
Erection of nine residential dwellings

**Report Item No
A5**

Land At Chapel Street Oakthorpe Swadlincote Derby

**Application Reference
14/00405/FUL**

**Applicant:
Mrs B Cotton**

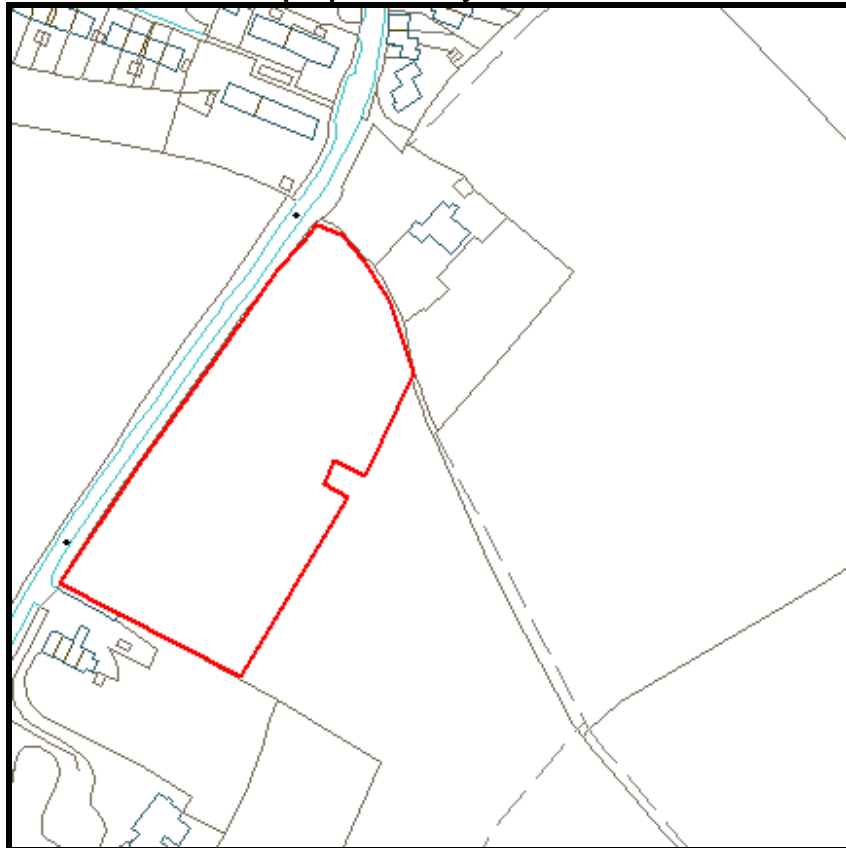
**Date Registered
20 May 2014**

**Case Officer:
Ebony Mattley**

**Target Decision Date
15 July 2014**

**Recommendation:
Refuse**

Site Location - Plan for indicative purposes only



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EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

Call In

The application is reported to the Planning Committee as it is an application of public interest and raises matters which should be referred to the Planning Committee for consideration.

Proposal

This application seeks full planning permission for nine dwellings, comprising seven open market dwellings and two affordable dwellings. Access to the site would be from Chapel Street. The application site measures some 0.09 hectares and is located outside the Limits to Development.

Consultations

Members will see from the main report below that there are a number of supportive residents, with one objector.

Planning Policy

The application site is located outside the Limits to Development as defined in the adopted North West Leicestershire Local Plan. Also relevant, is the District's housing land requirements, and the need as set out in the National Planning Policy Framework, (NPPF) to demonstrate a five year supply.

Conclusion

Whilst it is accepted that Oakthorpe has a reasonable range of services and facilities, the site is poorly related to these services and facilities by virtue of its position and physical detachment from the settlement boundary of Oakthorpe.

The site is located outside Limits to Development to the south of the village and within an important entrance and approach into the village. It is considered that a scheme of 9 dwellings would appear significantly out of character with this location, contrary to the environmental strand enshrined within the NPPF and paragraphs 17 and 109 of the NPPF.

Overall the development of this Greenfield site would be detrimental to the character of this rural locality as it would encroach and project significantly into the open countryside and would not be well-related to nearby development, as it would project beyond Oakthorpe's established settlement boundary.

In addition, it is considered that the scheme fails to take regard to this countryside setting by virtue of the design of the dwellings. As such on the basis of the submitted plans at the time of writing, it is considered that the scheme creates an un-acceptable and adverse impact upon the character of the area, contrary to the requirements of Saved Policy E4 of the North West Leicestershire Local Plan and paragraph 64 within the NPPF.

