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Meeting	<b>PLANNING COMMITTEE</b>
Time/Day/Date	<b>6.00 pm</b> on Tuesday, 4 August 2020
Location	MS Teams Live Event
Officer to contact	Democratic Services (01530 454529)

	<b>AGENDA</b>	
<b>Item</b>		<b>Pages</b>
<b>1.</b>	<b>APOLOGIES FOR ABSENCE</b>	
<b>2.</b>	<b>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.</b>	<b>MINUTES</b>	
	To confirm and sign the minutes of the meeting held on 7 July 2020.	<b>3 - 8</b>
<b>4.</b>	<b>PLANNING APPLICATIONS AND OTHER MATTERS</b>	
	Report of the Head of Planning and Infrastructure.	<b>9 - 12</b>

## Index of Applications to be Considered

<b>Item</b>	<b>Application Number and Details</b>	<b>Recommendation</b>	<b>Page</b>
<b>A1</b>	<b>20/00718/FULM: Construction of B8 warehouse together with ancillary buildings and associated access, parking, service and yard areas and landscaping</b>  Plot 12 East Midlands Gateway Development Ashby Road Castle Donington, DE74 2DL	<b>PERMIT subject to S106 Agreement</b>	<b>13 - 40</b>
<b>A2</b>	<b>14/00415/FUL: Erection of three no two-storey detached dwellings and ancillary garaging</b>  The Woodlands Bath Lane Moira Swadlincote Derby DE12 6BP	<b>PERMIT subject to S106 Agreement</b>	<b>41 - 60</b>
<b>A3</b>	<b>14/00417/FUL: Erection of detached two-storey dwelling with detached garage</b>  The Woodlands Bath Lane Moira Swadlincote Derby DE12 6BP	<b>PERMIT subject to S106 Agreement</b>	<b>61 - 80</b>
<b>A4</b>	<b>20/00699/FUL: Erection of two dwellings</b>  Land Adjacent To 5 Cedar Grove Moira Derby, DE12 6HJ	<b>PERMIT</b>	<b>81 - 90</b>

MINUTES of a meeting of the PLANNING Committee held in the MS Teams Live Event on TUESDAY, 7 July 2020

Present: Councillor N Smith (Chairman)

Councillors R Ashman (Substitute for N Smith on Item A2), R Boam, D Bigby, R Canny, D Everitt, S Gillard, D Harrison, G Hoult (Substitute for R Boam on Item A2), J Hoult, J Legrys and M B Wyatt

In Attendance: Councillors R Johnson

Officers: Mr C Elston, Mr J Mattley, Miss S Odedra, Mr T Delaney, Mr C English, Mrs H Exley, Mrs M Long and Mrs C Hammond

### **1. APOLOGIES FOR ABSENCE**

Apologies were received from Councillor A Bridgen.

### **2. DECLARATION OF INTERESTS**

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

Councillor R Ashman, G Hoult, J Hoult and J Legrys declared non-pecuniary interests in item A2, application number 20/00676/FUL, as they had served with the applicant during his time as an elected member of the Council but had come to the meeting with open minds.

Councillor R Boam declared a non-pecuniary interest in item A2, application number 20/00676/FUL, as the ward member and advised that once he had addressed the committee he would leave the meeting.

Councillor R Canny declared a non-pecuniary interest in item A1, application number 20/00457/FUL, as the ward member and advised that once she had addressed the committee she would leave the meeting for the consideration of the item.

Councillor N Smith declared a non-pecuniary interest in item A2, application number 20/00676/FUL, as a close friend of the applicant and advised that he would leave the chair and the meeting.

Members declared that they had been lobbied without influence in respect of the following applications but had come to the meeting with an open mind.

Item A2, application number 20/00676/FUL

Councillors D Bigby, R Canny, S Gillard, D Harrison, J Legrys and M B Wyatt.

Having declared their interests, Councillors R Ashman and G Hoult left the meeting until the consideration of item A2 and took no part in the discussion and voting on item A1.

### **3. MINUTES**

Consideration was given to the minutes of the meeting held on 2 June 2020, as amended in the update sheet.

It was moved by Councillor J Legrys, seconded by Councillor D Harrison and

By affirmation of the meeting it was

RESOLVED THAT:

The minutes of the meeting on 2 June 2020, as amended in the update sheet be approved and signed by the Chairman as a correct record.

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

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

#### 5. **A1**

##### **20/00457/FUL: PROPOSED CHANGE OF USE OF SITE FROM RESIDENTIAL TO RESIDENTIAL AND DOG BREEDING**

Cavendish Lodge Back Lane Cavendish Bridge Shardlow Derby DE72 2HL

**Officer's Recommendation: Permit**

Having declared an interest in the item Councillor R Canny left the committee to speak as Ward Member.

The Planning Officer presented the report to Members

Councillor Bernadette O'Dowd, on behalf of Castle Donington Parish Council addressed the committee highlighting that the owners had been breeding dogs on the site since May 2019 and that there was a constant barking noise throughout the day for two months until residents submitted complaints. She noted that the owners had advised of the work that had been carried out to mitigate the noise, but it was believed that no breeding had taken place for a while and once it started again the noise would return. She raised concerns over the site being located in a high risk area for flooding and outlined recent flooding events. She urged the committee to refuse the application.

A statement was read out on behalf of Mr Mark Baskcomb, objector, highlighting the potential noise levels from the site, which formal complaints had been made about in the past and that the noise would start from 6.30am and continue through to 10pm, seven days a week. He also raised concerns over the welfare of the dogs, as the site was situated in an area prone to high flood level risk, advising that the applicant's dwelling was on stilts but the kennels would be on ground level. He noted that the documents of support were from people outside of the community rather than those who would be impacted by the noise.

Mr Philip Rowland, agent, addressed the committee highlighting that the application sought to re-use a number of existing buildings, and the business would be appropriately located in the countryside, which would be deemed acceptable in accordance with the NPPF and Local Plan Policy S3. It was noted that there had not been any complaints in relation to noise since the applicant had fully sound insulated the buildings and, installed CCTV and a noise monitoring system. He informed Members that the business would be classed as a less vulnerable use in terms of the Flood Risk Vulnerability Classification and that the applicant had signed up to the Environmental Agency's Flood Warnings service to provide information for the removal of the dogs to a safe location. He added that the applicant had worked with officers throughout the application process and that the proposed development complied with all relevant planning policies and posed no highway safety issues.

Councillor Rachel Canny, Ward Member, addressed the committee highlighting that on a previous occasion when the site had flooded, twelve dogs had to be relocated to the owner's dwelling and that the owner had advised that an area outside the flood area

would be raised to mitigate the issue in the future. She noted the previous noise complaints, that there was no sound insulation in the dog runs and that the fence adjoining the children's play area had been re-enforced, however not all the perimeter works had been finished and asked that it be completed before permission was given, along with consideration to the height. She expressed concerns over the possible odour from the dog waste that would be kept on site, the different breeds of dogs that would be bordered there and the type of monitoring that would be put in place to deal with future noise issues.

Councillor R Canny then left the meeting and took no part in the consideration of the item and the voting thereon.

In determining the application, members noted the additional conditions that were included in the update sheet. Concerns were expressed over the numbers and breed of dogs that would be on site at any one time, and that the boundary treatment should be completed and appropriate insulation be fitted in the buildings before any permission be given. It was requested that the concerns be conditioned. Consideration was also given to waste disposal, drainage and that a licence would also be required from a Vet, before any breeding could take place, which would also consider the number of dogs allowed on the site.

Members felt that, if they were minded to permit the application, the permission given should be robust and requested that full consideration be given to all of the conditions that would be secured on the permission and asked that the Chairman of the Committee and Ward Member be consulted on the conditions before the permission was granted.

A motion to permit the application in accordance with the officer recommendation and that the approval of conditions and wording be delegated to the Head of Planning and Infrastructure in consultation with the Chairman of the Committee and the Ward Member was moved by Councillor J Legrys and seconded by Councillor D Harrison.

The Chairman put the motion to the vote. A recorded vote being required, the voting was as detailed below.

**RESOLVED THAT:**

The application be permitted in accordance with the officer recommendation and that the approval of conditions and wording be delegated to the Head of Planning and Infrastructure in consultation with the Chairman of the Committee and the Ward Member.

<b>Motion to permit the application in accordance with the officer's recommendation and approval of conditions and wording be delegated to the Head of Planning and Infrastructure in consultation with the Chairman of the Committee and Ward Member (Motion)</b>	
Councillor Nigel Smith	For
Councillor Russell Boam	For
Councillor Dave Bigby	For
Councillor Rachel Canny	Conflict Of Interests
Councillor David Everitt	Against
Councillor Stuart Gillard	For
Councillor Dan Harrison	For
Councillor Jim Hoult	Against
Councillor John Legrys	For
Councillor Michael Wyatt	Against
<b>Carried</b>	

Councillor R Canny returned to the meeting.

As both the Chairman and Deputy Chairman had declared interests in the next item the Chairman sought nominations to elect a Chairman for the consideration of item A2.

It was moved by Councillor D Harrison, seconded by Councillor J Legrys and

By affirmation of the meeting it was  
RESOLVED THAT:

Councillor D Harrison take the chair for the remainder of the meeting.

**6. A2**  
**20/00676/FUL: ERECTION OF THREE DETACHED DWELLINGS WITH GARAGES**  
Land At Loughborough Road Peggs Green Coleorton Leicestershire. LE67 8HJ  
**Officer's Recommendation: Refuse**

Having declared interests in the item, Councillor N Smith left the meeting at 6.10pm and took no part in the consideration of the item and the voting thereon and Councillor R Boam left the committee to speak as Ward Member.

Councillors R Ashman and G Houlton joined the meeting as substitutes for Councillors N Smith and R Boam.

The Senior Planning officer presented the report to Members.

Councillor Roger Cairns, on behalf of Swannington Parish Council, addressed the committee highlighting that the site fell outside the Limits to Development and should not have been permitted previously. He noted the previous applications on the site, a number of which had been refused and that permitting the application would set a precedent for applications outside the limits.

Mr Andrew Large, agent, addressed the committee highlighting that little weight was being put upon the selfbuild angle of the application, due to the applicant's desire to provide serviced plots and that little weight was being attached to the previous approval for which a discharge of condition application was made. He noted that in relation to sustainability, the reliance on the car was dwindling as working from home and home deliveries were becoming the new normal, therefore dwellings on the site were no more or less suitable than in the centre of a town.

Councillor R Boam, Ward Member, addressed the committee highlighting that he called in the application as the previous one was considered by members. He noted that the highways issues had now been agreed and felt that smaller developments were required in the village to ensure the sustainability of the area. He urged members to permit.

Councillor R Boam then left the meeting at 6.25pm and took no part in the consideration of the item and the voting thereon.

In determining the application members acknowledged that the application site now lay outside the Limits to Development as set out in the adopted Local Plan, that the Council now had the required 5 year housing land supply and that the sustainability of the area had changed since the previous application had been permitted.

A motion to refuse the application in accordance with the officer recommendation was moved by Councillor D Bigby and seconded by Councillor J Legrys.

The Chairman put the motion to the vote. A recorded vote being required, the voting was as detailed below.

RESOLVED THAT:

The application be refused in accordance with the officer recommendation.

<b>Motion to refuse the application in accordance with the officer's recommendation (Motion)</b>	
Councillor Nigel Smith	Conflict Of Interests
Councillor Russell Boam	Conflict Of Interests
Councillor Dave Bigby	For
Councillor Rachel Canny	For
Councillor David Everitt	For
Councillor Stuart Gillard	For
Councillor Dan Harrison	For
Councillor Jim Hout	Against
Councillor John Legrys	For
Councillor Michael Wyatt	For
Councillor Robert Ashman	For
Councillor Gill Hout	For
<b>Carried</b>	

The meeting commenced at 5.00 pm

The Chairman closed the meeting at 6.40 pm

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**APPENDIX B**

**Report of the Head of Planning and Infrastructure  
to Planning Committee**

**4 August 2020**

**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 Infrastructure are material planning considerations and relate to matters not previously raised.

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

Where the Head of Planning and Infrastructure 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 Infrastructure.

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

Where the Head of Planning and Infrastructure 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 Infrastructure.

## **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 Infrastructure.

## **7 Amendments to Motion**

An amendment must be relevant to the motion and may:

1. Leave out words
2. Leave out words and insert or add others
3. Insert or add words

as long as the effect is not to negate the motion

If the amendment/s makes the planning permission incapable of implementation then the effect is to negate the motion.

If the effect of any amendment is not immediately apparent the Chairman will take advice from the Legal Advisor and Head of Planning and Infrastructure/Planning and Development Team Manager present at the meeting. That advice may be sought during the course of the meeting or where the Officers require time to consult, the Chairman may adjourn the meeting for a short period.

Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of. The amendment must be put to the vote.

If an amendment is not carried, other amendments to the original motion may be moved.

If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

After an amendment has been carried, the Chairman will read out the amended motion before accepting any further amendment, or if there are none, put it to the vote.

## **8 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 Infrastructure.

### **9. Decisions on Items of the Head of Planning and Infrastructure**

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.

**Construction of B8 warehouse together with ancillary buildings and associated access, parking, service and yard areas and landscaping**  
**Plot 12 East Midlands Gateway Development Ashby Road**  
**Castle Donington, DE74 2DL**

**Report Item No**  
**A1**

**Application Reference**  
**20/00718/FULM**

**Grid Reference (E) 446551**  
**Grid Reference (N) 326949**

**Date Registered:**  
**22 April 2020**

**Consultation Expiry:**  
**22 May 2020**

**Applicant:**  
**Segro (EMG) Ltd**

**8 Week Date:**

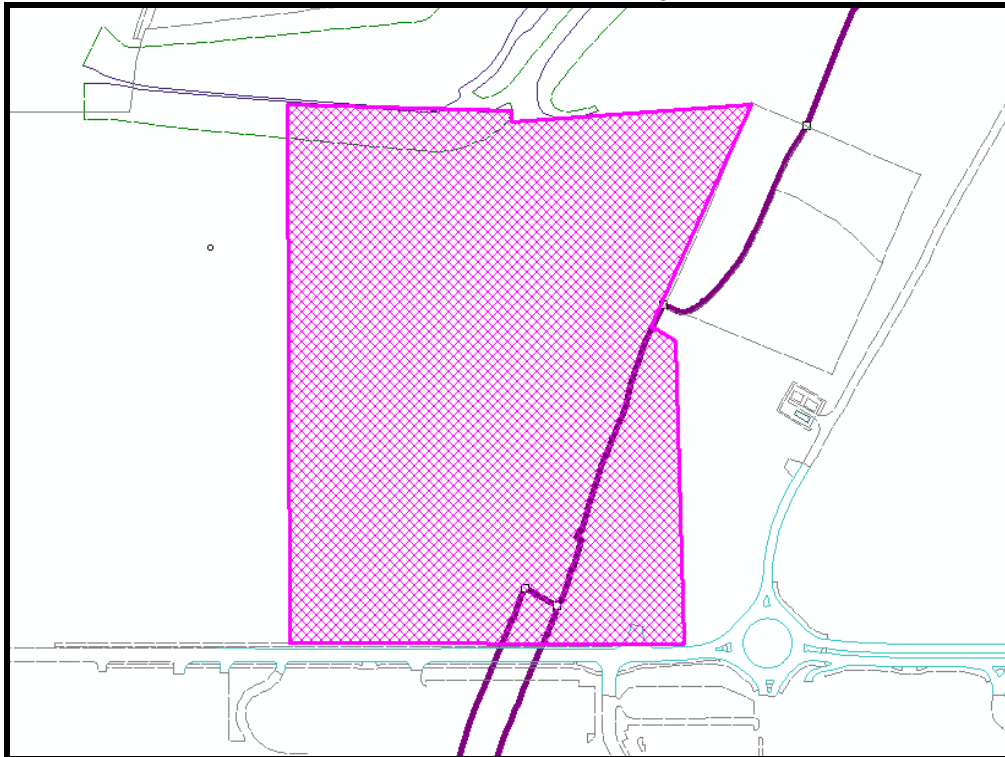
**17 June 2020**

**Case Officer:**  
**Adam Mellor**

**Extension of Time:**  
**5 August 2020**

**Recommendation:**  
**PERMIT subject to S106 Agreement**

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



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## EXECUTIVE SUMMARY OF PROPOSALS

### Call In

This application has been brought to the Planning Committee at the request of Councillor Sewell on the basis of the visual impacts as a result of the height of the unit, the implications the height would have to the setting of the Lockington and Hemington Conservation Areas and that a further precedent would be set for developments on the site to exceed the height parameters (i.e. the specified height of the units as determined by the Development Consent Order (DCO) granted by the Secretary of State for Transport).

### Proposal

The application is for the construction of a B8 warehouse together with ancillary buildings, associated access, parking, service and yard areas and landscaping at Plot 12, Zone A6, East Midlands Gateway Rail Freight Interchange, Castle Donington.

### Consultations

Objections have been received from third parties as well as Castle Donington Parish Council, Lockington cum Hemington Parish Council and The Gardens Trust (albeit a revised consultation response is awaited following the receipt of further information), the Council's Conservation Officer has also identified some harm in relation to the application. All other statutory consultees have raised no objections.

### Planning Policy

The application site is outside the Limits to Development in the adopted North West Leicestershire Local Plan but forms part of the East Midlands Strategic Rail Freight Interchange (EMSRFI).

### Conclusion

Whilst the site is outside the Limits to Development it forms part of the EMSRFI which was granted a Development Consent Order (DCO) in January 2016 and which has been implemented. The key issues are:

- The impacts to the visual amenities and landscape character of the area; and
- Impact on the historic environment.

The report below looks at these details, and Officers conclude that the details are satisfactory. The proposals meet the requirements of relevant NWLDC policies including the adopted Good Design for North West Leicestershire SPD, and the NPPF (2019).

### **RECOMMENDATION - PERMIT, SUBJECT TO A LEGAL AGREEMENT AND 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.**

## 1. Proposals and Background

Planning permission is sought for the construction of a B8 warehouse together with ancillary buildings, associated access, parking, service and yard areas and landscaping at Plot 12, Zone A6, East Midlands Gateway Rail Freight Interchange, Castle Donington. The application site, to which the proposed unit forms, lies to the east of Castle Donington, south of Lockington and Hemington, west of Kegworth and north of East Midlands Airport and is outside the defined Limits to Development. Zone A6 on which plot 12 is situated is in the north-eastern part of the site allocated for the provision of the warehouse units and is to the east of the rail terminal.

On the 12th January 2016 the Secretary of State for Transport granted a Development Consent Order (DCO) for The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (Statutory Instruments 2016 - No. 17), which comprised the following development as outlined in Schedule 1 of the DCO and which consisted of three separate Nationally Significant Infrastructure Projects (NSIPs): -

- Part 1 - NSIP 1: The Construction of a Rail Freight Interchange;
- Part 2 - NSIP 2: The Construction of a New Highway;
- Part 3 - NSIP 3: The Alterations of Existing Highways;
- Part 4 - Associated Development.

In more detail these works comprised the following:

- Provision of up to 557,414 square metres of rail-served warehousing and ancillary service buildings;
- An intermodal freight terminal accommodating up to 16 trains per day each way of up to 775 metres in length and which will include container storage and HGV parking;
- A new rail line connecting the terminal to the Castle Donington freight only branch line;
- Substantial improvements to Junctions 24 and 24A on the M1;
- A southern bypass of Kegworth to the east of the M1;
- Other new roads and alterations to existing road infrastructure;
- A bus interchange;
- Alterations to public rights of way;
- Demolition of existing structures and structural earthworks to create development plots and landscape zones; and
- Strategic landscaping and open space, including the creation of new publicly accessible open areas.

As part of the consideration of the DCO application a Parameters Plan was submitted which was used as a basis to determine the number of units within a zone, the maximum floor space of development within a zone and the height of the unit within a zone. For Zone A6 (where plot 12 is situated) it was proposed that up to 5 units could be constructed which would provide a maximum floor space of 147,295 square metres and where units could have overall heights of 20.5 metres. The maximum plateau level within Zone A6 is 66.50 metres Above Ordnance Datum (AOD).

This application seeks to provide a B8 unit with a floor space of 64,483 square metres on Zone A6 which would have a stairwell height of 38.3 metres and maximum parapet height of 36.3 metres, to the high bay, and maximum parapet height of 22.3 metres, to the low bay, and as such breaches the dimensions set on the Parameters Plan approved as part of the DCO. On the basis that the height of the unit proposed on plot 12 within Zone A6 would not accord with the terms of the DCO a separate planning application has been submitted for consideration by the

Local Planning Authority. The dimensions, layout and appearance of the proposed unit can be seen on the submitted plans with associated works also being proposed as part of the application.

A planning statement, design and access statement, landscape and visual appraisal, transport assessment, built heritage statement, lighting statement, drainage design philosophy statement, energy statement and BREEAM Assessment have been submitted in support of the application. Following the receipt of consultation responses additional landscape and visual appraisals, built heritage statements and a scheduled monument assessment have been submitted, reconsultation on these documents has been undertaken.

No other recent or relevant planning history was found within Zone A6.

## **2. Publicity**

1 Neighbours have been notified.

Press Notice published Derby Evening Telegraph 6 May 2020.

Site Notices were displayed on 1 May 2020.

## **3. Summary of Consultations and Representations Received**

The following summary of representations is provided.

### **Objections from:**

Councillor Sewell and Councillor Hay on the following summarised grounds:

- The construction of the unit on plot 2 should not set a precedent that other units should be allowed to exceed the heights on the parameters plan.
- The impact of the development on the setting of heritage assets should be appropriately considered with due regard given to heritage assets within the District as well as outside the District.
- Policy Ec3 of the adopted Local Plan outlines that development should not result in harm to the amenities of neighbouring residents or the general environment with Policy D2 of the adopted Local Plan outlining the development should be designed to minimise the impact on residential amenities. There is concern that the development will overshadow the area and be a blight in the landscape.
- If buildings of such height were required, then this should have been factored into the account when the parameters plan was finalised.

Castle Donington Parish Council on the following summarised grounds:

- The proposed height of the unit is above the height set by the parameters plan and therefore the bund is not sufficient to shield the view of the unit and consequently the bund should be raised in height by 16 metres.

Lockington cum Hemington Parish Council on the following summarised grounds:

- As there is less than substantial harm to heritage assets then it will be necessary to assess the application against Paragraph 196 of the NPPF and the potential public benefits of the scheme. Such public benefits should only be applicable to the increased height of the unit as the employment levels will be no different.
- The construction of the unit at plot 2 should not set a precedent that other units should



be allowed to exceed the heights on the parameters plan.

- The visual appearance and character of the landscape will be deteriorated and eroded as a result of the increase in height of the unit which will impact on the setting of settlements in the area above the level accepted when the Development Consent Order was granted.
- If planning permission is granted then a condition should be imposed requiring additional landscaping to the bund around Lockington and Hemington to ensure that the level of screening is increased, such landscaping should be approved before the application receives consent.
- A condition should also be imposed preventing the provision of advertisements on the northern elevations of the building to ensure the grey colour banding is maintained.

The Gardens Trust who consider that there is less than substantial harm to the setting of Kingston Park Pleasure Grounds.

**Concerns from:**

NWLDC - Conservation Officer who has stated that the proposal would result in less than substantial harm to the setting of the Lockington Conservation Area and the Kingston Park Pleasure Grounds Registered Park and Garden.

**No Objections from:**

Derbyshire County Council.  
Derbyshire County Council - Landscape Architect.  
Erewash Borough Council.  
Highways England.  
Historic England.  
Leicestershire County Council - Landscape Architect.

**No Objections, subject to conditions and/or informatives, from:**

East Midlands Airport Safeguarding.  
Leicestershire County Council - Ecology.  
Leicestershire County Council - Highways Authority.  
Leicestershire County Council - Lead Local Flood Authority.  
NWLDC - Environmental Protection.

