
- The local primary school has no capacity and no room to expand;
- There is a lack of infrastructure generally within the village to support such an

- expansion: no shop, post office, medical facilities etc;
- There are concerns about flooding of Butt lane from the site and the potential impact upon local properties;
- The ecological report lodged with the application is flawed.

**County Highways Authority** has no objections subject to conditions and subject to securing developer contributions through a legal agreement.

**Environment Agency** has no objections subject to conditions.

**Severn Trent Water Ltd** has no objection subject to a drainage condition.

**Natural England** has no objections subject to the development according with the requirements of the River Mease Developer Contribution Scheme.

**Police** has requested a developer contribution of £30,348.

**Coal Authority** has no objections subject to a condition.

**National Forest Company** advises that 20 percent of the site area should be woodland planting and landscaping.

**County Archaeologist** has no objections subject to conditions.

**County Ecology** has no objections subject to conditions.

**County Footpaths** raises observations in respect of the layout in respect of footpaths P11 and P13.

**NWLDC Head of Leisure and Culture** has requested a developer contribution of £77,524 towards Hood Park Leisure Centre.

**NWLDC Head of Housing** advises that the rural housing needs survey for Blackfordby identified a need for affordable homes. In line with the Council's Supplementary Planning Document, 30% affordable housing should be secured.

**NWLDC Footpaths Officer** confirms that there are a number of footpaths that cross this development which would need diverting.

**NWLDC Urban Designer** is not satisfied that the indicative scheme submitted on the original or amended plan represents a good standard of design as supported by the NPPF and Building for Life 12.

**NWLDC Conservation Officer** has no objections.

**NWLDC Tree Officer** has no objections subject to conditions.

**NWLDC Head of Environmental Protection** has no environmental observations, subject to a contaminated land condition.

No comments have been received from:-

Derbyshire County Council  
South Derbyshire District Council  
NHS England.

79 letters of objection have been received raising the concerns around the following areas-

- a) Principle of development, contrary to policies and un-sustainable
- b) Adjacent to a Conservation Area
- c) Highway Safety
- d) Previous underground and opencast mining activities and potential subsidence and contamination
- e) Existing inadequate infrastructure/services/amenities to accommodate the development
- f) Drainage and Floodrisk
- g) Wildlife
- h) Noise and pollution
- i) Boundary and land ownership disputes
- j) Assumptions and misleading information within the reports
- k) De-valuation of property prices and increased home insurance costs
- l) A full Environmental Impact Assessment is required
- m) Another application at the top of Butt Lane/Hepworth Road has been submitted
- n) Approval of the development will lead to a precedent for further development.

All responses from statutory consultees and third parties are available for Members to view on the planning file.

## 5. Relevant Planning Policy

### National Planning Policy Framework (NPPF) - March 2012

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Save where stated otherwise, the policies of the North West Leicestershire Local Plan as listed in the relevant section below are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application.

The following sections of the NPPF are considered relevant to the determination of this application:

- Paragraph 14 (Presumption in favour of sustainable development)
- Paragraph 32 (Promoting sustainable transport)
- Paragraph 34 (Promoting sustainable transport)
- Paragraph 47 (Delivering a wide choice of high quality homes)
- Paragraph 49 (Delivering a wide choice of high quality homes)
- Paragraph 54 (Delivering a wide choice of high quality homes)
- Paragraph 57 (Requiring good design)
- Paragraph 59 (Requiring good design)
- Paragraph 61 (Requiring good design)
- Paragraph 64 (Requiring good design)

Paragraph 100 (Meeting the challenge of climate change, flooding and coastal change)  
Paragraph 101 (Meeting the challenge of climate change, flooding and coastal change)  
Paragraph 103 (Meeting the challenge of climate change, flooding and coastal change)  
Paragraph 109 (Conserving and enhancing the natural environment)  
Paragraph 112 (Conserving and enhancing the natural environment)  
Paragraph 118 (Conserving and enhancing the natural environment)  
Paragraph 119 (Conserving and enhancing the natural environment)  
Paragraph 129 (Conserving and enhancing the historic environment)  
Paragraph 131 (Conserving and enhancing the historic environment)  
Paragraph 134 (Conserving and enhancing the natural environment)  
Paragraph 143 (Facilitating the sustainable use of minerals)  
Paragraph 203 (Planning conditions and obligations)  
Paragraph 204 (Planning conditions and obligations)

### **North West Leicestershire Local Plan:**

The application site is outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. The following Local Plan policies are relevant to this application:

Policy S1 sets out 13 criteria which form the strategy for the adopted Local Plan.

Policy S3 - Countryside  
Policy E2 - Landscaped Amenity Open Space  
Policy E3 - Residential Amenities  
Policy E4 - Design  
Policy E7 - Landscaping  
Policy E8 - Crime Prevention  
Policy E30 - Floodplains  
Policy F1 - National Forest General Policy  
Policy F2 - Tree Planting  
Policy F3 - Landscaping and Planting  
Policy T3 - Highway Standards  
Policy T8 - Parking  
Policy H4/1 - Housing Land Release  
Policy H6 - Housing Density  
Policy H7 - Housing Design  
Policy H8 - Affordable Housing  
Policy L21 - Children's Play Areas

### **Other Guidance**

National Planning Practice Guidance - March 2014.

The Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations').

Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System.

River Mease Water Quality Management Plan - August 2011.

River Mease Development Contributions Scheme - November 2012.

### **North West Leicestershire District Council Affordable Housing Supplementary Planning Document (SPD)**

Key Principle AH2 provides that affordable housing will be sought on all sites of 5 or more

dwellings in Blackfordby.

Key Principle AH3 requires a minimum of 30% of residential units to be available as affordable housing within Blackfordby.

### **North West Leicestershire District Council Play Area Design Guidance Supplementary Planning Guidance (SPG)**

The District Council's Play Area Design Guidance SPG sets out the relevant requirements in respect of children's play provision required in association with residential development.

### **Blackfordby Conservation Area Appraisal and Study Supplementary Planning Guidance (SPG)**

The SPG identifies individual factors considered to have a positive impact on the character of the Conservation Area. These factors include principal listed buildings and unlisted buildings of interest in the vicinity of the site.

### **6Cs Design Guide (Leicestershire County Council)**

The 6Cs Design Guide sets out the County Highway Authority's requirements in respect of the design and layout of new development.

## **6. Assessment**

The main considerations with regards to this application are the principle of development and assessing the previous reason for refusal, loss of agricultural land, access and highway safety, public footpaths, density and design, impact upon residential amenity, impact upon heritage assets, protected species/ecology, archaeology, trees, land contamination and coal mining, drainage and flood risk, the impact upon the River Mease Special Area of Conservation/SSSI, developer contributions and other matters.

### **Principle of development and assessing the previous reason for refusal**

Members are advised that planning permission was refused at the December 2014 Planning Committee for the following reason:-

*"Paragraph 14 of the National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development; Paragraph 7 defines sustainable development (and including its environmental dimension) and also provides that the planning system needs to perform an environmental role, including in respect of protecting and enhancing our natural environment and using natural resources prudently. Policy S3 of the Adopted North West Leicestershire Local Plan sets out the circumstances in which development outside of Limits to Development would be acceptable. The introduction of residential development on this undeveloped site, outside Limits to Development, remote from services would constitute unsustainable development, contrary to the policies and intentions of the NPPF and Saved Policy S3 of the North West Leicestershire Local Plan."*

### **Residential development on an "un-developed site, outside Limits to Development**

Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance, includes the

adopted North West Leicestershire Local Plan (2002 (as amended)).

The application site lies outside the Limits to Development of Blackfordby, as defined by the proposals map of the adopted Local Plan and therefore falls to be considered against Saved Policy S3 of the Local Plan. In applying weight to any conflict with Policy S3 in the overall planning balance, to bear in mind the fact that the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements only up until the end of that Plan Period (i.e. to 2006). It is therefore considered inevitable that greenfield land will need to be released in order to maintain a five year supply of deliverable sites, as well as (as in this case) land not allocated for housing development in the adopted Local Plan.

Saved Policy H4/1 is also of relevance and identifies the criteria for in releasing "appropriate" land for housing.

The northern and western boundaries of the site border Blackfordby House Farm and its access drive which are occupied by post and rail fencing. The eastern and southern boundaries of the site (which abut the highway and neighbouring residential properties) are predominantly occupied by hedgerows interspersed with trees, although some neighbouring gardens have other forms of enclosure. The site forms part of a larger field and therefore, the north eastern boundary of the site is currently open.

It is considered that the application site would relate reasonably well to the boundaries of existing residential properties fronting Fenton Avenue. Furthermore to the west of Butt Lane is an industrial complex comprising large, conspicuous and unattractive buildings and to the north of the site is Blackfordby House with a group of large scale buildings. Residential development also exists along Butt Lane to the west of the site.

Overall the application site abuts the settlement boundary of Blackfordby, and residential properties fronting Fenton Avenue, and it is considered that development on this site would be viewed against this backdrop of existing, adjacent built development and therefore, would not appear an isolated development in the countryside.

Therefore having regard to all of the above considerations (including the proximity of the site to existing development and the settlement boundary, the topography of the surrounding landscape, existing soft landscaping and the scope for mitigation in the detailed layout, design and landscaping of the scheme), whilst there would be moderate and localised harm to the countryside it is considered that it would be limited and not be so significantly detrimental to justify a reason for refusal based on the proposal resulting in an adverse impact on the character of this locality and the countryside.

As the Authority is able to demonstrate a five year supply of housing, including an additional 20% buffer, Saved Policies S3 and H4/1 are considered to be relevant in determining this application, in the context of Paragraph 49 of the NPPF (subject to the weight to be attached to Policy S3 as a material consideration being adjusted having regard to the plan period issue as set out above).

Insofar as the site's location is concerned, whilst the site it is located outside of Limits to Development, the site is well related to the settlement boundary, is bounded by existing development, as set out above and is not therefore considered to be an isolated development in the countryside.



## Sustainability credentials of the site

In seeking to overcome the previous reason for refusal, the applicant has provided a 'response to the previous reason for refusal' at section 7 of their submitted Planning Statement and a 'Local Facility Proximity Plan', in support of their application.

*The response to the previous reason for refusal is broken up into three main parts:-*

- 1) *Does the saved local plan policy S3 comply with the NPPF?*
- 2) *If policy S3 can be set aside, is the site indeed "remote from services? to the extent to render it un-sustainable and does it sufficiently conflict with the NPPF to sustain refusal?*
- 3) *The planning balance*

*The applicant states that as the Council's Local Plan was adopted in 2002 it was prepared against the context of national planning policy, at that time - PPG3 which sought to restrict the development of greenfield land for housing and prioritise brownfield land and was not therefore prepared under the policies contained with PPS3 (which superseded PPG3) which sought to deliver a "step change" in housing delivery. Furthermore the plan was therefore not considered in light of the NPPF which seek the "presumption in favour of sustainable development" and therefore S3 which does not reflect the shift towards prioritising the delivery of housing is not consistent with the NPPF.*

*The applicant refers to Anita Colman v Secretary of State case, and Inspector Stevens as an appeal at Pulley Lane, Droitwich Spa where it was concluded that in so far as the countryside policy seeks to protect the countryside, this policy is considered to be consistent, but in so far as it seeks to halt necessary development, it is not and that policies are on their own express terms very far from the cost/benefit approach to the NPPF.*

*The applicant states that Policy S3 lacks the "cost/benefit" approach required to ensure consistency with the NPPF and is therefore "out of date" and was considered against an evidence base for housing that was only confirmed for the plan period to 2006. The applicant believes that it is self-evident that the development plan does not accord with the strands of the NPPF making it out of date, and therefore Policy S3 which is the product of it, is also out of date and must be set aside when considering the proposal.*

*In respect of the growth to Blackfordby, the applicant confirms that 20.8% growth is lower than the 25% growth in Packington, which was approved in June 2014.*

*In terms of walking distances to local services to facilities, the applicant has compared the distance (in metres) with four other approved schemes - Loughborough Road, Thringstone, Greenhill Road, Coalville, Spring Lane, Packington and Normanton Road, Packington.*

- o Open space - at 440 metres this is closer than Thringstone and both Packington applications*
- o Primary school - at 540 metres is closer than Coalville and both Packington applications*
- o Public House - at 500 metres is closer than Coalville application (where there was no footway available)*
- o Bus Stops - at 480 metres is closer than Thringstone and comparable with both Packington applications at 450 metres*
- o Bus frequency - an hourly service the same as both Packington applications*
- o Village hall - at 610 metres is closer than all other applications*
- o Local Shop - at 1020 metres is further than all, but comparable to Thringstone*

*application at 960 metres*

- o Local Centre - at 1370 metres is closer than Coalville and both Packington applications*
- o Health Centre/GP/Hospital - at 1850 metres is closer than all applications and comparable to Coalville application at 1800 metres*
- o Secondary School - at 2440 is closer than both Packington applications and Thringstone at 3470 metres.*

*In terms of the planning balance, the applicant endorses the previous committee report's findings in respect of the economic, social and environmental dimensions and acknowledged that despite local objections, these objections must be weighed against an absence of recorded substantive technical objection.*

In assessing the contents of the applicant's sustainability assessment outlined above, the following comments have been reached by Officers:

As the Authority is able to demonstrate a five year supply of housing, Saved Policies S3 and H4/1 are considered to be relevant and in date, in the context of Paragraph 49 of the NPPF.

