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Meeting	<b>PLANNING COMMITTEE</b>
Time/Day/Date	6.00 pm on Tuesday, 6 July 2021
Location	Council Chamber, Council Offices, Whitwick Road, Coalville - Public are encouraged to view the live stream
Officer to contact	Democratic Services (01530 454529)

	<b>AGENDA</b>	
<b>Item</b>		<b>Pages</b>
<b>1. APOLOGIES FOR ABSENCE</b>		
<b>2. DECLARATION OF INTERESTS</b>		
	Under the Code of Conduct members are reminded that in declaring disclosable interests you should make clear the nature of that interest and whether it is pecuniary or non-pecuniary.	
<b>3. MINUTES</b>		
	To confirm and sign the minutes of the meeting held on 2 June 2021.	<b>3 - 6</b>
<b>4. PLANNING APPLICATIONS AND OTHER MATTERS</b>		
	Report of the Head of Planning and Infrastructure.	<b>7 - 10</b>

## Index of Applications to be Considered

Item	Application Number and Details	Recommendation	Page
A1	<b>21/00028/VC1: Variation of conditions 2, 3, 4, 6 and 8 of planning permission 18/00413/FUL to allow for the retention of amendments to the appearance and height of the dwelling along with proposals for the installation of render to the dwelling, provision of raised patio with associated screening, amendments to finished floor and ground levels to suit site topography, construction of a raised platform with steps and retaining wall and amendments to boundary fencing</b>  210 Battram Road Ellistown Coalville LE67 1GB	<b>PERMIT</b>	<b>11 - 30</b>
A2	<b>20/02030/REMM: Erection of 164 dwellings with associated car parking, secondary roads and incidental landscape planting (reserved matters to outline planning permission ref. 13/00956/OUTM)</b>  Grange Road Hugglescote Leicestershire LE67 2BT	<b>PERMIT subject to S106 agreement</b>	<b>31 - 42</b>

MINUTES of a meeting of the PLANNING Committee held in the Council Chamber, Council Offices, Coalville - The public are encouraged to attend remotely on WEDNESDAY, 2 June 2021

Present: Councillor N Smith (Chairman)

Councillors D Bigby, A J Bridgen, D Everitt, S Gillard, J Hoult, J Bridges (Substitute for Councillor R Boam), S Sheahan (Substitute for Councillor J Legrys), K Merrie MBE and R L Morris

In Attendance: Councillors R Ashman, R Canny and C A Sewell

Officers: Mr C Elston, Mr J Mattley, Mrs C Hammond, Ms S Grant, Mr J Knightley, Ms S Lee, Mr I Nelson and Ms C Proudfoot

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

Apologies were received from Councillors R Boam and J Legrys

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

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

Councillor D Bigby declared a non-pecuniary interest in item A1, application number 20/00316/OUTM, as he had previously expressed concerns in relation to the Council's employment planning policies, but he had come to the meeting with an open mind.

### **3. MINUTES**

Consideration was given to the minutes of the meeting held on 13 April 2021.

It was moved by Councillor N Smith, seconded by Councillor J Hoult and

RESOLVED THAT:

The minutes of the meeting held on 13 April 2021 be approved and signed by the Chairman as a correct record.

### **4. PLANNING ENFORCEMENT UPDATE**

The Environmental Protection Team Manager presented the report to members.

She advised Councillor S Sheahan that she would provide him with an update on the crossroads at Albert Village outside the meeting.

In response to a query about the case numbers in quarter 4 and the number of live cases across the year, she advised that the team was playing catch up due to COVID restrictions preventing officers from going out on site visits, but the team was adequately resourced to enable the work to happen.

It was moved by Councillor J Bridges, seconded by Councillor K Merrie and

RESOLVED THAT:

The report be noted.

## 5. 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.

## 6. A1

### **20/00316/OUTM: DEMOLITION OF EXISTING STRUCTURES AND THE ERECTION OF NEW BUILDING TO ACCOMMODATE UP TO 78,967SQM OF STORAGE AND DISTRIBUTION (USE CLASS B8) AND ANCILLARY OFFICE (USE CLASS B1) FLOORSPACE, WITH ASSOCIATED INFRASTRUCTURE INCLUDING ACCESS, PARKING, SERVICING AND LANDSCAPING (OUTLINE - ALL MATTERS OTHER THAN PART ACCESS RESERVED)**

Land At Netherfields Lane Sawley DE72 2HP

**Officer's Recommendation: PERMIT subject to S106 Agreement**

The Principal Planning Officer presented the report to members.

Councillor J McLelland, on behalf of Lockington and Hemington Parish Council, addressed the committee highlighting that there was not an immediate need or demand for more warehouses in the area, the greenspace and character around the two villages was slowly being eroded and they were surrounded by industrial buildings. He noted that, if there was an urgent need for more employment land, the application before them, due to the location, would not have a significant impact on the villages. He added that should there be a need for any further large scale warehousing for the district, it was felt that this should met in a more appropriate space outside the Parish.

Mr J Holmes, agent, addressed the committee highlighting that the location of the development would sit within an industrial area, close to the highway network, but would have little impact on the neighbouring villages and that the accompanying documents with the application identified both the need and demand for the warehouses. He noted any concerns raised by statutory consultees during the process had been addressed and there were no objections from them. He advised that the redevelopment of the site would help to prevent the ongoing anti-social behaviour and fly tipping that occurred in the area.

Councillor C Sewell, Ward Member, addressed the committee highlighting a number of areas around the district where empty warehouses were located, that should the application be approved a time limit be set for the development of the site and that the increase in traffic from the site would have a negative impact on Tamworth Road and the residents of Sawley Marina. She sought reassurances that the raised building table would not send flood water to the southern area of the site that was home to many species of wildlife and that area would benefit from mature planting to shield the site. She welcomed the information that CCTV would be positioned on the buildings, that could reduce the antisocial behaviour in the area and that emergency evacuation plans would be provided should the area be subject to flooding.

In determining the application, members felt that the landscaping that would provide a buffer for the site should include mature trees and that a condition should be included to ensure that CCTV cameras were placed on the site in the correct area to assist with ASB prevention, with live monitoring. Some members expressed concerns over the need and demand for warehouses in the district due to the number that were standing empty.

It was noted that should the reserved matters application not be submitted within the timescales, the applicant would need to submit a new outline application and get it approved to enable them to ensure that the site was developed, that officers were

satisfied that there was a need for the development and that conditions were included in relation to the size of the buildings.

A motion to permit the application in line with the officer's recommendation subject to a note to applicant being added in respect of the condition regarding surrounding landscaping about the requirement for sufficient mature buffer planting, and additional conditions relating to CCTV and providing details of emergency evacuation during flooding events, was moved by Councillor J Bridges and seconded by Councillor J Hout.

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 recommendation of the Head of Planning and Infrastructure subject to a note to applicant being added to the condition surrounding landscaping about the requirement for sufficient mature buffering, and additional conditions relating to CCTV and providing details of emergency evacuation during flooding events.

<b>Motion to permit the application in accordance with the recommendation of the Head of Planning and Infrastructure (Motion)</b>	
Councillor Nigel Smith	For
Councillor Dave Bigby	Abstain
Councillor Alexander Bridgen	For
Councillor David Everitt	Abstain
Councillor Stuart Gillard	For
Councillor Jim Hout	For
Councillor John Bridges	For
Councillor Sean Sheahan	For
Councillor Keith Merrie MBE	For
Councillor Ray Morris	For
<b>Carried</b>	

The meeting commenced at 6.00 pm

The Chairman closed the meeting at 7.17 pm

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**APPENDIX B**

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

**6 July 2021**

**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 list of the proposed planning 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.

Variation of conditions 2, 3, 4, 6 and 8 of planning permission 18/00413/FUL to allow for the retention of amendments to the appearance and height of the dwelling along with proposals for the installation of render to the dwelling, provision of raised patio with associated screening, amendments to finished floor and ground levels to suit site topography, construction of a raised platform with steps and retaining wall and amendments to boundary fencing  
210 Battram Road Ellistown Coalville Leicestershire LE67 1GB

Report Item No  
A1

Application Reference  
21/00028/VCI

Grid Reference (E) 442640  
Grid Reference (N) 309400

Date Registered:  
7 January 2021  
Consultation Expiry:  
18 May 2021  
8 Week Date:  
4 March 2021  
Extension of Time:  
None Agreed

Applicant:  
Mr Bahader Singh

Case Officer:  
Adam Mellor

Recommendation:  
PERMIT

Site Location - Plan for indicative purposes only



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

### **Call In**

This application has been brought to the Planning Committee at the request of Councillor Clarke on the basis that the original plans have not been adhered to and that alterations made to the land levels and provision of the raised patio will result in detrimental impacts to residential amenities, particularly in relation to overlooking.