**Third Party Representations**

Eight third party representations have been received objecting to the application with the comments raised summarised as follows:

*Visual Impacts*

- As the height of the building exceeds the parameters set the application should not be considered.
- The original decision was based on the whole site being screened by landscaping, as a result in the increase in height this would be negated.
- There would be a significant visual impact in views from the neighbouring settlements as a result of the increase in the height of the building.
- The applicant's statements in connection with the plot 2 application identified that only plot 2 could accommodate a building of a greater height without causing detriment to the neighbouring villages, on this basis alone the application should be rejected.
- The bunds are not capable on being amended to screen the increased height in the building.
- The location of plot 12 in relation to the bunding along the edge of Lockington and Hemington will mean that it will have a greater visual impact than the unit at plot 2, which is

further from this bund, and will not be screened by landscaping.

*Historic Environment*

- Castle Donington only has a moderate ability to mitigate change to the local area without detrimental effects on its character. Consequently, the proposal would impact negatively on the setting of the Castle Donington Conservation Area given the increased height.

*Residential Amenities*

- Noise from the buildings already constructed is required to be investigated.

*Others*

- The development is not required at this time.
- Additional hard surfaces as a result of the development will result in further surface water flooding in Hemington.
- Vehicle movements will result in highway safety implications given the tightness of the roads within the neighbouring settlements.
- If an argument is made that an increase in the height of the building is required for economic reasons, then the original permission should be questioned and revoked.

**4. Relevant Planning Policy**

**National Policies**

*National Planning Policy Framework (2019)*

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

- Paragraphs 8 and 10 (Achieving sustainable development);
- Paragraphs 11 and 12 (Presumption in favour of sustainable development);
- Paragraph 34 (Development contributions);
- Paragraphs 38, 39, 40, 41, 42, 44 and 47 (Decision-making);
- Paragraphs 54, 55, 56 and 57 (Planning conditions and obligations);
- Paragraphs 80, 82 and 84 (Building a strong, competitive economy);
- Paragraphs 105, 106, 108, 109, 110 and 111 (Promoting sustainable transport);
- Paragraph 117 (Making effective use of land);
- Paragraphs 124, 126, 127 and 131 (Achieving well-designed places);
- Paragraphs 163 and 165 (Meeting the challenge of climate change, flooding and coastal change);
- Paragraphs 170, 175, 178, 179 and 180 (Conserving and enhancing the natural environment);
- and
- Paragraphs 192, 194, 196, 199 and 200 (Conserving and enhancing the historic environment).

**Adopted North West Leicestershire Local Plan (2017)**

The following policies of the adopted local plan are consistent with the policies of the NPPF and should be afforded full weight in the determination of this application:

- Policy S1 - Future Housing and Economic Development Needs;
- Policy S2 - Settlement Hierarchy;
- Policy S3 - Countryside;
- Policy D1 - Design of New Development;

Policy D2 - Amenity;  
 Policy Ec1 - Employment Provision: Permissions;  
 Policy Ec5 - East Midlands Airport: Safeguarding;  
 Policy Ec6 - East Midlands Airport Public Safety Zones;  
 Policy IF4 - Transport Infrastructure and New Development;  
 Policy IF7 - Parking Provision and New Development;  
 Policy En1 - Nature Conservation;  
 Policy En6 - Land and Air Quality;  
 Policy He1 - Conservation and Enhancement of North West Leicestershire's Historic Environment;  
 Policy Cc2 - Water - Flood Risk; and  
 Policy Cc3 - Water - Sustainable Drainage Systems.

### **Other Policies**

National Planning Practice Guidance.  
 National Networks National Policy Statement - December 2014.  
 The Logistics Growth Review - November 2011.  
 Local Transport Plan (Leicestershire County Council) - April 2011.  
 Leicestershire Highways Design Guide (Leicestershire County Council).  
 Good Design for North West Leicestershire Supplementary Planning Document - April 2017.  
 Planning (Listed Buildings and Conservation Areas) Act 1990 - Sections 66 and 72.  
 Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System).  
 The Community Infrastructure Levy Regulations.

## **5. Assessment**

### **Principle of the Development**

The application site is situated outside the defined Limits to Development where the principle of development is generally restricted to those forms of development specified within Policy S3 of the adopted Local Plan. Part (s) supports the provision of employment land in accordance with the provisions of Policy Ec2. Development under part (s) of Policy S3 would also need to adhere to criteria (i) to (vi) of this Policy.

It is noted that the principle of the development of the site for the provision of a Strategic Rail Freight Interchange (SRFI) has been established by the granting of a Development Consent Order (DCO) by the Secretary of State in January 2016.

The development granted under the DCO allowed for the provision of rail served warehousing of particular dimensions to six development zones within the site with this particular application relating to a warehouse on Zone A6. For the avoidance of doubt this application does not seek to provide any additional warehouse units on the site, over and above those permitted by the DCO, but seeks to establish whether the increase in the height of the unit on Zone A6 above the level set by the Parameters Plan, of 20.5 metres, is acceptable.

Accordingly it is considered that the main matters for consideration as part of this application are the impact the increase in the height of the unit would have on the visual amenities and character of the landscape, the impact to the setting of heritage assets, whether the design of the unit is acceptable and whether there are any greater implications to airport safeguarding as a result of the development. Secondary matters for consideration would be whether the increase in the height of the unit has any greater impacts on the amenities of neighbouring properties, flood risk and highway safety.

Whilst Councillors Sewell and Hay have referred to Policy Ec3 (Existing employment areas) in their joint objection it is considered that this Policy would not be of relevance to the assessment of the application given that the application site is not covered by the terms of Policy Ec3.

### **Landscape and Visual Impacts**

An assessment of the visual impacts of the consented development on the landscape was undertaken by the Examining Authority (ExA) who provided a recommendation to the Secretary of State for Transport on the SRFI. The ExA concluded the following: -

*"Although of a significant size and scale, the built development within the SRFI site would largely be screened from external views due to the landform changes and the mounding with associated landscape planting. In their joint Local Impact Report (LIR), LCC and NWLDC consider that it would be inevitable that development of this scale would give rise to a significant landscape and visual impact at the local level. This would particularly be the case until the proposed landscaping had matured, and it would then assist in screening the majority of the built development.*

*There also would be substantial areas of grassland pasture and open space both preserved and created. Several of the photomontages show how prominent the existing two main areas of woodland at The Dumps and King Street Plantation are, and therefore their retention as proposed, coupled with significant additional planting, are important elements of mitigation. When set in the context of the major built landscape development in the locality we do not consider that the wider landscape impacts would be significantly detrimental. We therefore concur with the conclusions in the ES on this matter."*

A revised Landscape and Visual Appraisal (LVA) has been submitted in support of this application and this has concluded the following: -

*"Overall, the proposed Plot 12 development will result in some landscape and visual effects over and above those of the consented EMG development. These will primarily relate to the effects upon landscape and visual receptors to the north and east of the EMG site. This will include the effects upon parts of the wider Trent Valley and visual receptors generally to the north; and from parts of the landscape and visual receptors on the western edge and to the north east of Kegworth.*

*For the majority of these locations and receptors, the level of landscape and visual effect arising from the Plot 12 development, over and above the consented EMG development, is likely to be Minor Adverse. The only exceptions to this are likely to be where no such view or influence would arise from the consented EMG buildings. This is only predicted to potentially arise for a limited number of visual receptors and over a limited landscape area within and around Lockington and Hemington. The effects upon these landscape and visual receptors will be up to Minor/Moderate Adverse.*

*The proposed Plot 12 development has been appropriately considered and assessed in relation to landscape and visual matters. There will be an increase in some landscape and visual effects over and above those of the consented EMG scheme. For others, there will be no change to the originally assessed effects. In the medium and longer term, the increased effects identified will be effectively mitigated and reduced through the maturing of the recent woodland and tree planting extending across the wider EMG perimeter mounding and landscape areas."*

As part of the consideration of the application the Landscape Architect at Leicestershire County

Council has been consulted and in respect of the landscape and visual impacts, they have raised no objections and have stated that:

*"the Landscape and Visual Assessment, FPCR April 2020, has provided a thorough and accurate assessment of the proposed development and subsequent increased building height. I agree with the conclusions reached in the report that the proposed height and mass will be visible particularly from the north/north-east/north-west, but this effect will be mitigated by planting over time."*

It is also the case that the Landscape Architect at Derbyshire County Council has commented on the application and has also raised no objections with their comments outlining that:

*"cross sections seem to suggest that the extensive earthworks and planting will in the long-term also provide very effective screening in these views from the north. As such it is difficult to assess what the likely impact would be within Derbyshire, but it is considered that it would be difficult to make the case that these impacts would be significant and therefore unacceptable. The LVIA does acknowledge that the main visual impacts will be on receptors to the north, north-west and north-east so the potential is there that the increased height in this building might be visible from some receptors but this would be over some distance and in the context of other similar development in the area, such as the very large M&S distribution centre, which already exists. Having checked views using Google streetview from a number of locations around Weston-on-Trent and Aston-on-Trent it does appear that there is rising ground beyond the Trent Valley between these locations and the proposed development site so in reality any view is likely to be extremely limited or none. It is also noted that the building would be finished in banded colours similar to other buildings within the EMG where colours get lighter with height. Again, this would be beneficial because if there was any partial view then this would be the top of the building viewed against a sky backdrop. Overall, it is considered that the proposed development would raise no significant concerns for Derbyshire from a landscape and visual impact point of view regarding this proposed amendment to the original DCO scheme."*

The plateau on which the building would be set is 66.5 metres Above Ordnance Datum (AOD) and as proposed the unit on Plot 12 within Zone A6 would breach the Parameters imposed by the DCO as follows:

- Parapet High Bay (PHB) = 36.3 metres (102.8 metres AOD based on plateau level of 66.5 metres AOD) = +15.8 metres above parameters (20.5 metres max height);
- Parapet Low Bay (PLB) = 22.3 metres (88.8 metres AOD) = +1.8 metres above parameters;
- Stair Tower = 38.3 metres (104.8 metres AOD) = +17.8 metres above parameters.

For the unit proposed at Plot 12 within Zone A6 the high bay would comprise 55.8% of the total area of the building to be created with the stair tower comprising 0.06% of the total area.

At this time four units have been constructed on the site with a fifth under construction, four of these units have been approved in accordance with the Requirements of the Development Consent Order (DCO) with the other being subject to a separate application given that its overall height also exceeded the Parameters set by the DCO. This is the unit constructed on Plot 2 (occupied by XPO/Nestle) which was granted permission under application reference 17/01165/FULM. Predominately these units are set to the south of the site except for one which is set to the west.

As a way of comparison with these existing and permitted units the proposed unit would have

the following relationships with their overall heights (AOD):

Unit 1 (Amazon), set to the south-east = 89.25 metres AOD

- PHB = +13.55 metres; and
- PLB = -0.45 metres.

Unit 2 (XPO/Nestle), set to the south = 106.98 metres AOD (high bay) and 92.98 metres AOD (low bay)

- Highest Part - PHB = -4.18 metres; PLB = -18.18 metres;
- Lowest Part - PHB = +9.82 metres; PLB = -4.18 metres.

Unit 3 (Shop Direct), set to the south-west = 94.21 metres AOD

- PHB = +8.59 metres; and
- PLB = -5.41 metres.

Unit 4 (Kuehne + Nagel), set to the south-west = 94.3 metres AOD

- PHB = +8.5 metres; and
- PLB = -5.44 metres.

Unit 5 (Games Workshop), set to the west - 81.34 metres AOD

- PHB = +21.46 metres; and
- PLB = +7.46 metres.

In terms of other levels, the airport path at East Midlands Airport, set to the south, is 85.4 metres AOD, the runway at the airport is set at 86.0 metres AOD and the land at the King Street Plantation, set to the north-east is 66.6 metres AOD. The perimeter mounding (excluding any landscaping) formed as part of the approval of the DCO has finished levels of 78 metres AOD (to the western boundary with Castle Donington), 76 metres AOD to the northern boundary (with Hemington and Lockington) and 57.73 metres AOD (to the eastern boundary with the A453, M1 and Kegworth).

In terms of the lower bay element of the unit it is noted that the parapet would only exceed the height set on the parameters plan by 1.8 metres. Based on the above comparisons the lower bay element of the unit would be below the overall heights of the units set to the south (units 1 to 4) but higher than the height of the unit set to the west (unit 5). It is, however, the case that the parameters plan allows units constructed in Zone A6 (where plot 12 is situated) to be higher than those within Zone A5 (where unit 5 is located) with units in Zone A5 having finished floor levels (FFLs) of 67 metres AOD and overall heights of 17.5 metres (i.e. 84.5 metres AOD) whereas those within Zone A6 have FFLs of 66.5 metres AOD and overall heights of 20.5 metres (i.e. 87 metres AOD).

Whilst higher than the height of the unit set to the west taking into account the height of the bunds to the western and northern boundaries, and subsequent landscaping to be planted on the bunds, it is considered that this increase in the height of the lower bay would not be of such significance that there would be an adverse impact on the landscape character of the area or the visual amenities of the wider environment. This is due to the landscaping assisting in screening the lower bay element from Castle Donington, Hemington and Lockington with any

views from Kegworth viewing the lower bay element in comparison with the units 1 - 4 on the site which are greater in height. An increase in height of the lower bay element by 1.8 metres above the height set by the parameters would also not be perceivable in views towards the site from distant locations.

In terms of the higher bay element of the unit, including the stair tower, in order to assess the application the applicant was requested to indicate why plot 12 within Zone A6 had been selected as the site to accommodate a unit of a greater height as well as whether any consideration had been given to the reducing the visual impact (i.e. lowering the finished floor level). This followed discussions with Lockington cum Hemington Parish Council who requested such information in order to enable them to properly assess the impact of the application.

In response to this request the applicant has specified that plot 12 was selected for the following reasons:

- The formed plateau of Plot 12 within Zone A6 is set at the lowest height on the estate which is currently vacant with all the other plots having a plateau height in excess of Zone A6, thereby a unit elsewhere would be more visible in the landscape.
- Plot 5 has been assessed in detail by East Midlands Airport Safeguarding and a building of the height proposed on plot 5 would impact on planes landing and taking-off so consequently had to be discounted.
- The existing woodland to the east of plot 12 (the King Street Woodland Plantation) would also offer natural screening of the building.

The ability to reduce the finished floor level of the unit was also explored but this was not possible as it would prevent access from the estate road by vehicles given the fixed height of the constructed roadway, it would not allow for surface water or foul drainage infrastructure to be provided which would connect into the existing systems and would also lead to extensive vehicular movements of cut material off the site as this could not be balanced with the existing earthworks.

In proposing the building massing and orientation within the plot the submitted design and access statement identifies that numerous options were considered but it was determined that by placing the high bay to the southern part of the unit this would ensure it would have a greater separation distance from the landscaping bunds, and consequently the neighbouring settlements, whilst also placing it closer to unit 2 which already has a high bay.

The impacts on the visual amenities and landscape character of the immediate and wider area are set out below:

#### *The South*

In views from the south (i.e. from within the boundaries of East Midlands Airport) the high bay would not be visible given that it would be obscured by existing built infrastructure within the confines of the airport. Potentially a view may be established across the runway of the airport in views from the roundabout at the top of Hilltop in Castle Donington, as well as the passenger terminal, but in such a view the high bay would be seen in the context of its relationship with built infrastructure at the airport as well as the high bay on unit 2 (which would partially obscure the unit on plot 12 given that it is higher when taking into account its finished floor level). Given the presence of this significant urban infrastructure there would be no landscape and visual harm.

*The West*

From the west (i.e. from Castle Donington) the submitted landscape and visual appraisal identifies that plot 12 is situated away from the landscaping bund to the western boundary of the East Midlands Gateway (EMG) site (by over 860 metres) and whilst the high bay would be visible upon completion of the development this would be limited mainly to those properties on the eastern edge of the settlement (on Moira Dale). However, over time the maturing of the landscaping on the bund would obscure the high bay in its entirety. Prior to the landscaping maturing the high bay would be viewed in connection with the other units on the site (including the high bay on plot 2), but in the circumstances that the high bay would become obscured over time the degree of landscape and visual harm would not be sufficiently detrimental to visual amenities or landscape character as to cause conflict with local and national planning policies. Given the conclusions of the landscape and visual appraisal there would be no requirement to increase the height of the bund to the western boundary of the EMG as requested by Castle Donington Parish Council.

*The East*

In views from the east (i.e. from Kegworth) the submitted landscape and visual appraisal identifies that there would be some views from properties on the western edge of this settlement (on Ashby Road and Windmill Way) but on completion of the development the building would be assessed in the context of its relationship with units 1 and 2 given that the perimeter bunding to the eastern boundary of the EMG site is lower in height. Whilst a unit constructed in accordance with the DCO parameters would not be visible once the landscaping had matured, the provision of the high bay would result in the introduction of this element of the proposed unit into views from the east. However, it remains the case that units 1 and 2 would also be visible in such a view given their location at the vehicular entrance to the development. In this context it is considered that the degree of landscape and visual harm would not be sufficiently detrimental as to warrant a refusal of the application particularly as no features of significance would be obscured in the landscape as a result of the development.

Notwithstanding the above conclusion it was requested by officers that the visual impacts could be reduced should additional trees and mature tree planting be undertaken on the bunds to the eastern boundary of the EMG site (alongside the A453 and rail terminal). The applicant has agreed to this request and as such the visual impacts would be appropriately mitigated.

*The North*

It is acknowledged within the submitted landscape and visual appraisal that from the north (i.e. from Lockington and Hemington) there is the potential that the proposed building would have an influence on views where no such influence would occur if a unit was provided on plot 12 in accordance with the parameters set by the DCO. Whilst such influence may arise the landscape and visual appraisal concludes that this would be to a limited number of visual receptors and over a limited landscape setting with only the high bay element being visible. The concern in this respect was acknowledged by Lockington cum Hemington Parish Council and following a meeting with the applicant further photomontages were submitted to outline the impact in two viewpoints on Main Street, Lockington (with one such viewpoint being updated and the other being an additional viewpoint requested by the Parish Council).

The associated commentary in connection with the additional photomontages, from the applicants landscape advisor, specifies that in the first view on Main Street (outside the



entrance to Daleacre Court) the unit on plot 12 would almost be fully screened from this location, from the outset, by the bund with glimpsed views possible of the high bay above and through the existing intervening planting (which would be in the mid-distance). The updated photomontage on Main Street (no. 3 Main Street) identifies that upon completion of the development the high bay would be visible from this location between the existing intervening mature trees and woodland, however over time the existing landscaping and proposed planting on the bunds would filter and screen views of the high bay. In acknowledging the above visibility, the applicant has also sought to mitigate the impact by making amendments to the proposed landscaping to be provided on the bunds to the northern boundary of the EMG site, such amendments would increase the number of tree species to be planted as well the planting of more mature trees from the outset. The provision of such landscaping would reduce the visibility of the high bay and therefore lessen the overall impact, with the consultation response from Lockington cum Hemington Parish Council concluding that such amendments have lessened their concern in this respect subject to the landscaping amendments being secured.

It is noted that the landscaping on the bunds is outside the confines of the application site for plot 12 but would be undertaken on land under the control of the applicant. Requirement 8 of the DCO controls landscaping and in this respect a landscaping scheme for the bunds has already been approved. The applicant, however, has specified that a revised submission against Requirement 8 would be made to secure the amendments to the landscaping on the bunds to the northern and eastern boundaries. In terms of this application a Grampian condition (i.e. a condition requiring works to be undertaken on land outside the confines of the application site) would be imposed on any permission granted to ensure that any revised landscaping scheme secured against Requirement 8 is undertaken, with the applicant accepting that such landscaping is provided within the upcoming planting season (commencing from October/November 2020). The provision of such landscaping at this time will ensure it has an opportunity to be established before the unit is completed.

Whilst Lockington cum Hemington Parish Council has required such a landscaping scheme to be approved before a decision is made on this application, given the need to carry out consultation with East Midlands Airport Safeguarding (EMAS), it is considered that the proposed landscaping simply seeks to provide species which already form part of the approved landscaping schemes. Consequently, whilst still needing approval from EMAS it is unlikely that such approval would not be forthcoming given that they raised no objections to the landscaping which has already been provided on the wider EMG site. In any event, the agent has advised that the amended landscaping scheme will be submitted before the application is due to be determined by the Planning Committee and any update in this respect will be reported to Members via the update sheet.

Given the limited extent of the landscape setting and visual receptors which would be impacted on as a result of the provision of the high bay, as well as the mitigation of this impact further by the provision of additional landscaping to the northern bund, it is considered that the degree of harm to the visual amenities and landscape character of Lockington and Hemington would not be so adverse that a reason to refuse the application could be substantiated.

#### *Wider Visual Amenity and Landscape Character Impacts*

The submitted visual and landscape appraisal acknowledges that within the wider landscape distant views of the high bay would be possible from the north, north-east and north-west but over time the maturing of the landscaping to the bunds, as well as the presence of the existing woodland plantations, would filter and screen views of the high bay. Where visible the high bay would be assessed in the context of not only the high bay element of unit 2 (which would remain

more visually dominant given that it has a greater height AOD than the unit at plot 12) but also other significant urban influences including electricity pylons, the Ratcliffe-on-Soar power station and built development within East Midlands Airport and the settlements of Kegworth and Castle Donington. On this basis the implications to the visual amenities and character of the wider landscape would not be sufficiently adverse as to warrant a refusal of the application when the building is assessed separately as well as cumulatively with unit 2, particularly as the high bay elements of both units would be visually seen together given their proximity to each other.

In any event, and as outlined above, the applicant would seek to provide additional tree planting, including mature tree planting, on the bunds to the northern and eastern boundaries of the EMG site which consequently would further seek to mitigate the overall visual impacts.

*Conclusion in Relation to Visual Amenity and Landscape Character Impacts*

Overall the implications to the landscape and visual appearance of the immediate and wider area as a result of the provision of the high bay on the unit would not be of such detriment that a reason to refuse the application could be justified, particularly when taking into account the provision of mature species of trees as a result of the revisions to the landscaping upon the bunds and that both the landscape architects at Leicestershire and Derbyshire County Councils have raised no objections. As such the proposal accords with criterion (i) of Part 2 of Policy S3 and Policy D1 of the adopted Local Plan as well as Paragraphs 124 and 127 of the NPPF.

**Impact on the Historic Environment**

Sections 66 and 72 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, as well as a Conservation Area or other heritage assets, 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 and to the desirability of preserving or enhancing the character or appearance of that area. Such an approach is also supported by Paragraphs 192, 193, 194, 196 and 200 of the NPPF.

In terms of heritage assets, the information submitted in support of the Development Consent Order (DCO) application identified that there were 402 listed buildings, 21 conservation areas and 2 registered parks and gardens within a five-kilometre radius of the site. The Heritage Statement which accompanies this application has identified that the main heritage assets which may be impacted on by the proposed building on Plot 12 within Zone A6 would be the Church of St Nicholas, Lockington (Grade I listed), Church of St Edward King and Martyr, Castle Donington (Grade II\* listed), Church of St Andrew, Kegworth (Grade II\*) and Lockington Hall, Lockington (Grade II listed) as well as the Conservation Areas of Lockington, Hemington and Castle Donington. Therefore, the impact of the development on the fabric and setting of these heritage assets should be given special regard as required by the 1990 Act.