In terms of distance to amenities, the Institute of Highways and Transportation (IHT) document 'Providing for Journeys on Foot' details the distance of 800 metres is considered to be the preferred maximum walking distance to a town centre with 400 metres acceptable and 200 metres being desirable.

Consideration should also be given to the appeal decision at land South of Moira Road, Ashby. In terms of the distance to amenities, the inspector referred to DoT statistics which show that the average trip length regularly undertaken by the population of Great Britain is, on average, walking about 1km, cycling about 4.5km and by bus about 8km.

Below are the approximate distances to service within Blackfordby from the site:-

- o Village Hall - 725 metres;*
- o x2 Public House - 610 metres to the nearest;*
- o Playing field - 230 metres;*
- o Primary School - 730m;*
- o Bus Service - (nearest stop opposite 23 Main Street) - 520metres;*

(More direct routes to these services would be available through public footpaths through the settlement which link up with the eastern boundary of the site).

Bus Service 9/9A provides an hourly service between Coalville and Burton on Trent calling at Swannington, Ashby de la Zouch, Blackfordby, Moira, Swadlincote and Brizlincote. This service runs Monday to Friday between the hours of 0659 and 1939 hrs and on Saturdays between the hours of 0719 and 1939 hrs. A slightly reduced hourly bus service 9E runs on Sundays (this does not stop at Moira) between the hours of 0935 and 1935.

Whilst the services available within Blackfordby are limited, the site is reasonably well related to Norris Hill (Moira) and Woodville and although the latter settlement is outside the District boundary (within South Derbyshire), cumulatively they would provide a good range of services and facilities, which could be used by occupiers of the proposed dwellings. These include:

The following services are available within Norris Hill:

- o Primary School - 1200 metres;
- o Parade of shops on Blackfordby Lane comprising a convenience store, x2 takeaways, carpet shop and beauty salon - 1500 metres.

There is a continuous footway between the site and the services available at Norris Hill, although being unlit along sections of Drift Side may affect pedestrian access to these services in the evenings when it is dark and the route would be less desirable to pedestrians.

The following services are available in Woodville off the A511:

- o Shop (convenience store) x2 - 1140m and 1500m;
- o Post Office - 1500m;
- o Pharmacy - 1500m;
- o Primary School - 1500m;
- o Secondary School - 2300m;
- o Health Centre - 1800m;
- o Library - 1700m.

There is a continuous lit footway between the site and the services available at Woodville.

The County Highway Authority (CHA) have also commented upon transport sustainability within this application, stating that the site is reasonably sustainable in transport terms with a bus stop in the village providing an hourly service within about 500 metres of the site and a primary school within 900 metres of the centre of the site.

The now withdrawn submission version North West Leicestershire Local Plan: Core Strategy did identify Blackfordby as a "sustainable village". Having regard to the location of the site, it is considered that residents of the site would have reasonable access to services and facilities by walking and easy access to all the facilities Blackfordby and the neighbouring settlements have to offer by cycling or using public transport.

In response to the applicant's other appeal decisions outside the District, it is not considered that they carry any significant weight in the determination of this application.

The provisions of the NPPF do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF.

- o Economic - in this respect developments should contribute towards building a strong competitive economy through ensuring that sufficient land of the right type is available to support growth, and by coordinating development requirements, including the provision of infrastructure. It is considered that the development would benefit the local economy through both the creation of jobs for the construction of the development itself, as well as securing financial contributions for the provision and maintenance of local infrastructure. Accordingly the site is considered to be consistent with the 'economic role'.
- o Social - in this respect, developments should support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment with accessible local services that reflect the community's needs and support its health, social and cultural well-being. The new population could support and help sustain the local

services and facilities that meet local needs and contribute to the creation of sustainable communities. The development would provide both open market and affordable housing, appealing to a wider spectrum with the local market, thus increasing local market choice and appealing to groups whom may have otherwise been excluded from the locality. The proposal would include the provision of informal public open space and financial contributions will be secured towards the provision of local services and facilities. Accordingly the site is considered to be consistent with the 'social role'.

- o Environmental - to fulfil this role development should protect and enhance the natural, built and historic environment. As part of this biodiversity should be improved, natural resources should be used more prudently, waste and pollution should be minimised, and development should help mitigate, and adapt to climate change. The site is located outside the limits to development, but is well related to the existing settlement. Furthermore, as set out in the report below, it is considered that the proposal would not be contrary to the aims of protecting or enhancing the natural and historic environment. Accordingly the site is considered to be consistent with the 'environmental role'.

The NPPF specifically states that decision takers should consider housing applications in the context of the presumption in favour of sustainable development. Based on the above discussions, the proposed scheme is considered to comply with the core principles of the NPPF, and thus in principle, the development is considered acceptable.

Paragraph 14 of the NPPF requires an assessment to be undertaken to establish whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole.

When having regard to the information presented by the applicant in seeking to overcome the previous reason for refusal, the sustainability credentials of the settlement of Blackfordby and Woodville and the site, combined with the fact that the site is well related to existing built development and the Limits to Development, it is considered that a strong case has been made concerning the sustainability of the site.

### **Loss of Agricultural Land**

The Best and Most Versatile (BMV) agricultural land is defined as that falling within in Grades 1, 2 and 3a of the Agricultural Land Classification (ALC). The supporting information accompanying the application confirms that the land would be assigned to Classes 3a and 3b and therefore, would partly be classified as BMV agricultural land. A total of 1.4ha (20% of the site area) would be Grade 3a (BMV) and 6ha (80% of the site area) would be Grade 3b. Whilst, the NPPF does not suggest that the release of smaller BMV site is acceptable, it is commonly accepted that the magnitude of loss of agricultural land is low where less than 20 hectares of BMV would be lost and therefore given the relatively limited extent of the potential loss of the site, at 1.54 hectares, it is considered that the potential agricultural land quality issue is not sufficient to sustain a reason for refusal in this case.

### **Access and Highway Safety**

There is no change to the vehicular access and therefore consideration of this matter remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include highway safety in the reason for refusal.

All matters are reserved for subsequent approval except for access. The point of access

proposed show vehicular access via a new junction onto Butt Lane. The County Highways Authority has been consulted on the application and although concern has been raised by local residents about traffic generation and highway safety matters, the County Highways Authority has raised no objections (subject to conditions) to the proposed development in respect of highway safety implications.

In these circumstances, subject to conditions and S106 contributions, which the applicant has agreed to, it is considered that the development would accord with Policy T3 of the Local Plan.

### **Public Footpaths**

There is no change to the indicative layout and therefore consideration of these matters therefore remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include the impact upon the existing footpath in the reason for refusal.

The County Footpaths Officer (CFO) states that it would be appropriate for the layout to be designed so that the route of the right of way across the landscaped area is consistent with the legal line of P13 and that P11 would either be directly affected by a number of proposed dwellings or subsumed in one of the estate roads. Accordingly the CFO recommends that the planning consent should be conditional upon Footpath P11 being located within a landscaped area parallel to, but detached from the estate road. During the course of the application, the applicant has submitted a 'Briefing Note' to state that the mapping exercise is as accurate as reasonable possible, that from visits it is evident that P13 had little to no footfall and to amend the layout would compromise the positive green landscape elements of the scheme.

As layout is not for consideration at this time, it is not considered necessary at this stage to re-position any dwellings or roads within the scheme on the illustrative layout, and it is considered that the site is of sufficient size to accommodate the proposed development and existing footpaths in line with the above-mentioned advice from the CFO, at the reserved matters stage. Accordingly subject to a note to applicant to inform the applicant of the comments of the CFO, the proposal at this stage, is considered acceptable in terms of its impact on existing public footpaths.

### **Density and Design**

For the avoidance of doubt there is no change to the density or design and consideration of these matters therefore remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include density, or design in the reason for refusal.

The Council's Urban Designer raises concerns that the layout would fail to meet the Building for Life criteria, however when having regard to the outline nature of the scheme and the fact that it is not seeking consent for layout and appearance, it is not necessary to seek the submission of amended plans as these matters could be dealt with by appropriately worded condition which requires a Design Code to be agreed based on Building for Life 12 and a note to applicant providing the comments of the Urban Designer for any forthcoming reserved matters application(s).

Subject to these requirements, it is considered that an acceptable design solution for the development of the site could be achieved and therefore, the proposal is considered acceptable for the purposes of Policy E4 and H7 of the Local Plan and the design provisions of the NPPF.

### **Impact upon Residential Amenity**

For the avoidance of doubt, layout, scale and appearance have not been presented and consideration of these matters therefore remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include impact upon residential amenity in the reason for refusal.

In terms of the impacts on neighbouring occupiers arising from the proposed buildings themselves are concerned, this would need to be assessed at the reserved matters stage(s); notwithstanding the details shown on the illustrative layout, there would appear to be no reason in principle why up to 81 units could not be provided on the site in a manner which would not adversely impact upon neighbouring residential amenities, in terms of loss of privacy, loss of light or overbearing impact.

It is, therefore, deemed that the development would not have any significant detrimental impact upon neighbouring residential amenities and is considered to be acceptable in relation to Policy E3 of the Local Plan.

### **Impact upon Historic Assets**

For the avoidance of doubt, layout, scale and appearance have not been presented and consideration of these matters therefore remains as per the previous application ref: 14/00460/OUTM. The Committee did not include impact upon historic assets within the reason for refusal.

The scheme has been considered by the Council's Conservation Officer who raises no objection.

The Blackfordby Conservation Area lies approximately 90m to the east/north-east of the site at its closest point. The site does provide a rural setting for the village but is well separated from the Conservation Area by intervening residential development/agricultural land. The site would be visible within views of the Blackfordby Conservation Area, and some glimpses of the site would also be available within views from the edge of the Conservation Area through gaps in landscaping. When having regard to the distances involved, the relationship between the site and the Conservation Area and the intervening land uses/development, it is not considered that the development of the site for housing would adversely affect the setting of the Blackfordby Conservation Area.

Butt Cottage (Grade II) lies 60m to the south west of the site and is separated from the site by modern development. Although the site may be visible within views of Butt Cottage, when having regard to the distance involved and the intervening development, it is not considered that the proposed would result in any significant adverse impact on the setting of Butt Cottage. Norrishill Farmhouse and Boothorpe Farmhouse and barn and Boothorpe Farm Cottage, all Grade II Listed Buildings are located some distance from the site and it is not considered that the site forms part of the setting of these heritage assets and therefore, would be unlikely to be adversely affected by the proposed development.

In summary, the Council's Conservation Officer has given special regard to the desirability of preserving the setting of the heritage asset and has concluded that whilst the proposal may be harmful to the significance of the heritage assets, this would be unlikely to involve substantial harm or total loss of significance and the benefits of the development in the planning balance outweigh the limited harm the development will have on the heritage asset and for the reasons

set out above and would be in conformity with the intentions of the NPPF

### **Protected Species/Ecology**

There has been no change in respect of these matters and therefore consideration remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include impact upon protected species as a reason for refusal.

The application submission was accompanied by an Ecology Report which has been considered by the County Ecologist who has confirmed that the land is currently arable, of limited ecological value, and the only habitats of significance are the hedgerows, which are all largely retained in the indicative layout. She advises that the indicative layout presented is excellent in ecological terms, with substantial buffer along boundary features, and a large area of open space. There are opportunities for biodiversity enhancement in the SUDs features, and overall the County ecologist considers that biodiversity is likely to be enhanced as a result of this development.