### **Proposal**

This is an application under Section 73 of the Town and Country Planning Act to "vary" conditions 2, 3, 4, 6 and 8 of 18/00413/FUL for the erection of a detached dwelling with associated off-street parking at 210 Battram Road, Ellistown which was approved on the 27th June 2018. The variation seeks to retain alterations to the appearance and height of the dwelling as well as proposing the installation of render to the dwelling, the provision of a raised patio with screening, amendments to the finished floor and ground levels to suit site topography, construction of a raised platform with access steps and retaining wall and amendments to boundary fencing.

### **Consultations**

Seven objections have been received from third parties with no representation received to date, from Ibstock Parish Council. No other statutory consultees were required to be consulted on the application.

### **Planning Policy**

The application site lies outside Limits to Development, as defined in the adopted North West Leicestershire Local Plan.

### **Conclusion**

The principle of the development has already been assessed to be acceptable in the approval of planning application reference 18/00413/FUL. The key issues with regards to this application are:

- The impacts to residential amenities as a result of the proposed works;
- The impacts to the design of the dwelling and character and appearance of the streetscape as a result of the proposed works; and
- Highway safety.

The report below assess these details, and Officers are of the opinion that the details are acceptable. The proposals meet the requirements of relevant Local Plan policies, the adopted Good Design for North West Leicestershire SPD, and the National Planning Policy Framework (NPPF).

**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

### 1. Proposals and Background

This is an application under Section 73 of the Town and Country Planning Act to "vary" conditions 2, 3, 4, 6 and 8 of 18/00413/FUL for the erection of a detached dwelling with associated off-street parking at 210 Battram Road, Ellistown which was approved on the 27th June 2018.

Section 73 relates to development of land without complying with conditions subject to which a previous planning permission was granted. The Council in considering this application, is only entitled to consider the question of the conditions subject to which planning permission should be granted. Conditions 2, 3, 4, 6 and 8 which the applicant wishes to vary are associated with the following matters:

#### Condition 2

Approved Plans.

#### Condition 3

External Materials and Design Finishes.

#### Condition 4

Hard and Soft Landscaping.

#### Condition 6

Boundary Treatments.

#### Condition 8

Finished Floor and Ground Levels.

With regards to the amendments to the elevations of the dwelling the application would seek to retain the following changes:

#### *South-Eastern (Front) Elevation*

- Reduction in height of ground floor window serving a study/playroom;

#### *South-Western (Side) Elevation*

- Removal of window at ground floor level in single storey rear projection serving an open plan family/kitchen/dining area;
- Insertion of window at first floor level serving a master bedroom;

#### *North-Western (Rear) Elevation*

- Reduction in height of first floor windows serving a master bedroom and fourth bedroom;
- Insertion of two roof lights in main roof slope serving an attic storage area;
- Insertion of two roof lights in single storey rear projection roof slope serving an open plan family/kitchen/dining area; and
- Removal of window at ground floor level serving an open plan family/kitchen/dining area.

#### *North-Eastern (Side) Elevation*

- Insertion of window in end gable (facing towards no. 208 Battram Road) serving an attic storage area.

It is also the case that as a result of the provision of a steeper roof pitch the overall height of the dwelling has been increased by 0.54 metres and eaves height also being increased, by 0.25 metres, in comparison to the originally approved scheme.

As part of the application, permission is sought to wholly render the property, with the render being coloured 'Mouse Grey', and remove a partly constructed brickwork element adjacent to the single storey rear projection.

It is also proposed, as part of the application, that a raised patio would be created to the rear of the property which would be provided with screening along with amendments to the ground levels, which have been raised without consent in an area immediately outside the dwelling. A raised platform, supported by a retaining wall, with access steps from a utility door to the rear garden along with amendments to the boundary treatments are also proposed.

During the course of the application, and following a site visit, amended plans have been submitted to address discrepancies and re-consultation undertaken. These plans, as well as other information associated with the application, can be viewed on the Council's website.

Application reference 19/01972/VCI for the variation of conditions 3 and 4 of planning permission 18/00413/FUL to allow changes to the approved materials and to allow for the provision of a raised patio area was withdrawn on the 14th October 2020.

## **2. Publicity**

6 neighbours notified.

Site Notice displayed 15 January 2021.

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

The following summary of representations is provided. All responses from statutory consultees and third parties are available to view in full on the Council's website.

### **Statutory Consultees**

A representation from Ibstock Parish Council has not been received to date.

### **Third Party Representations**

Seven representations have been received from third parties objecting to the application with the comments raised summarised as follows:

#### *Residential Amenities*

- Ground levels have been raised at the rear which results in detriment to the amenities of neighbouring properties as a result of overlooking impacts.
- The provision of the raised patio results in overlooking onto neighbouring gardens as well as into neighbouring properties which results in detriment to residential amenities.
- The provision of the screening to the raised patio will result in overbearing and

overshadowing impacts to neighbouring properties and would be contrary to the guidance within the Council's Good Design SPD.

- The insertion of an additional window in the side elevation of the dwelling will result in an adverse overlooking impact including a perceived impact of overlooking.

#### *Design and Impacts on the Visual Amenities of the Streetscape*

- The proposed dwelling is of detriment to the visual amenities of the streetscape.
- The use of render is a means of hiding the poor construction work and is out of keeping with the streetscape where dwellings are of predominately red brick construction.
- The proposed dwelling is poorly constructed and should be demolished and rebuilt.

#### *Highway Safety*

- The number of bedrooms in the property have increased and amendments to the dwelling have reduced the availability of parking to the frontage. On this basis there is insufficient off-street parking. There is already insufficient off-street parking on Battram Road and this issue would be exacerbated.
- The use of the premises, or number of occupants, should be restricted so as to ensure sufficient off-street parking is available.

#### *Other Matters*

- An appropriate scheme of soft landscaping needs to be approved.
- Part of the proposed boundary treatment is outside of the boundaries of the original application site.
- Land ownership details are not clear.
- The development will result in land stability issues due to the previous dwelling being demolished following subsidence.
- The development will result in impacts on the structural stability of neighbouring properties.
- I will not be able to maintain my property as a result of the provision of the retaining wall.
- There will be a drainage issue in the gap between the retaining wall and the side elevation of my property where the damp proof course is situated.
- The applicant has not complied with the Party Wall Act.
- The developer should be made to adhere to the plans originally approved rather than being allowed to amend the scheme.
- The proposed development will impact on the value of my property.
- The raising of the land will result in flooding impacts from surface water runoff.
- The original permission has not been implemented lawfully as condition 8 of the original permission was not fully discharged in relation to finished ground levels.

## **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);  
 Paragraphs 38, 39, 40, 41, 42, 44 and 47 (Decision-making);  
 Paragraphs 54 and 55 (Planning conditions and obligations);  
 Paragraphs 59, 60, 61, 68, 73, 74 and 76 (Delivering a sufficient supply of homes);  
 Paragraphs 105, 106, 108, 109 and 110 (Promoting sustainable transport);  
 Paragraphs 117, 118, 122 and 123 (Making effective use of land);  
 Paragraphs 124, 126, 127 and 130 (Achieving well-designed places);  
 Paragraph 163 (Meeting the challenge of climate change, flooding and coastal change); and  
 Paragraphs 170, 175, 178, 179 and 180 (Conserving and enhancing the natural environment).

### **Adopted North West Leicestershire Local Plan (2021)**

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 IF4 - Transport Infrastructure and New Development;  
 Policy IF7 - Parking Provision and New Development;  
 Policy En1 - Nature Conservation;  
 Policy En3 - The National Forest;  
 Policy En6 - Land and Air Quality;  
 Policy Cc2 - Water - Flood Risk; and  
 Policy Cc3 - Water - Sustainable Drainage Systems.

### **Other Policies**

National Planning Practice Guidance.  
 Good Design for North West Leicestershire Supplementary Planning Document - April 2017.  
 Leicestershire Highways Design Guide (Leicestershire County Council).  
 Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System).

## **5. Assessment**

### **Principle of Development**

The principle of the proposed development has already been established by the previous planning permission (18/00413/FUL).

In this circumstance the only matters for consideration are whether the amendments to the design and external materials of dwelling, surfacing and boundary treatments around the dwelling and finished floor and ground levels of the dwelling (including the provision of a raised patio) are acceptable in respect of the impacts to residential amenity, the character and appearance of the streetscape and approach to design of the development.

## Residential Amenity

In the consideration of application reference 18/00413/FUL the Officer report outlined that the properties most immediately impacted on as a result of the development would be no's. 208 and 212 Battram Road which are situated to the north-east and south-west of the site, respectively.

