
Erection of 39 residential units including affordable housing and provision of sustainable urban drainage and on site public open space

**Report Item No
A4**

(Church View) Land Adjoining 33 Measham Road Appleby Magna

**Application Reference
13/00797/FULM**

**Applicant:
Jupiter Strategic Land Ltd.**

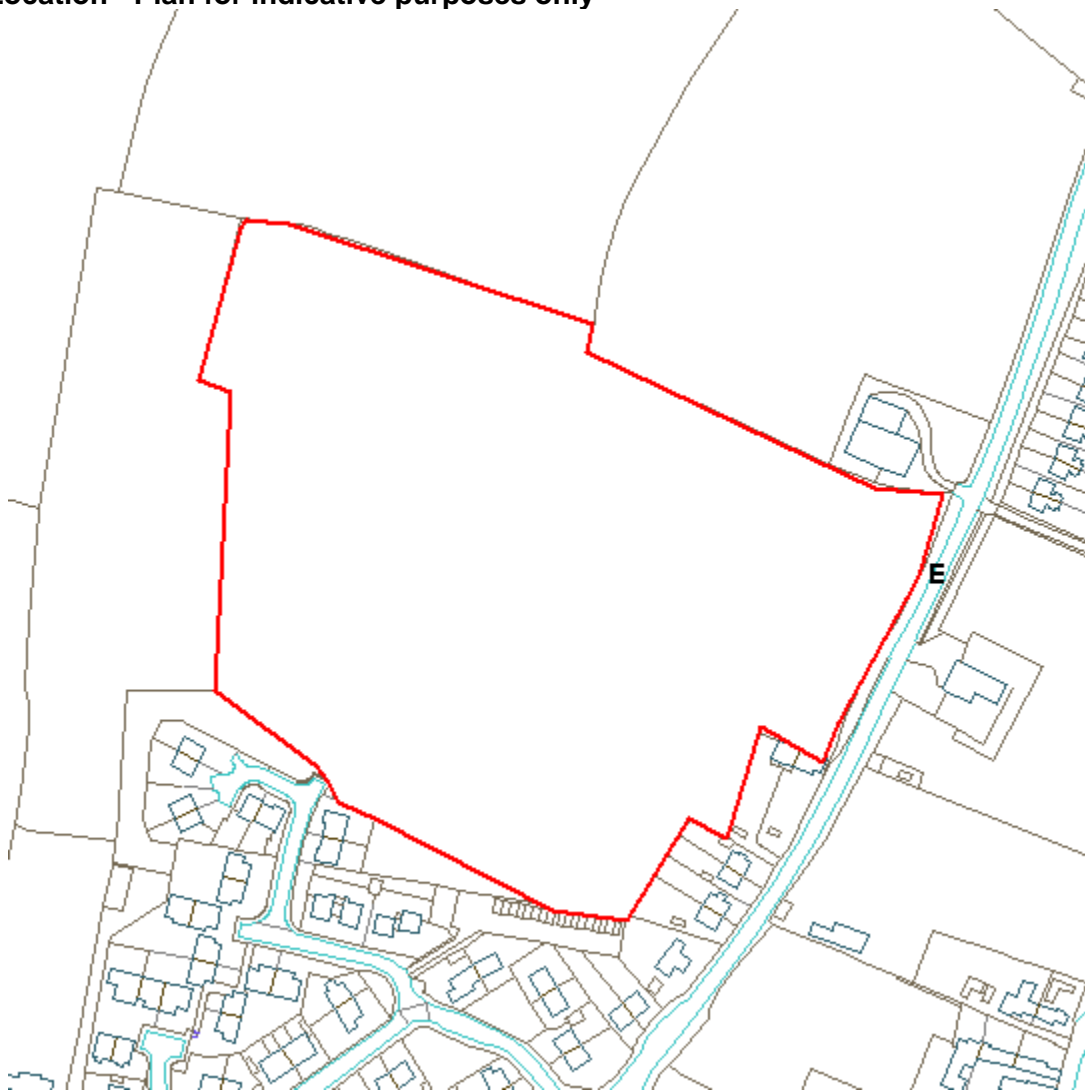
**Date Registered
18 October 2013**

**Case Officer:
Jenny Davies**

**Target Decision Date
17 January 2014**

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

Site Location - Plan for indicative purposes only



Reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office
©copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence LA 100019329)

Executive Summary of Proposals and Recommendation

Proposal

Planning permission is sought for the erection of 39 residential units including affordable housing and provision of sustainable urban drainage and on and off site public open space at land off Measham Road, Appleby Magna. The site is currently farmland which also contains two mature oak trees and lies on the western side of Measham Road. The site is adjoined by residential properties, open fields/paddocks, an agricultural building and the road network. The dwellings would be located on the southern part of the site with areas of public open space located on the western side and in the north eastern corner and an attenuation basin, which would form part of the sustainable urban drainage system, located adjacent to the northern boundary. The northern/north western part of the site would remain undeveloped and retained as farmland. Access to the site would be located in a similar position to an existing field access onto Measham Road which is located on the site's eastern boundary. A pedestrian link would be provided through to Parkfield Crescent and footways would also link into the footway on Measham Road.

Consultations

Members will see from the main report below that one letter of support has been received (although this has subsequently been withdrawn). Objections have also been received, including from Appleby Magna Parish Council, with 50 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 nearby residents, flood risk and drainage. The County Highway Authority initially objected on two grounds in relation to the sustainability of the site's location and failure to demonstrate the impact of the development on the local road network (as agreed in the scoping report), and provide sufficient details of the layout. Following the submission of additional information the Highway Authority has withdrawn the second of these reasons. Leicestershire Police also advises that policing is not included within the submitted Heads of Terms and therefore it raises a formal objection to the application on sustainability grounds and because the development is unacceptable without the necessary policing contribution.

