

Demolition of existing buildings and erection of up to three dwellings (Outline - details of access and layout for approval)

Report Item No
A2

49 Chapel Street Oakthorpe Swadlincote Derby DE12 7QT

Application Reference
21/00438/OUT

Grid Reference (E) 432010
Grid Reference (N) 312635

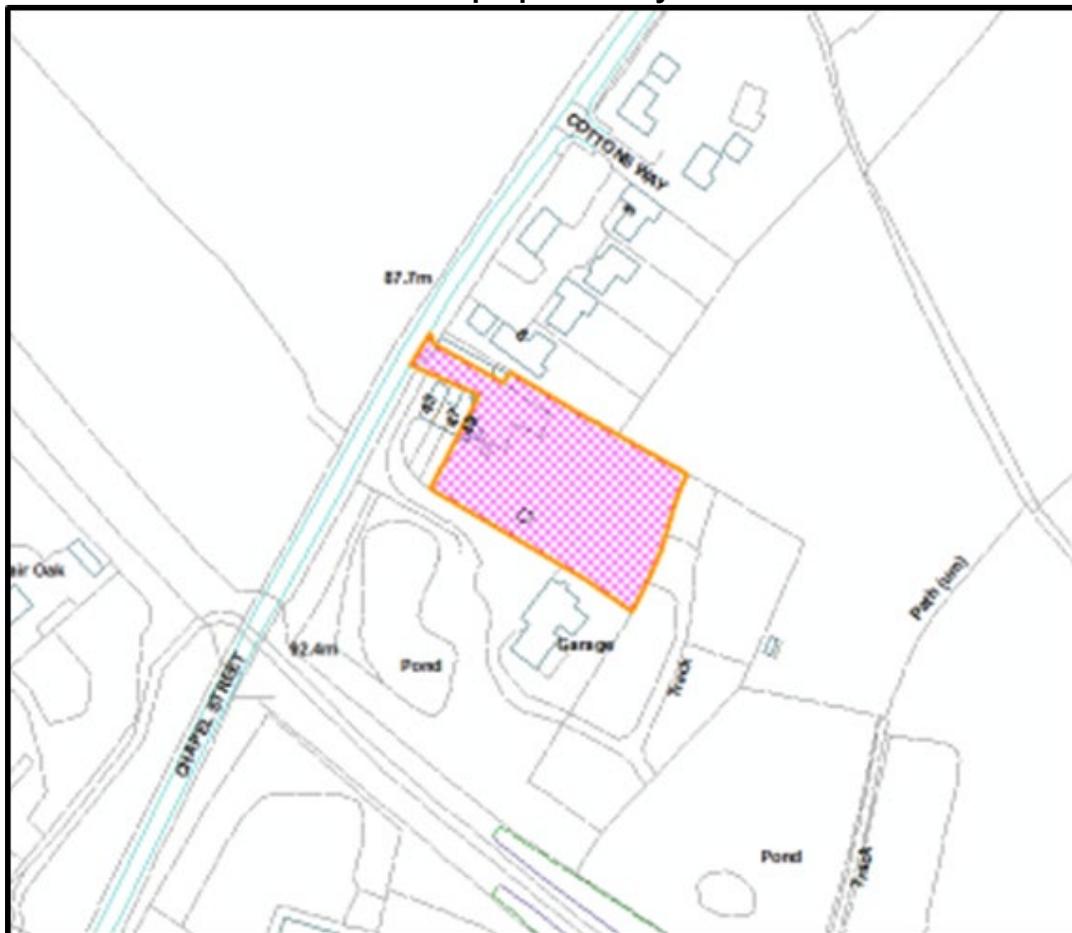
Date Registered:
14 April 2021
Consultation Expiry:
10 January 2022
8 Week Date:
9 June 2021
Extension of Time:
None Agreed

Applicant:
Grice

Case Officer:
Sarah Booth

Recommendation:
PERMIT

Site Location - Plan for indicative purposes only



Reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office
©copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence LA 100019329)

RECOMMENDATION- PERMIT, subject to the following conditions

- 1 Time limit.
- 2 Reserved Matters.
- 3 Approved Plans.
- 4 Levels.
- 5 Glazing - noise insulation
- 6 Acoustic fencing
- 7 Land Contamination
- 8 Verification Investigation
- 9 Secure non-mains drainage
- 10 EA water contamination
- 11 Surface water Drainage scheme
- 12 Infiltration Testing
- 13 Bat Boxes
- 14 Tree protection
- 15 Highways - Access
- 16 Highways - Visibility splays
- 17 Highways - surfacing,
- 18 Highways - Parking and turning
- 19 In accordance with the Ecology report

MAIN REPORT

1. Proposals and Background

The application is brought to the Planning Committee as the planning agent is related to a serving councillor (Councillor Blunt) and contrary representations to the recommendation to permit the application have been received.