The conclusions within the Officer report was that by virtue of the positioning and scale of the dwelling no adverse overbearing, overshadowing or overlooking would arise and therefore the development was deemed to comply with Policy D2 of the adopted Local Plan.

A condition (no. 8) was imposed on the original permission (18/00413/FUL) which required details of the finished floor and ground levels to be approved. This was to ensure that the development took the form envisaged by the Local Planning Authority as well as in the interests of preserving residential amenities.

The information submitted to discharge the terms of condition 8 specified that the finished floor level would be 158.31 Above Ordnance Datum (AOD) which was consistent with that of no. 208 Battram Road, but higher than that of no. 212 Battram Road. Such a finished floor level was approved but as no information was submitted to discharge finished ground levels the Officer correspondence confirming the discharge of condition 8 outlined that no alterations to the ground levels should be undertaken. Such existing ground levels were as denoted on the topographical survey, which accompanied the discharge of condition 8.

During the construction of the dwelling it was brought to the attention of the District Council that the development was not being undertaken in accordance with the approved plans and that land levels on the site had been raised, this matter was investigated by the District Council's Planning Enforcement Team (reference E/18/00447/NIAWAP). The conclusions of the Enforcement investigation were that the development was not being undertaken in accordance with the approved plans associated with the original decision (18/00413/FUL) and as such the applicant was requested to submit an application to regularise matters in respect of the development on the site.

Application reference 19/01972/VCI was submitted initially to regularise the situation but given the inaccuracies which remained with the plans, as well as the fact that the application did not cover all the discrepancies, this application was withdrawn.

### *Raised Patio and Associated Screening*

The application now under consideration (21/00028/VCI) proposes the provision of a raised patio area, covering a ground area of 19.76 square metres, which would be situated immediately outside the single storey rear projection (containing a family room). This raised patio area would have a level which would be 157.55 metres AOD (which would be 0.75 metres below the finished floor level of the dwelling - now stated to be 158.30) and would be provided with screening to a height of 1.75 metres with such screening being positioned on top of a retaining wall of 0.6 metres in height (i.e. the total height of the screen and retaining wall would be 2.35 metres). Such screening would be provided to all boundaries of the raised patio, with the exception of the gap on the north-western boundary where steps would be provided down to the garden, so as to prevent views being established towards no's. 208 and 212 Battram Road from users of the raised patio. The garden level, when stepping down from the raised patio, would be 157.25 metres AOD (i.e. 1.05 metres below the finished floor level and 0.30 metres below the level of the raised patio).

It is considered that the level of the patio and height of the screening provided would prevent an adverse overlooking impact towards no's. 208 and 212 Battram Road when occupants of the dwelling are using the raised patio should they be standing or sitting. It is, however, the case that the precise details of the means of screening are not known at this time and consequently a condition would be imposed on any planning permission granted so that such details can be appropriately considered. The condition would also require such screening to be provided prior to the first use of the raised patio and subsequently retained in perpetuity so as to ensure no adverse overlooking impact arises in the future. A condition could also be imposed which prevents the raising of the level of the raised patio.

Objections have been raised in relation to the overlooking impact from an occupant of the dwelling stepping out of the family room and down to the raised patio, given that the overall height of the screening would only be 1.6 metres above the finished floor level of the dwelling. Whilst acknowledging these objections it is considered that any overlooking, in this respect, would be momentarily as someone exits the property to the raised patio and would not be materially different to the view established should the raised patio (and its associated screening) not be proposed, given the height of the finished floor level. On the basis of the momentary nature of any overlooking it is considered that this would not impact on the amenities of neighbouring properties to justify a refusal of the application.

Objections have also been raised in relation to the projection of the raised patio and the overall height of the screening resulting in adverse overbearing and overshadowing impacts to the amenities of neighbouring properties. The raised patio, and its associated screening, would be set around 0.8 metres from the boundary with no. 208 and around 2.6 metres from the boundary with no. 212 with ground floor level patio doors (serving a kitchen/dining/sitting room) in the north-western (rear) elevation of no. 212 being the closest habitable room opening to the boundary with the dwelling. No ground floor windows are present in the part of the north-western (rear) elevation of no. 208 which is adjacent to the boundary with the dwelling.

As is identified above the overall height of the screening (comprising the retaining wall and screen) would be 2.35 metres with the raised patio projecting 4.39 metres beyond the single storey projection on the north-western (rear) elevation of no. 210. Based on the proposed level of the patio the screening would have an overall height of 159.9 metres AOD which would be 2.29 metres higher than the finished floor level of no. 210 and 2.84 metres higher than the garden level to the immediate rear of the dwelling. It is, however, the case that a 2 metre high close boarded fence would be provided to the shared boundary between no's. 210 and 212 which, based on the proposed ground level (157.25 metres AOD), would have an overall height of 159.25 metres AOD.

No. 212 is situated to the south-west of the dwelling and consequently no adverse overshadowing impacts would arise as a result of the provision of the screening to the raised patio. It is also considered that any overbearing impacts would not be sufficiently detrimental, so as to warrant a refusal of the application, given that the overall height of the screening would only be 0.65 metres higher than the height of the proposed boundary fence, the screening would not be positioned immediately adjacent to the shared boundary and the proposal would not be dominant along the shared boundary given the length of garden available to no. 212.

Regard is also given to the fact that permitted development rights were not removed as part of the consent granted under the original application (18/00413/FUL). Consequently, once the property was completed and occupied a single storey extension covering a similar area to that of the raised patio (the projection would have been limited to 4 metres) could have been

constructed with an eaves height of 3 metres and overall height of 4 metres, as a form of permitted development without planning permission being required. Such an extension would have a greater impact than that of the screening to the raised patio and consequently provides further justification as to why a refusal of the application on an overbearing impact could not be substantiated.

The land levels at no. 208 are largely consistent with those on the application site, if not slightly higher, and whilst no. 208 would be to the north-east of the dwelling it is considered that for the reasons identified above any overshadowing or overbearing impacts would not be so adverse so as to justify a refusal of the application.

In terms of the comments raised in relation to the 'forty five degree rule', as is identified in figure 15 and paragraph 13.7 on page 65 of the Council's adopted Good Design Supplementary Planning Document (SPD), it is considered that such ruling is more specific to extensions (rather than the screening to a raised patio) with it being stated that "*new development...should not normally project beyond a 45 degree line.*" Whilst the extent of the screening would impact on a 45 degree line taken from the centre of the patio doors in the north-western (rear) elevation of no. 212 it is considered that the conflict with the guidance of the Council's adopted Good Design SPD would not warrant the application being refused due to the 'permitted development' position identified above.

#### *Alteration to Land Levels*

Where the land levels have been raised, which are predominately between the boundary with no. 212 Battram Road and what would be the south-western boundary of the raised patio and the south-western (side) elevation of the dwelling, it is intended that these would be reduced to a level of 157.25 metres AOD with the garden levels then being maintained at their existing levels which results in the garden sloping downwards to the north-western site boundary.

As is outlined above whilst finished ground levels were not approved as part of the discharge of condition 8 of 18/00413/FUL a topographical survey was submitted which identified existing levels prior to the development being undertaken. In the area where the land levels would be reduced the topographical survey identifies levels of between 157.31 to 157.35 metres AOD with the proposed land levels beyond the area of the proposed raised patio than being consistent with the existing levels shown on the topographical survey.

A topographical survey of land associated with no. 212 Battram Road has also been provided as part of a representation received and this identifies that the land levels on the patio to the immediate rear of no. 212 would be 157.28 metres AOD which then steps down to a garden level of 157.06 metres AOD adjacent to the patio.

As part of the proposed development a fence to a height of 2 metres would be provided along the shared boundary between the dwelling and no's. 208 and 212 and on the basis of the proposed ground level this fence would have an overall height of 159.25 metres AOD.

On the basis that the proposed ground level would be lower than the existing level prior to the development commencing it is considered that such a level, when combined with the provision of the 2 metre high fencing, would be sufficient in ensuring that no adverse overlooking impacts would occur.

Given the issues which have been experienced as a result of the raising of the land levels it is considered reasonable to impose a condition on any permission granted which would prevent

the raising of land levels and which removes permitted development rights for the provision of an outbuilding or raised terrace/patio within the curtilage of the dwelling.

*Other Works*

In terms of the amendments to the elevations of the dwelling it is considered that the removal of the ground floor windows (serving an open plan/family/kitchen/dining area) in the south-western (side) and north-western (rear) elevations would be of benefit to the amenities of the neighbouring properties, in particular no. 212 Battram Road, given the reduction in the potential for overlooking impacts to arise.

The insertion of the roof lights in the main roof slope and roof slope of the single storey rear projection, all within the rear elevation of the dwelling, would not result in any adverse overlooking impacts given that those within the main roof slope would not provide any greater views than other existing windows provided in the rear elevation and those within the roof slope of the single storey rear projection being at a height above the finished floor level where no direct view would be established.

