

Erection of 17 townhouses with associated car parking access, landscaping and car park to hotel and associated access amendments
The Royal Hotel Station Road Ashby De La Zouch
Leicestershire LE65 2GP

Report Item No
A1

Application Reference
22/01552/FULM

Grid Reference (E) 435603
Grid Reference (N) 316437

Date Registered:
29 September 2022
Consultation Expiry:
2 November 2022
13 Week Date:
29 December 2022

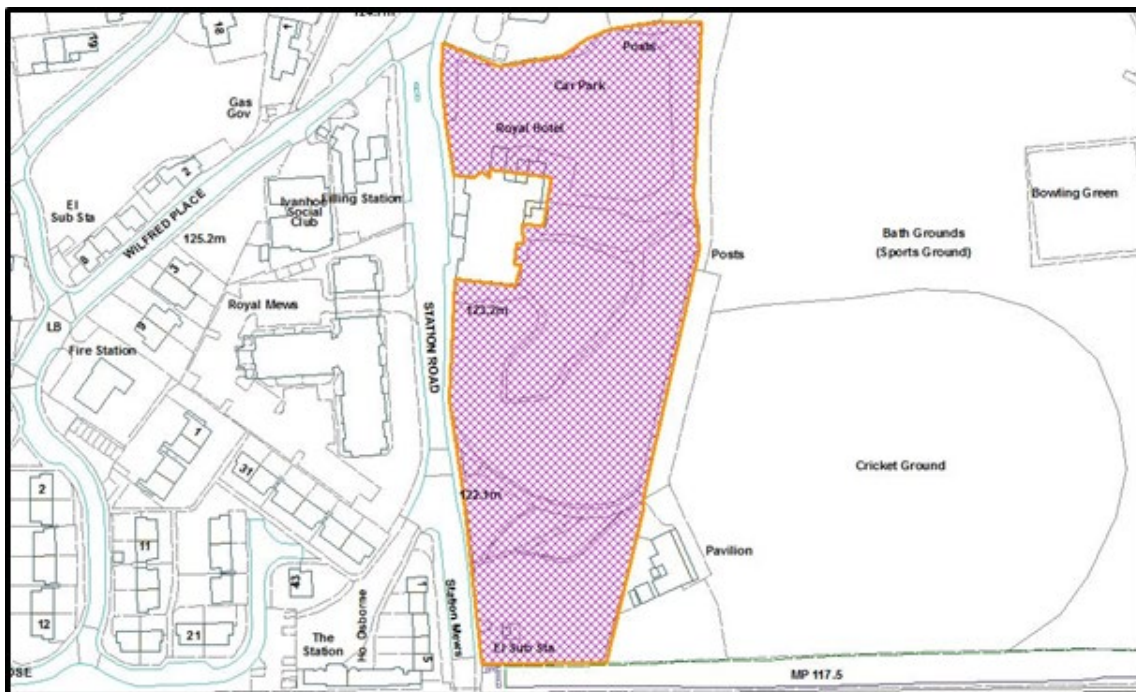
Applicant:
Mr S Dawson

Extension of Time:
FINAL EXT TO BE AGREED

Case Officer:
Adam Mellor

Recommendation:
PERMIT SUBJECT TO SECTION 106

Site Location - Plan for indicative purposes only



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Reasons the case is called to the Planning Committee:

The application is brought to the Planning Committee at the request of the Strategic Director for Place due to the significance of the scheme in relation to the restoration and re-use of the Royal Hotel a Grade II* listed building.

RECOMMENDATION – PERMIT, subject to the following conditions and Section 106 agreement:

1. Standard time limit (3 years).
2. Approved plans.
3. Removal of permitted development rights for Part 1 Classes A to H (extensions, alterations and outbuildings), Part 2 Classes C to F (exterior painting, electrical charging points and CCTV cameras) and Part 14 Classes A to I (renewable energy to domestic premises) to all plots.
4. Construction environmental management plan (CEMP) prior to commencement to be submitted, approved and implemented (will also include construction traffic management plan and mitigation measures to protect the Gilwiskaw Brook from pollution).
5. CEMP for biodiversity prior to commencement to be submitted, approved and implemented.
6. Finished ground and floor levels prior to commencement to be submitted, approved and implemented.
7. Scheme of external materials prior to townhouses being built above damp proof course level to be submitted, approved and implemented.
8. Sample panel of approved bricks, brick bond, mortar mix and pointing technique prior to the townhouses being built above damp proof course level to be submitted, approved and implemented.
9. Design detailing of townhouses prior to townhouses being built above damp proof course level to be submitted, approved and implemented.
10. External meter boxes and rainwater goods to be finished black.
11. Soft landscaping scheme in accordance with submitted plans.
12. Landscape environmental management plan (LEMP) prior to the first use of the development to be submitted, approved and implemented.
13. Scheme of tree protection measures for retained trees prior to the commencement of development to be submitted, approved and implemented.
14. Compliance with recommendations within submitted arboricultural impact assessment (AIA).
15. Hard landscaping scheme in accordance with submitted plans.
16. Boundary treatment scheme in accordance with submitted plans and removal of permitted development rights for alternative boundary treatment schemes to all plots.
17. Elevational information of boundary treatments prior to boundary treatments being installed to be submitted, approved and implemented.
18. Delivery of access arrangements (including visibility splays) in accordance with submitted plans.
19. Delivery of off-street parking and turning arrangements in accordance with submitted plans.
20. Delivery of secure cycle parking facilities prior to the first use of the development to be submitted, approved and implemented.
21. Scheme for the treatment of public footpath O111 prior to commencement to be submitted, approved and implemented.
22. Scheme of parking restrictions and signage on the southern access road prior to the first use of the development to be submitted, approved and implemented.
23. Surface water drainage scheme prior to commencement to be submitted, approved and implemented.

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24. Surface water drainage scheme during the construction phase prior to commencement to be submitted, approved and implemented.
25. Surface water drainage maintenance scheme prior to the first use of the development to be submitted, approved and implemented.
26. Bat survey(s) prior to the removal of any trees to be submitted, approved and implemented.
27. Bat and bird enhancement scheme prior to commencement, to be submitted, approved and implemented.
28. External lighting scheme (which will also include a lighting strategy for bats) prior to occupation to be submitted, approved and implemented.
29. Risk based land contamination assessment prior to commencement to be submitted, approved and implemented.
30. A verification investigation prior to first use of the development to be submitted, approved and implemented.
31. Delivery of bin storage points and bin collection areas in accordance with submitted plans.
32. Details of bin storage point enclosure prior to the townhouses being built above damp proof course level to be submitted, approved and implemented.
33. Programme of archaeological work prior to commencement to be submitted, approved and implemented.

