

**Erection of three detached dwellings and three double garages (one attached and two detached) with associated access, landscaping and drainage**

**Land At Drum And Monkey Lane Packington Leicestershire LE65 1XQ**

**Report Item No A1**

**Application Reference 19/02102/FUL**

**Grid Reference (E) 436410  
Grid Reference (N) 314785**

**Applicant:**  
Sean Hoult

**Case Officer:**  
Jenny Davies

**Recommendation:**  
**PERMIT subject to S106 Agreement**

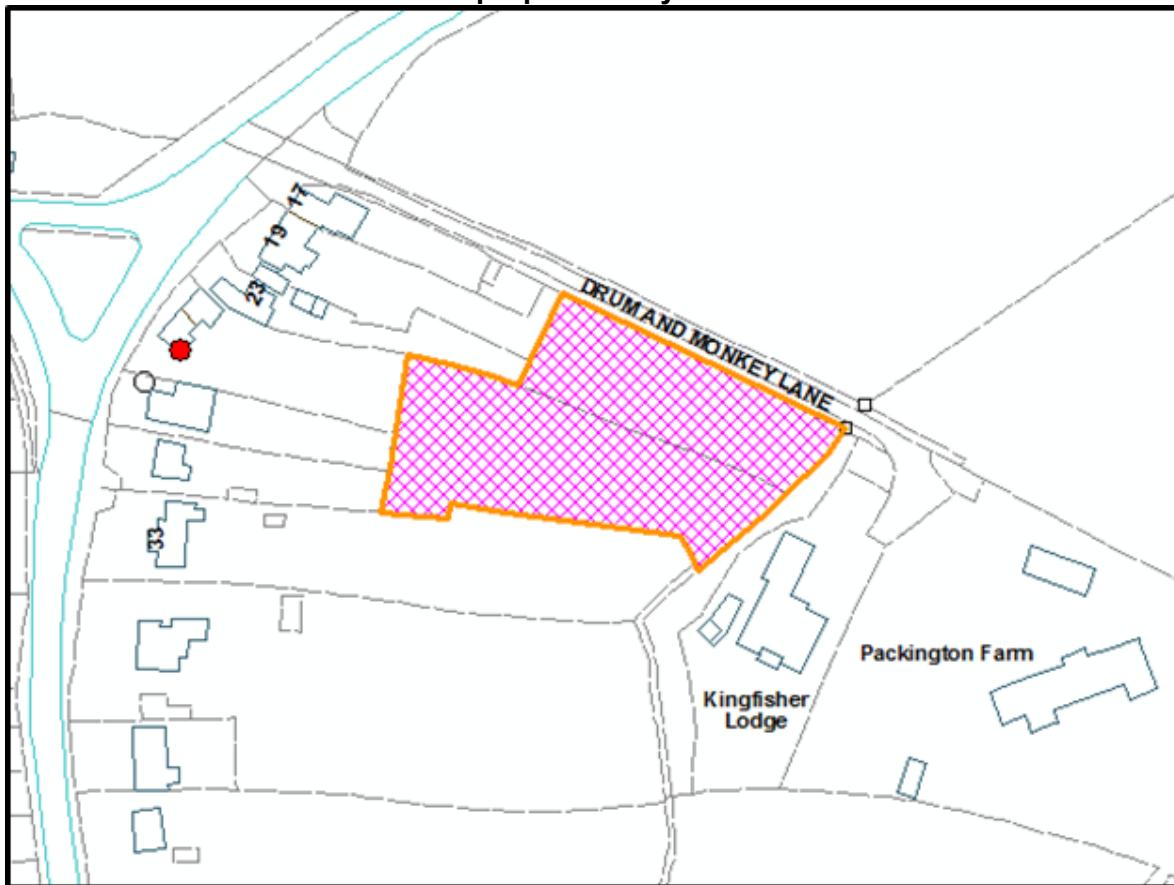
**Date Registered:**  
26 November 2019

**Consultation Expiry:**  
4 November 2020

**8 Week Date:**  
21 January 2020

**Extension of Time:**  
4 November 2020

#### **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 Smith on the grounds of being out of keeping with the area and highway safety. Councillor Rushton also has an interest in the site.

### Proposal

Planning permission is sought for the erection of three detached dwellings and three double garages (one attached and two detached) at land at Drum and Monkey Lane, Packington. The site is currently grassed with some trees, hedgerows and vegetation on its boundaries and within the site, and may have previously been part of the gardens to two dwellings on Normanton Road. The dwellings would be served by a new access off Drum and Monkey Lane.

### Consultations

Members will see from the main report below that a total of 33 letters of representation have been received from residents, which raise objections. Packington Parish Council raises objections. Concerns have also been raised by the County Ecologist and the Council's Conservation Officer and Tree Officer. 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
- Bin storage and collection arrangements
- Impact on the Packington Conservation Area and the setting of listed buildings
- Impact on residential amenities
- Impact on highway safety
- Impact on a public footpath
- Impact on trees and hedgerows
- Impact on ecological features and protected species
- 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 dwellings and three double garages (one attached and two detached) with associated access, landscaping and drainage at land at Drum and Monkey Lane, Packington. The site lies on the southern side of Drum and Monkey Lane and is adjoined by dwellings and gardens to the south and west, with open fields lying to the north on the opposite side of the lane. A watercourse adjoins the site to the east, with dwellings and gardens beyond.

It is not clear whether the site previously formed part of the gardens to No. 23 and 31 Normanton Road, and this is considered in more detail later in the report in the 'Assessment' section.

The site is currently grassed with a mature ash tree on the northern boundary, which is protected by Tree Preservation Order T481. The protected ash tree and most of the frontage hedgerow would be retained, along with the hedgerow on the southern boundary and trees in the south eastern corner and close to the western boundary. Trees are proposed to be removed close to the southern and western boundaries and in the north eastern corner. A hedgerow that ran through the centre of the site has been removed, and other trees and vegetation within the site have been removed. There are also other trees and vegetation on adjacent land, including within the gardens to the west of the site. The land slopes down by approximately two metres from west to east towards the watercourse and very gradually from north to south.

The application as originally submitted proposed five detached dwellings on the site with two new accesses onto the lane. The dwellings were originally shown to be served by package treatment plants, which were then amended to cesspools.

Following officer and consultee concerns raised in respect of layout and design, and impacts on the Packington Conservation Area, residential amenities, highway safety, the protected tree and other vegetation, drainage and flood risk and the River Mease Special Area of Conservation, amended plans have been received to reduce the number of dwellings to three, and for the dwellings to be served by the mains sewer system. Therefore the cesspools no longer form part of the proposal.

The dwellings are proposed to connect to a private pumping station on the site which would discharge to a rising main running through the garden to No. 31 Normanton Road, which would connect into No. 31's foul drainage system and then the adopted mains sewer system.

One of the dwellings (Plot 1) would be located at the western end of the site, with the other two (Plots 2 and 3) fronting onto Drum and Monkey Lane. Detached double garages are proposed to Plots 1 and 3 with an attached garage to Plot 2.

Drum and Monkey Lane is an unadopted road, and leads off the public highway in a south easterly direction where Normanton Road and Coleorton Lane meet. Public footpath O64 runs along Drum and Monkey Lane. Currently the lane serves two dwellings that have been built on the former poultry farm site, and permission also exists for another dwelling there. Vehicular

access is also available from the lane to the site and to the rear gardens/parking areas to Nos. 17 and 19 Normanton Road.

The existing access onto the lane would be closed and a new access would be formed at the western end of the northern boundary, serving all three dwellings. A new pedestrian access to serve Plot 3 would also be formed at the eastern end of the northern boundary. A turning area is proposed close to the southern boundary.

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). Packington House on Spring Lane lies around 230 metres to the south east and No. 9-11 Normanton Road lies around 90 metres to the north west, which are both Grade 2 listed buildings. The Packington Conservation Area lies to the west of the site and runs along part of its western boundaries. Nos. 17, 19, 23 and 25/27 Normanton Road are identified in the Packington Conservation Area Appraisal as unlisted buildings of interest.

The site lies within Flood Zone 1. The eastern parts of the site and Drum and Monkey Lane lie within areas at low to high risk of surface water flooding. The site also lies within the catchment area of the River Mease Special Area of Conservation and the adjacent watercourse is a tributary of the Gilwiskaw Brook, which in turn is a tributary of the River Mease.

*Planning History:*

An outline application for the erection of a single storey detached dwelling and detached garage on the northern part of the site (19/01063/OUT) was withdrawn in July 2019. Other planning history relates to extensions to No. 23 Normanton Road and for works to two ash trees that were erroneously submitted, as the trees are not in the Conservation Area.

**2. Publicity**

11 Neighbours have been notified.

Site Notice displayed 11 September 2020.

Press Notice published Leicester Mercury 18 December 2019.