A window has been installed in the gable end in the north-eastern (side) elevation of the dwelling which would serve the attic space. This window would be set around 0.52 metres from the blank side elevation of no. 208 and positioned so as to be more towards the front elevation of the dwelling. Given the separation distance to no. 208, combined with the positioning of the window, no view would be established towards the rear amenity area of no. 208 and as such no adverse overlooking impact would arise.

Within the south-western (side) elevation of the dwelling a first floor window has been installed which would be a secondary window within the master bedroom. The plans as submitted identify that this window would be obscured glazed, although it is not clear if it would be possible to open this window. Neighbour concerns have been raised that this window would result in an overlooking impact, including a perceived impact of overlooking, given that it would serve a habitable room.

The south-western (side) elevation of the dwelling is set 1.5 metres from the side elevation of no. 212 with the first floor window being set back from the rear elevation of no. 212 by around 4.4 metres. Any direct view out of the window would be onto the side elevation of no. 212 which contains no windows with only an oblique angle of view provided towards the rear amenity area associated with no. 212. On the basis of the positioning of the window it is considered that any view established would be no greater than that established by existing first floor windows in the rear elevation of the dwelling, which would serve the master bedroom and fourth bedroom, and which are both clear glazed windows which can be opened.

It is identified that the proposed window would be obscured glazed and a condition can be imposed, on any permission granted, to ensure that this is the case with a restriction also being imposed to prevent any opening of the window unless such an opening is more than 1.7 metres above the internal floor level of the room in which the window is installed. This approach would be consistent with that considered acceptable under permitted development rights where a first floor window is installed in the side elevation of a dwelling. Subject to the imposition of such a condition it is considered that any overlooking impact would not be so adverse that a reason to refuse the application could be substantiated with there being no perceived impact of overlooking given the positioning of the window and the lack of a direct view.

Between the south-western (side) elevation of the dwelling and the side elevation of no. 212 a

retaining wall would be constructed so as to support a platform and steps which would provide access from the door to the utility room (in the south-western (side) elevation of the dwelling) to the rear garden of the dwelling. The plans identify that the platform would have a height of 158.15 metres AOD with the top of the steps down to the rear garden being set back around 6.6 metres from the rear elevation of no. 212. These steps would provide access to the garden at a level of 157.25 metres AOD (i.e. the platform is 0.9 metres above the level of the garden). Any view established from the top of the steps before entering the garden would be momentarily and given that the steps are set back from the rear elevation of no. 212 it is considered that any view established from the top of the steps would be onto a partial element of the rear amenity area associated with no. 212. On this basis any overlooking impacts would not be so adverse that a reason to refuse the application could be justified.

The applicant has advised that the partly constructed element of brickwork immediately adjacent to the single storey rear projection would be removed with the land level being made to be 157.25 metres AOD so as to be consistent with the overall reduction in land levels. There would be no adverse impacts to residential amenities as a result of this change.

### *Residential Amenity Conclusion*

Overall, on the basis of the assessment above, it is considered that subject to the imposition of relevant conditions any impacts arising to the amenities of neighbouring properties as a result of the development would not be significantly adverse and as such the proposals would be compliant with the aims of Policy D2 of the adopted Local Plan.

### **Design and Impact on the Character and Appearance of the Streetscape and Wider Area**

The need for good design in new residential 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.

In the consideration of the original application (18/00413/FUL) the Officer report outlined that the position of the dwelling adhered to the established building line and that in approving a finished floor level it could be ensured that the ridge height did not exceed that of no. 208 Battram Road. The provision of a 'subservient' projection to the south-western side of the property also ensured that the frontage width of the property was more consistent with no's. 208 and 212 Battram Road.

Whilst the overall ridge and eaves heights of the dwelling have been slightly increased, in comparison to the dwelling as originally approved, it remains the case that the overall ridge height would be 0.26 metres lower and eaves height 0.34 metres lower than the ridge and eaves height of no. 208 Battram Road. On this basis the character of the streetscape is maintained in relation to the heights between the proposed dwelling and existing dwellings.

In terms of the design approach to the dwelling, as approved under application reference 18/00413/FUL, this was more of a 'traditional' approach which was considered acceptable in the context of the streetscape in which the property would be situated. A condition (no. 3) was imposed which required the details of the external materials to be approved and this condition was discharged on the 12th October 2018.

The external materials approved in connection with condition 3 of 18/00413/FUL included the use of red brick, concrete interlocking tiles coloured slate grey, uPVC windows coloured Anthracite Grey, Anthracite Grey doors, stone cills and lintels, a dentil course at the eaves, wet

bedded verges, a string-course brick detail, the provision of a chimney and the setting of windows in reveal.

As part of this application it is intended that the property would be wholly rendered, which would be coloured mouse grey, with it being observed during the site visit that dry verges have been installed and that the windows are not set in reveal. It is also the case that a chimney has not been provided, however the applicant has confirmed that this is still to be constructed.

In terms of the amendments to the elevations, as previously approved, these are as outlined in the *'Proposals and Background'* section of this report above.

A raised patio area would also be installed to the rear of the dwelling, attached to the single storey rear projection, which would be provided with screening on both sides. Access steps would also be created adjacent to the utility door in the south-western (side) elevation so as to provide access to the rear garden.

The implications of the provision of the raised patio area, access steps and insertion of new windows on the amenities of neighbouring properties is as undertaken in the *'Residential Amenity'* section of this report above.

From a design perspective, it is considered that the amendments to the elevations, as outlined above, would be relatively minor in the overall scale of the dwelling and would not compromise the 'traditional' approach to the development approved under the original application (18/00413/FUL) particularly given that the majority of the changes are to the rear of the dwelling which is not visually prominent from the public domain. The provision of the raised patio and access steps would also not compromise the overall appearance of the dwelling and, as above, these would be elements of the scheme which are not readily visible from the public domain.

In terms of the provision of render to the property it is considered that whilst, in the main, properties on Battram Road are predominately of red brick construction (particularly those to the immediate north-east of the dwelling) there are examples of properties which are partly rendered (including no's. 212 and 214) as well as those which are fully rendered (which includes properties to the north-east and north-west of the dwelling). On this basis it is considered that the application of render to the property would not result in such adverse impacts to the visual amenities of the streetscape and design approach to the dwelling that a reason to refuse the application could be substantiated.

It is also considered that whilst it is regrettable that the windows are not set in reveal, and dry verges have been installed, it is the case that there are examples of properties within the immediate streetscape which do not have their windows set in reveal (particularly to properties where windows have been replaced) and it is the case that a capping system could be provided to the verges (so as to create a dry verge) at any time, without formal consent. As is the case above, therefore, these amendments would not be of such detriment to the visual amenities of the streetscape or design of the dwelling that a reason to refuse the application could be justified.

Overall, it is considered that the proposal would remain compliant with the aims of Policy D1 of the adopted Local Plan, the Council's adopted Good Design SPD and Paragraphs 124 and 127 of the NPPF.

## Boundary Treatments

Condition 6 of the original permission (18/00413/FUL) required a scheme of boundary treatments to be submitted and approved prior to the first occupation of the dwelling. This condition has not been discharged but it was observed during the site visit that close boarded fence has been erected to the rear boundaries with both no's. 208 and 212 Battram Road. Such fencing has a height of 2.2 metres when measured from the ground levels associated with no. 212.

The plans as submitted identify that 2 metre high close boarded fencing would be provided to the rear boundaries with no's. 208 and 212 Battram Road (the height of 2 metres being taken from land levels associated with the dwelling) and this is considered acceptable given that such fencing is ordinarily provided to define boundaries between residential properties. Such fencing would also not be readily visible from the public domain, given its location to the rear of the property, and therefore would not impact adversely on the visual amenities of the streetscape.

Whilst treatments along the rear boundaries with no's. 208 and 212 are identified, the plans are not clear on whether boundary treatments would be provided along the frontage boundaries with no's. 208 and 212 or to the north-western (rear) or south-eastern (front) boundaries. It is unlikely that a boundary treatment would be provided to the south-eastern boundary, given the requirement to provide and access the off-street parking, but in the absence of precise details to the other boundaries it is considered that condition 6 would be re-imposed on any permission granted so as to ensure a precise scheme of boundary treatments is first submitted for approval.

The provision of an acceptable scheme of boundary treatments would ensure compliance with Policy D1 of the adopted Local Plan.