In concluding on the impacts of the development on heritage assets the ExA stated the following: -

*"Overall, we consider that the proposed development would not give rise to substantial harm to the setting of the conservation areas or listed buildings that lie within the vicinity of the application site for the following reasons:*

- *A substantial amount of mitigation is proposed through the creation of development plateaus that are generally at a lower level than the surrounding areas, with associated*

*landscape planting and earthwork bunds; this would largely screen any views of the proposed development from the nearby settlements;*

- *The nearest of any of the proposed warehouse buildings would be some distance from the boundaries of the Lockington, Hemington and Castle Donington Conservation Areas; we consider that these distances, combined with the proposed landform changes and landscape planting would be sufficient to ensure that any impacts on the settings of the Castle Donington, Hemington or Lockington Conservation Areas or the setting of any listed buildings within any of these or other nearby settlements, would not be significantly detrimental; and*
- *The Castle Donington Conservation Area (CDCA) is primarily within the central part of the settlement, and as such there is already other built development located between the boundary of the conservation area and the proposed development; in our view, the existing built development around the CDCA would serve to mask views into and out of the CDCA with regard to the SRFI site."*

The unit on plot 12 within Zone A6 would be set within the eastern part of the site allocated for the construction of the warehouse buildings where it would be to the direct north of unit 2 occupied by XPO/Nestle (the most visually dominant building on the site) as well as to the south of The Dumps Woodland Plantation and to the west of the King Street Woodland Plantation.

In terms of the impacts on heritage assets consultation has been undertaken with the Council's Conservation Officer, Historic England (HE) and The Gardens Trust (GT) as well as the neighbouring authorities which border with North West Leicestershire in this area (namely South Derbyshire District Council, Erewash Borough Council, Charnwood Borough Council and Rushcliffe Borough Council). The implications to the various assets would be as follows:

#### Impact on Conservation Areas

The impacts on the Conservation Areas within 5 kilometres of the site are assessed separately as follows:

##### *Castle Donington*

The supplementary landscape and visual note submitted in support of the application identifies that there are no potential views towards the development from this conservation area with built infrastructure already situated around this conservation area. Within the built heritage report it is concluded that the proposed development would be screened by the bunding and consequently there would be no harm to the significance of this conservation area over and above that already deemed acceptable when the DCO was granted.

The Council's Conservation Officer has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

##### *Cavendish Bridge, Shardlow*

The supplementary landscape and visual note identifies that there are no discernible views towards plot 12 although the high bay could potentially (most likely in winter) be distantly seen from positions and properties on the south-eastern edge of this conservation area. Within such a view the development would be seen alongside unit 2 and other urban influences in the landscape. An additional built heritage report outlines that the proposal would not appear over dominant or incongruous within the wider setting of the conservation area and would be softened and filtered by existing intervening vegetation. On this basis there would be a neutral change to the setting of this conservation area which would not affect its significance.

The Council's Conservation Officer has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

#### *Diseworth*

The supplementary landscape and visual note identifies that there are no potential views towards the development from this conservation area. On this basis there is no harm to its significance.

The Council's Conservation Officer has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

#### *Hemington*

The supplementary landscape and visual note identifies that there are no potential views towards the development from this conservation area. The built heritage report identifies that there is no visibility of the wider East Midlands Gateway (EMG) from this conservation area as a result of the earth bunding. However, the development would introduce a modern built form into what is presently an undeveloped rural setting to the south-east of this conservation area thereby affecting the positive contribution it makes to its setting. This impact would be reduced through the landscaping mitigation undertaken and the approach to the design of the unit on plot 12 whereby the high bay is situated away from the conservation area. Also when completed the unit at plot 12 would be viewed with the upper part of another building within the EMG site as well as being understood as part of the wider urbanised context of this conservation area setting, with such impacts being reduced over time as a result of the maturing of the landscaping. The built heritage report therefore concludes that the overall impact would be less than substantial to the significance of the immediate setting of this conservation area.

Notwithstanding the conclusions of the submitted built heritage report the Council's Conservation Officer has not identified any harm arising to the significance of the setting of this conservation area.

#### *Kegworth*

The supplementary landscape and visual note identifies that there are no potential views towards the development from this conservation area given the topography. The setting of this conservation area is also framed by existing built infrastructure. On this basis there is no harm to its significance.

The Council's Conservation Officer has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

#### *Lockington*

The supplementary landscape and visual note identifies that there are no potential views from the vast majority of this conservation area with only very limited views available from some properties situated towards the southern end of Main Street. Any views established will be towards the high bay of the unit and visible with unit 2.

Within the built heritage report it is stated that whilst the wider setting of this conservation area has been substantially urbanised, the immediate setting remains rural in character and there is no visibility of the existing development within the East Midlands Gateway (EMG) site. As a result of the development a small element of modern built form would be introduced into the present rural setting of this conservation area, thereby affecting the positive contribution it makes to its significance. This impact would be limited by virtue of the landscaping mitigation measures and the proposed approach to the height and massing of the proposal, whereby the high bay is situated on the southern part of the unit so as to be further from the conservation area. This separation will ensure that the high bay is seen distantly and over time will be softened by the maturing of the landscaping. The heritage report therefore concludes that the overall impact would be less than substantial to the significance of the setting of this conservation area.

The Council's Conservation Officer has stated that the unit would have a less than substantial impact on the setting of the Lockington conservation area in the short to medium term with this effect being reduced by screen planting in advance of the development.

#### *Long Whatton*

The supplementary landscape and visual note identifies that there are no potential views towards the development from this conservation area. On this basis there is no harm to its significance.

The Council's Conservation Officer has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

#### *Sawley*

The supplementary landscape and visual note identifies that there are no discernible views towards plot 12 although the high bay could potentially (most likely in winter) be distantly seen from this conservation area. Within such a view the development would be seen alongside unit 2 and other urban influences in the landscape. An additional built heritage report outlines that the proposal would be seen alongside unit 2 and potentially seasonably visible but this would comprise a neutral change to the setting of this conservation area and would result in no harm to its significance.

Erewash Borough Council has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

#### *Shardlow*

The supplementary landscape and visual note identifies that there are no potential views towards plot 12 from the vast majority of this conservation area, with only glimpsed and distant views (most likely in winter) possible from a very limited number of individual positions and properties on the south-eastern edge of this conservation area. Any views established would only be towards the high bay and viewed in conjunction with unit 2 and other urban infrastructure in the landscape. Within the additional built heritage report it is outlined that the development would comprise a neutral change within the wider setting of this conservation area with the proposal not appearing dominating or detracting from the conservation area's immediate setting. Consequently, there would be no harm to its significance.

South Derbyshire District Council has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

*Sutton Bonington*

The supplementary landscape and visual note identifies that there are no potential views towards the development from this conservation area. On this basis there is no harm to its significance.

No representation has been received from Rushcliffe Borough Council identifying harm to the significance of the setting of this conservation area.

*Trent Lock, Sawley*

The supplementary landscape and visual note identifies that there would be distant and restricted views towards the high bay of the unit across the Trent Valley floor from the southern part of this conservation area. Within such a view the proposal would be seen alongside and in front of unit 2, at a similar height, as well as other urban infrastructure. The additional built heritage report concludes that there would be a neutral change within the wider setting of this conservation area as a result of the development with no impacts on its immediate setting, on this basis there would be no harm to its significance.

Erewash Borough Council has not identified any harm arising to the significance of the setting of this conservation area and therefore the conclusions of the submitted information is accepted.

*Impact on Listed Buildings*

The submitted built heritage report concludes that the proposed development would have no harmful impact on the significance of listed buildings within the vicinity of the site. This is due to the substantial earth bunding constructed to the north and west of the site and the intervening vegetation ensuring that the proposal will remain screened in views of the immediate and wider settings of the listed buildings at ground level and will not affect their present contribution to their respective significance.

In the consideration of the application neither the Council's Conservation Officer or Historic England have raised any objections to the application in relation to its impacts to the setting of listed buildings and consequently it is considered that there is no additional harm to the setting of listed buildings over and above that previously assessed to be acceptable when the DCO was granted.

*Impact on Scheduled Ancient Monuments (Archaeological Sites of National Importance)*

The initial comments of Historic England (HE) outlined that the submitted information did not consider the impacts of the development on scheduled monuments in particular the enclosure castle at Castle Donington, Hemington Chapel and medieval settlement remains immediately east of The Wymeshead. Consequently, an objection was raised.

Following the receipt of additional information, HE has removed this objection and have specified that there would be no intervisibility between scheduled monuments and the unit proposed to plot 12 with the impact upon their wider setting being negligible. On this basis there

would be no additional harm to the setting of the scheduled ancient monuments over and above that previously assessed to be acceptable when the DCO was granted.

Impact on Registered Parks and Gardens

The Council's Conservation Officer has commented that Whatton House (Grade II) and Kingston Park Pleasure Gardens (Grade II) registered parks and gardens are within 5km of the site and the submitted information has identified that there is a theoretical visual impact to the setting of these assets.

For their part Historic England (HE) have raised no objections to the application in relation to the impacts on registered parks and gardens albeit HE generally would only assess the impacts to those registered parks and gardens which are registered Grade II\* or Grade I.

The Gardens Trust (GT), a statutory consultee on applications where a development will impact on registered parks and gardens, have also been consulted. Their consultation response is a joint response which also accompanies the comments of the Nottinghamshire Gardens Trust (NGT) and Leicestershire Gardens Trust (LGT).

In terms of Whatton House, which is covered by LGT, it is noted that the site is between 2.5 - 3km away. Whilst this is the case the geography of the land between Whatton House and the site, as well as the presence of an existing belt of trees to the north side of the House, would ensure that the proposed development would result in no additional impacts to the setting of the Whatton House registered park and garden over and above that previously assessed to be acceptable when the DCO was granted. Consequently, there is no objection from the GT and LGT in this respect.

With regards to the Kingston Park Pleasure Gardens (KPPG) the NGT have visited the site and have identified that there is clear inter-visibility between the location of plot 12 and the KPPG. Although the separation distance between the sites is about 4km the NGT and GT have commented that despite the gradation of the cladding the proposed building would appear as a substantial square edged structure on the horizon between farmland and the skyline with the KPPG being elevated and providing long *"commanding views to the south, west and east"* (Historic England register entry) over the Belper estates. It is further stated by the GT and NGT that it is unclear whether this heritage asset was given appropriate weight at the time of the determination of the DCO in 2016 but it is their view that the resultant development on the East Midlands Gateway (EMG) site has produced an impact on the setting of the KPPG.

Whilst the GT and NGT note the landscape mitigation for plot 12 they consider that is not explained from the perspective of the KPPG and therefore it unknown whether the bund and tree planting would protect the important views from the KPPG. Consequently, they consider that the proposal will add to the harm already caused to the setting of the KPPG.

In conclusion the GT and NGT object to the application based on the applicant failing to demonstrate that there will be no harm, or that mitigation measures (e.g. landscaping) will eliminate the harm. Whilst noting that the GT and NGT have identified that there could also be harm to the setting of Kingston Hall it is noted that Historic England (HE) have not raised any concerns to the setting of this asset in their consultation response.

The Council's Conservation Officer, in their consultation response, has commented that the proposed development would result in less than substantial harm to the significance of the setting of the KPPG.

In order to address the comments raised by the GT and NGT the applicant has subsequently submitted a KPPG heritage note and this outlines that HE identify that the principal aspects of the KPPG heritage significance is the intactness of the pleasure grounds and parkland, the association of the KPPG with Edward Blore and the unusual holistic design ethos applied to the landscape. As such the heritage significance of the KPPG is primarily embodied and understood from the designated areas, buildings and features of the KPPG itself.

It is further stated, within the KPPG heritage note, that the immediate setting of the KPPG comprises the village of Kingston on Soar and the surrounding agricultural fields which positively contribute to the significance of the KPPG through an appreciation of its historic context and development. Within KPPG wider setting, Ratcliffe on Soar Power Station is prominent to the north with other examples of modern development within views to the west and south-west. Given the distance between these areas and the KPPG they are experienced beyond the immediate agricultural fields and consequently comprise a secondary aspect of the setting of the KPPG which make no contribution to its significance.

Additional viewpoints have also been provided (taken from the north-western boundary of the KPPG along Gotham Road) and these show the agricultural fields which form the immediate setting of the KPPG and reflect its historic context. A band of trees and vegetation cut across the middle ground of the view and beyond this the upper parts of buildings within Kegworth (in particular the Refresco unit) are visible with the horizon line being punctuated by pylons and cabling along with existing buildings at the EMG and the King Street Plantation also visible. Such modern elements are experienced at the periphery of the view and as such do not affect the contribution or experience of the immediate undeveloped surroundings of the KPPG in this direction.

Whilst the KPPG heritage note acknowledges that the location of the majority of the parkland and terraces to the south-west are important to the design intention of Edward Blore, the views across the KPPG from Kingston Hall and its immediate rural setting will not be affected. Due to the distance between the KPPG and the site the proposed development will be partially experienced as part of the peripheries of this view, in conjunction with existing modern development already visible. Additionally, there is no impact as a result of the development on the ability to experience or understand the principal aspects of the significance of the KPPG.

The KPPG heritage note therefore concludes that the proposed development would comprise a neutral change within the wider setting of the KPPG which would not affect its significance.

Reconsultation has been undertaken with the GT and NGT on the KPPG heritage note and their revised comments are awaited. These comments will be reported to Members on the Committee update sheet.

#### *Conclusion in Relation to the Impacts on the Historic Environment*

On the basis of the above it concluded that the high bay element of the proposed unit on plot 12, which would exceed the parameters set by the DCO by 15.8 metres, would result in less than substantial harm to the significance of the setting of Lockington Conservation Area and the Kingston Park Pleasure Gardens (KPPG) Grade II Registered Park and Garden.

In terms of the setting of the Lockington Conservation Area the Council's Conservation Officer has concluded that the impacts would be in the short to medium term and could be mitigated by the provision of planting in advance of the development. In this respect the Landscape and



Visual Impacts section of this report above outlines that amendments would be made to the landscaping on the northern bund to mitigate the impacts to the landscape character and visual amenities of Lockington with such landscaping introduced before the development is completed. Whilst therefore it is appropriate to still consider the short and medium term impacts the overall maturing of the landscaping on the bund would result in no impact to the setting of Lockington Conservation Area in the long-term (i.e. its immediate rural setting would be maintained).

The Gardens Trust (GT) and Nottinghamshire Gardens Trust (NGT) also outline that mitigation could be undertaken to reduce the impact on the setting of the KPPG. In this respect officers have been proactive in negotiating with the applicant so that additional tree planting, along with planting of mature trees, is undertaken on the bunds to the eastern boundary of the EMG site which would assist in screening the development.

As a result of there being 'less than substantial' harm to the significance of the setting of heritage assets Paragraph 196 of the NPPF would be engaged which outlines that:

*"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, where appropriate, securing its optimum viable use."*

The applicant has provided information from the future occupant of plot 12 which has sought to identify the public benefits arising from the development and these are identified as follows:

#### *Economic*

In its initial phase the building will employ 755 people which will increase as additional customers and products are incorporated. The occupant has also secured a contract from a customer whose business requires an efficient logistics solution capable of handling large volumes of stock and as such the building has been designed to have a high bay so as to accommodate a complex materials handling solution which is engineered to manage the volume of stock so that it is rapidly stored, sorted and dispatched accurately. Over half of the employees on the site will be stationed on a two-storey mezzanine with their role being to receive and dispatch goods to and from the high bay area of the building. If a building of a height compliant with the parameters was constructed the operational efficiencies would decrease and consequently its high capital cost would not be justified, with such a building also resulting in lower stock volumes and generating fewer jobs. On this basis it is the efficiency of the operation facilitated by the mechanical handling equipment in the high bay which generates the need for a larger number of employees.

#### *Environmental Benefits*

As explained in the submitted Planning Statement the occupant is in the process of reviewing their operations as part of a 'Go-Green' strategy which has involved a wholesale review of their processes as well as long-term expansion requirements. It is also the case that the occupant, as well as their customers, have a significant drive towards lowering carbon emissions as part of their activities. The unit proposed on plot 12 forms part of a wider logistics solution for a customer of the occupant and originally it was envisaged that three separate warehouses would be required. However, the provision of the high bay on the unit proposed to plot 12, with its resultant capabilities, combined with the construction of a similar new build in the south-east would negate the need for a third unit. There would also be the ability to link the two sites (plot 12 and the unit in the south-east) by road and rail which would result in a significant environmental benefit and overall saving in carbon emissions. Removing the need for the

construction of a third unit also has consequential environmental benefits, including reduced land take, given that such a unit could have been constructed on a greenfield site, and elimination of the carbon footprint associated with the construction and operation of a third unit. The East Midlands Gateway site also places the occupant close to their existing operation in the District and allows them to utilise the sustainable transport possibilities as a result of the rail freight interchange. The development therefore aligns with the occupant's 'Go-Green' strategy.

### *Consolidation of Activities*

The future occupant of plot 12 has a well-established presence within the District and as a result of the Covid-19 pandemic the move to 'e-commerce' has been being rapidly accelerated with such a change resulting in the increased need for logistics and warehousing space. Prior to the pandemic the occupant was looking to increase their presence within the Midlands with proximity to their customers and accessibility being key criteria for their logistics operation. Given such criteria plot 12 at the East Midlands Gateway (EMG), with its rail freight capabilities, was ideally located for the occupant's operation to be expanded and diversified with their customers keen to see the occupant secure logistics space as close to the airport and EMG as possible. The occupant has also identified, in a wider context, that they continue to experience severe staff shortages in other prime logistics locations in the south, but the EMG site has the benefit of a more accessible and available labour pool.

The consolidation and bolstering of the occupant's activities in the District will offer them new accessibility by the rail link, whilst also utilising their existing road and air networks, and will enable them to create additional jobs close to their existing workforce as well as taking advantage of the readily available labour pool.

It is considered that the above provides rationale for the provision of the high bay on the unit at plot 12 and are considered to be public benefits which would outweigh the harm to the significance of the setting of the identified heritage assets given that the extent of harm would be significantly reduced over time as a result of the provision of landscaping to the bunds as well as a need to support and assist businesses in the economic recovery process as a result of the Covid-19 pandemic. On this basis compliance with Paragraph 196 of the NPPF is achieved.

Overall, the development would accord with Policy He1 of the adopted Local Plan, Paragraphs 192, 193, 194, 196 and 200 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **Design**

The need for good design in new development is outlined not only in adopted Local Plan Policy D1, as well as the Council's adopted Good Design for NWLDC SPD, but also Paragraphs 124 and 127 of the NPPF.

It is considered that the 'bulk' of the unit is simplistic in its design approach, being mainly rectangular in form, and would be devoid of openings with the exception of the cargo bay doors at ground floor level. It is considered that warehouse buildings are constructed to be functional and in the context of the development granted under the DCO, which the building would be visually associated with, it is considered that such a design approach would be acceptable given that it would be consistent with similar forms of development in the area.

The 'bulk' of the unit would be constructed from horizontally fitted metal cladding coloured, from top to bottom, as follows: -

- Hamlet (RAL 9002);
- Goosewing Grey (RAL 7038);
- Pure Grey (RAL 000 55 00);
- Merlin Grey (RAL 180 40 05);
- Anthracite (RAL 7016);

The use of such colours is consistent with those used on the other units within the estate and are considered appropriate in this instance given that they will set the building with the ground whilst merging its higher areas with the skyline. The use of such a colour palette would therefore have no significant impact on the character and appearance of the immediate area.

Whilst the majority of the unit would be simplistic in its design approach it is proposed that 'interest' would be added to its appearance by the provision of the office and transport office which would project forward of the southern (front) and eastern (side) elevations. It is considered that the provision of these features would assist in 'breaking-up' the monotony of the consistently flat elevations and is therefore welcomed in enhancing the appearance of the unit whilst providing clear and distinct entrance features. The provision of these offices would therefore have no adverse impact on the character and appearance of the unit to be created, with such features being consistent with other units on the estate, nor would their scale and design impact adversely on the appearance of the wider area.

In respect of the colour approach to the office elements of the building it is proposed that flat panel cladding which would be coloured mid-grey, yellow and red would be utilised with yellow cladding also being installed around the docking doors on the eastern (side) elevation. Similar colours have been utilised on units 1 (occupied by Amazon) and unit 2 (occupied by XPO/Nestle) so as to provide a 'corporate' identity to these units and consequently there would be no harm to the character and appearance of the unit, the overall industrial estate or the wider area as a result of the use of these colours.

Overall, the design and appearance of the building would be acceptable and would accord with Policy D1 of the adopted Local Plan, the Council's adopted Good Design SPD and Paragraphs 124 and 127 of the NPPF.

### **Residential Amenities**

The nearest residential receptors to the site are those on Main Street, Lockington which are around 574 metres to the north-west of the site.

It is considered that the granting of the DCO has established that the overall development would have an acceptable impact on the amenities of neighbouring residents. In respect of the development proposed as part of this application it is considered that the separation distance involved to the nearest residential receptors, as well as the presence of the landscaping bund, would ensure that the increase in height of the unit on plot 12 within Zone A6 above the set parameter (being 15.6 metres at the highest part) would not result in any unacceptable overbearing, overshadowing or overlooking impacts to the amenities properties which would justify a refusal of the application.

Whilst Councillors Sewell and Hay have referred to overbearing impacts in their joint objection this is in relation to a 'visual' impact rather than a 'physical' impact. It is considered that Policy D2 of the adopted Local Plan covers overbearing in the physical sense (i.e. the proximity of the development to the boundary of residential receptor) and therefore could not be used as a Policy to resist the development in this respect. Visual Impacts are assessed in more detail in the '*Landscape and Visual Impacts*' section of this report above.

The Council's Environmental Protection team have also raised no objections to the development in relation to the proposed external lighting to the unit and within the plot with there being no additional noise, smell or dust impacts over and above them assessed to be acceptable when the DCO was granted.

On the basis that any permission is granted so as to adhere to the Requirements (planning conditions) outlined in the DCO it is considered that the proposal would accord with Policy D2 of the adopted Local Plan and Paragraph 180 of the NPPF.

In relation to the third-party representation submitted which has outlined that noise from the existing operations on the site results in detriment to residential amenities, it is noted that Requirement 23 of the DCO outlines that justified complaints in relation to noise nuisance will be investigated. It is considered that issues associated with existing noise levels are not material to the consideration of this application and if the third party was to submit a justified complaint in relation to noise from the existing operations then this would be a matter to be investigated against Requirement 23 of the DCO. Any permission granted would be subject to a condition which would match the terms of Requirement 23 of the DCO to ensure that the unit is appropriately controlled.

### **Highway Safety**

The impacts of the entire development on the highway network were assessed by the ExA in their consideration of the DCO where no significant concerns were raised subject to the relevant road improvements being carried out as part of the development, these road improvements have been subsequently undertaken and are now complete. As part of the consideration of this application both Highways England (HE) and the County Highways Authority (CHA) have been consulted and no objections have been raised.

The access arrangements would be as per those approved by the DCO and therefore there would be no greater impact on highway safety, over and above that already assessed to be acceptable, as a result of the increase in the height of the unit. On this basis the proposal would be compliant with Policy IF4 of the adopted Local Plan and Paragraphs 108 and 109 of the NPPF.

The application would also be subjected to a Section 106 agreement which would require the development to be tied to the Development Consent Obligations (DCOb) therefore ensuring that a travel plan is approved. Such a travel plan would ensure that sustainable transport options are utilised in line with the other units which operate from the wider site.

In terms of parking the plans submitted identify that the following off-street parking provision for vehicles would be provided: -

- 472 car parking spaces including 18 disabled and 6 electric charging spaces;
- 120 cycle parking spaces;
- 19 motorcycle/moped spaces; and
- 176 heavy goods vehicle (HGV) spaces.