Planning Policy

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

Conclusion

Whilst the site is outside the Limits to Development in the adopted Local Plan and constitutes greenfield land, 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). A reason for refusal on the grounds of Appleby Magna not being a sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the Top Street site could not be justified, in particular having regard to the other material considerations set out in this report, including the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF).

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

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

RECOMMENDATION:-

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

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

MAIN REPORT

1. Proposals and Background

The application falls to be determined by the Planning Committee as one of the applicants is related to Councillors Richard Blunt, Caroline Large and Charles Meynell. It is also considered necessary for the application to be determined at the Planning Committee given that there are also a number of other applications for major residential development within Appleby Magna (13/00697/FULM and 13/00799/FULM) being considered separately on this agenda.

Full planning permission is sought for the erection of 39 residential units including affordable housing and provision of sustainable urban drainage and on and off site public open space at land off Measham Road, Appleby Magna. A scheme for 73 dwellings was originally submitted but following discussions with officers in relation to the scale of the proposal the number of dwellings has been reduced.

The site is currently farmland which also contains two mature oak trees and lies on the western side of Measham Road. The site is adjoined by residential properties, open fields/paddocks, an agricultural building and Measham Road itself. Land levels increase approximately by up to 2.5 metres from south to north and by up to 6.9 metres from east to west, with the site being higher than existing dwellings on Parkfield Crescent and Measham Road.

The proposed dwellings would be located on the southern part of the site with areas of public open space located on the western side and in the north eastern corner and an attenuation basin, which would form part of the sustainable urban drainage system, located adjacent to the northern boundary. The northern/north western part of the site would remain undeveloped and retained as farmland.

The 39 dwellings comprise 4 x one bed flats, 6 x two bed flats, 3 x two bed dwellings, 18 x three bed dwellings, 6 x four bed dwellings and 8 x five bed dwellings. A mixture of detached, semi-detached and terraced dwellings and flats are proposed. The scheme would provide for 30% affordable housing (12 dwellings) with a tenure mix of eight properties to be affordable rent and four properties to be intermediate/low cost housing.

Access to the site would be located in a similar position to an existing field access onto Measham Road which is located on the site's eastern boundary. A pedestrian links would be provided through to Parkfield Crescent and footways would also link into the footway on Measham Road.

The mature trees and hedgerows that currently form the site's western and northern boundaries are shown to be retained as are the boundary treatments that adjoin existing dwellings to the south and east. However the frontage hedgerow along Measham Road is shown to be partially removed to provide visibility splays.

The site lies within the catchment area of the River Mease Special Area of Conservation. The Appleby Magna Conservation Area lies approximately 90 metres to the east of the site and the nearest listed buildings are the Grade 2 listed Moores Almshouses lying approximately 235 metres to the south. The easternmost of the two oak trees is protected by a Tree Preservation Order (T278). There are no planning history records for the site.

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

development under the 2011 Regulations as its impacts, both on its own and cumulatively with three other major housing proposals on Top Street and Bowleys Lane (13/00697/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

45 no. Neighbours have been notified (Date of last notification 24 March 2014)

Site Notice displayed 1 November 2013

Press Notice published 12 December 2013

3. Consultations

Appleby Magna Parish Council consulted 24 October 2013
LCC Development Contributions consulted 4 December 2013
County Highway Authority consulted 3 March 2014
Development Plans consulted 3 March 2014
Environment Agency consulted 3 March 2014
Natural England consulted 3 March 2014
Severn Trent Water Limited consulted 3 March 2014
Manager Of Housing North West Leicestershire District Council consulted 3 March 2014
NWLDC Urban Designer consulted 3 March 2014
LCC ecology consulted 3 March 2014
NWLDC Conservation Officer consulted 3 March 2014
English Heritage- Grade I/II* LB Setting consulted 3 March 2014
Head of Environmental Protection consulted 3 March 2014
LCC Development Contributions consulted 3 March 2014
NHS Leicester, Leicestershire And Rutland Facilities Manager consulted 3 March 2014
Police Architectural Liaison Officer consulted 3 March 2014
NWLDC Tree Officer consulted 3 March 2014
County Archaeologist consulted 3 March 2014
LCC ecology consulted 14 March 2014
DEFRA consulted 13 January 2014
Manager Of Housing North West Leicestershire District Council consulted 3 February 2014
NHS Leicester, Leicestershire And Rutland Facilities Manager consulted 3 February 2014
Head Of Leisure And Culture consulted 25 October 2013
LCC/Footpaths consulted 25 October 2013
Highways Agency- Article 15 development consulted 25 October 2013
SUDS LCC consulted 1 November 2013

4. Summary of Representations Received

Statutory Consultees

Appleby Magna Parish Council objects on the following grounds:

- (i) Water management and sewage system cannot cope - this is a high area re water run-off.*
- (ii) Too many properties proposed for such a small village, however the Councillors do agree that some affordable housing is required in the area, so a reduction in properties may be acceptable IF, there was a new pumping station built on site pumping to Measham, however the plans show no sign of evidence of this.*

(iii) Potentially a site could be developed on a much smaller scale, however the extent of development depends on sewage and water issues being resolved, currently these are not sustainable within the infrastructure of the village.

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;*
- concern regarding the boundary planting areas. Will the developer make arrangement for the maintenance of the areas in-perpetuity or would the responsibility be passed to the PC? If the latter is the case we would require a minimum space for contractor's vehicles to access the existing hedgerows for cutting and mowing of the grass areas.*

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 initially recommended refusal on two grounds:

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

(ii) The applicant has failed to demonstrate the impact of the development on the local road network (as agreed in the scoping report), and provide sufficient details of the layout to enable the highway authority to provide a fully considered response.

Following submission of additional information the County Highway Authority has withdrawn its second reason for refusal.

