

Development of up to 450 residential dwellings and reinstatement of 1.1km of associated canal, provision of public open space and vehicular, emergency and footpath access (Outline application - All matters reserved except access)

Report Item No  
A2

Land At Measham Waterside Burton Road Measham Derby

Application Reference  
13/00141/OUTM

Applicant:  
Measham Land Company Limited

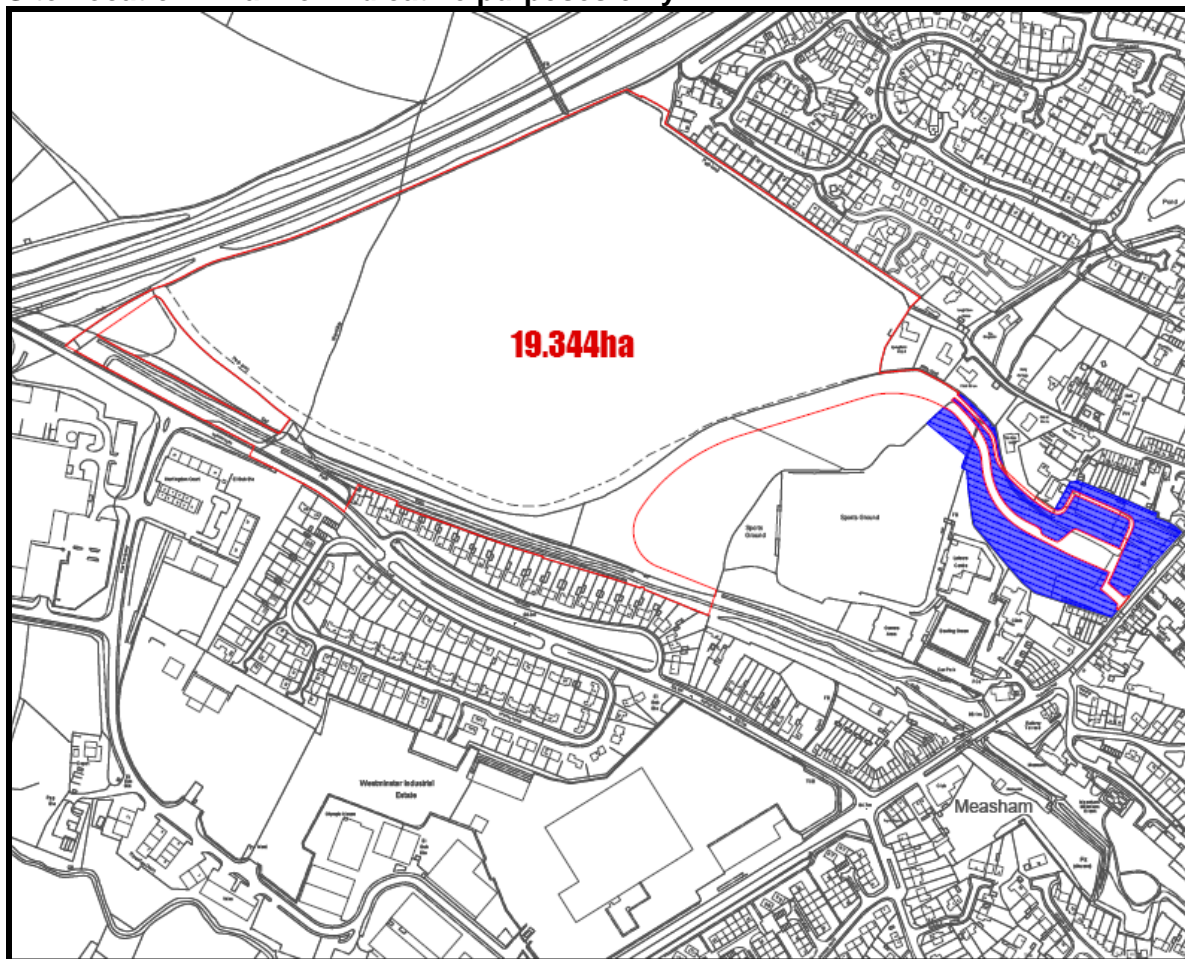
Date Registered  
25 February 2013

Case Officer:  
Sarah Worrall

Target Decision Date  
27 May 2013

Recommendation:  
PERMIT Subject to a Section 106 Agreement

Site Location - Plan for indicative purposes only



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

### **Proposal**

The development proposal is unchanged from the previous report to Planning Committee at its meetings of 1 October 2013 and 10 June 2014. However, following the Committee resolution in June to refuse the application, on the grounds that it was not policy compliant in terms of S106 contributions for infrastructure, the applicant and agent discussed the situation with the Head of Regeneration and Planning at that time. The applicant and agent requested further opportunity to revisit how the infrastructure could be provided, and an alternative S106 proposal has been submitted for consideration which is much more policy compliant than the previous options put forward for consideration.

The current S106 proposal would fully meet the financial contribution requests for health, education, libraries, highways, Police, leisure and management of the River Mease, and would partially meet the onsite affordable housing requirement with an option to review clause included as part of the S106. This would provide for trigger points for further viability assessments in the future to ascertain whether more affordable housing could be achieved as part of a viable scheme on site at that time.

The current S106 proposal would still provide for the route of the canal in that the access and bridge from Burton Road, which would cross the canal, would be provided and the remediation works to the land would be undertaken in relation to the canal implementation. However, in order to achieve the other infrastructure related to the proposed development the physical construction of the canal would not take place and would remain a Leicestershire County Council project.

As such, the following report is a further update for Planning Committee on the S106 negotiations and a copy of the original report to Committee and June update are attached as an addendum for information.

Members will recall that at the time the application was considered in 2013 the District Valuer found a policy compliant proposal to be viable, notwithstanding the applicant/agents position of a policy compliant scheme not being viable. Negotiations between parties since 1 October 2013 led to a further review of the policy compliant scheme and in May 2014 the District Valuer confirmed that a fully policy compliant scheme would **not** be viable, but a partially compliant scheme may be compliant.

### **Consultations**

No further consultations have taken place following submission of the revised S106 contribution information by the applicant and agent on 15 July 2014.

### **Planning Policy**

As reported in the update to Planning Committee's June meeting, there has been a change in policy since the application was considered on 1 October 2013 in that the Submission Core Strategy was withdrawn by Full Council on 29 October 2013. The Core Strategy indicated that land to the west of Measham village centre would be developed for residential use in addition to reinstatement of part of the Ashby Canal. In addition, since the June Committee meeting the District Council now has a 5 year housing land supply plus additional land over and above the extra 20% buffer when taking the Sedgefield approach to housing land supply numbers.

### **Conclusion**

The 2013 recommendation to conditionally permit the proposed development should be

maintained, with the S106 to include financial contributions towards health, education, libraries, highways, Police (pending receipt of Counsel's opinion on CIL compliancy), leisure and management of the River Mease, and partial provision of the on site affordable housing with an option to review clause, and provision of the access and bridge, and remediation works on the canal route.

**RECOMMENDATION:- THAT PLANNING PERMISSION FOR A PARTIALLY POLICY COMPLIANT SCHEME BE APPROVED SUBJECT TO CONDITIONS AS PER THE OCTOBER COMMITTEE REPORT AND UPDATE SHEET AND, to include FULL contributions for the Burton Road access, roundabout and bridge provision, open space provision, remediation works on the canal route, health, education, libraries, highways, Police, leisure and management of the River Mease, and PARTIAL provision of the on site affordable housing with an option to review clause.**

Members are advised that the above is a summary of the proposals and key issues contained in the main update report below. Members are advised that this summary should be read in conjunction with the update report below and the original report of October 2013 and the first update report of June 2014 which are attached.

## MAIN REPORT

### 1. Proposals and Background

This is an outline application for the erection of up to 450 dwellings, reinstatement of 1.1km of associated canal, provision of public open space, footpath access, an emergency access off High Street, and a new access with roundabout off Burton Road. All matters, except access, are reserved for subsequent approval.

An indicative masterplan drawing has been submitted as part of the application which includes the current application site (Measham Waterside) as well as the adjacent site which the applicant calls the Measham Wharf site. Whilst the masterplan drawing indicates the applicant's vision for the site it is indicative only. For clarity, it should be noted there is no separate application for the Measham Wharf site at this time. This application is purely in relation to residential development and associated highways and aspirations for the provision of a section of the Ashby canal.

The site is some 19.4 hectares in size, and is predominantly agricultural land which slopes downwards from west to east and north to south. The application site also includes the former Picture House Youth Club site which fronts High Street, and the Meer Bridge off Burton Road which is a Grade II Listed structure. The site is bound at the western side by the A42, to the north by residential development off Rosebank View and Hart Drive, to the east by residential development on Chapel Street and the physical boundary of High Street, open space to the south east and residential development on Burton Road to the south.

Members will recall that at the time the application was considered in 2013 the District Valuer found a policy compliant proposal to be viable, notwithstanding the applicant/agents position of a policy compliant scheme not being viable. Negotiations between parties since 1 October 2013 led to a further review of the policy compliant scheme and in May 2014 the District Valuer confirmed that a fully policy compliant scheme would **not** be viable, but a partially compliant scheme may be compliant. As such the matter was reported to the Planning Committee with three options, and Committee resolved that the application should be refused on the basis it was not policy compliant in terms of the S106 provision.

#### 2. Publicity

No further publicity has been required as the proposal has not changed and the matters for discussion relate to S106 contributions and the viability of the site in relation to these.

#### 3. Consultations

No further consultation, other than with the District Valuer, has been required as the proposal has not changed and the matters for discussion relate to S106 contributions and the viability of the site in relation to these.

#### 4. Summary of Representations Received

The District Valuer confirms that due to changes in Quarterly costs and additional information submitted by the agent a policy compliant scheme is not viable. However, the District Valuer indicates that a partially compliant scheme would be viable and suggests that sensitivity testing be undertaken to establish the viable position.

#### 5. Planning Policy

The planning policy in relation to the NPPF and the Adopted Local Plan as set out in the original

report as attached is still relevant to this update. However, the Submission Core Strategy policies are not since the document was withdrawn on 29 October 2013. Notwithstanding this issue, the site is included within the 2014 Strategic Housing Land Availability Assessment (SHLAA).

In addition, the District Council can now meet its 5 year housing land supply including 20% buffer plus additional supply so Policy S3 and H4/1 can be considered up to date policies once again. These issues are set out in more detail in the following Assessment section.