Whilst the number of car parking spaces is below the 537 spaces recommended by the Leicestershire Highways Design Guide (LHDG) the CHA acknowledge that the requirements of the LHDG are maximum standards and consequently it would be unreasonable for the CHA to advise that the total number of car parking spaces be increased. Whilst this is the case the CHA outline that the applicant should consider the impacts any overflow parking would have on the

industrial estate highway network which is under private ownership. In this respect the private estate road is subject to restrictions which prevent the indiscriminate parking of vehicles with the roads also regularly patrolled by security staff. On this basis it is considered that the applicant has sought to propose a number of off-street parking spaces which meet the needs of any future occupant of the unit.

The CHA also stated that the number of cycle spaces should be increased to 160, so as to meet the requirements of the LHDG, with it also being requested that the number of electric charging spaces be increased. An amended plan submitted has increased the cycle parking to 160 spaces and whilst the number of electric charging spaces has not increased there is no requirement within the LHDG, nor the DCO, which require such spaces to be provided and consequently there would be no justification to refuse the application on this basis. It would also be possible for the site to be adapted at a later stage to provide further electric charging spaces should there be an increase in demand.

Subject to the imposition of conditions which require the off-street parking to be provided it is considered that the development would be compliant with Policy IF7 of the adopted Local Plan and Paragraph 105 of the NPPF.

### **Ecology**

In the assessment of the DCO the ExA concluded that ecological species would not be adversely impacted on as a result of the development with relevant Requirements securing ecological and biodiversity enhancements. It is considered that there would be no greater implications to ecological species, over and above those previously deemed acceptable, and as such no adverse impacts would arise to ecological species. On this basis the proposal would accord with Policy En1 of the adopted Local Plan, Paragraphs 170 and 175 of the NPPF and Circular 06/05.

### **Landscaping**

Requirement 8 of the DCO requires the submission of landscaping and ecological mitigation details and for certain phases of the development such landscaping has been agreed. The details for soft landscaping on plot 12 within Zone A6 have been submitted as part of the application and it is shown that such landscaping would be predominately provided in the northern and southern sections of the site, and is of a standard which is consistent with the soft landscaping provided to the other constructed plots. As part of the consideration of the application the County Council Ecologist has not objected, and the planting would not result in implications to Airport Safeguarding given that it is consistent with that planting elsewhere. On this basis a condition would be imposed for the soft landscaping to be provided.

As considered in the *Landscape and Visual Impacts* section of this report above, amendments to the soft landscaping on the bunds to the north of the site, around the settlements of Lockington and Hemington, would be undertaken to try and provide a more 'instant' impact in screening the proposed unit following its construction. This landscaping would be outside the boundaries of the application site and provided in accordance with Requirement 8 of the DCO. Whilst this is the case a 'Grampian' condition (i.e. a condition requiring works to be undertaken on land outside the confines of the application site) would be imposed on any permission granted to ensure that such soft landscaping is provided.

Details of the hard landscaping to be provided on the site have not been submitted at this time and consequently a condition would be imposed on any permission granted to secure a precise scheme of hard landscaping.

Subject to the imposition of such conditions the proposal would accord with Policies D1 and En1 of the adopted Local Plan.

### **Airport Safeguarding**

It was concluded by the ExA in their assessment of the DCO that *"the effects of the proposed development on civil aviation have been properly assessed in line with paragraph 5.59 of the NSPNN. The applicant and EMA have agreed that the protection of the airport authority is appropriately secured in the draft DCO...We conclude therefore that the proposed development would not significantly impede or compromise the safe operation of the EMA, in compliance with paragraph 5.63 of the NPSNN."* Relevant Requirements were then incorporated into the DCO to ensure that the finer details of the development were agreed with East Midlands Airport Safeguarding.

Accordingly, the matter for consideration as part of this application is whether the increase in the height of part of the unit above the parameter set, of 20.5 metres, now results in any greater impact on the safe operation of East Midlands Airport.

As part of the consideration of the application East Midlands Airport (EMA) Safeguarding have been consulted and initially they raised an objection as it was necessary for the applicant to demonstrate that they were committed to undertaking assessments in relation to the impacts of the building on Communication Navigation Surveillance (CNS) equipment and the Instrument Flight Procedure (IFP) protected area (if the height of the building including construction equipment exceeds 111 metres above mean sea level (AMSL)), it was also necessary to demonstrate that the materials of construction would not produce excessive glint and glare.

Following commitment from the applicant that such assessments would be undertaken, as well as it being demonstrated that the materials of construction would not cause glint and glare, EMA Safeguarding have removed their objection subject to the imposition of conditions on any permission granted. Such conditions would seek to ensure that the development accords with the site wide Bird Hazard Management Plan, that landscaped areas are appropriately managed and that appropriate soft landscaping is planted (i.e. species which would not attract flocking birds), that a windshear assessment is undertaken, that lighting plans are approved by EMA Safeguarding and that dust suppression is undertaken during the construction phase. Permits for tall equipment, cranes and equipment transmitting frequencies would also be required.

It is considered that such conditions would be imposed on any permission granted to ensure the safe operation of the airport although in terms of the windshear assessment it is noted that no such requirement was imposed within the DCO to secure such an assessment. On this basis it would only be reasonable for such a condition to state that the unit to be provided on plot 12 does not exceed 20.5 metres in height, the limit set by the Parameters, until a windshear assessment is submitted for approval.

On the above basis it is considered that the proposal would not impact adversely on the operational safety of the airport and as such the development would accord with Policies Ec5 and Ec6 of the adopted Local Plan.

### **Development and Flood Risk**

The building to be provided on plot 12 within Zone A6 lies within Flood Zone 1, and is therefore at the lowest risk of flooding, with the vast majority of the site not being impacted by surface water flooding as defined by the Environment Agency's Surface Water Flood Maps (overland flow routes may result in a medium to high risk of surface water flooding across part of the site).

The proposed floor space of the unit to be provided would not exceed the thresholds set by the parameters plans and therefore there would be no additional surface water run-off from the site over and above that previously assessed by the ExA to be acceptable subject to the inclusion of a relevant Requirement (no. 17) in the DCO. In any event the Lead Local Flood Authority (LLFA) have been consulted as part of this application and they have advised that they would have no objection based on the surface water management design submitted in support of the application, consequently the submitted scheme would be conditioned on any permission granted. On the above basis the proposal would accord with Policies Cc2 and Cc3 of the adopted Local Plan and Paragraphs 163 and 165 of the NPPF.

Insofar as foul drainage is concerned it is indicated that this would be discharged to an on-site foul drainage system which has a connection to the mains sewer. The foul drainage network associated with the site was approved under Requirement 19 of the DCO, in consultation with Severn Trent Water, and consequently there is capacity in the sewerage network to accommodate the waste associated with the unit which would be no greater than that deemed acceptable when the DCO was granted. On this basis the proposal accords with Paragraph 180 of the NPPF.

### **Other Matters**

The DCO was subjected to a Development Consent Obligation (DCOb), the equivalent of a Section 106 agreement, in order to assist in mitigating the impacts of the development. As a result of this it is proposed that any permission is granted subject to a Section 106 which will ensure that the development would be bound by the terms of the DCOb so as to ensure that the impacts of the development remain mitigated if the unit on Plot 12, Zone A6 is built in accordance with any permission granted as part of this application rather than that approved by the DCO. On the basis that such an agreement is secured the scheme would accord with Paragraphs 54, 55 and 56 of the NPPF.

It was concluded in the assessment of application reference 17/01165/FULM, for the provision of unit 2 which exceeded the parameters, that the consent granted would not set a precedent that alterations to the heights of other units would be acceptable. It is a fundamental tenet of the planning system that each application be assessed on its own merits and as outlined above it is considered that the provision of a unit on plot 12 within Zone A6 with an increased height is acceptable, notwithstanding the presence of the unit 2. As such it is determined that the consent granted under 17/01165/FULM has not established a precedent and going forward any permission granted as part of this application would not set a precedent that alterations to the heights of other units is acceptable.

Whilst Lockington cum Hemington Parish Council have requested a condition preventing the provision of advertisements on the northern elevation of the proposed unit it is considered that advertisements are covered by separate planning legislation (The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)) to those of a planning application and consequently the imposition of such a condition would be unreasonable and would not meet the tests outlined in Paragraph 55 of the NPPF. Although this is a case a note to the applicant would be imposed to make them aware of the request of the Parish Council.

### **Conclusion**

Whilst the application site is outside the Limits to Development, it is considered that the principle of the proposal has been established by the granting of the Development Consent Order (DCO). It is also considered that the increase in height of the unit on plot 12 within Zone A6, over and

above the Parameters set by the DCO, would not lead to detriment to residential amenities, landscape character, the visual amenities of the wider environment, heritage assets, highway safety, airport safety or landscaping, nor would the development further exacerbate any localised flooding impact. There are no other material planning considerations that indicate planning permission should not be granted and accordingly the proposal, subject to relevant conditions and the securing of a Section 106 agreement, is considered acceptable for the purposes of the aforementioned policies.

**RECOMMENDATION - PERMIT, subject to conditions and the completion of a Section 106 agreement;**

1. Time limit
2. Approved plans.
3. Travel plan.
4. Highway phasing.
5. Construction environmental management plan (CEMP).
6. Construction hours.
7. Construction noise levels.
8. External materials.
9. On-site landscaping.
10. Off-site landscaping.
11. Replacement landscaping.
12. Hard landscaping.
13. Boundary treatments.
14. Finished floor and ground levels.
15. Off-street parking.
16. Access gradient.
17. Obstructions to access.
18. External lighting.
19. Operational noise levels.
20. Mechanical and ventilation plant details.
21. Broadband reversing alarms.
22. Noise complaints.
23. BREEAM assessment.
24. Waste management scheme.
25. External storage.
26. Surface water drainage.
27. Foul drainage.
28. Windshear assessment.
29. Airport safeguarding.



**Erection of three no two-storey detached dwellings and ancillary garaging**

**Report Item No  
A2**

**The Woodlands Bath Lane Moira Swadlincote Derby DE12 6BP**

**Application Reference  
14/00415/FUL**

**Grid Reference (E) 431137  
Grid Reference (N) 315524**

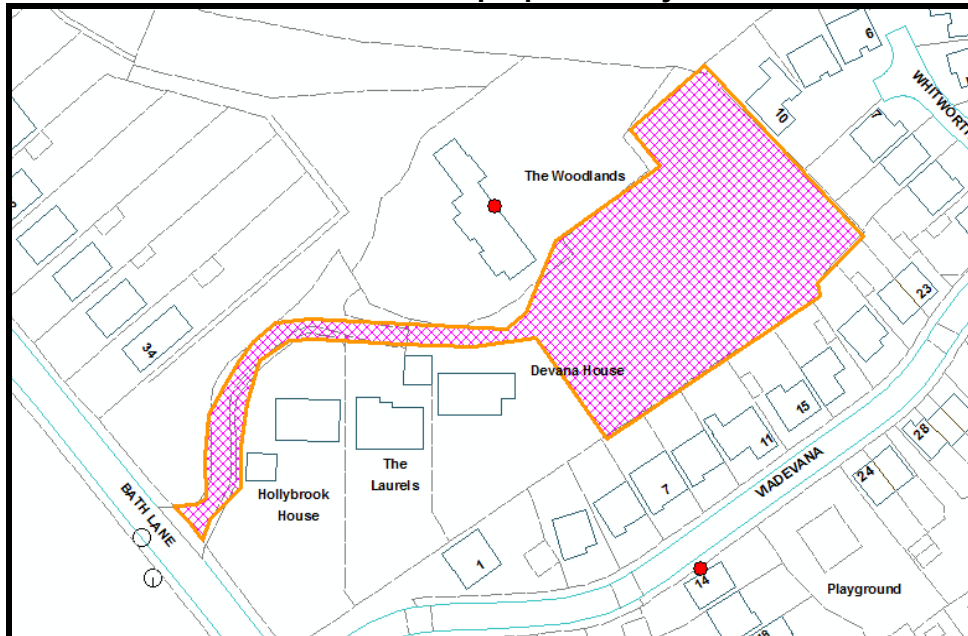
**Date Registered:  
10 July 2014  
Consultation Expiry:  
13 January 2020  
8 Week Date:  
4 September 2014  
Extension of Time:  
None Agreed**

**Applicant:  
Mrs J Hall**

**Case Officer:  
Jenny Davies**

**Recommendation:  
PERMIT subject to S106 Agreement**

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



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## **Executive Summary of Proposals and Recommendation**

### **Call In**

The application is brought to the Planning Committee at the request of Councillor Sheahan (on behalf of the ward member Councillor Bridges) on the grounds of flooding issues in the area.

### **Proposal**

Planning permission is sought for the erection of three detached two storey dwellings with garaging at The Woodlands, Bath Lane, Moira. The site is part of the garden to The Woodlands. The dwellings would be served by an existing access off Bath Lane.

### **Consultations**

Members will see from the main report below that a total of 27 letters of representation have been received from residents, which raise objections. Ashby Woulds Town Council raises objections. Councillor Bridges also raises concerns and comments have been received from Councillor Sheahan. All other statutory consultees have raised no objections.

### **Planning Policy**

The application site is located within the Limits to Development as defined in the adopted Local Plan. The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

### **Conclusion**

The key planning issues arising from the application details are:

- The principle of the erection of dwellings on the site
- Impact on the character and visual amenities of the area
- Impact on residential amenities
- Impact on highway safety
- Impact on protected trees
- Impact on flood risk and surface water drainage
- Impact on the River Mease SAC

The report below looks at these details, and Officers conclude that the details are satisfactory. The proposal meets the requirements of relevant NWLDC policies, including the Good Design for North West Leicestershire SPD, and the NPPF.

### **RECOMMENDATION - THAT PLANNING PERMISSION BE GRANTED SUBJECT TO CONDITIONS AND THE SIGNING OF A SECTION 106 AGREEMENT**

**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

Planning permission is sought for the erection of three detached two-storey dwellings with garaging at The Woodlands, Bath Lane, Moira. The application site lies on the north eastern side of Bath Lane, on the south eastern part of a wider site associated with The Woodlands. The application site is adjoined by dwellings on all sides.

An application for the erection of a detached two storey dwelling and garage (14/00417/FUL) on the northern part of the wider site is also to be considered by this Planning Committee.

The site forms part of the garden to The Woodlands and is currently grassed with mature lime trees alongside the south eastern boundary protected by Tree Preservation Order T284. Other unprotected trees are located in the eastern corner and along its north eastern edge. The land rises up by approximately 2.5 metres from the south west towards the north eastern boundary.

The dwellings would be located in a row on the central part of the site and would all be fully two storey. A detached double garage for Plot 1 is shown to be attached to the garage to Devana House. Detached triple garages are proposed to Plots 2 and 3 on the northern part of the site. No protected trees are proposed to be removed and the majority of unprotected trees would be retained.

Access would be gained via the existing access and private drive off Bath Lane that currently serves The Woodlands and three other dwellings. A turning head would be provided adjacent to the two garages.

Amended plans have been received during the course of the application to address officer and consultee concerns relating to layout and design and impacts on residential amenities, protected trees and drainage and flood risk. The precise dimensions of the proposal are available to view on the planning file.

The site lies within the Limits to Development as identified in the adopted North West Leicestershire Local Plan (2017). The site is considered to lie within Flood Zone 1. The southern part of the site (relating to part of the garden to Plot 1) lies within an area at low to medium risk of surface water flooding. The site also lies within the catchment area of the River Mease Special Area of Conservation and a tributary of the Hooborough Brook, which in turn is a tributary of the River Mease. runs alongside the site's south eastern boundary and continues into the wider site. Other trees within the wider site are protected by the TPO.

#### *Planning History:*

Outline planning permission (04/00743/OUT) was granted in September 2004 for the erection of three dwellings on the wider site. As a result of the 2004 approval and an earlier grant of outline planning permission for two dwellings (01/00150/OUT), permission was in place for four dwellings, as one of the dwellings on the 2004 permission replaced one on the 2001 permission. Both the 2001 and 2004 permissions have expired. An application for six dwellings on the wider site (06/00685/FUL) was withdrawn in June 2006.

Subsequently planning permission was granted in September 2007 for the erection of three dwellings at the front of the wider site (07/00298/FUL), which have been built. Permission was granted in January 2012 for amendments to Plot 3 (now Devana House) (11/00247/FUL).

Permission was refused in May 2010 for the erection of a detached dwelling (10/00291/FUL) in a similar position to Plot 3 on the 2007 permission, due to adverse impacts from its relationship with Plot 2 on the 2007 permission.

The most recent permissions on the site relate to works to protected trees (11/00775/TPO and 16/00048/TPO), with an application for the felling of five protected trees being refused in March 2017 (17/00075/TPO). Other history back to 2001 also relates to works to trees (03/01247/TPO, 02/00741/TPO, 01/00744/TPO and 01/00376/TPO).

## 2. Publicity

23 Neighbours have been notified.

Site Notice displayed 19 November 2018.

Press Notice published Burton Mail 15 October 2014.

## 3. Summary of Consultations and Representations Received

### Statutory Consultees

**Ashby Woulds Town Council** objects until the outstanding issue relating to the drains is resolved. The Town Council is against further development along Bath Lane and in the Via Devana area until the existing drainage and flooding problems are sorted.

The Town Council also objects on the following grounds:

- The area is liable to flooding and further development increases the risk;
- Current drainage system does not have the capacity for more and no permissions should be granted until the existing problems are resolved;

**The Environment Agency (EA)** originally objected on the grounds that the applicant needed to demonstrate that a Sequential Test had been undertaken. The EA subsequently advised that it also objected as the submitted Flood Risk Assessment (FRA) was inadequate. Following submission of a Hydraulic Modelling Report the EA advised that it was satisfied that the development is outside of Flood Zones 2 and 3 and therefore does not require an FRA. Therefore the EA advised that it wishes to remove its previous objection.

**Leicestershire County Council - Ecology** has no comments or objections provided the trees on the site's south eastern boundary are retained. Following the submission of amended plans the County Ecologist advised that she has no further comments as the issues relating to trees are arboricultural rather than ecological.

**Leicestershire County Council - Highway Authority** has no objections subject to conditions.

**Leicestershire County Council - Lead Local Flood Authority (LLFA)** has not raised any objections subject to the imposition of conditions.

**Natural England** has no objections subject to conditions and confirmation from the EA that the proposals are technically fit for purpose.

**NWLDC - Environmental Protection** has no environmental observations.

**NWLDC - Land Contamination** requests the imposition of conditions.

**NWLDC - Waste Services** has provided comments in respect of bin collection arrangements.

**NWLDC - Tree Officer** initially recommended refusal on the basis that the proposal would cause damage to protected trees. Following submission of amended plans the Tree Officer has no objections.

**Severn Trent Water (STW)** has no objections.

### **Third Party Representations**

Councillor Bridges, who is the ward member, states that there are serious flooding problems that need resolving before any future development can be considered within the affected zone.

Councillor Sheahan has queried whether a developer contribution could be sought towards flooding investigations.

27 letters of representation (some of which include photographs) have been received from local residents which object on the following grounds:

#### *Residential Amenities*

- direct overlooking/loss of privacy to dwellings and gardens on Whitworth Close, Via Devana and within The Woodlands site;
- loss of light to dwelling on Whitworth Close and Via Devana;
- proximity of dwelling and garages to dwelling on Whitworth Close;
- impacts from noise and car fumes;
- siting of bin collection area adjacent to existing dwelling;
- understood to be quiet rural area with restriction on development;
- disruption from construction works
- additional building being considered at expense of existing homes;

#### *Highway Safety*

- increase in traffic;
- site access and driveway are too narrow for two vehicles to pass and are unsafe due to lack of passing places, footways and bends and lighting and traffic resulting from further four houses;
- plans are inaccurate as do not show the entrance posts and gates which impact on the width of the access and driveway;

#### *Trees and Ecology*

- loss of trees protected by tree preservation order (TPO);
- more trees should be planted rather than disturb trees that have taken years to establish;

#### *Flood Risk and Drainage*

- inadequate drainage and sewage systems in the area;
- existing flooding, including at the junction of Bath Lane with Via Devana and onto land and gardens within The Woodlands and into houses on Via Devana, will be made worse;
- this flooding results from heavy rainfall and includes overflow of the main sewer on Bath Lane resulting in health and safety issues and risks for residents and property from sewage contamination in their houses and gardens, not being able to leave their houses or enter and leave their driveways and vehicles stranded and damaged;
- since June 2019 there has been seven floods and two of these have seriously breached Bath Lane causing a crisis situation and damage to property;
- the wooden footbridge in the garden to The Laurels has been lifted by the level and velocity of water in the watercourse;
- significant measures have not been put in place to alleviate the existing flooding issues;

- new drains installed to Bath Lane have added to flooding issues by back flowing and increasing flood water in the road;
- residents are unhappy that the situation regarding flooding remains unresolved;
- residents of Via Devana and Whitworth Close will not allow new connections to the existing drains;
- removal of trees will interfere with the natural drainage system;
- issues relating to this flooding need to be resolved before further development is allowed in this location;
- all applications in Moira should be reviewed by a Council committee that includes local and county councillors, County Council staff and the MP as well as those involved in the flood working group (town councillors, STW, the Highway Authority and the LLFA);
- errors in the original Flood Risk Assessment - including confusing the unnamed watercourse with the River Mease and no mention of existing flooding that occurs in the area - so how can this report be used for decision making;
- not clear from flood report how the dwellings will impact water flow and potential for flooding;
- the second flood report states that further work needs to be done.

#### *River Mease*

- significant environmental risk to the River Mease and its tributaries;
- sensitivities associated with the River Mease;
- foul water has entered the headwaters of this river;
- impact on the River Mease and its tributaries from sewer contamination resulting from flooding at junction of Via Devana and Bath Lane;

#### *Other Matters*

- no need for more houses;
- impacts on existing infrastructure;
- impact of ground works on stability of nearby dwellings built on rafts with underpinning and previously subject to subsidence;
- more subsidence could occur by building over mined ground;
- would the Council cover the cost of future subsidence if planning permission is granted;
- details of boundary plans required;
- the bin collection area is not required as existing residents on the site leave bins at the roadside;
- garage to Devana House is incorrectly included within the red line boundary on the plans;
- Devana House and its boundary with the site as well as one of the trees are drawn incorrectly on the plans;
- garage to Plot 1 would be attached to garage to Devana House but no details provided of how the garages would be attached;
- impact on property values;
- construction works could continue for many years;
- the site needs to be assessed overall rather than piecemeal and timing of works needs to be understood;
- the Council made mistakes with the three new dwellings on the site;
- these dwellings were started after the planning permission had expired;
- only benefit is for commercial interests of the landowner.

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

#### **4. Relevant Planning Policy**

##### **National Planning Policy Framework - February 2019**

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are applied. The following sections of the NPPF are considered relevant to the determination of this application:

Paragraphs 8 and 10 (Achieving sustainable development)  
 Paragraph 11 (Presumption in favour of sustainable development)  
 Paragraphs 54, 55 and 56 (Decision-making)  
 Paragraphs 59, 68, 73, 74 and 78 (Delivering a sufficient supply of homes)  
 Paragraph 91 and 92 (Promoting healthy communities)  
 Paragraphs 102, 103, 108, 109 and 110 (Promoting sustainable transport)  
 Paragraphs 117, 118, 121 and 122 (Making effective use of land)  
 Paragraphs 124, 127, 128 and 130 (Achieving well-designed places)  
 Paragraphs 148, 150, 153, 155 and 158-164 (Meeting the challenge of climate change, flooding and coastal change)  
 Paragraphs 170, 175, 177, 178, 179 and 180 (Conserving and enhancing the natural environment)

##### **Adopted North West Leicestershire Local Plan (2017)**

The North West Leicestershire Local Plan forms part of the development plan and the following policies of the Local Plan are relevant to the determination of the application:

S1 - Future Housing and Economic Development Needs  
 S2 - Settlement Hierarchy  
 D1 - Design of New Development  
 D2 - Amenity  
 IF4 - Transport Infrastructure and New Development  
 IF7 - Parking Provision and New Development  
 En1 - Nature Conservation  
 En2 - River Mease Special Area of Conservation  
 En3 - The National Forest  
 En6 - Land and Air Quality  
 Cc2 - Water - Flood Risk  
 Cc3 - Water - Sustainable Drainage Systems

##### **Other Guidance**

The Community Infrastructure Levy Regulations 2010  
 The Conservation of Habitats and Species Regulations 2017  
 Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System)  
 National Planning Practice Guidance - March 2014  
 River Mease Water Quality Management Plan - August 2011  
 The River Mease Developer Contributions Scheme (DCS) - September 2016  
 Good Design for North West Leicestershire SPD - April 2017  
 National Design Guide - October 2019  
 Leicestershire Highways Design Guide (Leicestershire County Council)  
 National Forest Strategy 2014-2024

## 5. Assessment

### Principle

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, comprises the adopted North West Leicestershire Local Plan (2017).