The County Ecologist has one concern regarding Great Crested Newts and considers that some mitigation/precautionary working will be required through the life of this development, to keep GCNs off site during phases of construction. Subject to an appropriately worded condition, the County Ecologist has no objections to the proposed development.

### **Archaeology**

There has been no change in respect of these matters and therefore consideration remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include archaeology in the reason for refusal.

The application has been accompanied with a desk-based archaeological assessment which has been considered by the County Archaeologist.

The County Archaeologist advises that the archaeological interest of the development area is hard to determine and has therefore recommended that the applicant be required to undertake a post-determination programme of archaeological investigation to establish the presence and character of any surviving remains. It is noted that this work should inform any Reserved Matters submission.

Accordingly, subject to the imposition of conditions to secure an appropriate programme of archaeological investigation and recording, it is considered that the proposal would comply with the provisions of the NPPF.

### **Impact upon Trees**

There is no change to the indicative layout and therefore consideration of these matters therefore remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include impact upon the trees in the reason for refusal.

An arboricultural report accompanies this application submission, which considers the implications of the development of the site on trees and hedgerows on the site, including along the site frontage around the proposed access position.

The Council's Tree Officer has been consulted on the application and considers the submitted

arboricultural report to be thorough. Subject to all structures being outside the Root Protection Areas of the trees to be retained (unless demonstrated to be necessary and acceptable by the consulting arborist), and subject to conditions, the Council's Tree Officer raises no objection to the proposed development.

### **Land Contamination, Coal Mining and Minerals**

Whilst Members did raise concerns about this issue, this was not included as a reason for refusal and consideration of these matters therefore remains as per the previous application ref: 14/00460/OUTM.

In response to the objections raised in relation to the past uses of the site and their potential impacts on future residential development, the application has provided an additional 'Briefing Note' to seek to address these concerns, within this application. The Briefing Note confirms that an updated Stage 1 Contamination Assessment has been submitted and the findings of the assessment are unchanged from the previous report. The Note states that the Environment Agency (EA) previously concluded that as the site may be at risk from ground instability, that these issues would have to be considered where foundations are designed for the development, and that the potential for unknown fill material in the clay pits, should be assessed and could be secured by way of a condition. The Note confirms that the EA considered it unlikely that contamination would preclude development of the site and as a consequence had no reason to object to the application.

This application has been re-considered by the EA and the Council's Environmental Health Officer who raise no objections, subject to conditions.

The site lies within the Coal Authority Referral Area and accordingly a Coal Mining Risk Assessment accompanied the application submission which identifies that the site is located within an area where unrecorded underground coal mining activity may have taken place at shallow depth. In addition, the site lies within a Mineral Consultation Area, because it contains potential near surface coal resources

The Coal Authority has been consulted on the application and concurs with the recommendations of the Coal Mining Risk Assessment which requires further investigation and any necessary mitigation measures, to be undertaken prior to development commencing.

Subject to the imposition of conditions, the proposed development is considered acceptable in terms of land contamination, coal mining and mineral risk.

### **Drainage and Flood Risk**

Whilst concerns were raised by residents in relation to the capacity of the local drainage network and the proposal contributing to existing flooding problems in the area, this was not included as a reason for refusal and consideration of these matters therefore remains as per the previous application ref: 14/00460/OUTM. In this respect, the Committee did not include flood risk in the reason for refusal.

The FRA has been considered by statutory consultees, all of which raise no objections, subject to the imposition of planning conditions.

The applicant's accompanying 'Briefing Note' also summaries the correspondence, during the previous application from the EA, confirming that the EA had been made aware of flooding



within the village, but were still unable to object to this proposal on flood risk grounds, because they did not have evidence of flooding on the site and there were technical solutions available which will prevent an increase in flood risk off-site.

### **Impact on the River Mease Special Area of Conservation/SSSI**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Therefore an assessment of whether the proposal would have a significant effect on the SAC is required. The River Mease Developer Contribution Scheme (DCS) has been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). The DCS advises that all new development which contributes additional wastewater to the foul water catchment areas of the treatment works within the SAC catchment area will be subject to a developer contribution. The DCS is considered to meet the three tests of the 2010 CIL Regulations and paragraph 204 of the NPPF.

When having regard to the existing agricultural use of the site, the proposal for 81 dwellings would increase the foul drainage discharge from the site and as such it is subject to the requirements of the DCS. The flows from the new dwellings will need to be taken into account against the existing headroom at Packington Treatment Works, which serves Blackfordby. At the time of writing sufficient capacity exists for the 81 dwellings proposed.

Natural England has considered the scheme and raises no objections in relation to impact on the SAC/SSSI subject to conditions. Therefore based on the above it can be ascertained that the proposal site would not, either alone or in combination with other plans or projects, have a significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI.

### **Developer Contributions**

Paragraphs 203 and 204 of the NPPF set out the Government's policy in respect of planning obligations and, in particular, provide that planning obligations should be:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the proposed development.

Equivalent legislative tests are contained within the Community Infrastructure Levy (CIL) Regulations 2010.

### *Affordable Housing*

The Council's Strategic Housing Team have been consulted on the application and have advised that there is a need for affordable housing and that the full 30% should be secured through the proposed development, in accordance with the Council's Affordable Housing Supplementary Planning Document (SPD).

The Council's preferred position is to seek delivery on site through a Registered Provider. However, as this site is in one of our smaller rural settlements, the Council's Strategic Housing Team considers that a proportion of this requirement could be provided as an off-site financial contribution to support the provision of affordable housing anywhere in the district where a need has been identified. The Council's Strategic Housing Team would therefore seek to secure 15%

on-site and 15% as an off-site contribution, with the actual contribution in terms of unit types to be agreed by the District Council.

#### *Play Area/Open Space*

Under the Council's Play Area Supplementary Planning Guidance (SPG), on-site children's play provision is required at a rate of 20 square metres per dwelling. Given that 81 dwellings are proposed, this would require a play area of not less than 1620 square metres. The indicative masterplan shows that provision is proposed to be made for public open space within the site, which would need to include a children's equipped play area. Taking into account the overall size of the recreation area, a suitable sized children's equipped play area could be provided at the reserved matters stage. Therefore, the proposal is considered to be in accordance with Local Plan Policy L21 and the SPG. In terms of the range of equipment necessary, for developments of this number of dwellings, the Council's SPG requires that the needs of children up to the age of 14 should be provided for, including a minimum of 8 types of activity.

#### *River Mease DCS*

A contribution under the River Mease DCS is required (as outlined earlier in the report) but an exact figure for the contribution cannot be determined at this stage (although the maximum amount would be £28,674) as the number of bedrooms in each dwelling would not be finalised until the reserved matters stage.

#### **Other Developer Contributions**

As a result of the Developer Contributions consultation, the following contributions have been requested:-

Leicestershire County Council (Libraries) request £2,450 towards additional resources at Ashby de-la Zouch Library.

Leicestershire County Council (Education) request a contribution of £235,204.75 for the primary school sector, for St. Margaret's C of E Primary School; a contribution of £144,796.98 for the high school sector, for Ivanhoe College and a contribution of £148,676.80 for the upper school sector, for Ashby School.

Leicestershire County Council (Highways) request:-

- o Travel Packs; to inform new residents from first occupation what sustainable travel choices are in the surrounding area (can be supplied by LCC at £52.85 per pack).
- o Six-month bus passes, two per dwelling (2 application forms to be included in Travel Packs and funded by the developer); to encourage new residents to use bus services, to establish changes in travel behaviour from first occupation and promote usage of sustainable travel modes other than the car
- o Improvements to the nearest bus stop, including raised and dropped kerbs to allow level access, to support modern bus fleets with low floor capabilities. At £3263.00 per stop.
- o Contribution towards equipping the nearest bus stop(s) and suitable bus route with Real Time Information (RTI) system, at total of £5,840;
- o Travel Plan and monitoring fee (£6,000/£11337) to enable LCC to provide support to the Travel Plan Coordinator, audit performance reports and enforce the Travel Plan if necessary.
- o Construction traffic route which is considered to be necessary in this case given the

site's proximity to residential areas and the village centre. The routing agreement will enable the Authority to prevent construction traffic from using unsuitable routes in the interests of highway safety.

The National Forest Company require 20% of the site area to be for woodland planting and landscaping, which equates to a requirement of 1.48 hectares. The application submission indicates that the development site could accommodate 3.2 hectares of open space including National Forest planting, which is in excess of the requirement. Areas of strategic planting are also shown on neighbouring land outside the application site within the Design and Access Statement. Whilst the National Forest Company are supportive of these elements of the proposal, given that the scheme already exceeds requirements for landscaping, it is not considered that a requirement for additional off-site planting could be justified, in this case.

NWLDC Head of Leisure and Culture has requested a developer contribution of £77,524 is requested for investment in sports facilities at Hood Park Leisure Centre. In terms of the Leisure contribution, there has not been a breakdown of specific costs which would be relevant to this specific development proposal and no evidence base has been submitted with the request to set out how the proposed development would generate the need for an the proposed health and wellbeing facility i.e. how it is specifically relevant to the proposed development.

Leicestershire Police requests a developer contribution of £30,348 comprising of the following:-

Start up equipment / training	£3,292
Vehicles	£2,059
Additional radio call capacity	£206
Police National Database	£105
Additional call handling	£189
ANPR	£2,055
Mobile CCTV	£375
Additional premises	£21,905
Hub equipment	£162

It is considered that, in principle, contributions towards policing may be capable of being justified in terms of satisfying the relevant NPPF and CIL Regulations tests. In terms of the increased level of police activity associated with the proposed development, Leicestershire Police advises that the scheme would result in 172 additional calls, 18 emergency events, 11 non-emergency events and 7 additional recorded crimes per year. Whilst officers have no alternative data in respect of these levels of activity, officers are concerned that the level of additional calls on Police time assumed to be associated with this development of up to 81 dwellings could be somewhat excessive and, as such, the scale and kind of contributions sought may not be fairly and reasonably related to this development. Insofar as the various individual elements of the requested policing contribution are concerned, however (and putting the issue raised above to one side), it is considered as follows:

*Start up equipment / training and Vehicles*

It is accepted that, in principle, such contributions could be reasonable.

*Additional radio call capacity:*

The process of improving radio cover / capacity is, it seems, an ongoing process and would appear to occur regardless of the development going ahead.

*Police National Database:*

The process of improving capacity of the Police National Database is, it seems, an ongoing process and would appear to occur regardless of the development going ahead.

*ANPR:*

It is not accepted that the proposed development would justify the installation of ANPR CCTV systems (and that, in the development's absence, ANPR would not be required). If there is a need to provide ANPR coverage of this area because of existing crime figures, the cameras should, it is considered, be provided regardless. It is not considered clear why the addition of these dwellings to the village would suggest that such a system would be required when, in the absence of the development, it was not.

*Mobile CCTV:*

It is not accepted that the proposed development would justify the installation of mobile CCTV systems (and that, in the development's absence, mobile CCTV would not be required). If there is a need to provide mobile CCTV coverage of this area because of existing crime figures, the cameras should, it is considered, be provided regardless. It is not considered clear why the addition of these dwellings to the village would suggest that such a system would be required when, in the absence of the development, it was not.

*Hub equipment:*

No information has been submitted which indicates that the existing hub (located in Measham) and equipment would, as a result of the development, be over-capacity.

*Additional premises:*

The contribution request from Leicestershire Police provides that, within North West Leicestershire, policing is delivered from Coalville LPU premises, and that occupation of premises is maintained at capacity. Contributions are sought for Coalville LPU, plus the Basic Command Unit (BCU) at Loughborough and the Force HQ at Enderby. Insofar as Coalville LPU is concerned, Leicestershire Police advises that occupation is maximised but constrained by its age and condition. Replacement to existing needs is, Leicestershire Police advises, being planned although it is suggested that the proposed development would create a need for additional floorspace. The District Council is also advised that a replacement facility at Loughborough has recently been completed and that this would need to be extended to accommodate staff to cover the proposed development; extension of the Force HQ would also, Leicestershire Police suggests, be required to serve the proposed development, and the request also suggests that the remainder of the premises contribution be directed towards other, unspecified, force-wide premises serving North West Leicestershire.

