

Erection of detached two-storey dwelling with detached garage

**Report Item No
A3**

The Woodlands Bath Lane Moira Swadlincote Derby DE12 6BP

**Application Reference
14/00417/FUL**

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

**Date Registered:
10 July 2014**

**Applicant:
Mrs J Hall**

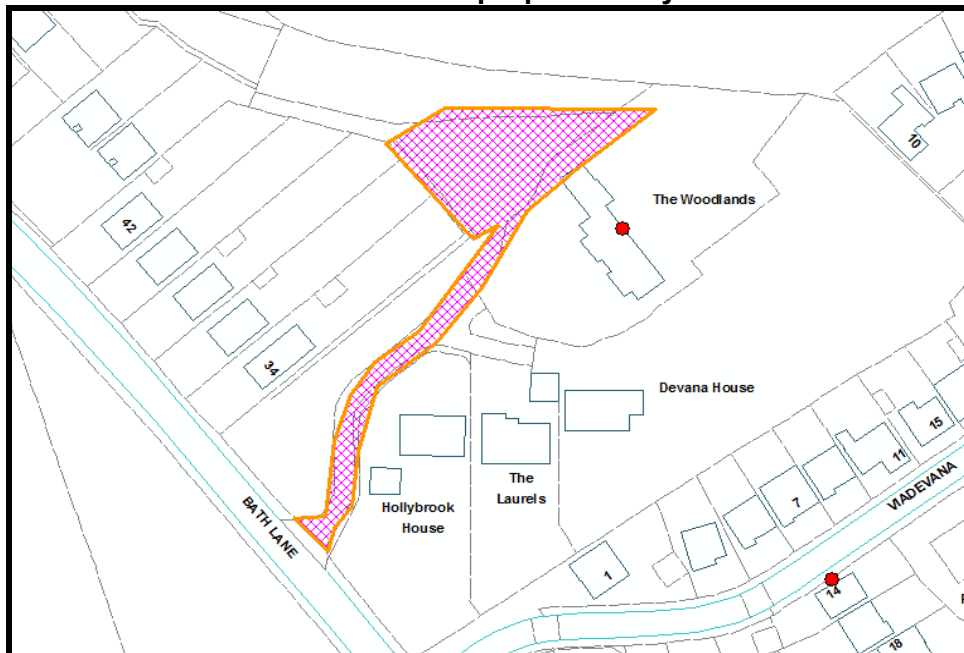
**Consultation Expiry:
17 March 2020**

**Case Officer:
Jenny Davies**

**8 Week Date:
4 September 2014
Extension of Time:
None Agreed**

**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 a detached two storey dwelling with garage at The Woodlands, Bath Lane, Moira. The site is part of the garden to The Woodlands. The dwelling would be served by an existing access off Bath Lane.

Consultations

Members will see from the main report below that a total of 34 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 majority of the application site (including the dwelling) is located within the Limits to Development as defined in the adopted Local Plan, with the northern part of the site located outside the Limits to Development. 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 a dwelling 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 a detached two-storey dwelling with detached garage at The Woodlands, Bath Lane, Moira. The application site lies on the north eastern side of Bath Lane, in the north western corner of a wider site associated with The Woodlands. The application site is adjoined by dwellings to the south east and south west, with vegetation, trees and woodland adjoining to the north and north west.

An application for the erection of three detached two storey dwellings and garaging (14/00415/FUL) on the southern 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 located alongside the south western boundary and other mature trees on its northern and north western parts protected by Tree Preservation Order T284. The land rises up by just over two metres towards the northern boundary.

The dwelling would be sited centrally on the site, with its first floor accommodation within the roofspace, with the garage adjacent to the south eastern boundary. Five protected trees (one ash, three poplar and one chestnut) are proposed to be removed.

Access would be gained via the existing access and private drive off Bath Lane that currently serves The Woodlands and three other dwellings. Parking and turning space would be provided to the front of the dwelling.

A private right of way which serves a number of dwellings on Bath Lane runs through the wider site and through the application site alongside the rear boundaries to Nos. 34 to 42 Bath Lane.