MAIN REPORT

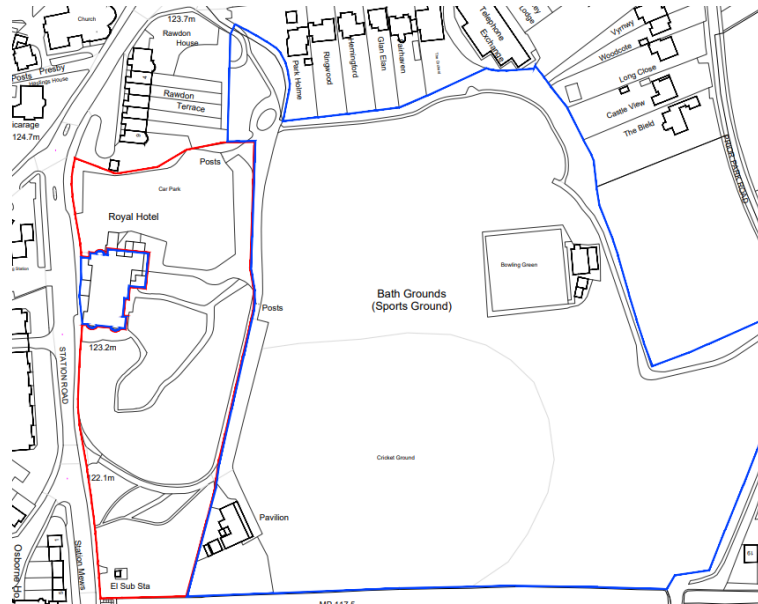
1. Proposals and Background

Planning permission is sought for the erection of 17 townhouses with associated car parking, access, landscaping and car park to hotel and associated access amendments at The Royal Hotel, Station Road, Ashby De La Zouch. The Royal Hotel is a Grade II* listed building and the hotel, and the land on which the development would be proposed, lies within the Ashby De La Zouch Conservation Area as well as the Limits to Development for the settlement. Rawdon Terrace, a Georgian residential terrace which is also Grade II* listed, is situated to the north of the site, Ashby Bath Grounds adjoin the site to the east and Station Road forms the boundary to the west. On the opposite side of Station Road development is predominately residential although some commercial elements, including a petrol filling station, do exist.

Existing Aerial Image of the Application Site



Site Location Plan



The development would comprise of the following:

- 17 townhouses with 10 provided to the north of the hotel on the former car park associated with the Royal Hotel and 7 provided to the south of the hotel. Units 1 to 3 would be 3 bed properties with accommodation over three-storeys and units 4 to 17 would be 5 bed properties with accommodation over four-storeys. The townhouses would be provided with dedicated off-street parking.
- The provision of a 63 space car park to serve the Royal Hotel which would be constructed to the south of the hotel.
- The soft landscaping of the grounds associated with the Royal Hotel.
- Alterations to the existing vehicular accesses onto Station Road set to the north and south of the hotel.
- Provision of a southern access road between Station Road and the Bath Grounds.

The development as proposed is shown on the image below.

Site Layout Plan Showing Proposed Development



It is outlined within the supporting documentation that the proposals comprise enabling development which is defined within Historic England’s publication ‘*Planning Note 4 – Enabling Development and Heritage Assets*’ at paragraph 5 as:

“...development that would not be in compliance with local and or national planning policies, and not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset.”

Paragraph 208 of the NPPF also states that:

“Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies, but which would secure the future conservation of a heritage asset, outweigh the dis-benefits of departing from those policies.”

In this particular case, it is outlined that there is a conservation deficit, i.e. there is insufficient funds available without development to repair and restore the Royal Hotel and bring it back into use as a hotel (a C1 use). On this basis the level of development proposed is the minimum necessary to generate and secure the funds which would enable the conservation deficit to be met and the repairs and restoration to the hotel to be undertaken.

In support of the application a planning statement, a design and access statement, built heritage statement, archaeological desk based assessment, transport statement, preliminary ecological appraisal, flood risk assessment and River Mease Developer Contribution Scheme 2 (DCS2) assessment have been submitted. Throughout the course of the application a Building for a Healthy Life (formerly Building for Life 12) assessment, amended flood risk assessment, sustainable urban drainage system (SuDS) operation and maintenance strategy, bat survey report and arboricultural impact assessment and method statement have also been submitted and re-consultation undertaken.

The recent and relevant planning history of the site is as follows:-

- 14/00104/FULM – Demolition of side and rear extensions at existing hotel, erection of side/rear extension to existing hotel and associated external works; erection of single

storey kiosk building (A3 use), erection of two-storey pavilion building (A3 and D2 use), formation of car park and alterations to existing access at Station Road involving removal of part of boundary wall to form visibility splays, associated removal of existing fencing and car park furniture and implementation of landscape works – Approved 24th October 2016.

- 14/00105/LBC – Demolition of side and rear extensions of hotel, erection of side/rear extension to hotel, internal works, partial demolition and rebuilding of boundary wall to form visibility splays – Approved 24th October 2016.
- 14/00107/FULM – Demolition and erection of both cricket and bowls pavilions and erection of no. 5 dwellings within the Ashby Grounds – Withdrawn 6th August 2014.
- 17/00761/FULM – Development of the northern car park of The Royal Hotel to provide B1 office accommodation and 28 residential apartments along with associated access, parking and amenity site – Withdrawn 18th June 2018.
- 19/00890/VCUM – Variation of conditions 2, 4, 6, 7, 8, 11, 13, 14, 15, 16, 17, 18, 27, 28, 30 and 31 of 14/00104/FULM to enable the site to be developed in areas – Approved 23rd October 2019.
- 19/01792/FULM – Erection of a 30 bed apartment terrace, B1(a) office building, café kiosk and 69 bed care home (C2) with associated car parking access, landscaping and associated access amendments – Withdrawn 5th October 2022.
- 22/01492/LBC – Repair and alterations to roof and external elevations, including stonework to be repaired and lime rendered on the east and south elevations – Approved 16th January 2023.

2. Publicity

186 neighbours initially notified 5 October 2022 and on the amended plans on the 25 April 2023.

A site notice was displayed on the 14 October 2022.

A press notice was published in the Leicester Mercury on the 12 October 2022.

3. Summary of Consultations and Representations Received

The following summary of representations is provided. All responses from statutory consultees and third parties are available to view in full on the Council's website.

Objections from:

Historic England.
Leicestershire County Council – Archaeology.
NWLDC Conservation Officer.
NWLDC Tree Officer.

Comments from:

Ashby De La Zouch Town Council on the following summarised grounds:

- *“That the District Council is satisfied that the proposed development of the 17 town houses is the minimum development which is required to secure the restoration of the Royal Hotel building;*

- *That the District Council is satisfied that the hotel will be a viable business following the proposed restoration based on the number of bedrooms and projected occupancy rates;*
- *That the District Council has a sufficiently robust legal arrangements in place to ensure that funds raised from the proposed development are used for the restoration of the hotel building;*
- *That the profits claimed by the developer in the financial statement are reasonable within the framework of 'enabling development' and the viability of the planning application itself;*
- *That the loss of 81 trees on the site will be addressed;*
- *That the allocation of 63 car parking spaces for the hotel is reviewed – this has been increased from the original plan but still lower than the 75 car parking spaces as specified by the Highway Authority;*
- *That the proposal for the hammer-head turning area for refuse collection vehicles is revisited and an alternative solution found (the current plan implies a loss of car parking for users of the Bath Grounds, including the cricket club and also raises practical concerns regarding access by members of the public to the current parking area;*
- *The Town Council also raises concerns that the view of townhouses from the Bath Grounds is significantly imposing upon the Royal Hotel listed building when they should be subservient to it. The Town Council would request that the developers and local authority revisit the plans to ascertain if they could be altered to readdress the balance."*

No Objections from:

Environment Agency.
NWLDC Environmental Protection.

