
Residential development for up to 29 dwellings (Outline - access included)

**Report Item No
A3**

Land Off Top Street Appleby Magna Swadlincote Derby

**Application Reference
13/00697/OUTM**

**Applicant:
Mr Dingley**

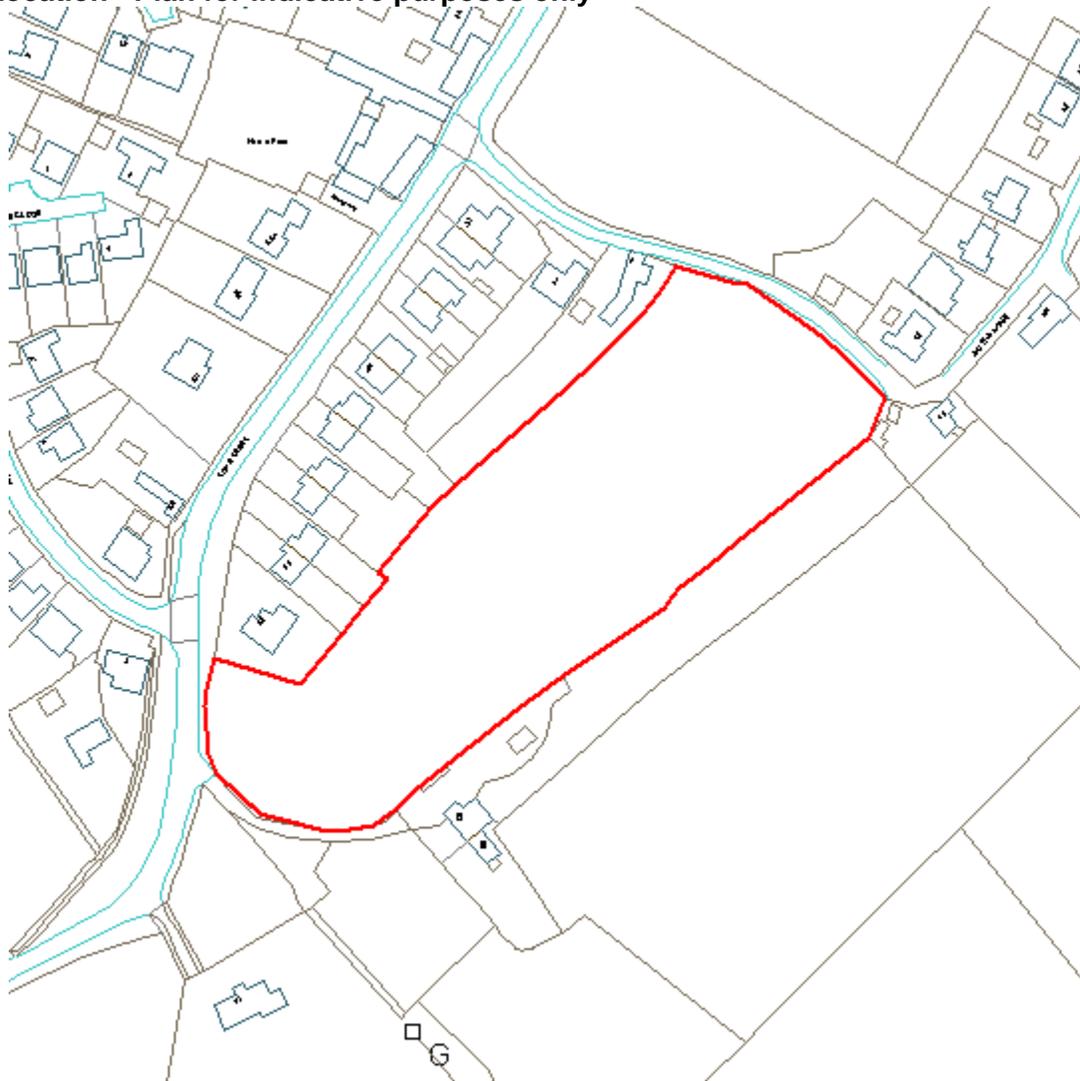
**Date Registered
18 November 2013**

**Case Officer:
Jenny Davies**

**Target Decision Date
17 February 2014**

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

Site Location - Plan for indicative purposes only



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Executive Summary of Proposals and Recommendation

Proposal

Outline planning permission (with access included for determination) is sought for residential development for up to 29 dwellings at land off Top Street, Appleby Magna. The site is currently a grassed field/paddock lying on the south eastern side of Top Street and is adjoined by residential properties, open fields and the road network (Botts Lane and Top Street). The indicative layout plan shows the dwellings to be laid out on either side of a central access road which ends at a turning head, with a mixture of detached and semi-detached properties and one terrace of three dwellings. Access to the site would be in a similar position to the existing field access onto Top Street which is located in the site's south west corner.

Consultations

Members will see from the main report below that objections have been received in respect of the proposals, including from Appleby Magna Parish Council, with 37 letters being received from members of the public. The objections cover several different issues, broadly but not exclusively relating to the principle and sustainability of the proposal, highway safety, impact on the character of the area, flood risk and drainage. The County Highway Authority has objected in relation to the sustainability of the site's location. The County Ecologist also objected in relation to inadequate information submitted on habitats on site and the impact great crested newts and the failure to protect a hedgerow, although her objections in relation to the first two matters have now been withdrawn. The Environment Agency also objected in relation to the inadequacy of the Flood Risk Assessment although following the submission of additional information its objection has been withdrawn.

Planning Policy

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

Conclusion

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

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

Whilst there would be harm to the Sensitive Area and potential for impact on an important hedgerow it is considered that this would not be at a sufficient level to justify reasons for refusal and it is considered that these impacts would be outweighed by other material considerations in particular the need for the District to release land for housing to ensure the provision and

maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF).

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

RECOMMENDATION:-

PERMIT, SUBJECT TO SECTION 106 OBLIGATIONS, AND SUBJECT TO THE IMPOSITION OF CONDITIONS

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

MAIN REPORT

1. Proposals and Background

The application falls to be determined by the Planning Committee given that there are also a number of other applications for major residential development within Appleby Magna (13/00697/FULM and 13/00797/FULM) being considered separately on this agenda.

Outline planning permission (with access included for determination) is sought for residential development for up to 29 dwellings at land off Top Street, Appleby Magna. The position of the access and an indicative layout plan has been provided but the design of the dwellings is not included.

The site is currently a grassed field/paddock lying on the south eastern side of Top Street and is adjoined by residential properties, open fields and the road network (Botts Lane and Top Street). Land levels increase approximately by up to 6.3 metres from south to north and by up to two metres from west to east.

The indicative layout plan shows the dwellings to be laid out on either side of a central access road which ends at a turning head, with a mixture of detached and semi-detached properties and one terrace of three dwellings. The scheme would provide for 30% on-site affordable housing (9 dwellings) with a tenure mix of shared ownership and affordable rent to be agreed as part of a legal agreement.

The mature trees and hedgerows that currently form the site's boundaries are shown to be retained, although part of the frontage hedgerow would be removed and replaced to allow for access alterations and visibility splays. Access to the site would be via the existing site entrance (which would be altered in terms of its width and alignment) onto Top Street which is located in the site's south west corner.

The site lies within the catchment area of the River Mease Special Area of Conservation. The boundary of the Appleby Magna Conservation Area lies 57 metres to the north east of the site. No. 42 Top Street and Jordan's Farm, which are both Grade 2 listed buildings, lie approximately 70 metres to the north west of the site, on the opposite side of Top Street. The Sir John Moore School, which is a Grade 1 listed building, lies 275 metres to the south of the site, further along Top Street. Two unlisted buildings of interest (outbuildings to the front of No. 42 Top Street and adjacent to the doctor's surgery) are also located on the other side of Top Street to the north west of the site.

Planning history:

- Erection of four detached bungalows (84/0671) refused September 1984 on the grounds of being outside limits to development and loss of open character;
- Residential development (outline) (75/1662) refused December 1975 on four grounds relating to being contrary to the Structure Plan and Village Plan; housing needs to link together existing sporadic development; outside limits to development and detrimental to amenities of village; and previous appeal decision dismissed for residential development;
- Four other applications for residential development on all or part of the site submitted before 1974 (4436, 3261, 2131 and 1546) have all also been refused, with 4436 being dismissed on appeal in July 1973.

The proposal has been assessed in respect of the Environmental Impact Assessment (EIA) Regulations 2011. Whilst the proposal is classed as development under paragraph 10(b) of Schedule 2 to the Regulations it has been concluded that this proposal does not constitute EIA

development under the 2011 Regulations as its impacts, both on its own and cumulatively with three other major housing proposals on Measham Road, Bowleys Lane and Top Street (13/00797/FULM, 13/00799/FULM and 14/00082/OUTM) and a scheme for eight dwellings on Measham Road (13/00829/OUT), are considered to not be significant and can be considered as part of the planning application.