Whilst Leicestershire Police maintains that additional floorspace is required at all of these locations to serve the proposed residential development, it would appear unlikely that a development of this scale would result in such a level of increased employment so as to necessitate extensions to accommodation at all three sites, notwithstanding that Leicestershire Police confirms that all facilities are maintained at capacity. It is not considered that the force has demonstrated that there is definitely no capacity to accommodate additional staff, nor that its various sites would actually be extended to meet any additional accommodation requirement

directly attributable to the development in hand.

On this basis, therefore, officers are of the view that, subject to the Police being able to demonstrate in a robust manner that the assumed levels of increased policing activity are appropriate given the scale of the proposed development, contributions in respect of the start up equipment / training, vehicles and call handling have the potential to satisfy the relevant NPPF and CIL tests.

No request has been received from NHS England and Leicestershire County Council (Civic Amenity) have confirmed that they are not requesting a contribution.

On consideration of these requests received in respect of this application it is considered that the following meet the tests and should members be minded to approved this application a Section 106 Agreement would secure the following:-

- o Affordable Housing (15% on-site and 15% as an off-site contribution)
- o Play and Open Space (on-site)
- o Education (£528,678.53)
- o Libraries (£2,450)
- o River Mease
- o National Forest (on site planting and/or contribution)
- o Transport (Travel Packs, Bus Passes, Bus Stop Improvements, Real Time Information, Monitoring)
- o Policing (Start up equipment / training and Vehicles)

Notwithstanding the above, from April 2015, no more than five obligations can be pooled by the charging authority to provide for the same item of infrastructure. Accordingly it will be necessary for the relevant consultees, in relation to the above mentioned requests to demonstrate that no issues arise in respect of pooling (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

## **Other Matters**

### **Letters of Representation**

In respect of other objections received which have not already been addressed within the report above:-

De-valuation of property prices and the right to a view are not material planning considerations.

Layout and landscaping are not for consideration at this time.

Concern has been raised by local residents about the development site encroaching onto land that is not in the ownership of the applicant. The applicant has provided land title details which show the full extent of the application site to be within the ownership of the applicant.

The proposal has been assessed in respect of the Environmental Impact Assessment (EIA) Regulations 2011. Whilst the proposal is classed as development under paragraph 10(b) of Schedule 2 to the Regulations it has been concluded that this proposal does not constitute EIA development under the 2011 Regulations as its impacts, are not considered to be significant and can be considered as part of the planning application.

## Conclusion

In conclusion, when having regard to the information presented by the applicant in seeking to overcome the previous reason for refusal, the sustainability credentials of the settlement of Blackfordby and Woodville and the site, combined with the fact that the site is well related to existing built development and the Limits to Development, it is considered that a strong case has been made concerning the sustainability of the site.

The proposed development would be acceptable in terms of density, design, impact upon the heritage assets, trees, residential amenities, highway safety, coal mining and land contamination, flood risk and drainage, ecological impacts and impact on the River Mease SAC/SSSI and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of the proposals on local facilities/services. There are no other relevant material planning considerations that indicate planning permission should not be granted.

## **RECOMMENDATION - PERMIT, subject to section 106 obligations and the imposition of conditions:**

- 1 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

*Reason- to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).*

- 2 Approval of the details of the access (save for the details of vehicular access into the site from Butt Lane), layout, scale and appearance of the development and landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

*Reason- this permission is in outline only.*

- 3 The reserved matter application(s) shall include precise details of finished ground levels across the site and the finished floor levels of all buildings in relation to an existing datum point.

*Reason - to ensure a satisfactory relationship with the adjacent dwellings/the streetscene, as insufficient details have been provided.*

- 4 Notwithstanding Conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, surfacing and width of footpaths through the site, landscaping, density parameters and scale, as well as details of any proposed phasing of development. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details (or any alternatives subsequently agreed in writing by the Local Planning Authority).

*Reason - To ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner.*

- 5 The first reserved matters application shall be accompanied by a further Building for Life 12 assessment.

*Reason - to provide evidence that demonstrates detailed compliance with Building for Life 12.*

- 6 The first reserved matters application in respect of the matter of landscaping shall provide for an ecological / landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), together with a timetable for its implementation. The development shall be carried out in accordance with the landscape management plan, or in accordance with any subsequent variations first submitted to and agreed in writing by the Local Planning Authority.

*Reason - To ensure the protection of wildlife and supporting habitat, to secure opportunities for the enhancement of the nature conservation value of the site in line with National planning policy and to provide for an appropriate form of development.*

- 7 The proposed development shall be carried out strictly in accordance with the following drawings, unless otherwise required by a condition of this permission: Drawing number C9772.13.001 Rev A (Site Location Plan); Drawing number F13152/02 Rev B (Proposed Site Access Layout) ; Drawing number 891 Rev O (Topographical Survey) and Drawing number C9772.14.760 Rev H (Parameters Plan- showing Extent of Development Area) received by the Authority on 05 February 2015.

*Reason- To determine the scope of this permission.*

- 8 A total of no more than 81 dwellings shall be erected and built development shall be limited to the area identified as 'Current Extent of Development' as set out on the parameters plan (drawing number C9772.14.900).

*Reason - To define the scope of this permission.*

- 9 No demolition/development shall take place/commence until a programme of archaeological work, commencing with an initial phase of trial trenching, has been detailed within a Written Scheme of Investigation, submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:
- a. The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme)
  - b. The programme for post-investigation assessment
  - c. Provision to be made for analysis of the site investigation and recording
  - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - e. Provision to be made for archive deposition of the analysis and records of the site investigation
  - f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition/development shall take place other than in accordance with the approved Written Scheme of Investigation.

*Reason - To ensure satisfactory archaeological investigation and recording.*

- 10 The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (9) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

*Reason - To ensure satisfactory archaeological investigation and recording.*

- 11 No development shall commence on site until a full and detailed site investigation and assessment has been carried out, at the developer's expense, and as set out in the Coal Mining Risk Assessment by Smith Grant LLP (dated March 2014), and submitted to the Local Planning Authority. In the event that the site investigations confirm the need for remedial works to treat the mine workings, and/or any other mitigation measures to ensure the safety and stability of the proposed development, no development shall commence on site until details of such works have been submitted to and agreed in writing by the Local Planning Authority and implemented at the site.

*Reason - To ensure the stability of the development, having regard to the comments of the Coal Authority and good engineering practice.*

- 12 No work shall commence on site until trees on and adjacent to the site have been securely fenced off with protective barriers to form a construction exclusion zone in accordance with BS 5837:2012 Tree in relation to design, demolition and construction. A Tree Protection Plan shall have been submitted to and approved in writing by the Local Planning Authority. Within the protected areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and no service trenches shall be dug unless first agreed in writing by the Authority.

*Reason- To ensure the existing trees are adequately protected during construction in the interests of the visual amenities of the area.*

- 13 No development shall commence on site until a detailed scheme of pruning works to be carried out in accordance with BS3998:2010 Tree Work - Recommendations have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed scheme.

*Reason- in the interests of health and safety and amenity value of the trees.*

- 14 No works or development shall take place until an auditable system of arboricultural site monitoring by the appointed project arboriculturist has been approved in writing by the Local Planning Authority. This scheme will be appropriate to the scale and duration of the works and will include details of: (select as appropriate)

- a. Induction and personnel awareness of arboricultural matters
- b. Identification of individual responsibilities and key personnel
- c. Statement of delegated powers



- d. Timing and methods of site visiting and record keeping, including updates
- e. Procedures for dealing with variations and incidents.
- f. The scheme of supervision shall be carried out as agreed.
- g. The scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved by the local planning authority.

*Reason- To ensure that the tree protection plan is adequately implemented in the interests of the visual amenities of the area.*

- 15 No development shall commence until details of design for off-site highway works being the upgrading of Public Right of Way P11 to a 2m wide tarmacadamed surface (unless evidence is provided that a less width applies) where it passes along the un-metalled part of Elstead Lane have been submitted to and agreed in writing by the Local Planning Authority. The development hereby permitted shall not be occupied until such time as the agreed scheme has been provided in accordance with the approved details.

*Reason - To provide an attractive and direct pedestrian route to school and bus services.*

- 16 Before first use of the development hereby permitted, drainage shall be provided within the site such that surface water does not drain into the Public Highway and thereafter shall be so maintained.

*Reason - To reduce the possibility of surface water from the site being deposited in the highway causing dangers to highway users.*

- 17 No development shall commence on the site until such time as a construction traffic management plan, including wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

*Reason - To reduce the possibility of deleterious material (mud, stones etc) being deposited in the highway and becoming a hazard to road users, and to ensure that construction traffic/site traffic associated with the development does not lead to on-street parking problems in the area.*

- 18 No part of the development as approved shall be brought into use until details of an updated Residential Travel Plan has been submitted to and agreed in writing by the Local Planning Authority. The Plan, once agreed, shall be implemented in accordance with the approved details, and thereafter, the implementation of the proposals and the achievement of targets of the Plan shall be subject to regular monitoring and review reports to the LPA and, if invoked, to the implementation of the specified additional measures.

*Reason - To ensure that adequate steps are taken to achieve and maintain reduced travel, traffic and parking impacts and to provide and promote use of more sustainable transport choices to and from the site in order to relieve traffic and parking congestion, promote safety, improve air quality or increase accessibility in accord with Section 4: 'Promoting Sustainable Transport' of the NPPF 2012.*

- 19 Before first use of the development hereby permitted, visibility splays of 2.4m metres by 46/48m metres shall be provided at the junction of the access with Butt Lane in general

accordance with Bancroft Consulting plan F13152/02 revB. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.

*Reason - To afford adequate visibility at the access/junction to cater for the expected volume of traffic joining the existing highway network and in the interests of general highway safety.*

20 No development shall commence on site until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:

- a. BS10175:2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
- b. BS 8576 Year 2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs)
- c. BS8485 Year 2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and
- d. CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- e. CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

The Verification Plan shall be prepared in accordance with the requirements of:

- f. Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- g. CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity, unless otherwise agreed in writing by the Local Planning Authority.

*Reason - To ensure that the land is fit for purpose and to accord with the aims and objectives of paragraph 120 of the NPPF.*

- 21 Prior to occupation of any part of the completed development, a Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:
- a. Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
  - b. Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
  - c. Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
  - d. Contain Test Certificates of imported material to show that it is suitable for its proposed use;
  - e. Demonstrate the effectiveness of the approved Remedial Scheme; and
  - f. Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

*Reason - To ensure that the land is fit for purpose and to accord with the aims and objectives of paragraph 120 of the NPPF.*

- 22 Operations that involve the destruction and removal of vegetation shall not be undertaken during the months of March to September inclusive unless otherwise agreed in writing by the Local Planning Authority that breeding birds will not be adversely affected by any works.

*Reason- to reduce the impact of the proposal on nesting birds, which are a protected species.*

- 23 No development shall commence on the site until an additional survey of Great Crested newts of the adjacent drainage basin (as referred to in EDP's report) together with precise details of any associated mitigation measures and a timetable for their implementation, has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out strictly in accordance with any agreed mitigation measures and timetable.

*Reason - In the interests of nature conservation, and to comply with the NPPF.*

- 24 No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage scheme should demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall include:

- a) Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.

- b) A minimum 4m wide watercourse corridor/easement protection to existing ditch course/surface water flow routes to the south eastern (rear of properties on Fenton Avenue) and south western (adjacent to Butt Lane) boundaries within the site - including trash screens to existing surface water culvert inlets (where necessary) designed in accordance with the trash/security screen guide 2009.
- c) Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- d) Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm.
- e) Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- f) Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

*Reason - The permanent retention of a continuous unobstructed area is an essential requirement for the preservation of the water course corridor, wildlife habitat and amenity. To prevent the increased risk of flooding, both on and off site, to improve and protect water quality and ensure future maintenance of the surface water drainage system.*

- 25 The development hereby approved shall only use the mains sewer system for its foul drainage discharge.

*Reason - Any other means of dealing with foul discharge could have an adverse impact on the River Mease Special Area of Conservation.*

- 26 No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
- 1. A site investigation scheme, based on the findings of the contamination assessment (report ref. R1956-R01-v2, dated February 2014) and mining risk assessment (letter ref. R1956-L02/afs, dated 13th March 2014), both prepared by Smith Grant LLP, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - 2. The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - 3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

*Reason - To protect and improve the quality of 'Controlled Waters' receptors on and in the vicinity of the site.*

27. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

*Reason - To protect and improve the quality of 'Controlled Waters' receptors on and in the vicinity of the site.*

**Notes to applicant**

1 The Council's Urban Designer recommends a note to applicant to highlight that there would be an expectation from the Local Planning Authority that the scheme draws inspiration from the positive and distinctive characteristics of the village through layout, form and appearance (including materials). Specifically, the applicant is advised as follows:

- The Council will seek to take any RM scheme to independent design review for consideration, with OPUN currently supplying these services with the region.
- The Council will expect the scheme to perform positively against BfL12, with 12 greens considered as appropriate target for a scheme on this site.
- The indicative layout is not considered appropriate. A revised layout to be developed in accordance with the BfL based Design Code.
- A minimum of two spaces will be required per dwelling, regardless of tenure, increasing to three spaces for homes of four bedrooms or more. Garages will not be counted as a parking space.