English Heritage advises that in line with the NPPF we consider the proposed residential development harmful to significance, which is deemed less than substantial. We recommend your authority determines this application in accordance with relevant policy guidance contained within the NPPF including paragraphs 131, 132, 134 and 137 and with reference to your specialist archaeological and conservation advice. English Heritage also has serious concern over the possible cumulative physical impact on the scale and character of the village.

The County Archaeologist initially advised that the proposals include operations that may destroy any buried archaeological remains that are present, but the archaeological implications cannot be adequately assessed on the basis of the currently available information and therefore an Archaeological Impact Assessment should be submitted before the application is determined. Following submission of this assessment the County Archaeologist recommends the imposition of conditions.

The Council's Urban Designer advises that the Council needs to be satisfied that the scheme offers a good standard of design as measured against Building for Life 12. He goes on to state that the proposal has the makings of an excellent scheme but sets out a number of issues that need to be addressed.

Severn Trent Water has no objection subject to conditions.

South Staffordshire Water advises that the site is outside its area of supply.

Leicestershire County Council (SUDS Approval Body) advises that it cannot review the application and provide formal comments.

The Environment Agency has no objections subject to conditions, refers to the need for surface water to go to watercourse and that the River Mease Developer Contribution Scheme will apply.

Natural England initially requested further information in relation to foul and surface water disposal, 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. Following the submission of further information, Natural England has no

objections subject to conditions.

The County Ecologist initially advised that the ecology reports are satisfactory, and no further surveys are required prior to determination and that the proposal does not pose any threat to a nearby population of great crested newts. However she raised concerns about minimal enhancement opportunities for biodiversity, with little open space provision and (apart from the mandatory SUDs scheme) no natural open space, that buffer zones would be required to separate boundary hedgerows from gardens and the roadside hedgerow should be retained. Following submission of the amended scheme she has no further comments to make.

The Council's Tree Officer has no objections relating to impact on on-site trees and suggests the imposition of conditions. He also makes comments in relation to landscaping proposals within the site.

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

The Affordable Housing Enabling Officer initially advised that the location, tenure mix and type of the proposed affordable housing is acceptable. However she raised concerns in relation to the size and design of some of the properties. Following the submission of the amended scheme she advises that all of the proposed changes to the scheme are acceptable.

NHS England initially requested a contribution of £33,486.84 towards the Measham GP surgery. If a revised contribution is requested for the amended scheme then it will be reported on the Update Sheet.

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 £4,350.00 (based on 73 dwellings) and subsequently requested a contribution of £2111.00 (based on 39 dwellings).

Leicestershire County Council Local Education Authority initially requested a contribution of £45,887.90 and subsequently requested an amended contribution of £278,891.97 (both based on 73 dwellings). The County Council 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.

Leicestershire Police initially requested a contribution of £29,551.00. If a revised contribution is requested for the amended scheme then it will be reported on the Update Sheet. Leicestershire Police also advises that policing is not included within the submitted Heads of Terms and therefore it raises a formal objection to the application on sustainability grounds and because the development is unacceptable without the necessary policing contribution.

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

Third Party Representations

One letter of support which (in summary) states that the village needs new development and that sustainability should not mean stagnation. However following the submission of amended plans this letter of support has been withdrawn although it is advised that the development is not opposed.

50 letters of objection 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;
- small piecemeal development is more sustainable and allows village to grow naturally;
- 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;
- 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;
- loss of countryside and recreational areas;
- need for health giving open spaces and vegetation;
- there are other sites available that could be built on;
- large scale development of the village would be unsustainable as the three tests in the NPPF would not be met;
- the District Council's own sustainability criteria show that housing development in the rural villages at all but the smallest scale threatens nationally required sustainability targets;
- cumulative number of dwellings proposed is disproportionate to the scale, 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;
- site furthest from services within the village;
- unsustainable demands on local services and possible creation of tensions within the community;
- difficult to increase the limited capacity at Sir John Moore School as it is a Grade 1 listed building;
- current or recent 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;
- house sizes need to complement those already in the village;
- lack of affordable homes;
- minimum number of affordable homes will be provided;
- affordable housing proposed is well above the requirement for the village;
- position of affordable homes close to existing houses and away from larger new houses;
- affordable housing should be integrated within the development and go to local residents not Housing Associations;
- 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;
- will set a precedent for further development on either side of Measham Road;
- further applications will be received to develop the rest of the field;

Visual Impact and Historic Environment

- contrary to Appleby Magna Village Design Statement;
- character of the village would be spoiled;
- development should be within the village boundaries;
- 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;
- impact on character of area including extending beyond existing village boundary and loss of open rural aspects and open spaces within the village;
- due to land levels new housing will be dominant;
- loss of open field on the edge of the village;
- loss of area of land that forms a buffer between the village and the main road network;
- kerb stones will replace grass verges;
- widening the road will spoil the village;
- housing designs can be found anywhere in the country;
- will detract from the Conservation Area;

Residential Amenities

- loss of light;
- loss of privacy;
- noise and disturbance will affect peace and quiet of the area;
- impact on quality of life from congestion, delays and pollution;
- proximity to existing dwellings;

Flooding and Drainage

- current issues with flooding in the village and close to the site will be exacerbated;
- surface water runoff will increase in particular towards Measham Road, Stoney Lane, Duck Lake and Old End;
- flooding already affects part of the site and water could flow into existing gardens;
- proposals to minimise runoff will not be satisfactory;
- developers need to be responsible for any drainage/flooding problems to existing properties;

- 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 cause congestion;
- additional traffic will have significant detrimental impact on health and safety of road users and residents;
- Measham Road and other roads within the village are already too narrow and hazardous with no footways;
- who will pay for road widening?;
- existing high speeds of traffic including from lorries;
- speed limit on Measham Road will need extending;
- existing on-street parking will be exacerbated;
- streetlighting turned off at night;
- inadequate turning space adjacent to Parkfield Crescent so difficult for large vehicles to manoeuvre;
- Parkfield Crescent should be linked to the new estate road;
- impact on junction of Measham Road and Tamworth Road;
- submitted transport information is factually incorrect and does not make an assessment of the cumulative impact of the different proposals;
- conclusions of the transport statement are unsupported and do not take account of the amount of traffic that will be generated and the existing road network;
- inadequate assessment of car travel;