2. Publicity

29 Neighbours have been notified (Date of last notification 7 March 2014)

Site Notice displayed 4 December 2013

Press Notice displayed 12 December 2013

3. Consultations

Appleby Magna Parish Council consulted 21 November 2013

County Highway Authority consulted 30 January 2014

Environment Agency consulted 21 November 2013

Severn Trent Water Limited consulted 21 November 2013

Head of Environmental Protection consulted 21 November 2013

Natural England consulted 21 November 2013

NWLDC Tree Officer consulted 21 November 2013

County Archaeologist consulted 21 November 2013

LCC ecology consulted 21 November 2013

NWLDC Conservation Officer consulted 21 November 2013

NWLDC Urban Designer consulted 21 November 2013

English Heritage- Grade I/II* LB Setting consulted 21 November 2013

LCC Development Contributions consulted 21 November 2013

NHS Leicester, Leicestershire And Rutland Facilities Managme consulted 21 November 2013

Development Plans consulted 21 November 2013

Head Of Leisure And Culture consulted 21 November 2013

Manager Of Housing North West Leicestershire District Council consulted 21 November 2013

Police Architectural Liaison Officer consulted 21 November 2013

Highways Agency- Article 15 development consulted 21 November 2013

Manager Of Housing North West Leicestershire District Council consulted 7 March 2014

DEFRA consulted 13 January 2014

4. Summary of Representations Received

Statutory Consultees

Appleby Magna Parish Council objects on the following grounds:

'This is an E1 Character Area, thus needs protection.

-This is a discreet site and could blend in with the village - however, the water and drainage - flooding problems previously outlined are still a major consideration and barrier to development.

- ACCESS is a major issue for this site - there are x3 junctions within 50 yards on fairly blind bends; Councillors have looked carefully at access issues, but there is no way around this.

- Nothing in the plans shows consideration for the surface water management - this cannot go straight into the brook!

- Thirty-two dwellings is too high for the area, even without the above due considerations.

The Parish Council also states that *'There is a village survey being carried out (an unbiased,*

objective questionnaire) re development within Appleby Magna - the results are not yet available, but we will pass these to you on receipt, this, with other planning matters can be discussed when you meet with Councillors to review the planning applications.'

The Parish Council also 'wishes to register interest in any Section 106 funding, should this become relevant - this would be useful to the village and Councillors are open to discussion in the future based on mutually agreed planning applications - however, this does not in any way give approval to any large scale planning applications as long as the infrastructure and inadequate water management in the village remains as is.'

The Parish Council goes onto state the following:

'All of the above applications are responded to by the Parish Council using material considerations, Councillors have acted fairly, openly and apolitically, approaching each application with an open mind and avoiding pre-conceived opinions, all issues have been carefully weighed up and they determined each application on its individual planning merits, avoiding undue contact with interested parties, clearly stating reasons for their decisions.'

It is interesting to note that Christine Fisher, Chief Executive of NWLDC stated in a letter sent 14th October 2014 re Churchyard of St Michael and All Angels, Appleby Magna regarding further burial land - "It is also unlikely that there will be any major development in Appleby Magna that would attract significant 106 funding." ... this leads the Councillors to feel that their major concerns with the infrastructure of the village are generally held.

Appleby Environment believes, in light of the cumulative effects of the various housing developments, and taking account of guidance set out in the NPPF on the importance of such cumulative effects, that NWLDC is required to commission an Environmental Impact Assessment (EIA). This is required to assess the cumulative effects of the proposed developments. This has to be undertaken prior to the determination of these residential applications.

The Parish Council works closely with Appleby Environment and other key interdependents to ensure the village is looked after and is sustained (and grows) in a strategic and robust manner, taking into account all factors which impact residents and are also material planning considerations, such as water management, road use, access/egress issues, sewage management and ensuring Appleby Magna sustains its character.

The Parish Council has also made the following additional comments:

- It is worth noting that the Severn Trent water disposal lorry is in the village every day dealing with water problems - this is causing a great deal of concern to residents, especially in light of further possible developments;*
- the Talbot Street, Whitwick planning application to build 8 houses has been rejected - in some part due to concerns re flooding and traffic/road safety - similar potential impacts to those causing concern in Appleby Magna village.*

The Parish Council has also forwarded the results of a village survey carried out on its behalf, which had a 57.2% turnout. The responses indicate the following:

- 87% of respondents oppose all or most of the proposed developments;*
- 89% of respondents are quite or very worried about flooding and drainage issues;*
- 56% of respondents are quite or very concerned about the primary school having to move and 62% of respondents are quite or very concerned that the primary school would have to change its future development plans. 32% and 23% of respondents did not respond to these two questions;*

- 75% of respondents are very concerned about the impact of extra traffic;
- 50% of respondents are very opposed to measures to accommodate extra traffic;
- The majority of respondents are in agreement with six out of seven of listed guidelines in the Village Design Statement being important to guide new development, and there being no over-riding view in relation to the seventh listed guideline;
- 60% of respondents are quite or very unhappy with the process of consultation/planning;
- 21% of respondents think 16 to 25 dwellings would be a reasonable level of new housing for the village.

Furthermore the Parish Council initially made the following comments:

'In the absence of an approved NWLDC Core Strategy we would ask that the total number of dwellings for all the applications be taken into consideration. The rejected Core Strategy considered Appleby Magna as a sustainable village and as such would share a quantity of new dwellings with the other sustainable villages. The proposed quantity was 80 between all the sustainable settlements; the proposals before the Council would exceed this level by 20% in a single community. There are several new dwellings already approved or awaiting approval prior to these applications giving a total of 9 new dwellings to be constructed. Please note that the Parish Council does not object to some development within the village, but feels that the proposed 9 dwellings plus 1 or 2 more would more than satisfy this village's quota towards the 5 year plan.

A major point of concern is the current flooding issues associated with a stream running through the village, this causes flooding in Church Street, Mawbys Lane, Duck Lake, Black Horse Hill and Old End as well as the Caravan Park off Measham Road. The Caravan Park off Measham Road is also the location of the main Severn Trent Water sewage pumping station for the village. With reference to the Severn Trent Water letters included in the Flood Risk Assessments for Applications 13/00797/FULM and 13/00799/FULM which states "the Village system is currently experiencing some hydraulic sewer flooding problems". These problems are associated with Black Horse Hill, Duck Lake, Old End and the Caravan Park off Measham Road. One resident of Black Horse Hill is currently unable to reside in the property because of these known problems. The application 13/00809/OUT would add to this problem and the dwelling may also be affected by it. The Parish Council would ask that further investigation of these known issues be carried out before adding to this problem.

The application 13/00799/FULM is on land that is currently subject to an Application for Village Green Status under consideration by Leicestershire County Council, the Parish Council ask that this be taken into consideration when assessing this application. It is our understanding that planning applications appertaining to Village Green land should be frozen, awaiting conclusion. There are also concerns about traffic movements on the single track section of Bowleys Lane from the proposed entrance to this development to its junction with the A444.

The Parish Council requests that all of the above applications be deferred until the key, serious issues relating to infrastructure, highways and footpaths are sorted out and professional reports requested and received for due consideration by all parties.'

The County Highway Authority recommends refusal on the following grounds:

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

The Highways Agency has no objections.

English Heritage advises that careful consideration is given to the potential cumulative impact of such developments on the significance of designated and non designated heritage assets; to include the character and appearance of the conservation area, the contribution of its setting to significance; the impact on listed buildings and the scheduled monument. English Heritage also advises that the archaeological potential is not fully considered and goes onto recommend that the application should be determined in accordance with national and local policy guidance and on the basis of the Authority's specialist conservation advice.

The County Archaeologist advises that since it is possible that archaeological remains may be adversely affected the Authority should defer determination of the application and request that the applicant completes an Archaeological Impact Assessment. Following submission of an assessment, further comments are awaited from the County Archaeologist and these will be reported on the Update Sheet.

The Council's Urban Designer set out three issues that need to be addressed at this stage and expresses concerns about the illustrative layout.

Severn Trent Water has no objection subject to conditions.

The Environment Agency initially set out guidance in relation to Flood Risk Assessments and surface water drainage schemes, and recommended consultation with the Lead Local Flood Authority and/or Local Land Drainage Section. Subsequently the Environment Agency provided detailed comments on the application and objected on the following grounds:

The FRA submitted with this application does not comply with the requirements set out in paragraph 9 of the Technical Guide to the National Planning Policy Framework. The submitted FRA does not therefore provide a suitable basis for assessment to be made of the flood risks arising from the proposed development.

In particular, the submitted FRA fails to adequately assess the risks to the site from the unnamed ordinary watercourse located south-east of the site, a watercourse which is conveyed under Top Street within a culvert. If any area is found to be within Flood Zone 3, there should be no development, raised levels or obstruction to flood flow in these areas.

Following submission of further information, the Environment Agency has no objections subject to conditions.

Natural England has no objections subject to conditions in relation to the River Mease SAC/SSSI, although this is subject to confirmation from the Environment Agency in respect of the general principles of foul and surface water disposal and from Severn Trent Water in relation to capacity of the drainage system. Natural England also suggested that green infrastructure, priority habitat creation and biodiversity enhancements should be incorporated, refers to its Standing Advice relating to protected species and advised that impacts on biodiversity, geodiversity and local landscape character should be considered.

The County Ecologist recommended refusal on the grounds of inadequate information submitted on habitats on site and the impact of a European protected species, and the failure to protect a habitat of County-wide value, the species-rich hedge to the south east boundary. Following the submission of additional information, the County Ecologist advises that she can remove one of her objections to the proposed development (the lack of supporting ecological

information), and has no objections in principle to this development. However her objection in relation to impact on the hedgerow still remains.

The Council's Environmental Protection team has no environmental observations and no comments in relation to contaminated land.

The Council's Tree Officer initially advised that a tree survey and arboricultural implications assessment are required and following submission of this information has no objections.

The Council's Affordable Housing Enabling Officer advises that the applicants have agreed to the requirements for affordable housing provision on the site.