2 The applicant's attention is drawn to the following notes of the County Archaeologist:

The Written Scheme of Investigation (WSI) must be prepared by an archaeological contractor acceptable to the Planning Authority. To demonstrate that the implementation of this written scheme of investigation has been secured the applicant must provide a signed contract or similar legal agreement between themselves and their approved archaeological contractor.

The Historic and Natural Environment Team, as advisors to the planning authority, will monitor the archaeological work, to ensure that the necessary programme of archaeological work is undertaken to the satisfaction of the planning authority.

3 The applicant's attention is drawn to the attached comments of the County Footpaths Officer dated 9 March 2015.

4 The applicant's attention is drawn to the attached comments of the Coal Authority dated 10 March 2015.

5 The applicant's attention is drawn to the attached comments of the Environment Agency dated 1 April 2015.

- 6 The applicant's attention is drawn to the following advisory notes of the County Highways Authority:
- Your attention is drawn to the requirement contained in the Highway Authority's design document to provide Traffic Calming measures within the new development.
  - All works within the limits of the highway with regard to the access shall be carried out to the satisfaction of the Highways Manager- (telephone 0116 3050001).
  - A public footpath / bridleway crosses the site and this must not be obstructed or diverted without obtaining separate consent from Leicestershire County Council.
  - You will be required to enter into a suitable legal Agreement with the Highway Authority for the off-site highway works before development commences and detailed plans shall be submitted and approved in writing by the Highway Authority. The Agreement must be signed and all fees paid and surety set in place before the highway works are commenced.
  - If the roads within the proposed development are to be adopted by the Highway Authority, the Developer will be required to enter into an agreement under Section 38 of the Highways Act 1980 for the adoption of the roads. Detailed plans will need to be submitted and approved, the agreement signed and all sureties and fees paid prior to the commencement of development. If an Agreement is not in place when the development is to be commenced, the Highway Authority will serve APCs in respect of all plots served by all the roads within the development in accordance with Section 219 of the Highways Act 1980. Payment of the charge MUST be made before building commences.
  - Please be aware that Leicestershire County Council as Lead Local Flood Authority (LLFA) are currently not a statutory consultee to the planning process for drainage matters. When Schedule 3 of the Flood and Water Management Act 2010 is implemented Leicestershire County Council will become the SuDs Approval Body (SAB) and also a statutory consultee of the planning process. You will need to contact Leicestershire County Council if you have an aspiration for us to adopt any SuDs features associated with the development. Please e-mail [roadadoptions@leics.gov.uk](mailto:roadadoptions@leics.gov.uk) if you wish to discuss further.
- 7 With respect to condition 4, the applicant is advised that in order to provide attractive and direct pedestrian and cycle routes from the development to school and bus services, and services in Swadlincote, the site masterplan, should:
- include an upgrade of PROW P11 to provide a 2m tarmaced surface between the new internal roads and the existing footpath between numbers 17 and 19 Fenton Avenue;
  - include an upgrade of PROW P11 to provide a 3m tarmaced surface between the internal estate roads and Butt Lane.
- 8 In relation to Condition 6, the Local Planning Authority would expect the ecological / landscape management plan to specify the retention of hedgerows and include buffer zones of at least 5m from natural vegetation along the boundaries of the site except for the proposed vehicular access point.
- 9 The applicant should be aware that, if any of the public footpaths crossing the site are to be diverted because the development crosses a footpath making the footpath unviable

for use of the footpath would not be there once the development is completed then a footpath diversion application will need to be to the District Council at the Reserved Matters Stage. Further information can be obtained from Julia Harley by calling 01530 454604 or emailing [julia.harley@nwleicestershire.gov.uk](mailto:julia.harley@nwleicestershire.gov.uk)

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Erection of Residential Nursing Home (C2 Use) and formation  
of additional parking (outline - all matters reserved)

Report Item No  
A6

Ibstock House 132 High Street Ibstock Coalville Leicestershire  
LE67 6JP

Application Reference  
14/01140/OUT

Applicant:  
Dr S Johri

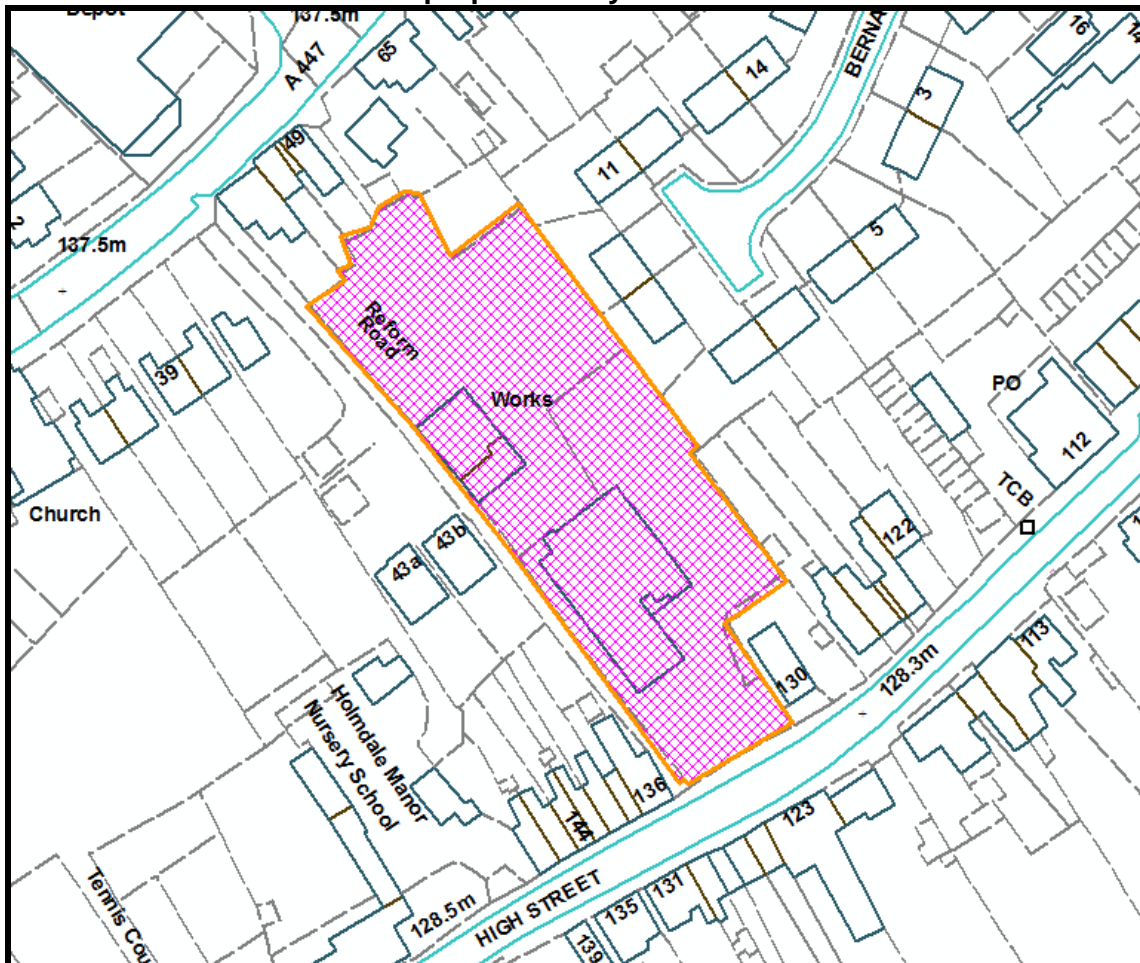
Date Registered  
22 December 2014

Case Officer:  
James Mattley

Target Decision Date  
16 February 2015

Recommendation:  
PERMIT

Site Location - Plan for indicative purposes only



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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **Proposal**

Planning permission is sought for the erection of a residential nursing home (C2 Use) and formation of additional parking (outline - all matters reserved) at the existing doctors surgery at Ibstock House, 132 High Street, Ibstock.

### **Consultations**

Members will see from the report below that objections have been received from surrounding neighbours and from the Parish Council.

### **Planning Policy**

The application site lies within the limits to development and in a sustainable settlement where the principle of new buildings are considered to be acceptable. Also material to the determination of the application is the advice in the National Planning Policy Framework (NPPF) and whether the scheme represents sustainable development.

### **Conclusion**

The site is located in a sustainable settlement and the principle of the development is considered to be acceptable. The indicative details supplied indicate that a suitable scheme could be designed at the reserved matters stage which would be acceptable in terms of the residential amenities of existing and future occupiers, would provide for an appropriate form of design that would be in keeping with the locality and which could be acceptable in relation to highway safety. There are no other relevant material planning considerations that indicate planning permission should not be granted.

### **RECOMMENDATION:- PERMIT, SUBJECT TO THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommended conditions, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

Planning permission is sought for the erection of a residential nursing home (C2 Use) and formation of additional parking (outline - all matters reserved) at the existing doctors surgery at Ibstock House, 132 High Street, Ibstock.

The site to which this application relates is an area of largely open grassed land which slopes relatively steeply up towards Melbourne Road and which lies to the rear of the existing doctors' surgery which fronts onto High Street, Ibstock. The site is partially within the Ibstock Conservation Area, although the majority of it, lies outside the designated Area. Reform Road, a public footpath, runs along most of the south-western boundary of the site. A former chapel building, in separate ownership, 'cuts' into the application site on the north-eastern side of Reform Road. To the north-west, the site is adjoined by the rear garden areas of dwellings fronting onto Melbourne Road and the rear garden areas of single storey dwellings on Bernard Close adjoin the north-eastern boundary.

In 2001 and 2007, outline applications for the erection of a residential nursing / care home on the site were submitted with details of access. These applications were both approved although they have now lapsed. An outline application for planning permission with all matters reserved has now been received for the erection of a residential nursing / care home on the site. The application has been accompanied by a Design and Access Statement and a Planning Statement. The submissions also include a drawing showing indicative development zones, additional car parking areas and areas of open space. The indicative drawing also suggests that it would be intention for the vehicular access to the site to be shared with the existing doctor's surgery and for new boundary planting to be provided to the north-eastern boundary of the site.

The application was originally in by Councillor De Lacy as it is considered to be a matter of public concern and the new Local Ward Member (John Clarke) has confirmed that the application should be heard at the planning committee.

#### Relevant Planning History:

01/00173/OUT - Proposed residential nursing/care home (outline - means of access) - refused.  
 01/01336/OUT - Proposed residential nursing/care home (outline - means of access) - permitted.  
 07/00671/OUT - Erection of residential nursing/care home (outline- all matters reserved) - permitted.  
 09/00684/FUL - Erection of two storey extension, single storey glazed link, installation of roof lights and associated car parking works to the existing surgery - permitted.

### 2. Publicity

34 no. Neighbours have been notified (Date of last notification 8 January 2015)

Press Notice published 14 January 2015

Site Notice published 11 January 2015

### 3. Consultations

Ibstock Parish Council consulted

County Highway Authority consulted 8 January 2015  
Severn Trent Water Limited consulted 8 January 2015  
Head of Environmental Protection consulted 8 January 2015  
NWLDC Conservation Officer consulted 8 January 2015  
LCC/Footpaths consulted 8 January 2015  
NWLDC Footpaths Officer consulted 8 January 2015  
NHS Leicester, Leicestershire And Rutland Facilities Management consulted 20 January 2015

#### **4. Summary of Representations Received Statutory Consultees**

Ibstock Parish Council strongly oppose to the application on the following grounds:

- \_ there has been material changes since permission was granted for a similar application in 2007;
- \_ there has been a lack of engagement between the surgery and the Parish Council;
- \_ the existing surgery should be extended using the existing Section 106 moneys which have been collected from previous housing applications in the area;
- \_ the existing car park is not big enough and the proposed development will make things worse;
- \_ the existing access has inadequate visibility;
- \_ the gradient of the existing access results in the surgery being closed during adverse weather conditions;
- \_ concerns regarding the proposed height of the building;
- \_ would be helpful to see a plan showing the proposed extension to the doctors surgery with the residential care home to see if there is sufficient space.