This is an outline application for the demolition of some existing domestic outbuildings and the erection of three new dwellings on land at 49 Chapel Street, Oakthorpe. Approval of access and layout are for consideration at this stage. If this application is approved the details of appearance, scale and landscaping would be dealt with during a subsequent reserved matters application.

The application site is located within the defined Limits to Development and is within the River Mease Special area of Conservation.

Recent Planning History

12/00822/FUL Change of use of building to general purpose use and car repair business for a temporary period of three years PER 14.11.2012

09/01124/FUL Erection of new storage/general purpose building used for purposes incidental to the main dwelling and maintenance of non-domestic land. PER 14.07.2010

05/00494/FUL Erection of single storey side extension to form conservatory PER 19.05.2005

04/00005/FUL Demolition of outbuilding/workshop and erection of part one/part two storey side extension PER 05.02.2004

2. Publicity

10 Neighbours have been notified.
Site Notice displayed 29 April 2021.

3. Summary of Consultations and Representations Received

Oakthorpe and Donisthorpe Parish Council - Concerns over risk of flooding with additional properties. History of flooding locally in the area.

No objections from:

LCC Minerals and Waste Planning
County Archaeologist
NWLDC Tree Officer

No objections subject to conditions / note to applicant:

NWLDC Environmental Protection
LCC Ecology
County Highway Authority
Natural England
Environment Agency
LLFA
Severn Trent Water

Third Party Representations

6 letters of representation have been received from members of the public these are summarised below:

2 letters neither objecting to nor supporting the application:

- Concerns regarding obstruction of shared access and drive.
- The new development must take account of an existing adjacent garage business. Future compatibility issues for new dwellings and the business.
- North easternly property will look into a bedroom at 8 Cottons Way.
- Drainage issues.

2 letters of Support:

- The private road will be tarmacked which will improve the existing situation.
- This would be a better use of the land.

2 letters of objection:

- Surface water flooding impacts.
- Land ownership concerns.
- Impact on windows of 47 Chapel Street.

4. Relevant Planning Policy

National Policies

National Planning Policy Framework (2021)

The policies of the North West Leicestershire Local Plan as listed in the relevant section below are consistent with the policies in the NPPF. The following paragraphs of the NPPF are considered relevant to the determination of this application:

Paragraphs 9 and 10 (Achieving sustainable development);
Paragraphs 11 and 12 (Presumption in favour of sustainable development);
Paragraphs 38, 44 and 47 (Decision-making);
Paragraphs 55 and 56 (Planning conditions and obligations);
Paragraphs 60, 69, 74, 75 and 79 (Delivering a sufficient supply of homes);
Paragraphs 107, 110, 111 and 112 (Promoting sustainable transport);
Paragraphs 119, 120 and 124 (Making effective use of land);
Paragraphs 126, 128, 130 and 134 (Achieving well-designed places);
Paragraph 152, 154, 157, 159, 161, 162 and 167 (Meeting the challenge of climate change, flooding and coastal change);
Paragraphs 174, 182, 183, 184, 185 and 186 (Conserving and enhancing the natural environment).

Adopted North West Leicestershire Local Plan (2021)

The following policies of the adopted Local Plan are consistent with the policies in the NPPF and should be afforded weight in the determination of this application:

S2 - Settlement Hierarchy
D1 - Design of New Development

D2 - Amenity
IF4 - Transport Infrastructure and New Development
IF7 - Parking Provision and New Development
EN1 - Nature Conservation
EN2 - River Mease Special Area of Conservation
CC2 - Water - Flood Risk
CC3 - Water - Sustainable Drainage Systems

Other Policies / Guidance

National Planning Practice Guidance
Good Design for North West Leicestershire Supplementary Planning Document - April 2017.
Leicestershire Highways Design Guide (Leicestershire County Council).
The Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations').
Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System).
River Mease Water Quality Management Plan - August 2011.
National Design Guidance - Oct 2019.