No Objections, subject to conditions and/or informatives from:

Leicestershire County Council – Developer Contributions.
Leicestershire County Council – Ecology.
Leicestershire County Council – Highways Authority.
Leicestershire County Council – Lead Local Flood Authority.
National Forest Company.
Natural England.
NHS Leicester, Leicestershire and Rutland.
NWLDC – Affordable Housing Enabler.
NWLDC – Environmental Protection (Contaminated Land).
NWLDC – Urban Designer.
NWLDC – Waste Services.
Police Architectural Liaison Officer.

Third Party Representations

Seven number of representations have been received objecting to the application with the comments raised summarised as follows:

<u>Grounds of Objections</u>	<u>Description of Impact</u>
<p>River Mease Special Area of Conservation (SAC)/Site of Special Scientific Interest (SSSI)</p>	<p>The properties are within the catchment area of the River Mease SAC/SSSI and there is no spare capacity at the Packington Sewerage Treatment Works to accommodate foul drainage from the development directed to the mains sewer. On this basis the proposed units will need to be served by cess pits and this is not addressed in the application. If the properties are permitted without cesspits, then they will pollute the River Mease SAC/SSSI.</p>
<p>Impact on the Bath Grounds</p>	<p>The Bath Grounds offers not only a place of historic importance for Ashby but also a peaceful space to play and enjoy. The erection of the townhouses will spoil this. Given the amount of development in Ashby such houses are not necessary on this historic site with green spaces being important and therefore should be protected.</p> <p>Townhouses as proposed should not be designed to overlook a recreation area and will make the experience of using the Bath Grounds unpleasant.</p>
<p>Highway Safety</p>	<p>The need for the Bath Grounds/cricket club parking area to be kept clear to accommodate a turning hammerhead for service vehicles would result in a loss of public parking spaces on land which would be owned or leased by the town council. The loss of such parking will significantly increase on-street parking in the vicinity.</p> <p>The number of parking spaces within the hotel car park remains less than those approved as part of the extant consent. This will also encourage on-street parking within the vicinity</p>

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	<p>of the site or within the Bath Grounds car park to the inconvenience of residents and users of the Bath Grounds and cricket club.</p>
	<p>The development will result in significant additional pedestrian journeys from the hotel and townhouses to the centre of Ashby. This will involve the dangerous crossing at the bottom of South Street (at the South Street entrance to the Bath Grounds). A financial contribution should be secured towards the provision of pedestrian crossing at this location as highlighted in the Ashby Neighbourhood Plan.</p>
<p>Loss of Trees</p>	<p>There is only minor mitigation for the loss of 81 trees (including 13 grade A and 31 grade B) and therefore additional tree planting elsewhere should be financed if it cannot be delivered on site.</p>
<p>Design</p>	<p>The height of the townhouses being the same as The Royal Hotel means that they will dominate the westerly view from the Bath Grounds, whereas they need to be subservient.</p>
	<p>There will be no ability for the hotel to expand in the future given the development undertaken around it.</p>
<p>Residential Amenity</p>	<p>Events hosted on the Bath Grounds generate noise and disturbance which will be objected to by inhabitants of the townhouses and impact on their amenities. Such complaints from residents would also render the Bath Grounds unusable as a recreation area.</p>
<p>Enabling Development</p>	<p>Is the proposed development the minimum necessary to raise the funds required to restore the hotel?</p>
	<p>Can it be ensured that the hotel, as proposed, is a viable business enterprise once restored and unlikely to fail and drift back into another</p>

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	cycle of closure and deterioration?
	Are the legal agreements associated with the proposed section 106 and Escrow agreements sufficiently robust to ensure that the funds raised from the developments are indeed used to restore the hotel in accordance with the repairs schedule and restoration proposals included?
	Can we be assured that the profits to be made from the whole package by the current owner are reasonable within the framework of Enabling Development guidance?
	The means of sharing any excess profits with the people of Ashby in recognition of their £620k input for the purchase of the Bath Grounds should be explored.

Ashby De La Zouch Civic Society have also objected to the application on the following summarised grounds:

- The exclusion of the Royal Hotel from the application site makes the proposed enabling development ineffective as the hotel should be included as part of the application.
- The proposal will result in the removal of 81 trees which is not acceptable with any replacement planting taking a significant of time to be established. The siting of the Royal Hotel amidst the trees is a key feature of the landscape.
- The height of the townhouses will dominate the Bath Grounds and result in the experience of the parkland being lost given the overlooking established.
- The hosting of noisy events on the Bath Grounds will result in detriment to the amenities of any future occupants of the townhouses with any complaints raised leading to the Bath Grounds not being usable for events.
- There are insufficient levels of parking associated with the hotel so as to facilitate with events (such as weddings) which may be hosted.
- There is poor provision for service vehicles to access the townhouses behind the cricket pavilion.

4. Relevant Planning Policy

National Policies

National Planning Policy Framework (2021)

The following sections of the NPPF are considered relevant to the determination of this application:

Paragraphs 8 and 10 (Achieving sustainable development);
Paragraphs 11 and 12 (Presumption in favour of sustainable development);
Paragraph 34 (Development contributions);
Paragraphs 38, 39, 40, 41, 42, 44 and 47 (Decision-making);
Paragraphs 55, 56, 57 and 58 (Planning conditions and obligations);
Paragraphs 60, 61, 62, 63, 65, 69, 74, 75, 77, 78 and 79 (Delivering a sufficient supply of homes);
Paragraphs 92 (Promoting healthy and safe communities);
Paragraphs 107, 108, 110, 111, 112 and 113 (Promoting sustainable transport);
Paragraphs 119, 120, 124 and 125 (Making effective use of land);
Paragraphs 126, 128, 130, 131 and 134 (Achieving well-designed places);
Paragraphs 152, 153, 154, 159, 167 and 169 (Meeting the challenge of climate change, flooding and coastal change);
Paragraphs 174, 180, 183, 184, 185, 186 and 187 (Conserving and enhancing the natural environment); and
Paragraphs 189, 194, 195, 197, 199, 200, 202, 205, 206 and 208 (Conserving and enhancing the historic environment).

Local Policies

Adopted North West Leicestershire Local Plan (2021)

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

Policy S1 – Future Housing and Economic Development Needs;
Policy S2 – Settlement Hierarchy;
Policy D1 – Design of New Development;
Policy D2 – Amenity;
Policy H4 – Affordable Housing;
Policy H6 – House Types and Mix;
Policy IF1 – Development and Infrastructure;
Policy IF3 – Open Space, Sports and Recreation Facilities;
Policy IF4 – Transport Infrastructure and New Development;
Policy IF7 – Parking Provision and New Development;
Policy En1 – Nature Conservation;
Policy En2 – River Mease Special Area of Conservation;
Policy En3 – The National Forest;
Policy En6 – Land and Air Quality;
Policy He1 – Conservation and Enhancement of North West Leicestershire’s Historic Environment;
Policy Cc2 – Water – Flood Risk; and
Policy Cc3 – Water – Sustainable Drainage Systems.