County Highway Authority has no objections subject to the imposition of relevant planning conditions.

Leicestershire County Footpath Officer has no objection to planning consent being granted as it would not impact upon the adjacent footpath.

NHS England raises no objection to the proposed application.

North West Leicestershire Environmental Protection has no environmental observations to make.

North West Leicestershire Land Contamination Officer has no objections subject to the inclusion of relevant conditions.

Severn Trent Water has no objection to the proposal subject to the inclusion of relevant drainage conditions.

#### **Third Party Representations**

One letter of representation has been received objecting to the application on the following grounds:

- \_ would impact on surrounding residential amenities;
- \_ would result in noise and disturbance;
- \_ existing mature trees should be retained;

\_ there are already residential nursing facilities within the village.

## **5. Relevant Planning Policy**

### **National Policies**

#### *National Planning Policy Framework*

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Save where stated otherwise, the policies of the North West Leicestershire Local Plan as listed in the relevant section below are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application.

The following sections of the NPPF are considered relevant to the determination of this application:

Paragraph 14 (Presumption in favour of sustainable development)  
 Paragraph 32 (Promoting sustainable transport)  
 Paragraph 34 (Promoting sustainable transport)  
 Paragraph 57 (Requiring good design)  
 Paragraph 59 (Requiring good design)  
 Paragraph 61 (Requiring good design)  
 Paragraph 118 (Conserving and enhancing the natural environment)  
 Paragraph 123 (Conserving and enhancing the natural environment)  
 Paragraph 128 (Conserving and enhancing the historic environment)  
 Paragraph 129 (Conserving and enhancing the historic environment)  
 Paragraph 131 (Conserving and enhancing the historic environment)  
 Paragraph 132 (Conserving and enhancing the historic environment)  
 Paragraph 133 (Conserving and enhancing the historic environment)  
 Paragraph 134 (Conserving and enhancing the historic environment)  
 Paragraph 203 (Planning conditions and obligations)

### **Adopted North West Leicestershire Local Plan (2002)**

The application site is outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. The following Local Plan policies are relevant to this application:

Policy S2 Limits to Development  
 Policy E3 Residential Amenities  
 Policy E4 Design  
 Policy E7 Landscaping  
 Policy T3 Highway Standards  
 Policy T8 Parking

### **Other Policies**

#### **6Cs Design Guide (Leicestershire County Council)**

The 6Cs Design Guide sets out the County Highway Authority's requirements in respect of the design and layout of new development.

## 6. Assessment

### Principle

The site is located within the limits to development where the principle of new development is considered acceptable subject to compliance with the relevant policies of the adopted North West Leicestershire Local Plan and other material considerations.

In terms of sustainability, the concept of new development being directed to locations that minimise reliance on the private motorcar is contained within the NPPF. The application site is located within Ibstock which benefits from a range of local services/facilities and is accessible via public transport. Therefore the proposal is considered to score well against the sustainability advice in the NPPF.

Two previous outline planning applications for this type of development have been granted planning permission. However, since the previous planning application on the site there have been a number of housing applications in Ibstock which have included for contributions to be spent on the expansion of the existing surgery and the Parish Council have raised some concerns regarding this application precluding the expansion of the existing surgery. Some of the legal agreements signed in respect of these healthcare contributions require the money to be spent only at the existing surgery whilst others just require the contribution to be spent within Ibstock.

In relation to these concerns the Local Planning Authority has consulted with the NHS England who state the following: *Even if the application were granted, we would be working with the practice to prioritise the expansion of the surgery to support primary care services and there is no indication that the practice would not work with us on this.*

Given that layout is not included for consideration at this stage and, therefore, the building could be significantly smaller than that shown on the indicative plan and that NHS England do not raise any objections in respect of this application, it is not considered that the application could be refused on these grounds.

Taking all of these issues into account, the proposal is considered acceptable in principle.

### Highway Safety and Parking

Having regard to the previous approval, and notwithstanding the concerns expressed by the Parish Council, it is considered that adequate off-street car parking provision to serve both the existing doctors surgery and the proposed development could be provided. Further, as means of access is a reserved matter, the necessary precise details can be secured in due course (with the reserved matters application submission), although again as indicated by the approval of 2001 and 2007 it is apparent that adequate access arrangements and parking can in principle be achieved at the site.

In conclusion, the County Highway Authority has no objections to the proposed development subject to relevant highway conditions. Therefore, it is not considered that the proposal would conflict with highway safety policies T3 and T8 in the Local Plan or the advice in the NPPF.

### Residential Amenity

There are residential properties located off Bernard Close and Melbourne Road that are in fairly close proximity to the application site boundary. Insofar as the requirements contained within Policy E3 are concerned, and having due regard to the applicants submissions, it remains the

case that it is considered that a building can be satisfactorily accommodated on the application site without necessarily compromising the residential amenities of surrounding existing properties. Key factors in securing the necessary satisfactory relationship will be the scale of the building(s) proposed, along with finished floor levels (given the topography of the site) and the boundary treatments. These issues can all be dealt with at the reserved matters stage.

Having regard to all of the above, it is deemed that a development could come forward on the site that would not have any significant detrimental impact upon neighbouring residential amenities and, therefore, the scheme is considered to be acceptable in relation to Policy E3 of the Local Plan.

### **Design and Impact on Conservation Area**

The northern section of the site, where the indicative details show the new building to be located, is located outside of the Ibstock Conservation Area. In terms of the impact on the character and appearance of the Conservation Area and the general environs, given the limited views into the site any development would be unlikely to have any significant visual impact on the local environs. The Council's Conservation Officer raises no objections to the principle of the development. In terms of design, there is no reason why an appropriate form of development could not be secured at the reserved matters stage, which would not adversely affect the setting of the Ibstock Conservation Area.

In terms of design issues, therefore, it is considered that the scheme would comply with the requirements of Local Plan Policies E4 and the design advice in the NPPF are considered to be met by the scheme at this stage although a suitable scheme would need to be submitted at the reserved matters stage.

### **Other**

The presence of other nursing homes within the area is not a material planning consideration.

Although the layout plan indicates that some trees on the boundary of the site may have to be removed this is indicative only as layout is a reserved matter and, therefore, this would need to be considered in more detail at the reserved matters stage. It is noted that the trees in question are located outside of the Conservation Area and are not subject to a Tree Preservation Order

### **Conclusion**

The site is located in a sustainable settlement and the principle of the development is considered to be acceptable. The indicative details supplied indicate that a suitable scheme could be designed at the reserved matters stage which would be acceptable in terms of the residential amenities of existing and future occupiers, would provide for an appropriate form of design that would be in keeping with the locality and which could be acceptable in relation to highway safety. There are no other relevant material planning considerations that indicate planning permission should not be granted.

Therefore, taking all of the above into account, it is considered that the application complies with relevant policies of the North West Leicestershire Local Plan, 2002 and the National Planning Policy Framework, 2012 and should be granted outline planning permission.

**RECOMMENDATION - PERMIT, subject to the following conditions;**

- 1 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

*Reason- to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).*

- 2 Approval of the details of the layout, scale, appearance, access and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

*Reason - This permission is in outline only.*

- 3 No development shall commence on site until provision has made for the satisfactory disposal of foul and surface water from the site in accordance with a scheme which shall first have been submitted and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

*Reason - To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.*

- 4 Before the development hereby permitted is first used, cycle parking provision shall be made to the satisfaction of the Local Planning Authority and once provided shall be maintained and kept available for use in perpetuity.

*Reason - In the interests of the sustainability of the development and to encourage alternative transport choice.*

- 5 No development shall commence on the site until such time as a construction traffic/site traffic management plan, including wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

*Reason - To reduce the possibility of deleterious material (mud, stones etc) being deposited in the highway and becoming a hazard to road users, and to ensure that construction traffic/site traffic associated with the development does not lead to on-street parking problems in the area.*

- 6 No development (except any demolition permitted by this permission) shall commence on site until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;



- BS 8576:2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs)
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.
- The Verification Plan shall be prepared in accordance with the requirements of:
- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
  - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity, unless otherwise agreed in writing by the Local Planning Authority.

*Reason - To ensure the safe development of the site, having regard to previous use of it and to accord with the aims and objectives of paragraph 120 of the NPPF.*

- 7 Before occupation of any part of the completed development, a verification investigation shall be undertaken inline with the agreed Verification Plan for any works outlined in the Remedial Scheme relevant to either the whole development or that part of the development shall be undertaken. The report showing the findings of the verification investigation shall be submitted to, and approved by, the Local Planning Authority. The verification report should:
- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan.
  - Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works.
    - Contain Movement permits of all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required
  - Contain test certificates of imported material to show that it is suitable for its proposed use
  - Demonstrate the effectiveness of the approved remedial scheme
  - Include a statement signed by the developer or the approved agent, confirming that all the works specified in the Remediation Scheme have been completed.

*Reason - To ensure the safe development of the site, having regard to previous use of it.*

**Notes to applicant**

- 1 You are advised that this grant of outline planning permission does not necessary imply approval for the details shown on the illustrative plan(s).
- 2 Planning permission has been granted for this proposal. The Local Planning Authority acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended).
- 3 Severn Trent Water advise that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.
- 4 The County Footpath Officer advises the following:
  1. The public footpath is enclosed between boundary features and the surfaced width currently available for use by pedestrians should not be encroached upon by works associated with the development.
  2. If it is intended to change any of the boundary treatments currently separating the application site from the public right of way, the Highway Authority's approval to the type of boundary treatment proposed should be obtained.
  3. If it becomes necessary for works to be carried out in connection with the proposed development which would affect the surface of the public right of way, prior consultation must be undertaken with the County Council's Travel Choice and Access Team (Tel No. 0116 305 0001).
  4. No new gates, stiles, fences or other structures affecting the footpath, either of a temporary or permanent nature, should be installed without the written consent of the Highway Authority having been obtained. Unless a structure has been authorised, it constitutes an unlawful obstruction of the right of way and the County Council would be obliged to require its immediate removal.
  5. Any damage caused to the surface of the right of way which is directly attributable to works associated with the development, will be the responsibility of the applicant to repair at his own expense to the satisfaction of the Highway Authority.
  6. If the applicant considers that he will be unable to assure the safety of users of Footpath Q96 while works associated with the proposed development are being undertaken, application would need to be made to the County Council for an Order suspending public rights for the duration of those works. An Application Form for the making of an Order in respect of the temporary diversion or stopping up of a public right of way, together with further details in relation to the process involved, may be obtained by e-mailing [roadclosures@leics.gov.uk](mailto:roadclosures@leics.gov.uk) . A minimum period of 8 weeks should be allowed for the processing of the application and a temporary alternative route would need to be identified.