NHS England initially requested a contribution of £14,609.16 towards the Measham GP surgery. Following the reduction in the number of dwellings, the requested contribution has increased to £14,879.80.

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

Leicestershire County Council Library Services Development Manager initially requested a contribution of £1970.00 (based on 32 dwellings). Subsequently the County Council advises that the following amounts would be payable per dwelling:

- £27.18 per one bed dwelling
- £54.35 per two bed dwelling
- £63.41 per three bed + dwelling.

Leicestershire County Council Local Education Authority initially requested a contribution of £80,187.92 and has also informally provided an education contribution for this site having regard to the cumulative impact of this proposal and two others within the village.

No responses received from the Council's Leisure team or Leicestershire Police by the date of this report.

Third Party Representations

37 letters of representation have been received which object on the following grounds:

Principle and Sustainability

- all applications for new housing in Appleby Magna need to be considered at the same time;
- all applications will need to be delayed pending outcome of the Village Green application as this takes precedence;
- cumulative impact on village needs to be considered alongside other applications for new houses;
- Environmental Statements need to be undertaken to consider cumulative impacts;
- strategic environmental assessment/sustainability appraisal needs to be undertaken by the Council as part of their emerging local plan;
- under the Core Strategy quota of new houses for Appleby Magna anticipated at 8-10 dwellings;
- these houses have already been provided by several small scale developments/proposals in the village;
- Council's supporting evidence for Core Strategy remains valid and states that rural housing requirement is already largely taken up;
- the criticisms from the Inspector in relation to the Core Strategy related to housing numbers

and the lack of specific identified sites for development and there was no challenge to the issue of distribution of housing;

- under last Local Plan large scale developments unacceptable in the village;
- Inspector's Report into the Local Plan refused to allocate the land for housing;
- professionally established local need should be met by specific allocation;
- applications are premature as the number of houses and the best site needs to be determined first;
- permission was granted in January 2014 for more houses in Ravenstone than were intended in all the sustainable villages for the whole of the plan period;
- Policy S3 of the Local Plan is still relevant;
- development is outside the limits to development and will result in loss of countryside;
- Green Belt land needs to be retained;
- adherence to planning restrictions on location of new houses now appears to be being disregarded and it is not clear which rules are being followed;
- there are other sites available that could be built on;
- a new purpose-built village could be built instead of adding housing to an existing village;
- large scale development of the village would be unsustainable as the three tests in the NPPF would not be met;
- cumulative number of dwellings proposed is disproportionate to the size and character of the village;
- rate of growth should be slow to allow newcomers to integrate into the community;
- the village cannot absorb more than small scale development due to limited public transport, facilities, jobs and infrastructure;
- unsustainable demands on local services and possible creation of tensions within the community;
- the level of services that are available in Appleby Magna has been exaggerated;
- difficult to increase the limited capacity at Sir John Moore School as it is a Grade 1 listed building;
- current consultations to close GP surgery and reduce bus service;
- the minutes from Appleby Magna Parish Council meetings show that the GP surgery will be closed;
- all options being offered in relation to the No. 7 bus service involve a significantly reduced service to Measham and Ashby and are an improvement on the 2012 consultation options so it is not plausible that there will be any further enhancement of service;
- impact on local village shop;
- limited capacity at Snarestone Treatment Works;
- limited capacity of local drainage system;
- limited capacity of electricity supply cables;
- limited capacity of internet/broadband links to the village;
- increase in car journeys which will increase carbon emissions;
- Strategic Housing Land Allocation Assessment is flawed;
- minimum number of affordable homes will be provided;
- house sizes need to complement those already in the village;
- lack of affordable homes;
- little evidence of need and demand for new homes in the village as a number of homes currently for sale and have been for some time;

Visual Impact and Historic Environment

- site is a Sensitive Area as designated in the Local Plan;
- site is integral as a rising open green space at the approach to the village and its loss would significantly affect the character of Top Street;
- development of land outside the built shape of the village;

- development will be visible from outside the village;
- contrary to Appleby Magna Village Design Statement;
- impact on character of area including extending beyond existing village boundary and loss of open rural aspects and open spaces within the village;
- rural aspect of the village from approach roads and uninterrupted views to landmark buildings in their settings should be retained with solid blocks of housing at the edge of the village avoided;

Residential Amenities

- noise and disturbance will affect peace and quiet of the area;
- proximity to existing dwellings;
- loss of light;

Flooding and Drainage

- current issues with flooding in the village and close to the site will be exacerbated;
- increase in surface water runoff will swamp the nearby watercourse;
- impacts, including cumulatively, on River Mease SAC have not been considered and an Appropriate Assessment is needed;
- potential pollution problems need to be considered;

Highway Safety

- village road network does not have the capacity and is not suitable for extra traffic;
- additional traffic will exacerbate and cause congestion in particular along Top Street;
- additional traffic will have significant detrimental impact on health and safety of road users and residents;
- construction traffic will pass through village and/or the school creating an unacceptable safety risk for children;
- additional traffic, in particular past the school, will make the roads more dangerous for vehicles and pedestrians;
- Top Street already used by lorries and as short cut to the A444 and not just for local journeys;
- road widening and traffic calming will be required which will affect local character;
- lack of footway along this side of Top Street;
- new footways do not seem adequate;
- impact on safe access to and from adjacent dwelling;
- poor visibility at junction of site access and Top Street;
- inadequate assessment of car travel;
- data from speed monitoring equipment may become contaminated and therefore invalid;

Ecology

- impact on and loss of wildlife, in particular grass snakes and their habitat;
- a survey for grass snakes is therefore required;
- loss of wild flowers;
- destruction of hedgerows and open areas which would have an adverse impact on nature conservation;

Other Matters

- an archaeological study needs to be undertaken;
- loss of view/outlook;
- impact on property values;
- misleading and inaccurate statements in the application;
- setting of a precedent;
- policies from current Local Plan are still in place and maintained in emerging Core Strategy;

- selective use of policy in application submissions;
- high probability that land will be sold on and plans changed to higher densities and lower quality design;
- concerns in respect of commerciality and viability of proposals due to potential impact of HS2;
- HS2 may dissuade potential buyers and result in half-finished building sites;
- public consultation has not been carried out;
- a full application is required as there is not enough detail to comment on the issues that will be raised.

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

5. Relevant Planning Policy

National Planning Policy Framework (NPPF) - March 2012

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

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

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

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

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

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

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

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

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

"34. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"135. The effect on the significance of a non-designated heritage asset should be taken into account in determining the application.

"139. Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets."

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

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

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

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

North West Leicestershire Local Plan:

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

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

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

Policy E1 states that development will not be permitted within the Sensitive Areas which would adversely affect or diminish the present open character of such areas and the contribution they make to the settlement, streetscene or relationship with adjoining countryside.

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

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

Policy E4 seeks to achieve good design in new development.

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

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

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

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

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

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

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

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

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

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

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

Other Guidance

Submission Core Strategy

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

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

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

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

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

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

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

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

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

NWLDC SPD for Affordable Housing - January 2011

Key Principle AH2 provides that affordable housing will be sought on all sites of 5 or more dwellings in areas outside the Greater Coalville Area, Ashby de la Zouch and Castle Donington.

Key Principle AH3 requires a minimum of 30% of residential units to be available as affordable housing within areas outside the Greater Coalville area and Ibstock.

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

Appleby Magna Village Design Statement The purpose of the Village Design Statement is to influence the planning process so that any further development and change within the village and the surrounding countryside will be managed in a way that protects and enhances the qualities that give Appleby its special character, by taking into account local knowledge, views and ideas.

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

6. Assessment

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

Principle of Development

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

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

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

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

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

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

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

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

Housing Land Supply

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

The consequences of an inability to demonstrate a five year supply are profound. Paragraph 49 of the NPPF advises that "Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites". Therefore the Council would not, in these circumstances, be able to rely on

either Policy S3 or Policy H4/1 as they are "relevant policies" for the purposes of NPPF paragraph 49. Whilst members have previously been advised, on the basis of the Stephenson's Green High Court decision that Policy S3 should not be considered to be a relevant policy for the supply of housing and that accordingly the policy should not be considered to be out of date, a recent judgement from the most senior Judge in the Administrative Court (who is also a specialist Planning Judge) has qualified the position taken by the Judge in the Stephenson's Green case as a result of which it is no longer appropriate to rely on the latter decision.

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

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

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

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

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

Sustainability

As set out above, the application site is an unallocated site located outside the Limits to Development in the adopted Local Plan. The County Highway Authority (CHA) considers that the applicant has failed to demonstrate that the proposal is in a location where services are readily available and safely accessible by a variety of modes of transport. These are issues which Policy H4/1 of the Local Plan deals with. Notwithstanding the status of Policy H4/1 as mentioned above, since its adoption the NPPF has been published.

In terms of the sustainability of the site, Appleby Magna provides a good range of day to day

facilities, i.e. a primary school, shop/Post Office, church, church hall, two public houses, GP surgery, play area/recreation ground and some small-scale employment sites. It should be noted that public consultation was undertaken at the end of 2012 to close the GP surgery so patients would have to attend the surgery in Measham (3.05km away) and it is understood that the surgery will close in May 2014.