5. Assessment

Principle of Development

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

This is an outline application for approval of access and layout at this stage. As the application site is within the defined Limits to Development and as this proposal is for residential development, it would accord with Policy S2 of the adopted Local Plan.

The proposal would represent a sustainable form of development and would accord with the policy aims of the adopted Local Plan and would be acceptable in relation to the NPPF. Therefore, the development is acceptable in principle subject to other material considerations as assessed in the remainder of the report.

Design and impact on character of the area

This outline application seeks approval for access and layout at this stage. As such, scale and appearance of the properties would be determined in a subsequent application for reserved matters. The following will assess the layout and the overall principle that a suitably designed property could be provided on this site.

The need for good design in new residential development is outlined not only in adopted Local Plan Policy D1 and the Council's Good Design SPD but also paragraphs 130 and 134 of the NPPF.

The application site is within the garden of an existing property. The site is within limits to development and is accessed off a private drive from Chapel Street in Oakthorpe where there are already several neighbouring dwellings. The proposed new dwellings would be visible from the public highway at the access point to the site.

The proposal includes the demolition of a group of existing sheds and a large storage building which is currently located towards the south-east part of the application site. It is considered that

removal of the existing buildings on site would help to improve the overall appearance of the site.

It is noted that there is a public footpath located approximately 85 metres to the north-east of the application site. However, the site and the public footpath are both well screened by a boundary of mature trees and hedgerows, therefore views of the application site from the public footpath would not be prominent.

With regard to the overall layout, it is noted that there is already a row of existing dwellings on the wider site and new dwellings have been granted in recent years on land directly to the north where some are also set back behind other properties. This development would have the appearance of a cul-de-sac which would not be dissimilar to surrounding development. Furthermore, the northern most unit faces the access drive which will help to give an attractive vista when viewed from the public highway. On that basis the proposed layout and location of the new dwellings would be in keeping with the character of the area.

Additionally, it is considered possible for the proposed dwellings to have a footprint that would be at least equal to its outdoor amenity space, as recommended in the Council's Good Design Supplementary Planning Document (SPD). As such the proposal is not considered to result in overdevelopment of the site.

Based on the submitted site plan it appears possible that the site could accommodate all of the necessary requirements including a private garden, landscaping, parking/turning space and bin storage for both the new dwelling as well as the existing dwelling, without being cramped.

Therefore, it is considered that the proposal would not result in any harmful impacts to the character or appearance of the local area. As such, the development would accord with Policy D1 of the Local Plan, the Good Design SPD and paragraph 130 and 134 of the NPPF.

Impact upon Residential Amenity

Neighbour representations have been received during the course of the application with regard to impacts on neighbouring residential amenity, particularly at 8 Cottons Way and 47 Chapel Street. These matters will be considered further below.

The neighbouring properties most likely to be affected by the proposed development are No.8 Cottons Way to the north of the application site and No's 49, 47, 45 and 43 Chapel Street, to the north west. No.49 Chapel Street is in the closest neighbouring dwelling in proximity to the proposal and No.49 is also in the same ownership as the application site.

As previously mentioned, this outline application only seeks approval for access and layout at this stage. Matters such as appearance and scale would be considered at reserved matters stage. Notwithstanding this the principal impacts on residential amenity will be considered below.

With regard to No.8 Cottons Way, the closest of the proposed new units (the most northern plot) would be at least 35 metres from the rear elevation of that neighbouring dwelling. This exceeds the recommended 20 metre separation distances as per the Council's Good Design Supplementary Planning Document (SPD). It is noted that this same proposed unit could have first floor windows within 10 metres of the rear garden boundary. Notwithstanding this, it is considered that during a reserved matters application it would be possible to obscurely glaze, and fix shut below an internal floor height of 1.7 metres, the closest window to that neighbour to reduce the overall impact. Furthermore, there would be a tree retained in this location that would

partly screen the proposed dwelling from the neighbouring garden. Overall, it is not considered that the proposed development would be harmful to No.8 Cottons Way.