**3. Summary of Consultations and Representations Received**

**Statutory Consultees**

Packington Parish Council objects on the following grounds:

*Design and Visual Impact and Historic Environment*

- backland development contrary to policy;
- poor design and out of keeping with character of the area;
- impacts on the Packington Conservation Area and Packington House, a Grade 2 listed building;

*Bin Storage and Collection*

- up to 70 waste receptacles would be left at bin collection area;
- bin collection area is in private ownership and is not highway land;
- impacts from bin collection point on picturesque entrance to the village, highway safety, existing parking area, access into adjacent field and arson risk

*Residential Amenities*

- overbearing impact;

*Highway Safety*

- increase in number of dwellings and vehicles using Drum and Monkey Lane;
- previous application for three dwellings nearby was refused on highway safety issues;
- concerns regarding access to Plot 3 for delivery vehicles;
- potential blockage of the lane;
- failure to provide access for service and emergency vehicles and safe access to the site for all;
- lack of information to assess application;
- application should be refused on highway safety grounds;

*Public Footpath*

- Drum and Monkey Lane is a public footpath and not a road;
- conflicts between users of the public footpath and additional vehicle movements, speed of vehicles and lack of turning space;

*Ecology, Trees and Hedgerows*

- mature trees and ancient hedgerows have been cleared from the site;
- TPO must be enforced and protected ash tree must remain;
- no further stripping of trees and hedgerows and highways and ecology reports should be reviewed;
- removal of hedgerows to provide correct visibility splays;
- ancient hedgerow is of ecological value and of value to protected species;
- recommendations in the ecology report should be followed;

*Drainage and Flood Risk*

- inaccurate information in the Flood Risk Assessment which is based on statistical assessment and general information rather than local knowledge and experience;
- high water table and high levels of ground water in the area;
- the site is subject to frequent flooding and the watercourse frequently bursts its banks;
- history of surface water flooding from adjoining farmland
- increased flooding across the village, in particular on Spring Lane and in February and March 2020, will be exacerbated;
- lack of investigative trial pits and evidence to demonstrate low risk of ground water flooding;
- surface water flow routes should not be impeded and floodwater should not be deflected onto other properties or significantly raise flood levels;
- additional buildings would remove land that absorbs rainfall;
- soakaways cannot be used on the site due to the presence of clay;
- surface water drainage system will be ineffective;
- system needs to be in place for future management and maintenance of the SuDS;
- ownership and responsibility for future maintenance of the watercourse should be identified;
- concerns regarding compliance with the general binding rules for private sewage systems and whether an Environmental Permit has been obtained;

*River Mease SAC*

- no River Mease statement with the application;
- no reference to the River Mease Developer Contributions Strategy (DCS) and whether capacity available;
- has money already collected under the DCS been spent;
- proposal should be refused for similar reasons relating to the River Mease SAC as the four dwellings at the corner of Spring Lane and Normanton Road;

- concerns regarding maintenance of the private foul drainage pump and pipework the mains sewer;
- foul and surface water cannot discharge into the watercourse as it is an SSSI/SAC;

*Other Matters*

- Councillor Rushton's interest in the site has not been declared;
- application form has not been filled in correctly;
- the Parish Council is awaiting a substantive response in connection with Councillor Rushton's personal interest in the application
- vehicle rights of access would be needed along the lane as it is a legal right of way only for the existing dwellings;
- boundary of the site is shown incorrectly.

The Parish Council has also submitted photographs alongside some of its comments on the application.

The Parish Council has also requested a site visit so that parish councillors and members of the public can meet planning officers, and that members of Planning Committee undertaken a site visit prior to considering the application.

**Leicestershire County Council - Archaeology** recommends the imposition of conditions.

**Leicestershire County Council - Ecology** initially objected in respect of the impact on a Local Wildlife Site hedgerow and lack of biodiversity net gain. Following the submission of amended plans, this objection has been withdrawn. Further concerns have been raised in respect of the soft landscaping scheme.

**Leicestershire County Council - Highway Authority** initially requested more information and following the submission of amended plans has no objections.

**Leicestershire County Council - Lead Local Flood Authority** has not raised any objections and refers to its Standing Advice.

**Leicestershire County Council - Minerals Planning Authority** has no comments to make.

**Leicestershire Police** has no objections in principle and makes a number of recommendations in respect of reducing the opportunities for crime.

**NWLDC - Conservation Officer** has raised concerns in respect of the layout and design of the five and three dwelling schemes.

**NWLDC - Environmental Protection** has no environmental observations.

**NWLDC - Housing Services** requested the provision of affordable housing on the site.

**NWLDC - Tree Officer** has raised concerns regarding the impact on the protected ash tree, the tree protection plan and the soft landscaping scheme.

**NWLDC - Waste Services** has provided advice in respect of bin storage and bin collection arrangements.

No comments have been received from Severn Trent Water. Any comments received will be reported on the Update Sheet.

### **Third Party Representations**

33 letters of representation have been received (some of which include photographs) from local residents. 28 of these letters have been received from three households. The letters of representation object on the following grounds:

#### *Principle*

- lack of compliance with Local Plan, NPPF and other strategies;
- the village infrastructure cannot sustain any more houses;
- surplus of new and existing housing in the village;
- no need for more housing in the village;
- no need for large five bed houses;
- areas of brownfield land are available for future housing needs;
- lack of sustainable features;
- lack of utilities/services to serve the site, e.g. no gas, sewers, water supply;
- safety of gas tanks;

#### *Design and Character of the Area*

- detrimental impact on rural and historic character of the lane, village and countryside;
- backland development that is out of character with existing pattern and density of development;
- overdevelopment;
- dwellings are too large and would dominate area;
- loss of green space;
- lack of screening;
- limited soft landscaping scheme;
- fencing is not appropriate;

#### *Bin Storage and Collection*

- private waste collection service not acceptable;
- first suggested bin collection area is where bins are left by No. 17 Normanton Road;
- amended bin collection area is over 100 metres from the site and is not in public highway;
- at least 90 waste/recycling bins, boxes and bags from seven dwellings would need to be left at the western end of the lane for emptying as waste collection lorries will not travel along the lane;
- bins will be left here for long periods;
- not enough space for bins from this number of properties;
- impacts from bin collection point on character and visual amenities of area, residential amenities, highway safety, existing parking area and access into adjacent field and health and safety;

#### *Historic Environment*

- impact on historic plot pattern;
- impact on old properties on Normanton Road;
- historic importance of public footpath that used to pass through the site;
- loss of and impact on ancient hedgerows;
- poorly informed assessment of historic environment;

#### *Residential Amenities*

- impact on health and wellbeing of residents and enjoyment of their homes, in particular during this coronavirus pandemic and to the elderly occupier of No. 17 Normanton Road;

- overlooking/loss of privacy;
- oppressive outlook and overbearing impact;
- overshadowing/loss of light;
- development will extend along most of garden boundary;
- impact no peace and tranquility;
- exacerbate noise and pollution impacts from the A42 and the airport and from HS2 in the future;
- noise and debris impacts during construction works;

*Highway Safety*

- Drum and Monkey Lane is unadopted and single track with no footway and used by 20-30 vehicles per day;
- additional traffic would be generated above the level considered acceptable when permission granted for the dwellings on the former poultry farm site;
- lane has no capacity for increase in traffic;
- use of the lane by existing dwellings does not justify development of the site;
- reduction in number of dwellings would not materially reduce occupancy levels;
- only five dwellings can be served by the lane due to its width;
- lane is too narrow for larger vehicles;
- access along the lane to existing dwellings cannot be blocked;
- lack of visibility and line of sight along the lane;
- clear line of sight needed along the lane;
- vehicle speeds along lane underestimated;
- potential for vehicle collisions and blockages;
- limited visibility at the site accesses;
- visibility splays at site access are insufficient;
- pedestrian access from Plot 3 would be dangerous;
- insufficient parking provision;
- position of parking to Plot 3;
- insufficient turning space, in particular for large vehicles;
- no turning space at the eastern end of the lane;
- vehicles for Plot 3 would need to reverse and turn within the lane;
- impact on owner of No. 17 Normanton Road whose house is immediately adjacent to lane;
- impossible to build on the site without causing an obstruction to the lane;
- speed of vehicles entering and leaving the village, proximity to 60 mph zone and recent collisions;
- lack of space and visibility at junction of lane with Coleorton Lane;
- no details provided of widening of junction of lane with Coleorton Lane;
- speed restrictions at entrance to village should be condition of planning permission;
- existing increase in traffic in the village will be worsened;

*Public Footpath*

- impacts on safety and enjoyment of users of popular public footpath that runs along Drum and Monkey Lane from:
- additional traffic (construction traffic and from dwellings);
- traffic reversing and turning on the lane;
- lack of separate footway;
- not enough space for cars and pedestrians to pass each other;
- dirt, dust and noise and hazards to health and safety;
- change in character of the lane;
  
- refusal of applications and appeals for land on Spring Lane, which is of similar nature to the

lane, on grounds of conflicts between vehicles and pedestrians and setting of precedent;  
 - potential for breach of section 34 of Road Traffic Act 1988;

#### *Trees and Hedgerows*

- trees and hedgerow have already been removed from the site and should be replaced;
- impact on remaining trees and hedgerows;
- no more trees or hedgerows should be removed;
- removal of hedgerows to provide correct visibility splays;
- no development should be within three metres of hedgerows as per government document;
- impact on hedgerow on northern side of Drum and Monkey Lane from turning vehicles;
- southern boundary hedgerow belongs to No. 33 Normanton Road and permission not given for removal of or impacts on this hedgerow;

#### *Ecology*

- detrimental impact on wildlife and their habitat from loss of trees, hedgerows and vegetation, construction work and impacts on watercourse;
- impact of light spill on bats;