Made Ashby Neighbourhood Plan (2018)

The Ashby Neighbourhood Plan forms part of the development plan and the following policies of the Neighbourhood Plan are relevant to the determination of the application:

Policy S1 – Presumption in Favour of Sustainable Development;
Policy S2 – Limits to Development;
Policy S4 – Design Principles;
Policy S5 – Support to be given to Brownfield Sites;
Policy H1 – Sustainable Housing Growth;
Policy H3 – Windfall Sites;
Policy H4 – Housing Mix;
Policy H5 – Affordable Housing;
Policy T1 – Traffic Management;
Policy T2 – Travel Plans;
Policy T4 – Walking and Cycling;
Policy HE1 – Ashby De La Zouch and Heath End Conservation;
Policy HE2 – Areas of Archaeological Interest;
Policy NE1 – Local Green Spaces;
Policy NE4 – Nature Conservation;
Policy NE5 – Trees and Hedgerows; and
Policy CF2 – Assets of Community Value.

Other Policies

National Planning Practice Guidance.

Good Design for North West Leicestershire Supplementary Planning Document – April 2017.

Leicestershire Highways Design Guide (Leicestershire County Council).

Planning (Listed Buildings and Conservation Areas) Act 1990 – Sections 66 and 72.

Historic England 'Enabling Development and Heritage Assets – 2020.

Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System).

River Mease Water Quality Management Plan – August 2011.

The River Mease Developer Contributions Scheme (DCS).

Circular 01/09 DEFRA Rights of Way.

5. Assessment

Principle of Development and Sustainability

Insofar as the principle of development is concerned, and 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 (2021) and made Ashby De La Zouch Neighbourhood Plan (ADLNP) (2018).

The site is located within the Limits to Development where the principle of development is considered acceptable subject to compliance with the relevant policies of the adopted Local Plan and other material considerations. Within the NPPF (2021) there is a presumption in favour of sustainable development and proposals which accord with the development plan should be approved without delay unless any adverse impacts of doing so would significantly and

demonstrably outweigh the benefits when assessed against the policies as a whole, or if specific policies in the NPPF indicate development should be restricted.

The sustainability credentials of the scheme would need to be assessed against the NPPF and in this respect Policy S2 of the adopted Local Plan highlights that Ashby De La Zouch is a Key Service Centre which is defined as a settlement where “*a significant amount of development will take place*”, albeit less development than that of the Principal Town (the Coalville Urban Area).

On the basis of the above, and taking into account the proximity of the site to the Ashby De La Zouch Town Centre, it is considered that the application site would be considered a sustainable location for new development due to it benefitting from a range of local services and being readily accessible via public transport, as such future residents would not be heavily reliant on the private car to access the most basic of services.

It is also the case that 10 of the townhouses would be on land, which was previously developed, being the former car park to the Royal Hotel, and therefore is the most preferable land for new development in the context of Paragraphs 119 and 120 of the NPPF as well as Policy S5 of the made ADLZNP.

Whilst this therefore leads to the proposed car park to the Royal Hotel and 7 of the townhouses being on greenfield land, which is not the most sequentially preferable land on which to provide new development, it is noted that the acceptance of a car park to the south of the hotel has previously been considered acceptable in accordance with the permission granted under application reference 14/00104/FULM (as varied by 19/00890/VCUM) which remains extant. On the basis that the land on which the 7 townhouses would be provided is not designated as a ‘Local Green Space’ under Policy NE1 of the made ADLZNP, in the same manner as the land associated with the Ashby Bath Grounds is, it is considered that the loss of the greenfield land to facilitate development would not be unacceptable ‘in principle’ and would not result in significant conflict with the environmental strand of sustainability enshrined within the NPPF.

The impact of the proposed development to the built environment is as assessed in the ‘*Impact on the Historic Environment*’ and the ‘*Design, Housing Mix and Impact on the Character and Appearance of the Streetscape*’ sections of this report below and it is considered that positive economic, social and environmental sustainability benefits would arise as a result of the development. As such, the proposal would be considered sustainable in accordance with Policy S2 of the adopted Local Plan, Policies S2, S5, H1 and H3 of the made ADLZNP and the core objectives of the NPPF.

The principle of the development is therefore considered to be acceptable, subject to all other material planning matters being addressed.

Impact on the Historic Environment

Policy He1 of the adopted Local Plan and the advice in the NPPF requires heritage assets to be preserved and enhanced. Where development results in harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The proposed development must also be considered against sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which states that special regard shall be had to the desirability of preserving the setting of a listed building and the character and appearance of the conservation area.

In terms of heritage assets the building is situated within the Ashby De La Zouch Conservation

Area with the Grade I listed Ashby Castle (which is also a Scheduled Monument) set to the north-east, Grade II* listed Royal Hotel set to the south, the Grade II* listed Rawdon House and Rawdon Terrace to the north and the Grade II listed Holy Trinity Vicarage (Station Road) and Grade II listed Roman Catholic Church of Our Lady of Lou (Station Road) to the north-west. Therefore, the impact of the development on the fabric and setting of these heritage assets should be given special regard as required by the 1990 Act.

NWLDC Conservation Officer

The original consultation response from the Council's Conservation Officer outlined the following concerns:

- (i) That the erection of the seven dwellings on land to the south of the hotel would necessitate the removal of 6 category A trees and 13 category B trees whilst also compromising the openness of the Bath Grounds;
- (ii) That harm would arise from the removal of three category A trees and 15 category B trees to facilitate the provision of the hotel car park and the 'landscaping' to the east of the hotel;
- (iii) That the roof ridge of plots 4 to 10 and 11 to 17 would be around one metre higher than the Royal Hotel;
- (iv) That the roofs of neighbouring listed buildings are 'not' visible whereas the roof of each terrace would be visually prominent;
- (v) That a mansard roof with a 65 degree pitch would not reflect local character; nor would dormer windows;
- (vi) That the detail whereby the party wall continues through the roof slope is not a locally characteristic one;
- (vii) That the proposed chimneys did not make sense given that, as an example, on each large terrace there would be six chimneys to serve seven dwellings; and
- (viii) That the garden elevation of each terrace would be faced in red brick which would not reflect the character of Rawdon Terrace or the Royal Hotel where the garden elevations are faced in Ashlar stone.

The Council's Conservation Officer also commented that the terraces on the former car park to the hotel (to its north) would reflect the orthogonal arrangement of Rawdon Terrace and the Royal Hotel with the terrace to the south of the hotel also reflecting this orthogonal arrangement.

In terms of addressing 'harm' via amending the plans the Council Conservation Officer's original response suggested that:

- (a) On land to the east of the hotel, a category A (Lime) tree and two category B (both Sycamore) trees should be retained;
- (b) The design of the hotel car park be amended to minimise the loss of category A and B trees, with the omission of parking space 32 enabling the retention of a Yew (category A) tree and the relocation of the car park access enabling the retention of a Sycamore (category B) tree and Yew (category B) tree.
- (c) Attic accommodation should be omitted from the two large terraces;
- (d) Roof pitches should be made as shallow as possible; and
- (e) On plots 4 to 10 and 11 to 17 the facing material used on the garden elevation should reflect the character of neighbouring listed buildings.