## 6. Assessment

### **Principle of Development**

In terms of the Adopted Local Plan, and as set out in the original report to Committee, the site lies outside the Limits to Development of Measham. Adopted Local Plan Policy S3 applies to countryside sites which lie outside Limits to Development, and sets out criteria for development in the countryside which does not include residential development. Notwithstanding the countryside location, whilst the proposal would be contrary to the adopted Development Plan regard must be had to other material considerations, including other policies, such as other Development Plan policies and national policies.

The NPPF requires that the Council should be able to identify a five year supply of housing land with an additional buffer of 5% or 20% depending on its previous record of housing delivery. The appeal decision of May 2013 in respect of land south of Moira Road, Ashby de la Zouch, concluded that the Council's 5 year housing land supply calculation should be based on the "Sedgefield" approach (i.e. an approach requiring planning authorities to deal with any past under-supply within the first 5 years rather than to spread this over the whole plan period) an approach now expressly preferred in the recently published National Planning Practice Guidance, and thus even more likely to be favoured by appeal inspectors going forward. The Moira Road Inspector also applied a buffer of 20% for persistent under delivery. As such, Officers have recently been advising members of the Council's inability to demonstrate a five-year supply of deliverable housing sites. The consequence of this has been that the Council's has not been able to rely on adopted Policies S3 and H4/1 in determining housing applications as they are "relevant policies for the supply of housing" for the purposes of Paragraph 49 of the NPPF which, Members are aware "should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites".

As reported to Committee on 8th July, however, a recently completed County-wide Strategic Housing Market Assessment (SHMA) has provided the Council with an up-to-date objectively assessed annual housing requirement, on which basis, the Council is now able to demonstrate a supply of 7.1 years (i.e. an excess of 2.1 years beyond the five year requirement, or an excess of 1.1 years beyond the five year plus 20% buffer requirement).

As a result of the above Policies S3 and H4/1 should no longer be considered 'out-of-date' in the context of Paragraph 49 of the NPPF - indeed these are Development Plan policies to which the Council should again now properly have regard in determining future planning applications. Whilst the weight to be applied to these policies against other material considerations is a matter entirely for members, officers would advise members, in applying weight to any conflict with Policy S3 in the overall planning balance, to bear in mind the fact that the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements only up until the end of that Plan Period (i.e. to 2006)".

In terms of the Local Plan, Policy H4/1 identifies a sequential approach to the release of appropriate land for housing to ensure sustainable development. Insofar as the site's location is concerned, it is situated immediately adjacent to the existing built up area of the village of Measham and would not result in isolated development in the countryside.

Furthermore, in terms of the sustainability of the site, the application site is well related to the existing wide range of services/facilities within the village of Measham. The distance to the nearest bus stop from the centre of the site is 800m and the distance to the nearest bus stop from the site access is 890m. The primary school is within walking distance of the site (some 770m), and the local shopping area including Post Office and Health Centre is some 540m from the site, so also within walking distance (preferred maximum walking distance is 800m). There would be open space on the application site and public footpaths would be maintained, diverted and/or introduced within the development to ensure connectivity between the site and the existing village.

In addition, permission for a section of the Ashby Canal is also sought as part of the application which would provide for future leisure and recreation opportunities in addition to economic regeneration and heritage opportunities.

Taking all of the above into account it is considered that, on balance, the site is in principle an appropriate and sustainable location for the level of development proposed, subject to other material considerations which have previously been considered by Planning Committee.

### **Other Issues**

The matters of design, heritage, residential amenity, highways, River Mease, drainage, ecology and ground stability are addressed in the original report and remain unchanged.

High Speed 2 (HS2) is not a material planning consideration at this time.

### **S106 requirements**

Members will recall that the scheme was presented to Planning Committee in October 2013 with a recommendation to permit subject to conditions, and subject to a S106 agreement in relation to library facilities, highways matters, leisure facilities, River Mease SAC Developer Contribution Scheme (DCS), affordable housing, implementation of the canal, and Open Space/National Forest Planting and Conservation Management Plans i.e. a policy compliant scheme.

The applicant/agent had submitted that the scheme was not viable with all contributions and a partially compliant scheme was put forward which included the canal provision and the River Mease SAC DCS contribution. However, the District Valuer, on behalf of the District Council, advised that a policy compliant scheme was viable and, as such, the recommendation was made as per the preceding paragraph.

Following the October Planning Committee further discussions took place between parties and the applicant/agent submitted additional information setting out their position in relation to the viability situation (February 2014) and, following discussions with the District Valuer, additional background information on costings was submitted (April 2014). The District Council instructed the District Valuer to advise on the position put forward by the applicant/agent and to advise in relation to the viability of the scheme.

On 21 May 2014 the District Valuer reported back to the District Council that a fully policy

compliant scheme was not viable at the site. Following further discussions between the District Council and the District Valuer after that date, the District Valuer indicated that a partially compliant scheme would be viable and suggested that sensitivity analysis and testing be undertaken to establish which combination of S106 requirements would be viable.

Further sensitivity testing was not agreed to by the agent or applicant to establish at what level of costings the scheme would become viable. However, it is evident from the District Valuer that a fully policy compliant scheme along with land remediation, Burton Road access, roundabout and bridge over the canal route and canal construction is not viable at the site.

It should be noted that the developer was agreeable to including a review clause within a S106 agreement in order to revisit other issues such as affordable housing, health and education at such a time as the scheme came forward.

Following the Committee resolution in June to refuse the application, on the grounds that it was not policy compliant in terms of S106 contributions for infrastructure, the applicant and agent discussed the situation with the Head of Regeneration and Planning at that time. The applicant and agent requested further opportunity to revisit how the infrastructure could be provided, and alternative S106 proposal has been submitted for consideration which is much more policy compliant than the previous options put forward for consideration.

As such, the applicant is agreeable to enter into a S106 agreement on the basis that a total amount of £3.4 million would be available to meet planning contribution requests. This is proposed on the basis that the scheme will not provide for the physical construction of the canal through the S106 as originally intended.

For clarification purposes, despite this change to the allocation of S106 funds, the planning application proposal remains unchanged since the outline permission seeks approval for the route of the canal, within the parameters set out in the 2005 Transport and Works Order, the Burton Road access, roundabout and canal bridge construction has been considered as a separately cost to the S106 contributions so would be undertaken. In addition, the remediation works to the land for implementation of construction of the canal have been considered as a separate cost to the S106 contributions, so would be undertaken. Members will recall these remediation works would be required since it became apparent during the pre-application process that the former canal bed had been landfilled with predominantly civic amenity waste. As such the aspirations for the implementation of the canal remain.

Following Members concerns in June 2014 in relation to there being no contributions towards health, education, affordable housing and other infrastructure the removal of the canal construction itself now provides £3.4m towards these associated costs.

During the original application process, Members will recall that educational boundaries changed. As a result, Leicestershire County Council revised its education contribution request from £1,306,693.00 to £2,096,190.30, an increase of £789,497.30 (£1,010,509.32 would be sought for Primary School Sector, in addition to requests for £309,257.74 in relation to the High School Sector and £776,423.27 for the Upper School Sector) as reported on the Update Sheet to the October 2013 meeting. The Update Sheet advised Members that this increase of some £800,000 would impact on viability.

As such, the applicant and agent have submitted the following options in relation to providing full contribution requests for highways (additional to the access, roundabout and bridge costs), Police (pending receipt of Counsel's opinion on CIL compliancy), education, libraries, leisure,

health and River Mease. The two options set out totals taking into account the two different education requests.

<b>Contribution</b>	<b>Option 1</b>	<b>Option 2</b>
<i>Highways</i>	£120,695.50	£120,695.50
<i>Police</i>	£152,480.00	£152,480.00
<i>Education</i>	£1,306,693.00	£2,096,190.30
<i>Libraries</i>	£26,870.00	£26,870.00
<i>Leisure</i>	£499,000.00	£499,000.00
<i>NHS PCT</i>	£179,000.00	£179,000.00
<i>River Mease</i>	£99,900.00	£99,900.00
<b>TOTAL</b>	<b>£2,384,638.50</b>	<b>£3,174,135.80</b>

From these totals it is evident that there would also be some opportunity for affordable housing, and the applicant and agent have also submitted the options in relation to providing a partially compliant affordable housing element as part of a legal agreement. The applicant and agent have also confirmed they are agreeable to an option to review clause as part of a S106 in relation to the affordable housing element so that it can be reviewed at various trigger points in the future.

As set out in the original report to Committee, development proposals in Measham attract a 30% requirement for onsite affordable housing unless it can be shown that the scheme is not viable. The District Valuer has confirmed that a fully policy compliant scheme is not viable, but that a partially compliant scheme may be. As such, proposed options depending on which option for full compliance as set out above is chosen, are as follows:

- Option 1: The first County Council Education requirement was for a lower amount and if this option is considered appropriate the level of remaining contribution towards affordable housing would be £1,015,361.50. This would deliver approximately 34 affordable units on site representing some 7.56% affordable housing provision; and,
- Option 2: The revised County Council Education requirement was for some £800,000 more than the first request and would result in a remaining contribution of £225,864.20 towards affordable housing. This would deliver approximately 8 units and represent a provision of 1.78%.

Whilst it is proposed that the tenure split of affordable housing would be determined through any reserved matters submission, should this current application be approved, it is proposed that the timings and trigger points for the provision of affordable units on site would be included as part of any S106 agreement as well as an option to review clause.

Whilst Option 2 would provide for the current full County Council education request, it would only provide for less than 2% affordable housing provision as part of the scheme, albeit with an option to review clause as well. As such, it is recommended that Members consider Option 1 for inclusion as part of a S106 agreement, which would include the original lower education request from County Council and would provide for some 7.5% of affordable housing provision with an option to review clause. However, should Members consider that the revised County education request needs to be met, then Option 2 could be included as an alternative should the application be approved.



## Conclusion

The withdrawal of the Submission Core Strategy in 2013 and revised housing land supply situation of July 2014 has changed the planning policy situation but not in any significant way which would result in a change to the original recommendation to conditionally approve the application subject to a S106 agreement.

All other matters, other than the S106 issue, remain the same as previously considered in October 2013 and June 2014. Due to viability issues, which have been confirmed by the District Valuer, the applicant proposed a scheme which would not be policy compliant in relation to S106 contributions. The previous S106 proposed to address costs and actions involved with canal construction, the provision of the Burton Road access, roundabout and canal bridge, remediation of the infilled sections of former canal, and open space provision.