The proposed development would be acceptable in terms of impacts upon the occupiers of existing and future occupiers, highway safety, ecology, archaeology, protected trees, flood risk, drainage, the River Mease SAC/SSSI and is not considered to prejudice the re-opening of the

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Ashby Canal. Appropriate contributions towards affordable housing, the River Mease and tree planting could also be made so as to mitigate the associated impacts of the proposal.

On balance, it is not considered that the proposal would represent a sustainable form of development for the purposes of the NPPF, and therefore, the principle of development is not considered acceptable. It is considered that any potential benefits of the scheme as proposed would be insufficient to outweigh the conflict with the development plan and the NPPF resulting from the harm as identified in the main body of the report.

MAIN REPORT

1. Proposal and background

Full planning permission is sought for the erection of nine dwellings. The scheme proposes the erection of four two-storey detached dwellings sited to the south of the site and five single storey and 1.5 detached dwellings sited the north of the site. There are two affordable houses proposed and seven open market dwellings.

There is a large area of open space, centrally located at the sites frontage, with smaller grassed areas along the remainder of the frontage. Access will be provided via amendments to an existing access and creation of a new access, both from Chapel Street. Proposed highways works include the widening of Chapel Street and the provision of a 2 metre wide footpath along the site frontage and within the scheme. The scheme also proposes an access to the east of the site to allow access to the agricultural fields to the rear.

An ash tree located on the site's boundary with Chapel Street is protected by a Tree Preservation Order (T194) and would be removed as a result of the development. Public Footpath P77 runs parallel to the northern site boundary and is consistent with the proposed route of Ashby Canal, as identified in the North West Leicestershire Local Plan 2002.

The site is in agricultural use, with an area of hardstanding to the south east of the site and is located outside Limits to Development, as identified in the North West Leicestershire Local Plan 2002.

The application is accompanied with a Biodiversity Report, Design and Access Statement, Coal Mining Risk Assessment and a Tree Survey and Arboricultural Assessment.

At the time of writing amended plans have been received which show the retention of the ash tree, removal of one access point and amount of hardstanding and alterations to surfacing and boundary treatments. Further negotiation is ongoing in respect of final layout and design amendments.

Relevant Planning History:-

04/00714/FUL - Erection of stables and change of use of land for the keeping of horses was approved in February 2004.

92/0239 - Use of land as site for mobile homes was refused in May 1992.

2. Publicity

Neighbours have been notified (Date of last notification 28 May 2014)

Site Notice displayed 29 May 2014

Press Notice published 4 June 2014

3. Consultations

Oakthorpe & Donisthorpe Parish Council consulted 28 May 2014
County Highway Authority consulted 28 May 2014
Severn Trent Water Limited consulted 28 May 2014
Head of Environmental Protection consulted 28 May 2014
Natural England consulted 28 May 2014
NWLDC Tree Officer consulted 28 May 2014
County Archaeologist consulted 28 May 2014
LCC ecology consulted 28 May 2014
National Forest Company consulted 28 May 2014
Development Plans consulted 28 May 2014
Manager Of Housing North West Leicestershire District Council consulted 28 May 2014
LCC/Footpaths consulted 28 May 2014
Ashby Canal consulted 28 May 2014
Coal Authority consulted 28 May 2014
Head Of Street Management North West Leicestershire District consulted 28 May 2014
NWLDC Footpaths Officer consulted 28 May 2014

4. Summary of Representations Received

Oakthorpe Parish Council considers that the highway is very narrow, road access is limited and there is an Ash tree covered by a TPO. In addition, Oakthorpe Parish Council believe that the recent ecological surveys carried out at an adjacent development have confirmed the existence of great crested newts and an inspection should be undertaken on this basis.

Natural England has confirmed that the proposal is not likely to have a significant effect on the River Mease Special Area of Conservation and therefore raises no objection. Natural England has also confirmed that the scheme will not impact upon the River Mease Site of Special Scientific Interest (SSSI) and therefore raises no objection subject to the imposition of a condition.

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

The County Highway Authority raises no objection subject to the imposition of planning conditions and the inclusion of a routeing agreement within the S106 agreement.

The County Footpaths Officer advises that the Public Footpath P77 to the north of the site should be surfaced.

The County Archaeologist considers that the site has low archaeological potential and consequently no further archaeological requirements have been recommended.

The County Ecologist raises no objection subject to conditions for mitigation.

NWLDC Affordable Housing Enabler is satisfied with the provision of two affordable, two bed bungalows on site.