A neighbour representation indicates that part of the fencing proposed to the boundary with no. 212 is outside of the boundaries of the application site (i.e. outside the red line on the site location plan) of the original permission (18/00413/FUL). In reviewing the plans associated with the original permission it is considered that whilst, in the main, changes undertaken to the proposed plans have provided the boundary treatment on land which would be consistent with the red line on the site location plan of the original consent, there would appear to be a slight discrepancy in relation to the alignment of a 'crux' in the fencing where it would attach to no. 212. A Section 73 application cannot amend the red line on the site location plan associated with the original approval and consequently the applicant has been requested to provide further amended plans so as to address the discrepancy identified. Subject to such plans being received it would be ensured that the proposed boundary treatment would be within the confines of the application site, as originally approved.

Whilst concerns have also been raised in relation to land ownership issues, particularly around the positioning of boundary treatments, it is considered that land ownership disputes are a matter to be resolved privately between affected individuals and consequently are not material to the consideration of the planning application. This matter is therefore separate, in relation to the issue discussed above, which responds to extent of the boundaries of the application site.

## Landscaping

Condition 4 of the original permission (18/00413/FUL) required a scheme of soft and hard landscaping to be submitted and approved prior to the first occupation of the dwelling. This condition has not been discharged albeit the property has not yet been occupied and consequently would not be required to be adhered to at this time.



The plans as submitted, are not precise on the soft and hard landscaping which would be provided as part of the development with it only being suggested that turf would be provided within the rear garden area.

In the absence of any precise details condition 4 would be re-imposed on any planning permission granted so as to ensure suitable schemes of soft and hard landscaping are provided as part of the development.

Subject to the imposition of such a condition the development would be compliant with Policies D1 and En3 of the adopted Local Plan.

### **Highway Safety**

As part of the original application (18/00413/FUL) a new vehicular access was to be formed into the site which would have a width consistent with the site frontage given the need to provide three off-street parking spaces. It was determined that such an access would ensure that vehicles associated with the dwelling would not cause conflict in the highway and that whilst vehicles would reverse into Battram Road this would not be materially different to other properties in the vicinity of the site which benefit from off-street parking with vehicle speeds being low. On this basis it was concluded that no detriment to pedestrian or highway safety would arise and the development would be compliant with Policy IF4 of the adopted Local Plan and Paragraphs 108 and 109 of the NPPF.

The access arrangements would not be altered by the variation to the scheme and consequently the proposal remains compliant with the relevant policies referred to above.

In terms of off-street parking the dwelling originally proposed four bedrooms and consequently three off-street parking spaces were required so as to accord with the Leicestershire Highways Design Guide (LHDG) and the Council's adopted Good Design SPD. It was demonstrated that at least three off-street parking spaces could be provided and consequently the development was deemed compliant with Policy IF7 of the adopted Local Plan and Paragraph 105 of the NPPF.

As part of the consideration of the application it was observed that roof lights and a window in the gable end facing no. 208 Battram Road had been installed which would serve the attic space. Following the submission of revised plans to clarify matters in this respect it is noted that the property would still have four bedrooms with the attic being used for storage.

Even if the attic space was to be utilised as a bedroom (and as such the property would have five bedrooms) it remains the case that the LHDG and Council's adopted Good Design SPD only require a minimum of three off-street parking space to be provided for dwellings with four or more bedrooms. Consequently, the level of off-street parking to be provided (being three spaces) would remain acceptable and compliant with the Policy IF7 of the adopted Local Plan and Paragraph 105 of the NPPF. On this basis there would be no justification to impose a condition which restricted the use of the dwelling or the overall occupancy levels.

As part of the site visit the dimensions of the site frontage were measured and it is the case that a sufficient depth and width exist at the frontage so as to provide the three off-street parking spaces in accordance with the recommend dimensions within the LHDG and Council's adopted Good Design SPD.

Although concerns have been raised in relation to the off-street parking available for neighbouring properties on Battram Road it is not a requirement of this application to address the deficiencies in such parking.

### **Land Stability**

Concerns have been raised in relation to land stability as a result of the proposed provision of a retaining wall (of around 0.5 metres in height) between the south-western (side) elevation of the dwelling and the side elevation of no. 212 Battram Road. Paragraph 178 of the NPPF advises, amongst other things, that the planning decisions should ensure that *"a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability...This includes risks arising from natural hazards or former activities such as a mining."* Paragraph 179 of the NPPF indicates that *"where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or land owner."*

In the consideration of the original application it was outlined that the property which formerly stood on the site was demolished following mining subsidence (this would appear to have been undertaken between 1955 and 1959 on the basis of historic maps) and the representation received has identified that buttresses were constructed on the side elevation of no. 212 following a subsidence claim, a buttress is also present on the side elevation of no. 208. The main issue around land stability is therefore associated with the legacy of coal mining activity in the area.

It is noted that the property does not fall within a Coal Mining Referral Area and consequently there is no requirement to consult the Coal Authority who advise that in such circumstance a note to the applicant should be imposed on any permission granted to make them aware of hazards which may be associated with previous coal mining activity in the area. This note was previously imposed on the original permission (18/00413/FUL) and would be re-imposed on any revised permission to be granted.

Given the limited extent of the retaining wall to be constructed it is considered that it would not result in any adverse impacts to land stability and would not have a materially different impact to any neighbouring property constructing a boundary wall, or retaining wall to a boundary, which could be undertaken as a form of permitted development. On this basis no conflict with Policy En6 of the adopted Local Plan or Paragraphs 178 and 179 of the NPPF would arise.

### **Other Matters**

In terms of the third party representations which have been received but are not considered above due regard has been given to the Planning Aid England and Department of Communities and Local Government (DCLG) 'Material Planning Considerations' document which is available to view on the District Council's website. From a planning law perspective, whilst the courts have not necessarily defined what is a 'material consideration' they have considered that planning is concerned with land use in the public interest and therefore the protection of private interests could not be material considerations.

Although comments received from third parties in relation to the standard of construction of the dwelling are noted it is the case that how the dwelling is constructed is a matter to be assessed under Building Regulations and is not, therefore, a material consideration in the assessment of a planning application. There is therefore no justification on planning grounds to refuse the application based on the standard of construction.

It is been stated that the applicant has not complied with the Party Wall Act. It is considered that compliance with the Party Wall Act, where required, is a matter to be complied with separately to planning legislation. As such this matter would not be a material planning consideration which could be taken into account in the assessment of the application. Whilst not material to the assessment of the planning application a note to the applicant would be included on any planning permission granted to make them aware of the requirements of the Party Wall Act.

The impact of the development on the value of a property is not a material planning consideration which could be taken into account in the assessment of the application.

Notwithstanding the conclusions reached in the '*Land Stability*' section of this report above, concerns have also been expressed that the provision of the retaining wall between the south-western (side) elevation of the dwelling and side elevation of no. 212 Battram Road will result in structural stability issues to no. 212 given the relationship with the existing buttresses. Whilst matters associated with land stability can be 'material' to the assessment of a planning application the impact of development on the structural stability of a neighbouring property is 'not material' in the assessment of a planning application given that such an issue is dealt with pursuant to building control legislation and is a private interest rather than a public interest. The impact of a development on the structural stability of a neighbouring property is therefore a matter to be assessed in accordance with Building Regulations and/or under the Party Wall Act.

Concern has also been raised that the provision of the retaining wall would result in the potential for surface water to form in the gap between the retaining wall and the side elevation of no. 212 and that further maintenance of the damp proof course of no. 212. The surface water drainage infrastructure within the curtilage of the dwellinghouse would be a matter to be assessed under Building Regulations and in discussions with the Building Control Team it has been outlined that it would be possible to provide a solution which would mitigate against any impact to the damp proof course of no. 212 as a result of the provision of the retaining wall. Any future maintenance of the damp proof course would not be a material consideration in the assessment of the planning application.

Whilst acknowledging the above, given the concern raised about this element of the scheme it is considered that a condition could be imposed on any permission granted which would require the precise details of the retaining wall, including any drainage infrastructure, to be provided to the Local Authority for approval. The submission of such details would then enable discussions with the Council's Building Control Team to ensure that the approach to the retaining wall is in accordance with good practice as outlined under Building Regulations.

It has been outlined that the terms of condition 8 of the original permission (18/00413/FUL) associated with the finished floor and ground levels were not fully discharged as no approval of the finished ground levels was made. On this basis a view is provided that the development undertaken is un-authorised and that the breach and deviations from the approved plans are unlawful.

Condition 8 of the original permission was a pre-commencement condition and as such was required to be discharged prior to the development commencing. Information to discharge condition 8 was submitted on the 6th September 2018 and 9th October 2018 with the condition being discharged by the District Council on the 12th October 2018. The Officer correspondence confirming the discharge of condition 8 outlines the approval of the finished floor level and indicates that as no information has been provided in relation to the finished ground levels it is assumed that there would be no alteration to the existing levels as were detailed on the

topographical survey which accompanied the discharge of condition submission. Such correspondence indicates that the 'pre-commencement' element of the above condition was effectively discharged.