Following the Planning Committee resolution to refuse the scheme in June 2014, the applicant has reconsidered their position and now proposes to exclude the construction of the canal. As such, the application will continue to provide for the implementation of the canal at a future date, and the S106 would include the following:

- costs and actions involved with the provision of the Burton Road access, roundabout and canal bridge, remediation of the infilled sections of former canal, and open space provision;
- full contributions towards highways (additional to the access, roundabout and bridge costs), Police, education, libraries, leisure, health and River Mease; and,
- part contributions towards onsite affordable housing at this stage, with an option to review clause also.

**RECOMMENDATION:- THAT PLANNING PERMISSION FOR A PARTIALLY POLICY COMPLIANT SCHEME BE APPROVED SUBJECT TO CONDITIONS AS PER THE OCTOBER COMMITTEE REPORT AND UPDATE SHEET AND, to include FULL provision of the Burton Road access, roundabout and bridge provision, open space provision, and remediation works on the canal route, in addition to FULL provision of health, education, libraries, highways, Police (pending receipt of Counsel's opinion on CIL compliancy), leisure and management of the River Mease contributions (all as set out in Option 1 of the main report), and PARTIAL provision of the on site affordable housing with an option to review clause.**

## MAY UPDATE

### Executive Summary of Proposals and Recommendation

#### Proposal

The development proposal is unchanged from the previous report to Planning Committee at its meeting of 1 October 2013. The following report is an update for Planning Committee on the S106 negotiations and a copy of the original report to Committee is attached as an addendum for information. At that time the District Valuer found a policy compliant proposal to be viable, notwithstanding the applicant/agents position of a policy compliant scheme not being viable.

#### Consultations

No further consultations have taken place other than with the District Valuer following

submission of additional confidential viability information by the applicant.

### **Planning Policy**

There has been a change in policy since the application was considered on 1 October 2013 in that the Submission Core Strategy was withdrawn by Full Council on 29 October 2013. The Core Strategy indicated that land to the west of Measham village centre would be developed for residential use in addition to reinstatement of part of the Ashby Canal.

### **Conclusion**

The recommendation of approval of the proposed development should be maintained, subject to further negotiations with the District Valuer and applicant/agent in relation to viability issues. Negotiations between parties since 1 October 2013 have led to a further review of the policy compliant scheme where all S106 contributions, as set out in the original report, have been considered along with revised and updated information from the agent. On 21 May 2014 the District Valuer confirmed that a fully policy compliant scheme would **not** be viable, but a partially compliant scheme may be compliant. It should be noted that the developer is agreeable to including a review clause within a S106 agreement in order to revisit other issues such as affordable housing, health and education at such a time as the scheme comes forward. As such, there are three options for Members to consider at this time which are set out below:

**RECOMMENDATION A :- THAT PLANNING PERMISSION FOR A PARTIALLY POLICY COMPLIANT SCHEME BE APPROVED SUBJECT CONDITIONS AS PER THE OCTOBER COMMITTEE REPORT AND UPDATE SHEET AND SUBJECT TO FURTHER NEGOTIATIONS IN RELATION TO S106 CONTRIBUTIONS and that Delegated powers be authorised in order for Officers to negotiate proportionate figures for contributions sought, other than the canal reinstatement, Burton Road roundabout provision and the River Mease SAC contribution which should be provided in full.**

**RECOMMENDATION B :- THAT PLANNING PERMISSION FOR A PARTIALLY POLICY COMPLIANT SCHEME BE APPROVED SUBJECT CONDITIONS AS PER THE OCTOBER COMMITTEE REPORT AND UPDATE SHEET AND, to include contributions for the canal reinstatement, Burton Road roundabout provision, the River Mease SAC contribution, and the provision of open space.**

**RECOMMENDATION C :- THAT THE APPLICATION BE REFUSED ON THE GROUNDS THAT THE DEVELOPER IS NOT AGREEABLE TO THE S106 REQUIREMENTS AND, THEREFORE, THE PROPOSAL DOES NOT REPRESENT SUSTAINABLE DEVELOPMENT.**

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 and the original report which is attached.

## **MAIN REPORT**

### **1. Proposals and Background**

This is an outline application for the erection of up to 450 dwellings, reinstatement of 1.1km of associated canal, provision of public open space, footpath access, an emergency access off

High Street, and a new access with roundabout off Burton Road. All matters, except access, are reserved for subsequent approval.

An indicative masterplan drawing has been submitted as part of the application which includes the current application site (Measham Waterside) as well as the adjacent site which the applicant calls the Measham Wharf site. Whilst the masterplan drawing indicates the applicant's vision for the site it is indicative only. For clarity, it should be noted there is no separate application for the Measham Wharf site at this time. This application is purely in relation to residential development and associated highways and canal infrastructure works.

The site is some 19.4 hectares in size, and is predominantly agricultural land which slopes downwards from west to east and north to south. The application site also includes the former Picture House Youth Club site which fronts High Street, and the Meer Bridge off Burton Road which is a Grade II Listed structure. The site is bound at the western side by the A42, to the north by residential development off Rosebank View and Hart Drive, to the east by residential development on Chapel Street and the physical boundary of High Street, open space to the south east and residential development on Burton Road to the south.

Following various discussions between the applicant/agent, District Valuer and District Council, further viability information was submitted by the agent on 11 February 2014 which submits that the scheme would be viable on the basis of financial contributions for the canal reinstatement and the River Mease Developer Contribution Strategy. Further costing information was submitted on 28 April 2014 and various discussions have taken place between the District Valuer and the agents.

## **2. Publicity**

No further publicity has been required as the proposal has not changed and the matters for discussion relate to S106 contributions and the viability of the site in relation to these.

## **3. Consultations**

No further consultation, other than with the District Valuer, has been required as the proposal has not changed and the matters for discussion relate to S106 contributions and the viability of the site in relation to these.

## **4. Summary of Representations Received**

The District Valuer confirms that due to changes in Quarterly costs and additional information submitted by the agent a policy compliant scheme is not viable. However, the District Valuer indicates that a partially compliant scheme would be viable and suggests that sensitivity testing be undertaken to establish the viable position.

## **5. Planning Policy**

The planning policy in relation to the NPPF and the Adopted Local Plan as set out in the original report as attached is still relevant to this update. However, the Submission Core Strategy policies are not since the document was withdrawn on 29 October 2013. Notwithstanding this issue, the site is included within the 2014 Strategic Housing Land Availability Assessment (SHLAA).

In terms of the Adopted Local Plan, and as set out in the original report to Committee, the site lies outside the Limits to Development of Measham. Adopted Local Plan Policy S3 applies to countryside sites which lie outside Limits to Development, and sets out criteria for development in the countryside which does not include residential development. However, the current situation with the District Council's 5 year housing land supply has to be taken into

consideration. Since the District Council does not have a 5 year housing land supply (with 20% buffer) Policy S3 cannot be considered up to date in the context of Paragraph 49 of the NPPF in terms of it being a general policy that constrains the supply of housing. Furthermore, the development of the section of canal would, in principle, be acceptable development in the countryside since it would be for leisure and recreation use.

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 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 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*

In terms of the sustainability of the site, the application site is well related to the existing wide range of services/facilities within the village of Measham. The distance to the nearest bus stop from the centre of the site is 800m and the distance to the nearest bus stop from the site access is 890m. The primary school is within walking distance of the site (some 770m), and the local shopping area including Post Office and Health Centre is some 540m from the site, so also within walking distance (preferred maximum walking distance is 800m). There would be open space on the application site and public footpaths would be maintained, diverted and/or introduced within the development to ensure connectivity between the site and the existing

village.

In addition, reinstatement of a section of the Ashby Canal is also proposed as part of the application which would provide for leisure and recreation opportunities in addition to economic regeneration and heritage opportunities. As such, it is considered that the site is a sustainable location for the level of development proposed.

### **Other Issues**

The matters of design, heritage, residential amenity, highways, River Mease, drainage, ecology and ground stability are addressed in the original report and remain unchanged.

High Speed 2 (HS2) is not a material planning consideration at this time.

### **S106 requirements**

The scheme was presented to Planning Committee in October 2013 with a recommendation to permit subject to conditions, and subject to a S106 agreement in relation to library facilities, highways matters, leisure facilities, River Mease SAC Developer Contribution Scheme (DCS), affordable housing, implementation of the canal, and Open Space/National Forest Planting and Conservation Management Plans i.e. a policy compliant scheme.

The applicant/agent had submitted that the scheme was not viable with all contributions and a partially compliant scheme was put forward which included the canal provision and the River Mease SAC DCS contribution. However, the District Valuer, on behalf of the District Council, advised that a policy compliant scheme was viable and, as such, the recommendation was made as per the preceding paragraph.

Following the October Planning Committee further discussions took place between parties and the applicant/agent submitted additional information setting out their position in relation to the viability situation (February 2014) and, following discussions with the District Valuer, additional background information on costings was submitted (April 2014). The District Council instructed the District Valuer to advise on the position put forward by the applicant/agent and to advise in relation to the viability of the scheme.

On 21 May 2014 the District Valuer reported back to the District Council that a fully policy compliant scheme was not viable at the site. Following further discussions between the District Council and the District Valuer after that date the District Valuer has indicated that a partially compliant scheme would be viable and has suggested that sensitivity analysis and testing be undertaken to establish which combination of S106 requirements would be viable.

It should be noted that the developer is agreeable to including a review clause within a S106 agreement in order to revisit other issues such as affordable housing, health and education at such a time as the scheme comes forward.

It should also be noted that further correspondence was received from the agent on 29 May 2014 in relation to the viability situation. The agent advises that their client (the applicant) is of the view that further negotiations with the District Valuer will not lead to an agreement between the parties as to the content of a S106 agreement and that the application should either be approved as a partially policy compliant scheme (with canal and River Mease contributions) or refused.

## Conclusion

The withdrawal of the Submission Core Strategy has changed the planning policy situation but not in any significant way which would result in a change to the recommendation to approve the application. All other matters, other than the S106 issue, remain the same as previously considered in October 2013.