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 majority of the site lies within the Limits to Development as identified in the adopted North West Leicestershire Local Plan (2017) with the northern part of the site lying outside the Limits to Development. The dwelling, garage and parking/turning area would be sited on the part of the site that lies within the Limits to Development, with no built development proposed on the area outside the Limits to Development, which would form part of the garden. The site is considered to lie within Flood Zone 1. The site also lies within the catchment area of the River Mease Special Area of Conservation. An unnamed watercourse runs alongside the wider site's south eastern boundary which is a tributary of the River Mease. 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

25 Neighbours have been notified.

Site Notice displayed 19 November 2018.

Press Notice published Burton Mail 30 July 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 initially had no objections subject to submission of clearer copies of surveys to clarify the loss of trees. 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.

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 has no objections.

Third Party Representations

Councillor Bridges, who is the ward member, has advised 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.

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

Design and Visual Impact

- impact on landscape and surroundings;

Residential Amenities

- direct overlooking/loss of privacy to dwellings and gardens on Bath Lane, Via Devana and within The Woodlands site;
- loss of light to dwellings on Via Devana;
- impacts from noise and lighting;
- impact on tranquillity;
- 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 is unsafe due to lack of passing places, footways 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

- impacts on and loss of trees protected by tree preservation order (TPO);
- trees have been destroyed on the site in the past;
- has the scheme been validated by the Council's Tree Officer;
- more trees should be planted rather than disturb trees that have taken years to establish;
- impact on habitats and wildlife;

Flood Risk

- 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;
- moderate rain flows from the site have resulted in flooding of a nearby garage;
- 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;
- 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;
- 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;
- no meaningful contribution to local housing needs;
- impacts on existing infrastructure;
- no local economic or social benefits to the community and local or wider economy;
- development does not meet any of the criteria set out in the NPPF relating to environmental objectives;
- 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;
- impact on property values;
- impact on views;
- 12 foot wide right of way for the bungalows on Bath Lane that runs through the site is shown blocked by a proposed fence;
- the applicant has no legal right to close off the right of way;
- if the Council approve a scheme with a right of way shown blocked it would be guilty of condoning a breach of civil law which could result in a civil action against the applicant and possibly the Council as well as a judicial review;
- the Council has to refuse the application as it knows a permission cannot be implemented in the manner shown on the plans;
- 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
S3 - Countryside
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 majority of the application site lies within the defined Limits to Development within the Local Plan, although the northern part of the site lies outside the Limits to Development and is therefore within the countryside. The dwelling, garage and parking/turning area would be sited on the part of the site that lies within the Limits to Development. Policy S2 advises that in villages such as Moira a limited amount of growth will take place within the Limits to Development.

Whilst residential development is not a form of development permitted in the countryside under Policy S3 of the Local Plan (unless under specific circumstances that do not apply here), the part of the site within the countryside would form part of the garden for the proposed dwelling and no built development is proposed within this area. As this area is already part of the garden to The Woodlands, the use of this part of the site would not change and is therefore acceptable in principle.

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. Some garden land would be lost but the majority of the land around the dwelling would remain as garden. A large garden area would be retained to The Woodlands taking into account both this proposal and the separate application for three dwellings. Whilst the dwelling would be positioned 80 metres from the road, the development would be well related to The Woodlands, which is set further back into the site. The dwelling would not be at a significantly higher land level than other dwellings or nearby roads. 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 several trees on the site protected by Tree Preservation Order T284 (TPO), which make a positive contribution to the character and visual amenities of the area. 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.

Amended plans have subsequently been submitted which show that five of these protected trees would be removed; a group of four trees (one ash and three poplars) at the northern

corner of the site and one chestnut tree towards the southern boundary. The Tree Officer has not raised objection to the removal of these five trees, which are considered to make a more limited contribution to the character and visual amenities of the area compared to other trees within the site, as they are not visible on their own from public viewpoints and are always seen alongside, and screened by, other protected trees. A condition could be imposed to secure replacement tree planting.

The Tree Officer also has no objections to the amended layout which shows that the majority of trees on the site would be retained, including the row of lime trees alongside the boundary with the dwellings on Bath Lane, and two trees close to the north eastern boundary. These are the trees on the site that are considered to make the strongest contribution to the character and visual amenities of the area.

The dwelling would have a large footprint but would be smaller than The Woodlands and not dissimilar to the three existing dwellings on the front of the wider site. The dwelling would have an unusual design that does not reflect other nearby dwellings. There is however a mix in the scale and design of dwellings in the area, and as noted above there are limited views of this part of the site with good screening in place. Its mass would also be broken up as a result of its design. The garage would be small in scale and of a simple design.