In terms of harm which was 'unavoidable' the Council's Conservation Officer stated that:

*“The erection of a terrace of seven houses on land to the south of the hotel would compromise the openness of the Bath Grounds, it would necessitate the removal of trees that contribute positively to the conservation area; it may prejudice the preservation of the subterranean water tank. These are fundamental considerations. We should refuse planning permission unless it can be demonstrated that the terrace would constitute enabling development – i.e. (a) “that the amount of development is the **minimum necessary to secure the future of the place**” and (b) “that its form minimises harm to other public interests.”*

Applicant’s Response to the Council Conservation Officer’s Original Consultation Response

In responding to the comments provided by the Council’s Conservation Officer the applicant has stated the following:

“The dormer features have been detailed to provide confidence that these will be of a traditional construction, again using high quality materials such as lead. The roofs of plots 1 to 3 are designed to reflect those of the adjacent listed Rawdon Terrace, with the aim of providing a coherent street scene with both Rawdon Terrace and the Royal Hotel. The remaining townhouses do have the additional storey however we feel that the prominence of the roof will be subservient to the main façade of the house and read separately to the vertical mass the brickwork presents. The overall elevations and their proportions are key to the success of the townhouses, and we feel these would be affected if we increase the height of the parapet wall to hide or mask the roof design. As an alternative, we have suggested a robust, more defined course of stone detailing to delineate the upper edge of the façade and emphasise the break in forms. We feel this subtle change will also help the dormers to appear less dominant and visually sit beyond this stronger upper edge.”

Amendments have also been made to the scheme to retain the category A trees referred to in points (a) and (b) of the Council’s Conservation Officer’s original consultation response (as outlined above).

NWLDC Conservation Officer Revised Response

The revised response of the Council’s Conservation Officer outlines that the retention of the category A trees is welcome (albeit the success of their retention is a matter which is discussed in more detail in the ‘*Landscaping*’ section of this report below), but in the main it is the view of the Council’s Conservation Officer that the matters raised in their original consultation response have not been appropriately addressed.

The overall conclusion from the Council’s Conservation Officer is that the proposed development would result in *less than substantial harm* to the significance of the setting of the Royal Hotel, Rawdon House and Rawdon Terrace and the character and appearance of the Ashby De La Zouch Conservation Area.

Historic England

In terms of Historic England (HE) their consultation responses outlined the impact of the development to the Royal Hotel, Rawdon House and Rawdon Terrace, the Ashby De La Zouch Conservation Area and Ashby Castle. Their assessment in this respect is as follows:

Impact to the Royal Hotel

HE has noted that although efforts have been made to articulate the massing of the townhouse

blocks, it remains the case that the proposals are large in scale and massing and as such would detract from the hotel's dominance notably both from Station Road and within the Bath Grounds. Given the close proximity, HE is concerned that the townhouses would compete with the Royal Hotel as the most prominent feature of the townscape.

HE has also outlined that the space between the Royal Hotel and Rawdon Terrace is an important part of their setting given that it allows views through to the Bath Grounds and the historic site of the Ivanhoe Baths. The proposed terrace fronting Station Road would sit between both the Royal Hotel and Rawdon Terrace and therefore prevent a view through to the Bath Grounds. Such views would be further hampered by the rear terrace (plots 4 to 10) proposed on the site of Ivanhoe Baths and as such would erode the legibility of the group and the contribution the assets make to each other's significance.

In terms of the design of the townhouses, HE has commented that this would jar with the hotel and erode its design quality and consequently the townhouses would not be subservient to the listed buildings.

HE also considers that the provision of residential units and their associated curtilages would change the character of the Bath Grounds and the immediate setting of the hotel with a residential use also having the potential to impact on the viability of the hotel given that such a use may conflict with a residential use.

On the above basis HE concludes that the development would result in a high level of less than substantial harm to the significance of the Royal Hotel.

Impact to Rawdon House and Rawdon Terrace

As is the case with the Royal Hotel, HE has outlined that the scale and massing of the townhouse blocks would detract from Rawdon Terrace's prominence, particularly in views from the Bath Grounds and Station Road, and that legibility of the group and relationship between Rawdon Terrace and the Royal Hotel would be eroded by the townhouses on the former car park of the Royal Hotel.

HE also considers that the proposed mock Georgian style would erode the original scheme and design intent.

Such impacts would result in less than substantial harm to the significance of Rawdon House and Rawdon Terrace.

Impact to the Ashby De La Conservation Area

HE considers that the proposed buildings would be at odds with the development of the site, filling the space on Station Road which was always open to allow views to the former Ivanhoe Baths, this would affect the legibility of the bath complex which forms an important part of the Conservation Area.

The proposals would also not preserve or enhance the character and appearance of the conservation area, due to the scale, mass and design of the townhouses, and therefore there would be less than substantial harm to the Ashby De La Zouch Conservation Area.

Impact to Ashby Castle

HE has outlined that the castle's current setting with minimal development bounding it enables it to be experienced in a setting similar to and reminiscent of that which would have been contemporary when the castle was in use as a residence.

HE outlines that the scale, detailing and massing of the proposals on their eastern elevation are likely to alter views to the higher levels of the Ashby Castle ruins that are permitted from the south of the site and the wider recreation ground. It would therefore compete with the castle for dominance in the skyline in panoramic views of the castle from the south of the Bath Grounds.

HE also considers that the provision of the townhouses would detrimentally alter the semi-tranquil and semi-parkland setting that the castle is experienced. This is due to the residential lighting spilling onto the recreation fields and compounding the effect at night.

Overall, there would be less than substantial harm to the significance Ashby Castle derives from its setting.

Historic England Conclusion

Based on the above, HE has determined that less than substantial harm would arise to the significance of the setting of Ashby Castle, Rawdon House and Rawdon Terrace and the character and appearance of the Ashby De La Zouch Conservation Area. It is also outlined that a high level of less than substantial harm would arise to the significance of the Royal Hotel.

HE has also indicated that the proposals would result in a cumulative impact to the group of heritage assets, and this should be considered in the overall assessment of the development.

It is noted that the applicant has not provided a specific response in relation to the comments raised by HE.

Officer Conclusion to the Impact on the Historic Environment

Considering the assessments by the Council's Conservation Officer and, in particular HE, it is concluded that less than substantial harm would arise to the significance of the setting of the Grade I listed Ashby Castle (which is also a Scheduled Monument) Grade II* listed Rawdon House and Rawdon Terrace as well as the significance of the Ashby De La Zouch Conservation Area. It is also the case that a high level of less than substantial harm would arise to the significance of the setting of the Grade II* listed Royal Hotel.

Paragraph 197 of the NPPF encourages local planning authorities to take account of, amongst other things, "*the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation*" (criterion (a)) and "*the desirability of new development making a positive contribution to local character and distinctiveness*" (criterion (d)).