There is also a limited public transport service; the No. 7 service currently provides a service Monday to Saturday (approximately every 1.5-2 hours) from 8.10am to 5.48pm which serves Measham, Ashby de la Zouch, Atherstone and Nuneaton with a total of 11 buses running per day. Public consultation was also undertaken at the end of 2013 to reduce the bus service so it operates every four hours, with a total of six buses running per day. The County Council has advised that its review of this bus service will be considered at its Scrutiny Committee in March 2014 and at its Cabinet meeting in May 2014.

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

Bus Stop - 490 metres
Primary School - 435 metres
Shop/Post Office - 765 metres
Play Area/Open Space - 460-590 metres
Church Hall - 780 metres
Public House - 520 metres

The application site is within 800 metres (preferred maximum walking distance) of the services listed above. The level of services available is considered to be good for a rural village although the public transport connectivity is considered to be poor. Whilst there is no footway on this side of the road, one runs along the western side of Top Street into the village and to the south west towards the school and also along Didcott Way to link to a public footpath to Wren Close and the western side of the village. Furthermore occupiers of existing dwellings on the eastern side of Top Street have to cross the road to use the footway into the village or to the school. A condition can be imposed requiring provision of new footways to link into existing footways, via a suitable crossing facility. There is also a variety of pedestrian routes through the village that could be used to reach existing services. Although there already appears to be a high level of car use within the village (based on 2011 Census data) there are some services/facilities within the village and some opportunities to access them other than by car.

Concerns have been raised about the impact on local services, in particular on Sir John Moore Primary School which is located in a Grade 1 listed building, in particular the capacity for the site/building to house additional pupils. Contributions have been sought by Leicestershire County Council (discussed in a separate section below) which would fund capacity for extra school places and the County Council would decide where those spaces are provided. The school has advised that it has a Master Plan in place which involves a new building to the rear of the existing building and there is some flexibility to provide space for additional pupils within this proposed building. Contributions have also been sought to provide additional capacity at the library and GP surgery at Measham, to improve the open space/recreational facilities within

the village and to provide bus passes/travel packs and improve bus stops.

Given the scale of the development it is considered that the proposal would not result in unsustainable demands on local services and facilities, and contributions have been sought to provide additional capacity within schools, the library and GP surgery at Measham, to improve the recreational facilities within the village and to provide bus passes/travel packs and improve bus stops. There is nothing to suggest that the public houses and shop would be adversely affected by an increase in residents and it may be the case that additional residents could support and sustain these and other services/facilities. Taking all of these matters into account, it is considered that Appleby Magna is a sustainable location for the level of development proposed for this site on an individual basis.

Scale of Development

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

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

It is estimated that there are 433 properties in the village of Appleby Magna within its main built up area; there are 485 properties in the Parish of Appleby Magna. This proposal for a maximum of 29 dwellings would represent a 6.7% increase in the number of dwellings within the village and a 6% increase within the Parish. The 29 proposed dwellings alongside the 12 new dwellings built since 2006 and the outstanding commitments for seven dwellings would equate to an 11.09% growth in the village since 2006. Adding on the eight dwellings at Measham Road (13/00829/OUT) with a resolution to permit would result in a 12.93% increase in growth. Therefore, the proposed development on its own, and with additional dwellings/commitments, would represent a lower level of growth than that for North West Leicestershire as a whole. As such it is considered that the proposal on an individual basis would not result in a significant increase in housing development within the village.

When considered cumulatively with the other three major housing proposals for the village (a maximum of 153 dwellings) this would equate to a 35.33% increase in new dwellings within the village and a 31.55% increase across the whole Parish, which would represent a higher level of growth for the village and Parish than proposed across the District in the GL Hearn Study. When taking into account new dwellings/commitments this growth increases to 41.57 % and 37.11% respectively. This level of cumulative development is considered to be inappropriate for Appleby Magna given its poor public transport connectivity, its level of services/facilities and the village's rural location. Although this site is the second to be considered on the Agenda the number of dwellings proposed for the village has not increased given that the first application (i.e. the Bowleys Lane site) was recommended for refusal.

Loss of Agricultural Land

Also of relevance to the principle of releasing the site is the issue of loss of agricultural land. The site is currently grassland although it is not clear if it is in active agricultural use. However the development of the southern part of the site would result in an irreversible loss to non-agricultural use. DEFRA has been consulted on this issue, but no response has been received.

Paragraph 112 of the NPPF suggests that, where significant development of agricultural land is

demonstrated to be necessary, poorer quality land should be used in preference to that of a higher quality. Having regard to the five year housing land supply issue as set out above, it would seem inevitable that greenfield land (much of which will be agricultural in terms of use) will need to be released. Best and Most Versatile (BMV) agricultural land is defined as that falling within in Grades 1, 2 and 3a of the Agricultural Land Classification (ALC). The application site falls within Grade 2 of the ALC.

However, it is commonly accepted that the magnitude of loss of agricultural land is low where less than 20 hectares of BMV would be lost (with medium and high impacts defined as those resulting in loss of between 20 and 50ha, and those of 50ha and above respectively). The site is approximately 1.07 hectares in size. It is noted that the NPPF does not suggest that release of smaller BMV sites is acceptable. However, it nevertheless appears reasonable to have regard to the extent of the loss in the decision making process, which in this case would be relatively small in scale but irreversible as there are unlikely to be any areas of open space/landscaping that would be large enough to accommodate an agricultural use in the future.

Nevertheless it is not considered that the proposed development sits particularly comfortably with the requirements of the NPPF and, in particular, the aims of paragraph 112. However, this would need to be weighed against other material considerations and, whilst there would be adverse impacts in this regard, when considered in the context of the five year housing land supply issue, and the benefits of releasing the site to assist in maintaining such supply, it is considered that the agricultural land quality issue is not sufficient to suggest that planning permission should be refused, particularly given the relatively limited extent of the loss.

Conclusions in respect of the Principle of Development and Planning Policy

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

The site is outside Limits to Development in the adopted Local Plan and its development for housing would therefore be contrary to Local Plan Policy S3. For reasons which have been outlined above, however, this Policy cannot be considered as being up-to-date in the context of Paragraph 49 of the NPPF. The site's general suitability for housing (given its location in terms of distances to most services/facilities) is also material, together with the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF).

It is considered that the proposal on its own would not result in a significant increase in housing development within the village. Although the level of cumulative development proposed across the four major housing proposals is considered to be inappropriate for Appleby Magna, both when considering the four sites together and with new dwellings/commitments, consideration is only given to the scale of the proposal on an individual basis as the number of dwellings for the village has not increased as the Bowleys Lane application was recommended for refusal.

Having regard to the three dimensions of sustainable development, it is accepted that the contribution to economic growth associated with the proposed development in terms of jobs and the creation of new households, coupled with the role played in contributing to housing land supply, its proximity to services/facilities, the provision of affordable housing and open space and the inclusion of appropriate contributions to local services would ensure that the scheme would sit well in terms of the economic and social dimensions. Insofar as the environmental

role is concerned, whilst the proposed development would result in the development of a greenfield site, as set out in more detail below, the proposed development would not result in any unacceptable impacts on the historic environment. There would be some harm to the built and natural environment in terms of the character of the area and impact on a hedgerow but not at a sufficient level to justify a reason for refusal and it is considered that this would be outweighed by other material considerations in particular the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF).

Having regard to all of the above in the overall balance it is considered that the proposal would be a sustainable form of development and therefore the proposed development of the site is acceptable in principle.

Density

The proposal results in a density of 27 dwellings per hectare, which is below that sought under Policy H6 of the Local Plan (a minimum of 30 dwellings per hectare). The NPPF states that local planning authorities should set their own approach to housing density to reflect local circumstances. This density is considered appropriate having regard to the location of the site in a rural village and the character of the area.

Layout and Design

The proposal provides a mix of housing with the majority being detached or semi-detached properties. The layout is indicative and so is not fixed to that shown on the submitted plan but does show what could be provided on the site. It is recognised that the dwellings at the southern end of the site would need to be set back from the road to allow for a sustainable drainage system and open space. Furthermore the site is located on the edge of the village with open countryside beyond and so a lower density development with a softer entrance and frontage is appropriate. Although an even lower density could be more appropriate in this location, substantial screening is available along the site's northern and eastern boundaries. There is potential to provide dual aspect dwellings to provide opportunities for surveillance and key end stop/vistas. A scheme could be designed without any large parking courts

The area is also characterised by a mix of property ages, sizes and designs on Top Street, Botts Lane and adjacent roads and the VDS states that there is no over-riding style that characterises the village's appearance. Consideration of how the dwellings' design, details and materials meet the VDS guidelines can be undertaken at the reserved matters stage. The development's character would be further reinforced by landscape features and building details, such as materials and colour. The site could accommodate all of the necessary requirements (private gardens, parking/turning space, bin storage/collection areas) without being cramped. Dwellings could be positioned away from the existing boundary hedgerows to allow for their retention. Although land levels rise up across the site from south to north and west to east, there is unlikely to be a need for a significant increase in land levels across the site. There may be potential to provide an informal pedestrian link onto Botts Lane in the form of a stile. It is therefore considered that the site could accommodate a scheme for up to 29 dwellings that is acceptable in design and layout terms.

Sensitive Area and Character of the Area

The site is designated within the Local Plan under Policy E1 as a Sensitive Area. Policy E1 is not considered to be a relevant policy for the supply of housing (see the recent judgment in respect of the application to quash the Secretary of State's decision to dismiss the Stephenson Green appeal), notwithstanding that a contrary view has been taken elsewhere (and including

by the Secretary of State on appeal), and accordingly the policy should not be considered to be out of date.