The application site lies within the defined Limits to Development within the Local Plan. Policy S2 advises that in villages such as Moira a limited amount of growth will take place within the Limits to Development.

Consideration must also be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) as set out in the NPPF.

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 Council is able to demonstrate a five year supply of housing (with 20% buffer) against the housing requirement contained in the Local Plan.

In terms of social sustainability it is noted that in respect of the withdrawn application for six dwellings on the wider site (06/00685/FUL), officers raised concerns that the site was not in a sustainable location for new dwellings under the criteria set out under Policy H4/1 of the previous adopted Local Plan. However that plan and policy are no longer in force.

Moira provides a range of day to day facilities, e.g. shop/Post Office, small supermarket, two public houses, primary school, village hall, recreational facilities/open space and employment uses. The nearest bus routes serve Norris Hill, Overseal and Donisthorpe, which are all at least a 25 minute walk away. There is a footway along Bath Lane in both directions; to the south it provides a route into the main parts of Moira and to the north it provides a link to Conkers, the Miners Welfare sports club, employment uses and on towards Overseal. Some of these services/facilities are within 800 metres to one km (preferred maximum walking distance) of the site but the bus services are not. However whilst there is limited access to bus services, given the range of services within walking distance it is considered that occupiers of the dwelling would not necessarily be dependent on the private car. Taking all of these matters into account it is considered that the site is socially sustainable in terms of access to services/facilities.

Given the scale of the development it is considered that the proposal would not result in unsustainable demands on local services and facilities. The proposal falls below the threshold of 10 dwellings or more under which contributions towards services and facilities would be sought.

In terms of environmental sustainability, the site currently represents garden land associated with The Woodlands. Garden land in built up areas is excluded from the definition of previously developed land set out in the NPPF and therefore this effectively constitutes a greenfield site. The NPPF states that decisions should encourage the effective use of land by re-using land that has been previously developed and that Local Planning Authorities should consider the use of policies to resist inappropriate development of residential gardens. As the Council does not have a specific policy that prevents development on gardens, it is deemed that a reason for refusal on the basis of the loss of part of the residential garden could not be justified in this instance.

The proposal would also not result in unacceptable impacts on the natural, built or historic environment as set out in more detail below. There would also be very limited economic



benefits which would include local construction jobs and helping to maintain local services in the area.

In the overall balance, compliance with the settlement hierarchy and strategic housing aims of Policy S2, the lack of unacceptable impacts on the natural, built or historic environment, the site's social sustainability credentials and very limited economic benefits all weigh positively in the balance and are considered to outweigh the loss of greenfield land. It is therefore considered that the proposal represents a sustainable form of development.

### **Design and Visual Impact**

The need for good design in new residential development is outlined in Policy D1, the Council's Good Design SPD, the National Design Guide and Paragraphs 124 and 127 of the NPPF. Policy En3 requires development in the National Forest to be appropriate to its Forest setting.

The proposal results in a density of 10 dwellings per hectare (excluding the access drive from the calculation). The Local Plan does not contain a policy setting specific densities. This density is considered appropriate having regard to the character of the area, nearby dwellings and the protected trees.

There are limited views of the site from Bath Lane, as it is set back from the road and screened by mature trees and existing dwellings, which also provide screening in views from most of Whitworth Close and Via Devana. Plot 3 would fill the gap at the end of the private drive in front of No. 10 Whitworth Close but this is not a prominent view from public viewpoints. Some garden land would be lost but a large garden area would be retained to The Woodlands taking into account both this proposal and the separate application for one dwelling. Whilst the dwellings would be positioned at least 100 metres from Bath Lane, the development would be well related to The Woodlands and dwellings on Whitworth Close and Via Devana. The dwellings would not be at a significantly higher land level than other dwellings or nearby roads. Two dwellings have previously been approved on a similar part of the site under the 2004 outline planning permission for three dwellings (04/00743/OUT). The development would therefore not be overly prominent in the locality or streetscene. The site could also accommodate all of the necessary requirements (private garden, bin storage, parking/turning space) without being too cramped or resulting in over-development.

There are two rows of lime trees on the south eastern part of the site, protected by Tree Preservation Order T284 (TPO), which make a positive contribution to the character and visual amenities of the area, and which are shown to be retained. There are a number of other trees on the site that are not protected by the TPO but most are shown to be retained. The Council's Tree Officer considered that the original plans would have resulted in serious damage being inflicted on the protected trees and as such recommended refusal of the application. Following submission of an updated tree survey and plan, the Tree Officer has advised that the dwellings are in an acceptable position in relation to the trees.

The dwellings would have large footprints but would be smaller than The Woodlands and not dissimilar in scale and design to the three existing dwellings. Dwellings of a similar size were also considered acceptable here under the 2004 outline permission. Whilst not small in scale the garages would be of simple designs with traditional detailing and would be well screened and seen alongside the proposed dwellings and existing development.

A bin collection area is proposed close to the junction of the access drive with Bath Lane (as set out in more detail in the 'Bin Storage and Collection' section of this report), which would also serve the one dwelling proposed under the separate application (14/00417/FUL). The bin

collection area would be set back behind the front boundary and so would not be prominent in the streetscene. In addition bins should only be left in this area for collection and not on a permanent basis.

Therefore it is considered, on balance, that the proposal, both on its own and cumulatively with the separate single dwelling, would not be significantly harmful to the character and visual amenities of the streetscene and locality within the National Forest to justify a reason for refusal under Policies D1 and En3 of the Local Plan, the Good Design SPD and the National Design Guide.

### **Residential Amenities**

The proposal is likely to result in an increase in traffic using the access drive which runs adjacent to Hollybrook House and its rear garden, as well as being close to No. 34 Bath Lane and The Woodlands. However the situation would not be dissimilar to a development on a corner site with a side road running close to dwellings and their rear gardens, which was considered to be a yardstick for an acceptable standard in an appeal decision at Ashby de la Zouch (07/00624/OUT).

Whilst tranquility in the area may in part be due to the size of The Woodlands' existing garden it is not unusual to find housing adjacent to other housing. New housing is unlikely to generate significant levels of noise and disturbance or impacts from lighting and car fumes. A condition could be imposed restricting construction hours given the site is bounded by other dwellings and access is via a private drive that passes close to dwellings.

The bin collection area would be located eight metres from Hollybrook House's garden and 18 metres from its side elevation, which contains windows serving habitable rooms, with the access drive in-between. The bin collection area would be at least 18 metres from the boundary with No. 34 Bath Lane. A condition could be imposed requiring the bin collection area to be used for bin collection purposes only. The Environmental Protection team has not raised any objections in relation to impacts on existing residents. As such the proposal unlikely to result in significant impacts on residential amenities from noise, disturbance, smells, lighting and car fumes. The Council also has separate powers under the Environmental Protection Act to deal with noise, disturbance, smells and lighting.

The three dwellings would be at least 14 metres from the gardens to the dwellings on Via Devana and over 20 metres from the dwellings.

Plot 1 would be 17 metres from Devana House, with its front habitable room windows facing towards Devana House's side elevation. This elevation has two windows serving a utility room and a bedroom (also served by another window). Plot 1's first floor front windows would be 20 metres from Devana House's nearest front habitable room windows and would not directly face them. The central first floor window to Plot 1 is shown to serve a void above the hall/stairs and could be obscurely glazed and fixed shut. The other first floor window to Plot 1 would be 24 metres from the side bedroom window and 18.5 metres from Devana House's conservatory. Some screening would be provided by the garaging and the design of Plot 1's window (three narrow separate panes) would reduce the potential for direct overlooking. The garage to Plot 1 would be on the boundary but is proposed to be attached to the garage to Devana House. Plot 1 would be eight metres from Devana House's garden, but Devana House's garden is large in size and Plot 1 would not directly overlook its main private amenity space.

Plot 1 would be eight metres from The Woodlands and its garden. However Plot 1 has no first floor side windows and The Woodlands would have a large retained garden. Due to the

relationship between the dwellings there is unlikely to be any direct overlooking of The Woodland's side windows from Plot 1's first floor front windows. Plots 2 and 3 would be at least 24 metres from The Woodlands. Whilst Plot 2 and its front windows would be seven metres from The Woodlands' garden with front windows facing this garden, and its triple garage would be on the garden boundary, this would impact on a small part of The Woodlands' extensive garden. Plot 3's triple garage would be set away from this boundary.

Plot 3 would be sited within three metres of No. 10 Whitworth Close and its front garden. Plot 3 would impinge very slightly on the 45-degree line from the closest front living room and bedroom windows to No. 10 Whitworth Close but not to a significant extent. These rooms are also served by secondary windows. Existing mature vegetation on the boundary would act as a screen but it is acknowledged that this may be removed, cut down or trimmed back, although a condition could be imposed requiring some form of landscaping to be retained or provided on this boundary to assist with screening. An open aspect would be retained from No. 10's windows and front garden to the east and south east. A front garden area is not afforded the same level of protection as a rear garden as it is not a private space (unless it formed the only garden area which it does not in this case). No first floor windows are shown in Plot 3's side elevation closest to No. 10. Whilst the front elevation of Plot 3 and its habitable rooms windows would appear to 'face' towards the front of Plot 10, the location plan shows the relationship between the dwellings, that the dwellings would not be directly face to face, and Plot 3 would project just beyond the front of No. 10 so that their front windows would not directly look into each other.

Whilst Plot 3 and its triple garage would impinge on the 45-degree line from No. 10's two side windows, they serve a kitchen and a bathroom. The kitchen window is secondary and a bathroom is a non-habitable room. The mature vegetation on the boundary would provide screening if retained. A 1.8 metre close boarded boundary fence also screens the kitchen window to some extent. Whilst Plot 3 would be around five metres from these windows, due to its position in relation to No. 10 there is unlikely to be direct overlooking of these windows. Plot 3 would also be 10 metres from No. 10's rear garden.

Plot 3's triple garage would be one metre from No. 10's rear garden and two metres from No. 10, would also impinge on the 45-degree line from No. 10's rear windows. However the garage would be single storey, with its roofslope running away from No. 10's garden and would not extend along the whole of the garden boundary. Some screening may also be provided by the vegetation on the boundary if retained and the close boarded fence. The rear windows would retain open aspects to the north and north east.

Whilst there would be some overlooking of Devana House, and some overshadowing to No. 10 and its garden and impact on outlook from No. 10's front and rear windows, given the circumstances set out above it is considered that this impact would not be so significantly harmful to the amenities of the occupiers of these dwellings or other nearby dwellings to justify a reason for refusal under Policy D2 of the Local Plan and the Council's Good Design SPD.

### **Highway Safety**

Bath Lane is a classified road subject to a 30mph site limit. The existing access and driveway currently serves four dwellings, and if this and the separate application for one dwelling were approved would result in a total of eight or five dwellings on the site.

The County Highway Authority (CHA) has not raised any objections subject to conditions. The CHA has also not raised any objections to the separate application for one dwelling, and also did not object to the withdrawn application for six dwellings which would have resulted in seven dwellings on the site.

Whilst the layout plan indicates that no amendments are proposed to the access, it is bound by walls and gate posts on both sides, which are not shown on the plan. The CHA advises that an access serving two to five dwellings should be 4.25 metres wide for a distance of five metres behind the highway boundary, and one serving eight dwellings should be 4.8 metres wide for this distance. In both cases if an access is bound on one side, e.g. by a wall, then its width should be increased by 0.5 metres on that side. It is not clear whether the existing access meets the required width for this proposal, e.g. 4.8 metres, and so the CHA has requested imposition of a condition requiring this access width.

The CHA also advises that there have been no recorded personal injury collisions within the last five years close to the access. A condition could be imposed requiring vehicular and pedestrian visibility splays. The CHA considers that a safe and suitable access can be achieved and there is no evidence of highway safety concerns at this location. The driveway within the site is shown on the layout plan to be at least 4.5 metres wide (and in most places would be five metres wide) in its first stretch. After the point where the driveway for Hollybrook House and the separate access for The Woodlands and one dwelling turn off, the drive would be 4.5 metres wide. This part of the drive would only serve five dwellings (The Laurels, Devana House and the three proposed dwellings).

The CHA also advises that the parking and turning spaces are acceptable. The bin collection area would not impinge on the access, driveway and visibility splays.

The Highway Authority therefore advises that the impacts of the development on highway safety would not be unacceptable and when considered cumulatively with other developments, the impacts on the road network would not be severe. As such the proposal complies with Policies IF4 and IF7 of the Local Plan and paragraphs 108 and 109 of the NPPF.

### **Trees**

Two rows of lime trees on the south eastern part of the site are protected by Tree Preservation Order T284 (TPO), and a number of other trees on the site are not protected by the TPO. The Tree Officer considered that the original plans would have resulted in serious damage being inflicted on the protected trees, on the basis of inaccuracies in the tree survey and tree plan and as such recommended refusal of the application.

An amended tree survey and tree plan have been submitted, which shows all protected trees to be retained, along with all the unprotected trees close to the site's south eastern boundary.

In respect of the withdrawn application for six dwellings (where three dwellings were proposed on this site) concerns were raised regarding incompatibility with the protected trees. However two dwellings were approved on this part of the site under the 2004 outline permission when the lime trees would not have been significantly smaller. The Tree Officer has not raised any concerns in respect of this matter as part of this application. Plot 1 would be closest to the lime trees (four metres from the canopies at its closest point) but this would be its side elevation (which contains secondary windows) and garage. The main rear windows and conservatory to Plots 2 and 3 would face the trees but would be further from their canopies. Whilst Plot 3 would be close to the two ash trees in the eastern corner of the site, these are not protected, and the trees would be close to the corner of the dwelling with a more open aspect retained to most of its rear elevation. The dwellings would have good sized rear gardens with areas that would not be shaded by trees

Plot 3 and its triple garage would be close to the north eastern boundary where there is a

conifer hedgerow and other trees, which may need to be removed, cut down or trimmed back to allow for erection of this dwelling and garage. However this hedgerow and trees are not covered by the TPO.

There may be a requirement to widen the access (as set out above in the 'Highway Safety' section of this report), which may impact on the protected trees. However it is not clear what works would be required to widen the access, and whether any trees would be affected, so the Tree Officer has advised that this matter could be dealt with by condition. Method statements could be submitted for construction of the bin collection area and any widening/strengthening of the driveway.

Conditions could also be imposed relating to a tree protection plan to include protective fencing during construction, no changes to ground levels within the fenced off areas and submission of method statements for any works, e.g. installation of services, within root protection areas. As such the proposal would comply with Policy En1 of the Local Plan.

### **Ecology**

There are mature trees and hedgerows on and adjacent to the site, as well as adjacent trees and woodland, the site is part of a large garden, a watercourse runs through the site and the Ashby Canal lies to the north. All of these are features that could be used by European Protected Species (EPS) or national protected species. As EPS may be affected by a planning application, the Local Planning Authority has a duty under regulation 9(5) of the Habitats Regulations 2017 to have regard to the requirements of the Habitats Directive in the exercise of its functions.

An ecology survey found no evidence of important flora/fauna, nor of protected species using the site or their habitats. Whilst some trees would be removed that may have potential to be used by bats and breeding birds, there would be other similar habitat retained on site as well as on adjoining land. The canal is some distance from the site with intervening land uses and so it is unlikely that species using it would be found on the site. Whilst the dwellings would be 12 metres from the watercourse the County Ecologist has not raised any concerns regarding species that would use this habitat. The County Ecologist requested clearer copies of surveys to clarify the loss of trees. Following submission of an amended tree survey the County Ecologist has no objections and advises that the issues relating to trees relate to arboricultural issues rather than ecological issues. On this basis it is considered that important flora/fauna and protected species and their habitats would not be adversely affected by the proposal and so the proposal complies with the Habitats Regulations 2017 and Policy En1 of the Local Plan.

### **Flood Risk and Drainage**

An unnamed watercourse runs through the site adjacent to its south eastern boundary, flowing from north east to south west. This watercourse flows from the Rawdon Road area, is culverted underneath the Ashby Canal and Via Devana/Whitworth Close, then resurfaces as it flows through the site, and passes underneath Bath Lane and the Miners' Welfare site and former railway embankment before discharging into the Hooborough Brook.

#### *Background*

Heavy rainfall can result in flooding occurring in the vicinity of this watercourse, and there have been several instances of this recorded back to 2006. This flooding can extend along Bath Lane and Via Devana (blocking the road), and into the Miner's Welfare ground, the site entrance and the gardens to Hollybrook House, The Laurels and Devana House. Photographs have been provided by several residents to show the extent of the flooding.

Concerns have been raised by local residents, Ashby Woulds Town Council, Councillor Bridges (who is the ward member) and Councillor Sheahan throughout the course of the application regarding this flooding and the impact of the development on this flooding. A petition has been submitted to Leicestershire County Council by local residents requesting immediate action to resolve the flooding. In addition it has been requested that issues relating to this flooding need to be resolved before the application is permitted and further development is allowed in this area.

Discussions and investigations have taken place and measures undertaken to resolve the flooding since before the application was submitted and on an ongoing basis. Most recently pipes were installed along Bath Lane in autumn 2019, which unfortunately did not resolve the problem, and so a meeting took place in January 2020 between the Lead Local Flood Authority (LLFA), the District Council, Councillor Bridges and Councillor Sheahan, the Town Council and local residents.

In July 2020 the LLFA advised that a larger pipe system could not be installed due to the presence of statutory undertakers' equipment and so two smaller pipes were installed instead. The LLFA has advised that engineers are of the view that a larger pipe system under Bath Lane would alleviate the problems, that a crate attenuation system would not be a solution (because the system would be downstream of the flooding meaning Bath Lane would flood before the attenuation system is reached, so the attenuation crates would be empty whilst Bath Lane floods) and that a trial hole is in the process of being organised to ascertain what can be done at Bath Lane and the cost. The LLFA has also advised that it is also liaising with the EA, that other measures are being considered (e.g. repairs to the private culvert under the sports ground) and the section of watercourse under the railway embankment will continue to be cleansed.

#### *Planning Considerations*

Initially the EA objected in the absence of any evidence to demonstrate that the flood risk Sequential Test had been applied, which is required to be undertaken on sites shown to be covered by the EA's Flood Zones 2 and 3 on the EA's flood risk map, and on the grounds that the Flood Risk Assessment (FRA) was inadequate.

A Hydraulic Modelling Report was subsequently submitted which concludes that the modelled 20-year, 100-year and 1000-year flood events do impact on the wider Woodlands site but that flooding is restricted to the south western part of the wider site (i.e. the area around the three existing dwellings at the front of the wider site, part of the site entrance and a small part of the garden to Plot 1 on this application). This modelling correlates with the parts of the wider site that have flooded in the past, and differs from the EA's flood risk map which suggests that the whole of the wider site would be inundated with flood water.

The Modelling Report also included a blockage risk analysis of the two culverts in the vicinity of the site (a small culvert within the wider site close to Devana House and the culvert that runs under Bath Lane and the Miners Welfare site) which indicates some increases in the modelled flood events and depths by up to 20mm in the watercourse channel and 25mm within the wider site.

The Modelling Report recommends that that the modelled 100-year event and results from the blockage risk analysis should be taken into account when setting any on-site flood mitigation measures, e.g. when setting the finished floor levels of the dwellings. No further works or other flood risk mitigation measures were identified in this report.

The EA was consulted on the Modelling Report and advised that it was satisfied that the

development is outside of Flood Zones 2 and 3 and therefore does not require an FRA. Therefore the EA advised that it wishes to remove its previous objection. As it has been demonstrated that the site is not within Flood Zones 2 and 3, and this has been accepted by the EA, then regardless of what the EA's flood risk map shows, the site is within Flood Zone 1 which is the zone with the lowest probability of flooding.

The southern part of the site (relating to part of the garden to Plot 1) lies within an area at low to medium risk of surface water flooding whilst the rest of the site is outside these areas. However due to the flooding issues the LLFA has been consulted on the application several times and information has been provided to it in respect of the objections raised by residents and the Town Council. As outlined above the LLFA has been investigating the flooding in the vicinity of the site and liaising with residents, the Town Council, the ward member and other interested parties, and so is aware of the flooding issue and the concerns raised. The LLFA has not raised any objections to the proposal in any of its comments. It has also indicated that the new dwellings are unlikely to significantly increase the surface water runoff rate from the site. The LLFA has advised:

- when determining applications the District Council should ensure flood risk is not increased elsewhere and only consider development in areas at risk of flooding where informed by a site specific FRA confirming it will not put the users of the development at risk;
- the proposals constitute minor development and as such it is not within the LLFA's statutory duty to comment. However, the District Council has asked the LLFA to comment due to ongoing flooding issues nearby. It is noted that the EA has concluded that the site falls within fluvial Flood Zone 1 (low risk of flooding), as such this development type is suitable at this location;
- the LLFA advises the District Council that the proposals are considered acceptable to the LLFA and that planning conditions should be attached to any permission granted.

As noted above the EA has advised that an FRA is not required. The conditions suggested by the LLFA relate to submission of a surface water drainage scheme for the site (for both during construction and once the development is complete), finished floor levels and a maintenance plan for the surface water drainage system before development commences on site. The surface water scheme is required to include holding sustainable drainage techniques that incorporate treatment trains to maintain or improve existing water quality, limit surface water runoff from the site to equivalent greenfield rates (i.e. limit it to the same runoff rate as occurs from the site now) and the ability to accommodate surface water runoff on site up to the critical 1 in 100 year return plus an allowance for climate change.

As noted above a trial hole investigation is being organised to ascertain what can be done at Bath Lane, and the LLFA is also looking into other measures. Consideration has been given to whether a developer contribution could be sought to fund a trial hole investigation. However due to there being no objections from the EA and LLFA to the application a developer contribution could not be sought as it would not meet the three tests in the 2010 CIL Regulations.

The proposal would comply with the requirements of Policy Cc2 and paragraphs 155 and 163 of the NPPF, as it is accepted by the EA and LLFA to be within an area at the lowest risk of flooding (Flood Zone 1), and so is on a site with the lowest probability of flooding where it would not increase the risk of flooding elsewhere. Conditions could also secure a sustainable drainage system as required by Policy Cc3.

Therefore for the reasons set out above, and the lack of objection from the EA and the LLFA, as well as from STW (Severn Trent Water), it is considered that a reason for refusal on the basis of significant impact on flood risk or drainage could not be justified under Policies Cc2 and Cc3 of

the Local Plan and paragraphs 155 and 163 of the NPPF.

**River Mease Special Area of Conservation/SSSI**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). An unnamed watercourse that is a tributary of the Hooborough Brook, which in turn is a tributary of the River Mease, runs alongside the site's south eastern boundary. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river.

As a result of the proposed development there could be an impact on the River Mease SAC, which may undermine its conservation objectives, from an increase in foul and surface water drainage discharge and its proximity to a tributary of the river. Therefore an appropriate assessment of the proposal and its impacts on the SAC is required.