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Erection of a radio transmission mast

Report Item No  
A7

Summit Bardon Hill Copt Oak Road Markfield Coalville  
Leicestershire LE67 9PJ

Application Reference  
15/00257/FUL

Applicant:  
Hermitage FM

Date Registered  
13 March 2015

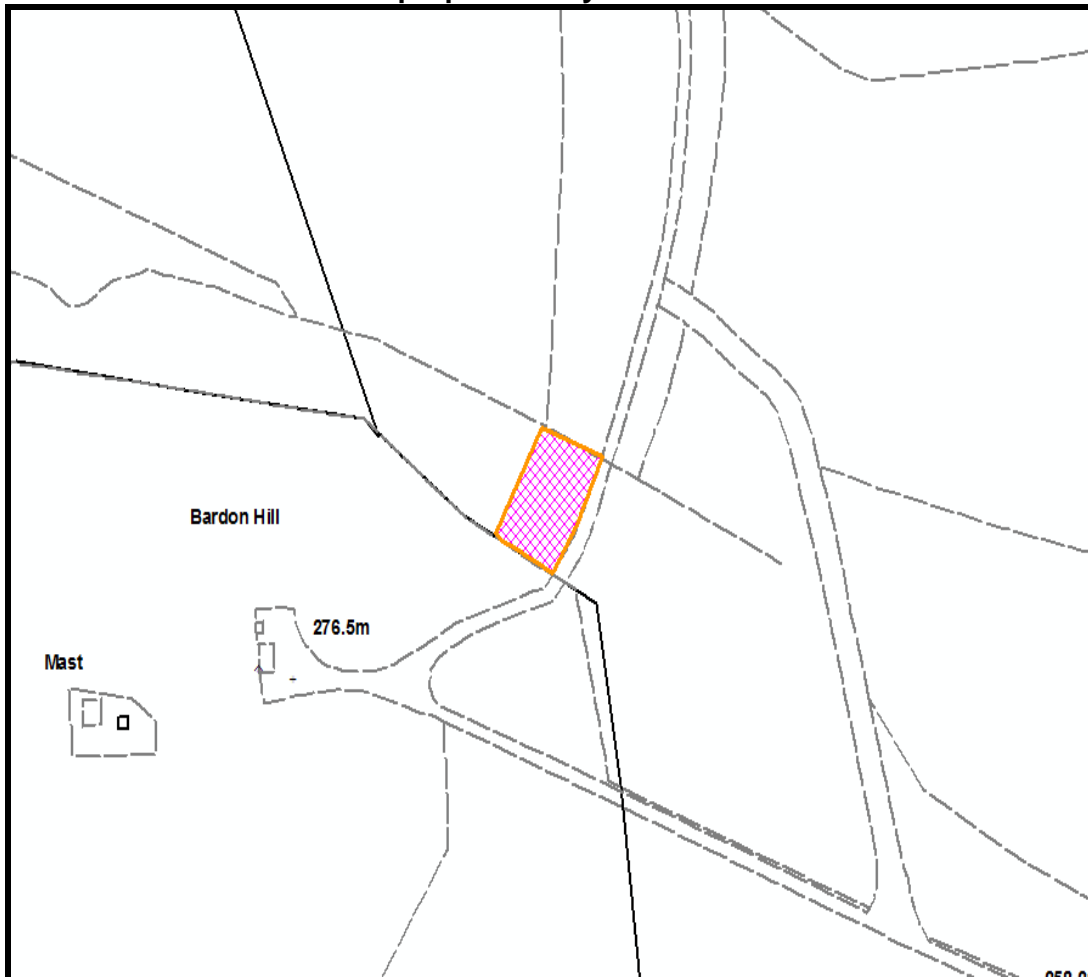
Case Officer:  
James Mattley

Target Decision Date  
8 May 2015

Recommendation:  
PERMIT

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Site Location - Plan for indicative purposes only



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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **Proposal**

Planning permission is sought for the erection of a radio transmission mast and associated equipment near to the summit of Bardon Hill. The application is submitted by Hermitage FM.

### **Consultations**

Members will see from the report below that no objections have been received in relation to the application.

### **Planning Policy**

The application site lies outside the limits to development although Local Plan Policy S3 does allow development in the countryside for operational reasons. Also material to the determination of the application is the advice in the National Planning Policy Framework (NPPF).

### **Conclusion**

There is no objection in principle to the siting of a mast in this location. The proposal would not have any impacts upon residential amenity, would not be significantly detrimental to visual amenity or result in harm to ecology. There are no other material considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

## **RECOMMENDATION:- PERMIT, SUBJECT TO THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommended conditions, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

Planning permission is sought for the erection of a radio transmission mast and associated equipment near to the summit of Bardon Hill. The application site is located outside of the limits to development and outside of the Bardon Hill Site of Special Scientific Interest (SSSI). The application is submitted by Hermitage FM.

The proposed mast would be 10 metres in height and would also include for the erection of a 4 square metre concrete base, container measuring 2 square metres and 1.5 metres in height and the erection of fencing of 2.5 metres in height.

### 2. Publicity

No neighbours have been notified.

Site Notice displayed 26 March 2015

### 3. Consultations

Natural England  
 County Archaeologist  
 LCC ecology  
 County Planning Authority  
 Airport Safeguarding

### 4. Summary of Representations Received Statutory Consultees

County Ecologist has no objections to this development in this location.

Natural England has no objection subject to the inclusion of a condition.

East Midlands Safeguarding raises no objection.

### Third Party Representations

No letters of representation have been received in relation to this application.

### 5. Relevant Planning Policy

#### National Planning Policy Framework (NPPF) - March 2012

The Department of Communities and Local Government published the National Planning Policy Framework (NPPF) on 27 March 2012. The NPPF brings together Planning Policy Statements, Planning Policy Guidance Notes and some Circulars into a single consolidated document. The NPPF contains a number of references to the presumption in favour of sustainable development. It states that local planning authorities should:

- approve development proposals that accord with statutory plans without delay; and
- grant permission where the plan is absent, silent or where relevant policies are out of date unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the

- benefits when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

The NPPF (Para 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

The following policies of the North West Leicestershire Local Plan are consistent with the policies in the NPPF and should be afforded weight in the determination of this application:

**North West Leicestershire Local Plan**

Policy S3 - Countryside

Policy E3 - Residential Amenities

Policy E4 - Design

**6. Assessment**

**Principle**

The application site is located outside of the limits to development where the principle of development is only normally considered to be acceptable under the following circumstances:

- (a) Can be shown to be essential for the efficient long-term operation of agriculture and forestry;
- (b) Comprises acceptable farm diversification;
- (c) Is a public service or utility which cannot, for operational reasons, be accommodated within the defined Limits;
- (d) Is for recreation, community facilities, or tourism-related purposes, in accordance with the leisure and tourism policies of this Local Plan;
- (e) Is for Forest-related purposes within the National Forest, in accordance with the National Forest policies of this Local Plan; or
- (f) Involves the re-use, adaptation or conversion of rural buildings, in accordance with Policy E24 of this Local Plan.

The mast is required to be located on particularly high ground for operational purposes and all of the Bardon Hill area is located outside of the limits to development. It is considered that the proposal would comply with criteria (c) of Policy S3. It is also noted that there is an existing mast located at the top of Bardon Hill. Taking all of these issues into account it is considered that the proposed mast would be acceptable in principle.

**Visual Amenity**

At the top of Bardon Hill there is an existing structure that stands at 20 metres in height and provides a number of telecommunication masts and dishes. The existing structure is highly visible from the surrounding area. By contrast, the proposed radio mast would only be 10 metres in height, would be sited at a lower ground level and would be a more slim-line pole with no lattice structure or guide ropes necessary. Although associated works would also be required including a concrete base, fencing and a container these would be sited within an area

of small trees which would help to reduce any visual impacts associated with this associated equipment.

The slim-line mast would be coloured white, the fencing would be coloured green and the container would be clad in timber. The proposed materials and colours are considered to be acceptable in this location.

Overall, having regard to all of the above, it is not considered that the proposal would have a significant impact upon visual amenity and, therefore, the scheme is deemed to be in accordance with Policy E4 of the Local Plan and the advice contained in the NPPF with regard to design.

### **Ecology**

The proposed site avoids impacts on the adjacent SSSI and the nearby heathland and species-rich grassland (candidate Local Wildlife site). The habitat on the application site is recently regenerated oak woodland, but it is considered that the mast and fencing can fit into the site with minimum disturbance. The County Ecologist raises no objections to the proposed scheme and Natural England has no objections subject to a condition requiring power lines and associated service cables being routed along existing trackways.

Therefore, subject to the inclusion of relevant conditions, the proposal would not have any significant impacts upon ecology and the scheme is considered to be acceptable in this regard.

### **Residential Amenity**

No letters of representation have been received from the public as part of the consultation exercise. The proposed mast would be located a significant distance away from any residential properties and would be significantly smaller than the existing mast that is located at the top of Bardon Hill. Having regard to this, it is not considered that the proposed mast would result in overbearing or overshadowing impacts or result in noise and disturbance.

Having regard to all of the above, the scheme is considered to be acceptable in relation to Policy E3 of the Local Plan.

### **Conclusions**

There is no objection in principle to the siting of a mast in this location. The proposal would not have any impacts upon residential amenity, would not be significantly detrimental to visual amenity or result in harm to ecology. There are no other material considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

### **RECOMMENDATION - PERMIT, subject to the following conditions;**

- 1 The development shall be begun before the expiration of three years from the date of this permission.

*Reason- to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).*

- 2 The proposed development shall be carried out strictly in accordance with the following plans, unless otherwise required by a condition of this permission:
- \_ Site location plan deposited with the Local Planning Authority on 13 March 2015;
  - \_ Plans showing front and side elevations deposited with the Local Planning Authority on 13 March 2015;
  - \_ Block plan deposited with the Local Planning Authority on 13 March 2015.

*Reason - To determine the scope of this permission.*

- 3 The materials and colour of materials shall be in accordance with the details contained in emails dated 13 May 2015 12:00 as agreed by email dated 13 May 2015 15:57, unless alternative details are first agreed in writing with the Local Planning Authority.

*Reason - To enable the Local Planning Authority to retain control over the external appearance as no details have been submitted.*

- 4 All power lines and other service cables associated with the proposed radio mast shall be sited along existing trackways, unless otherwise agreed in writing with the Local Planning Authority.

*Reason - To ensure that the development would not impact upon the features of special interest for which Bardon Hill SSSI is notified.*

#### **Notes to applicant**

- 1 Planning permission has been granted for this proposal. The Local Planning Authority acted pro-actively through early engagement with the applicant at the pre-application stage which led to improvements to the scheme. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.



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Erection of a Grain Storage Building

Report Item No  
A8

Land At Scaffacre Farm From The Green To Unnamed Road  
At Top Merrill Grange Diseworth Leicestershire DE74 2QQ

Application Reference  
15/00212/FUL

Applicant:

Date Registered  
16 March 2015

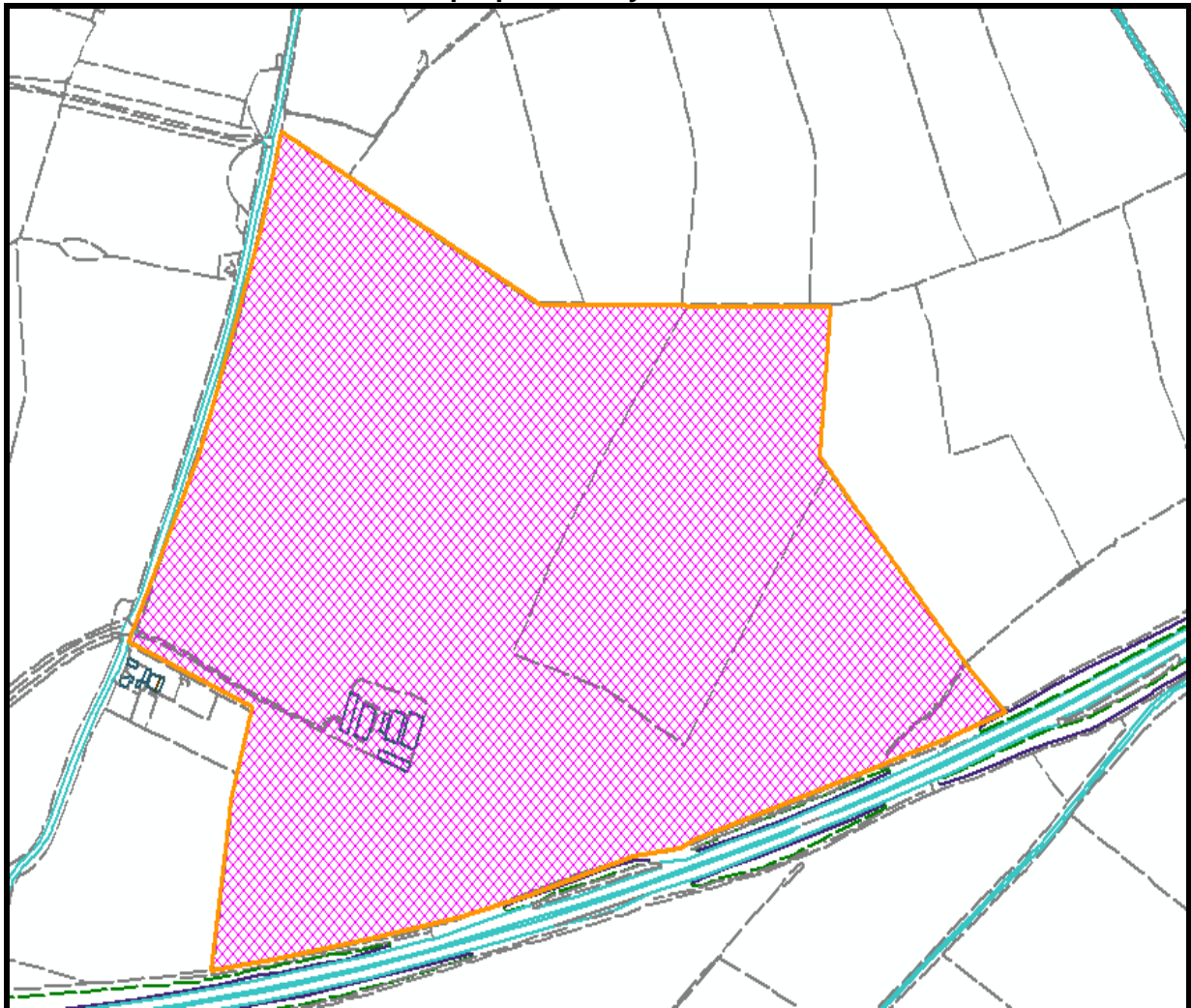
Case Officer:  
Robert McKillop

Target Decision Date  
11 May 2015

Recommendation:  
PERMIT

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**Site Location - Plan for indicative purposes only**



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## EXECUTIVE SUMMARY OF PROPOSALS

### Call In

The application is brought to the Planning Committee as the agent for the application is related to a serving Councillor (Cllr Richard Blunt).