Policy E1 is supported by the advice in the NPPF which seeks to protect valued landscapes as well as its key principles to conserve and enhance the natural environment and recognising the character and beauty of the countryside.

The Inspector's Report into the Local Plan concurred with the view that this '*...open pastureland are in a prominent position on the southern approach to Appleby village, and accordingly critical to the retention of the present rural character of the locality*' and therefore designated the site as a Sensitive Area. In considering that the site should not be allocated for housing in the Local Plan, the Inspector's Report states that '*Because of its openness and edge of village location, the objection site to my mind makes a substantial contribution to that character, which would of necessity be eroded if it were developed. Detracting from the rurality of the area would in this case be particularly harmful to its existing character and appearance, because of the prominent position the objection site occupies on one of the main roads into the village: when Appleby Magna is approached via New Road, the site lies straight ahead*'.

The proposal would diminish the present open character of the Sensitive Area and would therefore be contrary to Policy E1. However an assessment also needs to be undertaken as to whether the proposal would adversely affect the contribution the site makes to the character, form and setting of the settlement, streetscene and adjacent open countryside.

In terms of the character of the site and locality and the guidelines in the adopted Village Design Statement (VDS), the site forms an open space and is part of the semi-rural feel to the approach into the village along Top Street, as well as forming part of the edge to the village's main built up area. The site is fairly prominent in views from Top Street and the south west, as it open and rises up to the north, although some screening is in place from existing vegetation along Top Street and hedgerow boundaries. The site is less prominent from Botts Lane as the roadway is at a lower level and some screening is provided by the existing bank and hedgerow. Furthermore views from the countryside to the east are limited due to screening by existing vegetation.

The Village Character section of the VDS indicates that the character of Appleby is essentially rural, there is a strong sense of being in the countryside and natural features contribute to its rural ambience. Although most development is located to the west of the site, there are isolated dwellings to the north, east and south, with those to the north being visible in longer views and in closer views all adjoining development is visible. Therefore the site is reasonably well related to the existing settlement. Furthermore hedgerows/trees form a strong eastern boundary and existing housing and their associated gardens to the east and south separate the site from the more open countryside beyond.

The site and its boundary treatments are important elements of the setting and approach to the village as identified in the VDS. The eastern, northern and western boundary hedgerows, which create a strong sense of enclosure to the site and form an important part of the character of the village, in particular along Botts Lane, are unlikely to be significantly affected and could be separated from gardens by boundary treatments. Most of the hedgerow along the site's frontage with Top Street would be lost, therefore opening up views into the site and making development more prominent, as the northern and central parts of the site rise up to the north. However close range views into the site from Top Street are already fairly open, due to the field gate, low hedge and changing land levels. Dwellings would be set back from Top Street which would reduce their prominence within the streetscene and a layout could be achieved so that

dwellings would not create a harsh edge to or form a solid block of development at the village boundary. Development is unlikely to be prominent when viewed from the more developed parts of Top Street as it is largely not visible from this direction due to screening by existing dwellings and vegetation. Although the site is at a higher land level to Botts Lane, new dwellings could be sited away from the boundary where land levels start to drop, again reducing their prominence. Existing hedgerows/trees along the site's northern boundary would also reduce the impact from Botts Lane.

There would be limited longer views of new housing from the countryside east due to existing screening and the site would also be seen against the backdrop of existing dwellings. However the longer views of the site from the south west and its relationship with the rest of the village were matters of importance raised in the Inspector's Report into the Local Plan and at that time the Inspector considered justified the site's designation as a Sensitive Area and not allocating it for housing. The site is screened in some longer views by vegetation. Development of the site would extend the edge of the village eastwards and due to the changes in levels and open nature of the site new dwellings would be visible in longer views in particular in some views along Top Street. However the development would be seen in the wider context of a village that has grown over time, with modern development located alongside the site's western boundary and in other parts of the village, e.g. Didcott Way. Also the characteristics of the site are in many ways not significantly different from other open fields which form the boundary/edge to the village and are prominent in views of the village and therefore make a similar contribution.

The openness of the site would largely be lost contrary to Policy E1 of the Local Plan. Whilst the site contributes to the form and setting of the village and its semi-rural character in this location, in close range views the sensitivity of the site is more limited, as it is effectively a paddock, separated from the open countryside and surrounded to a large extent by dwellings and their associated domestic paraphernalia. In longer views the loss of the site would diminish the contribution the site makes to the setting and character of this part of the village. However since publication of the Inspector's Report and determination of previous applications (the last being in 1984) the character of the village has changed with modern developments along its edge (e.g. Didcott Way).

Therefore having regard to all of the above considerations, whilst there would be harm to the Sensitive Area it is considered that a reason for refusal based on the proposal resulting in an adverse impact on the character, form and setting of the village and streetscene could not be justified in this case. The impact on the Sensitive Area also has to be considered in the balance of other planning considerations. When considering allocation of the site for housing, the Inspector's Report into the Local Plan stated that at that time '...the District's housing land needs can be fully satisfied by land where development would be less harmful. As noted earlier in this report, currently the District does not benefit from a five year housing land supply which is an important material consideration.

Historic Environment

The boundary of the Appleby Magna Conservation Area runs along part of Top Street some 115 metres to the north west of the site. No. 42 Top Street and Jordan's Farm on Top Street are Grade 2 listed buildings and the Sir John Moore School, which lies 280 metres to the south west, is a Grade 1 listed building. The outbuildings adjoining No. 42 Top Street and the doctor's surgery are identified as unlisted buildings of interest in the Appleby Magna Conservation Area Appraisal. The Church of St Michael, which is a Grade 2* listed building, lies to 350 metres to the north west of the site and there are other listed buildings located close to the church along with the moated site of the former medieval manor house which is a Scheduled Monument. The site also lies in a zone of archaeological interest, within the anticipated medieval and post-

medieval historic settlement core of Appleby Magna and may contain buried archaeological remains. The Conservation Area and listed buildings are designated heritage assets as defined in the NPPF, with unlisted buildings of interest being undesignated heritage assets. Any archaeological remains within the site would also form a heritage asset.

Appleby Magna is thought to have Saxon origins and it is considered likely that the original settlement may have been in the vicinity of the later St Michael's church, which is Grade 2* listed. However evidence of Romano-British activity indicates that the area around the shallow stream valley was farmed and settled much earlier. Appleby Magna also lies to the south east of the approximate route of a possible Roman road linking Watling Street at Tamworth with a crossing of the Trent at Sawley and the adjacent Roman settlement at Redhill. Within the existing village, which remained in agricultural use until the 19th century, it is thought the settlement was planned, based around Church Street and Top Street linked by two cross routes, Mawbys Lane and Stoney Lane/Blackhorse Hill with three foci of early occupation. To the east of the site lies the scheduled moated site of the former medieval manor house of the Appleby Family, fishponds and settlement earthwork remains later converted into formal gardens in the 16th or 17th Century east of the Church. Within the village there are numerous listed buildings which in general are clustered around the historic routes. Highly graded assets include the Grade 1 listed Sir John Moore School dated 1697 and designed by Sir William Wilson, the Grade 2* 16th Century Moat House with gatehouse which has been described as the best preserved medieval house on a moated site in Leicestershire, and the 14th century Church of St Michael, listed Grade 2*. Together with the moated site, the relationship and association of these structures with one another, including the association with the earlier manor house, is highly significant. This significance derives from the group's architectural, historic and archaeological interest. This includes the historic relationship of the Moore Family who owned the manor house. This historic inter-relationship is recognised within the Appleby Magna Conservation Area Appraisal and Study (2001) which also states that the pattern of the pre-enclosure settlement remains largely evident within the area.

Therefore the listed and unlisted buildings, the Conservation Area, Scheduled Ancient Monument and any archaeological remains form an important part of the history of this part of the village and the village as a whole and are considered to be heritage assets of high significance which have value for this and future generations.

The contribution made by this site to the setting of the Conservation Area and listed buildings/Scheduled Monument within derives from its landscape character, which helps reinforce the strong contrast of the rural landscape with the historic village settlement. The survival of the development site in both land use and visual terms helps define the direct historic relationship between the settlement and its agricultural setting. It is accepted that existing 20th century development has impacted on the setting of the medieval village and the setting of the Conservation Area. However the character of this site as part of the rural landscape combined with views towards the church and historic settlement helps reinforce the strong contrast of the rural landscape with this historic settlement. Therefore the continued development of the rural landscape that surrounds the village is considered harmful to the significance of the designated heritage assets.

The church is seen in a panorama of the village which is now largely dominated by modern development on the edge of the settlement e.g. Didcott Way, Wren Close, Bowleys Lane, and the extension of the village to include the application site would not significantly increase the extent of the village seen alongside the church or impact on views of the Conservation Area. The site does not form a significant part of the backdrop to Sir John Moore School nor does it bring dense development significantly closer to the school or reduce the distance between the

built up edge of the village and the school. The site also does not form a significant visual backdrop or foreground to the Conservation Area as a whole or along Top Street (including the listed and unlisted buildings) due to screening by existing dwellings and vegetation and there will be separation between the proposal and the older buildings on Top Street. The proposal will therefore have a limited visual impact on the Conservation Area and listed and unlisted buildings on Top Street.

In this case the proposal would not result in a significant separation of the historic village core from the village's agricultural setting due to the reduction in the scale of the proposal, the distance between the site and the historic centre, the built form of the village would not significantly extend into the countryside, and as the relationship in terms of rural landscape and the historic village settlement has been diminished by other modern development that has already taken place.