Ecology

- loss of trees, open areas and hedgerows;
- impact on and loss of wildlife;

Other Matters

- loss of view/outlook;
- impact on property values;
- amendments suggested to layout and design;
- lack of site levels and dimensions on plans and no drawings of the proposed apartment block so can't assess impact;
- 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 properly, it does not properly represent the views of the village and the statistics and information presented is inaccurate ;
- even after public consultation more residents opposed development than were in favour;
- developers have ignored local residents' wishes set out in adopted documents and during consultation;
- selective use of policy in application submissions, failure to take into account local planning policies and documents and contradictory statements set out within the supporting information;
- impacts of the development significantly outweigh the benefits.

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."

"138. Not all elements of a Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area should be treated either as substantial harm or less than substantial harm."

"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 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 Appleby Magna.

Key Principle AH3 requires a minimum of 30% of residential units to be available as affordable housing within Appleby Magna.

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, design and visual impact and its impact on the historic environment, trees, residential amenities, highway safety, drainage and flood risk, protected species/ecology and on the River Mease Special Area of Conservation, and the provision of affordable housing and developer contributions.

Principle of Development

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

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

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

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

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

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

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

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

Housing Land Supply

The NPPF requires that the Council should be able to identify a five year supply of housing land and include an additional buffer of 5% or 20% depending on previous performance in terms of delivery of housing. The appeal decision of May 2013 in respect of land south of Moira Road, Ashby de la Zouch, found that the "Sedgefield" approach should be used and that a buffer of 20% should be allowed for (an approach to assessing land availability also suggested as appropriate within the recently published National Planning Practice Guidance). On this basis, the District Council's most recent calculations indicate that the Council is only able to demonstrate a supply of 4.7 years which represents a 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) raises concerns as it 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 2013 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. Consideration has been given to seeking a contribution towards provision of an hourly bus service. However given the costs of such a proposal (typically around £100,000 per year), and the size of development, it is unlikely to be viable and unlikely to comply with the test "fairly and reasonably related in scale and kind to the development" in the NPPF and the CIL Regulations.

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 - 320 metres
Primary School - 1.6 km
Post Office - 700 metres
Open Space - 880 metres
Village Hall - 570 metres
Public House - 690 metres

The application site is well related to most of the key services/facilities within the village, being within 800 metres (preferred maximum walking distance) of the majority of the services listed above, apart from the open space and the school. The school is located outside the main village and is unlikely to be a practical walking option for many existing village residents and additional open space, including a play area, would be provided within the site. The level of services available is considered to be good for a rural village although the public transport connectivity is considered to be poor. The Highway Authority has concerns about footway provision into and within the village. A footway runs along the western side of Measham Road from the site access into the village, from which Measham Road has to be crossed to continue into the village. A footway link is proposed from the southern part of the site into Parkfield Crescent which then joins Measham Road. Furthermore residents of existing dwellings further along Measham Road and within Parkfield Crescent would have to cross the road to use the footway into the village and already use the existing footway network within the village. 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 and when taking into account the site on the eastern side of

Top Street (totalling 68 dwellings) 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.

The site is the least well related to services when compared to the Bowleys Lane and Top Street sites. However it is considered that on balance a reason for refusal on the grounds of Appleby Magna not being sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the Top Street site could not be justified, in particular having regard to the other material considerations set out in this report.

Scale of Development and Cumulative Impacts

It is appropriate to consider the scale of the proposed development compared to 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 39 dwellings would represent a 9% increase in the number of dwellings within the village and an 8.04% increase within the Parish. The 39 proposed dwellings alongside the 12 new dwellings built since 2006 and the outstanding commitments for seven dwellings would equate to a 10.39% 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 15% 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 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. However cumulatively the 68 additional dwellings (from this and the Top Street site) would equate to a 15.7% increase within the village which is less than the level of growth for the District. Alongside existing commitments/new housing there would be a 22% increase in total, which although only just below this level of growth, does take into account development/commitments since 2006. It should also be noted that the level of housing proposed across these two sites would be built over a number of years and works would not start immediately due to the need for legal agreements to be completed and for a reserved matters application to be submitted (and approved) on the Top Street site.

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 4.1 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 as it would relate only to the southern part of the site (2.5 hectares) with the northern part of the site being large enough to continue to accommodate a continued agricultural use. The cumulative loss of farmland across this and the Top Street site would be 3.57ha which is also considered to be low.

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, Policy S3 cannot be considered as being up-to-date in the context of paragraph 49 of the NPPF. Whilst the site is the least well related to services when compared to the Bowleys Lane and Top Street sites, a reason for refusal on the grounds of Appleby Magna not being a sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the Top Street site could not be justified, in particular having regard to the other material considerations set out in this report, including the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF).

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, as set out in more detail below, the proposed development would not result in any unacceptable impacts on the natural, built or historic environment. Having regard to all of the above in the overall balance it is considered that the proposal would be a sustainable form of development and therefore the proposed development of the site is acceptable in principle.

Density

The proposal results in a density of 9.5 dwellings per hectare for the whole site, which is well below that sought under Policy H6 of the Local Plan (a minimum of 30 dwellings per hectare), although for the developed area of the site the density increases to 15.6 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 on the edge of a village and the character of the area.

Design and Visual Impact

The proposal provides a mix of housing with the majority being detached or terraced properties, ranging in size from one to five bedrooms. The amended proposal reflects parts of the original layout for 73 dwellings as it was broadly considered to be acceptable.