Paragraph 199 of the NPPF further advises that *“when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. This is irrespective of whether any potential harm amounts to less than substantial harm to its significance as any harm loss to, or loss of, the significance of a designated heritage asset (from alteration or destruction, or from development within its setting) should require clear and convincing justification.”*

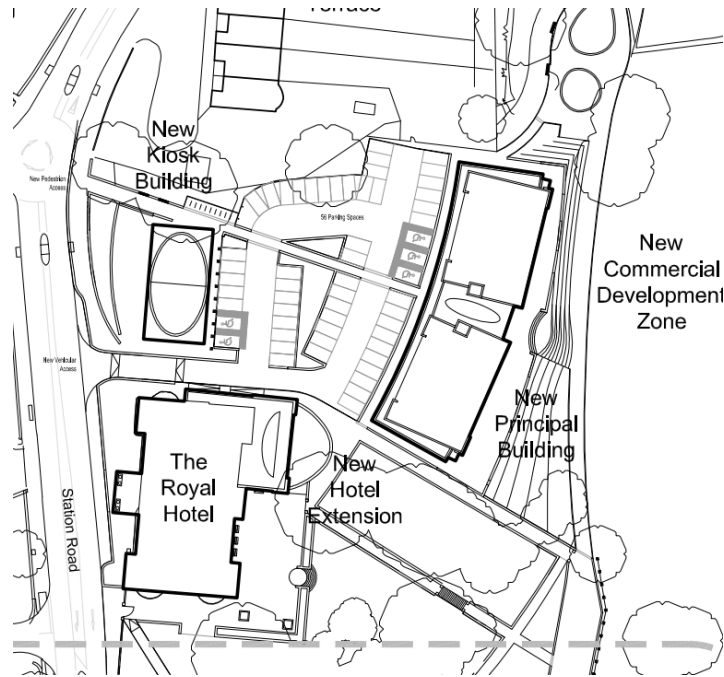
In reflecting on certain aspects of the comments raised by the Council’s Conservation Officer, it is accepted that dormers are not a common feature of buildings on Station Road but within the wider Ashby De La Zouch Conservation Area they are present on a building on Market Street. Nevertheless, the omission of the attic accommodation would remove two bedrooms from plots 4 to 17 and this consequently would have a fundamental impact on the viability of the development and increase the conservation deficit thereby increasing the pressure for further development to be provided. It is also considered that expressed party walls and dormers would not have a profound impact on the overall streetscape along Station Road when accounting for the fact that elsewhere within the Conservation Area, i.e. along Market Street, there is a huge variety of incremental styles and shifts as the street developed. The same sentiment would apply to the overall height of the townhouses with it also being noted that Rawdon Terrace has an expressed party wall.

With regards to the chimneys, it is considered that they ‘read’ correctly as they are organised along the roof, and this is considered logical. Rawdon Terrace has what appears to be four ‘banks’ of chimneys which also seems at odds with the number of properties, albeit the proposed development has a greater number of chimney sets.

In respect of the comments of HE, and the comments in relation to the erosion of the gap between the Royal Hotel and Rawdon Terrace and views to and from the Bath Grounds, regard is had to the extant planning permission under application reference 14/00104/FULM (as varied by 19/00890/VCUM).

An extract from the masterplan and the streetscape images associated with the development previously permitted, which involved the construction of a café kiosk and pavilion building on the former car park associated with the Royal Hotel, are below:

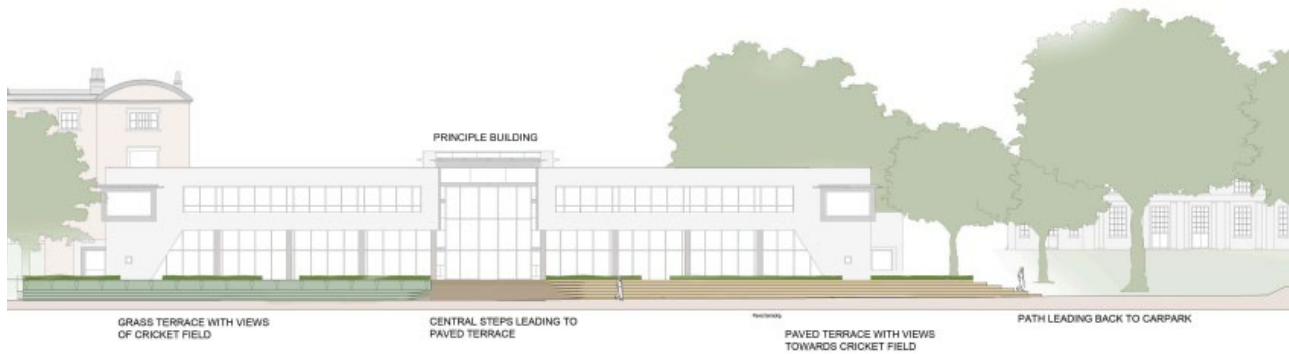
Extract from Masterplan Showing Development on Former Royal Hotel Car Park under 14/00104/FULM



Streetscape Image of Development Permitted under 14/00104/FULM from Station Road



Streetscape Image of Development Permitted under 14/00104/FULM from Bath Grounds



HE's comments in relation to application reference 14/00104/FULM did not raise any objections, and they considered that there was a benefit to enclosing the space currently used for car parking and improving the frontage onto Station Road. It was also considered that although the scale, massing and design of the pavilion would have a greater presence within the setting of the Royal Hotel and Rawdon Terrace, as well as this part of the Ashby De La Zouch Conservation Area, such scale would not dominate the massing and appreciation of the heritage assets with the footprint of the pavilion aligning with the former Ivanhoe Baths providing some historical precedence for a building.

It is also needs to be understood that the extant planning permission could be implemented without any benefit to the Royal Hotel given that the development was not proposed as enabling development.

An extract from the site plan associated with the current application and a streetscape image showing the relationship plots 1 to 3 have with the Royal Hotel and Rawdon Terrace is shown below:

Extract from Site Plan Associated with Application Reference 22/01552/FULM



Image Showing Relationship between Plots 1 to 3 with Rawdon Terrace (to the left) and the Royal Hotel (to the right)



Notwithstanding the scale and form of the proposed development, in comparison to that associated with the extant planning permission, the impact on the ‘gap’ between the Royal Hotel and Rawdon Terrace would not be materially different to that which could already be implemented. It is also considered that any views through the site towards the Bath Grounds from Station Road ‘lost’ as a result of the development would not be materially different to the views ‘lost’ as a result of the implementation of the extant consent particularly when accounting for the fact that the pavilion building has a greater width than plots 4 to 10 (i.e. it is evidenced above that the rear elevation of the Royal Hotel would be partially obscured by the provision of the pavilion building).

It is unclear why HE has not had regard to the extant consent in their consultation response but fundamentally it remains the case that there is a historic precedence for the provision of buildings on the former car park of the Royal Hotel, given the former Ivanhoe Baths, and there remains a benefit in enclosing the space associated with the former car park to the hotel and improving the streetscape of Station Road.

The relationship between the Royal Hotel and residential receptors is a matter which is considered in the ‘*Residential Amenity*’ section of this report below and where it is noted that the Council’s Environmental Protection Team have raised no objections.

The comments from HE in relation to the impact on the setting of Ashby Castle from the south of the Bath Grounds are noted, however, officers are of the opinion that the proposed development would not be experienced within the same setting as Ashby Castle given that the proposed development would be set to the west of the direct view and Ashby Castle would be to the east of the direct view.

It is also considered that the provision of the approved pavilion building could have the same degree of impact to the semi-tranquil and semi-parkland setting within which Ashby Castle is experienced given that the extent of the light spill from the pavilion could potentially have a greater impact (including during the evening hours) than the townhouses given the significant levels of glazing to the Bath Grounds elevation. A condition could be imposed to ensure that an external lighting scheme associated with the townhouses is submitted for approval to try and reduce the overall impact of lighting to the significance of the setting of Ashby Castle.

Whilst noting the above, it is recognised that the proposed development would be of a greater scale than that previously approved, of a different design character and results in development to both the north and south of the Royal Hotel.