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

Paragraph 134 of the NPPF requires less than substantial harm to designated heritage assets to be weighed against the public benefits of the proposal, including securing its optimum viable use. The VDS requires the historic environment to be conserved, enhanced and respected. The harm to the heritage assets is in this case considered on balance to be outweighed by the provision of up to 29 new homes to contribute to the District's housing land supply (which is currently at less than five year supply) which includes affordable homes and contributions towards improving capacity within existing public services and under the River Mease DCS which will improve the quality of the River Mease SAC.

Archaeology

The County Archaeologist initially advised that the proposals include operations that may destroy buried archaeological remains, but that not enough information had been submitted to appropriately identify or manage the archaeological interest of the site. Therefore since it was possible that archaeological remains may be adversely affected by the proposal, the County Archaeologist recommended that an Archaeological Impact Assessment of the proposals was undertaken before determination of the application. Following submission of an Archaeological Assessment further comments are awaited from the County Archaeologist and these will be reported on the Update Sheet.

Trees

There are several trees located on or close to the site which would be affected by the proposal. Therefore a tree survey, arboricultural implications assessment and a tree protection plan were requested during the course of the application. Following submission of this information, the Tree Officer has no objections. The tree protection plan (albeit based on the indicative layout for 32 dwellings) shows that these trees could be retained alongside the proposed development and when considering the indicative layout for 29 dwellings, built development has been moved away from several of the trees on the southern half of the site. As such it is considered that the site could accommodate 29 dwellings without significant impact on the trees or incompatibility between development and the trees.

Residential Amenities

The access road/turning area would be located within six metres of No. 57 Top Street and its garden. A recent appeal decision found that situations where access drives run close to existing dwellings would not be dissimilar to having a development on a corner site with a side road running close to the dwellings and their rear gardens, which was considered to be a yardstick for an acceptable standard, and which already occurs in this part of the village. Therefore it is considered that a reason for refusal on the grounds of impact from noise and disturbance and fumes resulting from use of the access drive cannot be justified. Whilst tranquillity in the area may in part be due to the site's current use, it is not unusual to find housing adjacent to other areas of housing, and new housing is unlikely to generate significantly detrimental levels of noise and disturbance. The Environmental Protection team has not raised any objections or concerns in relation to noise or disturbance.

The outlook from all adjacent dwellings towards and across the site would be affected. Nos. 45-55 Top Street are all at least 18.5 metres from the site boundary with gardens being generally large in size (except No. 51 Top Street - but this garden does not adjoin the site). Although land levels rise up towards the east and north, there is not a significant difference between the floor levels of housing on Top Street and ground levels on the closest parts of the site. It is not an unusual arrangement for dwellings to back onto each other even at different land levels, as is the case elsewhere in the village.

Nos. 57 Top Street is closer to the site's boundaries but is located on a large plot. Due to the need to provide open space and a sustainable drainage system on the southern part of the site, development would be positioned to the south east of the No. 57. Nos. 63-65 Top Street lie eight metres from the site boundary with their gardens apparently extending along much of the site's eastern boundary. However these gardens are large in size with a strong existing boundary treatment.

No. 4 Botts Lane lies between two and four metres away from the site, with some windows and a balcony facing towards the site. The indicative layout shows that a dwelling could be positioned 8.5 metres from No. 4 with landscaping provided in-between. Whilst several new dwellings could lie adjacent to No. 4's rear garden, this garden is extensive in size and new dwellings could be positioned so that they are positioned away from No. 4's boundary with their gardens being immediately adjacent to the boundary. No. 16 Botts Lane lies 12 metres from the site and also has a large private garden.

It is therefore considered, based on the indicative layout, that there is space within the site to provide appropriate separation between new and existing dwellings and their gardens. As such it is considered that a development could be accommodated on the site that would not result in significant detriment to occupiers of properties on Top Street and Botts Lane in terms of loss of light, loss of privacy and creation of an oppressive outlook.

Highway Safety

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

The Highway Authority's objection on the grounds of the site being in an unsustainable location is addressed earlier in this report. Concerns have been raised by local residents in terms of poor visibility at the access, lack of footways, congestion and the capacity of Top Street and the village road network to cope with the traffic generated by this and the other major housing schemes currently proposed. The County Highway Authority has no objections in relation to

highway safety matters, subject to conditions and contributions to be secured in a legal agreement which are considered in a separate section below.

The existing access to the site would be widened and altered and visibility splays can be provided in both directions. The Highway Authority's requirements for visibility splays and other technical requirements can be met and at least two parking spaces could be provided per dwelling, with more spaces in some cases, all of which can be secured by condition. As the site is served by new access roads, there is likely to be space for any off-street parking to take place within the site. The Highway Authority raises no concerns in relation to the proposal on its own adversely affecting the capacity of the village road network. A report relating to the cumulative impact on the highway network alongside other housing proposals in the village does not raise any concerns, this issue has also been considered in respect of both other applications for the village on this Agenda and the Highway Authority has raised no objections in relation to this matter. Based on the above it is considered that the proposal would not result in a severe impact on highway safety and as such it is considered that a highway safety reason for refusal could not be sustained in this case.

Drainage and Flood Risk

The site lies within Flood Zone 1 but as it is over one hectare in size a Flood Risk Assessment (FRA) was submitted with the application. A stream lies approximately 20 metres to the south/south west of the site, which runs through the garden to 71 Top Street, before passing under the road and running along the southern boundary of Didcott Way. Concerns have been raised in relation to the exacerbation of existing flooding problems within the village and close to the site, in particular in relation to the stream that lies close to the site's southern boundary.

The Environment Agency initially objected on the grounds that the FRA does not provide a suitable basis for assessment to be made of the flood risks arising from the proposed development, in particular as it fails to adequately assess the risks to the site from the nearby watercourse. The Agency advised that parts of the development may lie within the flood zone for the nearby watercourse. Following submission of an addendum to the FRA and a modelling report, the Environment Agency has withdrawn its objection, subject to a condition requiring the development to be carried out in accordance with the addendum to the FRA.

STW initially advised it had no objections subject to the imposition of a condition relating to drainage details, although detailed discussions have taken place relating to the capacity of the drainage system. Consideration of the capacity of STW's treatment works is set out below in the section relating to impact on the River Mease SAC.

Natural England is satisfied with the general principle of surface water drainage but requested that consideration be given to comments from the Environment Agency. The original FRA indicates that surface water could be dealt with by on-site infiltration and/or discharge to watercourse. The Environment Agency has raised no objections to this but did advise that the site made no provision for an on-site sustainable drainage system (SUDS). The amended layout shows space on the southern part of the site for an attenuation pond and the Environment Agency has requested that a condition is imposed requiring submission of a detailed surface water scheme.

Although the FRA indicates that surface water can discharge within the site, it may also have to discharge to watercourse via a new sewer rather than into the mains. The runoff to the watercourse would be restricted to greenfield runoff rates (i.e. the rate at which surface water currently discharges from the site when undeveloped) of 5l/sec/ha and this would be required by condition. The surface water scheme for the site would also have to include the ability to

accommodate surface water run-off on-site up to the critical 1 in 100 year rainfall event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and the responsibility for the future maintenance of drainage features.

Concerns have also been raised by residents in relation to the capacity of the local drainage network. STW has advised that it is aware of current issues with the sewerage system which is being looked into by its sewer modelling team and it intends to promote a project into its capital programme within the coming months. STW advises that it will not object to the proposal in relation to this matter and that a phasing condition should be imposed, which can be drafted as a Grampian condition to prevent occupation of the proposed dwellings until measures have been undertaken to ensure the sewer/drainage system has capacity to serve the development. Such an approach has been adopted on the scheme for eight dwellings at Measham Road (13/00829/OUT) which was approved at Planning Committee in February 2014.

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

Protected Species/Ecology

The site is a paddock, with large residential gardens, trees, ponds and a stream nearby with mature trees/hedgerows forming the boundaries, all of which are habitats that can be home to protected species. Some of these are features that could be used by European Protected Species (EPS) and as such species may be affected by a planning application, the Local Planning Authority has a duty under regulation 9(5) of the Habitats Regulations 2010 to have regard to the requirements of the Habitats Directive in the exercise of its functions. The habitats could also be used by national protected species. Natural England makes no comments in relation to protected species other than to refer to its Standing Advice.

The County Ecologist was not satisfied with the ecology report submitted with the application, primarily because it was undertaken in December when an adequate survey of grassland can be carried out. Furthermore the recommended surveys of nearby ponds for great crested newts had not been undertaken. As such the County Ecologist recommended refusal of the application on the above grounds.

Subsequently further work has been undertaken to update the ecological report and to survey two ponds and the nearby stream for great crested newts. The survey found both ponds and the stream to be of low suitability to support great crested newts, that the stream presents a minor barrier to movement of the species and the site itself is of low suitability due to heavy grazing /compaction by horses and small amounts of suitable terrestrial habitat (ungrazed grassland). The report contains evidence as to why the site comprises species-poor semi-improved grassland. The County Ecologist has therefore advised that the amended report and great crested newt survey are acceptable and her objections in relation to these matters can be withdrawn.