It is noted that No.47 Chapel Street has raised some concerns regarding the impacts on their windows from the development. No.47 is at least 20 metres away from the nearest proposed dwelling which complies with the Council's Good Design SPD. It is noted that the occupant of No.47 has concerns with their front windows and the proximity to the driveway. As the driveway already existing there are already comings and goings past the front windows of these properties. It would be unreasonable to argue that this development would intensify the development to a harmful extent that would be sufficient enough to warrant refusal of the application. As such the proposal is considered to be satisfactory.

Concerns have been raised by the owners of the adjacent commercial garage business regarding the future occupants of the proposed dwellings being likely to make noise complaints about the garage business due to the close proximity of garage to the application site. The Council's Environmental Protection Team have provided additional advice regarding noise and disturbance concerns for future occupants of the new dwellings. The Environmental Protection Officer has assessed the submitted noise assessment and is satisfied with the proposal. They have also recommended conditions to secure acoustic fencing and to ensure the windows would be sufficiently noise insulated. Subject to these conditions the proposal is considered to be satisfactory.

In addition to the above, it has been recommended that the southern plot is moved further away from the boundary to further reduce the possibility of noise impacts on the future occupants of this plot. This option is in discussions with the applicant and will be updated to planning committee.

With regard to impacts on the existing dwelling No.49, it is considered that the proposals would be sited in locations that would provide a suitable distance to prevent any adverse overshadowing, overbearing or overlooking impacts. Further assessment could be made during a reserved matters application, once the location of windows is confirmed, to ensure that there would not be any adverse overlooking. However, there would be a distance of at least 10 metres from the rear elevation of the nearest adjacent plot to No.49, which is compliant with the standard minimum distances as per the Council's Good Design SPD.

Overall, it is considered that a scheme at reserved matters could be achieved that would not result in detrimental impacts upon surrounding residential amenity. Therefore, the proposed development is considered to be in accordance with Policy D2 of the adopted Local Plan and the Council's Good Design SPD.

Highway Considerations

The site would utilise an existing access, an adopted unclassified road on Chapel Street. No details have been submitted regarding the surfacing of the site access however, it is considered this could be secured by way of a planning condition to ensure suitable surfacing for the development which would reduce the risk of deleterious material being deposited in the highway.

The County Highway Authority (CHA) requested that a speed survey was undertaken due to the intensification of the use of the site access in order to establish the recorded 85th percentile speeds on Chapel Street. Subsequently, a speed survey has been undertaken which identified the speeds of 35.5mph northeast bound and 39.5mph southwest bound.

In accordance with Table DG4 of Part 3 of the Leicestershire Highway Design Guide (LHDG), visibility splays of 2.4m x 65m should be provided.

Whilst the submitted block plan demonstrates visibility splays of 2.4m x 65m and 2.4m x 54m to the northeast and southwest of the site access respectively, the CHA is satisfied that suitable visibility splays can be achieved and recommends that the access details are secured by way of planning condition. The access arrangements are therefore acceptable.

The proposed site plan indicates that the required amount of off street parking can be accommodated within the application site. Additionally, the swept path analysis demonstrated a fire appliance accessing and turning within the site, which is considered to be acceptable.

Neighbour concerns have been raised with regard to possible obstruction of the site access and driveway during construction. This is a private drive and is not part of the adopted public highway, therefore any arrangements during construction on private land would be a civil matter for the developer to arrange with those who have a right of way over the land.

The CHA has determined that the proposed development is acceptable subject to conditions to secure access details, visibility splays, surfacing, parking and turning. The proposal is considered acceptable in relation to the Leicestershire Highways Design Guide and Policies IF4 and IF7 of the adopted Local Plan and the Local Highways Design Guidance.

Flood Risk

Neighbour objections and an objection from the Parish Council have been received regarding the development's impact on drainage and flooding. This will be considered below.

The application site is within Flood Zone 1 however the site contains areas at low risk of surface water flooding. There are also some surrounding areas on neighbouring land which are within areas at high risk of surface water flooding.

Due to the concerns raised by residents, Councillors and given that there appear to be wider surface water flooding issues in the locality, the Lead Local Flood Authority (LLFA) have been consulted on this application and were asked to provide a detailed assessment.

The LLFA notes that there have been repeated reports of internal flooding on land around the application site. Reports indicate that flooding to the south is partially due to surface water accumulation inside the sites blue line boundary, which is land within the ownership of the applicant.