On 21 May 2014 the District Valuer confirmed that a fully policy compliant scheme would **not** be viable, but subsequently indicated that a partially compliant scheme may be compliant. The agent's comments of 29 May 2014 are noted. Notwithstanding those comments, there are three valid options for the proposal for Members to consider at this time and these are set out below:

**RECOMMENDATION A :- THAT PLANNING PERMISSION FOR A PARTIALLY POLICY COMPLIANT SCHEME BE APPROVED SUBJECT TO CONDITIONS AS PER THE OCTOBER COMMITTEE REPORT AND UPDATE SHEET, AND SUBJECT TO FURTHER NEGOTIATIONS IN RELATION TO S106 CONTRIBUTIONS and that Delegated powers be authorised in order for Officers to negotiate proportionate figures for contributions sought, other than the canal reinstatement, Burton Road roundabout provision and the River Mease SAC contribution which should be provided in full.**

**RECOMMENDATION B :- THAT PLANNING PERMISSION FOR A PARTIALLY POLICY COMPLIANT SCHEME BE APPROVED SUBJECT TO CONDITIONS AS PER THE OCTOBER COMMITTEE REPORT AND UPDATE SHEET, AND to include contributions for the canal reinstatement, Burton Road roundabout provision, the River Mease SAC contribution, and the provision of open space.**

**RECOMMENDATION C :- THAT THE APPLICATION BE REFUSED ON THE GROUNDS THAT THE DEVELOPER IS NOT AGREEABLE TO THE S106 REQUIREMENTS AND, THEREFORE, THE PROPOSAL DOES NOT REPRESENT SUSTAINABLE DEVELOPMENT.**

## OCTOBER 2013 REPORT

### Executive Summary

#### Call In

The application has not been called in but is brought before Planning Committee on the grounds of local concern.

#### Proposal

This is an outline application for the erection of up to 450 dwellings, reinstatement of 1.1km of associated canal, provision of public open space, footpath access, an emergency access off High Street, and a new access with roundabout off Burton Road. All matters, except access, are reserved for subsequent approval.

#### Consultations

Members will note that representations from local residents have been made. In terms of those issues raised, all statutory consultees are satisfied that there are no matters that have not been satisfactorily addressed or cannot otherwise be satisfied by way of condition with the exception of Natural England whose additional comments are outstanding at the time of writing this report. Any further advice will be reported on the Update Sheet.

### **Planning Policy**

The site is a Greenfield site located outside the Limits to Development of the sustainable village of Measham, and is also situated within the River Mease SAC catchment area. The Submission Core Strategy identifies the site for residential and other development. Also relevant are the District's housing land requirements, and the need (as set out in the National Planning Policy Framework) to demonstrate a five year land supply particularly in light of the recent planning appeal decision for the site off Moira Road, Ashby.

### **Conclusion**

The report below indicates that the site is a Greenfield site, and is outside Measham's defined Limits to Development as identified in the Adopted Local Plan and therefore development in the countryside. However, the Submission Core Strategy identifies the site as an area of growth to support Measham's role as a Rural Centre.

Appropriate contributions to infrastructure could also be made to enable local facilities to absorb the impact of the proposed development. A viability report has been submitted in relation to the proposed development as the applicant submits that the scheme is not viable if any additional costs over the new roundabout, emergency access, canal uplift funds and River Mease SAC Developer Contribution Scheme are required. However, the report and other background information has been assessed by the District Valuer which concludes that the scheme is viable with all financial contribution requests.

As such, whilst the proposed development would not comply with countryside policies of the Adopted Local Plan or Submission Core Strategy, the site is identified in the Submission Core Strategy as an area for growth. Benefits of the proposal including the reinstatement of 1.1km of canal and contributions to infrastructure also have to be considered. In this particular instance it is concluded that the benefits of the proposal outweigh the fact that the proposal would form development in the countryside outside Limits to Development of Measham and, on this basis, the application is recommended for approval subject to a legal agreement relating to all financial contributions and construction phasing. Should the applicant or agent subsequently advise they are not agreeable to entering into a legal agreement to secure all financial contributions due to viability issues, it is recommended that the right to defer the matter for reconsideration at a future Planning Committee meeting is reserved.

### **RECOMMENDATION: PERMIT SUBJECT TO CONDITIONS AND S106 AGREEMENT**

#### **Proposals and Background**

This is an outline application for the erection of up to 450 dwellings, reinstatement of 1.1km of associated canal, provision of public open space, footpath access, an emergency access off High Street, and a new access with roundabout off Burton Road. All matters, except access, are reserved for subsequent approval.

An indicative masterplan drawing has been submitted as part of the application which includes the current application site (Measham Waterside) as well as the adjacent site which the applicant calls the Measham Wharf site. Whilst the masterplan drawing indicates the applicant's vision for the site it is indicative only. For clarity, it should be noted there is no separate application for the Measham Wharf site at this time. This application is purely in relation to residential development and associated highways and canal infrastructure works.

A number of documents have been submitted as part of the application including a Design and Access Statement, Heritage Statement, Statement of Community Involvement, Flood Risk



Assessment, Tree Survey, Landscape and Visual Assessment, Ecological Survey, Archaeological Desk Based Assessment, Noise Assessment, Preliminary Ground Investigation (Phase 1), Landfill Ground Investigation and Preliminary Remediation Strategy, Coal Mining Risk Assessment Report, Transport Assessment and a Travel Plan Framework.

A confidential Viability Report with no background information has also been submitted. Additional confidential information pertaining to this has been submitted during the application process at the request of the District Valuer which has undertaken an assessment of the viability information on behalf of the District Council.

Additional information was requested by Natural England which was received, but Natural England advised it still did not satisfy its concerns. At the time of writing this report Natural England is assessing further information submitted by the agent on 3 September 2013. Any further comments will be reported on the Update Sheet.

The site is some 19.4 hectares in size, and is predominantly agricultural land which slopes downwards from west to east and north to south. The application site also includes the former Picture House Youth Club site which fronts High Street, and the Meer Bridge off Burton Road which is a Grade II Listed structure. The site is bound at the western side by the A42, to the north by residential development off Rosebank View and Hart Drive, to the east by residential development on Chapel Street and the physical boundary of High Street, open space to the south east and residential development on Burton Road to the south.

## **History**

There is no planning history for the application site as a whole. However, an outline application 99/0365 was submitted for residential development on a 1 hectare site just off High Street, but the file on this was closed in August 2000 as additional information which had been requested had not been submitted.

An application was submitted in relation to the former Picture House Youth Club site in relation to a satellite dish which was approved in 1990.

## **2. Publicity**

218 neighbours have been notified. (Date of last notification 13 March 2014)

Site Notice displayed 13 March 2013

Press Notice published 13 March 2013

## **3. Consultations**

Measham Parish Council consulted 6 March 2013

County Highway Authority consulted 12 March 2013

Environment Agency consulted 12 March 2013

Severn Trent Water Limited consulted 12 March 2013

Head of Environmental Protection consulted 12 March 2013

Natural England consulted 12 March 2013

NWLDC Tree Officer consulted 12 March 2013

County Archaeologist consulted 12 March 2013

LCC ecology consulted 12 March 2013

Airport Safeguarding consulted 12 March 2013

NWLDC Conservation Officer consulted 12 March 2013

NWLDC Urban Designer consulted 12 March 2013  
County Planning Authority consulted 12 March 2013  
LCC Development Contributions consulted 12 March 2013  
NHS Leicester, Leicestershire And Rutland Facilities Managme consulted 12 March 2013  
Building Control - NWLDC consulted 12 March 2013  
Head Of Leisure And Culture consulted 12 March 2013  
Manager Of Housing North West Leicestershire District Council consulted 12 March 2013  
Police Architectural Liaison Officer consulted 12 March 2013  
LCC/Footpaths consulted 12 March 2013  
Highways Agency- Article 15 development consulted 12 March 2013  
Coal Authority consulted 12 March 2013  
English Heritage- Ancient Monument consulted 28 March 2013  
National Forest Company consulted 3 April 2013

#### **4. Summary of Representations Received**

217 residents notified by letter

Site notices (x 6) posted on 25 March 2013 at various locations adjacent to the site boundaries and/or adjacent to Public Rights of Way.

Press Notice published 2013 in the Leicester Mercury

#### **Summary of Representations Received**

**Measham Parish Council** - no comments received on the proposal;

**Leicestershire County Council Public Footpaths** - no objection subject to the Public Rights Of Way being diverted within the site and alternative routes being made available during construction works;

**Leicestershire County Council Highways Authority** - no objection subject to conditions and planning obligations;

**Leicestershire County Council Ecologist** - no objection subject to conditions;

**Leicestershire County Council Civic Amenity** - no financial requirement is sought at this time as Lount CA has capacity for the size of the proposed development;

**Leicestershire County Council Education** - no financial requirement is sought as High and Upper School sectors for the locality are in surplus capacity (Ibstock Community College and Ashby School respectively). However, £1,306,693.08 is sought for the Primary School Sector Requirement since there is a net deficit of 108 pupils between Measham Church of England Primary School which is at deficit and Oakthorpe Primary School which is at capacity. The contribution would be used at Measham Church of England Primary School;

**Leicestershire County Council Libraries** - a financial contribution of £28,530 would be sought to mitigate the impact of the development on local library services;

**Leicestershire County Council Planning** - the potential to extract coal from within the site should be assessed prior to the determination of the planning application to ensure that any viable mineral resources are recovered where practicable and acceptable to do so.

**English Heritage** - no objection but attention is drawn to the ridge and furrow site and the County Archaeologist should be consulted.

**National Forest** - no objection subject to a legal agreement ensuring delivery of the canal in association with the proposed development, and subject to conditions relating to open space aspects including sustainable drainage schemes, habitat creation, submission of a waymarking strategy and a construction method statement to protect retained habitats from construction.