A bin collection area is proposed close to the junction of the access drive with Bath Lane which would also serve the three dwellings proposed under the separate application (14/00415/FUL), which is considered in detail in the section of this report titled 'Bin Collection and Storage'. The bin collection area would be set back behind the front boundary and so would not be prominent in the streetscene.

It is therefore considered that whilst five protected trees would be removed and the design of the dwelling would not reflect the positive characteristics of other dwellings in the locality, on balance the proposal, both on its own and cumulatively with the separate three dwellings, 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 S3, 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. 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 is unlikely to result in significant impacts on residential amenities from noise, disturbance, smells and lighting. The Council also has separate powers under the Environmental Protection Act to deal with noise, disturbance, smells and lighting.

The dwelling would be at least 50 metres from the three dwellings within The Woodlands site (Hollybrook House, The Laurels and Devana House) and at least 38 metres from their front gardens.

The dwelling would be 16 metres from the nearest habitable room windows to The Woodlands. The dwelling's side (south eastern) elevation would contain a first floor window serving a bedroom which would be 16 metres from The Woodlands' nearest windows. However this elevation would not face directly towards The Woodlands' windows, with the nearest room being served by at least two windows. Whilst the dwelling would be 9.5 metres from The Woodlands' rear garden, it would not be located in close proximity to the private amenity space and The Woodlands' retained garden would still be extensive in size. Whilst on the boundary with The Woodlands, the garage would be single storey and closest to its garages.

The dwelling would be eight metres from the gardens to Nos. 34 and 36 Bath Lane and 13 metres from the garden to No. 38 Bath Lane, and at least 40 metres from the dwellings themselves, which are all single storey and have rear conservatories and rear windows serving habitable rooms. However the gardens are long (at least 30 metres), and the existing close boarded fencing on the boundary and line of protected trees alongside the boundary would provide some screening. The front (south western) elevation would have one rooflight at first floor (in its roofslope) serving a bathroom which could be conditioned to be obscure glazed. This elevation would also not face directly towards the dwellings and gardens on Bath Lane.

The first floor of the side (north western) elevation would contain one large window with a Juliet balcony serving a bedroom, along with an adjacent balcony. This window and balcony would face towards the end parts of the gardens on Bath Lane, and would also not face directly back to back with the dwellings. Amended plans have been received which show parts of the window to be obscure glazed, and the design of a Juliet balcony prevents it from being used as a balcony. These plans also show a screen along the north western edge of the balcony to prevent direct overlooking of the dwellings and gardens, which could be secured by condition.

Whilst there may be some overlooking of the gardens to the dwellings on Bath Lane, 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 three dwellings were approved would result in a total of five or eight dwellings on the site.

The County Highway Authority (CHA) initially referred to the comments it made in respect of a previous application for one dwelling on the site (10/00291/FUL) where it had no objections subject to conditions. However that proposal related to a dwelling that would have replaced another dwelling approved in 2007 and so there would have been no increase in the amount of traffic.

Under the CHA's Standing Advice it does not need to be consulted on applications for a single

dwelling. The CHA has also not raised any objections to the application for three dwellings and also did not object to the withdrawn application for six dwellings which would have resulted in seven dwellings on the site.

However as there could be a total of eight dwellings across the site if both current applications were approved, and concerns have been raised by residents regarding the safety of the access and driveway, in particular due to its width, the CHA has been asked to provide comments on the application.

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. 4.25 metres, and so the CHA has requested imposition of a condition requiring this access width. A condition could be imposed on the application for three dwellings requiring the access width for that proposal alongside the existing dwellings, e.g. 4.8 metres.

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 narrows to below four metres at the point where it would only serve the proposed dwelling.

The CHA also advises that the parking and turning space is 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

Mature lime trees located alongside the south western boundary and other mature trees on its northern and north western parts are protected by Tree Preservation Order T284 (TPO). The 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. The trees in the north western corner of the wider site are outside the application site and no works are proposed to the woodland that lies beyond the site's north eastern boundary.

An amended tree survey and tree plan have been submitted, along with amended plans which show that five of these protected trees are to be removed; one ash and three poplars at the northern corner of the site and one chestnut tree towards the southern boundary. The impact on the character and visual amenities of the area from the loss these protected trees is considered earlier in the report in the section relating to 'Design and Visual Impact'.