NWLDC Environmental Protection has no environmental observations.

NWLDC Footpaths Officer considers that no footpath diversion considerations are necessary for this application.

At the time of writing the report representations had not been received from:-

Severn Trent Water
The Council's Tree Officer

Third Party Representations:

A petition containing 41 signatures has been received, in support of the development.
2 letters of support has been received stating that the site is an ideal location not being crammed into the village, provides bungalows which there is a shortage of and is within walking distance of Oakthrope, is located in a desirable location, proposes parking, large gardens and detached dwellings.

1 letter of objection has been received stating that the site would expand the main part of the village whilst there is room to infill within the village, the narrow width of Chapel Street and the use as a cut through, and the Ashby Canal and HS2 rail line is due to come through this field. The site also has a tree covered by a TPO, the sewers are blocked and the school is full.

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.

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

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

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

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

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

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

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

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

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

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

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

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

"61. Although visual appearance and the architecture of individual buildings are very important

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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."

"64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions."

"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..."

"129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal taking account of the available evidence and any necessary expertise."

"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."

"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."

Adopted 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 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 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.

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Policy E4 seeks to achieve good design in new development.

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

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

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

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

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

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

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

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

Policy T16 states that development will not be permitted which would prejudice the re-opening of Ashby Canal and associated canalside facilities.

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 provides a legislative requirement that an obligation must meet the following tests:

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

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

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

NWLDC SPD for Affordable Housing - January 2011 Key Principle AH3 provides that affordable housing will be sought on all sites of 15 or more dwellings in 'all other settlements'.

6. Assessment

The main considerations with regards to this application are the principle of development and five year housing land supply, siting, impact upon the countryside, density, layout and design, impact upon residential amenity, highway considerations, protected species/ecology, archaeology, drainage and flood risk, the impact upon the River Mease Special Area of Conservation/SSSI, impact upon Ashby Canal and footpath, impact upon trees and the provision of affordable housing and developer contributions.

Principle of Development and Five Year Housing Land Supply

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)).

The application site lies outside the Limits to Development of Oakthorpe, as defined proposals map of the adopted Local Plan. The overarching principle of the NPPF is to protect the countryside but to allow sustainable development where appropriate. Schemes outside Limits to Development fall to be considered against Saved Policy S3 of the Local Plan.

The development proposed would not meet the criteria for development in the countryside and the scheme would therefore be contrary to the provisions of 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, as discussed below.

Housing Land Supply

The NPPF requires that the Council should be able to identify a five year supply of housing land and include an additional buffer of 5% or 20% depending on previous performance in terms of delivery of housing. The appeal decision of May 2013 in respect of land south of Moira Road, Ashby de la Zouch, found that the "Sedgefield" approach should be used and that a buffer of 20% should be allowed for (an approach to assessing land availability also suggested as appropriate within the recently published National Planning Practice Guidance).

On this basis, the District Council's most recent calculations indicate that the Council is only able to demonstrate a supply of 4.7 years which represents a significant shortfall vis-à-vis the requirements of the NPPF. The consequences of an inability to demonstrate a five year supply are profound. Paragraph 49 of the NPPF advises that "Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites".

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

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

"46. That phraseology is either very narrow and specific, confining itself simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction, or alternatively it requires

a broader approach which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner.

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

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

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

Sustainable Development

In March 2012 the National Planning Policy Framework (NPPF) was published and introduces the presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved without delay and where relevant policies are out of date planning permission should be granted unless the adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies as a whole or if specific policies in the NPPF indicate development should be restricted.

There are three core strands underpinning the presumption in favour of sustainable development promoted within the NPPF. These are economic, social and environmental. So long as a development is consistent with these criteria, in principle the development should be considered acceptable.

Economic - in this respect developments should contribute towards building a strong competitive economy through ensuring that sufficient land of the right type is available to support growth, and by coordinating development requirements, including the provision of infrastructure. It is considered that the development would benefit the local economy through both the creation of jobs for the construction of the development itself, as well as securing financial contributions for the provision and maintenance of local infrastructure. Accordingly the site is considered to be consistent with the 'economic role'.

Social - in this respect, developments should support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future

generations; and by creating a high quality built environment. The scheme proposes bungalows and two storey dwellings, including the provision of affordable housing, appealing to a wider spectrum with the local market, thus increasing local market choice and appealing to groups whom may have otherwise been excluded from the locality.

Environmental - to fulfil this role development should protect and enhance the natural, built and historic environment. As part of this biodiversity should be improved, natural resources should be used more prudently, waste and pollution should be minimised, and development should help mitigate, and adapt to climate change.