**Natural England** - No objection to connecting to the mains sewer system subject to River Mease SAC Water Quality Management Plan Developer Contribution Scheme. Objection to the impact of the canal (management and maintenance) on the River Mease SSSI and SAC. Any comments in relation to additional information will be reported on the Update Sheet;

**Environment Agency** - no objection subject to conditions;

**Severn Trent Water** - no objection subject to surface and foul water drainage condition;

**The Coal Authority** - No objection subject to condition;

**NWLDC Environmental Protection (land contamination)** - no comments received at the time of writing the report;

**NWLDC Environmental Protection (noise pollution)** - no objection subject to conditions relating to mitigation measures as per the SLR report;

**NWLDC Tree Officer** - no objection in principle, subject to conditions relating to a detailed landscaping scheme and survey, and the submission and implementation of a tree protection plan should the application be approved;

**NWLDC Housing Enabling Officer** - No objections subject to 95 affordable rented homes and 40 intermediate homes (varied bedroom numbers within each);

**NWLDC Leisure Services** - No objection subject to £495,000 towards the capital redevelopment of Measham Leisure Centre which would be used by the population generated by the proposed development;

**Leicestershire Constabulary** - objects to the planning application if there is no consideration of the necessary Policing contribution of £152480;

**Leicester, Leicestershire and Rutland NHS** - The cost of providing additional accommodation for 1080 patients in the form of an extension to Measham Medical Unit would be £178,711.92 and this is requested as a planning obligation;

21 representations have been received from local residents in relation to the proposal, 14 by individual submission and 7 through a feedback form. Full copies of comments are available for Members information on the application file. The comments can be summarised as follows:

### **Positive Representations**

- Not against the development in principle as it will include the reinstatement of part of the Ashby Canal;

- The development will bring Measham back to life;

### **Representations expressing concerns**

#### *Impact on Measham and locality*

- The character of Measham village will be destroyed, it is currently a quaint village;
- There is no need for development on countryside and agricultural land;
- Build homes where they are needed instead of in an area of natural beauty;
- Reduce the house numbers and increase the green space;
- It should be a smaller development around the canal basin and the fields should be left for nature conservation, wooded area and a nature trail for residents to enjoy;
- Would welcome a smaller development to include the canal wharf, local amenities and a smaller residential area around the wharf;
- Increasing the population by such a big volume may reduce the quality of life for many current residents since there is high unemployment in the area;
- The current economic climate doesn't warrant a development of this size in the village, and there is not much interest in other development in Measham - dwellings have been approved on Bosworth Road;
- The old Picture House should be incorporated into the scheme

#### *Highways*

- The development will cause too much traffic on already busy and badly surfaced roads;
- Chapel Street is a partly unadopted road and is too narrow to accept any traffic from the High Street to the development site;
- Chapel Street should not be used for an emergency access;
- An increase on traffic on Chapel Street could adversely impact on our drains, sewers and pipes on this section of the street;
- The location for the emergency access is directly adjacent to our boundary (Springfield Cottage, Chapel Street) and will cause disturbance and loss of privacy;
- Public rights of way would be diverted away from the hedgerows and wildlife;
- Public rights of way will be lost;

#### *Other Infrastructure issues*

- How will schools and Doctors cope with the added population?;
- What shops will be proposed?;
- New shops should not cause existing shops to go out of business;

#### *Residential Amenity*

- There will be increased disturbance from comings and goings;
- There will be overlooking of dwellings on Chapel Street and Rosebank View;
- Houses could be built close to the boundary of dwellings on Hart Drive and could cause overlooking;
- Development would be overbearing to the bungalows on Hart Drive;
- There will be an increase in noise, light, ground and air pollution in the National Forest area;

#### *Canal, Flooding and River Mease SAC*

- The site slopes and may cause drainage problems and increase flooding to properties

- on Chapel Street - we already get run-off from the field;
- A short stretch of canal will be of no use and no benefit;
- The canal should be linked;
- How will the canal be maintained?;

#### *Ecology and Archaeology*

- The site is bordered to the north by an old hawthorn hedge - this should be retained as it is the natural nesting place for wildlife and may have a preservation order on it;
- The site has a considerable range of wildlife - mammals, amphibians and insects;
- The canal route is planned through an ancient ridge and furrow site - the archaeological report doesn't mention this so is flawed;

#### *Other*

- Loss of view over the field;
- Devaluation of property;
- HS2 will go through the site so people won't buy the houses. It is unfair that houses built within 120m of the line can claim compensation;
- The rights of people who vote for MPs and Councillors should be considered.

### **5. Relevant Planning Policy**

#### **Relevant Planning Policy**

The following planning policy is considered relevant to the determination of this planning application.

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

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 contains a number of references to the presumption in favour of sustainable development.

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.

The policies of the North West Leicestershire Local Plan as set out in more detail in the relevant sections below are consistent with the policies in the NPPF and should be afforded weight in the determination of this application.

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."

Paragraph 17 states that within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up to date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
- not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
- take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, 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, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy);
- contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in the Framework;
- encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
- promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production);
- conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and
- take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

"32 All developments that generate significant amounts of movement should be supported

by a Transport Statement or Transport Assessment. 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."

"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."

"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."

"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;...
- opportunities to incorporate biodiversity in and around developments should be encouraged..."

"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 significant 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. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. ... Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments ... should be wholly exceptional."

"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 that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use."

"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 following saved policies of the North East Leicestershire Local Plan are considered to be in compliance with the requirements of the National Planning policy Framework and are therefore afforded weight in the determination of this application.

Policy S3 advocates a presumption against new development in the countryside.

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 others, 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 housing mix, accessibility to centres, design etc. Within Coalville and Ashby-de-la-Zouch town centres, local centres and other locations well served by public transport and accessible to services a minimum of 40 dwellings per ha will be sought and a minimum of 30 dwellings per ha elsewhere (in respect of sites of 0.3 ha or above).

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

Policy E3 seeks to prevent development which would be significantly detrimental to the amenities enjoyed by the occupiers of nearby dwellings, and presumes against residential development where the amenities of future occupiers would be adversely affected by the effects of existing nearby uses.

Policy E4 requires new development to respect the character of its surroundings.

Policy E7 seeks to provide appropriate landscaping in association with new development including, where appropriate, retention of existing features such as trees or hedgerows.

Policy F1 states that new development within the boundaries of the National Forest should demonstrate a high quality of site layout, building design and choice of materials, in order to reflect local architecture and its Forest setting.

Policy F2 requires appropriate landscaping and planting schemes taking into account the existing landscape character of the site and its surroundings, the level of planting proposed, site constraints, scale type and the value of development.

Policy F3 requires that the implementation of agreed landscaping and planting schemes for new development will be secured through planning condition, the negotiation of a planning agreement, or a combination of both.

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

Policy T8 requires that parking provision in new developments be kept to the necessary minimum, having regard to a number of criteria.

Policy L21 sets out the circumstances in which schemes for residential development will be required to incorporate children's play areas.

### **Submission Core Strategy (April 2012)**

The District Council considered its response to the Pre-Submission Core Strategy consultation and suggested changes at its meeting of 26 March 2013. The Council resolved, amongst others, to agree the recommended significant changes, to note the delegated minor changes, to agree to a period of consultation on the significant changes, and to agree to submit the Core Strategy to the Secretary of State as soon as possible following consultation. The following Submission Core Strategy policies are considered relevant and, given the stage that the draft Strategy has reached, should be afforded some (but not full) weight in the determination of this application:

Policy CS1 provides that provision will be made for at least 9,700 new homes (an average of 388 per annum) in the District over the period 2006 to 2031.

Policy CS7 provides that new development, including new facilities and services will be directed to the most sustainable locations in accordance with the settlement hierarchy set out in that policy.

Policy CS8 provides for the protection of the countryside, and requires that appropriate development in the countryside should be of a scale and environmental impact that is compatible with the character of its rural location.

Policy CS15 provides that sufficient land will be allocated to ensure the overall housing provision of at least 9,700 dwellings over the period 2006-2031.

Policy CS16 provides that all housing developments should be of a good standard of design and have a layout and built form that makes efficient use of land and complements the built form and character of the area in which it is situated, and that proposals for sites of 0.3ha or above should have a minimum net density of 30 dwellings per hectare.

Policy CS17 provides that the District Council will seek a mix of housing types, sizes and tenures in all new housing development.

Policy CS18 provides, amongst others, that a proportion of affordable housing will be provided on eligible sites.

Policy CS21 provides that all new residential development will have to demonstrate how it satisfies the Council's place-making principles:

Policy CS22 provides that new development will be supported by the provision of new or improved physical, social and green infrastructure needed to enable the amount of development proposed for the area.

Policy CS23 requires new development to maximise the efficient use of existing transport facilities in the district as it looks to a lower carbon future.

Policy CS24 requires new development to minimise carbon dioxide and other greenhouse gas emissions.

Policy CS25 provides that new residential developments will be expected to achieve the highest level technically and financially viable under the Code for Sustainable Homes.

Policy CS26 provides that new development will be directed towards areas at the lowest risk of flooding within the District.

Policy CS32 provides that new development should contribute to the protection and improvement of the natural environment.

Policy CS33 requires the water quality of the River Mease SAC to be improved.

Policy CS34 requires that heritage assets, and their setting, will be protected and conserved.

Policy CS41 sets out the proposed development strategy to support Measham's role as a Rural Centre. This includes making provision for at least 440 more homes by 2031 to the north west of Measham and a Masterplan should set out the proposed uses and relationships, additional infrastructure provision requirements in respect of local services and facilities, measures to

reinstate the Ashby Canal, and consideration of the coalfield legacy and groundwater source protection.

## 6. Assessment

### Principle of Development

The application site lies in the countryside, outside the Limits to Development of Measham so would be unacceptable under Adopted Local Plan Policy S3 which presumes against development in the countryside. In terms of housing policies, Adopted Local Plan Policy H4/1 seeks to direct housing development across the district in a sequential manner and small scale infill development within Limits to Development of Measham may, in principle, be acceptable but not large scale development outside Limits to Development.

In addition, four policies of the Submission Core Strategy are of relevance to the scheme:

- CS7: *Location of Development*
- CS8: *Countryside*
- CS15: *Distribution of Housing*
- CS41: *Measham*

The proposal would not be contrary to the countryside policy of the Submission Core Strategy since that document indicates the application site as being an area of growth to support the role of Measham as a Rural Centre under Policy CS41. Policy CS41 submits that at least 440 more homes should be provided to the north west of Measham by 2031.

Part B of CS7 notes that, after Coalville Urban Area, most of the remaining housing and employment development will be located within Rural Centres (of which Measham is one). Policies CS15 and CS42 complement one another on that issue. CS15 requires that '*at least 550 dwellings*' are to be provided during the Plan period at Measham. The Core Strategy figures are based on the residual method of calculation for housing land supply and but it should be noted that this has not been tested through Examination of the Core Strategy. Furthermore, it is a material consideration that a recent Planning Inspectorate decision for a housing development at land off Moira Road, Ashby concluded that the District Council could not demonstrate a 5 year housing land supply (5YHLS) and should calculate this using the Sedgfield approach and on top of that provide a 20% buffer for housing land supply.