As the site is currently greenfield with no associated foul drainage discharge, there would be an increase in occupancy of the site, resulting in an increase in foul drainage discharge from the site. Additional foul drainage discharge from the site would adversely impact on the SAC as it would pass through the STW sewage treatment works within the catchment area of the SAC and contribute to the raised phosphate levels in the river.

Discharge into the river or its tributaries from surface water disposal via a sustainable drainage system or via the mains sewer system can also result in an adverse impact on the SAC, including in relation to water quality and flow levels.

The tributary that runs through the site could also be affected by construction works and activity associated with the proposal.

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 CIL Regulations and paragraph 177 of the NPPF. There is no capacity available under DCS1 and so DCS2 was adopted by the Council on 20 September 2016.

The applicant has indicated she is willing to pay the required DCS contribution and the Council's solicitors have been instructed. The Environment Agency and Natural England have both issued Standing Advice relating to the River Mease SAC under which they do not need to be consulted if the proposal connects to the mains sewer and the applicant is agreeable to payment of the DCS contribution. Natural England has requested that the EA provided technical advice regarding the acceptability of the foul drainage for the site but this is outside the EA's remit. STW has however raised no objections to the application.

The flows from the dwellings needs to be taken into account against the existing headroom at Donisthorpe Treatment Works which serves Moira. Whilst it is understood that there is currently no capacity at Donisthorpe, STW has previously advised that it will not object to proposals where there is no capacity available but that a phasing condition should be imposed.

However whilst a phasing condition was imposed on previous permissions in the Moira area at STW's request as there was no capacity available at the treatment works at that time, STW has the opportunity to consider whether capacity is available within its sewer network when issuing permits to connect to the sewer system. Therefore it is considered that a phasing condition is no longer required.



On the above basis, compliance with the proposed legal agreement would ensure that foul drainage discharge from the site would not adversely impact on the integrity of the River Mease SAC.

As the new dwellings would be sited on a permeable part of the site, a condition could be imposed requiring surface water to discharge to a sustainable drainage system. As noted earlier in this report (in the section relating to 'Flood Risk and Drainage') the LLFA has requested such a condition, which would need to include measures to restrict water flows and protect water quality. Conditions would also be imposed relating to surface water drainage during construction and a maintenance plan. Natural England has request that the EA provided technical advice regarding the acceptability of the surface water drainage for the site. However this is outside the EA's remit, and the LLFA would provide comments on details submitted to discharge surface water conditions.

On the above basis, compliance with the proposed conditions would ensure that surface water run-off from the site would not adversely impact on the integrity of the River Mease SAC.

There could be impacts on the channel and banks of the watercourse during construction works and therefore a condition could be imposed requiring submission of a construction management plan. Whilst the watercourse is within the large garden to The Woodlands, three dwellings could increase activity near to the watercourse and so it could be excluded from their curtilage.

On the above basis, compliance with the proposed conditions would ensure that construction works and activity on the site would not adversely impact on the integrity of the River Mease SAC.

Therefore it can be ascertained that the proposal will, either alone or in combination with other plans or projects, have no adverse effect on the integrity of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI, and would comply with the Habitat Regulations 2017, the NPPF and Policies En1 and En2 of the Local Plan.

### **Land Stability and Contamination**

Concerns have been raised regarding the stability of the site and impacts on nearby dwellings on Bath Lane previously affected by subsidence. The Planning Practice Guidance states that if there is a risk of subsidence the proper design of buildings and their structures to cope with any movement should be ensured. However the site is not within the Coal Authority's Development High Risk Area and therefore a coal mining risk assessment is not required. The Council's Land Contamination Officer has requested the imposition of conditions relating to contaminated land. The Council's Building Control team have advised that whilst there are unlikely to be any issues associated with land stability a ground investigation report would be required under the Building Regulations. The dwellings would be over 75 metres from the dwellings on Bath Lane. As such it is considered that a reason for refusal in respect of land stability could not be justified under Policy En6 of the Local Plan and paragraphs 178 and 179 of the NPPF.

### **Bin Collection**

The Council's Waste Services team advises that occupiers of the dwellings would be required to present their bins at the end of the access drive adjacent to the public highway (i.e. Bath Lane) for collection. The bin collection area would be close to the front boundary and access drive which is acceptable to the Waste Services team.

In this case the dwellings would be 100 metres from the bin collection area. Whilst the Building Regulations require bins to be stored no more than 25 metres from a bin collection area, which

would be exceeded in this case, this is separate legislation and there is no requirement in the Local Plan and Good Design SPD to meet these requirements in such a situation. The bin collection arrangements would be similar to those for residents of the four existing dwellings who it is understood leave their bins for collection by the roadside. There would also be a fairly level route through the site (i.e. no steep gradients). The bin collection area would not adversely impact on visual and residential amenities, protected trees or highway safety as outlined earlier in this report. Alternatively residents of the dwellings may leave their bins for collection by the roadside (similar to existing residents). If this did occur bins should be removed once emptied, and if not the Council has powers to require bins to be removed from the public highway. It is therefore considered that there is not any policy justification to warrant a refusal of permission in respect of bin collection and storage. A note to applicant could be imposed advising that residents would need to leave their bins for collection in the bin collection area or by the roadside.

### **Other Matters**

Impact on property values are not material planning considerations and therefore cannot be given any weight in the determination of this application.

In respect of the concerns raised regarding erroneous information in the application submission, the submitted information together with all of the information gathered when undertaking the site visits and assessing the application, as well as the information set out in amended and additional plans and documents, have allowed for the application to be fully and adequately assessed.

Amended plans have been received which show the correct position of the red line boundary and the correct position and dimensions of Devana House and its garage. The means of attaching of Plot 1's garage to the garage to Devana House is not a material planning consideration, and may be dealt with under the Building Regulations and/or the Party Wall Act, as well as possibly being a civil matter.

Matters relating to the implementation of the 2007 planning permission are not relevant to the consideration of this planning application.

### **Conclusion**

The proposal is acceptable in principle. Reasons for refusal in respect of loss of greenfield land, impact on the character and visual amenities of the area, residential amenities, protected trees, flood risk and drainage and land stability could not be justified in this case. The proposal would not adversely impact on highway safety, ecology/protected species and the River Mease SAC/SSSI. 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 a Section 106 Agreement and conditions relating to the following matters:**

- 1 - time limit
- 2 - approved plans
- 3 - construction hours
- 3 - watercourse and tree protection during construction
- 4 - surface water drainage
- 5 - contaminated land
- 6 - ground and floor levels
- 7 - materials and details
- 9 - bin collection
- 10 - landscaping and boundary treatments
- 11- highway safety
- 12 - removal of permitted development rights, obscure glazing to windows
- 13 - residential curtilage

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Erection of detached two-storey dwelling with detached garage

Report Item No  
A3

The Woodlands Bath Lane Moira Swadlincote Derby DE12 6BP

Application Reference  
14/00417/FUL

Grid Reference (E) 431137  
Grid Reference (N) 315524

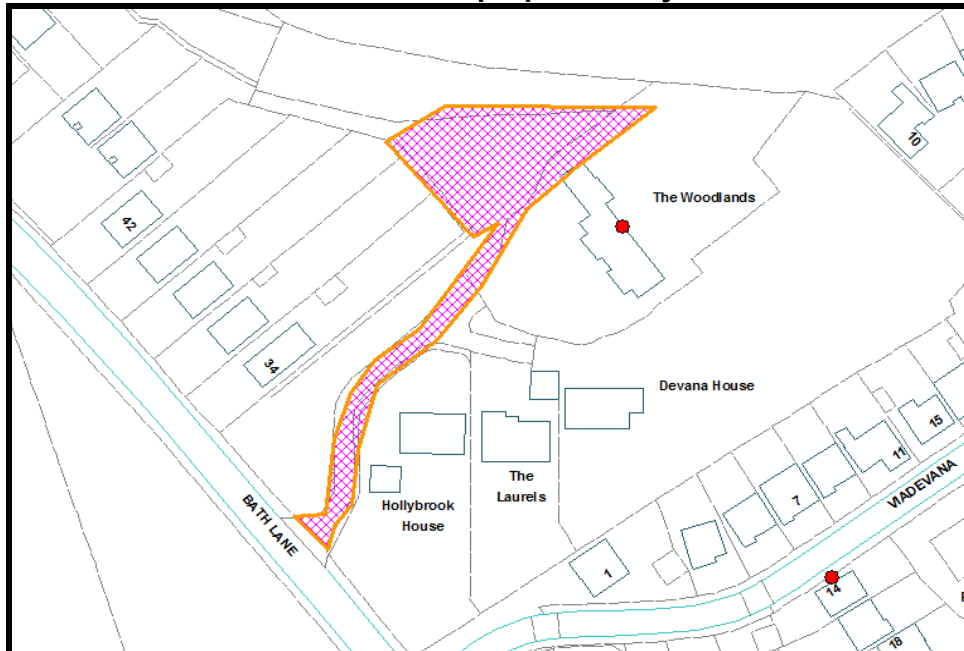
Date Registered:  
10 July 2014  
Consultation Expiry:  
17 March 2020  
8 Week Date:  
4 September 2014  
Extension of Time:  
None Agreed

Applicant:  
Mrs J Hall

Case Officer:  
Jenny Davies

Recommendation:  
PERMIT subject to S106 Agreement

Site Location - Plan for indicative purposes only



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## **Executive Summary of Proposals and Recommendation**

### **Call In**

The application is brought to the Planning Committee at the request of Councillor Sheahan (on behalf of the ward member Councillor Bridges) on the grounds of flooding issues in the area.

### **Proposal**

Planning permission is sought for the erection of a detached two storey dwelling with garage at The Woodlands, Bath Lane, Moira. The site is part of the garden to The Woodlands. The dwelling would be served by an existing access off Bath Lane.

### **Consultations**

Members will see from the main report below that a total of 34 letters of representation have been received from residents, which raise objections. Ashby Woulds Town Council raises objections. Councillor Bridges also raises concerns and comments have been received from Councillor Sheahan. All other statutory consultees have raised no objections.

### **Planning Policy**

The majority of the application site (including the dwelling) is located within the Limits to Development as defined in the adopted Local Plan, with the northern part of the site located outside the Limits to Development. The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

### **Conclusion**

The key planning issues arising from the application details are:

- The principle of the erection of a dwelling on the site
- Impact on the character and visual amenities of the area
- Impact on residential amenities
- Impact on highway safety
- Impact on protected trees
- Impact on flood risk and surface water drainage
- Impact on the River Mease SAC.

The report below looks at these details, and Officers conclude that the details are satisfactory. The proposal meets the requirements of relevant NWLDC policies, including the Good Design for North West Leicestershire SPD, and the NPPF.

### **RECOMMENDATION - THAT PLANNING PERMISSION BE GRANTED SUBJECT TO CONDITIONS AND THE SIGNING OF A SECTION 106 AGREEMENT**

**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

Planning permission is sought for the erection of a detached two-storey dwelling with detached garage at The Woodlands, Bath Lane, Moira. The application site lies on the north eastern side of Bath Lane, in the north western corner of a wider site associated with The Woodlands. The application site is adjoined by dwellings to the south east and south west, with vegetation, trees and woodland adjoining to the north and north west.

An application for the erection of three detached two storey dwellings and garaging (14/00415/FUL) on the southern part of the wider site is also to be considered by this Planning Committee.

The site forms part of the garden to The Woodlands and is currently grassed, with mature lime trees located alongside the south western boundary and other mature trees on its northern and north western parts protected by Tree Preservation Order T284. The land rises up by just over two metres towards the northern boundary.

The dwelling would be sited centrally on the site, with its first floor accommodation within the roofspace, with the garage adjacent to the south eastern boundary. Five protected trees (one ash, three poplar and one chestnut) are proposed to be removed.

Access would be gained via the existing access and private drive off Bath Lane that currently serves The Woodlands and three other dwellings. Parking and turning space would be provided to the front of the dwelling.

A private right of way which serves a number of dwellings on Bath Lane runs through the wider site and through the application site alongside the rear boundaries to Nos. 34 to 42 Bath Lane.

Amended plans have been received during the course of the application to address officer and consultee concerns relating to layout and design and impacts on residential amenities, protected trees and drainage and flood risk. The precise dimensions of the proposal are available to view on the planning file.

The majority of the site lies within the Limits to Development as identified in the adopted North West Leicestershire Local Plan (2017) with the northern part of the site lying outside the Limits to Development. The dwelling, garage and parking/turning area would be sited on the part of the site that lies within the Limits to Development, with no built development proposed on the area outside the Limits to Development, which would form part of the garden. The site is considered to lie within Flood Zone 1. The site also lies within the catchment area of the River Mease Special Area of Conservation. An unnamed watercourse runs alongside the wider site's south eastern boundary which is a tributary of the River Mease. Other trees within the wider site are protected by the TPO.

#### *Planning History:*

Outline planning permission (04/00743/OUT) was granted in September 2004 for the erection of three dwellings on the wider site. As a result of the 2004 approval and an earlier grant of outline planning permission for two dwellings (01/00150/OUT), permission was in place for four dwellings, as one of the dwellings on the 2004 permission replaced one on the 2001 permission. Both the 2001 and 2004 permissions have expired. An application for six dwellings on the wider site (06/00685/FUL) was withdrawn in June 2006.

Subsequently planning permission was granted in September 2007 for the erection of three dwellings at the front of the wider site (07/00298/FUL), which have been built. Permission was granted in January 2012 for amendments to Plot 3 (now Devana House) (11/00247/FUL).

Permission was refused in May 2010 for the erection of a detached dwelling (10/00291/FUL) in a similar position to Plot 3 on the 2007 permission, due to adverse impacts from its relationship with Plot 2 on the 2007 permission.

The most recent permissions on the site relate to works to protected trees (11/00775/TPO and 16/00048/TPO), with an application for the felling of five protected trees being refused in March 2017 (17/00075/TPO). Other history back to 2001 also relates to works to trees (03/01247/TPO, 02/00741/TPO, 01/00744/TPO and 01/00376/TPO).

## 2. Publicity

25 Neighbours have been notified.

Site Notice displayed 19 November 2018.

Press Notice published Burton Mail 30 July 2014.

## 3. Summary of Consultations and Representations Received

### Statutory Consultees

**Ashby Woulds Town Council** objects until the outstanding issue relating to the drains is resolved. The Town Council is against further development along Bath Lane and in the Via Devana area until the existing drainage and flooding problems are sorted.

The Town Council also objects on the following grounds:

- The area is liable to flooding and further development increases the risk;
- Current drainage system does not have the capacity for more and no permissions should be granted until the existing problems are resolved.

**The Environment Agency (EA)** originally objected on the grounds that the applicant needed to demonstrate that a Sequential Test had been undertaken. The EA subsequently advised that it also objected as the submitted Flood Risk Assessment (FRA) was inadequate. Following submission of a Hydraulic Modelling Report the EA advised that it was satisfied that the development is outside of Flood Zones 2 and 3 and therefore does not require an FRA. Therefore the EA advised that it wishes to remove its previous objection.

**Leicestershire County Council - Ecology** initially had no objections subject to submission of clearer copies of surveys to clarify the loss of trees. Following the submission of amended plans the County Ecologist advised that she has no further comments as the issues relating to trees are arboricultural rather than ecological.

**Leicestershire County Council - Highway Authority** has no objections subject to conditions.

**Leicestershire County Council - Lead Local Flood Authority (LLFA)** has not raised any objections subject to the imposition of conditions.

**NWLDC - Environmental Protection** has no environmental observations.

**NWLDC - Land Contamination** requests the imposition of conditions.



**NWLDC - Waste Services** has provided comments in respect of bin collection arrangements.

**NWLDC - Tree Officer** initially recommended refusal on the basis that the proposal would cause damage to protected trees. Following submission of amended plans the Tree Officer has no objections.

**Severn Trent Water** has no objections.

### **Third Party Representations**

Councillor Bridges, who is the ward member, has advised that there are serious flooding problems that need resolving before any future development can be considered within the affected zone.

Councillor Sheahan has queried whether a developer contribution could be sought towards flooding investigations.

34 letters of representation (some of which include photographs) have been received from local residents which object on the following grounds:

#### *Design and Visual Impact*

- impact on landscape and surroundings;

#### *Residential Amenities*

- direct overlooking/loss of privacy to dwellings and gardens on Bath Lane, Via Devana and within The Woodlands site;
- loss of light to dwellings on Via Devana;
- impacts from noise and lighting;
- impact on tranquillity;
- understood to be quiet rural area with restriction on development;
- disruption from construction works
- additional building being considered at expense of existing homes;

#### *Highway Safety*

- increase in traffic;
- site access and driveway are too narrow for two vehicles to pass and is unsafe due to lack of passing places, footways and lighting and traffic resulting from further four houses;
- plans are inaccurate as do not show the entrance posts and gates which impact on the width of the access and driveway;

#### *Trees and Ecology*

- impacts on and loss of trees protected by tree preservation order (TPO);
- trees have been destroyed on the site in the past;
- has the scheme been validated by the Council's Tree Officer;
- more trees should be planted rather than disturb trees that have taken years to establish;
- impact on habitats and wildlife;

#### *Flood Risk*

- inadequate drainage and sewage systems in the area;
- existing flooding, including at the junction of Bath Lane with Via Devana and onto land and gardens within The Woodlands and into houses on Via Devana, will be made worse;
- this flooding results from heavy rainfall and includes overflow of the main sewer on Bath Lane

resulting in health and safety issues and risks for residents and property from sewage contamination in their houses and gardens, not being able to leave their houses or enter and leave their driveways and vehicles stranded and damaged;

- since June 2019 there has been seven floods and two of these have seriously breached Bath Lane causing a crisis situation and damage to property;
- moderate rain flows from the site have resulted in flooding of a nearby garage;
- significant measures have not been put in place to alleviate the existing flooding issues;
- new drains installed to Bath Lane have added to flooding issues by back flowing and increasing flood water in the road;
- residents are unhappy that the situation regarding flooding remains unresolved;
- removal of trees will interfere with the natural drainage system;
- issues relating to this flooding need to be resolved before further development is allowed in this location;
- all applications in Moira should be reviewed by a Council committee that includes local and county councillors, County Council staff and the MP as well as those involved in the flood working group (town councillors, STW, the Highway Authority and the LLFA);
- errors in the original Flood Risk Assessment - including confusing the unnamed watercourse with the River Mease and no mention of existing flooding that occurs in the area - so how can this report be used for decision making;
- the second flood report states that further work needs to be done.

#### *River Mease*

- significant environmental risk to the River Mease and its tributaries;
- sensitivities associated with the River Mease;
- foul water has entered the headwaters of this river;
- impact on the River Mease and its tributaries from sewer contamination resulting from flooding at junction of Via Devana and Bath Lane;

#### *Other Matters*

- no need for more houses;
- no meaningful contribution to local housing needs;
- impacts on existing infrastructure;
- no local economic or social benefits to the community and local or wider economy;
- development does not meet any of the criteria set out in the NPPF relating to environmental objectives;
- impact of ground works on stability of nearby dwellings built on rafts with underpinning and previously subject to subsidence;
- more subsidence could occur by building over mined ground;
- would the Council cover the cost of future subsidence if planning permission is granted;
- details of boundary plans required;
- impact on property values;
- impact on views;
- 12 foot wide right of way for the bungalows on Bath Lane that runs through the site is shown blocked by a proposed fence;
- the applicant has no legal right to close off the right of way;
- if the Council approve a scheme with a right of way shown blocked it would be guilty of condoning a breach of civil law which could result in a civil action against the applicant and possibly the Council as well as a judicial review;
- the Council has to refuse the application as it knows a permission cannot be implemented in the manner shown on the plans;
- the Council made mistakes with the three new dwellings on the site;
- these dwellings were started after the planning permission had expired;

- only benefit is for commercial interests of the landowner.

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

#### **4. Relevant Planning Policy**

##### **National Planning Policy Framework - February 2019**

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are applied. The following sections of the NPPF are considered relevant to the determination of this application:

Paragraphs 8 and 10 (Achieving sustainable development)  
Paragraph 11 (Presumption in favour of sustainable development)  
Paragraphs 54, 55 and 56 (Decision-making)  
Paragraphs 59, 68, 73, 74 and 78 (Delivering a sufficient supply of homes)  
Paragraph 91 and 92 (Promoting healthy communities)  
Paragraphs 102, 103, 108, 109 and 110 (Promoting sustainable transport)  
Paragraphs 117, 118, 121 and 122 (Making effective use of land)  
Paragraphs 124, 127, 128 and 130 (Achieving well-designed places)  
Paragraphs 148, 150, 153, 155 and 158-164 (Meeting the challenge of climate change, flooding and coastal change)  
Paragraphs 170, 175, 177, 178, 179 and 180 (Conserving and enhancing the natural environment)

##### **Adopted North West Leicestershire Local Plan (2017)**

The North West Leicestershire Local Plan forms part of the development plan and the following policies of the Local Plan are relevant to the determination of the application:

S1 - Future Housing and Economic Development Needs  
S2 - Settlement Hierarchy  
S3 - Countryside  
D1 - Design of New Development  
D2 - Amenity  
IF4 - Transport Infrastructure and New Development  
IF7 - Parking Provision and New Development  
En1 - Nature Conservation  
En2 - River Mease Special Area of Conservation  
En3 - The National Forest  
En6 - Land and Air Quality  
Cc2 - Water - Flood Risk  
Cc3 - Water - Sustainable Drainage Systems

##### **Other Guidance**

The Community Infrastructure Levy Regulations 2010  
The Conservation of Habitats and Species Regulations 2017  
Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System)  
National Planning Practice Guidance - March 2014  
River Mease Water Quality Management Plan - August 2011  
The River Mease Developer Contributions Scheme (DCS) - September 2016  
Good Design for North West Leicestershire SPD - April 2017

National Design Guide - October 2019  
 Leicestershire Highways Design Guide (Leicestershire County Council)  
 National Forest Strategy 2014-2024

## 5. Assessment Principle

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, comprises the adopted North West Leicestershire Local Plan (2017).

The majority of the application site lies within the defined Limits to Development within the Local Plan, although the northern part of the site lies outside the Limits to Development and is therefore within the countryside. The dwelling, garage and parking/turning area would be sited on the part of the site that lies within the Limits to Development. Policy S2 advises that in villages such as Moira a limited amount of growth will take place within the Limits to Development.

Whilst residential development is not a form of development permitted in the countryside under Policy S3 of the Local Plan (unless under specific circumstances that do not apply here), the part of the site within the countryside would form part of the garden for the proposed dwelling and no built development is proposed within this area. As this area is already part of the garden to The Woodlands, the use of this part of the site would not change and is therefore acceptable in principle.

Consideration must also be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) as set out in the NPPF.

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 Council is able to demonstrate a five year supply of housing (with 20% buffer) against the housing requirement contained in the Local Plan.

In terms of social sustainability it is noted that in respect of the withdrawn application for six dwellings on the wider site (06/00685/FUL), officers raised concerns that the site was not in a sustainable location for new dwellings under the criteria set out under Policy H4/1 of the previous adopted Local Plan. However that plan and policy are no longer in force.

Moira provides a range of day to day facilities, e.g. shop/Post Office, small supermarket, two public houses, primary school, village hall, recreational facilities/open space and employment uses. The nearest bus routes serve Norris Hill, Overseal and Donisthorpe, which are all at least a 25 minute walk away. There is a footway along Bath Lane in both directions; to the south it provides a route into the main parts of Moira and to the north it provides a link to Conkers, the Miners Welfare sports club, employment uses and on towards Overseal. Some of these services/facilities are within 800 metres to one km (preferred maximum walking distance) of the site but the bus services are not. However whilst there is limited access to bus services, given the range of services within walking distance it is considered that occupiers of the dwelling would not necessarily be dependent on the private car. Taking all of these matters into account it is considered that the site is socially sustainable in terms of access to services/facilities.