#### *Flood Risk and Drainage*

- inaccurate information and no assessment of impact on existing dwellings in Flood Risk Assessment;
- the Council has a duty to protect the village and residents from flooding;
- high water table and groundwater levels at houses and gardens on Normanton Road;
- site acts as natural soakaway to alleviate flooding;
- increase in runoff from the site would flow into the watercourse;
- watercourse is frequently at capacity and cannot cope with additional water;
- erosion of watercourse;
- frequent waterlogging and flow of soil on nearby fields;
- increased flood risk to nearby properties and gardens;
- exacerbation of existing flooding within the village, including to houses on Spring Lane, Mill Street and Babelake Street;
- restriction on building on land adjacent to the watercourse;
- responsibilities for damage and disruption from flooding;
- inaccurate information regarding subsoil;
- surface water drainage scheme may not work or be ineffective;
- maintenance of shared surface water drainage scheme;

#### *River Mease SAC*

- pollution of the watercourse;
- impacts from package treatment plants and cesspools;
- no sewage connections available to village until 2025

#### *Other Matters*

- concerns regarding matters of governance, probity and conflict of interest relating to Councillor Rushton - these are summarised in more detail in the 'Other Matters' section of the report below;
- owners of Packington Farm and Kingfisher Lodge (on the former poultry farm site) financed the surfacing of Drum and Monkey Lane and maintain the lane, and own the surfacing and kerbing;
- refusal of access onto the surface of the lane for construction and delivery vehicles;
- damage to surface and kerbing from additional traffic, making it dangerous and create additional financial burden to owners of the surfacing;
- during purchase of the former poultry farm site proof had to be provided of right of vehicular

access along Drum and Monkey Lane;

- applicant does not have a legal right of vehicular access to the site;
- owners of Packington Farm had to go through process of establishing prescriptive easement for vehicular movements along the lane;
- unjustifiable increase in the burden of the prescriptive easement which should not be permitted;
- vehicles would be using the lane illegally and so legal action would be taken;
- apparent intention to damage property not within the applicant's ownership;
- widening of the lane would create an area for litigation if accidents or damage occurred;
- ownership of Drum and Monkey Lane is unknown;
- land outside applicant's ownership within the red line boundary;
- breach of deeds to No. 31 Normanton Road;
- potential for further development on other land to rear of houses on Normanton Road;
- security concerns and potential for increase in crime;
- no affordable housing proposed;
- setting of precedent.

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 - June 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, 63, 68, 70, 73, 74 and 78 (Delivering a sufficient supply of homes)

Paragraph 91, 92 and 98 (Promoting healthy communities)

Paragraphs 102, 103, 108, 109 and 110 (Promoting sustainable transport)

Paragraphs 117, 118, 122 and 123 (Making effective use of land)

Paragraphs 124, 127, 128 and 130 (Achieving well-designed places)

Paragraphs 148, 150, 153, 155 and 163 (Meeting the challenge of climate change, flooding and coastal change)

Paragraphs 170, 175, 177, 178, 179 and 180 (Conserving and enhancing the natural environment)

Paragraphs 189, 190, 192, 193-197 and 199-201 (Conserving and enhancing the historic 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 this application:

S1 - Future Housing and Economic Development Needs

S2 - Settlement Hierarchy

D1 - Design of New Development

D2 - Amenity

H4 - Affordable Housing

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  
He1 - Conservation and Enhancement of North West Leicestershire's Historic Environment  
Cc2 - Water - Flood Risk  
Cc3 - Water - Sustainable Drainage Systems

**Adopted Leicestershire Minerals and Waste Local Plan (September 2019)**

The Leicestershire Minerals and Waste Local Plan forms part of the development plan and the following policy is relevant to the determination of this application:

Policy M11: Safeguarding of Mineral Resources

**Other Guidance**

Sections 66(1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990  
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  
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)  
Packington Conservation Area Study and Appraisal - September 2001  
DEFRA Rights of Way Circular (1/09) - October 2009  
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) and the adopted Leicestershire Minerals and Waste Local Plan (2019).

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

Concerns have been raised that there is no need for the proposed housing, as there is sufficient housing to buy in Packington and sufficient housing land in the District. The NPPF requires that the Council should be able to identify a five year supply of housing land with an additional buffer of 5%, 10% or 20% depending on its previous record of housing delivery, and the Council is able to demonstrate a five year supply of housing (with 20% buffer) against the housing requirement contained in the Local Plan. The site will however contribute to the Council maintaining a five year housing land supply in the District.

In terms of social sustainability Packington provides a range of day to day facilities, e.g. a primary school, shop, church, village hall, café, public house and play area/recreation ground, along with bus stops served by a limited hourly bus service. It is noted that some of these services are operating a reduced service due to the coronavirus pandemic and that the pub is up for sale, but all are still open. These services/facilities are within 800 metres to one km (preferred maximum walking distance) of the site.

Whilst there is no footway or lighting along Drum and Monkey Lane Lane and it is single track, it has a low traffic flow and is a public right of way. Footways and lighting are available from Normanton Road, some 65 metres away, and onwards into the village. As such there are some opportunities to walk to the village from the site along a route which is already in use by pedestrians. The centre of Ashby-de-la-Zouch is also located approximately 2.5km from the site, where a wider range of services can be found, and which is considered to be accessible on foot or by cycling. Therefore, it is considered that occupiers of the dwellings 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, and when taking into account other sites that have been granted planning permission since 2014 or are currently proposed in the village (totalling 50+ dwellings), it is considered that the proposal would not result in unsustainable demands on local services and facilities. Whilst the site may not be served by mains gas, electricity or water no evidence has been submitted to demonstrate that these services could not be installed. There are also parts of the District without mains gas where gas/oil tanks are used. The proposal would also have limited economic benefits which would include local construction jobs and helping to maintain local services in the area.

In terms of environmental sustainability, the submitted Planning Statement states that the site is part of the established rear gardens to existing dwellings. Garden land in built up areas is excluded from the definition of previously developed land set out in the NPPF. It is not clear from the available evidence whether the site was previously garden land but it has now been separated from the adjacent dwellings. It is also not considered that the site formed part of the curtilages to nearby dwellings. Regardless of its status the site is greenfield.

The NPPF encourages the effective use of land in meeting the need for homes, and as much use as possible of previously developed land, and sets out that the case should be considered for the use of policies to resist inappropriate development of residential gardens. As such, as set out in more detail below, some limited harm would arise from the loss of greenfield land. However, the proposal would not result in any unacceptable impacts on the natural, built or historic environment.

Concerns have been raised regarding the lack of sustainable features to the dwellings. A sustainable urban drainage system is proposed to deal with surface water. However no other sustainable features have been proposed. Whilst this is regrettable, it is considered that a reason for refusal on the lack of sustainable features could not be justified given that the Local Plan does not contain a policy that requires a certain level of sustainability/renewable technology is incorporated into schemes.

In the overall balance, the proposal would result in loss of greenfield land and does not include any sustainable features. However the site is in a location where occupiers of the dwellings would not necessarily be dependent on the private car, the proposal would not result in unsustainable demands on local services and facilities, would comply with the settlement hierarchy and strategic housing aims set out under Policy S2, and would have limited economic

benefits, which all weigh positively in the balance. In addition there would not be any unacceptable impacts on the natural, historic or built environment. 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 around 10 dwellings per hectare. The Local Plan does not contain a policy setting specific densities. This density is considered appropriate having regard to the character of the area and the site's location on the edge of the village.

This part of the village is characterised by dwellings that front onto Normanton Road, although some recent housing developments in the locality do not have road frontages, including the dwellings on the former poultry farm to the east, and a site further south along Normanton Road. The nearest dwellings on Normanton Road are densely developed and set back slightly from the road with long gardens, creating a linear plot pattern extending back, and the dwellings on the former poultry farm site are large in size and on spacious sites. The site is considered to make a positive contribution to the character and visual amenities of the locality due to its undeveloped nature at the edge of the village.

The initially submitted five dwelling scheme was considered to result in overdevelopment of the site, resulting in harm to the character and visual amenities of the area. The three dwelling scheme does not completely reflect the existing linear plot pattern in the area. However the narrower plots are located to the west of the site on Normanton Road, with the existing plot pattern on the site and further to the south being more diluted as the parcels of land, whilst still linear, are wider than those to the west.

The scheme would not be out of keeping with the character of the area as one dwelling would have no road frontage and the other two would front onto Drum and Monkey Lane, which whilst not public highway, is a public right of way. The dwellings would also be set back from the land. The amended scheme would also result in a much less dense form of development compared to the nearest dwellings on Normanton Road and would provide a transition from this denser area to the more spacious former poultry farm site.

Plot 1 and the garages would not be overly prominent in views from Drum and Monkey Lane or from Coleorton Lane to the north, as they would be set well back and screened by existing vegetation. Plots 2 and 3 would be more visible in these views, but would also be set back, and the frontage hedgerow and the protected ash tree would provide some screening. In addition, the dwellings would be seen alongside existing dwellings to the east and west. It is considered that the site could accommodate all of the necessary requirements (private gardens, bin storage, parking/turning space) without being too cramped or resulting in over-development. 1.8 metre high close boarded fencing is proposed along some of the boundaries to the plots, including behind the frontage hedgerow between Plots 2 and 3, but is not proposed along the site boundaries other than such fencing already in place on part of the western boundaries. A soft landscaping scheme has also been submitted.

The elements of the five dwelling scheme that were considered to be detrimental to the character and visual amenities of the lane, including the widening of Drum and Monkey Lane, formation of a passing bay and two vehicular accesses, the extent of hardsurfacing and the removal of stretches of the frontage hedgerow, have either been removed or amended.