On this basis, the District Council's most recent calculations indicate that the Council is only able to demonstrate a supply of 4.33 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". The Council would not, in these circumstances, be able to rely on adopted Local Plan Policy S3 (Limits to Development) as, being a policy constraining the supply of housing land, it would be considered to be out of date.

Notwithstanding the above, the positive aspects of the scheme also need to be considered. If approved, the scheme would provide a community facility and potential regeneration catalyst in the form of a stretch of reinstated canal, and other infrastructure. The delivery of the canal

segment and infrastructure would need to be ensured through a S.106 agreement.

Overall, whilst development of the site would be contrary to Adopted Local Plan countryside policy, that policy is currently out of date the site is an area identified for growth in the Submission Core Strategy and would include reinstatement of part of the canal and other infrastructure.

### **Design and Conservation Issues**

The application is made in outline only with all matters, other than access, reserved for subsequent approval so there are no details of the proposed housing development. The indicative masterplan is for information only and illustrates the applicant's vision for the site.

In terms of conservation there are various designated heritage assets to consider. Firstly, the impact of the proposed access on the Grade II Listed Meer Bridge on Burton Road and, secondly, the impact of the emergency access route onto the High Street which is within the Measham Conservation Area and in the vicinity of Listed Buildings on the High Street.

The proposed roundabout access from Burton Road would be set to the south east of Meer Bridge and would not detract from the setting of that bridge which forms part of a Public Right of Way, and would continue to do so as part of this proposal.

The emergency access onto High Street would utilise the existing access at the former Picture House Youth Club site. Whilst LCC Highways would require the emergency access on to High Street to be implemented and available for use by the first occupation of the development, the Authority has confirmed, after much negotiation, that width for two way passing vehicles would be required only along parts of that access. As such, the access onto High Street could be kept as a single width access with adjacent footpath which would be in scale and character with existing accesses off High Street which are, historically, narrow due to modes of transport of those times and would have no adverse impact on the designated heritage asset. Substantive negotiations took place in relation to this matter since a two vehicle width access would appear incongruous in the streetscene and would not be appropriate in the conservation setting.

On this basis the proposed main and emergency accesses would have no adverse impact on the character or setting of designated heritage assets in accordance with the requirements of the NPPF, and Submission Coe Strategy CS34.

### **Residential Amenity Issues**

As stated above, the application is made in outline only with all matters, other than access, reserved for subsequent approval so there are no details of the proposed housing development. It is apparent from representations made on the scheme that local residents who live close to the site are concerned about overlooking, overshadowing and overbearing impact as a result of the scheme due to the layout shown on the indicative masterplan. To clarify, the indicative masterplan is for information only and illustrates the applicant's vision for the site. Should this application be approved, details of siting, layout and appearance would be dealt with at a reserved matters application stage. However, there is no reason why a scheme could not be designed so that the amenities of existing residents were not adversely affected.

A noise assessment has been submitted as part of the application in relation to the impact of the noise from the A42 at the north west boundary on any proposed residential development.

Mitigation measures including a bund at this boundary are proposed in order to protect the amenities of any future occupiers of the site and it is recommended that appropriate conditions be attached to a decision notice should the application be approved.

## Highways

Notwithstanding the comments of local residents, no emergency access is proposed between the site and Chapel Street. An existing footpath link would be maintained at that point.

Substantive pre-application, and during application, discussions have taken place between the agent and Leicestershire County Council Highways in relation to the accesses to the site. The proposed access arrangements are shown on WSP's drawing number RP-0001 Rev B. Full details of the Burton Road roundabout, which would form the main access to the site, have been submitted and proposals also include a link with a bridge and bus stop provision nearby. It would be a raised roundabout with a bridge over the proposed canal in order for boats to move underneath, and to allow adequate headroom under the bridge along the canal towpath. The emergency access, required at first occupation of the development, would be single width at the High Street and would utilise the existing access to the former youth club site as outlined in the Design and Conservation section above.

The Highway Authority has no objection subject to conditions and S106 contributions.

## River Mease SAC, Drainage and Ecology

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC), which was designated in 2005. The 2010 Habitat Regulations sets out how development proposals within an SAC should be considered. 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. It should be noted that the scale of the development is not one which warrants an Environmental Impact Assessment to be undertaken.

A long term Water Quality Management Plan (WQMP) for the River Mease SAC was finalised in June 2011 with a primary purpose *to reduce the levels of phosphate within the River Mease SAC, to enable the Conservation Objectives for the SAC to be met, and an adverse effect upon the SAC avoided*. The main objective of the WQMP is that *the combined actions will result in a reduction in phosphate in the River Mease to no more than 0.06mg/l*.

One of the actions of the WQMP was to establish a developer contribution framework in accordance with planning obligations best practice to be known as a Developer Contribution Scheme (DCS). The DCS was agreed in November 2012 and developer contributions will fund a programme of actions to restore and provide new benefits to the River Mease.

In terms of residential development, developers will have to contribute based on the exact size and sustainability of the dwellings since these factors determine the levels of Phosphate output per unit. As such, homes which are built to the new sustainable homes standards will pay a lower contribution.

The WQMP is entirely concerned with reducing levels of phosphate to enable the conservation objectives target to be met. It is therefore directly connected with and necessary to the

management of the River Mease SAC. As such, both the plan itself and the Developer Contribution Scheme are excluded from the assessment provisions of the Habitats Regulations.

The Environment Agency advises that it has no objection to the proposal subject to the Mease Developer Contribution Scheme being in place to allow a DCS payment to be made to mitigate for the increased foul effluent resulting from the development.

In addition, surface water issues are considered in the Flood Risk Assessment submitted as part of the application. The Environment Agency advises that the proposed development would meet the requirements of the NPPF if measures set out in the Flood Risk Assessment are implemented and secured by way of planning condition. Conditions are recommended by the Agency and it is recommended that these be attached to any permission should the application be approved.

The applicant has confirmed that it is agreeable to making a DCS contribution. As such, the proposal would comply with the National, Regional and Local planning policies and the Habitats Regulations.

In terms of ecology, it is noted that the County Ecologist is satisfied with the information submitted as part of the application but recommends conditions be attached to a decision should the application be approved. These would relate to reassessing for the presence of badgers if no development has taken place by then, and to the provision of wildlife corridors and habitat enhancement including bat boxes.

The indicative masterplan indicates green boundaries and soft and hard landscaping throughout the scheme. The proposals would maintain and establish green corridors within the site, and at its boundaries, to ensure that wildlife links between habitats would be maintained as advocated by Natural England, the County Ecologist and the National Forest Company. The proposed access would involve the removal of a prominent Black Poplar on Burton Road. The Black Poplar is one of Britain's rarest native timber trees and is identified as a priority species in the Leicestershire Local Biodiversity Action Plan. However, the access could not be situated at any other point on Burton Road and whilst the loss of the tree would be regrettable, it would not be of such significance to warrant the refusal of the scheme.

The site is within the National Forest and should be subject to National Forest planting guidelines which comprise 20% of the area to be woodland planting and landscaping for housing sites over 0.5 hectares. The National Forest Company is satisfied that this could be achieved on the site with the level of development proposed, since the indicative masterplan shows how the requirements could be met.

### **Archaeology**

The Masterplan drawings indicate development over a wider area than that which forms part of this current planning application. In terms of the current application the canal route would be situated within the route area previously approved by Central Government under a Transport and Works Order which was sought by Leicestershire County Council. The current application site excludes an existing area of land where ridge and furrow is evident.

### **Ground stability**

A coal risk assessment report and a Phase 1 site investigation report have been submitted as part of the application. The Coal Authority confirms it has no objection to the proposal subject to

condition.

The County Council has raised concerns about the protection of mineral resources. However, the area has already been subject to historic coal extraction and is bordered by residential development to the north, east and west and is unlikely that mineral extraction could take place at the site without significant adverse impacts on the residential amenities of occupiers of those dwellings. It is noted that the County Council did not object to the Core Strategy proposal for housing development at the site.

### **Viability of the scheme**

The application includes a confidential viability report for consideration as the developer is of the view that the scheme is not viable with additional infrastructure costs over and above the canal, access and River Mease DCS costs. The District Valuer was instructed to act on behalf of the District Council and requested background information details not all of which have been forthcoming. On that basis the District Valuer has assessed the viability report making certain assumptions based on current market situations and has concluded that the scheme is viable with all costs.

Should the applicant not be agreeable to meeting the financial contribution requests, or alternatively, find themselves in dispute with the District Valuer in relation to the matter, the District Council would reserve the right to negotiate between the applicant/agent and officers and, should significant disagreements emerge, also reserve the right to report the matter back to Members for further consideration.

### **Developer contributions**

Circular 05/2005 sets out the Government's policy in respect of planning obligations. In particular, it provides in Annex B Paragraph B5 that "A planning obligation must be:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development; and
- (v) reasonable in all other respects.

In addition to the above policy tests, the Community Infrastructure Levy (CIL) Regulations 2010 provide a legislative requirement that an obligation must meet tests (ii), (iii) and (iv) above which is also advocated in the Draft 2012 CIL Regulations.

In terms of the respective contributions, the following conclusions are reached:

**LCC Libraries** - £28,530 would be sought towards facilities at Measham Library on Thorpe Road, Measham based on the following formula for library facilities contributions: 450 x 3/4/5 bed houses/apartments @ £63.41 per unit

**LCC Highways** - To comply with Government guidance in NPPF the following contributions would be required in the interests of encouraging sustainable travel to and from the site, achieving modal shift targets, and reducing car use :

- Travel Packs; to inform new residents from first occupation what sustainable travel choices are in the surrounding area (can be supplied by LCC at £52.85 per pack, index linked).
- 6 month bus passes, two per dwelling (2 application forms to be included in Travel Packs 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 (can be supplied through LCC at average £325.00 per pass (index linked) - NOTE it is very unlikely that a development will get 100% take-up of passes, 25% is considered to be a high take-up rate).