The chestnut tree would be removed as it would be too close to the dwelling and would be likely to cause future incompatibility problems. As a result of the removal of the four trees in the northern corner, the dwelling would have a rear garden with areas that would not be shaded by

trees. The dwelling and garage would be outside the root protection areas to the ash and poplar trees close to the northern boundary and the row of lime trees. Whilst the canopy of the ash tree would be around two metres from the dwelling, it would predominantly be close to non-habitable rooms and would be to the north east of the dwelling so should not result in significant overshadowing. The poplar tree would be further away to the east. The dwelling should largely be outside the canopies to the lime trees. There would also be an open aspect from the dwelling towards the south east.

The driveway would now run through the existing parking/turning area to The Woodlands and then crosses its north western boundary to enter the application site. The Tree Officer is satisfied with this amended route which moves the driveway away from the protected trees.

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 be imposed relating to submission of 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/Protected Species

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 lies 67 metres to the south east 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 watercourse and canal are some distance from the site with intervening land uses and so it is unlikely that species using these water bodies would be found on the site. 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, some 67 metres to the south east of the site, runs through the wider 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, 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 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 the three dwelling scheme). 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 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 dwelling. 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 site is not within an area at low, medium or high risk of surface water flooding based on the EA's flood risk map. 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 dwelling is 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 wider site's south eastern boundary, some 67 metres to the south of the application site. 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 site is also located close to the tributary which could 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.

The flows from the dwelling need 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 dwelling 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.

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.

The application site is 67 metres from the watercourse and there is unlikely to be any direct impact from the proposal, either from construction works or increased activity on the site, on its channel and banks, as it is separate from the site. On this basis, construction works and increased 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 has also 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 dwelling would also be at least 40 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 dwelling 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 dwelling would be 80 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 dwelling 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

A private right of way which serves a number of dwellings on Bath Lane runs through the wider site and the application site alongside the rear boundaries to Nos. 34 to 42 Bath Lane.

Concerns have been raised by occupiers of some of these dwellings that the proposal would block this right of way. The original plans showed a post and rail fence along the site's north western boundary that would cross the right of way. However an amended layout plan has been submitted which no longer shows a treatment along this boundary, and this boundary is now annotated on the layout plan as 'Application Site Boundary.' A condition could be imposed requiring submission of the details of the boundary treatments to the application site, and it would be expected that any treatment proposed to this boundary would leave a gap for the private right of way. A note to applicant could also be imposed to this effect.

One of the objections states that if the Council approves a development that showed this right of way to be blocked that the applicant and Council were at risk of being sued and the Council was at risk of a judicial review, as to approve such a scheme would show the Council condoning a breach of civil law.

The government's Planning Practice Guidance document states that "*Land Ownership, including any restrictions that may be associated with land, is not a planning matter*". The Council's solicitors advise that as a matter of general principle, planning is concerned with land use from the point of view of the public interest and is not concerned with private rights as such. This general principal is caveated on the basis that the public interest may require the interests of individual occupiers to be considered. In *Robinson v Secretary of State for the Environment* the court stated that the guiding principle appeared to be in each case whether the private interest in question requires to be protected in the public interest. Therefore it is a matter of planning judgement whether the protection of the private right of way is in the public interest.

The private right of way provides access to the rear gardens of a maximum of seven private dwellings, which could also be accessed by other means, e.g. through the dwellings themselves and their front gardens/driveways. Approving a planning application does not affect any legal rights that may exist, and so the beneficiaries of the right of way could pursue a separate civil action should their rights be affected if this application was approved. Therefore notwithstanding that the layout plan has now been amended so that the right of way is no longer shown to be blocked by a fence, it is considered that protection of this right of way would not be a private interest that warrants protection in the public interest through the planning system, and is therefore not a material planning consideration.

Should a boundary treatment scheme be submitted as part of a discharge of condition

application that does not show a gap or entry through any treatment proposed for the site's north western boundary, then the Council would have to have regard to the guidance and case law set out above.

Impact on property values and views 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.

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 - tree protection during construction
- 4 - surface water drainage
- 5 - contaminated land
- 6 - ground and floor levels
- 7 - materials and details
- 8 - details of opening and balcony screen, and use of balcony
- 9 - bin collection
- 10 - landscaping and boundary treatments
- 11- highway safety
- 12 - removal of permitted development rights, obscure glazing to windows