Whilst a dwelling was originally proposed adjacent to Nos. 31 and 33 Measham Road at the site entrance, which provided a strong entrance to the site, this has now been removed and this area would be retained as a paddock to form part of Plot 1, with a dwelling positioned behind facing with its principal elevation facing Measham Road. As the site is located on the edge of the village with open countryside adjacent a low density development with a softer entrance and frontages to the site, and retention of most of the existing frontage hedgerow, is appropriate. Plot 1 would still provide a key end stop/vista when looking into the site and similar end stops would be provided elsewhere within the site, e.g. Plots 11 and 15.

Although there are no true dual aspect dwellings, opportunities for surveillance are available with corner plots and elevations facing onto the access road, parking areas, play area and the open space/SUDS. Although some side elevations are lacking windows this matter could be dealt with by condition. The large parking court on the original layout has been removed and smaller shared parking areas would be provided

The surrounding area is characterised by a mix of properties along Measham Road with more modern dwellings on Parkfield Crescent although within these there is a mix of size and design. The VDS states that there is no over-riding style that characterises the village's appearance. The detailed designs show properties with traditional proportions and detailing which fit in with the character of older properties located within the historic core of the village. There would be a mix of designs, with variation in the design of the dwellings so that one style is not dominant.

The site can accommodate all of the necessary requirements (private gardens, parking/turning space, bin storage/collection areas) without being cramped. A landscaping scheme for the site shows the use of hedgerows/planting to front and side boundaries, which reinforces and enhances street definition, although further details would need to be secured by condition. Although land levels rise up across the site from south to north and east to west, the streetscenes do not indicate a significant increase in land levels across the site, although this would be also be dealt with by condition.

The open space on the western side of the site would provide a 'village green' area which is framed by new development and views would be retained from this area towards the church. The open space/SUDS on the north eastern part of the site would also provide a softer entrance to the site and would include the retention of the protected oak tree. The provision of a new footway link to Parkfield Crescent gives legibility to the scheme and would enhance links to the village.

The residential element of the scheme would create a housing development that would be of high quality in terms of its form and design, with dwellings that fit well with the traditional house types within the village and its character would be further reinforced by landscape features and building details, such as materials and colour. The scheme would create a well-defined network of both roads and pedestrian links. The scheme would also provide additional open space and footway links that are well related to new and existing housing and would integrate the scheme into the village. Based on the above and subject to conditions, the scheme is considered to be acceptable in terms of its design and layout.

Character of the Area

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 Measham Road as well as forming part of the edge to the village's main built up area. The site is prominent in views from the western end of Parkfield Crescent as the land rises up gradually and there is not an established treatment along the boundary. However the site is not particularly prominent in immediate views from Measham Road or from the public footpath network to the west of the site, nor is it prominent in longer views from Measham Road and Tamworth Road to the north largely due to screening by existing boundary hedgerows.

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 south of the site, there are isolated dwellings to the north along Measham Road. Therefore the site is reasonably well related to the existing settlement and the new dwellings would be located on the part immediately adjoining existing housing.

The site and its boundary treatments are important elements of the setting and approach to the village as identified in the VDS. Hedgerows/trees form strong northern and western boundaries and most of the frontage hedgerow with Measham Road would be retained, which would assist with screening the development and meeting the guidelines of the VDS. The boundary hedgerows, which create a strong sense of enclosure to the site and form an important part of the character of the village are unlikely to be significantly affected and could be separated from gardens by boundary treatments. Additional tree planting is also proposed alongside the site's western boundary and both mature oak trees would also be retained and be visible in views from Measham Road.

Development would be prominent in views from the western end of Parkfield Crescent due to the lack of boundary treatment and land levels. However this is not considered to be an important view out of the village as it is from a cul de sac which serves a limited number of homes and from which there are no links through to other parts of the village and the view is predominantly of a large open field which is similar in characteristics to other large fields that surround the village and are found elsewhere in the District.

Some of the hedgerow along the site's frontage would be lost, therefore opening up views into the site and making development more prominent in immediate views from Measham Road as

the site rises up to the west, although it does drop down to the south. The first dwelling would be set back which would reduce its 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, in particular as the northern part of the site would not be developed. Development is unlikely to be prominent when viewed from further along Measham Road and Tamworth Road as it is largely not visible due to screening by existing dwellings and vegetation and the site would also be seen against the backdrop of existing dwellings.

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

Therefore having regard to all of the above considerations, whilst there would be moderate and localised harm to the countryside it is considered that it would be limited and not be so significantly detrimental to justify a reason for refusal based on the proposal resulting in an adverse impact on the character of this locality and the countryside.

Historic Environment

The boundary of the Appleby Magna Conservation Area lies 76 metres to the east of the site at Old End. Nos. 11, 15, 17 and 19 Old End are identified as unlisted buildings of interest in the Appleby Magna Conservation Area Appraisal. The nearest listed buildings are Nos. 32-40 Mawby's Lane (Moore's Almshouses) which lie 250 metres to the south west (Grade 2). The Church of St Michael, which is a Grade 2* listed building, lies to 315 metres to the south of the site and is visible in views from the site to the south. 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 may also 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). Therefore the heritage assets 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. Whilst arable cultivation will have damaged remains of medieval ridge and furrow cultivation, English Heritage's records indicate that this was previously mapped from aerial photographs. Survival of the development site as arable land 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 landscape character of this arable site as part of the rural landscape and combined with views towards the church and historic settlement helps reinforce the strong contrast of the rural landscape with this historic settlement. Development would further erode this character increasingly dissecting the Conservation Area and medieval core away from the rural landscape. The church spire is visible in views from the site towards the south and therefore its setting would be affected. Therefore the continued development of the rural landscape that surrounds the village is considered harmful to the significance of the designated heritage assets.

In terms of visual impact, although at a higher land level the site does not form a prominent backdrop to the Conservation Area due to screening by existing dwellings and vegetation. There will also be separation between the proposed development and the Conservation Area. The proposal will therefore have a limited visual impact on the Conservation Area and the unlisted buildings.