- New/Improvements to 2 nearest bus stops on Burton Road (including raised and dropped kerbs to allow level access); to support modern bus fleets with low floor capabilities. At £3263.00 per stop (index linked).
- 2 new bus shelter at nearest bus stop; to provide high quality and attractive public transport facilities to encourage modal shift. At £4,908.00 per shelter (index linked).
- 2 new flag and pole at cost of £145 per site (index linked).
- Information display cases at 2 nearest bus stops; to inform new residents of the nearest bus services in the area. At £120.00 per display (index linked).
- Contribution towards equipping the nearest suitable bus route with Real Time Information (RTI) system; to assist in improving the nearest bus service with this facility, in order to provide a high quality and attractive public transport choice to encourage modal shift.  
Total RTI contribution = £3900.00 (index linked)
- £300 per: ETM (Electronic Ticket Machine) upgrade cost, for nearest suitable bus service, X 12 buses (based on PVR data for Arriva 85 Bus service ) = £3600.00
- £150 per: Information Point sign (non-electronic display), X 2 number of signs =£300

Justification of the proposed bus stop: Making improvements to the proposed bus stop location in relation to the site and create waiting environment and accessibility to bus service, to encourage modal shift.

The Travel Plan which is required to achieve the defined outcomes in the Travel Plan to ensure that the proposed development is satisfactorily assimilated into the transport network. This approach is considered to be consistent with Government guidance in the National Planning Policy Framework, the CIL Regulations 2011, and the County Council's Local Transport Plan 3;

A monitoring fee of £6000 (index linked) to enable Leicestershire County Council to provide support to the developers Travel Plan Co-ordinator; audit annual Travel Plan performance reports to ensure Travel Plan outcomes are being achieved and for it to take responsibility for any necessitated planning enforcement. Appointment of a Travel Plan Co-ordinator is required from first occupation and for a period to 5 years after completion of the development.

Justification: To ensure effective implementation and monitoring of the site Travel Plan submitted in support of the Planning Application.

**LCC Education** - This site falls within the catchment area of Measham Church of England Primary School. The School has a net capacity of 240 and 353 pupils are projected on roll should this development proceed; a deficit of 1113 pupil places (of which 5 are existing and 108 are created by this development). There is one other primary school within a two mile walking distance of the development. Oakthorpe Primary School has a projected surplus of 3 pupil places, giving an overall deficit in the primary sector of 1110 pupil places. There are therefore no primary places available for children from the development and a claim for an education contribution in this sector is justified.

In order to provide the additional primary school places anticipated by the proposed development, the County Council requests a contribution for the primary school sector of £1,306,693.08. Based on the table above, this is calculated the number of deficit places created by the development (108) multiplied by the DFE cost multiplier in the table above (£12,099.01) which equals £1,306,693.08.



This contribution would be used to accommodate the capacity issues created by the proposed development by improving, remodelling or enhancing existing facilities at Measham Church of England Primary School. The contribution would be spent within 5 years of receipt of final payment.

No contribution would be required for High School or Upper School facilities.

The County Council requests would help mitigate the impact of the development, and would meet the Circular policy tests and are CIL compliant. It should be noted that the developer requested a change to the notional housing mix being used in the viability assessment at the end of August 2013 and which was agreed with officers, including the Housing Enabling Officer, at the start of September. Leicestershire County Council has been reconsulted on the revised notional mix and confirms that the revision will alter the above library and education requests and that they will endeavour to report with revised conclusions as soon as possible. Any further details submitted will be reported on the Update Sheet.

**Leicestershire Constabulary** - A Policing contribution is requested, for the sum of £152480 with a breakdown as follows:

Start up equipment	£19106
Vehicles	£12699
Additional radio call capacity	£1147
PND additions	£585
Additional call handling	£1052
ANPR	£5426
Mobile CCTV	£1000
Additional premises	£110565
Hub equipment	£900
Total	£152480

**NWLDC Head of Leisure and Culture** - requests £1,100 per unit (450 x £1,100 = £495,00) towards the upgrade of existing leisure facilities. This request would help mitigate the impact of the development on existing leisure facilities.

**River Mease WQMP DCS** - cost per unit in relation to phosphate mitigation measures. This request would help mitigate the impact of the development on the River Mease, and would meet the Circular policy tests and is CIL compliant.

Clauses relating to affordable housing, a trigger point for the retail unit to ensure construction, and Open Space/National Forest Planting and Conservation Management Plans would also need to be included as part of any S106 legal agreement. These aspects are relevant to the proposal and would help mitigate the impact of the development, would meet the Circular policy tests and are CIL compliant.

Should the applicant or agent subsequently advise they are not agreeable to entering into a legal agreement to secure all financial contributions due to viability issues, it is recommended that the right to defer the matter for reconsideration at a future Planning Committee meeting is reserved.

## Other Issues

Devaluation of property and loss of view are not material planning considerations. Whilst the preferred route for the High Speed 2 train route has been issued by Central Government for consultation, it is not yet a material planning consideration and cannot be considered as part of this application.

## Conclusion

The application site lies in the countryside, outside the Limits to Development of Measham as defined on the Adopted Local Plan Proposals map. The proposed development would result in housing development contrary to the Local Plan but in accordance with the Submission Core Strategy as the application site is an area of growth for residential development in the latter document. A new access off Burton Road would be created to serve the development, and an emergency access would be linked to High Street at the existing former Youth Club site and would be in accordance with the requirements of Policies T3 and T8 of the Adopted Local Plan. The scheme would link to the main sewer and the applicant is agreeable to contribution to the River Mease SAC WQMP DCS. As such, there would be no adverse impact on the River Mease SAC. Ecological, Coalfield and ground instability issues have been addressed, subject to conditions.

As such, the proposed development would not comply with countryside policy of the Adopted Local Plan, but that policy is currently out of date as the Council cannot demonstrate a Sedgefield approach plus 20% buffer calculated 5 year housing land supply. Furthermore, the development would comply with the housing and Measham related Submission Core Strategy policies and national planning guidance. In addition, the benefits of the proposal, including the provision of part of the Ashby Canal and infrastructure, have to be considered in relation to the 5 year housing land supply shortfall issues. In this particular instance it is concluded that the benefits of the proposal along with current policy considerations, in light of the absence of a 5 year housing land supply, outweigh the issue that the proposal would form development in the countryside outside Limits to Development of Measham. On this basis, the application is recommended for approval.

As noted earlier in this report, should the applicant not be agreeable to meeting the financial contribution requests, or alternatively, find themselves in ongoing dispute with the District Valuer in relation to the matter, the District Council would reserve the right to negotiate between the applicant/agent and officers and, should significant disagreements emerge, also reserve the right to report the matter back to Members for further consideration.

**RECOMMENDATION - PERMIT subject to the following condition(s) and subject to a S106 agreement in relation to library facilities, highways matters, leisure facilities, River Mease SAC WQMP DCS, affordable housing, implementation of the canal, Open Space/National Forest Planting and Conservation Management Plans and other items arising above - also subject to Natural England final comments which have not been received at the time of writing this report and to the developer being agreeable to the S106 financial contributions:**

- 1 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

*Reason- To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).*

- 2 Approval of the details of the layout, scale, appearance, and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

*Reason- This permission is in outline with details of access only.*

- 3 *Plans for approval to be listed on the Update Sheet as further information on the emergency access may be forthcoming at the time of writing this report.*

- 4 Notwithstanding the submitted details, no development shall commence on site until representative samples of the materials to be used in all external surfaces have been submitted to and agreed in writing with the Local Planning Authority. The works shall be undertaken in accordance with the approved details and maintained as such.

*Reason- To enable the Local Planning Authority to retain control over the external appearance.*

- 5 Notwithstanding the details submitted on indicative Masterplan drawings or Landscaping plans no development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping, including details of landscaping for the bund at the western boundary. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a five year period from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

*Reason- To ensure the satisfactory overall appearance of the completed development, and to ensure an appropriate planting palette within the National Forest.*

- 6 No work shall commence on the site until such time as a scheme for protecting the existing trees and hedgerows, identified as being retained, during the construction process has been submitted to and approved by the Local Planning Authority and implemented to its satisfaction. The scheme shall include measures to protect the working area within Root Protection Areas. Such protection as is agreed shall be maintained during the course of development.

*Reason- To ensure satisfactory protection of the existing trees and hedgerow in question during the period when construction works take place on the site.*

- 7 No work shall commence on the site until such time as a scheme for protecting the existing trees and hedgerows, identified as being retained, during the construction process has been submitted to and approved by the Local Planning Authority and implemented to its satisfaction. The scheme shall include a full tree schedule and appropriate tree retention categories and measures to protect the working area within Root Protection Areas. Such protection as is agreed shall be maintained during the

course of development.

*Reason- To ensure satisfactory protection of the existing trees and hedgerow in question during the period when construction works take place on the site.*

- 8 No works shall commence on site until such a time as a scheme indicating proposed finished floor levels of all buildings and the relationship of such to the existing dwellings surrounding the site, and the base and top levels of the canal, has been submitted to and approved by the Local Planning Authority and the development shall be constructed in accordance with the agreed levels.

*Reason- To safeguard the privacy and amenities of the occupiers of adjoining properties and in the interest of visual amenities.*

- 9 No development shall commence until a scheme for the insulation of the buildings(s)/erection of barriers against the transmission of noise and vibration from the A42 has been submitted to and agreed in writing with the Local Planning Authority. All works shall be fully implemented in accordance with the approved scheme before occupation, and shall be maintained as such in perpetuity.

*Reason- In the interest of residential amenities.*

- 10 No development shall commence on site until a full and detailed site investigation and assessment confirming the location and condition of any coal mine entries has been carried out, at the developer's expense, and submitted to the Local Planning Authority. In the event that the site investigations confirm the need for remedial works to treat the mine entries, and/or any other mitigation measures to ensure the safety and stability of the proposed development, no development shall commence on site until details of such works have been submitted to and agreed in writing by the Local Planning Authority and implemented at the site.

*Reason- In the interests of safeguarding the proposed development and adjacent properties.*

- 11 The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use

*Reason- To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.*

- 12 The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) dated 30th January 2013, Ref: 120616/R001/issue 2 and the following mitigation measures detailed within the FRA:

1. Limiting the surface water run-off generated by the 100 year plus 30% for residential, 20% for commercial (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site. Section 4.0.

The mitigation measures shall be fully implemented prior to occupation and subsequently in

accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

*Reason- To prevent flooding by ensuring the satisfactory storage/disposal of surface water from the site.*

- 13 No development approved by this planning permission shall take place until such time as a scheme to demonstrate the surface water drainage has been submitted to, and approved in writing by, the local planning authority.

The scheme shall include:

- o Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.
- o Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 30% for Residential 20% for Commercial (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- o Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% for Residential 20% for Commercial (for climate change) critical rain storm.
- o Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- o Details of how the on site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters

*Reason- To prevent the increased risk of flooding, both on and off site.*

- 14 No development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

1) A preliminary risk assessment which has identified:  
all previous uses

potential contaminants associated with those uses

a conceptual model of the site indicating sources, pathways and receptors

potentially unacceptable risks arising from contamination at the site.

2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

*Reason- To ensure that the proposed development does not cause pollution of controlled waters receptors.*

15 No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

*Reasons- To ensure protection of controlled waters receptors.*

16 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

*Reasons- To protect controlled waters receptors.*

17 No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

*Reasons- To prevent pollution of controlled waters receptors.*

18 No construction works, movement of construction traffic, and deliveries to and from the premises, shall occur other than between 0800 and 1800 hours weekdays, and 0800 and 1300 hours on Saturdays, and at no time on Sundays or Public Holidays.

*Reason- To safeguard the privacy and amenities of the occupiers of adjoining properties during periods of construction.*

19 Prior to the first occupation of any dwelling hereby permitted, the proposed development shall comply with the design standards of the Leicestershire County Council as contained in its current design standards document (6CsDG). Such details must include parking and turning facilities, access widths, gradients, surfacing, signing and lining

(including that for cycleway and shared use footway/cycle ways) and visibility splays and be submitted for approval by the local Planning Authority in consultation with the Highway Authority before development commences.

Note: Your attention is drawn to the requirement contained in the Highway Authority's current design guide to provide Traffic Calming measures within the new development.

*Reason- To ensure a satisfactory form of development and in the interests of Highway safety.*

- 20 Prior to the occupation of the development, an access off Burton Road, a roundabout junction and link (as generally shown on WSPs, drawing number RP-001 Rev. B) shall be completed to the satisfaction of the Highway Authority.

*Reason- To ensure adequate form of access to cater for the traffic generated by the development joining Burton Bridge Road and in the interests of general highway safety, and to comply with Policy T3 of the North West Leicestershire Local Plan.*

- 21 The emergency access road is required to withstand the weight of 12.5 Tons for a standard Fire Appliance and width for two way passing vehicles.
- a) Prior to the commencement of any part of the development hereby permitted, detailed design of the proposed emergency access link with access onto High Street shall be submitted to and approved in writing by the Local Planning Authority.
- b) Prior to first occupation of the development, the approved junction and emergency access link shall be provided in full and available for use.

*Reason- To provide vehicular access to the site, in the interests of highway safety, and to comply with Policy T3 of the North West Leicestershire Local Plan.*

- 22 The gradient of any private access drive shall not exceed 1:12 for the first 6 metres behind the Highway boundary.

*Reason- To enable vehicles to enter and leave the highway in a slow and controlled manner and in the interests of general highway safety.*

- 23 No walls, planting or fences shall be erected or allowed to grow on the Highway boundary exceeding 0.9 metres in height above the level of the adjacent carriageway.

*Reason- To afford adequate visibility at the access/junction to cater for the expected volume of traffic joining the existing highway network and in the interests of general highway safety.*

- 24 Before first occupation of any dwelling hereby permitted, 1.0 metre by 1.0 metre pedestrian visibility splays shall be provided on the Highway boundary on both sides of the access with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway, in accordance with the current standards of the Highway Authority and shall be so maintained in perpetuity.

*Reason- In the interests of pedestrian safety.*

- 25 Before first occupation of any dwelling hereby permitted, its access drive and any turning space shall be surfaced with tarmacadam, concrete or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the Highway boundary and shall be so maintained at all times.

*Reason- To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.).*

- 26 The car parking and any turning facilities shown within the curtilage of each dwelling shall be provided before the dwelling is occupied and shall thereafter permanently remain available for such use.

*Reason- To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking problems in the area.*

- 27 Before the first occupation of any dwelling, car parking provision shall be made within the development site on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms. The parking spaces so provided shall not be obstructed and shall thereafter permanently remain available for car parking.

*Reason- To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking problems in the area.*

- 28 Any shared private drives serving no more than a total of 5 dwellings shall be a minimum of 4.25 metres wide for at least the first 5 metres behind the Highway boundary and have 2 metres control radii at its junction with the adopted road carriageway. The access drive once provided shall be so maintained at all times.  
NOTE: If the access is bounded immediately on one side by a wall, fence or other structure, an additional 0.5 metre strip will be required on that side. If it is so bounded on both sides, additional 0.5 metre strips will be required on both sides.

*Reason- To ensure that vehicles entering and leaving the site may pass each other clear of the highway and not cause problems or dangers within the highway.*

- 29 Any shared private drive serving more than 5 but no more than 25 dwellings shall be a minimum of 4.8 metres wide for at least the first 5 metres behind the Highway boundary and have 6 metres kerbed radii at its junction with the adopted road carriageway. The access drive once provided shall be so maintained at all times.  
NOTE: If the access is bounded immediately on one side by a wall, fence or other structure, an additional 0.5 metre strip will be required on that side. If it is so bounded on both sides, additional 0.5 metre strips will be required on both sides.

*Reason- To ensure that vehicles entering and leaving the site may pass each other clear of the highway and not cause problems or dangers within the highway.*

- 30 Any garage doors shall be set back from the Highway boundary a minimum distance of 5 metres for sliding or roller/shutter doors, 5.6 metres for up-and-over doors or 6 metres for doors opening outwards and thereafter shall be so maintained.

*Reason- To enable a vehicle to stand clear of the highway whilst the garage doors are opened/closed and protect the free and safe passage of traffic, including pedestrians, in the public highway.*

- 31 No part of the development, its supports or foundations shall be positioned in, on, over,



upon, or within any part of the public highway. The buildings are to be setback 0.5m from the highway to provide clearance from windows opening outwards and surface water drainage pipes from the roof within the curtilage of the property.

*Reason- In the general interests of Highway safety.*

- 32 Before first use of the development hereby permitted, drainage shall be provided within the site such that surface water does not drain into the Public Highway and thereafter shall be so maintained.

*Reason- To reduce the possibility of surface water from the site being deposited in the highway causing dangers to road users.*

- 33 No development shall take place until a strategy of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved development shall be implemented in accordance with the approved strategy prior to the use of the building commencing.

*Reason- To ensure that the principles of sustainable drainage are incorporated into this proposal.*

- 34 Before the development commences, swept path analyses shall be submitted for refuse vehicle and approved by the Local Planning Authority (LPA) in consultation with the Highway Authority.

*Reason- To ensure that large vehicles can manoeuvre within the carriageway without the overhang of vehicle being danger to pedestrians.*

- 35 Before the development commences, details of the routing of construction traffic shall be submitted to and approved by the Local Planning Authority (LPA) in consultation with the Highway Authority. During the period of construction, all traffic to and from the site shall use the agreed route at all times unless otherwise agree in writing by the LPA.

*Reason- To ensure that construction traffic associated with the development does not use unsatisfactory roads to and from the site.*

- 36 No part of the development as approved shall be brought into use until details of a Residential Travel Plan has been submitted to and agreed in writing by the Local Planning Authority.

The Plan shall address the travel implications of the use of the whole site as if the development approved were to have been fully completed and occupied.

The Plan shall specify facilities and with measurable out put and outcome targets designed to:

- o Reduce single occupancy vehicle use, reduce vehicular travel at peak traffic times and reduce vehicle emissions for journeys made for all purposes to and from the developed site,
- o Increase the choice and use of alternative transport modes for any journeys likely to be made to and from the developed site and, in particular, to secure increases in the proportion of travel by car sharing, public transport use, cycling and walking modes and the use of IT substitutes for real travel,
- o Manage the demand by all users of the developed site for vehicle parking within and in

the vicinity of the developed site.

The Plan shall also specify:

- o The on-site Plan implementation and management responsibilities, including the identification of a Travel Plan Co-ordinator,
- o The arrangements for regular travel behaviour and impact monitoring surveys and Plan reviews covering a period extending to at least one year after the last unit of development is occupied or a minimum of 5 years from first occupation, whichever will be the longer.
- o The timescales or phasing programmes for delivery of the Plan's proposals and for the achievement of the specified output and outcome targets, and
- o Additional facilities and to be implemented if monitoring shows that the Plan's targets are not likely to be met, together with clear trigger dates, events or threshold levels for invoking these measures.

The Plan, once agreed, shall be implemented in accordance with the approved details, and thereafter, the implementation of the proposals and the achievement of targets of the Plan shall be subject to regular monitoring and review reports to the LPA and, if invoked, to the implementation of the specified additional measures.

Note: The plan shall make provision for relevant surveys, review and monitoring mechanisms, targets, timescales, phasing programmes and on-site management responsibilities. It shall be implemented and subject to regular review in accordance with the above approved details.

*Reason- To ensure that adequate steps are taken to achieve and maintain reduced travel, traffic and parking impacts and to provide and promote use of more sustainable transport choices to and from the site in order to relieve traffic and parking congestion, promote safety, improve air quality or increase accessibility in accord with Section 4: 'Promoting Sustainable Transport' of the NPPF 2012.*

37 The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking, geophysical survey and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- o The programme and methodology of site investigation, recording and post-investigation assessment (including the initial geophysical survey, fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
- o The programme for post-investigation assessment;
- o Provision to be made for analysis of the site investigation and recording;
- o Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- o Provision to be made for archive deposition of the analysis and records of the site investigation;
- o Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- o A detailed timetable for the implementation of all such works / measures

Unless any alternative measures are first agreed in writing by the Local Planning

Authority, no development shall take place at any time other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable.

*Reason - To ensure satisfactory archaeological investigation and recording.*

### **Notes to applicant**

- 1 Planning permission/or approval of reserved matters (delete as appropriate) has been granted for this proposal. The Local Planning Authority acted pro-actively through early engagement with the applicant at the pre-application stage 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 As of April 6th April 2008 written requests to discharge one or more conditions on a planning permission must be accompanied by a fee of £85.00 per request. Please contact the Local Planning Authority on (01530) 454665 for further details.
- 3 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.

The Historic and Natural Environment Team, as advisors to the planning authority, will monitor the archaeological work, to ensure that the necessary programme of archaeological work is undertaken to the satisfaction of the planning authority.