The development would result in the loss of greenfield land which is identified in the adopted Local Plan as being countryside and for the reasons discussed later in this report is not considered to protect or enhance the natural environment.

In summary, based on the above discussion, the development proposed is not considered to comply with the environmental strand within the NPPF, and thus in principle, the development is not considered to be acceptable.

Sustainability Credentials of Oakthorpe

The site is located to the south west of Oakthorpe. The site does not adjoin the settlement boundary and is located some distance from the services and facilities within Oakthorpe.

In terms of sustainability, Oakthorpe has a reasonable range of services and facilities for a settlement of its size.

Oakthorpe itself has a primary school, public house, general store, community leisure centre and children's play area. In terms of public transport the nearest bus stops are at located along Main Street (Bon Croft Gardens) there is an hourly 6 day a week (Monday to Saturday) service to Ashby, although it should be noted that 2 services per day terminate at Measham.

In terms of distance to amenities, the Institute of Highways and Transportation (IHT) document 'Providing for Journeys on Foot' details the distance of 800 metres is considered to be the preferred maximum walking distance to a town centre with 400 metres acceptable and 200 metres being desirable.

Below are the approximate distances from the centre of the site to local facilities and services via the existing footway network:

Methodist Church 185
Public House - 285 metres
Bus Stop - 330 metres
Primary School - 730 metres
Leisure/Community - 900 metres
Shop and Takeaway - 1,060 metres

Accordingly only the Methodist Church would be within the 'desirable' walking distance, with the Public House and Bus Stop being within the 'acceptable' walking distance. The Primary School would fall within the 'maximum' walking distance with the leisure/community facility, shop and takeaway falling outside of the 'maximum' walking distance.

It is considered that whilst Oakthorpe is a sustainable location, the site is located outside the defined Limits to Development and result in an inappropriate form of development disconnected

from the main built up area of Oakthorpe, and would not, therefore represent a sustainable form of development.

Siting

The settlement boundary of Oakthorpe runs along the rear gardens of Stretton View, which are residential properties located to the western side of Chapel Street. The boundary line then continues north east, incorporating the road and residential curtilage of No. 35 Chapel Street, located to the east of Chapel Street. Neighbouring 'Springfield' which adjoins the application site to the north is not included within the settlement boundary. Accordingly the site does not adjoin or abut the settlement boundary at any point.

With the exception of No's 43 to 49 Chapel Street, a row of two storey terraces located to the south of the site, a single storey outbuilding and garage, the area is agricultural and un-developed in nature. No's 43 to 49 are very much an exception to the pattern and un-developed nature of this area. Whilst the site itself is immediately adjoined to the north and south by this above mentioned residential development, both are outside of the settlement boundary and therefore also fall outside limits to development.

It is considered that the most natural, sustainable expansion of Oakthorpe would be development which abuts, adjoins the settlement boundary or has a physical and visual relationship with the settlement itself.

Impact upon the Character and Appearance of the Countryside

As discussed earlier in this report the application site in policy terms lies outside of the defined development limits for Oakthorpe and within the countryside. Paragraph 17 of the NPPF also states that planning should recognise the intrinsic character and beauty of the countryside and support thriving rural communities within it, and paragraph 109 states that the planning system should protect and enhance valued landscapes.

The site occupies a prominent position and important viewpoint when travelling into the south of the settlement of Oakthorpe from Chapel Street. Land levels gently rise from the centre of the site towards the northern periphery with 'Springfield'.

To the north of the site is a mature hedgerow and public footpath which is considered to provide both a visual and a physical separation from the settlement with the countryside beyond. The site itself is characterised by mature hedgerows with scattered trees to the north and west, with a clear open view to the east of the site.

It is considered that this site represents a 'typical' rural countryside location and provides an important element of the setting and approach to the village. It is considered that the introduction of nine residential dwellings and associated infrastructure would bring a change and an impact upon the visual character of the area, given the sites un-developed agricultural nature.

The submitted details show the removal of a large expanse of hedgerow across the sites frontage, to largely facilitate the proposed footpath and visibility splays. Resultant of the loss of the mature hedgerow to the sites frontage, this would open up views into the site, thus making the development more prominent in immediate views from Chapel Street.

The applicant has confirmed that a replacement hedgerow could be planted behind the footpath,

which has been reflected in part with the latest submitted plans, which would help soften the impact of the development, however there would be an un-acceptable visual impact until such a time that the hedgerow was able to establish itself.