The view of the church from the site has other development in the foreground e.g. Parkfield Crescent, and the extension of the village to include the application site would not significantly increase the extent of the village seen in views of the church from outside the village, in particular due to the screening of the site by existing vegetation so that the development would not be prominent within the countryside. In addition the extent of the developed part of the site has been reduced from the original scheme so that it relates better to the village, views would be retained through some of the developed part of the site and longer views of the church from the northern part of the site would be retained. English Heritage also advises that the revised scheme, to some extent, takes account of the preservation of ridge and furrow as identified in the geophysical survey in the northern half of the site..

In this case the loss of part of the rural landscape is not considered to be significantly detrimental to the semi-rural character of the area or the village (as discussed earlier in the report). Furthermore the proposal, both on its own and cumulatively with the proposal on the eastern side of Top Street, 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 39 new homes to contribute to the District's housing land supply (which is currently at less than five year supply) which includes affordable homes, contributions towards improving capacity within existing public services and under the River Mease DCS which will improve the quality of the River Mease SAC and the high quality design of the proposal.

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, to include geophysical surveying and targeted trial trenching to identify and locate any archaeological remains of significance, and propose suitable treatment to avoid or minimise damage by the development. Following submission of an Archaeological Assessment which included geophysical surveying, the County Archaeologist advised the future management of the northern site could be dealt with by condition.

Trees

The mature oak trees within the site (one of which is protected by a TPO) would not be affected by the proposed development as all development would be outside their Root Protection Areas. The majority of the frontage hedgerow would be retained either side of the access and both the northern and western boundary hedgerows would be retained, with development not proposed alongside the majority of these hedgerows. A new tree belt would be planted adjacent to the western hedgerow and could be separated from gardens by a post and rail fence to ensure its retention. A clause relating to management of open space/areas of landscaping should be included within a legal agreement and conditions can be imposed relating to precise details of landscaping and boundary treatments.

Residential Amenities

A building that appears to be in agricultural or commercial use is located close to the site's northern boundary. However new dwellings are no longer proposed in this part of the site and the Environmental Protection team has no objections in relation to the relationship of this building to the site.

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 access road would be at least 20 metres from existing properties and is therefore unlikely to result in significant levels of noise and disturbance. The large parking court has been removed and shared parking courts would have a maximum of four spaces. 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 and although the site is at a higher land level than properties on Measham Road and Parkfield Crescent, there is not a significant increase in ground levels.

Plot 1 would be 16 metres from No. 33 Measham Road and 20 metres from No. 31 Measham Road and would not contain any windows in its side elevation. Although five dwellings (Plots 2-6) would be positioned immediately to the west of No. 33 and its garden, these properties would be between 10 and 18 metres from No. 33's boundary where there is an existing hedgerow and trees. The garages to these plots would be closer but would be single storey. Plot 2 would be positioned within 16 metres of No. 33's main side elevation which appear to contain windows serving habitable rooms. This is less than the recommended distance of 22 metres between dwellings set out in the Council's Development Guidelines (which are guidelines only). However Plot 2 would not back directly onto No. 33 and a hedgerow and trees form the boundary.

Plots 5 and 6 would be within six metres of the boundary with No. 29 Measham Road but 25 metres from No. 29 itself which has a garden approximately 18 metres in length. Plots 7 and 8 would be 4.5 metres from the boundary with Nos. 25, 27 and 29 Measham Road and would be over 22 metres from these properties. The first floor rear windows to Plots 7 and 8 would serve non-habitable rooms and would be obscure glazed.

Whilst Plots 9 and 10 would be within two-four metres of the boundaries with Nos. 21 and 23 Measham Road, they would be at least 20 metres from the dwellings, both of which have large rear gardens. The first floor side kitchen window to Plots 9 and 10 would be repositioned in its rear elevation facing towards the adjacent garage court.

Plots 9 and 10 would be between least 17.5 metres from the boundaries with Nos. 17 and 19 Measham Road and at least 30 metres from the two dwellings. Plots 11-15 would be at least 22 metres from the boundaries with dwellings on Parkfield Crescent and over 30 metres from the dwellings themselves and although their garages would be closer they would be single storey. The adjacent garage court would also be located between the existing and new dwellings. The triangular area of land to the rear of Nos. 33-86 Parkfield Crescent does not form part of the gardens to any of these properties. Plots 17 and 18 would be 24 metres from Nos. 93 and 95 Parkfield Crescent.

Plot 16 would be within six metres of No. 86 Parkfield Crescent's boundary and within nine metres of No. 86 itself, which is one of a pair of semi-detached dwellings with No. 84. However Plot 16 would be to the north of Parkfield Crescent, its rear wing would be stepped down from the main part of the dwelling and its two side windows are at ground level or would serve a non-habitable room. The garage to Plot 16 would be 11 metres from the boundary with Nos. 84 and 86 and 20 metres from the dwellings and would be single storey with no rear windows.

Therefore whilst there would be some loss of light and privacy to No. 33 Measham Road and Nos. 84 and 86 Parkfield Crescent and some impact on their outlook, it is considered that this would not be so significantly detrimental to occupiers of these properties to justify a reason for refusal. It is also considered that the proposal would not result in significant detriment to the residential amenities of occupiers of the other properties on Measham Road and Parkfield Crescent referred to above 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).

Concerns have been raised by local residents including in terms of existing on-street parking, speeds of traffic the suitability and capacity of Measham Road 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 initially objected on two grounds relating to the applicant failing to demonstrate the impact of the development on the local road network and provide sufficient details of the layout to enable the Highway Authority to provide a fully considered response, and the site being in an unsustainable location. Following submission of a revised Transport Assessment and a detailed layout plan the Highway Authority has withdrawn its reason for refusal relating to these matters and if approved recommends that the proposal is subject to conditions and contributions to be secured in a legal agreement which are considered in a separate section below. The latter of the Highway Authority's objections is addressed earlier in this report.