### Proposal

Planning permission is sought for the erection of a grain storage building at land at Scaffacre Farm, Top Merrill Grange, Diseworth. The new building would be to the west of these existing structures and would measure a footprint of 48.768 metres in length by 24.384 metres in width. It would measure 7.01 metres in height to the eaves and 10.277 metres in overall height.

### Consultations

No letters of representation to the application have been received from third parties, to date, and no adverse comments have been received from statutory consultees. The Parish Council raise no objection subject to tree planting to screen the building. Any relevant comments received following the publication of the Planning Committee Agenda will be reported to members on the Committee Update Sheet.

### Planning Policy

It is considered that the development would accord with all relevant policies of the North West Leicestershire Local Plan, the general principles of the National Planning Policy Framework (NPPF) as well as relevant supplementary planning guidance.

### Conclusion

The site lies outside the defined limits to development where the principle of agricultural development is acceptable. It is considered that a need has been established for the additional grain storage building given that sustainable rural businesses should be supported and promoted. Development would accord with advice within the NPPF and Policy S3 of the Local Plan.

As the structure would be situated on an operational farm holding away from residential dwellings it is considered that it would not have any significant detrimental impact on residential amenity and would accord with Policy E3 of the Local Plan.

The building would be of a similar scale and appearance to existing structures on the site and it is considered that the proposal would not have any significant detrimental impact on the character and appearance of the site as a whole or the wider countryside given its position adjacent to existing buildings. As such the proposal would accord with Paragraph 61 of the NPPF and Policy E4 of the Local Plan.

Sufficient space would remain within the site for vehicular manoeuvres and the application is not likely to lead to any substantial increase in the use of the existing access. In these circumstances the development would not pose a risk to highway safety and would accord with Policies T3 and T8 of the Local Plan.

It is therefore recommended that the application be permitted.

### RECOMMENDATION - APPROVE SUBJECT TO CONDITIONS;

**Members are advised that the above is a summary of the proposals and key issues**

contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommended conditions, and Members are advised that this summary should be read in conjunction with the detailed report.

## MAIN REPORT

### 1. Proposals and Background

Planning permission is sought for the erection of a grain storage building at land at Scaffacre Farm, Top Merrill Grange, Diseworth. The application site is surrounded by open fields, with Gelscoe Farm and a small number of cottages to the west. The building would be located outside of the limits to development.

There are several existing agricultural buildings on the site which are of a similar scale to the proposed building, including 4 no. large silos which would be demolished. The new building would be to the west of these existing structures and would measure a footprint of 48.768 metres in length by 24.384 metres in width. It would measure 7.01 metres in height to the eaves and 10.277 metres in overall height. The walls would be constructed from horizontal concrete wall panels and green plastic coated steel sheets. The roof would be grey fibre cement sheets, and three galvanised roller shutter doors are proposed in the south facing side elevation. A Design and Access Statement was submitted in support of the application.

No relevant planning history was found for this application.

### 2. Publicity

One neighbour has been notified (Date of last notification 23 March 2015)

Site Notice displayed 23 March 2015

### 3. Consultations

Clerk To Long Whatton & Diseworth consulted  
 County Highway Authority  
 Environment Agency  
 Severn Trent Water Limited  
 Head of Environmental Protection  
 LCC ecology

### 4. Summary of Representations Received

No representations have been received from members of the public.

County Ecologist has no objection to this application.

County Highway Authority has no objections to the application subject to the building remaining ancillary to the agricultural use and is not sold, leased or used separately from the agricultural use of the site.

Environment Agency does not wish to provide comments on this application.

Long Whatton & Diseworth Parish Council does not object to the application although recommends planting of native trees to screen the building.

NWLDC Environmental Protection - any comments received will be reported to Members on the Update Sheet.

Severn Trent Water has no objection to this application.

## 5. Relevant Planning Policy

### National Policies

#### *National Planning Policy Framework*

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Save where stated otherwise, the policies of the North West Leicestershire Local Plan as listed in the relevant section below are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application.

The following sections of the NPPF are considered relevant to the determination of this application:

- Paragraph 3 (Supporting a prosperous rural economy)
- Paragraph 14 (Presumption in favour of sustainable development)
- Paragraph 28 (Economic growth in rural areas)
- Paragraph 61 (Requiring good design)
- Paragraph 118 (Conserving and enhancing the natural environment)

### Adopted North West Leicestershire Local Plan (2002)

The application site is outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. The following Local Plan policies are relevant to this application:

- Policy S3 Countryside
- Policy E3 Residential Amenities
- Policy E4 Design
- Policy E7 Landscaping
- Policy T3 Highway Standards
- Policy T8 Parking

### Other Policies

### 6Cs Design Guide (Leicestershire County Council)

The 6Cs Design Guide sets out the County Highway Authority's requirements in respect of the design and layout of new development.

## 6. Assessment

### Principle

The application site is located outside the limits to development where permission for new development would not normally be granted unless, amongst other things, it is essential for the efficient long-term operation of agriculture or forestry, or involves acceptable farm diversification. The application is for agriculture and is therefore considered to be acceptable in relation to Policy S3 of the adopted Local Plan. It is, however, necessary to consider impacts upon design, amenity, highway safety and any other material considerations.

### Residential Amenity

Consideration has been given to the impact on surrounding residential properties despite not receiving any letters of representation during the course of the application. Given the proposed building would be more than 130 metres away from the nearest neighbouring dwelling, it is

deemed that this distance would remove the possibility of any detrimental impact caused by the physical form of the building. As the proposed building would be adjacent to existing agricultural buildings and would be used for the purpose of grain storage, it is deemed that the level of activity would not be significantly increased and there would be not detrimental impact in terms of noise or disturbance associated with the development.

On this basis, it is deemed that the development would not have any significant detrimental impact upon neighbouring residential amenities would accord with Policy E3 of the Local Plan.

### **Design**

Although the proposed building would be of a large scale, it would be sited adjacent to the existing agricultural buildings and would have a similar appearance given the choice of materials proposed. Whilst it would be formed to the west of the existing agricultural buildings at the site, it would be approximately 190 metres away from the main road from which the farm holding is served and the building would therefore not feature prominently in views from the west. The Design and Access Statement confirms that the existing grain silos, of which there are four, would be demolished and as they are considered not to contribute positively to the wider appearance or character of the farm holding, their removal would likely improve the appearance of the farm holding overall.

On the basis of the aforementioned considerations, it is deemed that the development would not adversely impact on the character and appearance of the wider landscape particularly in the circumstances that the structure would be viewed in the context of its relationship with existing structures. It is deemed that the building would be positioned in the most appropriate location on the site and the development would not have a significantly detrimental impact on the character and appearance of the rural environment. As such, the application would accord with Paragraph 61 of the NPPF and Policy E4 of the Local Plan.

### **Highway Safety**

The County Council Highways Authority has no objections to the application although recommends a condition to be added to any permission granted to the effect that the building shall remain ancillary and shall not be sold, leased, or otherwise disposed of separately from the agricultural use of the wider site. It is considered that the condition preventing the building being used for commercial purposes would be unreasonable in the context of the fact that whilst the Town and Country Planning (General Permitted Development) Order 1995 (as amended) has introduced measures which allow agricultural buildings to be converted to alternative uses, subject to a prior notification process, these rights only apply if the building was built prior to the 3rd July 2012. If the building was constructed after this time then it would need to be used continuously for a period of 10 years before these rights would apply and in any case as part of the prior notification procedure highway safety impacts have to be taken into account. A condition preventing the sale or leasing of the building from the wider agricultural use of the site would also be considered unenforceable given that it would be difficult to demonstrate the difference between different agricultural operations undertaken by tenants, given that permission would not be required to change a livestock farm to an arable farm, as well as the fact that planning permission would be required to utilise the building for any other purpose than agriculture.

It is considered that the site is an operational farm holding, and as such slow moving vehicles are already associated with utilising the access to the site, and in these circumstances it is considered that the provision of the building would not be to the further detriment of highway safety. The development would also not impinge on the facilities available for the manoeuvring of vehicles and as such any vehicle exiting the site would do so in a forward direction. As such

the application would not have any significant detrimental impact on highway safety accord with Policies T3 and T8 of the Local Plan.

**Landscaping**

In response to a request for some boundary screening made by the Parish Council, a plan has been provided to show landscaping proposed adjacent to the north and west elevations of the building. This would be in the form of four rows of trees, made up of a mixture of Ash, Oak and Lime. It is deemed that these would offer screening to the building and would improve the appearance of the site and character of the countryside area. The nature and layout of the proposed landscaping is deemed to be acceptable and the application would accord with Policy E7 of the Local Plan.

**Protected Species**

The County Ecologist has no objection to the proposal on the basis that although the site is close to a Great Crested Newt pond, the land is currently used for agriculture and is therefore unlikely to be suitable for foraging or as a habitat link. As such the application would be acceptable in ecological terms, and would accord with Paragraph 118 of the NPPF.

**Conclusion**

There have been no objections to the proposed development. The principle of the development is considered to be acceptable. The proposal is not considered to affect residential amenity in the area, have any significant detrimental design impacts or conflict with highway safety. There are no other relevant material planning considerations that indicate planning permission should not be granted. The proposal is deemed to comply with the relevant policies in the Local Plan, in this case S3, E3, E4, E7, T3, T8, the relevant advice in the NPPF. It is therefore recommended that the application be permitted.

**RECOMMENDATION - PERMIT, subject to the following conditions;**

- 1 The development shall be begun before the expiration of three years from the date of this permission.

*Reason- to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).*

- 2 The proposed development shall be carried out strictly in accordance with the following plans, unless otherwise required by a condition of this permission:
  - Location Plan, deposited with the Local Planning Authority on 11 March 2015;
  - Block Plan, deposited with the Local Planning Authority on 11 March 2015;
  - Proposed Elevations Drg No.0315-001, deposited with the Local Planning Authority on 11 March 2015;
  - Proposed Floor Plans Drg No.0315-002, deposited with the Local Planning Authority on 11 March 2015;
  - Design & Access Statement, deposited with the Local Planning Authority on 11 March 2015;
  - Farm Business Appraisal, deposited with the Local Planning Authority on 11 March 2015.

*Reason- To determine the scope of this permission.*

- 3 The external materials to be used in the development hereby permitted shall be in strict accordance with those specified in the application unless alternative materials are first agreed in writing with the Local Planning Authority.

*Reason- to ensure a satisfactory standard of external appearance.*

- 4 Prior to the first use of the building hereby permitted, soft landscaping shall be provided in strict accordance with that shown on the Landscaping Plan, received by the Local Planning Authority on the 20th May 2015, unless an alternative soft landscaping scheme is first submitted to and agreed in writing by the Local Planning Authority.

*Reason - to ensure a satisfactory landscaping scheme is provided within a reasonable period and in the interests of the visual amenities of the area.*

- 5 Any tree or shrub which may die, be removed or become seriously damaged shall be replaced in the first available planting season thereafter and during a period of 5 years from the first implementation of the approved landscaping scheme or relevant phase of the scheme, unless a variation to the landscaping scheme is agreed in writing with the Local Planning Authority.

*Reason - to provide a reasonable period for the replacement of any trees.*

#### **Notes to applicant**

- 1 Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).