Public Footpath P77 extends along the north eastern boundary of the application site before turning south and extending along to meet Measham Road. The route of the Public Footpath to the northern part of the site has mature hedgerow planting and it is considered that there is only likely to be glimpses of the development during the winter months.

The views from Public Footpath P77 to the east of the site would be most prominent given the open nature of the adjoining field to the east. Accordingly the view from the east would be of the rear of plots 3,4 and 6-9 and the 1.8 metre close boarded wooden fencing which is proposed to the rear boundaries which is not considered to be a typical boundary treatment within this setting. Following discussions with the applicant an alternative post and rail fence with hedgerow planting has been submitted which would soften this edge.

In terms of views from within the settlement boundary of Oakthorpe itself, it is acknowledged that as the single storey dwellings would be proposed on the highest part of the site, and the two storey on the lowest part and furthest away from the settlement and therefore the scheme is unlikely to be visually prominent from the north.

Accordingly whilst the site would not be particularly prominent from the north of the site due to screening by existing boundary hedgerows and topography, the scheme would be visually prominent from immediate views from Chapel Street and from the public footpath network to the east of the site.

Whilst there would be a set back of built development from the road frontage and replacement hedgerow planting, given the removal of the mature hedgerow and introduction of residential development in this previously un-developed site, it would be difficult for even a semi-rural character to remain intact.

In summary, Chapel Street is bound by mature hedgerow on both elevations which create a strong sense of enclosure and forms an important part of this rural character and approach to the village. The character of the area is essentially rural, with a strong sense of being within the countryside by virtue of natural features which contribute to its rural ambience. Given the lack of existing urban features, with the exception of No's 43-49 Chapel Street (which as discussed above are considered to be an exception to the grain of development), it is considered that a scheme of nine dwellings would appear significantly out of character with its surroundings.

It is therefore considered that the introduction of a residential housing scheme would represent an un-acceptable adverse impact upon the character and appearance of the countryside contrary to Paragraph 17 of the NPPF.

Density, Layout and Design

Density

The NPPF states that local planning authorities should set their own approach to housing density to reflect local circumstances.

The application proposes 9 dwellings on a 0.9 hectare site equating to a net density of 10

dwelling per hectare (dph) which is well below that sought under Policy H6 of the Local Plan (a minimum of 30 dwellings per hectare). This density is considered appropriate having regard to the location of the site on the edge of a village and the rural character of the area. Accordingly it is not considered that a higher density of development could be achieved on the site, without having greater adverse impacts than the current proposal. Therefore, the scheme is considered to be acceptable in relation to the advice contained in the NPPF and Policy H6 of the Local Plan.

Layout and Design

Paragraph 64 of the NPPF states that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

The eastern side of Chapel Street is characterised by a row of two storey terraces (to the south of the application site) and a mix of detached and semi detached two storey dwellings to the north of the application site. In the wider vicinity to the west of Chapel Street are terraces and semi detached dwellings.

Overall it is considered that there are a range of property types and designs within the vicinity of the site, although as previously discussed with the exception of No's 43-49 Chapel Street and Springfield Farm the residential properties are located within Limits to Development and as such the layout and design of properties are expected to be different in nature.

The proposal provides a mix of four, two storey detached dwellings and three, single storey open market bungalows and a pair of 1.5 storey (with accommodation in the roofspace) affordable dwellings. The site is split into two distinct areas, with the two storey dwellings to the south of the site and single storey to the north. Whilst the scale should typically reduce from the settlement towards the countryside, to give a lessening of urban influence, given the presence of two storey dwellings to the south of the site and given that land levels rise to the north, the re-location of two storey dwellings to the north of the site would result in an additional adverse impact upon this countryside setting. On this basis the division between the two storey and single storey dwellings is considered acceptable in principle.

The Council's Urban Design Officer was of the opinion that the layout and design of the buildings on this edge of settlement location is out of character and has requested that cottage style or agricultural barn style/courtyard style arrangements to be considered. In addition, concerns have been expressed over the expanse of hard standing, the heavily engineered access route, the provision of two access points and the removal of the Ash tree and hedgerow to the sites frontage.

At the time of writing amended plans have been submitted which shows an improved layout of the dwellings, removal of one access point and footpaths within the scheme, the removal of large expanses of hard standing and retention of the ash tree, at the Tree Officers approval. Accordingly the layout and treatment of spaces between and around the dwellings has been improved it is still considered, however that further alterations to improve the overall visual appearance of the scheme can be sought and the specific design details of the properties enhanced.