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 are proposed 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. The Transport Assessment considers the cumulative impact on the highway network alongside other housing proposals in the village, to which the Highway Authority has raised no objection. 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 and as it is over one hectare in size, a Flood Risk Assessment (FRA) has been submitted. The Environment Agency has no objections in principle subject to conditions and advises that any concerns in relation to flood risk are solely in respect of surface water drainage. The FRA indicates that surface water would discharge into the mains sewer system with on-site attenuation being provided via a sustainable urban drainage system (SUDS). However the Environment Agency advises that it agrees with Severn Trent Water's (STW) response to the applicants 'developers enquiry' that its preference is for surface water to be disposed of via soakaways or a nearby watercourse if feasible (see Appendix F of the FRA) and recommends that the site connects directly to the watercourse via a new surface water sewer, in preference to connecting to the public combined sewer.

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 initially sought further details of foul and surface water disposal and was provided with the comments made by the Environment Agency and STW. Natural England also sought clarification relating to runoff rates and measures in place to control levels of phosphate and pollutants if surface water was directed to the watercourse. Following further comments from the Environment Agency in relation to these matters, Natural England has advised it has no objections relating to foul and surface water disposal subject to conditions.

Although surface water would 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 the Environment Agency's suggested condition. The surface water scheme for the site would have to include two treatment trains to help improve water quality; the limitation of surface water run-off to equivalent greenfield rates; 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. Each of the three sites in the village would be subject to a similar condition so that runoff rates for each site remain at greenfield levels and as such the proposals are unlikely to result in a significant cumulative impact on the watercourse or drainage system.

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 arable land and contains two mature trees with trees/hedgerows along its boundaries. The site is also adjoined by grassland and ponds are located nearby, along with other trees and hedgerows. 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 advises that the site has no significant ecological value and although it once had nature conservation value and was a "Parish-level" site historically, this has been destroyed through subsequent ploughing. The County Ecologist is concerned about the impact on the boundary hedges if they are incorporated into gardens or removed to provide the access. As noted above in the section of the report relating to trees, the majority of the frontage hedgerow and both the northern and western boundary hedgerows would be retained and a new tree belt would be planted adjacent to the western hedgerow and could be separated from gardens by a post and rail fence to ensure its retention.

The ecology report identifies a colony of great crested newts (GCN) in two ponds which lie within the 500 metre dispersal zone of GCN's (which are the ponds located within and adjacent to the Bowleys Lane site). However the County Ecologist advises that the two sites are sufficiently separated by existing development within the village, especially Parkfield Crescent, and does not consider that the development poses any threat to these GCN populations or that mitigation is required. However given the presence of these GCN and that records of GCN have been historically recorded adjacent to the site, a condition needs to be imposed requiring surveys to be undertaken in three years time if work has not started on site.

The County Ecologist has not made any detailed comments on the remainder of the submitted Ecological Assessment, which found no evidence of badgers and is considered to be sub-optimal habitat for badgers. The report found that the site provides low habitat quality for bats and a low level of bat activity, with the trees with bat potential being retained, and that there are nesting and feeding opportunities for birds across the site. Whilst some of the trees and hedgerows would be removed, areas of new planting are shown across the site and the northern part of the site would remain undeveloped with additional vegetation suitable for wildlife provided around the attenuation basin and alongside western boundary. Conditions can also be imposed relating to a management plan for new and existing habitats, a lighting plan to prevent impact of light spill and further surveys for bats before trees are 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 favourable conservation status of GCN would be maintained as the site is separate from the GCN ponds and no mitigation measures are considered necessary. Furthermore 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. It is therefore considered that the proposal meets the requirements of the Habitats Regulations 2010 in respect of protected species.

Impact on the River Mease Special Area of Conservation/SSSI

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC), which was designated in 2005. A tributary to the River Mease lies approximately 130 metres to the east of the site. The 2010 Habitat Regulations and Circular 06/2005 set out how development proposals within an SAC should be considered. Regard should also be had to national planning guidance in the NPPF. During 2009 new information came to light regarding the factors affecting the ecological health of the River Mease SAC, in particular that the river is in unfavourable condition due to the high level of phosphates within it. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Therefore an assessment of whether the proposal will have a significant effect on the SAC is required.

The River Mease Water Quality Management Plan (WQMP) has been drawn up to ensure there is no adverse impact on the SAC from further development and includes an action to establish a developer contribution framework to fund a programme of actions to restore and provide new

benefits to the river. The River Mease Developer Contribution Scheme (DCS) has been produced to meet this action of the WQMP so that the costs of improving the quality of the water in the river are met by potential developers. The DCS advises that all new development which contributes additional wastewater to the foul water catchment areas of the treatment works within the SAC catchment area will be subject to a developer contribution. The DCS has been assessed against and is considered to meet the three tests of the 2010 Community Infrastructure Levy Regulations, which are also set out at paragraph 204 of the NPPF.

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 which has been calculated as £10,579. Natural England has no objections in relation to impact on the SAC/SSSI subject to conditions.

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. 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 Severn Trent Water and/or are under construction, and by the number of dwellings that have been granted planning permission. Taking these into account the capacity available at the treatment works is significantly reduced.

Severn Trent Water has advised that it has verbally agreed with the Environment Agency to change Severn Trent Water's permits, which will enable the transfer of 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. Severn Trent Water will be formally applying to vary the permit in the coming weeks and it expects that the updated 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. Such an approach has been adopted on the scheme for eight dwellings at Measham Road (13/00829/OUT). 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 site is 130 metres from the nearest tributary to the River Mease, with no development located in-between. 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. Therefore there is unlikely to be any direct adverse impact on this stream, in particular as the Environment Agency has 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. More detailed consideration is given to surface water earlier in this report.

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 73 dwelling scheme NHS England sought £33,486 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. Details of the requested contribution for the 39 dwellings have not yet been received and 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 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. The agent has subsequently advised that the applicant accepts the requested healthcare contribution.