Whilst land levels were altered following the commencement of the development, which should have been subject to approval by the District Council, it is considered that this does not mean the permission has not been implemented lawfully as the correspondence provided to the applicant at the time indicates that the 'pre-commencement' element of the condition has been discharged (it being assumed that the finished ground levels would match the existing ground levels). On this basis it is considered that a Section 73 application can be utilised to regularise the changes which have/are proposed to the original approval rather than requiring the submission of a 'fresh' planning application to retain the development as built along with the relevant changes.

In any event the submission of a 'fresh' planning application would not alter the 'principle' of the development, which would remain acceptable, and for the reasons as outlined above in this report the proposed changes to the scheme are considered to be acceptable in relation to relevant planning policies.

## **Conclusion**

The site has the benefit of planning permission for the erection of a dwelling which has been implemented on the site. It is considered that the proposed or implemented amendments to the appearance of the dwelling and external materials, along with the provision of a raised patio with screening, amendments to boundary treatments and alterations to land levels, would not result in adverse impacts to the character and appearance of the streetscape or wider area, residential amenity or highway safety. There are no other material planning considerations that indicate that a variation to the approved plans is not acceptable and consequently the development remains compliant with the planning policies referred to above.

The proposed changes will require an alteration to condition 2 (which would now be condition 1 as the permission has been implemented) to reflect the revised approved to the design and appearance of the dwelling. Conditions 3, 6 and 8 (which would now be conditions 2, 5 and 7) would also be updated in respect of the amendments to the scheme. Condition 4 would not be altered as a precise soft and hard landscaping scheme has not been submitted and new conditions would be added to require details of the screening to the raised patio, details of the retaining wall, to remove permitted development rights and ensure the first floor window in the south-western (side) elevation is obscure glazed with a restricted opening. All other conditions, now being nos. 4 and 6, would remain the same as imposed on planning permission reference 18/00413/FUL.

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

1. Approved plans.
2. External materials and finishes.
3. Hard and soft landscaping.
4. Replacement soft landscaping.
5. Boundary treatments.
6. Highway safety.
7. Finished floor and ground levels.
8. Details of screening to raised patio.
9. Retaining wall details.
10. Removal of permitted development rights.
11. Obscure glazed and restricted opening first floor window.
12. Removal of partly constructed element of brickwork adjacent to single storey rear projection.

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Erection of 164 dwellings with associated car parking,  
secondary roads and incidental landscape planting (reserved  
matters to outline planning permission ref. 13/00956/OUTM)  
Grange Road Hugglescote Leicestershire LE67 2BT

Report Item No  
A2

Application Reference  
20/02030/REMM

Grid Reference (E) 443399  
Grid Reference (N) 312592

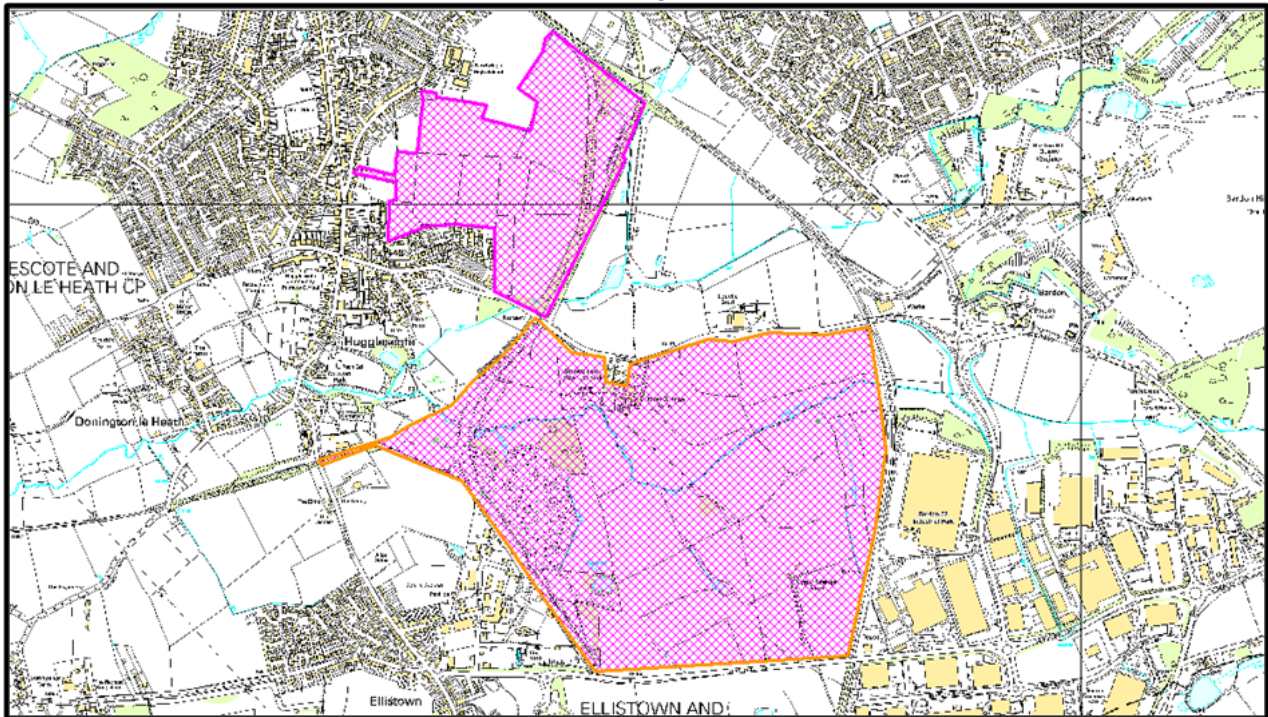
Date Registered:  
6 January 2021  
Consultation Expiry:  
1 July 2021  
8 Week Date:  
7 April 2021  
Extension of Time:  
None Agreed

Applicant:  
Bellway Homes And Harworth Group PLC

Case Officer:  
James Knightley

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 referred to the Planning Committee for determination on the basis of the Planning Committee resolution of 2 December 2014 in respect of the outline planning permission for the wider South East Coalville development.

### **Proposal**

This is a reserved matters application for the erection of 164 dwellings and associated development, forming part of the wider South East Coalville development.

### **Consultations**

Concerns have been raised by Hugglescote and Donington le Heath Parish Council in respect of the proposals; no other objections are raised by statutory consultees.

### **Planning Policy**

The application site lies within Limits to Development as defined in the adopted Local Plan and is also identified as a site with planning permission for housing under Policy H1.

### **Conclusion**

The proposed development is considered to represent an appropriate form of development in accordance with the outline planning permission, and would provide for an acceptable standard of design to meet the Local Planning Authority's design objectives.

**RECOMMENDATION- PERMIT, subject to Section 106 Obligations to secure the management and maintenance of the unadopted roads and the non-petitioning to the local highway authority for their adoption (or any alternative mechanism as considered appropriate by the District Council's Head of Legal and Support Services), and 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

### 1. Proposals and Background

This is a reserved matters application for (following amendment) the erection of 164 dwellings on a parcel of land of approximately 5.5 hectares forming part of the wider South East Coalville development (and identified as Phase A2 of the wider scheme).

The original outline planning permission (ref. 13/00956/OUTM) was determined at the Planning Committee in December 2014, and issued in September 2016 following completion of a Section 106 obligation securing contributions including in respect of affordable housing, travel plans, travel packs, bus passes, children's play / public open space / recreation, biodiversity enhancement, education, civic amenity, libraries and healthcare. An associated Section 278 agreement between the applicants and Leicestershire County Council secured contributions towards off-site highways infrastructure.

All matters were reserved for subsequent approval, and all five reserved matters for the phases to which this application relates (i.e. access, appearance, landscaping, layout and scale) are included for consideration as part of this reserved matters submission. However, the outline planning permission was accompanied by an indicative development framework plan indicating the general location of built development, open space and highway infrastructure within the site, and has subsequently been subject to approved discharge of condition submissions in respect of a site-wide masterplan, Design Code and a vehicular access strategy.

The phase the subject of this application is located to the southern side of Grange Road and would be accessed via the "Gateway" road (part of the principal route running north-south through the eastern part of that part of the South East Coalville development located to the south of Grange Road, previously been approved under a separate reserved matters application (ref. 19/00747/REMM)). As per the site-wide masterplan, land to the south of the current application phase is identified as public open space (and, as per the access road, already the subject of reserved matters approval ref. 19/00747/REMM).

### 2. Publicity

No neighbours notified.

Site Notice displayed 15 January 2021.

Press Notice published Leicester Mercury 20 January 2021.