Given the scale of the development it is considered that the proposal would not result in unsustainable demands on local services and facilities. The proposal falls below the threshold

of 10 dwellings or more under which contributions towards services and facilities would be sought.

In terms of environmental sustainability, the site currently represents garden land associated with The Woodlands. Garden land in built up areas is excluded from the definition of previously developed land set out in the NPPF and therefore this effectively constitutes a greenfield site. The NPPF states that decisions should encourage the effective use of land by re-using land that has been previously developed and that Local Planning Authorities should consider the use of policies to resist inappropriate development of residential gardens. As the Council does not have a specific policy that prevents development on gardens, it is deemed that a reason for refusal on the basis of the loss of part of the residential garden could not be justified in this instance.

The proposal would also not result in unacceptable impacts on the natural, built or historic environment as set out in more detail below. There would also be very limited economic benefits which would include local construction jobs and helping to maintain local services in the area.

In the overall balance, compliance with the settlement hierarchy and strategic housing aims of Policy S2, the lack of unacceptable impacts on the natural, built or historic environment, the site's social sustainability credentials and very limited economic benefits all weigh positively in the balance and are considered to outweigh the loss of greenfield land. It is therefore considered that the proposal represents a sustainable form of development.

### **Design and Visual Impact**

The need for good design in new residential development is outlined in Policy D1, the Council's Good Design SPD, the National Design Guide and Paragraphs 124 and 127 of the NPPF. Policy En3 requires development in the National Forest to be appropriate to its Forest setting.

The proposal results in a density of 10 dwellings per hectare (excluding the access drive from the calculation). The Local Plan does not contain a policy setting specific densities. This density is considered appropriate having regard to the character of the area, nearby dwellings and the protected trees.

There are limited views of the site from Bath Lane, as it is set back from the road and screened by mature trees and existing dwellings. Some garden land would be lost but the majority of the land around the dwelling would remain as garden. A large garden area would be retained to The Woodlands taking into account both this proposal and the separate application for three dwellings. Whilst the dwelling would be positioned 80 metres from the road, the development would be well related to The Woodlands, which is set further back into the site. The dwelling would not be at a significantly higher land level than other dwellings or nearby roads. The development would therefore not be overly prominent in the locality or streetscene. The site could also accommodate all of the necessary requirements (private garden, bin storage, parking/turning space) without being too cramped or resulting in over-development.

There are several trees on the site protected by Tree Preservation Order T284 (TPO), which make a positive contribution to the character and visual amenities of the area. The Council's Tree Officer considered that the original plans would have resulted in serious damage being inflicted on the protected trees and as such recommended refusal of the application.

Amended plans have subsequently been submitted which show that five of these protected trees would be removed; a group of four trees (one ash and three poplars) at the northern

corner of the site and one chestnut tree towards the southern boundary. The Tree Officer has not raised objection to the removal of these five trees, which are considered to make a more limited contribution to the character and visual amenities of the area compared to other trees within the site, as they are not visible on their own from public viewpoints and are always seen alongside, and screened by, other protected trees. A condition could be imposed to secure replacement tree planting.

The Tree Officer also has no objections to the amended layout which shows that the majority of trees on the site would be retained, including the row of lime trees alongside the boundary with the dwellings on Bath Lane, and two trees close to the north eastern boundary. These are the trees on the site that are considered to make the strongest contribution to the character and visual amenities of the area.

The dwelling would have a large footprint but would be smaller than The Woodlands and not dissimilar to the three existing dwellings on the front of the wider site. The dwelling would have an unusual design that does not reflect other nearby dwellings. There is however a mix in the scale and design of dwellings in the area, and as noted above there are limited views of this part of the site with good screening in place. Its mass would also be broken up as a result of its design. The garage would be small in scale and of a simple design.

A bin collection area is proposed close to the junction of the access drive with Bath Lane which would also serve the three dwellings proposed under the separate application (14/00415/FUL), which is considered in detail in the section of this report titled 'Bin Collection and Storage'. The bin collection area would be set back behind the front boundary and so would not be prominent in the streetscene.

It is therefore considered that whilst five protected trees would be removed and the design of the dwelling would not reflect the positive characteristics of other dwellings in the locality, on balance the proposal, both on its own and cumulatively with the separate three dwellings, would not be significantly harmful to the character and visual amenities of the streetscene and locality within the National Forest to justify a reason for refusal under Policies S3, D1 and En3 of the Local Plan, the Good Design SPD and the National Design Guide.

### **Residential Amenities**

The proposal is likely to result in an increase in traffic using the access drive which runs adjacent to Hollybrook House and its rear garden, as well as being close to No. 34 Bath Lane and The Woodlands. However the situation would not be dissimilar to a development on a corner site with a side road running close to dwellings and their rear gardens, which was considered to be a yardstick for an acceptable standard in an appeal decision at Ashby de la Zouch (07/00624/OUT).

Whilst tranquility in the area may in part be due to the size of The Woodlands' existing garden it is not unusual to find housing adjacent to other housing. New housing is unlikely to generate significant levels of noise and disturbance or impacts from lighting. A condition could be imposed restricting construction hours given the site is bounded by other dwellings and access is via a private drive that passes close to dwellings.

The bin collection area would be located eight metres from Hollybrook House's garden and 18 metres from its side elevation, which contains windows serving habitable rooms, with the access drive in-between. The bin collection area would be at least 18 metres from the boundary with No. 34 Bath Lane. A condition could be imposed requiring the bin collection area to be used for bin collection purposes only. The Environmental Protection team has not raised any objections in

relation to impacts on existing residents. As such the proposal is unlikely to result in significant impacts on residential amenities from noise, disturbance, smells and lighting. The Council also has separate powers under the Environmental Protection Act to deal with noise, disturbance, smells and lighting.

The dwelling would be at least 50 metres from the three dwellings within The Woodlands site (Hollybrook House, The Laurels and Devana House) and at least 38 metres from their front gardens.

The dwelling would be 16 metres from the nearest habitable room windows to The Woodlands. The dwelling's side (south eastern) elevation would contain a first floor window serving a bedroom which would be 16 metres from The Woodlands' nearest windows. However this elevation would not face directly towards The Woodlands' windows, with the nearest room being served by at least two windows. Whilst the dwelling would be 9.5 metres from The Woodlands' rear garden, it would not be located in close proximity to the private amenity space and The Woodlands' retained garden would still be extensive in size. Whilst on the boundary with The Woodlands, the garage would be single storey and closest to its garages.

The dwelling would be eight metres from the gardens to Nos. 34 and 36 Bath Lane and 13 metres from the garden to No. 38 Bath Lane, and at least 40 metres from the dwellings themselves, which are all single storey and have rear conservatories and rear windows serving habitable rooms. However the gardens are long (at least 30 metres), and the existing close boarded fencing on the boundary and line of protected trees alongside the boundary would provide some screening. The front (south western) elevation would have one rooflight at first floor (in its roofslope) serving a bathroom which could be conditioned to be obscure glazed. This elevation would also not face directly towards the dwellings and gardens on Bath Lane.

The first floor of the side (north western) elevation would contain one large window with a Juliet balcony serving a bedroom, along with an adjacent balcony. This window and balcony would face towards the end parts of the gardens on Bath Lane, and would also not face directly back to back with the dwellings. Amended plans have been received which show parts of the window to be obscure glazed, and the design of a Juliet balcony prevents it from being used as a balcony. These plans also show a screen along the north western edge of the balcony to prevent direct overlooking of the dwellings and gardens, which could be secured by condition.

Whilst there may be some overlooking of the gardens to the dwellings on Bath Lane, given the circumstances set out above it is considered that this impact would not be so significantly harmful to the amenities of the occupiers of these dwellings or other nearby dwellings to justify a reason for refusal under Policy D2 of the Local Plan and the Council's Good Design SPD.

### **Highway Safety**

Bath Lane is a classified road subject to a 30mph site limit. The existing access and driveway currently serves four dwellings, and if this and the separate application for three dwellings were approved would result in a total of five or eight dwellings on the site.

The County Highway Authority (CHA) initially referred to the comments it made in respect of a previous application for one dwelling on the site (10/00291/FUL) where it had no objections subject to conditions. However that proposal related to a dwelling that would have replaced another dwelling approved in 2007 and so there would have been no increase in the amount of traffic.

Under the CHA's Standing Advice it does not need to be consulted on applications for a single

dwelling. The CHA has also not raised any objections to the application for three dwellings and also did not object to the withdrawn application for six dwellings which would have resulted in seven dwellings on the site.

However as there could be a total of eight dwellings across the site if both current applications were approved, and concerns have been raised by residents regarding the safety of the access and driveway, in particular due to its width, the CHA has been asked to provide comments on the application.

Whilst the layout plan indicates that no amendments are proposed to the access, it is bound by walls and gate posts on both sides, which are not shown on the plan. The CHA advises that an access serving two to five dwellings should be 4.25 metres wide for a distance of five metres behind the highway boundary, and one serving eight dwellings should be 4.8 metres wide for this distance. In both cases if an access is bound on one side, e.g. by a wall, then its width should be increased by 0.5 metres on that side. It is not clear whether the existing access meets the required width for this proposal, e.g. 4.25 metres, and so the CHA has requested imposition of a condition requiring this access width. A condition could be imposed on the application for three dwellings requiring the access width for that proposal alongside the existing dwellings, e.g. 4.8 metres.

The CHA also advises that there have been no recorded personal injury collisions within the last five years close to the access. A condition could be imposed requiring vehicular and pedestrian visibility splays. The CHA considers that a safe and suitable access can be achieved and there is no evidence of highway safety concerns at this location. The driveway within the site is shown on the layout plan to be at least 4.5 metres wide and narrows to below four metres at the point where it would only serve the proposed dwelling.

The CHA also advises that the parking and turning space is acceptable. The bin collection area would not impinge on the access, driveway and visibility splays.

The Highway Authority therefore advises that the impacts of the development on highway safety would not be unacceptable and when considered cumulatively with other developments, the impacts on the road network would not be severe. As such the proposal complies with Policies IF4 and IF7 of the Local Plan and paragraphs 108 and 109 of the NPPF.

### **Trees**

Mature lime trees located alongside the south western boundary and other mature trees on its northern and north western parts are protected by Tree Preservation Order T284 (TPO). The Tree Officer considered that the original plans would have resulted in serious damage being inflicted on the protected trees and as such recommended refusal of the application. The trees in the north western corner of the wider site are outside the application site and no works are proposed to the woodland that lies beyond the site's north eastern boundary.

An amended tree survey and tree plan have been submitted, along with amended plans which show that five of these protected trees are to be removed; one ash and three poplars at the northern corner of the site and one chestnut tree towards to the southern boundary. The impact on the character and visual amenities of the area from the loss these protected trees is considered earlier in the report in the section relating to 'Design and Visual Impact'.

The chestnut tree would be removed as it would be too close to the dwelling and would be likely to cause future incompatibility problems. As a result of the removal of the four trees in the northern corner, the dwelling would have a rear garden with areas that would not be shaded by



trees. The dwelling and garage would be outside the root protection areas to the ash and poplar trees close to the northern boundary and the row of lime trees. Whilst the canopy of the ash tree would be around two metres from the dwelling, it would predominantly be close to non-habitable rooms and would be to the north east of the dwelling so should not result in significant overshadowing. The poplar tree would be further away to the east. The dwelling should largely be outside the canopies to the lime trees. There would also be an open aspect from the dwelling towards the south east.

The driveway would now run through the existing parking/turning area to The Woodlands and then crosses its north western boundary to enter the application site. The Tree Officer is satisfied with this amended route which moves the driveway away from the protected trees.

There may be a requirement to widen the access (as set out above in the 'Highway Safety' section of this report), which may impact on the protected trees. However it is not clear what works would be required to widen the access, and whether any trees would be affected, so the Tree Officer has advised that this matter could be dealt with by condition. Method statements could be submitted for construction of the bin collection area and any widening/strengthening of the driveway.

Conditions could be imposed relating to submission of a tree protection plan to include protective fencing during construction, no changes to ground levels within the fenced off areas and submission of method statements for any works, e.g. installation of services, within root protection areas. As such the proposal would comply with Policy En1 of the Local Plan.

### **Ecology/Protected Species**

There are mature trees and hedgerows on and adjacent to the site, as well as adjacent trees and woodland, the site is part of a large garden, a watercourse lies 67 metres to the south east and the Ashby Canal lies to the north. All of these are features that could be used by European Protected Species (EPS) or national protected species. As EPS may be affected by a planning application, the Local Planning Authority has a duty under regulation 9(5) of the Habitats Regulations 2017 to have regard to the requirements of the Habitats Directive in the exercise of its functions.

An ecology survey found no evidence of important flora/fauna, nor of protected species using the site or their habitats. Whilst some trees would be removed that may have potential to be used by bats and breeding birds, there would be other similar habitat retained on site as well as on adjoining land. The watercourse and canal are some distance from the site with intervening land uses and so it is unlikely that species using these water bodies would be found on the site. The County Ecologist requested clearer copies of surveys to clarify the loss of trees. Following submission of an amended tree survey the County Ecologist has no objections and advises that the issues relating to trees relate to arboricultural issues rather than ecological issues. On this basis it is considered that important flora/fauna and protected species and their habitats would not be adversely affected by the proposal and so the proposal complies with the Habitats Regulations 2017 and Policy En1 of the Local Plan.

### **Flood Risk and Drainage**

An unnamed watercourse, some 67 metres to the south east of the site, runs through the wider site adjacent to its south eastern boundary, flowing from north east to south west. This watercourse flows from the Rawdon Road area, is culverted underneath the Ashby Canal and Via Devana/Whitworth Close, then resurfaces as it flows through the site, passes underneath Bath Lane and the Miners' Welfare site and former railway embankment before discharging into the Hooborough Brook.

*Background*

Heavy rainfall can result in flooding occurring in the vicinity of this watercourse, and there have been several instances of this recorded back to 2006. This flooding can extend along Bath Lane and Via Devana (blocking the road), and into the Miner's Welfare ground, the site entrance and the gardens to Hollybrook House, The Laurels and Devana House. Photographs have been provided by several residents to show the extent of the flooding.

Concerns have been raised by local residents, Ashby Woulds Town Council, Councillor Bridges (who is the ward member) and Councillor Sheahan throughout the course of the application regarding this flooding and the impact of the development on this flooding. A petition has been submitted to Leicestershire County Council by local residents requesting immediate action to resolve the flooding. In addition it has been requested that issues relating to this flooding need to be resolved before the application is permitted and further development is allowed in this area.

Discussions and investigations have taken place and measures undertaken to resolve the flooding since before the application was submitted and on an ongoing basis. Most recently pipes were installed along Bath Lane in autumn 2019, which unfortunately did not resolve the problem, and so a meeting took place in January 2020 between the Lead Local Flood Authority (LLFA), the District Council, Councillor Bridges and Councillor Sheahan, the Town Council and local residents.

In July 2020 the LLFA advised that a larger pipe system could not be installed due to the presence of statutory undertakers' equipment and so two smaller pipes were installed instead. The LLFA has advised that engineers are of the view that a larger pipe system under Bath Lane would alleviate the problems, that a crate attenuation system would not be a solution (because the system would be downstream of the flooding meaning Bath Lane would flood before the attenuation system is reached, so the attenuation crates would be empty whilst Bath Lane floods) and that a trial hole is in the process of being organised to ascertain what can be done at Bath Lane and the cost. The LLFA has also advised that it is also liaising with the EA, that other measures are being considered (e.g. repairs to the private culvert under the sports ground) and the section of watercourse under the railway embankment will continue to be cleansed.

*Planning Considerations*

Initially the EA objected in the absence of any evidence to demonstrate that the flood risk Sequential Test had been applied, which is required to be undertaken on sites shown to be covered by Flood Zones 2 and 3 on the EA's flood risk map, and on the grounds that the Flood Risk Assessment (FRA) was inadequate.

A Hydraulic Modelling Report was subsequently submitted which concludes that the modelled 20-year, 100-year and 1000-year flood events do impact on the wider Woodlands site but that flooding is restricted to the south western part of the wider site (i.e. the area around the three existing dwellings at the front of the wider site, part of the site entrance and a small part of the garden to Plot 1 on the three dwelling scheme). This modelling correlates with the parts of the wider site that have flooded in the past, and differs from the EA's flood risk map which suggests that the whole of the wider site would be inundated with flood water.

The Modelling Report also included a blockage risk analysis of the two culverts in the vicinity of the site (a small culvert within the wider site close to Devana House and the culvert that runs under Bath Lane and the Miners Welfare site) which indicates some increases in the modelled flood events and depths by up to 20mm in the watercourse channel and 25mm within the wider

site.

The Modelling Report recommends that the modelled 100-year event and results from the blockage risk analysis should be taken into account when setting any on-site flood mitigation measures, e.g. when setting the finished floor levels of the dwelling. No further works or other flood risk mitigation measures were identified in this report.

The EA was consulted on the Modelling Report and advised that it was satisfied that the development is outside of Flood Zones 2 and 3 and therefore does not require an FRA. Therefore the EA advised that it wishes to remove its previous objection. As it has been demonstrated that the site is not within Flood Zones 2 and 3, and this has been accepted by the EA, then regardless of what the EA's flood risk map shows, the site is within Flood Zone 1 which is the zone with the lowest probability of flooding.

The site is not within an area at low, medium or high risk of surface water flooding based on the EA's flood risk map. However due to the flooding issues the LLFA has been consulted on the application several times and information has been provided to it in respect of the objections raised by residents and the Town Council. As outlined above the LLFA has been investigating the flooding in the vicinity of the site and liaising with residents, the Town Council, the ward member and other interested parties, and so is aware of the flooding issue and the concerns raised. The LLFA has not raised any objections to the proposal in any of its comments. It has also indicated that the new dwelling is unlikely to significantly increase the surface water runoff rate from the site. The LLFA has advised:

- when determining applications the District Council should ensure flood risk is not increased elsewhere and only consider development in areas at risk of flooding where informed by a site specific FRA confirming it will not put the users of the development at risk;
- the proposals constitute minor development and as such it is not within the LLFA's statutory duty to comment. However, the District Council has asked the LLFA to comment due to ongoing flooding issues nearby. It is noted that the EA has concluded that the site falls within fluvial Flood Zone 1 (low risk of flooding), as such this development type is suitable at this location;
- the LLFA advises the District Council that the proposals are considered acceptable to the LLFA and that planning conditions should be attached to any permission granted.

As noted above the EA has advised that an FRA is not required. The conditions suggested by the LLFA relate to submission of a surface water drainage scheme for the site (for both during construction and once the development is complete), finished floor levels and a maintenance plan for the surface water drainage system before development commences on site. The surface water scheme is required to include holding sustainable drainage techniques that incorporate treatment trains to maintain or improve existing water quality, limit surface water runoff from the site to equivalent greenfield rates (i.e. limit it to the same runoff rate as occurs from the site now) and the ability to accommodate surface water runoff on site up to the critical 1 in 100 year return plus an allowance for climate change.

As noted above a trial hole investigation is being organised to ascertain what can be done at Bath Lane, and the LLFA is also looking into other measures. Consideration has been given to whether a developer contribution could be sought to fund a trial hole investigation. However due to there being no objections from the EA and LLFA to the application a developer contribution could not be sought as it would not meet the three tests in the 2010 CIL Regulations.

The proposal would comply with the requirements of Policy Cc2 and paragraphs 155 and 163 of the NPPF, as it is accepted by the EA and LLFA to be within an area at the lowest risk of

flooding (Flood Zone 1), and so is on a site with the lowest probability of flooding where it would not increase the risk of flooding elsewhere. Conditions could also secure a sustainable drainage system as required by Policy Cc3.

Therefore for the reasons set out above, and the lack of objection from the EA and the LLFA, as well as from STW (Severn Trent Water), it is considered that a reason for refusal on the basis of significant impact on flood risk or drainage could not be justified under Policies Cc2 and Cc3 of the Local Plan and paragraphs 155 and 163 of the NPPF.

**River Mease Special Area of Conservation/SSSI**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). An unnamed watercourse that is a tributary of the Hooborough Brook, which in turn is a tributary of the River Mease, runs alongside the wider site's south eastern boundary, some 67 metres to the south of the application site. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river.

As a result of the proposed development there could be an impact on the River Mease SAC, which may undermine its conservation objectives, from an increase in foul and surface water drainage discharge and its proximity to a tributary of the river. Therefore an appropriate assessment of the proposal and its impacts on the SAC is required.

As the site is currently greenfield with no associated foul drainage discharge, there would be an increase in occupancy of the site, resulting in an increase in foul drainage discharge from the site. Additional foul drainage discharge from the site would adversely impact on the SAC as it would pass through the STW sewage treatment works within the catchment area of the SAC and contribute to the raised phosphate levels in the river.

Discharge into the river or its tributaries from surface water disposal via a sustainable drainage system or via the mains sewer system can also result in an adverse impact on the SAC, including in relation to water quality and flow levels.

The site is also located close to the tributary which could be affected by construction works and activity associated with the proposal.

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 CIL Regulations and paragraph 177 of the NPPF. There is no capacity available under DCS1 and so DCS2 was adopted by the Council on 20 September 2016.

The applicant has indicated she is willing to pay the required DCS contribution and the Council's solicitors have been instructed. The Environment Agency and Natural England have both issued Standing Advice relating to the River Mease SAC under which they do not need to be consulted if the proposal connects to the mains sewer and the applicant is agreeable to payment of the DCS contribution.

The flows from the dwelling need to be taken into account against the existing headroom at Donisthorpe Treatment Works which serves Moira. Whilst it is understood that there is currently no capacity at Donisthorpe, STW has previously advised that it will not object to proposals where there is no capacity available but that a phasing condition should be imposed.

However whilst a phasing condition was imposed on previous permissions in the Moira area at

STW's request as there was no capacity available at the treatment works at that time, STW has the opportunity to consider whether capacity is available within its sewer network when issuing permits to connect to the sewer system. Therefore it is considered that a phasing condition is no longer required.

On the above basis, compliance with the proposed legal agreement would ensure that foul drainage discharge from the site would not adversely impact on the integrity of the River Mease SAC.

As the new dwelling would be sited on a permeable part of the site, a condition could be imposed requiring surface water to discharge to a sustainable drainage system. As noted earlier in this report (in the section relating to 'Flood Risk and Drainage') the LLFA has requested such a condition, which would need to include measures to restrict water flows and protect water quality. Conditions would also be imposed relating to surface water drainage during construction and a maintenance plan.

On the above basis, compliance with the proposed conditions would ensure that surface water run-off from the site would not adversely impact on the integrity of the River Mease SAC.

The application site is 67 metres from the watercourse and there is unlikely to be any direct impact from the proposal, either from construction works or increased activity on the site, on its channel and banks, as it is separate from the site. On this basis, construction works and increased activity on the site would not adversely impact on the integrity of the River Mease SAC.

Therefore it can be ascertained that the proposal will, either alone or in combination with other plans or projects, have no adverse effect on the integrity of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI, and would comply with the Habitat Regulations 2017, the NPPF and Policies En1 and En2 of the Local Plan.

### **Land Stability and Contamination**

Concerns have been raised regarding the stability of the site and impacts on nearby dwellings on Bath Lane previously affected by subsidence. The Planning Practice Guidance states that if there is a risk of subsidence the proper design of buildings and their structures to cope with any movement should be ensured. However the site is not within the Coal Authority's Development High Risk Area and therefore a coal mining risk assessment is not required. The Council's Land Contamination Officer has requested the imposition of conditions relating to contaminated land. The Council's Building Control team has also advised that whilst there are unlikely to be any issues associated with land stability a ground investigation report would be required under the Building Regulations. The dwelling would also be at least 40 metres from the dwellings on Bath Lane. As such it is considered that a reason for refusal in respect of land stability could not be justified under Policy En6 of the Local Plan and paragraphs 178 and 179 of the NPPF.