The swept path analysis for fire engines and waste collection vehicles shows that there may be some adverse impacts on the hedgerow that runs along the northern side of Drum and Monkey Lane, if such vehicles turn at the access to the site. However, the Council's waste collection vehicles do not use Drum and Monkey Lane and it is unlikely that larger vehicles such as fire engines and delivery and removal lorries would frequently turn in this area. Turning space would also be provided within the site which is of a suitable size to be used by larger vehicles. As such the potential for adverse impacts on this hedgerow is considered to be infrequent and any adverse impacts would be minimal.

The three dwellings would be linear in form and incorporate traditional features and subservient elements. Plot 1 would be smaller in scale with its rooms partly in the roofspace. Plots 2 and 3 would be larger and have three floors of accommodation, although the second floors would be within the roofspace. The garages would be single storey and of a simple design. There are also large dwellings nearby, including on the former poultry farm site, and there is also a mix in the scale, height and design of nearby dwellings.

Plot 2 would be dual aspect which provides surveillance to Drum & Monkey Lane and the driveway and parking spaces. Whilst Plot 3's garage and parking spaces are located some distance from the dwelling, surveillance would be provided from the front of Plot 1. The view along the driveway would terminate with a partial view of the front of Plot 1 and the hedgerow that forms the southern boundary.

Some of the recommendations made by Leicestershire Police fall outside the scope of the planning system, e.g. standard of lighting columns, power supply for CCTV within lamp posts, dwellings being alarmed, but some can be considered. Some 1.8 metre high fencing has been proposed but provision of such fencing along the whole of the site perimeter would raise issues in relation to visual impact and impacts on trees and hedgerows. No evidence has been provided to indicate that the proposal would increase crime levels within the area and so provision of CCTV could not be justified. The heights of vegetation could not be restricted (other than for highway safety reasons) as this would be unreasonable. Concerns have also been raised by residents regarding increased opportunities for access for crime. There is already a field access into the site, and the site has limited surveillance from nearby dwellings. The proposal would provide surveillance of the proposed access and driveway as well as improved surveillance to the lane.

For the reasons set out in the 'Bin Storage and Collection' section of this report, it is considered that the bin collection point would not adversely impact on the character and visual amenities of the locality.

Therefore, on balance it is considered that the proposal would not be significantly harmful to the character and visual amenities of the public right of way, Drum and Monkey Lane, Coleorton Lane and the wider locality to justify a reason for refusal under Policies D1 and En3 of the Local Plan and the Council's Good Design SPD.

### **Bin Storage and Collection**

There is space within the site for bin storage. The Council's Waste Services team have advised that the Council's waste collection vehicles do not use Drum and Monkey Lane as it is not constructed to an adoptable standard, and therefore waste and recycling receptacles could not be left for emptying within the site. The agent initially suggested that a private waste collection service would be used but the Waste Services team advised that this would not be a viable solution as the residents of the proposed dwellings may not want to pay for such a service in the

future. The Council also has a statutory responsibility under the Environmental Protection Act 1990 to collect domestic waste and the Council is also in receipt of an element of Council Tax to provide this service.

Therefore the Waste Services team requested that a bin collection area be provided close to the public highway on the northern side of Drum and Monkey Lane. However it was subsequently confirmed that this is where bins are stored by the occupier of No. 17 Normanton Road. The Waste Services team therefore advised that a bin collection area would need to be provided on an area of hardsurfacing on Coleorton Lane, to the immediate north of Drum and Monkey Lane at its western end.

The bin collection area requested by the Waste Services team lies within the public highway. Whilst the County Highway Authority (CHA) advises that bin collection areas should not be within the public highway, in this case, considering the site specific circumstances, the CHA has no objections to receptacles being left at the western end of the lane, provided this does not form a formal bin collection area and receptacles are not permanently kept at this location. A formal bin collection area could therefore not be requested and so the plans show a bin collection point, which could not be secured by condition given the CHA's comments above regarding the public highway.

In addition, receptacles should only be left in this area for collection and not on a permanent basis, and the Council's Environmental Protection team have powers under the Environmental Protection Act 1990 to require the removal of bins and such receptacles from within the public highway and from bin collection points. The Waste Services team has also requested that a sign be installed at the bin collection point to advise that receptacles must be removed within 24 hours of having been emptied.

In this case the dwellings would be at least 70 metres from the bin collection point. Whilst the Building Regulations require receptacles to be stored no more than 25 metres from where they are collected, 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 proposed bin collection arrangements would be similar to those for residents of the two dwellings on the former poultry farm site, who it is understood leave their receptacles for collection in a similar location. The bin collection point would be closer to the site than to these dwellings. There would also be a fairly level route from the site to the bin collection point (i.e. no steep gradients) which is hardsurfaced.

Six dwellings (three on the site and three on the former poultry farm site) could leave their receptacles for emptying at the bin collection point.

Receptacles left at the bin collection point would be prominent as it is an open area at the entrance to the village and the public right of way, and no enclosures can be erected for screening as the bin collection point would be within the public highway. The bin collection point would be 6.5 metres from No. 17, which has windows in its side elevation and a side conservatory. Comments have not yet been received from the Council's Environmental Protection team on the bin collection point and so will be reported to members on the Update Sheet. However No. 17 is on the opposite side of Drum and Monkey Lane and receptacles are already left here for emptying by the two dwellings on the former poultry farm site.

As receptacles should only be left in this area for collection and not on a permanent basis, this would reduce the impacts on the character and visual amenities of the area, residential amenities and highway safety and the risk from arson. The Council also has separate powers

under the Environmental Protection Act 1990 to deal with noise and odour.

Whilst the bin collection point may be used for parking by existing residents and users of the public footpath, this is not controlled by existing planning permissions nor is it a formal parking area provided by the CHA. As receptacles should not be left at the bin collection point on a permanent basis, there should still be space for cars to be parked in this area most of the time and on the adjacent area of grass as per the existing situation. These parked cars are also already likely to impact on the visibility available at the junction of the lane with the public highway. The CHA has not raised any concerns in respect of impacts on highway safety. The current arrangements for waste collection vehicles to stop either within the road or by pulling off the road would continue. Receptacles left for emptying at the bin collection point would be unlikely to block access to the adjacent field as bins should not be left there permanently, the gate is at least four metres wide and cars are already parked in this area.

The bin storage area within the site would be located adjacent to the end of the long gardens to Nos. 17, 19 and 23 Normanton Road and over 45 metres from the dwellings.

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/receptacles for collection at the bin collection point.

### **Historic Environment**

Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, when considering whether or not to grant planning permission for development which affects the setting of a listed building, or the character and appearance of a Conservation Area, to have special regard to the desirability of preserving the building's setting and to the desirability of preserving or enhancing the character or appearance of that area. Reference should also be made to paragraphs 192, 193 and 194 of the NPPF.

In terms of heritage assets, Packington House on Spring Lane lies around 230 metres to the south east and No. 9-11 Normanton Road lies around 90 metres to the north west, which are both Grade 2 listed buildings. The Packington Conservation Area lies to the west of the site and runs along part of its western boundaries. Nos. 17, 19, 23 and 25/27 Normanton Road are identified in the Packington Conservation Area Appraisal as unlisted buildings of interest.

Part of Packington House's significance is its age, dating from the late 18th and early 19th centuries, that its scale, design and original features have retained its country house appearance and that it still retains its historic relationship with the village as an outlying dwelling within the rural landscape. Part of the significance of No. 9-11 is that it is a good example of an 18th century cottage located within a part of the Conservation Area which forms the entrance to the core of the village. The significance of the nearest part of the Conservation Area comes from it forming the entrance to the historic core of the village, and the dwellings at the northern end of Normanton Road, which are unlisted buildings of interest, being part of the first expansion of development beyond the historic core in the late 19th century. The site also contributes to the setting of the Conservation Area in views from Coleorton Lane southwards across open fields and along Drum and Monkey Lane in both directions.

Significant weight is given to preserving the setting of the Grade 2 listed buildings and Conservation Area.

The Conservation Officer has not raised any concerns in respect of impacts on the setting of the listed buildings. The dwellings would not be visible within the setting of No. 9-11 Normanton Road. The setting of Packington House is somewhat compromised to the immediate north by the presence of a modern two-storey dwelling but its rural setting survives predominantly to the south and south east, but also to some extent to the west and south west. However the dwellings on the former poultry farm now form part of the foreground/backdrop to Packington House in particular when viewed from the public footpath and from the listed building itself, which screen Packington House in views of the site. There does not appear to be any direct functional/historic relationship between the site and the listed buildings.

In respect of the three dwelling scheme, the Conservation Officer has concerns regarding Plot 1 forming tandem development which would not reflect local character, and requests that Plot 1 and the driveway are omitted, as well as also requesting some changes to the windows to Plot 1 if retained.

The changes to Plot 1's windows have been made. However Plot 1 and the driveway remain part of the proposal. Whilst Plot 1 does not reflect the narrow linear plot pattern in the adjacent Conservation Area, this plot pattern is diluted on the site and further to the south as these parcels of land, whilst still linear, are wider than those in the Conservation Area. Plot 1, its garage and the driveway would be closest to the rear gardens in the Conservation Area. They would not be overly prominent in views from within or of the Conservation Area as they would be set well back within the site, with some screening provided by vegetation on the site boundary and within the gardens themselves, as well as by the dwellings on Normanton Road and the mature ash tree and frontage hedgerow. Even if Plot 1 was removed, the driveway would be required to serve Plots 2 and 3.