As such at present the design of the units does not have full regard to this countryside setting and thus create an un-acceptable and adverse impact upon the character of the area, contrary to the requirements of Saved Policy E4 and paragraph 64 within the NPPF.

Accordingly at the time of writing the report, whilst the layout of the scheme has been improved, the final detailed design is un-acceptable and as such a reason for refusal is recommended on this basis. The applicant is working with the Authority to overcome these concerns and further amendments are expected. As such the final revised layout and design will be explored in detail, on submission of the amendments and be reported to Members via the update sheet.

Impact upon Residential Amenity

The residential dwellings most immediately impacted upon as a result of the proposal would be No.'s 43-49 Chapel Street located to the south of the application site and 'Springfield', Chapel Street located to the north of the application site.

There is a distance of approximately 14.1 metres between the rear elevation of the garage of plot 9, and approximately 19.5 metres between the side elevation of plot 9, to the closest point to the terrace row of 43-49 Chapel Street, respectively. This is considered to be a sufficient distance away to ensure no adverse impacts, and there is an existing single storey outbuilding along the site's southern boundary which would screen an element of the development.

There is a distance of 16 metres between 'Springfield' and the application site boundary and a further distance of 14.8 metres from the boundary to the closest point of plot 2. This is considered to be a sufficient distance between the two properties, and given the changes in levels, plot 2 sits considerably lower than that of the neighbouring dwelling ensuring no adverse impacts.

It is considered that if distances alter on the receipt of final amended plans then the revised distances will be provided via the update sheet.

All other existing neighbouring dwellings are located at sufficient distances away not to be significantly impacted upon as a result of the proposal.

In respect of impacts upon the future occupiers between the plots themselves, there is sufficient distance between the dwellings to ensure that there are no any significant overlooking, overshadowing, or overbearing impacts. There is a direct relationship between plots 4 and 5, however there is a distance of a minimum of 20 metres between the habitable windows in both single properties which is in excess of the recommended separation distances.

Windows serving bathrooms and en-suites are to be fitted with obscure glass, secured by the imposition of a planning condition.

In summary, the proposal is considered to have minimal impacts upon amenity of existing neighbouring or future neighbouring residents. As such the scheme is considered to be in accordance with Saved Policy E3 of the Local Plan.

Highway Considerations

Access will be provided via amendments to an existing access and creation of a new access, both from Chapel Street. Proposed highways works include the widening of Chapel Street and the provision of a 2 metre wide footpath along the site frontage. There is a mixture of integral and detached garaging, with all plots providing a minimum of 2 no. car parking spaces.

The County Highway Authority (CHA) has been consulted and does not raise any objections,

subject to conditions and details for the routing of construction traffic to be included in a S106 legal agreement.

In summary, subject to the imposition of conditions it is considered that the scheme is acceptable in relation to Saved Policies T3 and T8 of the Local Plan.

Protected Species/Ecology

The application has been accompanied by an ecological appraisal, incorporating a protected species survey which has been considered by the County Ecologist.

Initially the County Ecologist raised no objections to this development, however following consideration of a secondary survey relating to a pending application at Home Farm, Oakthorpe (ref: 14/00244/OUTM) has subsequently revised their observations.

This secondary survey undertaken by independent ecologists, EMEC undertook a survey of the same pond and assessed the pond as 'high' risk of Great Crested Newts being present and this was subsequently confirmed beyond doubt when a population was located.

Accordingly the County Ecologist had raised a holding objection pending further investigation of the pond and the provision of satisfactory mitigation statement. The applicant has subsequently submitted a great crested new mitigation plan to complement the previous submitted ecological appraisal.

This mitigation plan has been considered by the County Ecologist who now raises no objection, subject to conditions which enshrine the recommendations within the mitigation plan.

The site lies within the catchment of the River Mease Special Area of Conservation (SAC) and consideration of the potential impacts of the development on this designated site will be covered later in this report.

Archaeology

The application has been considered by the County Archaeologist who has confirmed that the development lies in an area of uncertain archaeological potential to the south of the former line of the Ashby to Nuneaton canal (Leics. & Rutland Historic Environment Record (HER): ref: MLE8916); the latter dates from the turn of the 18th-19th century.

The County Archaeologist states that the scheme stands off the recorded line of the canal, which itself is located immediately outside the development area to the north, consequently it appears unlikely that buried remains associated with the canal will be disturbed by the scheme.

Overall it is considered that the site has a low archaeological potential and consequently no further archaeological requirements have been recommended.