In terms of other protected species, no evidence of badgers or bats was found although the site and boundary trees/hedgerows may be used for bat foraging/roosting. The species-rich hedgerow could be used by dormice but is considered unlikely given its rarity within Leicestershire. There is potential for the trees/hedgerows to be used by breeding birds and for the site to be used by ground nesting birds although the areas of suitable habitat are limited. The areas of rough grassland also have potential to be used by reptiles including grass snake and a limited range of common and widespread invertebrates are likely to be present. Therefore there is potential for bat foraging routes, breeding birds and reptiles to be affected.

The indicative site layout shows most of the boundary hedgerows/trees to be retained which will secure habitats for bats and breeding birds and the important hedgerow along the site's south eastern boundary could be separated from gardens by a post and rail fence to ensure its retention. The report also recommends that a survey of the site for reptiles should be undertaken well in advance of any works or vegetation removal and if any are present then mitigation should be undertaken to protect them during development, which the County Ecologist has advised is acceptable. Conditions can also be imposed to secure these matters along with a lighting plan to prevent impact of light spill and further surveys for bats trees are to be removed. On this basis it is considered that the proposal will not adversely affect other protected species.

Under regulation 53 of the Habitat Regulations, activities which would otherwise contravene the strict protection regime offered to EPS under regulation 41 can only be permitted where it has been shown that the following three tests have been met:

- the activity must be for imperative reasons of overriding public interest ("IROPI") or for public health and safety;
- there must be no satisfactory alternative;
- the favourable conservation status of the species in question must be maintained.

Until recently, these tests had only really been examined as part of the EPS licensing process carried out by Natural England. However, a recent court case (R (on the application of Simon Woolley) v Cheshire East Borough Council and others [2009] EWHC 1227), has upheld that Local Planning Authorities must engage with these three tests at the planning application stage and demonstrate that they are satisfied that the three tests have been met prior to granting planning permission.

In this case the development is considered to be in the over-riding public interest as new housing is required as the Authority does not have a five year housing land supply. There is no satisfactory alternative to the site as other large sites proposed for housing in the village have been reduced in scale or are not considered appropriate for housing and are recommended for refusal. The favourable conservation status of GCN would be maintained as it is unlikely GCN are present on the site and even if GCN are present in the nearby ponds and stream there are barriers in place to discourage movement. It is therefore considered that the proposal meets the requirements of the Habitats Regulations 2010 in respect of protected species.

Furthermore the County Ecologist advises that the layout would not provide for the retention of the species rich hedgerow along the south eastern boundary (which also meets the criteria for designation as a Local Wildlife Site) as it would form a boundary to private gardens which could lead to its piecemeal removal and damage and affect its capacity as a wildlife corridor. As such the County Ecologist recommended refusal of the application on this ground unless a buffer zone could be provided adjacent to the hedgerow. In practice it would be difficult to provide a buffer zone to this hedgerow other than by requiring the erection of a post and rail fences to prevent the hedgerows from being affected by domestic activity. In addition the hedgerow can be excluded from gardens/curtilages which can be secured by condition. The impact on the hedgerow also has to be considered in the balance of other planning considerations set out above and below. Therefore it is considered that a reason for refusal on the basis of impact on the hedgerow could not be justified in this case.

Impact on the River Mease Special Area of Conservation/SSSI

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC),

which was designated in 2005. A stream lies approximately 20 metres to the south/south west of the site which is a tributary of the River Mease. The 2010 Habitat Regulations and Circular 06/2005 set out how development proposals within an SAC should be considered. Regard should also be had to national planning guidance in the NPPF. During 2009 new information came to light regarding the factors affecting the ecological health of the River Mease SAC, in particular that the river is in unfavourable condition due to the high level of phosphates within it. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Therefore an assessment of whether the proposal will have a significant effect on the SAC is required.

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

The application proposes that foul drainage would be dealt with via the mains sewer system and confirms that the applicant will pay the required contribution under the DCS. The exact contribution cannot be agreed at this time (although the maximum amount would be £10,266) as the exact number of bedrooms per dwelling has not been agreed at this stage. Natural England has no objections provided the proposal is in full accordance with the DCS.

Consideration needs to be given to the capacity of Severn Trent Water's receiving treatment works at Snarestone. The flows from the new dwellings will need to be taken into account against the existing headroom at Snarestone Treatment Works, which serves the village. At March 2013 capacity was available for 47 dwellings but this is reduced by the number of dwellings that have already received a permit from STW and/or are under construction, and by the number of dwellings that have been granted planning permission. Taking these into account the capacity available at the treatment works is significantly reduced.

STW has advised that it has verbally agreed with the Environment Agency to change STW's permits, which will enable the transfer some capacity from Packington Treatment Works to Snarestone (in part due to additional capacity becoming available due to the planned closure of the Arla site in Ashby) to create capacity for a further 90 dwellings, and that is likely to be take place as this approach has been successfully adopted elsewhere in the SAC catchment area. STW will be formally applying to vary the permits in the coming weeks and it expects that the update permit will be issued in May 2014. As such STW advises that it will not object to the proposal and that if the transfer of capacity has not been agreed by the time the application is determined, then a phasing condition should be imposed, which can be drafted as a Grampian condition to prevent occupation of the proposed dwellings until additional capacity has been provided at Snarestone Treatment Works. If further capacity above 90 dwellings was required then STW has advised that it would provide more capacity. As such a reason for refusal based on limited capacity at the treatment works could not be justified.

A condition requiring that only a mains connection is used at the site would also be required as the use of other means for foul drainage discharge could adversely affect the SAC. The Environment Agency have advised that the standards to which the surface water drainage

system would have to be designed reduce the potential for pollution to the watercourse by including what are known as treatment trains, which capture and prevent any 'dirty' surface water run-off from the development reaching the river.

The site is around 20 metres from the nearest tributary to the River Mease, with no development located in-between. There are no objections from the Environment Agency and Natural England in relation to direct impact on the stream and Natural England has advised that it has no objections to surface water from the scheme discharging to the watercourse. There is unlikely to be any direct impact on its channel and banks as it is separate from the site. However it would need to be ensured, whilst the site is developed, that pollution does not enter the brook which can be secured by condition requiring submission of a method statement for construction.

Therefore based on the above it can be ascertained that the proposal site would not, either alone or in combination with other plans or projects, have a significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI.

Developer Contributions

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

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

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

Healthcare

In respect of the 32 dwelling scheme NHS England sought £14,609 to provide additional GP surgery facilities at Measham Clinic for additional patients arising from the development and a details of a revised contribution have been sought. The requested contribution for the 29 dwellings has increased to £14,879.70. Clarification of this contribution from NHS England has been sought to ensure consistency across all the applications for Appleby Magna and the response from NHS England will be reported on the Update Sheet.

It is understood that the Appleby GP surgery (which is also a small and limited facility) will close in May 2014 and the Measham Clinic is used by some village residents and provides the full range of GP healthcare services. NHS England also advises that the Measham Clinic is very likely to feel the impact of any population increases whether the Appleby Magna surgery remains open or not.

The agent for the Bowleys Lane and Measham Road proposal has queried whether the healthcare contribution is CIL compliant in terms of the amount of additional GP surgery hours that would be generated by the development when compared to the works that the requested contribution would pay for, and whether the scheme located on the western side of Top Street has been taken into account. NHS England has advised that:

The responses have focused on the internal reconfiguration of the accommodation to increase capacity as this is feasibility and achievable. As you have indicated the total amount of consulting time for the proposed developments is 10.5 hours per week and this needs to be achieved throughout the building as flexibly as possible given that the practice's utilisation of the

building currently is high. The cost of building an extension for the additional consulting hours would far exceed the cost of this work and so it is proportionate. We are aware of a further development and we would respond in a similar manner but in proportion to the applications already submitted.

It is therefore considered that the NHS request is CIL compliant.

Libraries

Leicestershire County Council is seeking a contribution to provide additional capacity at Measham Library, which is the nearest library. The agent queried this request, stating that it was not understood how the site directly impacts on the library service, they would like to see a clear link between the proposal and the contribution requested, the request is not justified and recently Derbyshire County Council have withdrawn their requests for such funding on that basis.

The County Council subsequently made the following comments (in summary):

- (i) The proposal will impact on the local library in respect of putting additional pressure on the availability of local library facilities. The library contribution is sought to provide additional resources e.g. books; reference books/materials; newspapers;
- (ii) Necessary to make the development acceptable in planning terms - recognition that contributions should be made to mitigate the impacts of development are set out in the planning related policy documents. The provision of community facilities is a matter that is relevant to planning. The contributions sought will ensure that additional needs brought about by the development are met. The approach to seeking contributions as set out above is consistent fair and transparent providing certainty to all involved in the process.
- (iii) Directly related to the development - The occupiers of the development will have an additional impact on local services. The contributions towards library facilities have been sought as a result of the proposed development and will be spent only on services and infrastructure facilities serving the locality of the proposed development i.e at the nearest Leicestershire County Council library, which would ordinarily serve the residents of the proposed development;
- (iv) Fairly and reasonably related in scale and kind to the development - the financial contributions have been calculated in accordance with the scale and size of each individual dwelling comprising the proposed development. The calculations of each financial contributions has been based on the thresholds identified in the adopted policies and would meet the additional demands which would be placed on the local library service arising out of the proposed development;
- (v) In the recent appeal at Stephenson Green in Whitwick, whilst the appeal was dismissed the Planning Inspector's report and the Secretary of State's letter accept the developer contributions met the CIL regulation tests including the library contribution.