Plots 2 and 3 would be more visible in views of the Conservation Area. However the Conservation Officer has not raised any concerns in respect of Plots 2 and 3. These dwellings would be set back at least eight metres from the lane, some screening would be provided by the ash tree and frontage hedgerow, and the dwellings would be seen alongside existing dwellings to the east and west, and so would not be overly prominent.

The Conservation Officer has not raised any objections to the bin collection point. It would not form a significant part of the setting to Packington House given the distance away and intervening screening from trees and existing dwellings. The bin collection point would be seen in the setting of No. 9/11 and the Conservation Area. However as bins should not be left there permanently, that other bins are already left at this point by other properties, no structures or surfacing would be installed, and that there are already other domestic features in this area, e.g. parked cars, it is considered that bins left for emptying at the bin collection point would not adversely affect the setting of the listed buildings and the Conservation Area.

Whilst the trees on the site are not in the Conservation Area, they do form part of its setting. The protected ash tree and most of the frontage hedgerow would be retained, along with the southern hedgerow and trees in the south eastern corner and close to the western boundary. Trees are proposed to be removed in the north and south eastern corner and close to the southern and western boundaries. No works are proposed to any of the nearby trees that are within the Conservation Area. As discussed in more detail below in the 'Trees and Hedgerows' section of this report, the Council's Tree Officer has not raised any objections to the loss of trees within the site, which are not considered to make a significant contribution to the setting of the Conservation Area given their size and location and the intervening screening by other trees. Therefore it is considered that the loss of some trees from within the site would not result in harm to the setting of the Conservation Area.

The County Archaeologist advises that the site lies within the historic settlement core of Packington, and therefore as the proposal involves works that could impact on archaeological remains, requests the imposition of a condition requiring a staged programme of archaeological work, including trial trenching, to be undertaken.

Therefore it is considered that the proposal would not adversely affect the setting of the listed buildings or the Conservation Area, and would not harm the designated and undesignated heritage assets. As such the proposal complies with the NPPF and Policy HE1 of the Local Plan.

### **Residential Amenities**

The proposal is likely to result in an increase in vehicles using Drum and Monkey Lane which runs adjacent to No. 17 Normanton Road and rear gardens. However some traffic already uses the lane to access the two dwellings on the former poultry farm site. In addition, 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). As such the addition of extra traffic on the lane is unlikely to result in significant levels of noise and disturbance to existing residents or significant impacts on their health and wellbeing.

Whilst peace and tranquility in the area may in part be due to the site being empty, it is not unusual to find housing adjacent to other areas of housing, and new housing is unlikely to generate significantly detrimental levels of noise and disturbance. The Environmental Protection team has not raised any objections or concerns in relation to noise or disturbance.

For the reasons set out in the 'Bin Storage and Collection' section of this report, it is considered that the bin collection point would not adversely impact on residential amenities.

### *Plot 1*

The scale and design of Plot 1 has been amended to address concerns relating to direct overlooking/loss of privacy to gardens to dwellings on Normanton Road.

The two storey and 1.5/single storey elements to Plot 1 would be at least 45 metres and 43 metres respectively from Nos. 17 to 33 Normanton Road which significantly exceed the back to back distance set out in the Council's Good Design SPD. The garage would be at least 35 metres away.

The SPD sets out a 10 metre distance between new dwellings and existing gardens. This distance would be exceeded from all parts of the dwelling in relation to the gardens to Nos. 17-31, other than in respect of the 1.5 storey element in relation to No. 23's garden (eight metres away), and the single and two storey elements in relation to No. 33's garden (six metres and two metres away respectively).

However the garden to No. 23 is around 50 metres long and there would be no side first floor windows facing this garden. The rooflight in the rear of the 1.5 storey element would be set at a higher level than the first floor rear windows.

The garden to No. 33 is at least 90 metres long, and Plot 1 would be at least 17 metres from the part of the garden more closely associated with No. 33 (which is at least 30 metres long). No windows are proposed in the side elevation facing the garden.

The garage would be at least 10 metres from most of the gardens and whilst it would be within two metres and six metres respectively to the gardens to Nos. 23 and 25/27, both properties have long gardens and the garage would be single storey with no openings above ground floor level.

#### *Plot 2*

Plot 2 would be 60 metres from Nos. 17, 19 and 23, 11 metres from No. 23's garden (which is at least 50 metres long), and at least 13 metres from the gardens to Nos. 17 and 19 which are at least 40 metres long. The first floor windows in the side of Plot 2 could also be obscure glazed with restricted openings (if serving non-habitable rooms) and the rooflights would be positioned higher than the first floor windows.

Plot 2 also faces towards the garden to No. 33 and would be at least 17 metres away, with the first floor window in its rear elevation serving a dressing room, which could be obscure glazed.

#### *Plot 3*

Plot 3 also faces towards No. 33's garden and would be 12.4 metres from the end part of this long garden. The first floor rear window and nearest rooflight could be obscure glazed. Whilst Plot 3's garage would be 3.5 metres from No. 33's garden, it would be single storey with no openings above at ground floor level and would be 43 metres from the part of the garden closest to No. 33.

The northern elevation of Kingfisher Lodge (the closest dwelling on the former poultry farm site) has a first floor opening and balcony in its northern elevation. The lower part of Plot 3's rear projection would be 10 metres from these elements and its eastern roofslope would contain one high level rooflight serving a bedroom. The rear two storey element to Plot 3 would be 11.5 metres away and its first floor landing window could be obscure glazed with restricted opening. Plot 3's main rear elevation would be 13.5 metres away, with a rear bedroom window being 15 metres from the balcony, and two rear rooflights serving rooms in the roofspace with no specified purpose, which could also therefore be obscure glazed with restricted opening.

The lower rear element to Plot 3 would be at least 16 metres from the nearest windows in the western elevation to Kingfisher Lodge, and the two storey elements would be at least 20 metres away. There would not be a direct back to back or back to side relationship between Plot 3 and Kingfisher Lodge. Whilst Plot 3 would be 6.5 metres from the side garden area to Kingfisher Lodge, the main part of its garden is to the south of the dwelling.

#### *Conclusion*

As such it is considered that a reason for refusal on the basis of direct overlooking/loss of privacy, overshadowing/loss of light and creation of an oppressive environment to occupiers of Nos. 23 and 33 Normanton Road and Kingfisher Lodge could not be justified. The proposal would also not adversely affect the amenities of occupiers of other nearby dwellings from noise and disturbance, odour, overlooking/loss of privacy, overshadowing/loss of light or creation of an oppressive outlook, and as such would comply with Policy D2 of the Local Plan.

#### **Highway Safety**

Concerns have been raised by Packington Parish Council and local residents regarding highway safety as set out in the 'Representations' section of this report.

It is acknowledged that Plots 2 and 3 could have seven bedrooms each (as whilst the plans show these two dwellings to have five bedrooms each, both dwellings have two additional rooms shown within the roofspace which could be used as bedrooms), with Plot 1 having four

bedrooms. Therefore compared to the five dwelling scheme there would be a reduction in three bedrooms (if both dwellings had seven bedrooms). The CHA has been advised of this and having considered the trip generation associated with the proposal advises that typically a dwelling is anticipated to generate approximately six vehicular trips per day, so therefore three dwellings are likely to result in approximately 18 trips per day, which would be a reduction of 12 trips per day compared to the five dwelling scheme.

Regarding the use of Drum and Monkey Lane by more than five dwellings, the CHA advises that its width falls below the minimum requirement of the Leicestershire Highway Design Guide (LHDG) in regard to private access drives (a minimum width of 4.25m for an access serving two to five dwellings and 4.8m for a private access serving six or more dwellings for the first five metres behind the highway boundary). However given the existing use of the lane, its horizontal alignment which affords good forward visibility, and the 15 metre set back of the start of the lane from Normanton Road/Coleorton Lane the CHA would not find this unacceptable.

The CHA has also advised that in assessing the access from Normanton Road/Coleorton Lane onto Drum and Monkey Lane, consideration was given to forward visibility for vehicles entering the lane from the public highway, the length of Drum and Monkey Lane that cannot accommodate two-way movements between the highway and site access, the likely level of vehicular movements on the lane and the likely impact on Normanton Road/Coleorton Lane. Along with the extant two-way vehicular movements on the lane, and the scale of development, the CHA's conclusion is that the use of Drum and Monkey Lane would not have a severe impact on the highway network, and therefore a reason for refusal on this basis could not be substantiated.

The lane widening and passing bay no longer form part of the proposal due to concerns relating to impact on the frontage hedgerow, the character and visual amenities of the locality and public footpath and the setting of the Conservation Area. These were not requested by the CHA and given its advice above and other impacts it could not be insisted that they are re-instated.

There are also no proposals to widen Drum and Monkey Lane at its junction with Normanton Road/Coleorton Lane. The CHA has also not raised any objections in relation to visibility at this junction. The CHA has also advised that there has been no records of personal injury collisions in the last five years in the vicinity of the site and the junction of Drum and Monkey Lane with the public highway.

The CHA has not raised any objections to the vehicular access into the site, which would meet access width requirements in the LHDG.

In respect of the visibility splays proposed at this access, they are less than those required in the LHDG for roads with speeds of 21mph to 25mph (33 metres for light vehicles and 36 metres for HGVs) and 16mph to 20mph (23 metres for light vehicles and 25mph for HGVs).