Drainage and Flood Risk

The site lies within Flood Zone 1 as defined by the Environment Agency as having a low probability of flooding. As the site does not exceed 1 hectare in size, there is no formal requirement to provide a Flood Risk Assessment (FRA) or formal consultation undertaken with the Environment Agency.

Severn Trent Water has been consulted on the application but no comments have been received at time of writing. A chasing request has been made and should any comments be received, they will be reported to Members via the update sheet.

The submitted details confirmation that surface water would be disposed of via a soakaway and whilst no formal details have been submitted a suitably worded condition could be imposed should Members be minded to approve the application.

Consideration of the capacity of STW's treatment works is set out below in the section relating to impact on the River Mease SAC.

Impact on the River Mease Special Area of Conservation/SSSI

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC), which was designated in 2005. A tributary of the River Mease runs alongside the western boundary of the site and the River Mease itself is within 200m of the site. The 2010 Habitat Regulations and Circular 06/2005 set out how development proposals within an SAC should be considered. Regard should also be had to national planning guidance in the NPPF. During 2009 new information came to light regarding the factors affecting the ecological health of the River Mease SAC, in particular that the river is in unfavourable condition due to the high level of phosphates within it. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Therefore an assessment of whether the proposal will have a significant effect on the SAC is required.

The flows from the new dwellings will need to be taken into account against the existing headroom at Measham Treatment Works, which serves the village. At March 2014 capacity was available for 188 dwellings but this is reduced by the number of dwellings that have consent and/or are under construction (none) whilst also considering those which are pending consideration (128 dwellings). Taking these into account, assuming all would be approved there would still be capacity for at worst case scenario, 60 dwellings. Accordingly a scheme for 9 falls well within the existing capacity levels.

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.

When having regard to the existing agricultural use of the site, the proposal for 9 dwellings would increase the foul drainage discharge from the site and as such it is subject to the requirements of the DCS. The application proposes that foul drainage would be dealt with via the mains sewer system and confirms that the applicant will pay the required contribution under the DCS which has been calculated as a maximum of £2,650.00

Natural England has no objections in relation to impact on the SAC/SSSI subject to a condition. 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.

Impact upon Ashby Canal and Public Footpath

Saved Policy T16 (Ashby Canal) states that development will not be permitted which would prejudice the re-opening of Ashby Canal and associated canalside facilities. There is at least a 6 metre buffer/separation shown to the north of the site, with a distance of 14.8 and 20 metres between the rear walls of units 1 and 2, respectively. Given the layout and distances it is not considered that this development would prejudice the re-opening of this stretch of the canal.

The County Footpath Officer considers that the route of the Public Footpath P77 will extend inside the north eastern boundary of the application site. This Public Footpath is situated parallel to the north site boundary, to the north of the existing hedgerow and therefore the route of the footpath is not impacted upon as a result of the proposal. The scheme is proposing the provision of a footpath to the sites frontage and there is no evidence to suggest that the development would directly impact upon the route of Public Footpath P77 and it is considered that the re-surfacing is considered onerous and not necessary in this case.

Impact upon Trees

An ash tree located on the site's boundary with Chapel Street is protected by a Tree Preservation Order (T194) and the original scheme proposed the removal of this tree. Following discussions with the applicant, amended plans have been received showing the retention of three and consideration by Council's Tree Officer will be reported to Members via the update sheet

Coalfield Issues

The northern part of the site falls within the Coal Authority Referral Zone. The scheme has been considered by The Coal Authority who have confirmed that there is a potential risk to the development from shallow coal seams beneath the site and intrusive site investigations should be carried out in order to establish the exact situation in respect of coal mining legacy issues. Accordingly it is suggested a planning condition should be imposed requiring that site investigation works are undertaken prior to the commencement of development.

Developer Contributions

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

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

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

Affordable Housing

The proposal seeks to provide 9 properties in total so triggers the policy requirement for 30% affordable housing equating to 3 properties. The applicant is proposing that 2 of the dwellings

be affordable, which would just fall short of the requirements of the SPD.

The housing register for Oakthorpe and Donisthorpe in 2011 indicated a need of 9 properties, of which 4 properties were identified specifically from households currently living or working in Oakthorpe. The results of this survey are still valid and the following property types were identified as 1 x 1 bed flat; 1 x 2 bed house and 2 x 2 bed bungalows.

The Council's Strategic Housing Team have been consulted on the application and have advised that they are satisfied with the reduced provision in this case, on the basis that the affordable housing provision includes the two bungalows (two-bed), there are no age restrictions attached to these properties and they are provided as affordable rented properties.