### **Bin Collection**

The Council's Waste Services team advises that occupiers of the dwelling would be required to present their bins at the end of the access drive adjacent to the public highway (i.e. Bath Lane) for collection. The bin collection area would be close to the front boundary and access drive which is acceptable to the Waste Services team.

In this case the dwelling would be 80 metres from the bin collection area. Whilst the Building Regulations require bins to be stored no more than 25 metres from a bin collection area, which would be exceeded in this case, this is separate legislation and there is no requirement in the

Local Plan and Good Design SPD to meet these requirements in such a situation. The bin collection arrangements would be similar to those for residents of the four existing dwellings who it is understood leave their bins for collection by the roadside. There would also be a fairly level route through the site (i.e. no steep gradients). The bin collection area would not adversely impact on visual and residential amenities, protected trees or highway safety as outlined earlier in this report. Alternatively residents of the dwelling may leave their bins for collection by the roadside (similar to existing residents). If this did occur bins should be removed once emptied, and if not the Council has powers to require bins to be removed from the public highway. It is therefore considered that there is not any policy justification to warrant a refusal of permission in respect of bin collection and storage. A note to applicant could be imposed advising that residents would need to leave their bins for collection in the bin collection area or by the roadside.

### **Other Matters**

A private right of way which serves a number of dwellings on Bath Lane runs through the wider site and the application site alongside the rear boundaries to Nos. 34 to 42 Bath Lane.

Concerns have been raised by occupiers of some of these dwellings that the proposal would block this right of way. The original plans showed a post and rail fence along the site's north western boundary that would cross the right of way. However an amended layout plan has been submitted which no longer shows a treatment along this boundary, and this boundary is now annotated on the layout plan as 'Application Site Boundary.' A condition could be imposed requiring submission of the details of the boundary treatments to the application site, and it would be expected that any treatment proposed to this boundary would leave a gap for the private right of way. A note to applicant could also be imposed to this effect.

One of the objections states that if the Council approves a development that showed this right of way to be blocked that the applicant and Council were at risk of being sued and the Council was at risk of a judicial review, as to approve such a scheme would show the Council condoning a breach of civil law.

The government's Planning Practice Guidance document states that "*Land Ownership, including any restrictions that may be associated with land, is not a planning matter*". The Council's solicitors advise that as a matter of general principle, planning is concerned with land use from the point of view of the public interest and is not concerned with private rights as such. This general principal is caveated on the basis that the public interest may require the interests of individual occupiers to be considered. In *Robinson v Secretary of State for the Environment* the court stated that the guiding principle appeared to be in each case whether the private interest in question requires to be protected in the public interest. Therefore it is a matter of planning judgement whether the protection of the private right of way is in the public interest.

The private right of way provides access to the rear gardens of a maximum of seven private dwellings, which could also be accessed by other means, e.g. through the dwellings themselves and their front gardens/driveways. Approving a planning application does not affect any legal rights that may exist, and so the beneficiaries of the right of way could pursue a separate civil action should their rights be affected if this application was approved. Therefore notwithstanding that the layout plan has now been amended so that the right of way is no longer shown to be blocked by a fence, it is considered that protection of this right of way would not be a private interest that warrants protection in the public interest through the planning system, and is therefore not a material planning consideration.

Should a boundary treatment scheme be submitted as part of a discharge of condition

application that does not show a gap or entry through any treatment proposed for the site's north western boundary, then the Council would have to have regard to the guidance and case law set out above.

Impact on property values and views are not material planning considerations and therefore cannot be given any weight in the determination of this application.

In respect of the concerns raised regarding erroneous information in the application submission, the submitted information together with all of the information gathered when undertaking the site visits and assessing the application, as well as the information set out in amended and additional plans and documents, have allowed for the application to be fully and adequately assessed.

Matters relating to the implementation of the 2007 planning permission are not relevant to the consideration of this planning application.

### **Conclusion**

The proposal is acceptable in principle. Reasons for refusal in respect of loss of greenfield land, impact on the character and visual amenities of the area, residential amenities, protected trees, flood risk and drainage and land stability could not be justified in this case. The proposal would not adversely impact on highway safety, ecology/protected species and the River Mease SAC/SSSI. 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 a Section 106 Agreement and conditions relating to the following matters:**

- 1 - time limit
- 2 - approved plans
- 3 - construction hours
- 3 - tree protection during construction
- 4 - surface water drainage
- 5 - contaminated land
- 6 - ground and floor levels
- 7 - materials and details
- 8 - details of opening and balcony screen, and use of balcony
- 9 - bin collection
- 10 - landscaping and boundary treatments
- 11- highway safety
- 12 - removal of permitted development rights, obscure glazing to windows

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Erection of two dwellings

Report Item No  
A4

Land Adjacent To 5 Cedar Grove Moira Derby, DE12 6HJ

Application Reference  
20/00699/FUL

Grid Reference (E) 432786  
Grid Reference (N) 316717

Date Registered:  
6 May 2020

Consultation Expiry:  
2 July 2020

Applicant:  
Sarah Robinson

8 Week Date:  
1 July 2020

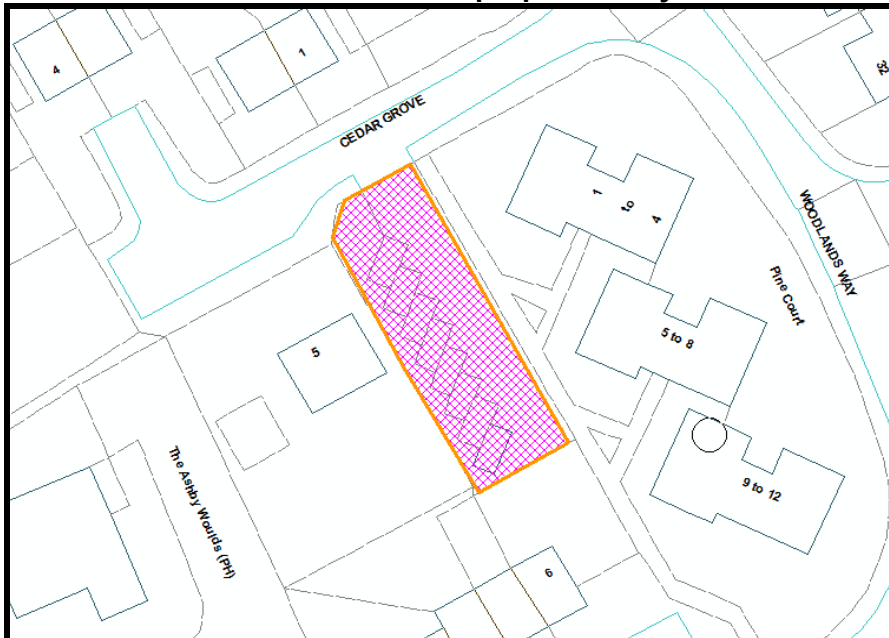
Case Officer:  
Sarah Booth

Extension of Time:  
5 August 2020

Recommendation:  
PERMIT

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



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### **Call In**

The application is brought before Planning Committee as the application has been submitted by North West Leicestershire District Council and contrary representations to the recommendation to permit the application have been received.

### **Proposal**

Planning permission is sought for the erection of two dwellings on land adjacent to 5 Cedar Grove, Moira.

### **Consultations**

A total of 2 letters of neighbour representation have been received. One of the objection letters has been withdrawn following further communication with the neighbour, however all matters raised by the neighbours have been included in this report for the avoidance of doubt. No objections have been received from statutory consultees who have responded during the consultation process.

### **Planning Policy**

The site is located within the Limits to Development on the Policy Map of the adopted Local Plan. The application has also been assessed against the relevant policies within the NPPF (2019), the adopted Local Plan, the Council's Good Design Supplementary Planning Document (SPD) and other relevant guidance.

### **Conclusion**

The principle of the development is acceptable. The proposal is not considered to have any significant detrimental impacts on residential amenity, design, the River Mease SAC or highway safety. The proposal is deemed to comply with the relevant policies in the adopted Local Plan, the advice in the NPPF and the Council's Good Design SPD. It is therefore recommended that the application be permitted, subject to the imposition of planning conditions.

### **RECOMMENDATION:- PERMIT 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 and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

Planning permission is sought for the construction of two new dwellings on land located between flats at Pine Court and No.5 Cedar Grove in Moira. The proposed new dwellings would be for council housing for social affordable rent through North West Leicestershire District Council.

The application site is currently used for parking for the adjacent Pine Court flats, which are also owned by the Council. This land was previously occupied by detached garages serving Pine Court however these buildings have now been demolished.

The site is located within Limits to Development, as defined by the Policy Map to the adopted Local Plan.

Amended plans have been received during the course of the application to address design concerns. The proposal now includes a chimney and the porch design has been amended.

### Recent Planning History

18/02260/DEM - Demolition of 8 brick garages (PER 21.01.2019).

The following application on a nearby site at Woulds Court, Willow Close, Moira is also relevant to this application:

18/02261/DEM - Demolition of Woulds Court flats and associated buildings (PER 21.01.2019).

## 2. Publicity

27 Neighbours have been notified.  
Site Notice displayed 18 May 2020.

## 3. Summary of Consultations and Representations Received

### No objection from:-

Ashby Woulds Town Council  
Leicestershire County Council Ecology  
NWLDC Waste Services

### No objection, subject to condition(s) from:-

NWLDC Environmental Protection - Land Contamination  
Leicestershire County Council Highways - access, parking, turning and visibility splays

### No response received from:-

Severn Trent Water

### Third Party Representations

Two letters of neighbour representation have been received raising objections to the proposal. One of the letters of objection has now been withdrawn following more detailed discussions with the neighbour, however all matters raised are summarised as follows for the avoidance of doubt:

### Objections

- Highway safety / on street parking concerns.
- Responsibility for the upkeep of Cedar Grove.

### **Withdrawn objections**

- Potential for damage to neighbouring properties.
- Concerns with dust / fumes during construction.
- Materials for boundary treatment / boundary / maintenance issues.
- Security / privacy during construction of boundary treatments.

## **4. Relevant Planning Policy**

### **National Planning Policy Framework (2019)**

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

Paragraphs 8 and 10 (Achieving sustainable development);  
 Paragraph 11 (Presumption in favour of sustainable development);  
 Paragraphs 54, 55 and 56 (Decision-making);  
 Paragraphs 59, 68, 73, 74 and 78 (Delivering a sufficient supply of homes);  
 Paragraphs 102, 103, 108, 109 and 110 (Promoting sustainable transport);  
 Paragraphs 117, 118, 121 and 122 (Making effective use of land);  
 Paragraphs 124, 127, 128 and 130 (Achieving well-designed places);  
 Paragraphs 148, 150, 153, 155 and 163 (Meeting the challenge of climate change, flooding and coastal change);  
 Paragraphs 170, 177, 178, 179, 180 and 181 (Conserving and enhancing the natural environment).

### **Adopted North West Leicestershire Local Plan (2017):**

The North West Leicestershire Local Plan forms the development plan and the following policies of the Local Plan are relevant to the determination of the application:

S1 - Future Housing and Economic Development Needs  
 S2 - Settlement Hierarchy  
 D1 - Design of New Development  
 D2 - Amenity  
 IF4 - Transport Infrastructure and New Development  
 IF7 - Parking Provision and New Development  
 En1 - Nature Conservation  
 En2 - River Mease Special Area of Conservation  
 En3 - The National Forest  
 En6 - Land and Air Quality  
 Cc3 - Water - Sustainable Drainage Systems

### **Other Guidance**

The Conservation of Habitats and Species Regulations 2017  
 Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System  
 National Planning Practice Guidance - March 2014  
 River Mease Water Quality Management Plan - August 2011  
 The River Mease Developer Contributions Scheme (DCS) - September 2016  
 Leicestershire Highways Design Guide (Leicestershire County Council)  
 Good Design for North West Leicestershire SPD - April 2017  
 National Design Guide - October 2019

## 5. Assessment

### Principle of Development

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 (2017).

The site is located within Limits to Development as defined by the adopted Local Plan. Policy S2 defines Moira as a 'Sustainable Village' which is supportive of a limited amount of new development within Limits to Development.

It is proposed that these two dwellings would provide additional housing for the Council to rent as affordable units, the principle of which is encouraged by the NPPF and the Council's Local Plan.

Overall, it is considered that the proposal would represent a sustainable form of development and would accord with the policy aims of both the adopted Local Plan and would be acceptable in relation to the NPPF. Therefore the development is acceptable in principle subject to other material considerations.

### Siting and Design and Impact upon Character

The need for good design in new residential development is outlined not only in adopted Local Plan Policy D1 and the Council's Good Design Supplementary Planning Document (SPD) but also paragraphs 127 and 130 of the NPPF.

The wider area consists of a mixture of property types including flats, bungalows and detached and semi-detached dwellings, which are all set back from the public highway. The existing street scene primarily comprises brick built, side gable properties with chimneys and some elements of cladding. The majority of dwellings in this location are semi-detached.

The proposed new dwellings would be two storey semi-detached dwellings with a set back from the highway in line with No.5 Cedar Close and would be constructed in brick and vertical cladding. During the course of the application amended plans have been provided to include a chimney and to amend the detailing of the porch designs so that the two new properties would be symmetrical. The new dwellings are now considered to be more consistent with the design of neighbouring properties.

It is noted that the proposed design includes a protruding front gable element which differs somewhat from the other dwellings in Cedar Grove. However, this feature is similar in appearance to certain aspects of the adjacent Pine Court flats. On that basis it is considered that the proposal would not be harmful to the street scene.

The overall plot sizes, floor area and height of the proposed new dwellings would also be comparable to surrounding neighbouring properties.

It is noted that the proposal includes tandem parking which is not the Council's preferred type of off street parking as advised in the Council's Good Design SPD. However, the design includes an almost equal ratio of landscaping to parking and hardstanding which softens the appearance of the frontage of the new development and accords with the aims of the Council's Good Design SPD.

Whilst some materials have been referred to in the application submission it is recommended to condition more specific details of the proposed materials, especially the cladding, to ensure they

would be in keeping with the visual amenity of the area.

The adjacent neighbour at No.5 Cedar Grove has raised some queries regarding what would be proposed for boundary treatments. The location and appearance of any boundary treatments will need to be considered to ensure they would be in keeping with the character of the area. However, other matters raised by the neighbour such as boundary disputes, access to land for maintenance of a neighbour's fence and security and privacy during construction are not materials planning considerations. Notwithstanding this, the applicant has advised that they can discuss any details with the neighbour, outside of the planning application process, to address the civil matters which the neighbour has raised.

Precise details for the proposed boundary treatments have not been included in the application at this stage. The applicant has requested that these details could be agreed by condition if this application is approved. It is therefore recommended that such a condition be included.

Overall the proposed development accords with the general siting and scale of existing dwellings within the vicinity, the development appears in keeping with the scale and character of existing dwellings and the design approach is considered acceptable. Therefore, the proposal is considered to be in accordance with Policy D1 of the adopted Local Plan, the Council's Good Design SPD and the advice contained in the NPPF.

#### **Impact upon Residential Amenity**

The residential dwellings most immediately impacted upon as a result of the proposal would be No.5 Cedar Grove to the west, the flats in Pine Court to the east (No's 1- 12), No's 1 and 2 Cedar Grove opposite the site (to the north) and No.6 Koppe Close which borders the rear of the site (to the south).

With regard to No's 1 and 2 Cedar Grove and No.6 Koppe Close to the front and rear of the site, these neighbouring dwellings would be at least 20 metres away from the proposed new dwellings. This would accord with the separation distances set out within the Council's Good Design Supplementary Planning Document (SPD) and therefore the development is not considered to adversely impact on the residential amenities of these properties.

As the new dwellings would be located in a parallel position to No.5 Cedar Grove the new development would accord with the 45 degree code of practice as per the Council's Good Design SPD and it is considered that the new dwellings would not significantly impact on No.5.

The neighbour at No.5 Cedar Grove has raised concerns with regard to the potential loss of privacy if any existing boundary fencing needs to be removed during construction. This is not a material planning consideration however the applicant has advised that if this work is required then they can arrange for temporary fencing to be erected if there was an issue of security and privacy.

It is noted that there are proposed first floor side facing windows on both the east and west side elevations of the new dwellings. It is recommended that these should be conditioned to be obscurely glazed and fixed shut below in internal height of 1.7 metres to prevent any overlooking impacts of either the flats at Pine Court to the east or No.5 Cedar Grove to the west.

With regard to the flats at Pine Court, it is noted that there are some first floor windows serving the flats which would be in close proximity to the application site. Notwithstanding this, there is a distance of at least 10 metres from the Pine Court first floor windows to either the side elevation of the proposed Plot 2 or its garden. In addition to this the flats are rotated at an oblique angle to

the application site which further reduces the impact. Overall it is considered that this proposal would not result in any harmful overlooking, overbearing or overshadowing impacts on the flats of Pine Court.

Overall, the proposal is not considered to result in significant impacts upon surrounding residential amenity. Therefore, the proposed development is considered to be in accordance with Policy D2 of the adopted Local Plan and the Council's Good Design SPD.

### **Highway Considerations**

The site is located on Cedar Grove, an adopted, unclassified residential street subject to a 30mph speed limit. The scheme proposes two dwellings each with two bedrooms and two off street parking spaces are proposed for each dwelling. This is in accordance with the Local Highways Design Guide (LHDG). The proposed access would be approximately 5.5m in width which also accords with the LHDG.

The County Highway Authority (CHA) have advised that the site layout indicates that the position of the existing dropped kerb would require a minor amendment, therefore the applicant is advised that any amendments to this would require approval from the CHA.

The CHA have also advised that whilst visibility splays have not been demonstrated, considering the former use of the site and the cul-de-sac location, the CHA are satisfied that the access has appropriate visibility.

Neighbour concerns have been raised with regard to on-street parking problems that could arise as a result of building on the existing car parking area for Pine Court. The applicant has advised that the garages that were previously located on the application site, had not been occupied since 2015, with all being vacant between 4 and 11 years prior to their demolition in 2019. The applicant therefore considers that there was a lack of demand for garages from the residents of Pine Court. It is understood that a small number of cars of residents of Pine Court park on the application site, but most appear to already park on the highway.

Additional advice has been sought from the CHA with regard to parking concerns raised by the neighbour. The CHA note that there are no current planning restrictions which secure the application site to be available for use by the flats. Notwithstanding this the CHA are satisfied that the loss of the existing parking area and the impacts of any displaced parking onto the surrounding highway would not cause severe harm to the highway network in this location. As such a reason to refuse the application on highway safety grounds could not be justified.

Overall, therefore, the highway safety aspects of the scheme are considered to be acceptable. The proposal is considered to comply with the aims of Policies IF4 and IF7 of the adopted Local Plan and the LHDG.

### **River Mease Special Area of Conservation/SSSI - Habitat Regulations Assessment**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). A tributary of the river lies around 150 metres to the north of the proposed development. Discharge from the sewerage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river.

As a result of the proposed development there could be an impact on the River Mease SAC, which may undermine its conservation objectives, from an increase in foul and surface water drainage discharge as well as due to its proximity to tributaries of the River Mease. Therefore an

appropriate assessment of the proposal and its impacts on the SAC is required.

The proposed development would result in an increase in foul drainage discharge from the site which would therefore adversely impact on the SAC as it would pass through the sewage treatment works within the catchment area of the River Mease SAC and contribute to the raised phosphate levels in the river.

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 CIL Regulations and Paragraph 177 of the NPPF. DCS2 was adopted by the Council on 20th September 2016 following the cessation of capacity under DCS1.

This application has been submitted by North West Leicestershire District Council. In the application submission the Council have highlighted that they own other sites within close proximity to the application site. The Council have recently demolished a sheltered accommodation building on the site of Woulds Court in Moira, this was located on Willow Close which is approximately 90 metres to the north-east of the application site.

The Woulds Court sheltered accommodation building previously comprised of 20 one-bedroom flats and 1 three-bedroom flat. DCS2 advises that this is an average foul discharge rate of 140.4 litres per day for a 1-bedroom dwelling and 278.4 litres per day for a 3-bedroom dwelling, this equates a foul discharge rate of 3086.4 litres per day. Given that the sheltered housing building has been recently demolished then this foul drainage discharge has now ceased. As such it could be possible for new development to be built and offset against the former usage of the Woulds Court site.

The offsetting of foul drainage of a previous use is usually limited to a redevelopment scheme on the same application site. However, in this instance the applicant is the same land owner, the two sites are in close proximity to each other and both sites also discharge to the same sewage treatment works. Given these specific circumstances, and that there is no extant planning permission for redevelopment of the sheltered housing site, it is considered that the proposed two new dwellings for this Cedar Grove applicant can be offset against the foul drainage previously associated with Woulds Court.

The foul drainage associated with the proposed 2 x two-bedroom dwellings would equate to 412.8 litres a day, which would not exceed the amount used by the former sheltered housing site. Therefore, there would be no further impacts on the River Mease SAC and as such a DCS2 contribution would not be required in this case.

It is recommended to include a note to applicant, should permission be forthcoming, to remind the applicant that this scheme would need to be included in the total new foul drainage output if a new application is proposed to redevelop the Woulds Court site.

The flows from the new dwellings need to be taken into account against the existing headroom at Packington Treatment Works. At the time of writing this report capacity is available at the treatment works for the proposed 2 dwellings.

Discharge into the river from surface water disposal via a sustainable drainage system or via the mains sewer system can also result in an adverse impact on the SAC, including in relation to water quality and flow levels.



With regard to surface water and flood risk the site is within Flood Zone 1 which has the lowest risk of flooding and the proposed development does not fall within an area identified as having a risk of surface water flooding.

In this case the development is located on an area of existing impermeable hard standing and the proposed development would include new areas of grass and landscaping which would improve the surface water drainage situation from the existing arrangements. Therefore it is not considered reasonable to condition a sustainable surface water drainage scheme in this instance and it is considered that the proposal would comply with the aims of Policies CC2 and CC3 of the adopted Local Plan.

Therefore it can be ascertained that the proposal would, either alone or in combination with other plans or projects, have no adverse effect on the integrity of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI, and would comply with the Habitat Regulations 2017, the NPPF and Policies En1 and En2 of the Local Plan.

### **Land Contamination**

The Council's Environmental Protection Land Contamination Officer has requested that conditions be imposed requiring a risk based land contamination assessment. The applicant is in agreement for these conditions to be attached should planning permission be granted. Subject to these conditions the development would accord with Policy En6 of the adopted Local Plan and paragraphs 178 and 179 of the NPPF regarding land and air quality.

### **Other**

Neighbours have raised some concerns regarding the new dwellings impact on the future upkeep of Cedar Grove, which is not a material planning consideration.

A neighbour has raised concerns with the construction of the development and its impacts on any dust and fumes. Environmental protection have not raised any objections in relation to this and the work on site is governed by separate legislation. As such it is not considered that the development would be harmful to the neighbouring properties.

No objections have been raised by the Council's Waste Services team or County Ecology.

### **Conclusion**

The principle of the development is acceptable. The proposal is not considered to have any significant detrimental design, residential amenity or highway impacts. 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 adopted Local Plan, the advice in the NPPF and the Council's Good Design SPD. It is therefore recommended that the application be permitted.

**RECOMMENDATION - PERMIT, subject to the following conditions;**

- 1 Time limit.
- 2 Approved Plans.
- 3 Materials.
- 4 Levels.
- 5 Land contamination.
- 6 Land contamination - Verification Investigation
- 7 Hard and soft landscaping and boundary treatments.
- 8 Replacement planting.
- 9 Obscure glazing.
- 10 Highways - access.
- 11 Highways - turning.
- 12 Highways - visibility splays.