In respect of this matter the CHA advises that "*To the west of the access, a visibility splay of 2.4m x 13.5m is shown, and drawn to a point one metre offset from the northern carriageway edge. Given that Drum and Monkey Lane is approximately three metres in width in this location and that therefore vehicular speeds will be low, this is acceptable. To the east, a visibility splay of 2.4m x 17m is shown to a point one metre offset from the nearside carriageway edge is shown, which is also acceptable in this instance.*"

In order to assess the suitability of the above visibility splays, a calculation of the Stopping Sight Distance (SSD) in accordance with the standards set out in the Manual for Streets (MfS) has been carried out by the CHA, who has confirmed that the proposal would be acceptable in this regard.

The pedestrian access to Plot 3 leads from the front of the dwelling onto the lane. It is not unusual in some places to have front doors or accesses used by pedestrians that exit directly onto a street with no footway, and there are examples elsewhere in the village, e.g. on Mill Street, where traffic speeds may be similar to those along the lane or perhaps higher. In addition the CHA has raised no objections and has requested a condition requiring the provision of pedestrian visibility splays on either side of this access.

The parking and turning space for Plot 3 would be sited to the rear of the dwelling, and concerns have been raised by the Parish Council and residents that some vehicles, e.g. delivery vans and lorries, could travel to the front of Plot 3, park on the lane and block access for other vehicles and pedestrians, and then have to reverse back to the site access to turn. The CHA has not raised any objections in respect of this matter and notes that a pedestrian link between Plot 3's parking and turning space and Plot 3 itself is now shown on the plans, in order to discourage parking on Drum and Monkey Lane. A condition could also be imposed requiring provision of signage at the site access to advise that there is no vehicular access to the front of Plot 3 and to use the parking/turning space available within the site. The CHA cannot take into account the potential for blocking of vehicles wishing to access the dwellings on the former poultry farm site as the lane is an unadopted road, and Plot 3 is over 100 metres from the public highway. Impacts on users of the public footpath is considered separately below in the 'Public Footpath section of this report.

The CHA has not raised any objections in respect of the position, design and amount of the parking and turning space. The CHA has no objections to the bin collection point and for the reasons set out in the 'Bin Storage and Collection' section of this report, it is considered that the bin collection point would not adversely impact on highway safety.

The advice in paragraph 109 of the NPPF is that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

The CHA therefore advises 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. Therefore a reason for refusal on the basis of a severe impact on highway safety or the road network under Policies IF4 and IF7 of the Local Plan and paragraphs 108 of the NPPF could not be justified in this case.

### **Public Footpath**

Public footpath O64 runs along Drum and Monkey Lane and then continues through the former poultry farm site and on to Spring Lane where it links in with other parts of the public rights of way network and routes to the Diamond Jubilee Woodland and National Forest woodlands. No part of the development would encroach upon its route, and its route is not proposed to change.

The CHA has not raised any objections in respect of an increase in traffic on the lane impacting on users of the public footpath. As noted above in the 'Highway Safety' section, concerns have been raised by the Parish Council and residents that vehicles visiting Plot 3 could block the lane and have to reverse along part of the lane, therefore impacting on users of the public footpath. The CHA has not raised any objections in respect of this matter in respect of impacts on users

of the public footpath, and notes that a pedestrian link between Plot 3's parking and turning space and Plot 3 itself is now proposed, in order to discourage parking on Drum and Monkey Lane. As noted above, a condition could also be imposed requiring provision of signage at the site access relating to access to Plot 3. The CHA also has powers to deal with the blocking or obstructing of public rights of way.

Reference has been made by the Parish Council and residents to two planning decisions relating to three dwellings on a nearby site on Spring Lane (97/0061 and 15/01064/OUT) being refused due to the potential for conflicts between vehicles and pedestrians, as Spring Lane is also narrow and has no footway. The 1997 application was refused in part due to conflicts between pedestrians and vehicles on Spring Lane, and a subsequent appeal was dismissed on the grounds of harm to the character and appearance of the locality and the difficulty of resisting other similar proposals which would have a detrimental impact. The Inspector stated '*I am not convinced that the additional traffic that would be generated by the proposal would pose such a risk to highway safety as to warrant rejection on that account alone.*' The 2015 application was refused only on the grounds of being outside the Limits to Development and significant harm to the character and rural appearance of the locality. The CHA did not raise any objections to the 2015 application in respect of conflict between vehicles and non-car users, and this matter was not raised by the Inspector when considering the subsequent appeal.

It is considered that the amended proposal would not adversely impact on the enjoyment and recreational value of users of the public footpath, in particular as the changes on the site would be short term as pedestrians pass along the lane adjacent to the site and no works are now proposed to the lane itself.

The CHA has not raised any concerns in respect of the health and safety of users of the public footpath. It is not unusual for public footpaths to pass close to dwellings or along routes also used by vehicular traffic. However as construction traffic may use Drum and Monkey Lane it is considered reasonable to impose a condition requiring submission of a management plan to ensure that the footpath is safe and available for users of the footpath during construction.

With regards to any damage caused to Drum and Monkey Lane, the CHA advises that it is responsible for maintaining the lane to public right of way standards. Therefore in the event that there was any damage to this standard, if there was sufficient evidence as to who was responsible then the CHA would pursue them, but if not then the CHA would be required to repair to the standard. Any additional damage over and above what is required for this standard would be a civil matter and for the landowner to determine the most appropriate course of action.

Given the above circumstances it is considered that a reason for refusal on the basis of significant harm to users of the public footpath could not be justified in this case.

### **Trees and Hedgerows**

The protected ash tree and most of the frontage hedgerow would be retained, along with the southern hedgerow and trees in the south eastern corner and close to the western boundary. Trees are proposed to be removed close to the southern and western boundaries and in the north eastern corner. No works are proposed to any of the trees on adjacent land.

The Council's Tree Officer originally considered that the protected ash tree was a veteran tree and therefore should have a root protection area (RPA) of 18 metres, which is the required RPA for such a tree of this size. However the applicant's arboricultural advisor disagrees that the tree is a veteran tree, and considers that a 15 metre RPA based on the guidance in

BS5837:2012 would be appropriate. Parts of Plots 2 and 3 would be within the 18 metre RPA although they would be outside the 15 metre RPA shown on the plans. The Tree Officer is not able to confirm that the tree is a veteran. Therefore as it is not fully conclusive that the ash is a veteran tree it is considered that it would be unreasonable to insist on Plots 2 and 3 being outside the 18m RPA.

The Tree Officer advises that the paths to Plots 2 and 3 could be within the RPA provided they are constructed in accordance with the submitted construction method statement. Conditions could also be imposed to secure the tree protection plan and the construction method statement, and to require submission of an arboricultural supervision plan, construction management plan and tree management plan to include an annual inspection of the tree's branches.

Impacts on the frontage hedgerow are considered in more detail in the 'Ecology and Protected Species' section below. However most of this hedgerow would be retained, as would the hedgerows on the western and southern boundaries, and the Tree Officer has not raised any objections. The path/paving that extended around Plot 1 close to the southern hedgerow has been removed. Whilst Plot 1 would be within two metres of this hedgerow and the driveway would be within one metre, the Tree Officer has not raised any objections. Protective fencing would be erected to these hedgerows during construction.

The potential for impacts on the hedgerow that runs along the northern side of Drum and Monkey Lane from large vehicles turning onto the lane has been considered earlier in the 'Design and Visual Impact' section, where it was concluded that the potential for adverse impacts on this hedgerow to be infrequent and any adverse impacts would be minimal.

Most of the trees and vegetation close to the watercourse have already been removed, along with the hedgerow that ran through the centre of the site. None of these were protected by a Tree Preservation Order nor by the Hedgerow Regulations and therefore whilst it is regrettable that they have been removed, the Council does not have any powers to prevent this from taking place or enforce against it.

The Tree Officer has not raised any objections to the loss of other trees within the site. Several mature trees would also be retained, and additional tree and hedgerow planting is proposed. The amendments requested by the Tree Officer to the soft landscaping scheme have been made.

Given the considerations set out above in respect of the protected ash tree, and whilst it is preferable that existing soft landscaping is retained and enhanced, particularly when a development is located in the National Forest, it is considered that the loss of the soft landscaping in this instance should not act as a constraint on the development, particularly given that its lack of protection could lead to it being removed at any time. Several trees, including the protected ash tree, and the majority of the remaining hedgerows would be retained. As such it is considered that a reason for refusal under Policy En1 of the Local Plan could not be justified in this case.

### **Ecology and Protected Species**

#### *Habitats and Important Features*

The County Ecologist has not raised any objections to the loss of the species-poor semi-improved grassland and scrub that covers the site.

The County Ecologist advises that the hedgerow on the site's northern boundary is a candidate for Local Wildlife Status, as is the protected ash tree. Impact on the ash tree have been considered above in the 'Trees and Hedgerows' section, and the County Ecologist has not raised any objections in respect of ecological impacts on this tree.

The County Ecologist raised objections to the five dwelling scheme on the basis of the loss of most of the northern hedgerow and the lack of biodiversity net gain for the lost hedgerow. The majority of the hedgerow would now be retained. The dwellings would also be sited at least five metres from this hedgerow as required by the County Ecologist. The visibility splays to the vehicular access would not require removal of any of the frontage hedgerow nor any of the hedgerow further west along Drum and Monkey Lane. The CHA has requested two metre by two metre pedestrian visibility splays to the pedestrian access to Plot 3 to which the County Ecologist has no objections.