### 3. Summary of Consultations and Representations Received

The following summary of representations is provided. All responses from statutory consultees and third parties are available to view in full on the Council's website.

#### Statutory Consultees

**Hugglescote and Donington le Heath Parish Council** raises the following issues:

- Design is compact, houses front on to Grange Road, and is well thought out
- Appropriate speed reduction measures are included within the scheme
- Travel Plan requires updating
- Insufficient affordable housing
- Affordable housing ought to be dispersed throughout the site

- Insufficient bungalows
- Unclear as to how pedestrians will be able to cross Grange Road safely

**Leicestershire County Council Lead Local Flood Authority** has no objections.

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

**Leicestershire Police** - no comments received.

**National Forest Company** requests use of larger trees within the proposed landscaping scheme (and incorporating a greater proportion of native species), and suggests greater use of timber in the design of the proposed dwellings to reflect the National Forest setting.

**North West Leicestershire District Council Strategic Housing team** has no objections.

**North West Leicestershire District Council Waste Services Team** has no objections.

### **Other Representations**

Councillor Johnson expresses concern over the proposed provision of pedestrian access points between the site and Grange Road given the absence of footway on that side of Grange Road.

### **Other Third Party Representations**

None

## **4. Relevant Planning Policy**

### **National Policies**

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

The following sections of the National Planning Policy Framework (NPPF) are considered relevant to the determination of this application:

- Paragraphs 8, 11 and 12 (Achieving sustainable development)
- Paragraphs 47, 54 and 55 (Decision-making)
- Paragraphs 106, 109 and 110 (Promoting sustainable transport)
- Paragraphs 122 and 123 (Making effective use of land)
- Paragraphs 124, 127, 128, 129 and 130 (Achieving well-designed places)
- Paragraph 165 (Meeting the challenge of climate change, flooding and coastal change)

#### **Adopted North West Leicestershire Local Plan (2021)**

The application site lies within Limits to Development as defined in the adopted Local Plan and is also identified as a site with planning permission for housing under Policy H1 (site H1h). The following adopted Local Plan policies are considered relevant to the determination of this application:

- Policy D1 - Design of new development
- Policy D2 - Amenity

Policy H6 - House types and mix  
Policy IF1 - Development and Infrastructure  
Policy IF3 - Open Space, Sport and Recreation Facilities  
Policy IF4 - Transport Infrastructure and new development  
Policy IF7 - Parking provision and new development

### **Submission Draft Hugglescote and Donington le Heath Neighbourhood Plan**

The six week consultation on the Submission Draft Neighbourhood Plan ended on 23 April 2021. The submission plan and the representations made during the consultation period are currently being assessed by an independent Examiner who will consider whether the plan meets the Basic Conditions.

The site lies within Limits to Development as defined in the emerging Neighbourhood Plan. The draft Neighbourhood Plan policies listed below are considered relevant to this application.

The weight to be attached by the decision maker to this submitted version should be in accordance with the approach set out in Paragraph 48 of the NPPF, having regard to the stage now reached towards adoption, the extent to which there are unresolved objections to the policies relevant to the determination of this application, and the degree to which the emerging policies are consistent with the NPPF. In view of the early stage, only limited weight can be attributed to its policies at this point.

Policy G1 - Limits to Development  
Policy G2 - South East Coalville Development Scheme  
Policy G3 - Design  
Policy H1 - Housing Mix  
Policy T1 - Transport Assessment for New Housing Development  
Policy T2 - Residential and Public Car Parking

### **Other Policies**

National Planning Practice Guidance.  
Good Design for North West Leicestershire Supplementary Planning Document - April 2017.  
Leicestershire Highways Design Guide (Leicestershire County Council).

## **5. Assessment**

### **Principle of Development**

The principle of development on this site for residential purposes was established by the grant of the original outline planning permission in September 2016 and, as a submission for reserved matters approval, the present application essentially seeks agreement of details in respect of the access, appearance, landscaping, layout and scale. Assessment of this application should therefore relate to the implications of the particular scheme proposed under this reserved matters application; issues relating to the principle of the development and associated matters are not relevant to this application.

## Other Matters Relating to the Outline Planning Permission

In addition to a range of conditions requiring submission and approval of details in respect of various matters prior to trigger points such as commencement / occupation etc., the outline planning permission also requires certain matters to be included as part of the reserved matters application(s) (either for the site as a whole or the relevant phase). These conditions include requirements in respect of: provision of a masterplan (Condition 5); a Design Code (Condition 8); a statement setting out how the Design Code has been complied with (Condition 9); details of modelling and buffer works relating to the River Sence (Conditions 11 and 16); a vehicular access strategy (Condition 27); a site-specific Travel Plan for the relevant phase (Condition 31); and details of continuous routes suitable for buses (Conditions 32 and 33). However, whilst these conditions generally require these matters to be submitted with the first reserved matters application for the relevant phase, the consortium has already sought to address the majority of these on a site-wide basis under separate (approved) discharge of condition applications, and the submission requirements under Conditions 5, 8, 11, 16, 27, 32 and 33 have, in effect, already been complied with. In terms of the remaining conditions referred to above, the following conclusions are reached:

*Condition 9:* In accordance with the condition, the application is accompanied by a statement setting out how, in the applicant's view, the scheme meets the requirements of the approved Design Code, and the requirements of the condition are met. Officers' assessment of the scheme's performance against the Code is set out in more detail under Urban Form, Design and Site Layout below.

*Condition 31:* The application is accompanied by a Travel Plan; further assessment is set out under Highway Safety, Transportation and Access Issues below.

### Urban Form, Design and Site Layout

The proposed development would provide for a gross density of approximately 30 dwellings per hectare (34 per hectare net). Paragraph 122 of the NPPF requires development to make efficient use of land; the density of the proposed development would, when having regard to the location of the development and the implications of meeting the District Council's design policies, be considered reasonable in this location.

As per previous reserved matters submissions in respect of the wider South East Coalville site, the scheme is intended to be a landscape-led development in accordance with the principles set out in the agreed Design Code for the site as a whole and the landscaping proposed would accord with the street typologies approved under the Code.

During the course of the application, the scheme has been the subject of discussions between officers and the applicant, intended to address a number of concerns raised by officers (including the District Council's Urban Designer) in respect of the originally submitted scheme, including elevational treatment, street typology, space for landscaping, garden sizes and pedestrian connections. Following the submission of various amendments, these concerns are now considered to have been addressed and, subject to the imposition of conditions in respect of various details, the scheme is considered acceptable from a design point of view. In terms of pedestrian connections in particular, it is noted that the scheme includes a north-south vehicle-free link through the parcel, connecting to the open space to the south. Having regard to concerns raised (including by the County Highway Authority and Parish Council), a proposed pedestrian connection to Grange Road has been deleted from the scheme on highway safety grounds, but the link would nevertheless be considered to be of use within the parcel itself, even

if it has not proved possible for it to operate as part of a connection through the wider area. Two other proposed pedestrian links have also been deleted for the same reason, although a link at the north western end of the parcel (towards the recently constructed roundabout) remains.

In terms of housing mix issues, Local Plan Policy H6 requires a mix of housing types, size and tenure to meet the identified needs of the community. Whilst tenure is in effect addressed by the existing Section 106 obligations securing affordable housing (with a minimum 7.5% required) as part of the development, Policy H6 refers to the need to have regard to the most up-to-date Housing and Economic Development Needs Assessment (HEDNA), and sets out the range of dwelling size (in terms of numbers of bedrooms) identified as appropriate in the HEDNA as follows:

<i>Tenure</i>	<i>No. of Bedrooms (% of each tenure type)</i>					
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4+</i>		
Market			0-10	30-40	45-55	10-20
Affordable			30-35	35-40	25-30	5-10

Following amendment, the submitted scheme proposes the following (%):

<i>Tenure</i>	<i>No. of Bedrooms</i>					
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4+</i>		
Market			0	4.6	49.0	46.4
Affordable			23.0	69.2	7.7	-

Insofar as the market housing is concerned, it is noted that the scheme would be more weighted towards larger units than as suggested in the HEDNA although it is acknowledged that Policy H6 indicates that the HEDNA mix is one of a number of criteria to be considered when applying the policy, and that Inspectors' decisions elsewhere in respect of housing mix have indicated that reserved matters applications cannot normally be used to secure a specific mix of house types (i.e. as housing mix is not, in itself, a reserved matter).

Policy H6 also requires a proportion of dwellings suitable for occupation by the elderly (including bungalows) for developments of 50 or more dwellings; two single storey dwellings are included within the proposed development. The policy also requires a proportion of dwellings suitable for occupation or easily adapted for people with disabilities; the applicant confirms that the proposed house types are adaptable in accordance with Part M4(2) of the Building Regulations.