Should Members be minded to approve this application, this would be subject to the signing of a legal agreement to secure the provision of the two affordable rented bungalows.

River Mease DCS

A contribution under the River Mease DCS is required (as outlined earlier in the report) but an exact figure for the contribution cannot be determined at this stage, as the code levels of the dwellings has not been finalised. The contribution would be based on the provision of 2 x 2 bed, 2 x 3 bed and 5 x 4 bed, accordingly the maximum with code level 1/2 amount would be £2,650.00

A Section 106 agreement would be worded as such to allow flexibility based on the construction code levels.

National Forest Company

The application site extends to 0.9 ha and the National Forest Planting Guidelines require 20% of the site area to be for woodland planting and landscaping. This would equate to an area of 0.18 ha either on-site, off-site or by way of a financial contribution equating to £3,600.

Summary

For the avoidance of doubt given that the scheme is for 9 dwellings there is no requirement under the provisions of the policy to request either on site play space or a financial contribution in lieu for off site provision.

Overall, it is considered that the proposed obligations would comply with the relevant policy and legislative tests as set out in the NPPF and the CIL Regulations, and would represent appropriate contributions towards the infrastructure and other needs of the proposed development.

The applicant has confirmed that they would be willing to enter into an agreement to secure the above mentioned contributions, should there be a resolution to grant planning permission.

Conclusion

In conclusion, the development would not give rise to any significant material impacts upon the occupiers of existing and future occupiers, highway safety, ecology, archaeology, protected trees, flood risk, drainage, the River Mease SAC/SSSI or prejudice the re-opening of the Ashby Canal. Appropriate contributions to infrastructure could also be made so as to mitigate the

impacts of the proposals on local facilities/services.

As set out in the main report above, however whilst Oakthorpe itself is a sustainable location for residential development, the scheme would be sited outside the defined Limits to Development and result in an inappropriate form of development disconnected from the main built up area of Oakthorpe, and would not, therefore represent a sustainable form of development.

The site is located outside Limits to Development to the south of the village and within an important entrance and approach to the village. The character of the area is essentially rural, with a strong sense of being within the countryside by virtue of natural features which contribute to its rural ambience. It is considered that a scheme of 9 dwellings would appear significantly out of character with this location contrary to the environmental strand enshrined within the NPPF and paragraphs 17 and 109 within the NPPF.

At the time of writing the report, whilst the main layout of the scheme has been improved, the final detailed layout and design is un-acceptable and as such a reason for refusal is recommended on this basis. The applicant is working with the Authority to overcome these concerns and further amendments are expected. As such the final revised layout and design will be explored in detail, on submission of the amendments and be reported to Members via the update sheet. Accordingly it is considered by virtue of the design of the scheme, it fails to respect the character and appearance of this countryside setting, contrary to the requirements of Saved Policy E4 and paragraph 64 within the NPPF.

It is considered that any potential benefits of the scheme as proposed would be insufficient to outweigh the conflict with the development plan and the Framework resulting from the harm as identified in the main body of the report.

RECOMMENDATION: REFUSE for the following reasons:-

- 1 Paragraph 17 of the NPPF states that planning should recognise the intrinsic character and beauty of the countryside and support thriving rural communities within it, and paragraph 109 states that the planning system should protect and enhance valued landscapes. The 'Environmental' strand at the heart of sustainable development states that development should protect and enhance the natural, built and historic environment.

The introduction of this residential development on this un-developed Greenfield site would be detrimental to the character of this rural locality as it would encroach and project significantly into the open countryside, would not be well-related to nearby development, as it would project beyond Oakthorpe's established settlement boundary. The scheme would therefore represent an un-acceptable adverse impact upon the character and appearance of the countryside contrary to the environmental strand enshrined within the NPPF and paragraphs 17 and 109 of the NPPF.

- 2 Policy E4 of the North West Leicestershire Local Plan requires new development to respect the character of its surroundings. Paragraph 64 within the NPPF stated that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

The proposed scheme by reason of its design would not be sympathetic to the character and appearance of this countryside setting. The proposal is therefore contrary to Policy

E4 of the North West Leicestershire Local Plan and paragraph 64 within the NPPF.

Notes to applicant

- 1 Planning permission has been refused for this proposal for the clear reasons set out in this decision notice. The Local Planning Authority acted pro-actively through positive engagement with the applicant in an attempt to narrow down the reasons for refusal but fundamental objections could not be overcome. The applicant was invited to withdraw the application to seek pre-application advice prior to any re-submission but did not agree to this. The Local Planning Authority has therefore acted pro-actively in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended).