

**Erection of three no two-storey detached dwellings and
ancillary garaging**

**Report Item No
A2**

The Woodlands Bath Lane Moira Swadlincote Derby DE12 6BP

**Application Reference
14/00415/FUL**

**Grid Reference (E) 431137
Grid Reference (N) 315524**

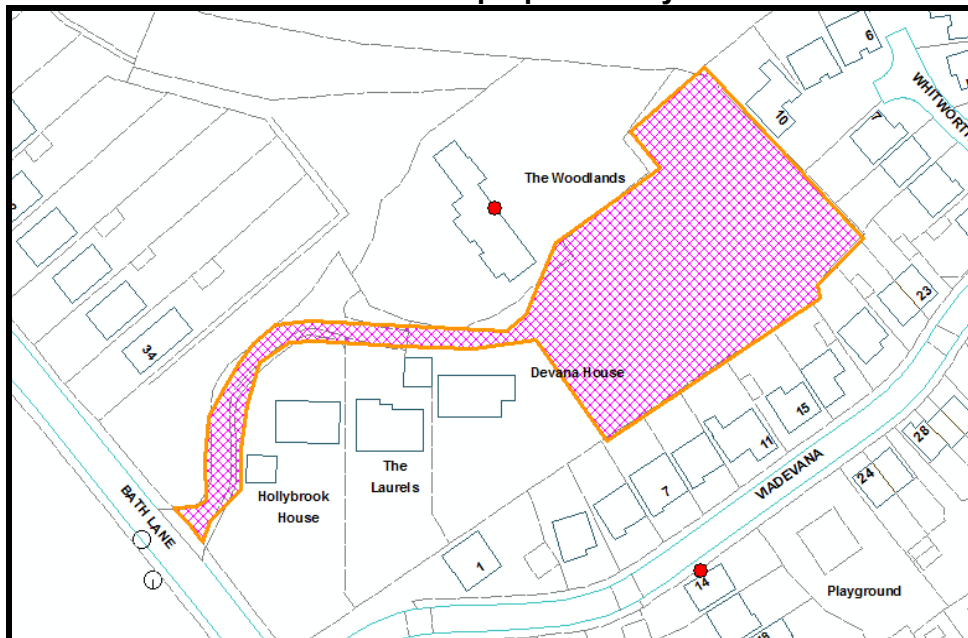
**Date Registered:
10 July 2014
Consultation Expiry:
13 January 2020
8 Week Date:
4 September 2014
Extension of Time:
None Agreed**

**Applicant:
Mrs J Hall**

**Case Officer:
Jenny Davies**

**Recommendation:
PERMIT subject to S106 Agreement**

Site Location - Plan for indicative purposes only



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Executive Summary of Proposals and Recommendation

Call In

The application is brought to the Planning Committee at the request of Councillor Sheahan (on behalf of the ward member Councillor Bridges) on the grounds of flooding issues in the area.

Proposal

Planning permission is sought for the erection of three detached two storey dwellings with garaging at The Woodlands, Bath Lane, Moira. The site is part of the garden to The Woodlands. The dwellings would be served by an existing access off Bath Lane.

Consultations

Members will see from the main report below that a total of 27 letters of representation have been received from residents, which raise objections. Ashby Woulds Town Council raises objections. Councillor Bridges also raises concerns and comments have been received from Councillor Sheahan. All other statutory consultees have raised no objections.

Planning Policy

The application site is located within the Limits to Development as defined in the adopted Local Plan. The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

Conclusion

The key planning issues arising from the application details are:

- The principle of the erection of dwellings on the site
- Impact on the character and visual amenities of the area
- Impact on residential amenities
- Impact on highway safety
- Impact on protected trees
- Impact on flood risk and surface water drainage
- Impact on the River Mease SAC

The report below looks at these details, and Officers conclude that the details are satisfactory. The proposal meets the requirements of relevant NWLDC policies, including the Good Design for North West Leicestershire SPD, and the NPPF.

RECOMMENDATION - THAT PLANNING PERMISSION BE GRANTED SUBJECT TO CONDITIONS AND THE SIGNING OF A SECTION 106 AGREEMENT

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

MAIN REPORT

1. Proposals and Background

Planning permission is sought for the erection of three detached two-storey dwellings with garaging at The Woodlands, Bath Lane, Moira. The application site lies on the north eastern side of Bath Lane, on the south eastern part of a wider site associated with The Woodlands. The application site is adjoined by dwellings on all sides.

An application for the erection of a detached two storey dwelling and garage (14/00417/FUL) on the northern part of the wider site is also to be considered by this Planning Committee.

The site forms part of the garden to The Woodlands and is currently grassed with mature lime trees alongside the south eastern boundary protected by Tree Preservation Order T284. Other unprotected trees are located in the eastern corner and along its north eastern edge. The land rises up by approximately 2.5 metres from the south west towards the north eastern boundary.

The dwellings would be located in a row on the central part of the site and would all be fully two storey. A detached double garage for Plot 1 is shown to be attached to the garage to Devana House. Detached triple garages are proposed to Plots 2 and 3 on the northern part of the site. No protected trees are proposed to be removed and the majority of unprotected trees would be retained.

Access would be gained via the existing access and private drive off Bath Lane that currently serves The Woodlands and three other dwellings. A turning head would be provided adjacent to the two garages.

Amended plans have been received during the course of the application to address officer and consultee concerns relating to layout and design and impacts on residential amenities, protected trees and drainage and flood risk. The precise dimensions of the proposal are available to view on the planning file.

The site lies within the Limits to Development as identified in the adopted North West Leicestershire Local Plan (2017). The site is considered to lie within Flood Zone 1. The southern part of the site (relating to part of the garden to Plot 1) lies within an area at low to medium risk of surface water flooding. The site also lies within the catchment area of the River Mease Special Area of Conservation and a tributary of the Hooborough Brook, which in turn is a tributary of the River Mease. runs alongside the site's south eastern boundary and continues into the wider site. Other trees within the wider site are protected by the TPO.

Planning History:

Outline planning permission (04/00743/OUT) was granted in September 2004 for the erection of three dwellings on the wider site. As a result of the 2004 approval and an earlier grant of outline planning permission for two dwellings (01/00150/OUT), permission was in place for four dwellings, as one of the dwellings on the 2004 permission replaced one on the 2001 permission. Both the 2001 and 2004 permissions have expired. An application for six dwellings on the wider site (06/00685/FUL) was withdrawn in June 2006.

Subsequently planning permission was granted in September 2007 for the erection of three dwellings at the front of the wider site (07/00298/FUL), which have been built. Permission was granted in January 2012 for amendments to Plot 3 (now Devana House) (11/00247/FUL).

Permission was refused in May 2010 for the erection of a detached dwelling (10/00291/FUL) in a similar position to Plot 3 on the 2007 permission, due to adverse impacts from its relationship with Plot 2 on the 2007 permission.

The most recent permissions on the site relate to works to protected trees (11/00775/TPO and 16/00048/TPO), with an application for the felling of five protected trees being refused in March 2017 (17/00075/TPO). Other history back to 2001 also relates to works to trees (03/01247/TPO, 02/00741/TPO, 01/00744/TPO and 01/00376/TPO).

2. Publicity

23 Neighbours have been notified.

Site Notice displayed 19 November 2018.

Press Notice published Burton Mail 15 October 2014.

3. Summary of Consultations and Representations Received

Statutory Consultees

Ashby Woulds Town Council objects until the outstanding issue relating to the drains is resolved. The Town Council is against further development along Bath Lane and in the Via Devana area until the existing drainage and flooding problems are sorted.

The Town Council also objects on the following grounds:

- The area is liable to flooding and further development increases the risk;
- Current drainage system does not have the capacity for more and no permissions should be granted until the existing problems are resolved;

The Environment Agency (EA) originally objected on the grounds that the applicant needed to demonstrate that a Sequential Test had been undertaken. The EA subsequently advised that it also objected as the submitted Flood Risk Assessment (FRA) was inadequate. Following submission of a Hydraulic Modelling Report the EA advised that it was satisfied that the development is outside of Flood Zones 2 and 3 and therefore does not require an FRA. Therefore the EA advised that it wishes to remove its previous objection.

Leicestershire County Council - Ecology has no comments or objections provided the trees on the site's south eastern boundary are retained. Following the submission of amended plans the County Ecologist advised that she has no further comments as the issues relating to trees are arboricultural rather than ecological.

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

Leicestershire County Council - Lead Local Flood Authority (LLFA) has not raised any objections subject to the imposition of conditions.

Natural England has no objections subject to conditions and confirmation from the EA that the proposals are technically fit for purpose.

NWLDC - Environmental Protection has no environmental observations.

NWLDC - Land Contamination requests the imposition of conditions.

NWLDC - Waste Services has provided comments in respect of bin collection arrangements.

NWLDC - Tree Officer initially recommended refusal on the basis that the proposal would cause damage to protected trees. Following submission of amended plans the Tree Officer has no objections.

Severn Trent Water (STW) has no objections.

Third Party Representations

Councillor Bridges, who is the ward member, states that there are serious flooding problems that need resolving before any future development can be considered within the affected zone.

Councillor Sheahan has queried whether a developer contribution could be sought towards flooding investigations.

27 letters of representation (some of which include photographs) have been received from local residents which object on the following grounds:

Residential Amenities

- direct overlooking/loss of privacy to dwellings and gardens on Whitworth Close, Via Devana and within The Woodlands site;
- loss of light to dwelling on Whitworth Close and Via Devana;
- proximity of dwelling and garages to dwelling on Whitworth Close;
- impacts from noise and car fumes;
- siting of bin collection area adjacent to existing dwelling;
- understood to be quiet rural area with restriction on development;
- disruption from construction works
- additional building being considered at expense of existing homes;

Highway Safety

- increase in traffic;
- site access and driveway are too narrow for two vehicles to pass and are unsafe due to lack of passing places, footways and bends and lighting and traffic resulting from further four houses;
- plans are inaccurate as do not show the entrance posts and gates which impact on the width of the access and driveway;

Trees and Ecology

- loss of trees protected by tree preservation order (TPO);
- more trees should be planted rather than disturb trees that have taken years to establish;

Flood Risk and Drainage

- inadequate drainage and sewage systems in the area;
- existing flooding, including at the junction of Bath Lane with Via Devana and onto land and gardens within The Woodlands and into houses on Via Devana, will be made worse;
- this flooding results from heavy rainfall and includes overflow of the main sewer on Bath Lane resulting in health and safety issues and risks for residents and property from sewage contamination in their houses and gardens, not being able to leave their houses or enter and leave their driveways and vehicles stranded and damaged;
- since June 2019 there has been seven floods and two of these have seriously breached Bath Lane causing a crisis situation and damage to property;
- the wooden footbridge in the garden to The Laurels has been lifted by the level and velocity of water in the watercourse;
- significant measures have not been put in place to alleviate the existing flooding issues;

- new drains installed to Bath Lane have added to flooding issues by back flowing and increasing flood water in the road;
- residents are unhappy that the situation regarding flooding remains unresolved;
- residents of Via Devana and Whitworth Close will not allow new connections to the existing drains;
- removal of trees will interfere with the natural drainage system;
- issues relating to this flooding need to be resolved before further development is allowed in this location;
- all applications in Moira should be reviewed by a Council committee that includes local and county councillors, County Council staff and the MP as well as those involved in the flood working group (town councillors, STW, the Highway Authority and the LLFA);
- errors in the original Flood Risk Assessment - including confusing the unnamed watercourse with the River Mease and no mention of existing flooding that occurs in the area - so how can this report be used for decision making;
- not clear from flood report how the dwellings will impact water flow and potential for flooding;
- the second flood report states that further work needs to be done.

River Mease

- significant environmental risk to the River Mease and its tributaries;
- sensitivities associated with the River Mease;
- foul water has entered the headwaters of this river;
- impact on the River Mease and its tributaries from sewer contamination resulting from flooding at junction of Via Devana and Bath Lane;

Other Matters

- no need for more houses;
- impacts on existing infrastructure;
- impact of ground works on stability of nearby dwellings built on rafts with underpinning and previously subject to subsidence;
- more subsidence could occur by building over mined ground;
- would the Council cover the cost of future subsidence if planning permission is granted;
- details of boundary plans required;
- the bin collection area is not required as existing residents on the site leave bins at the roadside;
- garage to Devana House is incorrectly included within the red line boundary on the plans;
- Devana House and its boundary with the site as well as one of the trees are drawn incorrectly on the plans;
- garage to Plot 1 would be attached to garage to Devana House but no details provided of how the garages would be attached;
- impact on property values;
- construction works could continue for many years;
- the site needs to be assessed overall rather than piecemeal and timing of works needs to be understood;
- the Council made mistakes with the three new dwellings on the site;
- these dwellings were started after the planning permission had expired;
- only benefit is for commercial interests of the landowner.

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

4. Relevant Planning Policy

National Planning Policy Framework - February 2019

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are applied. The following sections of the NPPF are considered relevant to the determination of this application:

Paragraphs 8 and 10 (Achieving sustainable development)
Paragraph 11 (Presumption in favour of sustainable development)
Paragraphs 54, 55 and 56 (Decision-making)
Paragraphs 59, 68, 73, 74 and 78 (Delivering a sufficient supply of homes)
Paragraph 91 and 92 (Promoting healthy communities)
Paragraphs 102, 103, 108, 109 and 110 (Promoting sustainable transport)
Paragraphs 117, 118, 121 and 122 (Making effective use of land)
Paragraphs 124, 127, 128 and 130 (Achieving well-designed places)
Paragraphs 148, 150, 153, 155 and 158-164 (Meeting the challenge of climate change, flooding and coastal change)
Paragraphs 170, 175, 177, 178, 179 and 180 (Conserving and enhancing the natural environment)

Adopted North West Leicestershire Local Plan (2017)

The North West Leicestershire Local Plan forms part of the development plan and the following policies of the Local Plan are relevant to the determination of the application:

S1 - Future Housing and Economic Development Needs
S2 - Settlement Hierarchy
D1 - Design of New Development
D2 - Amenity
IF4 - Transport Infrastructure and New Development
IF7 - Parking Provision and New Development
En1 - Nature Conservation
En2 - River Mease Special Area of Conservation
En3 - The National Forest
En6 - Land and Air Quality
Cc2 - Water - Flood Risk
Cc3 - Water - Sustainable Drainage Systems

Other Guidance

The Community Infrastructure Levy Regulations 2010
The Conservation of Habitats and Species Regulations 2017
Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System)
National Planning Practice Guidance - March 2014
River Mease Water Quality Management Plan - August 2011
The River Mease Developer Contributions Scheme (DCS) - September 2016
Good Design for North West Leicestershire SPD - April 2017
National Design Guide - October 2019
Leicestershire Highways Design Guide (Leicestershire County Council)
National Forest Strategy 2014-2024

5. Assessment

Principle

In accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance, comprises the adopted North West Leicestershire Local Plan (2017).

The application site lies within the defined Limits to Development within the Local Plan. Policy S2 advises that in villages such as Moira a limited amount of growth will take place within the Limits to Development.

Consideration must also be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) as set out in the NPPF.

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 Council is able to demonstrate a five year supply of housing (with 20% buffer) against the housing requirement contained in the Local Plan.

In terms of social sustainability it is noted that in respect of the withdrawn application for six dwellings on the wider site (06/00685/FUL), officers raised concerns that the site was not in a sustainable location for new dwellings under the criteria set out under Policy H4/1 of the previous adopted Local Plan. However that plan and policy are no longer in force.

Moira provides a range of day to day facilities, e.g. shop/Post Office, small supermarket, two public houses, primary school, village hall, recreational facilities/open space and employment uses. The nearest bus routes serve Norris Hill, Overseal and Donisthorpe, which are all at least a 25 minute walk away. There is a footway along Bath Lane in both directions; to the south it provides a route into the main parts of Moira and to the north it provides a link to Conkers, the Miners Welfare sports club, employment uses and on towards Overseal. Some of these services/facilities are within 800 metres to one km (preferred maximum walking distance) of the site but the bus services are not. However whilst there is limited access to bus services, given the range of services within walking distance it is considered that occupiers of the dwelling would not necessarily be dependent on the private car. Taking all of these matters into account it is considered that the site is socially sustainable in terms of access to services/facilities.

Given the scale of the development it is considered that the proposal would not result in unsustainable demands on local services and facilities. The proposal falls below the threshold of 10 dwellings or more under which contributions towards services and facilities would be sought.

In terms of environmental sustainability, the site currently represents garden land associated with The Woodlands. Garden land in built up areas is excluded from the definition of previously developed land set out in the NPPF and therefore this effectively constitutes a greenfield site. The NPPF states that decisions should encourage the effective use of land by re-using land that has been previously developed and that Local Planning Authorities should consider the use of policies to resist inappropriate development of residential gardens. As the Council does not have a specific policy that prevents development on gardens, it is deemed that a reason for refusal on the basis of the loss of part of the residential garden could not be justified in this instance.

The proposal would also not result in unacceptable impacts on the natural, built or historic environment as set out in more detail below. There would also be very limited economic

benefits which would include local construction jobs and helping to maintain local services in the area.

In the overall balance, compliance with the settlement hierarchy and strategic housing aims of Policy S2, the lack of unacceptable impacts on the natural, built or historic environment, the site's social sustainability credentials and very limited economic benefits all weigh positively in the balance and are considered to outweigh the loss of greenfield land. It is therefore considered that the proposal represents a sustainable form of development.

Design and Visual Impact

The need for good design in new residential development is outlined in Policy D1, the Council's Good Design SPD, the National Design Guide and Paragraphs 124 and 127 of the NPPF. Policy En3 requires development in the National Forest to be appropriate to its Forest setting.

The proposal results in a density of 10 dwellings per hectare (excluding the access drive from the calculation). The Local Plan does not contain a policy setting specific densities. This density is considered appropriate having regard to the character of the area, nearby dwellings and the protected trees.

There are limited views of the site from Bath Lane, as it is set back from the road and screened by mature trees and existing dwellings, which also provide screening in views from most of Whitworth Close and Via Devana. Plot 3 would fill the gap at the end of the private drive in front of No. 10 Whitworth Close but this is not a prominent view from public viewpoints. Some garden land would be lost but a large garden area would be retained to The Woodlands taking into account both this proposal and the separate application for one dwelling. Whilst the dwellings would be positioned at least 100 metres from Bath Lane, the development would be well related to The Woodlands and dwellings on Whitworth Close and Via Devana. The dwellings would not be at a significantly higher land level than other dwellings or nearby roads. Two dwellings have previously been approved on a similar part of the site under the 2004 outline planning permission for three dwellings (04/00743/OUT). The development would therefore not be overly prominent in the locality or streetscene. The site could also accommodate all of the necessary requirements (private garden, bin storage, parking/turning space) without being too cramped or resulting in over-development.

There are two rows of lime trees on the south eastern part of the site, protected by Tree Preservation Order T284 (TPO), which make a positive contribution to the character and visual amenities of the area, and which are shown to be retained. There are a number of other trees on the site that are not protected by the TPO but most are shown to be retained. The Council's Tree Officer considered that the original plans would have resulted in serious damage being inflicted on the protected trees and as such recommended refusal of the application. Following submission of an updated tree survey and plan, the Tree Officer has advised that the dwellings are in an acceptable position in relation to the trees.

The dwellings would have large footprints but would be smaller than The Woodlands and not dissimilar in scale and design to the three existing dwellings. Dwellings of a similar size were also considered acceptable here under the 2004 outline permission. Whilst not small in scale the garages would be of simple designs with traditional detailing and would be well screened and seen alongside the proposed dwellings and existing development.

A bin collection area is proposed close to the junction of the access drive with Bath Lane (as set out in more detail in the 'Bin Storage and Collection' section of this report), which would also serve the one dwelling proposed under the separate application (14/00417/FUL). The bin

collection area would be set back behind the front boundary and so would not be prominent in the streetscene. In addition bins should only be left in this area for collection and not on a permanent basis.

Therefore it is considered, on balance, that the proposal, both on its own and cumulatively with the separate single dwelling, would not be significantly harmful to the character and visual amenities of the streetscene and locality within the National Forest to justify a reason for refusal under Policies D1 and En3 of the Local Plan, the Good Design SPD and the National Design Guide.

Residential Amenities

The proposal is likely to result in an increase in traffic using the access drive which runs adjacent to Hollybrook House and its rear garden, as well as being close to No. 34 Bath Lane and The Woodlands. However the situation would not be dissimilar to a development on a corner site with a side road running close to dwellings and their rear gardens, which was considered to be a yardstick for an acceptable standard in an appeal decision at Ashby de la Zouch (07/00624/OUT).

Whilst tranquility in the area may in part be due to the size of The Woodlands' existing garden it is not unusual to find housing adjacent to other housing. New housing is unlikely to generate significant levels of noise and disturbance or impacts from lighting and car fumes. A condition could be imposed restricting construction hours given the site is bounded by other dwellings and access is via a private drive that passes close to dwellings.

The bin collection area would be located eight metres from Hollybrook House's garden and 18 metres from its side elevation, which contains windows serving habitable rooms, with the access drive in-between. The bin collection area would be at least 18 metres from the boundary with No. 34 Bath Lane. A condition could be imposed requiring the bin collection area to be used for bin collection purposes only. The Environmental Protection team has not raised any objections in relation to impacts on existing residents. As such the proposal unlikely to result in significant impacts on residential amenities from noise, disturbance, smells, lighting and car fumes. The Council also has separate powers under the Environmental Protection Act to deal with noise, disturbance, smells and lighting.

The three dwellings would be at least 14 metres from the gardens to the dwellings on Via Devana and over 20 metres from the dwellings.

Plot 1 would be 17 metres from Devana House, with its front habitable room windows facing towards Devana House's side elevation. This elevation has two windows serving a utility room and a bedroom (also served by another window). Plot 1's first floor front windows would be 20 metres from Devana House's nearest front habitable room windows and would not directly face them. The central first floor window to Plot 1 is shown to serve a void above the hall/stairs and could be obscurely glazed and fixed shut. The other first floor window to Plot 1 would be 24 metres from the side bedroom window and 18.5 metres from Devana House's conservatory. Some screening would be provided by the garaging and the design of Plot 1's window (three narrow separate panes) would reduce the potential for direct overlooking. The garage to Plot 1 would be on the boundary but is proposed to be attached to the garage to Devana House. Plot 1 would be eight metres from Devana House's garden, but Devana House's garden is large in size and Plot 1 would not directly overlook its main private amenity space.

Plot 1 would be eight metres from The Woodlands and its garden. However Plot 1 has no first floor side windows and The Woodlands would have a large retained garden. Due to the

relationship between the dwellings there is unlikely to be any direct overlooking of The Woodland's side windows from Plot 1's first floor front windows. Plots 2 and 3 would be at least 24 metres from The Woodlands. Whilst Plot 2 and its front windows would be seven metres from The Woodlands' garden with front windows facing this garden, and its triple garage would be on the garden boundary, this would impact on a small part of The Woodlands' extensive garden. Plot 3's triple garage would be set away from this boundary.

Plot 3 would be sited within three metres of No. 10 Whitworth Close and its front garden. Plot 3 would impinge very slightly on the 45-degree line from the closest front living room and bedroom windows to No. 10 Whitworth Close but not to a significant extent. These rooms are also served by secondary windows. Existing mature vegetation on the boundary would act as a screen but it is acknowledged that this may be removed, cut down or trimmed back, although a condition could be imposed requiring some form of landscaping to be retained or provided on this boundary to assist with screening. An open aspect would be retained from No. 10's windows and front garden to the east and south east. A front garden area is not afforded the same level of protection as a rear garden as it is not a private space (unless it formed the only garden area which it does not in this case). No first floor windows are shown in Plot 3's side elevation closest to No. 10. Whilst the front elevation of Plot 3 and its habitable rooms windows would appear to 'face' towards the front of Plot 10, the location plan shows the relationship between the dwellings, that the dwellings would not be directly face to face, and Plot 3 would project just beyond the front of No. 10 so that their front windows would not directly look into each other.

Whilst Plot 3 and its triple garage would impinge on the 45-degree line from No. 10's two side windows, they serve a kitchen and a bathroom. The kitchen window is secondary and a bathroom is a non-habitable room. The mature vegetation on the boundary would provide screening if retained. A 1.8 metre close boarded boundary fence also screens the kitchen window to some extent. Whilst Plot 3 would be around five metres from these windows, due to its position in relation to No. 10 there is unlikely to be direct overlooking of these windows. Plot 3 would also be 10 metres from No. 10's rear garden.

Plot 3's triple garage would be one metre from No. 10's rear garden and two metres from No. 10, would also impinge on the 45-degree line from No. 10's rear windows. However the garage would be single storey, with its roofslope running away from No. 10's garden and would not extend along the whole of the garden boundary. Some screening may also be provided by the vegetation on the boundary if retained and the close boarded fence. The rear windows would retain open aspects to the north and north east.

Whilst there would be some overlooking of Devana House, and some overshadowing to No. 10 and its garden and impact on outlook from No. 10's front and rear windows, given the circumstances set out above it is considered that this impact would not be so significantly harmful to the amenities of the occupiers of these dwellings or other nearby dwellings to justify a reason for refusal under Policy D2 of the Local Plan and the Council's Good Design SPD.

Highway Safety

Bath Lane is a classified road subject to a 30mph site limit. The existing access and driveway currently serves four dwellings, and if this and the separate application for one dwelling were approved would result in a total of eight or five dwellings on the site.

The County Highway Authority (CHA) has not raised any objections subject to conditions. The CHA has also not raised any objections to the separate application for one dwelling, and also did not object to the withdrawn application for six dwellings which would have resulted in seven dwellings on the site.

Whilst the layout plan indicates that no amendments are proposed to the access, it is bound by walls and gate posts on both sides, which are not shown on the plan. The CHA advises that an access serving two to five dwellings should be 4.25 metres wide for a distance of five metres behind the highway boundary, and one serving eight dwellings should be 4.8 metres wide for this distance. In both cases if an access is bound on one side, e.g. by a wall, then its width should be increased by 0.5 metres on that side. It is not clear whether the existing access meets the required width for this proposal, e.g. 4.8 metres, and so the CHA has requested imposition of a condition requiring this access width.

The CHA also advises that there have been no recorded personal injury collisions within the last five years close to the access. A condition could be imposed requiring vehicular and pedestrian visibility splays. The CHA considers that a safe and suitable access can be achieved and there is no evidence of highway safety concerns at this location. The driveway within the site is shown on the layout plan to be at least 4.5 metres wide (and in most places would be five metres wide) in its first stretch. After the point where the driveway for Hollybrook House and the separate access for The Woodlands and one dwelling turn off, the drive would be 4.5 metres wide. This part of the drive would only serve five dwellings (The Laurels, Devana House and the three proposed dwellings).

The CHA also advises that the parking and turning spaces are acceptable. The bin collection area would not impinge on the access, driveway and visibility splays.

The Highway Authority therefore advises that the impacts of the development on highway safety would not be unacceptable and when considered cumulatively with other developments, the impacts on the road network would not be severe. As such the proposal complies with Policies IF4 and IF7 of the Local Plan and paragraphs 108 and 109 of the NPPF.

Trees

Two rows of lime trees on the south eastern part of the site are protected by Tree Preservation Order T284 (TPO), and a number of other trees on the site are not protected by the TPO. The Tree Officer considered that the original plans would have resulted in serious damage being inflicted on the protected trees, on the basis of inaccuracies in the tree survey and tree plan and as such recommended refusal of the application.

An amended tree survey and tree plan have been submitted, which shows all protected trees to be retained, along with all the unprotected trees close to the site's south eastern boundary.

In respect of the withdrawn application for six dwellings (where three dwellings were proposed on this site) concerns were raised regarding incompatibility with the protected trees. However two dwellings were approved on this part of the site under the 2004 outline permission when the lime trees would not have been significantly smaller. The Tree Officer has not raised any concerns in respect of this matter as part of this application. Plot 1 would be closest to the lime trees (four metres from the canopies at its closest point) but this would be its side elevation (which contains secondary windows) and garage. The main rear windows and conservatory to Plots 2 and 3 would face the trees but would be further from their canopies. Whilst Plot 3 would be close to the two ash trees in the eastern corner of the site, these are not protected, and the trees would be close to the corner of the dwelling with a more open aspect retained to most of its rear elevation. The dwellings would have good sized rear gardens with areas that would not be shaded by trees

Plot 3 and its triple garage would be close to the north eastern boundary where there is a

conifer hedgerow and other trees, which may need to be removed, cut down or trimmed back to allow for erection of this dwelling and garage. However this hedgerow and trees are not covered by the TPO.

There may be a requirement to widen the access (as set out above in the 'Highway Safety' section of this report), which may impact on the protected trees. However it is not clear what works would be required to widen the access, and whether any trees would be affected, so the Tree Officer has advised that this matter could be dealt with by condition. Method statements could be submitted for construction of the bin collection area and any widening/strengthening of the driveway.

Conditions could also be imposed relating to a tree protection plan to include protective fencing during construction, no changes to ground levels within the fenced off areas and submission of method statements for any works, e.g. installation of services, within root protection areas. As such the proposal would comply with Policy En1 of the Local Plan.

Ecology

There are mature trees and hedgerows on and adjacent to the site, as well as adjacent trees and woodland, the site is part of a large garden, a watercourse runs through the site and the Ashby Canal lies to the north. All of these are features that could be used by European Protected Species (EPS) or national protected species. As EPS may be affected by a planning application, the Local Planning Authority has a duty under regulation 9(5) of the Habitats Regulations 2017 to have regard to the requirements of the Habitats Directive in the exercise of its functions.

An ecology survey found no evidence of important flora/fauna, nor of protected species using the site or their habitats. Whilst some trees would be removed that may have potential to be used by bats and breeding birds, there would be other similar habitat retained on site as well as on adjoining land. The canal is some distance from the site with intervening land uses and so it is unlikely that species using it would be found on the site. Whilst the dwellings would be 12 metres from the watercourse the County Ecologist has not raised any concerns regarding species that would use this habitat. The County Ecologist requested clearer copies of surveys to clarify the loss of trees. Following submission of an amended tree survey the County Ecologist has no objections and advises that the issues relating to trees relate to arboricultural issues rather than ecological issues. On this basis it is considered that important flora/fauna and protected species and their habitats would not be adversely affected by the proposal and so the proposal complies with the Habitats Regulations 2017 and Policy En1 of the Local Plan.

Flood Risk and Drainage

An unnamed watercourse runs through the site adjacent to its south eastern boundary, flowing from north east to south west. This watercourse flows from the Rawdon Road area, is culverted underneath the Ashby Canal and Via Devana/Whitworth Close, then resurfaces as it flows through the site, and passes underneath Bath Lane and the Miners' Welfare site and former railway embankment before discharging into the Hooborough Brook.

Background

Heavy rainfall can result in flooding occurring in the vicinity of this watercourse, and there have been several instances of this recorded back to 2006. This flooding can extend along Bath Lane and Via Devana (blocking the road), and into the Miner's Welfare ground, the site entrance and the gardens to Hollybrook House, The Laurels and Devana House. Photographs have been provided by several residents to show the extent of the flooding.

Concerns have been raised by local residents, Ashby Woulds Town Council, Councillor Bridges (who is the ward member) and Councillor Sheahan throughout the course of the application regarding this flooding and the impact of the development on this flooding. A petition has been submitted to Leicestershire County Council by local residents requesting immediate action to resolve the flooding. In addition it has been requested that issues relating to this flooding need to be resolved before the application is permitted and further development is allowed in this area.

Discussions and investigations have taken place and measures undertaken to resolve the flooding since before the application was submitted and on an ongoing basis. Most recently pipes were installed along Bath Lane in autumn 2019, which unfortunately did not resolve the problem, and so a meeting took place in January 2020 between the Lead Local Flood Authority (LLFA), the District Council, Councillor Bridges and Councillor Sheahan, the Town Council and local residents.

In July 2020 the LLFA advised that a larger pipe system could not be installed due to the presence of statutory undertakers' equipment and so two smaller pipes were installed instead. The LLFA has advised that engineers are of the view that a larger pipe system under Bath Lane would alleviate the problems, that a crate attenuation system would not be a solution (because the system would be downstream of the flooding meaning Bath Lane would flood before the attenuation system is reached, so the attenuation crates would be empty whilst Bath Lane floods) and that a trial hole is in the process of being organised to ascertain what can be done at Bath Lane and the cost. The LLFA has also advised that it is also liaising with the EA, that other measures are being considered (e.g. repairs to the private culvert under the sports ground) and the section of watercourse under the railway embankment will continue to be cleansed.

Planning Considerations

Initially the EA objected in the absence of any evidence to demonstrate that the flood risk Sequential Test had been applied, which is required to be undertaken on sites shown to be covered by the EA's Flood Zones 2 and 3 on the EA's flood risk map, and on the grounds that the Flood Risk Assessment (FRA) was inadequate.

A Hydraulic Modelling Report was subsequently submitted which concludes that the modelled 20-year, 100-year and 1000-year flood events do impact on the wider Woodlands site but that flooding is restricted to the south western part of the wider site (i.e. the area around the three existing dwellings at the front of the wider site, part of the site entrance and a small part of the garden to Plot 1 on this application). This modelling correlates with the parts of the wider site that have flooded in the past, and differs from the EA's flood risk map which suggests that the whole of the wider site would be inundated with flood water.

The Modelling Report also included a blockage risk analysis of the two culverts in the vicinity of the site (a small culvert within the wider site close to Devana House and the culvert that runs under Bath Lane and the Miners Welfare site) which indicates some increases in the modelled flood events and depths by up to 20mm in the watercourse channel and 25mm within the wider site.

The Modelling Report recommends that that the modelled 100-year event and results from the blockage risk analysis should be taken into account when setting any on-site flood mitigation measures, e.g. when setting the finished floor levels of the dwellings. No further works or other flood risk mitigation measures were identified in this report.

The EA was consulted on the Modelling Report and advised that it was satisfied that the

development is outside of Flood Zones 2 and 3 and therefore does not require an FRA. Therefore the EA advised that it wishes to remove its previous objection. As it has been demonstrated that the site is not within Flood Zones 2 and 3, and this has been accepted by the EA, then regardless of what the EA's flood risk map shows, the site is within Flood Zone 1 which is the zone with the lowest probability of flooding.

The southern part of the site (relating to part of the garden to Plot 1) lies within an area at low to medium risk of surface water flooding whilst the rest of the site is outside these areas. However due to the flooding issues the LLFA has been consulted on the application several times and information has been provided to it in respect of the objections raised by residents and the Town Council. As outlined above the LLFA has been investigating the flooding in the vicinity of the site and liaising with residents, the Town Council, the ward member and other interested parties, and so is aware of the flooding issue and the concerns raised. The LLFA has not raised any objections to the proposal in any of its comments. It has also indicated that the new dwellings are unlikely to significantly increase the surface water runoff rate from the site. The LLFA has advised:

- when determining applications the District Council should ensure flood risk is not increased elsewhere and only consider development in areas at risk of flooding where informed by a site specific FRA confirming it will not put the users of the development at risk;
- the proposals constitute minor development and as such it is not within the LLFA's statutory duty to comment. However, the District Council has asked the LLFA to comment due to ongoing flooding issues nearby. It is noted that the EA has concluded that the site falls within fluvial Flood Zone 1 (low risk of flooding), as such this development type is suitable at this location;
- the LLFA advises the District Council that the proposals are considered acceptable to the LLFA and that planning conditions should be attached to any permission granted.

As noted above the EA has advised that an FRA is not required. The conditions suggested by the LLFA relate to submission of a surface water drainage scheme for the site (for both during construction and once the development is complete), finished floor levels and a maintenance plan for the surface water drainage system before development commences on site. The surface water scheme is required to include holding sustainable drainage techniques that incorporate treatment trains to maintain or improve existing water quality, limit surface water runoff from the site to equivalent greenfield rates (i.e. limit it to the same runoff rate as occurs from the site now) and the ability to accommodate surface water runoff on site up to the critical 1 in 100 year return plus an allowance for climate change.

As noted above a trial hole investigation is being organised to ascertain what can be done at Bath Lane, and the LLFA is also looking into other measures. Consideration has been given to whether a developer contribution could be sought to fund a trial hole investigation. However due to there being no objections from the EA and LLFA to the application a developer contribution could not be sought as it would not meet the three tests in the 2010 CIL Regulations.

The proposal would comply with the requirements of Policy Cc2 and paragraphs 155 and 163 of the NPPF, as it is accepted by the EA and LLFA to be within an area at the lowest risk of flooding (Flood Zone 1), and so is on a site with the lowest probability of flooding where it would not increase the risk of flooding elsewhere. Conditions could also secure a sustainable drainage system as required by Policy Cc3.

Therefore for the reasons set out above, and the lack of objection from the EA and the LLFA, as well as from STW (Severn Trent Water), it is considered that a reason for refusal on the basis of significant impact on flood risk or drainage could not be justified under Policies Cc2 and Cc3 of

the Local Plan and paragraphs 155 and 163 of the NPPF.

River Mease Special Area of Conservation/SSSI

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). An unnamed watercourse that is a tributary of the Hooborough Brook, which in turn is a tributary of the River Mease, runs alongside the site's south eastern boundary. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river.

As a result of the proposed development there could be an impact on the River Mease SAC, which may undermine its conservation objectives, from an increase in foul and surface water drainage discharge and its proximity to a tributary of the river. Therefore an appropriate assessment of the proposal and its impacts on the SAC is required.

As the site is currently greenfield with no associated foul drainage discharge, there would be an increase in occupancy of the site, resulting in an increase in foul drainage discharge from the site. Additional foul drainage discharge from the site would adversely impact on the SAC as it would pass through the STW sewage treatment works within the catchment area of the SAC and contribute to the raised phosphate levels in the river.

Discharge into the river or its tributaries from surface water disposal via a sustainable drainage system or via the mains sewer system can also result in an adverse impact on the SAC, including in relation to water quality and flow levels.

The tributary that runs through the site could also be affected by construction works and activity associated with the proposal.

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 CIL Regulations and paragraph 177 of the NPPF. There is no capacity available under DCS1 and so DCS2 was adopted by the Council on 20 September 2016.

The applicant has indicated she is willing to pay the required DCS contribution and the Council's solicitors have been instructed. The Environment Agency and Natural England have both issued Standing Advice relating to the River Mease SAC under which they do not need to be consulted if the proposal connects to the mains sewer and the applicant is agreeable to payment of the DCS contribution. Natural England has requested that the EA provided technical advice regarding the acceptability of the foul drainage for the site but this is outside the EA's remit. STW has however raised no objections to the application.

The flows from the dwellings needs to be taken into account against the existing headroom at Donisthorpe Treatment Works which serves Moira. Whilst it is understood that there is currently no capacity at Donisthorpe, STW has previously advised that it will not object to proposals where there is no capacity available but that a phasing condition should be imposed.

However whilst a phasing condition was imposed on previous permissions in the Moira area at STW's request as there was no capacity available at the treatment works at that time, STW has the opportunity to consider whether capacity is available within its sewer network when issuing permits to connect to the sewer system. Therefore it is considered that a phasing condition is no longer required.

On the above basis, compliance with the proposed legal agreement would ensure that foul drainage discharge from the site would not adversely impact on the integrity of the River Mease SAC.

As the new dwellings would be sited on a permeable part of the site, a condition could be imposed requiring surface water to discharge to a sustainable drainage system. As noted earlier in this report (in the section relating to 'Flood Risk and Drainage') the LLFA has requested such a condition, which would need to include measures to restrict water flows and protect water quality. Conditions would also be imposed relating to surface water drainage during construction and a maintenance plan. Natural England has requested that the EA provided technical advice regarding the acceptability of the surface water drainage for the site. However this is outside the EA's remit, and the LLFA would provide comments on details submitted to discharge surface water conditions.

On the above basis, compliance with the proposed conditions would ensure that surface water run-off from the site would not adversely impact on the integrity of the River Mease SAC.

There could be impacts on the channel and banks of the watercourse during construction works and therefore a condition could be imposed requiring submission of a construction management plan. Whilst the watercourse is within the large garden to The Woodlands, three dwellings could increase activity near to the watercourse and so it could be excluded from their curtilage.

On the above basis, compliance with the proposed conditions would ensure that construction works and activity on the site would not adversely impact on the integrity of the River Mease SAC.

Therefore it can be ascertained that the proposal will, either alone or in combination with other plans or projects, have no adverse effect on the integrity of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI, and would comply with the Habitat Regulations 2017, the NPPF and Policies En1 and En2 of the Local Plan.

Land Stability and Contamination

Concerns have been raised regarding the stability of the site and impacts on nearby dwellings on Bath Lane previously affected by subsidence. The Planning Practice Guidance states that if there is a risk of subsidence the proper design of buildings and their structures to cope with any movement should be ensured. However the site is not within the Coal Authority's Development High Risk Area and therefore a coal mining risk assessment is not required. The Council's Land Contamination Officer has requested the imposition of conditions relating to contaminated land. The Council's Building Control team have advised that whilst there are unlikely to be any issues associated with land stability a ground investigation report would be required under the Building Regulations. The dwellings would be over 75 metres from the dwellings on Bath Lane. As such it is considered that a reason for refusal in respect of land stability could not be justified under Policy En6 of the Local Plan and paragraphs 178 and 179 of the NPPF.

Bin Collection

The Council's Waste Services team advises that occupiers of the dwellings would be required to present their bins at the end of the access drive adjacent to the public highway (i.e. Bath Lane) for collection. The bin collection area would be close to the front boundary and access drive which is acceptable to the Waste Services team.

In this case the dwellings would be 100 metres from the bin collection area. Whilst the Building Regulations require bins to be stored no more than 25 metres from a bin collection area, which

would be exceeded in this case, this is separate legislation and there is no requirement in the Local Plan and Good Design SPD to meet these requirements in such a situation. The bin collection arrangements would be similar to those for residents of the four existing dwellings who it is understood leave their bins for collection by the roadside. There would also be a fairly level route through the site (i.e. no steep gradients). The bin collection area would not adversely impact on visual and residential amenities, protected trees or highway safety as outlined earlier in this report. Alternatively residents of the dwellings may leave their bins for collection by the roadside (similar to existing residents). If this did occur bins should be removed once emptied, and if not the Council has powers to require bins to be removed from the public highway. It is therefore considered that there is not any policy justification to warrant a refusal of permission in respect of bin collection and storage. A note to applicant could be imposed advising that residents would need to leave their bins for collection in the bin collection area or by the roadside.

Other Matters

Impact on property values are not material planning considerations and therefore cannot be given any weight in the determination of this application.

In respect of the concerns raised regarding erroneous information in the application submission, the submitted information together with all of the information gathered when undertaking the site visits and assessing the application, as well as the information set out in amended and additional plans and documents, have allowed for the application to be fully and adequately assessed.

Amended plans have been received which show the correct position of the red line boundary and the correct position and dimensions of Devana House and its garage. The means of attaching of Plot 1's garage to the garage to Devana House is not a material planning consideration, and may be dealt with under the Building Regulations and/or the Party Wall Act, as well as possibly being a civil matter.

Matters relating to the implementation of the 2007 planning permission are not relevant to the consideration of this planning application.

Conclusion

The proposal is acceptable in principle. Reasons for refusal in respect of loss of greenfield land, impact on the character and visual amenities of the area, residential amenities, protected trees, flood risk and drainage and land stability could not be justified in this case. The proposal would not adversely impact on highway safety, ecology/protected species and the River Mease SAC/SSSI. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

RECOMMENDATION, PERMIT subject to the signing of a Section 106 Agreement and conditions relating to the following matters:

- 1 - time limit
- 2 - approved plans
- 3 - construction hours
- 3 - watercourse and tree protection during construction
- 4 - surface water drainage
- 5 - contaminated land
- 6 - ground and floor levels
- 7 - materials and details
- 9 - bin collection
- 10 - landscaping and boundary treatments
- 11- highway safety
- 12 - removal of permitted development rights, obscure glazing to windows
- 13 - residential curtilage