Libraries

Leicestershire County Council is seeking £2110.00 to provide additional capacity at Measham Library, which is the nearest library. It is therefore considered reasonable for a contribution to be sought to increase its capacity to cater for additional users.

Education

Under the scheme for 73 dwellings Leicestershire County Council sought the following contributions to provide additional places at the nearest schools where there is no capacity:

- initial request (based on 73 dwellings) - (£86,386.93 - primary school - Sir John Moore School; £0 - high school - Ibstock Community College; £115,637.51 - upper school - Ashby School)
- amended request (based on 73 dwellings) - (£86,386.93 - primary school - Sir John Moore School; £76,867.53 - high school - Ibstock Community College; £115,637.51 - upper school -

Ashby School).

The education contributions referred to above relate to the original proposal for 73 dwellings on its own. As such, it is generally clear what the individual impact from the proposed development would be on educational facilities in the locality.

However 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

As the site is 880 metres from the play area at Bowleys Lane an on-site play area is proposed, which would be located within the 'village green' open space which is considered an appropriate location as surveillance would be available from nearby dwellings. A contribution for maintenance would be required if the play area was taken on by the Parish Council. Open space would also be provided within the site and an obligation relating to management plans for the open space, habitats, 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 equates to 30% provision, with 70% being for affordable rent and 30% being intermediate low cost home ownership. Following the reduction in the number of dwellings, the number of on-site affordable homes has been reduced to 12, with eight to be affordable rent and four to be intermediate housing. The Strategic Housing Team is satisfied with the level, location, type and tenure of the affordable housing and their concerns regarding the design of some of the affordable housing have been addressed.

Highways Contributions

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

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

There is a requirement for a contribution of £10,579 in accordance with the River Mease DCS as outlined earlier in the report.

Leicestershire Police

The Police have identified that there is a lack of capacity in their existing infrastructure to accommodate the population growth and associated demands occasioned by the development which means that it is necessary for the developer of the site to provide a contribution so that this situation may be remedied. A contribution of £29,551 has been requested which would be divided between the following functions: -

- Start-up equipment - £2939.00;
- Vehicles - £1854.00
- Additional radio call capacity - £186.00;
- PND additions - £95.00;
- Additional call handling - £163.00;
- ANPR - £2713.00;
- Mobile CCTV - £500.00;
- Additional premises - £20,995.00;
- Hub equipment - £146.00

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

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

The continuing controversy surrounding policing contributions is, however, itself undesirable as it creates uncertainty both for Leicestershire Police and developers / landowners as to whether a request for a contribution is likely to be supported in any given case. The Leicestershire Authorities have therefore agreed jointly to seek an independent legal Opinion as to the correct

approach to be adopted by Local Planning Authorities to such requests. It is expected that this Opinion will be received very shortly.

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

Other Contributions

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

Summary

Overall it is considered that the proposed obligations would comply with the relevant policy and legislative tests as set out in the NPPF, Circular 05/2005 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. However the Environment Agency has requested a condition to protect groundwater underlying the site.

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).

Two public consultations/surveys in relation to this proposal and that at Bowleys Lane were undertaken by the applicants before submission of the application. Concerns have been raised in relation to the timings of these consultations and whether they were adequate, misleading

and have taken into account respondents' comments. 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 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.

The site lies approximately 420 metres 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. The scheme also includes an additional belt of tree planting alongside the existing hedgerow on the western boundary. 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). A reason for refusal on the grounds of Appleby Magna not being a sustainable location for the level of development proposed for this site on an individual basis and cumulatively with the Top Street site could not be justified, in particular having regard to the other material considerations set out in this report, including the need for the District to release land for housing to ensure the provision and maintenance of a five year supply of land (with a 20% buffer) and to accord with the Government's intention to stimulate growth through a presumption in favour of sustainable development (as set out in the NPPF).

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

The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of

such development as set out in that document. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

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

- 1 Three year time limit
- 2 Approved plans
- 3 Amended house types - to show side windows in some plots
- 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 Mains sewer system only
- 10 Finished floor levels/ground levels
- 11 External materials
- 12 Removal of permitted development rights/ no additional windows / obscure glazing
- 13 Use of paddock to Plot 1
- 14 Detailed hard and soft landscaping and boundary treatment schemes
- 15 Replacement planting
- 16 Protective fencing to RPA of protected tree
- 17 Design and method statement for any works taking place within RPA
- 18 No storage within areas of protective fencing
- 19 Restriction on times for destruction and removal of vegetation
- 20 Survey of the ponds for great crested newts if site not developed within three years
- 21 Details of bird nesting boxes and bat boxes and biodiversity enhancements
- 22 Details of external lighting, including lighting assessment
- 23 Programme of archaeological work
- 24 Completion of archaeological site investigation and post investigation assessment
- 25 Parking and turning facilities, access widths, gradients, surfacing, signing and lining (including that for cycleways and shared use footway/cycleways)
- 26 Provision of access road
- 27 Garage doors
- 28 Highway drainage
- 29 Footway to Measham Road
- 30 Construction traffic management plan
- 31 Visibility splays
- 32 Pedestrian link to Parkfield Crescent
- 33 Groundwater and contaminated land

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 early engagement with the applicant at the pre-application stage and 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 under River Mease DCS
 - Provision of on-site play area and maintenance
 - Management plans for landscaping, open space, SUDS and habitats
 - Improvements to bus stops
 - Provision of travel packs and bus passes
 - Construction traffic route
 - Affordable housing.
- 5 In respect of condition 23 the Written Scheme of Investigation (WSI) must be prepared by an archaeological contractor acceptable to the Planning Authority. To demonstrate that the implementation of this written scheme of investigation has been secured the applicant must provide a signed contract or similar legal agreement between themselves and their approved archaeological contractor.
- 6 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.
- 7 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)
- 8 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 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.