It is therefore considered reasonable for a contribution to be sought to increase Measham Library's capacity to cater for additional users. The agent has advised that if the other contributions stay at the current level then the applicant will accept it although they are of the view that it is justified. The exact contribution cannot be agreed at this time as the exact number of bedrooms per dwelling has not been agreed at this stage and the legal agreement would need to be worded to reflect this.

Education

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

- initial request (based on 32 dwellings) - £80,187.92 (£0 - primary school - Sir John Moore School; £21,451.40 - high school - Ibstock Community College; £58,736.51 - upper school -

Ashby School)

The education contributions referred to above relate to the original proposal for 32 dwellings on its own. Sir John Moore School has capacity for 140 pupils and the proposal on its own would not create a deficit in places which is why no contribution is sought. As such, it is generally clear what the individual impact from the proposed development would be on educational facilities in the locality.

The District Council has sought to clarify the position in terms of any cumulative impact from the three major housing schemes considered on this Agenda to ensure any resulting primary school deficit could be met through an appropriate financial contribution. Subsequently the County Council has informally provided further amended contributions which share existing spare school places across the proposals on this site and the sites at Bowleys Lane and on the eastern side of Top Street which resulted in a further change in the requested contributions. These contributions are however based on the original number of dwellings proposed for each site and after discussion with both the agent and the County Council it has been agreed that the County Council will again calculate the contributions (based on the amended number of dwellings for each site) once the three applications have been considered at Planning Committee.

Play Area/Open Space

Under the District Council's Play Area Supplementary Planning Guidance, on-site children's play provision is required at a rate of 20 square metres per dwelling. Given that 29 dwellings are proposed, this would require a play area of not less than 580 square metres. No on-site children's play area is proposed as part of this proposal and instead it is proposed to make a contribution towards the existing open space at Bowleys Lane of £1235 per dwelling (£35,815), which would allow the Parish Council some flexibility as to how the money is spent. A small area of open space would also be provided within the site.

The Council's SPG regarding children's play areas specifies that a commuted sum may be acceptable for sites that are within a reasonable walking distance of 400 metres. The distance to the existing play area/recreation ground is around 600 metres, which would be in excess of the 400 metres walking distance as suggested in the SPG. However, guidance in Building for Life indicates that a point should be awarded for community facilities (such as play areas) being within a short distance (defined as 800 metres), and the proposals would satisfy this criterion. Taking into account the alternative distance recommended under Building for Life (which the Council has adopted as a design quality indicator), it is considered that a commuted sum towards upgrading and improving the existing play area in the village would be acceptable in this instance. An obligation relating to management plans for the open space, landscaping and SUDS to ensure that the land is properly established, maintained and managed in the future would also be required.

Affordable Housing

10 affordable homes were originally proposed on site, which has now been reduced to nine, which equates to 30% provision, with 70% being for affordable rent and 30% being intermediate low cost home ownership, which are likely to be two and three bedroom properties with the actual tenure breakdown to be agreed via the legal agreement. The Strategic Housing Team has advised that this is acceptable.

Highways Contributions

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

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

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

The Highway Authority also requests agreement of a construction traffic route which is considered to be necessary in this case given the site's proximity to residential areas and the village centre and that although existing weight restrictions are in place they would not prevent HGVs from passing through the village to access the site itself.

River Mease DCS

A contribution under the River Mease DCS is required (as outlined earlier in the report) but an exact figure for the contribution cannot be determined at this stage (although the maximum amount would be £10,266) as the number of bedrooms in each dwelling would not be finalised until reserved matters stage.

Other Contributions

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

Summary

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

Other Matters

The Environmental Protection team has not raised any objections or requested a condition in relation to contaminated land.

The purpose of the Strategic Housing Land Allocation Assessment (SHLAA) is to help inform

future plan making in the District and monitor the supply of land for housing on sites that are capable of being developed in the next 5 years. The inclusion of the site in the SHLAA does not automatically mean it will be developed and site suitability is determined through the Local Plan process and assessment of the current application. The process associated with the SHLAA is not a matter that can be taken into account in the determination of planning applications.

The Village Green application relates to another site within the village at Bowleys Lane, which is subject to a separate planning application (13/00799/FULM). The Village Green application therefore does not affect the progression of planning applications on separate sites.

Given the proximity of the site to residential properties on two sides and that there is only one access to the site, in this case it is reasonable to impose a condition limiting the hours of construction works (as at the site for eight dwellings at Measham Road - 13/00829/OUT).

Whilst it appears that no public consultation by the applicant has taken place, other than a letter sent to the Parish Council in August 2013, there is no statutory requirement to do so. The Localism Act 2011 contains provisions to require pre-application consultation on certain types of planning applications. However although the Localism Act is now in force, the requirements on pre-application consultation will not apply until secondary legislation is enacted. A village survey has also been undertaken on behalf of the Parish Council which shows concerns for the level of development proposed (based on the number of dwellings proposed when the applications were first submitted).

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

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

Conclusion

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

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

Whilst there would be harm to the Sensitive Area and potential for impact on an important hedgerow it is considered that this would not be at a sufficient level to justify reasons for refusal and it is considered that these impacts would be outweighed by other material considerations in particular the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF).

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

RECOMMENDATION, PERMIT, subject to the signing of the Section 106 Agreement and the following conditions to cover:

- 1 Reserved matters time limit
- 2 Details of the reserved matters (appearance, landscaping, layout and scale) to be submitted
- 3 Approved Plans
- 4 Hours for construction works
- 5 Confirmation of capacity at Snarestone Waste Water Treatment Works
- 6 Details of measures to ensure capacity in sewer/drainage network
- 7 Details of foul drainage disposal
- 8 Details of surface water disposal
- 9 Development in accordance with FRA only - need to prevent development within flood risk areas
- 10 Mains sewer system only
- 11 Finished floor levels/ground levels
- 12 Exclusion of hedgerow along south eastern boundary from garden areas/curtilages and details of post and rail fencing to protect the hedgerow
- 13 Protective fencing for trees/hedgerow in accordance with Tree Survey and Tree Protection Plan
- 14 Design and method statement for any works taking place within areas of protective fencing
- 15 No storage within areas of protective fencing
- 16 Restriction on times for destruction and removal of vegetation
- 17 Survey of the site for grass snakes
- 18 Details of bird nesting boxes and bat boxes and habitat for grass snakes
- 19 Details of external lighting, including lighting assessment
- 20 Construction method statement to prevent adverse impact on River Mease SAC
- 21 Details of footways to connect to existing footways and crossing facility
- 22 Parking and turning facilities, access widths, gradients
- 23 Visibility splays

- 24 Provision and surfacing of access road
- 25 Highway drainage
- 26 Access gates
- 27 Construction traffic management plan

Members are advised that that the detailed wording of these conditions should be delegated to the Director of Services

Notes to applicant

- 1 Planning permission has been granted for this proposal. The Local Planning Authority acted pro-actively through engagement with the applicant during the application which led to improvements to the scheme. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended).
- 2 Written requests to discharge one or more conditions on a planning permission must be accompanied by a fee of £97 per request. Please contact the Local Planning Authority on 01530 454666 for further details.
- 3 The applicants are advised that, under the provisions of the Site Waste Management Plan Regulations 2008, the works may require the preparation of a Site Waste Management Plan (SWMP). Further information can be obtained from the Department for Environment Food and Rural Affairs at www.defra.gov.uk
- 4 This decision is subject to a Section 106 Obligation regarding the following matters:
 - Contribution towards education
 - Contribution towards library facilities
 - Contribution towards healthcare facilities
 - Contribution towards play area/open space
 - Management plans for the on-site open space/landscaping/hedgerows/SUDS
 - Improvements to bus stops
 - Provision of travel packs and bus passes
 - Construction traffic route
 - Affordable housing
 - River Mease Developer Contribution Scheme
- 5 All works within the limits of the highway with regard to the access shall be carried out to the satisfaction of the Highways Manager- (telephone 0116 3050001).
- 6 This planning permission does NOT allow you to carry out works in the highway. Before such work can begin, separate permits or agreements will be required under the Highways Act 1980 from either the Adoptions team (for 'major' accesses) or the Highways Manager. For further information, including contact details, you are advised to visit the County Council website as follows: -
For 'major' accesses - see Part 6 of the "6 C's Design Guide" at www.leics.gov.uk/6csdg.
For other minor, domestic accesses, contact the Service Centre Tel: 0116 3050001.
- 7 If the roads within the proposed development are to be adopted by the Highway Authority, the Developer will be required to enter into an agreement under Section 38 of the Highways Act 1980 for the adoption of the roads. Detailed plans will need to be submitted and approved, the agreement signed and all sureties and fees paid prior to the commencement of development. If an Agreement is not in place when the development is to be commenced, the Highway Authority will serve APCs in respect of

all plots served by all the roads within the development in accordance with Section 219 of the Highways Act 1980. Payment of the charge MUST be made before building commences.

- 8 The highway boundary is the wall/hedge/fence etc. fronting the premises and not the edge of the carriageway/road.
- 9 Please be aware that Leicestershire County Council as Lead Local Flood Authority (LLFA) are currently not a statutory consultee to the planning process for drainage matters. When Schedule 3 of the Flood and Water Management Act 2010 is implemented Leicestershire County Council will become the SuDs Approval Body (SAB) and also a statutory consultee of the planning process. The SAB role is currently anticipated to commence in April 2014. You will need to contact Leicestershire County Council if you have an aspiration for us to adopt any SuDs features associated with the development. Please e-mail roadadoptions@leics.gov.uk if you wish to discuss further.