The LLFA provided guidance during the course of the application and the planning agent has provided an amended flood risk assessment in accordance with the LLFA's comments. On the basis of the detailed reports provided the LLFA advises that the proposals are acceptable however planning conditions should be attached to any permission granted to secure a surface water drainage scheme and to undertake infiltration testing.

Subject to the recommended conditions it is considered that the proposal is unlikely to result in any harmful increases in flooding on the site or elsewhere. The proposal would therefore not have a significant impact on flood risk or drainage and so would comply with Policies CC2 and CC3 of the Local Plan and the aims of the NPPF.

River Mease Special Area of Conservation/SSSI - Habitat Regulations Assessment

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC).

Discharge from the sewerage 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 SAC is required.

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.

Foul / Non-Mains Drainage

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 CIL Regulations and paragraph 182 of the NPPF.

Paragraph 174 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of water pollution. Paragraph 180 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment. The Planning Practice Guidance (PPG) also states that applications for developments relying on anything other than connection to a public sewage treatment plant will need to be supported by sufficient information to understand the potential implications for the water environment. The PPG also sets out a hierarchy of preferred foul drainage solutions; firstly mains sewer, then package treatment plants and lastly septic tanks, and also advises that proposals should clearly set out the responsibility and means of operation and management of non-mains drainage systems to ensure that the permit is not likely to be infringed in the life of the plant, the effects on amenity and traffic should be considered and where a system will rely on use of a drainage field, consideration may be given to the need to periodically replace it to allow the system to continue to function properly.

It therefore has to be considered whether a non-mains drainage system could be accommodated on the site without resulting in an adverse impact on the environment, as well as whether it is likely that any necessary approvals under separate legislation, e.g. the Environmental Permit system and the Building Regulations, could be successfully obtained. Consideration is therefore given as to whether the non-mains drainage system can be accommodated on the site in accordance with separate legislation, whilst not resulting in any impacts on material planning considerations, e.g. residential amenities, highway safety, flood risk, layout and design of the site, and any other relevant planning matters. Specific impacts on the River Mease SAC are considered in a separate section of this report below.

Firstly, the application site would be in excess of 30 metres from the nearest mains connection, as such a non-mains drainage option in principle is considered to be acceptable in this location. It is also noted that the existing neighbouring properties already have non-mains options. Given that a non-mains option is required in this location there is no requirement to secure a DCS contribution as the development would not connect to the mains.

In terms of the Environment Agency's hierarchy of non mains drainage methods the preference

would be package treatment plants then septic tanks then cesspools or sealed tanks. The planning agent has confirmed that the proposed method of drainage for this development would be a package treatment plant, which would be the most preferable in the EA's guidance.

This proposal has been assessed against Natural England's standing advice to ensure that the non-mains drainage would not adversely impact on the River Mease Special Area of Conservation and it has been found to comply with this guidance. Furthermore, Natural England has no objection to this application.

It is noted that access would be required for a large vehicle to enter the site to empty the cesspool / sealed tank and it is considered that here would be sufficient turning space within the application site for this to take place.

It is therefore considered that the non-mains drainage system would not result in any adverse impacts on residential amenities, health and living conditions, highway safety, flood risk and the natural environment (other than matters relating to the River Mease SAC/SSSI are considered below) and would therefore comply with paragraphs 174 and 180 of the NPPF and the guidance in the PPG.

On the above basis, it is considered that foul drainage discharge from the site would not adversely impact on the integrity of the River Mease SAC/SSSI.

Surface Water Drainage

This application would increase areas of hardstanding. It is considered that an appropriate condition to secure disposal of surface water runoff to a sustainable drainage system would ensure that no adverse impacts would arise. On this 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.

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.

Conclusion

On the above basis, it is considered that foul drainage discharge from the proposed new dwelling on the site would not adversely impact on the integrity of the River Mease SAC.

Therefore, it can be ascertained that the proposal would, 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 adopted Policies En1 and En2.

Ecology

During the course of the application the County Ecologist requested a detailed ecological survey be provided. The submitted Ecological Appraisal Survey (Wildlife Consultants Limited, June 2021) confirms that at the time of the survey no evidence of protected species was found. A Habitat Suitability Index (HIS) has confirmed the ponds offer poor potential to support Great Crested Newts (GCN) and no further surveys are required, nor is implementation of a Mitigation Strategy for GCNs required.