The County Ecologist also advises that the loss of parts of the northern hedgerow needs to be compensated for by an equivalent amount of hedgerow within the site, and has requested amendments to the soft landscaping scheme to deal with this matter, which will be reported to members on the Update Sheet.

Concerns have been raised by residents that development should be at least three metres from the southern hedgerows as per the government document 'Biodiversity and Hedgerows: Government's Strategy for England's Wildlife and Ecosystems'. The County Ecologist cannot find this reference, but advises that a buffer of five metres between hedgerows and development is normally sought for important hedgerows or those that form boundaries adjacent to open countryside or natural/informal open space. However this standard is not usually applied to hedgerows that form boundaries to gardens (such as the southern hedgerow) as they are not protected by the Hedgerow Regulations and therefore could be removed at any time. Therefore the County Ecologist has not raised any objections in respect of impacts on this hedgerow.

On this basis it is considered that a reason for refusal on the basis of impacts on important ecological features could not be justified in this case under Policy En1 of the Local Plan.

#### *Protected Species*

There are mature trees/hedgerows on and adjacent to the site, the site is grassland and adjoined by open fields and large gardens, a pond lies close to the site and a watercourse runs alongside its eastern boundary. 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.

The submitted ecology survey found that the ash trees on the northern boundary were considered to be of negligible bat roost potential. The trees and hedgerows on the site would also be suitable for breeding birds and a note to applicant could be added to this effect. Whilst some trees would be lost, some trees and the northern and southern hedgerows would be retained and there is other similar habitat nearby. Conditions could be imposed to minimise light spill from any external lighting onto the hedgerows to maintain their value as bat foraging corridors, and to secure bat bricks and bird boxes as recommended by the ecology report.

No evidence was found of badger activity, the nearby pond appears to have been filled in, and there are no records of water vole using the adjacent watercourse. The watercourse is also

considered to be suboptimal for water voles and otters. Habitats on the site could however be suitable for use by badgers, great crested newts and reptiles, as well as hedgehogs (which are not a protected species) and so the recommendations in the ecology report would need to be followed. Hedgehog holes would be provided within some of the fences, which could be secured by condition. The County Ecologist advises that a newt found near the site is a smooth newt, which is not a protected species. The County Ecologist has not raised any objections in respect of impacts on protected species.

On this basis it is considered that protected species would not be adversely affected by the proposal and the proposal complies with the Habitats Regulations 2017 and Policy En1 of the Local Plan.

### Flood Risk and Drainage

An unnamed watercourse runs alongside the site's eastern boundary flowing north east to south west. This watercourse flows from the fields to the north, passes underneath Drum and Monkey Lane, and then continues alongside the ends of gardens to dwellings on Normanton Road, before passing underneath Normanton Road and Heather Lane before joining the Gilwiskaw Brook around 165 metres south of the bridge on Bridge Street.

The site lies within Flood Zone 1 which covers the area at the lowest risk from fluvial flooding. The eastern part of the site and part of Drum and Monkey Lane lie within areas at low to high risk of surface water flooding. The area at low risk extends between eight and 21.5 metres into the site from the watercourse. The areas at medium to high risk extend up to six metres into the site.

Plots 1 and 2 are not within any of these zones. The dwelling on Plot 3 would not be within the zones at medium to high risk although most of the dwelling would be within the area at low risk. A small part of the eastern edge of Plot 3's garden would be within the medium to high risk zones, and some of Plot 3's garden would be within the low risk zone, but the majority would be outside.

The very easternmost part of the site, which lies within all three zones, would not form part of Plot 3's garden. The low risk zone extends in front of Plot 3 beyond the pedestrian access.

Concerns have been raised by the Parish Council and residents in respect of flood risk as set out in the 'Representations' section of this report.

Whilst the FRA states that the garden has not flooded and the brook has not broken its banks on either side in the last 25 years, the Parish Council and residents dispute this, stating that the watercourse becomes inundated and flows at capacity, and gardens to dwellings on Normanton Road, dwellings on Spring Lane and the nearby fields have flooded.

Furthermore whilst the FRA states that there are no known issues or reports relating to ground water flooding at the site and that the site is not in an area at high risk of ground water flooding, the Parish Council and residents have indicated that there is a high water table and high groundwater level in the locality, in part due to the clay soils and during high rainfall. The information in the FRA has been taken from a map of groundwater risk covering a large part of the District and is not based on site-specific information. It appears that high groundwater has resulted in wet ground on nearby land, and it is understood that there are various measures in place on these sites to try and alleviate this situation. However it is not clear how much this has contributed to flooding in the area nor whether the site itself is affected by groundwater issues. It is therefore considered that conditions should be imposed to secure mitigation measures for

potential impacts from groundwater and resistant/resilient building techniques relating to groundwater flood risk.

As noted above Plot 3 and its garden partly lie within the zone at low risk of surface water flooding, although the Standing Advice from the Lead Local Flood Authority (LLFA) is that buildings are not placed directly at risk of surface water flooding and that such areas should be utilised for roads and green infrastructure.

However the LLFA has not raised any objections to the application in respect of surface water flooding. In respect of Plot 5 on the five dwelling scheme (replaced by Plot 3 on the three dwelling scheme) it advises that the watercourse poses a high surface water flood risk, and so finished floor levels should be set sufficiently above flood levels in line with its standing advice, i.e. 300mm above the general ground level of the site. The LLFA subsequently advised that the surface water flood risk is low, which is acceptable for development and that mitigation is typically required only where there is a medium or high risk of surface water flooding. It is also considered that the close boarded fence along Plot 3's eastern boundary would need to made permeable to water flows so it does not divert water back into the watercourse.

A sustainable surface water drainage scheme (SuDS) is also proposed, which would direct surface water to filter strips/French drains/below ground attenuation crates and then discharge into the adjacent water course. Due to clay forming the underlying subsoil, infiltration cannot be used. Conditions could be imposed to secure the SuDS, mitigation measures for impacts from groundwater flooding, resistant/resilient building techniques relating to groundwater flooding, and the ongoing maintenance/management of the SuDS and mitigation measures.

The applicant's drainage consultant also advises that the development would reduce the amount of overland flow from the site as positively drained hard paved areas would intercept existing overland flow routes and attenuate them using the below ground storage. The consultant also advises that the runoff rate would not exceed the existing greenfield runoff rate from the site, therefore not increasing the flood risk further downstream or to other properties.

Most of the trees and vegetation along the site's boundary with the watercourse has already been removed and whilst one tree in the north eastern corner would be removed, it is not considered that this would significantly destabilise the banks of the watercourse. The banks would not be altered other than installation of the headwall for the surface water drainage system.

The LLFA also asked for provision of an easement alongside the watercourse to safeguard access to the watercourse for essential maintenance and inspection purposes, which is shown on the amended plans. The LLFA also advises that the watercourse will become the responsibility of the riparian owner (i.e. anyone who owns a property where there is a watercourse within or adjacent to the boundaries of their property, and is also responsible for watercourses or culverted watercourses passing through their land) as per the Land Drainage Act 1991. Any works that are likely to affect flows within the watercourse would also need a separate land drainage consent from the LLFA.

Given the circumstances set out above, and the lack of objection from the LLFA, it is considered that a reason for refusal on the basis of an inadequate FRA, an inadequate surface water drainage system and the proposal increasing flood risk on the site or elsewhere could be justified in this case under Policies CC2 and CC3 of the Local Plan and the NPPF.

### *Foul Drainage*

Concerns were raised by the Parish Council and local residents in respect of the use of package treatment plants and cesspools which were originally proposed to treat the foul drainage discharge from the site (as set out below in the 'River Mease SAC' section). However the site is now proposed to connect to the mains sewer and so the non-mains drainage systems have been removed from the plans.

The site does not appear to be connected to the mains sewer system. The amended FRA shows the dwellings would connect to a private pumping station on the site which would then discharge to a rising main running through the garden to No. 31 Normanton Road which would connect into No. 31's foul drainage system and then on into the adopted mains sewer system.

No evidence has been submitted to demonstrate that a connection to the mains sewer could not be achieved or that there is no capacity at Severn Trent Water's (STW) treatment works. STW has been consulted on the application and any comments received will be reported on the Update Sheet. However as it is not known whether or not STW would take over the responsibility of the pumping station, rising main and connection to No. 31's drainage system and the mains sewer system, it is considered reasonable for a condition to be imposed requiring submission of a scheme for maintenance/management of these elements. As such the arrangements for foul drainage discharge from the site appear acceptable subject to any comments received from STW.

### **River Mease Special Area of Conservation/SSSI**

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). The adjacent watercourse is a tributary of the Gilwiskaw Brook, which in itself is a tributary of the River Mease. 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 as well as due to its proximity to a tributary of the River Mease. Therefore an appropriate assessment of the proposal and its impacts on the River Mease SAC is required.

As noted earlier in the report, package treatment plants and cesspools were originally proposed to treat the foul drainage discharge from the site. However following a review of the schemes approved under the River Mease Developer Contribution Scheme (DSC2), a small amount of capacity has now become available, which has been allocated to extant applications in chronological order on the basis of the date they were registered.

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 therefore adversely impact on the SAC as it would pass through the sewage treatment works within the catchment area of the River Mease SAC and contribute to the raised phosphate levels in the river.