In terms of affordable housing generally, as set out above, the Section 106 agreement requires the provision of a minimum of 7.5% of the proposed dwellings within each phase to be affordable. However, the need to comply with the terms of the Section 106 agreement is not directly relevant to the determination of this reserved matters application (and the precise nature of the proposed affordable contribution within the phase the subject of this application would need to be agreed separately under the provisions of the Section 106 agreement prior to commencement on the phase). Nevertheless, in terms of the affordable provision indicated, it is proposed that 13 of the proposed units (i.e. 7.9%) would be provided, thus ensuring that the development would meet (and slightly exceed) the minimum requirements for the phase.

Insofar as the mix of affordable units is concerned in terms of dwelling size and tenure type, this would also need to be resolved under the provisions of the Section 106 agreement, but the Strategic Housing Team nevertheless confirms that it is content with the location, unit size (in terms of bedroom numbers) and tenure mix of the affordable properties indicated at this time. Whilst it is acknowledged (or the reasons set out above) that the details of the affordable

housing contribution would be a matter for approval under the Section 106 agreement rather than the current reserved matters application, it is nevertheless noted that the proposed affordable units would be grouped together in the south eastern part of the site; by contrast, Local Plan Policy H4 seeks to ensure that affordable units are "integrated" within the design and layout of a development, and the NPPF requires development to contribute towards creating mixed and balanced communities. In this case, however, it is considered that, whilst the affordable units within this phase would be grouped together, when considered in the context of the wider development of which it forms part (where the affordable units would be dispersed amongst all residential phases), the grouping of affordable units in this part of the phase would not be unacceptable.

Insofar as the sustainability credentials of the development are concerned, the application is supported by a Sustainability Statement setting out a range of measures, including in respect of use of sustainably resourced materials, measures to limit pollution and waste during construction works and the inclusion of measures to improve water and energy efficiency. In particular, the proposed dwellings are anticipated to limit water consumption to approximately 100 litres per person per day (compared to a Building Regulations maximum requirement of 125 litres per person per day). In terms of energy efficiency, the Sustainability Statement indicates the following measures will be implemented:

- High levels of insulation in the ground floor, external walls and roof spaces;
- Provision of sufficient glazing provision to the principal living rooms to allow each home to benefit from solar gain;
- Compliance with thermal bridging guidance measures;
- Use of efficient gas condensing boiler will be installed in each property
- Dual zone heating controls with delayed start thermostats;
- Energy efficient lamps used in light fittings;
- Dwellings naturally ventilated using efficient decentralised extract fans; and
- White goods installed in each property or offered to purchasers will have an A+ or A energy efficiency rating.

Under the provisions of the Section 106 obligation entered into at the outline stage, a significant contribution to green infrastructure (including public open space, children's play and National Forest planting) is required to be implemented (within the site as a whole). Insofar as this part of the wider site is concerned, the submitted layout broadly corresponds with the various areas of proposed green infrastructure on the site-wide masterplan, and would be considered to provide a suitable contribution to the network of open space proposed as part of the development's overall landscape-led approach.

Under the provisions of the Section 106 agreement (and associated side agreements), the developer for each phase of this part of the wider development is required to agree the details of those areas of public open space etc. under that agreement prior to occupation of the relevant phase. As such, this is essentially a matter relating to discharge of planning obligations rather than the current reserved matters application. It is also noted that this part of the site is adjacent to proposed public open space to the south. This is proposed to include a new Locally Equipped Area for Play (LEAP), the details of which were the subject of a previously approved reserved matters application (ref. 20/02028/REMM), and which has been amended in accordance with the resolution of the Planning Committee of 13 April 2021 so as to include a rubber surfacing.

## Highway Safety, Transportation and Access Issues

As set out above, whilst the site is subject to an agreed vehicular access strategy, the details of the proposed means of access is a reserved matter for determination as part of this application. The submitted scheme shows the proposed dwellings served from the "Gateway" road linked to Grange Road via a new roundabout (part of the principal route running north-south through the eastern part of that part of the South East Coalville development located to the south of Grange Road)). The Gateway has previously been approved under a separate reserved matters application (ref. 19/00747/REMM), and is not the subject of this reserved matters submission.

In response to the submissions, the County Highway Authority had previously raised issues in respect of proposed "connecting" private drives (i.e. those unadopted drives where access is possible via a proposed adopted road from both ends, of which there are three proposed within the scheme), and the County Highway Authority had suggested that the "through" routes ought to be prevented by use of physical features (e.g. gates / bollards etc.).

It is understood the County Highway Authority's concerns in respect of such connecting private drives relates to the potential for future requests to adopt such routes rather than any specific planning-related (e.g. highway safety) reason, and hence no objections are raised to the planning application. The issue of whether or not the Local Highway Authority would wish to adopt the estate roads is not considered to be directly relevant to planning merits, and any request to adopt the roads under Section 38 of the Highways Act 1980 would need to be pursued by the developer separately with the County Council in the usual way. Elsewhere in the District where similar concerns have arisen, it is understood that developers have (in conjunction with the Section 38 process) entered into separate covenants with Leicestershire County Council so as to ensure that future residents will not be able to petition the County Council to adopt private drives; it is understood that the applicant would be content to enter into such an undertaking to the County Council in this instance.

In raising no objections, the County Highway Authority notes that the private drives in question do not accord with standards for adoption within the Leicestershire Highway Design Guide. In the event that the County Council did not adopt the wider estate roads (for whatever reason), it would be open to the developer to retain them as private roads; as per other situations elsewhere in the District where this has arisen, it is considered that it would be necessary to ensure that measures were put in place (e.g. by way of a Section 106 obligation) to ensure that any privately-maintained roads were to remain available for all users at all times in the same way as an adopted road would.

In terms of highway safety issues, the County Highway Authority considers that an additional speed control feature would be required towards the eastern end of the main east-west route through the site; it is considered that this could be addressed by way of a condition. As set out above, proposed pedestrian connections to Grange Road to the north have been deleted from the scheme, but a connection (linking to footway at the roundabout) would remain (and to which no objections are raised by the County Council).

As set out above, (and as per the requirements of Condition 31 of the outline planning permission) the application is accompanied by a Travel Plan relating to this phase of the wider scheme, and which sets out a range of measures designed to reduce reliance on single occupancy vehicle trips (and in accordance generally with the Framework Travel Plan for the site as a whole forming part of the outline application submissions). This site-specific Travel Plan has been assessed by the County Highway Authority and, following amendments made to the document to address issues raised by the County Highway Authority, no objections are

raised.

Overall in respect of highway safety, transportation and access issues, therefore, the scheme is considered acceptable.

### **Residential Amenity**

There are no existing neighbours considered to be materially affected by the proposals; insofar as future residents of the proposed development are concerned, the proposed layout is considered to include appropriate relationships between the new dwellings, and has been amended to address officer concerns over garden sizes, providing for an acceptable level of amenity, and complying with the relevant Local Plan and SPD policies.

### **Other Matters**

Whilst a matter controlled under the outline planning permission, the Lead Local Flood Authority (LLFA) had queried the accessibility of associated surface water drainage features for maintenance purposes; following the submission of supplementary information, however, the LLFA is now content with the proposals in this regard.

### **Conclusion**

As set out above, the principle of the development has already been established by way of the outline planning permission, and assessment is therefore limited to those issues falling within the reserved matters.

The reserved matters scheme, the subject of this application is considered to be acceptable, and previously raised design and highway safety concerns are considered to have been addressed to an acceptable degree. It is therefore recommended that reserved matters approval be granted.

**RECOMMENDATION- PERMIT, subject to Section 106 Obligations to secure the management and maintenance of the unadopted roads and the non-petitioning to the local highway authority for their adoption (or any alternative mechanism as considered appropriate by the District Council's Head of Legal and Support Services), and subject to the following conditions:**

- 1 Compliance with outline planning permission
- 2 Approved plans
- 3 Landscaping (including future maintenance and management)
- 4 Hard surfacing (including provision of transition strips to proposed roads)
- 5 Materials
- 6 Boundary treatment (including precise alignment of proposed dwelling boundary features adjacent to public realm)
- 7 Tree / hedgerow protection



- 8 Levels
- 9 Pedestrian and cycle connections
- 10 Car parking
- 11 External lighting
- 12 Windows, doors, rainwater goods, utility boxes, chimneys, eaves and verges
- 13 Windows to car parking areas
- 14 Bin / recycling storage and collection points
- 15 Street name plates
- 16 Retaining walls / structures
- 17 Provision of signage in respect of unadopted roads / drives intended for public use
- 18 Access visibility splays
- 19 Site Specific Travel Plan
- 20 Measures to prevent drainage of surface water into the public highway

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