Although of a greater scale it is considered that when viewed from Station Road, plots 1 to 3 would have a degree of separation from both the Royal Hotel and Rawdon Terrace and are sited to be set behind the building line of the Royal Hotel. Although plots 1 to 3 would be forward of the building line of Rawdon Terrace a mature tree screen exists to the southern boundary of no. 9 Rawdon Terrace which, except for the winter months, would partially obscure views of plots 1 to 3. Plots 11 to 17 to the south of the Royal Hotel, would be set further back from Station Road than the Royal Hotel and would be predominantly screened by the trees retained to the site frontage adjacent to Station Road. In this context, and accounting for the overall height of plots 1 to 3 being lower than that of the Royal Hotel, it is considered that the Royal Hotel itself would retain primacy in the Station Road streetscape.

The design of the townhouses is also considered to be appropriate, with them positively responding to the streetscape whilst also removing the former car park of the Royal Hotel which at presents impacts adversely on the streetscape. It is also considered that the design approach would not compete with the architectural approach to both the Royal Hotel and Rawdon Terrace given the use of differing materials and the design detailing. In this context it is considered that the proposals would enhance the character and appearance of the Ashby De La Zouch Conservation Area when compared to the development which could be constructed under the extant consent.

Whilst, based on the above, the level of harm arising to the significance of the heritage assets could be considered to be reduced it remains the case that both the Council's Conservation Officer and HE have identified that harm would arise to the significance of heritage assets as a result of the proposed development. On this basis there is conflict with the intentions of Policy He1 of the adopted Local Plan as well as Paragraphs 197 and 199 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which indicate the need to have special regard to the desirability of preserving heritage assets, including their setting.

However, such conflict would need to be assessed in the context of Paragraphs 202 and 208 of the NPPF given that the proposal comprises 'enabling development' to secure the future conservation of the Royal Hotel and consequently such conflict is weighed in the overall balance as part of the '*Enabling Development*' section of this report below.

Archaeology

The County Council Archaeologist has outlined that the Leicestershire and Rutland Historic Environment Record (HER) notes that the application lies within an area of archaeological interest, particularly relating to the early 19th century Ivanhoe Baths. The baths, the most important building of Ashby's 'spa period' were built in 1827, subsequently redeveloped in the later 19th century, and represent a significant period in the settlement's historic development.

Additionally, the development proposals lie partly within the rural hinterland of the historic settlement core of Ashby De La Zouch, therefore providing the further possibility for discovering medieval buried archaeological remains.

On the above basis the County Council Archaeologist, in their original consultation response, outlined that the preservation of archaeological remains is a 'material consideration' in the determination of a planning application and that the proposals included operations which may destroy any buried archaeological remains that are present. It was, however, the case that the archaeological impacts could not be adequately assessed based on the information which was originally submitted. As such the County Council Archaeologist original consultation response requested the completion of an Archaeological Impact Assessment (ARIA), prior to the determination of the application, to ensure that archaeological remains would not be adversely affected by the proposal.

As is outlined in the '*Impact on the Historic Environment*' section of this report above the concern raised by the Council's Conservation Officer in relation to archaeology was the preservation of the subterranean tank formerly associated with the Ivanhoe Baths. It is also considered that the principle of development on the former car park to The Royal Hotel (to the north of the hotel) and the provision of a car park on land to the immediate south of the hotel (i.e. within its grounds) has been established by the extant planning permission (14/00104/FULM subsequently varied by 19/00890/VCUM).

The applicant subsequently responded to the County Council Archaeologist to indicate that the subterranean tank is located under the proposed internal access road and plots 11 to 17 (in the southern part of the application site) and that it is the intentions of the applicant to fully record the tank once it is excavated. On this basis the applicant would accept a planning condition requiring a historic recording survey to be submitted before such time as construction is undertaken on the internal access road and plots 11 to 17 rather than undertaking an ARIA prior to determination.

Following re-consultation, the County Council Archaeologist has indicated that their original position remains, in that an ARIA should be undertaken prior to determination, since it is possible that archaeological remains may be adversely affected by the proposal and therefore it is important for such impacts to be understood before such time as a decision is made so that appropriate mitigation (if necessary) is delivered.

Archaeology Conclusion

Paragraph 205 of the NPPF outlines that planning authorities should "*require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.*"

Policy He1 of the adopted Local Plan outlines that the District Council “*will support development that conserves the significance of non-designated heritage assets, including archaeological remains.*”

Policy HE2 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) indicates that “*where a development proposal may adversely affect the site of an heritage asset with archaeological interest, developers or their agents should seek guidance from the local planning authority at the pre-application stage to establish the material that will be required as part of any planning application, comprising either an appropriate desk-based assessment or, where necessary, a field evaluation, in order to appropriately assess the proposed development.*”

It is probable that any archaeological investigation to be undertaken would seek to record and archive any medieval archaeological remains found on the site, with it also being likely that the subterranean tank would be recorded in situ rather than being made publicly accessible as an archaeological feature. On this basis it is considered that the undertaking of any archaeological investigation prior to work commencing to plots 11 to 17 and the internal access road would still achieve what is desired by the County Council Archaeologist.

However, the above would be an assumption based on the fact that without an ARIA the archaeological significance of the southern part of the site (where plots 11 to 17 and the internal access road would be sited) is unknown and should it be the case that remains of some significance were discovered (outside of the subterranean tank) it would not be possible to mitigate against such impacts on-site post determination when the principle of the redevelopment of the southern part of the site would be established.

On this basis it is considered that there is some tension with the aims of Policy He1 of the adopted Local Plan, Policy HE2 of the made ADLZNP and Paragraph 205 of the NPPF given that, ideally, the impacts arising to archaeological remains should be established and (where necessary) appropriately mitigated before planning permission is granted.

Although some tension arises, it is noted that the proposal comprises ‘enabling development’ to secure the future conservation of The Royal Hotel and consequently such conflict will be weighed in the overall balance as part of the ‘*Enabling Development*’ section of this report below.

Design, Housing Mix and Impact on the Character and Appearance of the Streetscape

Policy D1 of the Local Plan (2021) requires that all developments be based upon a robust opportunities and constraints assessment and be informed by a comprehensive site and contextual appraisal. It also requires that new residential developments must positively perform against Building for a Healthy Life (BfHL) (formerly Building for Life 12 (BfL12)) and that developments will be assessed against the Council's adopted Good Design SPD.

The Council's Urban Designer has been consulted on the application and has commented as follows on various aspects of the development:

Layout

The Council's Urban Designer considers that the broad layout concept is much more sympathetic to the surrounding context and townscape than the development previously proposed under application reference 19/01792/FULM (which was withdrawn) with the three

simple forms (as opposed to the 'L' shaped block of the previously proposed care home) fitting better within the site and providing a clear order and structure through the creation of definite 'fronts and backs'.

It is also considered that the lesser footprint of the townhouse block would sit more appropriately within the landscape and have a reduced impact upon the established tree cover.

Boundary Treatment

The Council's Urban Designer outlined that careful consideration would need to be given to the approach to the rear boundaries of those townhouses whose garden would form part of the public realm onto the Bath Grounds (plots 4 to 10 and 11 to 17) given their prominence. As, initially proposed, the boundary treatments to such plots comprised a 1.1 metre high estate railing together with a hedge and it was the view of the Council's Urban Designer that a more robust boundary treatment should be proposed given that future residents would likely desire privacy within their rear garden. Therefore, designing an appropriate treatment into the scheme would avoid any future piecemeal approach by future residents which could have greater visual implications given the potential lack of conformity to the type of boundary treatment constructed and the materials of construction.