Paragraph 180 of the NPPF (2021) states that 'opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is

appropriate'. To achieve biodiversity net gain on the site the County Ecologist advises that the recommendations in the report should be followed. The Ecology survey states that biodiversity net gain can be achieved by management of existing hedgerows, planting a new hedgerow, planting new native shrub and tree species within the adjacent blue line area. The County Ecologist advises that a landscape plan should be provided to demonstrate how biodiversity net gain will be achieved on the site or on adjacent land within the applicant's ownership. However, this would be a matter for a future reserved matters application where landscaping would be assessed.

The County Ecologist has also advised that there should be a condition attached to any planning permission granted to secure 2 bat bricks/boxes on each new dwelling.

Subject to the above recommended conditions, it is considered that protected species would not be adversely affected by the proposal and the development complies with the Habitats Regulations 2017 and Policy En1 of the adopted Local Plan.

Trees

The tree officer has assessed the proposed development and has no arboricultural objections to this outline application. The submitted details demonstrate that the three new dwellings could be constructed on the site without undue impacts to the existing tree cover. Further details will be required regarding the protection of trees during construction. However, this would need to be dealt with, alongside a landscaping scheme, during a subsequent reserved matters application, if this outline consent is granted.

If planning permission is granted then it is recommended to attach a condition to secure tree protection measures for the retained trees on site in order to ensure these trees would not be adversely affected during construction.

On the basis of the above, this application is considered to accord with Policy En1 of the Adopted Local Plan.

Land Contamination

The Council's Environmental Protection Land Contamination Officer has requested that conditions be imposed requiring a risk based land contamination assessment.

The Environment Agency (EA) has also provided advice which relates to the protection of controlled waters. Detailed geological maps indicate that the site is located on a Principal Aquifer. The site is not within a groundwater Source Protection Zone however several surface water features are located within proximity of the site. The proposed application is also located to the north of an existing pond.

Reference to Environment Agency databases indicate that the site is located in proximity to an historic landfill, known as 'Oakthorpe Landfill Site'. The EA advise that the landfill accepted inert, industrial and household waste between 1960 - 1974. The EA also note that the site was formerly used in relation to motor vehicles maintenance and repair garage. These former uses of the site have the potential to have caused contamination to controlled waters receptors. Furthermore, there is the potential to mobilise existing contamination during development. As such, the EA recommend that a land contamination condition be included if planning permission is granted.

The wider site has also been used as a motor vehicle garage, and nearby historic landfills, presents a risk of contamination that could be mobilised during construction to pollute controlled

waters. Controlled waters are particularly sensitive in this location because the proposed development site is located upon a principal aquifer.

Considering the above, the EA advise that the proposed development will be acceptable if a planning condition is included requiring the submission of a remediation strategy. This should be carried out by a competent person in line with paragraph 183 of the NPPF.

Subject to these conditions the development would accord with Policy En6 of the adopted Local Plan and paragraphs 183 and 184 of the NPPF regarding land and air quality.

Minerals

The site lies within a Mineral Safeguarding Area for shallow/surface coal and therefore Policy M11 of the Minerals and Waste Local Plan is relevant. However, the Mineral Planning Authority does not believe that the proposed development would adversely sterilize mineral if present, and advises that a Mineral Assessment is not required. As such the proposal would not conflict with Policy M11.

Other

With regard to land ownership disputes, these have been clarified with the applicant. Other landowners have been service notice and have been declared on the submitted application form. The issues raised regarding land ownership would be a civil matter and would be dealt with by the applicant separately outside of the planning application process.

Neighbour concerns were raised by the occupants of No.47 regarding whether the development would be built over their non-mains drainage. The latest drainage plan shows that this would not be built over and therefore the owners of No.47 would still have access to their drainage.

Conclusion

In conclusion, the site lies within Limits to Development where there is a presumption in favour of development subject to all other matters being addressed. The scheme does not give rise to any significant material impacts upon the occupiers of neighbouring dwellings, visual amenity, highway safety, ecology, flooding, trees or environmental protection matters. The proposal would also not result in harm to the River Mease SAC. It is recommended that planning permission be granted, subject to the imposition of planning conditions and the completion of a legal agreement.