Discharge into the river 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 adjacent to a watercourse which is a tributary of the River Mease and therefore could be affected by construction works and activity associated with the proposal.

The River Mease DCS 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 they are 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.

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.

The flows from the three dwellings need to be taken into account against the existing headroom at STW's Packington Treatment Works. At March 2016 capacity was available for 3368 dwellings but this is reduced by the number of dwellings that already have consent or are under construction at March 2016 (1444) and a further 676 which have subsequently been granted permission or have a resolution to permit in place, giving capacity for 1248 dwellings. As such it is considered that capacity is available at the relevant treatment works for the foul drainage from the site.

As the dwellings would be sited on a grassland which is permeable, a condition could be imposed requiring surface water to discharge to the proposed sustainable drainage system. Surface water can discharge into a tributary of the River Mease provided the discharge from the system is restricted (in this case to the existing greenfield runoff rate from the site) and measures are put in place to prevent pollution of the watercourse.

On the above basis, compliance with the proposed condition 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. The watercourse would be outside the garden to Plot 3, and separated from the garden by a boundary treatment. The watercourse could also be excluded from the curtilage to Plot 3 to prevent increased activity within the watercourse.

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.

### **Other Matters**

The Council's Environmental Protection team has not requested the imposition of conditions relating to contaminated land. Whilst the site is in a Minerals Safeguarding Area, the Minerals Planning Team has advised that the site is constrained by other nearby dwellings and the

adjacent lane and so it has not raised any objections.

The Council's Housing team initially advised that off-site affordable housing was required in respect of the five dwelling scheme as required by Policy H4. However the National Planning Practice Guidance sets out that '*...planning obligations for affordable housing should only be sought for residential developments that are major developments...*' and as this national guidance was published after the adoption of the Local Plan, affordable housing can no longer be sought.

Concerns have been raised by residents in respect of the existing and future impacts on the village from the A42, East Midlands Airport and HS2, in particular in relation to health and wellbeing. It is considered however that the proposal won't exacerbate any impacts on the village from these sources given its scale.

Concerns have been raised by residents and the Parish Council with both the District and County Councils regarding matters of governance, probity and conflict of interest relating to Councillor Rushton. The concerns relate to:

- Councillor Rushton and his brother owning or having an interest in the site and the application;
- that these interests have not been properly declared;
- that Councillor Rushton has been promoting the application, has a vested interest in planning permission being granted and will receive financial gain;
- that Councillor Rushton has incorporated a limited company named 'Drum & Monkey Lane' whose nature of business is declared as 'development of building projects';
- that Councillor Rushton has connections with some of the parties involved with the application submission;
- that a plan and advice on the application has been provided by officers;
- that the application will be decided by District councillors based on reports from Council staff;
- that question 24 of the application form (which requires it to be stated whether the applicant or agent is or is not related to a member of staff or a councillor) has not been completed correctly given Councillor Rushton's interest in the site;
- that consultee comments have been provided to the Council on the application by some of the services at Leicestershire County Council for which Councillor Rushton is also a councillor and is Leader of the County Council and therefore independent advice should be sought on the application;
- that Councillor Rushton is the County Council's lead on housing growth and developer contributions and sits on the County Council's Environment, Economy, Housing and Transport Board.

In its response in respect of these matters the County Council has not identified any issues relating to governance, probity or conflict of interests, does not recognise the lead on housing growth and developer contributions and the Environment, Economy, Housing and Transport Board as being County Council bodies, and advises that in all cases where there may be a direct or indirect involvement of an elected member it is ensured that the consultation is overseen by a senior member of the directorate at Head of Service or Assistant Director level.

The Council's Monitoring Officer and legal advisors are still investigating this matter and have not yet concluded their investigation. However it is understood that when the application was submitted that Dunkin Rushton Ltd (a company of which Councillor Rushton is the Secretary and a Director) and Councillor Rushton's brother and wife owned all or part of the site, and on that basis if the application is recommended for approval it would need to be decided at Planning Committee. The Council's solicitor advises that question 24 of the application form has been completed correctly as neither the applicant nor the agent is related to an employee or

member of the Council, nor is a current employee or member of the Council. An update on this matter will be reported on the Update Sheet.

Amended plans have been submitted to exclude land to the east (which is outside the applicant's ownership) from the site and the development is now wholly within the red line boundary.

Concerns have also been raised by the owners of No. 33 Normanton Road that land in their ownership has also been included within the red line boundary and that the southern boundary hedgerow belongs to them. The agent has advised that notice has been served on the correct owners and notice has also been published in a local newspaper. The layout plan has also been amended to show the extent of the hedgerow on the southern boundary that lies within the site. If it was subsequently found that land within No. 33's ownership was included within the red line boundary, then the owners of No. 33 would not be prejudiced as they have been sent consultation letters and are aware of the application.

The Council has been advised that the owners of the two dwellings on the former poultry farm site (Packington Farm and Kingfisher Lodge) financed and maintain the works that have been carried out to Drum and Monkey Lane and own the surfacing and kerbing along the lane. The Council has also been advised that access along the lane to the site for construction and delivery vehicles is refused.

Furthermore the owners of Packington Farm state that they had to provide proof of their rights to vehicular access along Drum and Monkey Lane as part of the purchase and development of the former poultry farm site, and had to go through the process of establishing prescriptive easement for vehicular movements along the lane. A prescriptive easement is understood to be the acquisition of a legal right enjoyed over another's freehold property which is obtained through long use, and which is similar to adverse possession, but relates to a right to use another person's property in a particular way rather than claiming ownership of the land.

The owners also state that the proposal would increase the burden of the easement over the lane and such intensification of use should not be permitted, and that if the proposal is permitted that any vehicles associated with the proposal use the lane would be doing so illegally, resulting in legal action being taken if the lane was used illegally.

The agent advises that as far as he is aware the applicant has a right of access along the lane. Furthermore meeting the requirements to obtain vehicular rights of access over land and obtain prescriptive easement does not form part of planning legislation. Concerns regarding the lack of vehicular access rights along the lane and the need to provide proof of rights to vehicular access along the lane and to apply for prescriptive easement were not matters raised in respect of the applications for dwellings on the former poultry farm site.

No evidence has been put forward to demonstrate who owns the lane nor to suggest that vehicular access rights to the site over the lane do not exist nor that a prescriptive easement would not be granted. Approving a planning application does not affect or override any legal rights or other legislation, nor does it mean that it is inevitable that an illegal action would take place. If an illegal action took place on the lane or on the site after a grant of planning permission then there would be options open to any affected parties to take separate legal action. Therefore it is considered that it would be unreasonable for the Council to refuse a planning application on the basis that to do so could result in a breach of third party land interests or other separate legislation.

Although the Planning Practice Guidance indicates that the application site should be edged in red to include all land necessary to carry out the proposal, e.g. land required for access to the site from the public highway, there is no statutory requirement for the application site to have a common boundary with the public highway. The exclusion of Drum and Monkey Lane from the red line boundary does not affect the Council's ability to consider the adequacy of the access onto the lane, the lane itself and the lane's junction with the public highway. No works are proposed to the lane as part of the application.

The only condition that could affect the lane would be provision of the vehicular visibility splays. However these splays would not involve any development, and as if anything under 0.6 metres in height was provided within the splays this would block access to the site itself and to Packington Farm and Kingfisher Lodge and could block or obstruct the public footpath, it seems unlikely that the visibility splays could not be provided within the lifetime of a planning permission.

It is understood that enforcement of Section 34(1) of the Road Traffic Act 1988, which provides that anyone driving a mechanically propelled vehicle on a road that is a footpath, bridleway or restricted byway is guilty of an offence unless it can be shown that there is a private right in place for people to use the accessway to gain vehicular access to their property is a matter for the police and the courts.

Any damage to third party land caused by use of Drum and Monkey Lane as a result of the proposal would be a civil matter, as it is not an inevitable consequence of granting planning permission that damage would automatically be caused to third party land. Damage to the northern hedgerow along the lane is however considered above in the 'Design and Visual Impact' section.

The potential for the driveway to provide access in the future to land to rear of dwellings further south on Normanton Rd cannot be considered as part of this application. If an application was submitted for development of this land then it would be considered on its own merits.

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 visit and assessing the application have allowed for the application to be fully and adequately assessed.

In respect of matters raised in the letters of representation that have not been addressed above, matters contained within property deeds is a civil matter and are not subject to planning legislation.

### **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, highway safety, public footpath, the protected tree, trees and hedgerows, ecology, flood risk and drainage, and matters relating to bin collection arrangements could not be justified in this case. The proposal would not adversely impact on the historic environment, 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
- 4 - watercourse protection during construction
- 5 - public footpath construction management plan
- 6 - tree protection measures
- 7 - management plan for the protected tree
- 8 - groundwater measures
- 9 - surface water drainage - during construction, provision of SuDS scheme and maintenance/management
- 10 - maintenance/management of foul drainage system
- 11 - ground and floor levels
- 12 - materials and details
- 13 - bin storage
- 14 - external lighting
- 15 - landscaping and boundary treatments including amendments to the fence to Plot 3
- 16 - bat and bird boxes
- 17 - hedgehog holes
- 18 - light spill to hedgerows
- 19 - highway safety - site accesses including surfacing and visibility splays, parking and turning space, pedestrian link and signage for Plot 3 and construction traffic management plan
- 20 - removal of permitted development rights, and obscure glazing and restrictions to windows
- 21 - extent of residential curtilage to Plot 3