Townhouse Appearance

The Council's Urban Designer outlined that the attention to detail, the proportions and components such as floor to ceiling heights would need to be right for the scheme to be successful.

In this respect the Council's Urban Designer outlined that the introduction of a particular brick bond was welcomed but that the quality of the bricks, the detailing of heads and cills, stringcourse, eaves detailing, and depth of reveals would also be important. The introduction of a pilaster to the porches to ground them to the building was also considered imperative to the Council's Urban Designer.

In terms of the approach to the materials on the rear elevations of those townhouses visible from the Bath Grounds (plots 4 to 10 and 11 to 17), the Council's Urban Designer outlined that the computer generated images (CGI's) from the Bath Grounds indicated that the rear ground floor in stone stood out and therefore in order to soften the visual impact and emphasise the importance of the Royal Hotel there was a strong case for the material of construction to be brick. This approach did, however, conflict with the view of the Council's Conservation Officer as outlined in the '*Impact of the Historic Environment*' section of this report above (see point (viii)).

Revisions

The applicant has advised that in relation to the design of the townhouses the predominant material would be brick with the use of a traditional Flemish brick bond, and so as to compliment the brickwork stone detailing would be proposed which would assist in breaking up the façade. It is also considered by the applicant that stone porticos and timber door surrounds would also balance the elevations and enhance their overall appearance.

In terms of the porticos the applicant has advised that they now have a corresponding pilaster to 'ground' them to the elevation and that the rear elevation of plots 4 to 17 have been amended so as to omit the ashlar stone.

It is also outlined by the applicant that careful consideration has been given to the proportions of the townhouses through the correct use of floor to ceiling heights and window sizing so as to reflect a traditional townhouse, in the respect the sliding sash windows have a ratio of 5/4/3/2, with the five pane window being on the ground floor and the two pane windows of the dormer windows being on the 4th storey. Whilst the two pane windows within the dormers have a slightly different orientation the applicant considers that as these windows sit within the roof, and not the main façade, they are not read directly alongside the lower windows and as such do not look out of place or affect the visual proportions of the elevation. In this respect a smaller window would be lost in the roofscape with a larger window drawing the eye with a concern that this may look 'top heavy'.

With regards to the boundary treatments, it is now proposed that plots 11 to 17 would have 1.8 metre high brick walls with piers to their rear garden boundaries (presented to the Bath Grounds) with planting, a 1.1 metre high estate railing and a native hedgerow then providing a buffer between the gardens of plots 11 to 17 and the Bath Grounds. The rear boundary treatment to plots 4 to 10 would remain as previously proposed being a 1.1 metre high estate railing with a formal hedgerow then planted the garden side of the estate railing (i.e. the estate railing itself would be presented to the Bath Grounds).

Images of the proposed development are as below.

Image Showing Relationship between Plots 1 to 3 with Rawdon Terrace (to the left) and the Royal Hotel (to the right)



Plots 4 to 17 Front Elevation Appearance



Computer Generated Image (CGI) Impression of View Established from the Bath Grounds



CGI Aerial Image of the Proposed Development



Other Design Matters

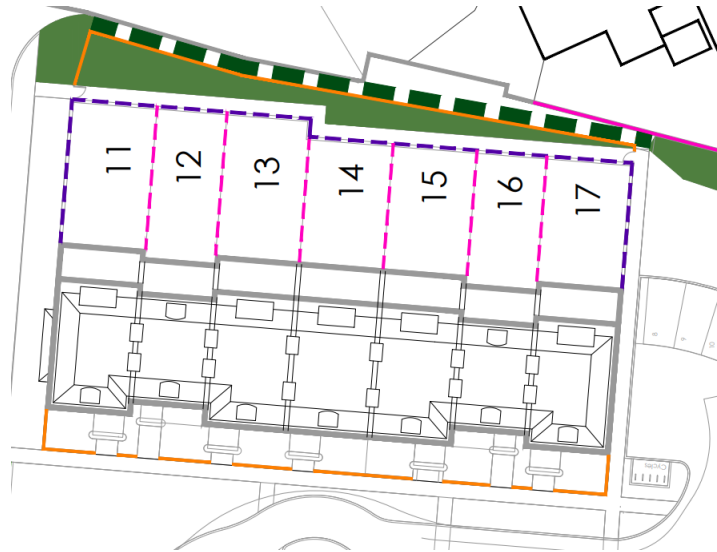
It is noted that some of the Council's Conservation Officer comments relate to matters which would be more applicable to the design of the scheme than being issues which result in harm to the significance of heritage assets including comments in relation to space left over after planning (SLOAP) and the displacement of parking for plots 11 to 17.

In terms of these points, it is considered that it would be reasonable to repeat the linear layout proposed on the northern part of the site for the terrace south of the hotel given that other options, such as a crescent, have been explored and discounted. In this respect the crescent shaped design resulted in greater implications to the existing trees and resulted in rear gardens which were undersized. It is also considered that any concerns in relation to the SLOAP have been addressed by its incorporation into the landscape space to the rear of plots 11 to 17 and being bound by the 1.1 metre high estate railing which would ensure it would be suitably managed and maintained by the future occupants of these plots or a management company (this being shown on the images below).

Area of SLOAP on Initially Proposed Plans (Dark Green Line Denotes a Hedge)



Area of SLOAP Designed Out on Amended Plans (Dark Green Dotted Line Denotes a Native Hedgerow with the Orange Line Denoting a 1.1 Metre High Estate Railing)



With regards to the parking to plots 11 to 17, it is considered that whilst such parking would not be directly 'on plot' it is the case that such parking is conveniently located to ensure that it is easily accessible to the inhabitants of plots 11 to 17. Such an approach also prevents car parking from being dominant should it be located to the frontage of plots 11 to 17 whilst also reducing the impact to existing trees by limiting the expanse of hard surfacing.

Design and Impact on the Character and Appearance of the Streetscape Conclusion

The Council's Urban Designer considers that the concept to reintroduce townhouses around the Royal Hotel would demand a high level of skill and detailing to be successful and that if this can be achieved, and the quality maintained throughout the build, then the townhouses themselves could be an exciting addition to Ashby De La Zouch.

Whilst accepting that the proposed townhouses would be a significant in scale there is a balance to be had, in respect of the development of plots 1 to 10, to the scheme consented under the extant planning permission under application reference 14/00104/FULM (as varied by 19/00890/VCUM) which would allow the construction of a pavilion building which whilst lower in height would have a width which would partially obscure the eastern (rear) elevation of the Royal Hotel. Although, therefore, the townhouses would be visible in conjunction with the Royal Hotel, the approach to the design would ensure that they would be subservient to the Royal Hotel and not detract from its importance within the streetscape or from views within the Bath Grounds. It is also considered that the use of brick to the ground floor elevations of plots 4 to 17 would recede better than the originally proposed Ashlar stone therefore ensuring that the Royal Hotel and Rawdon Terrace (which are both heritage assets) maintain their primacy as the buildings which utilise stone to their rear elevations.

In terms of the appearance of the townhouses themselves it is considered that they contain design features which would be desirable, including a brick bond, cill and header details, stone banding detail, timber sliding sash windows, recessed windows, chimneys, porticos, and timber door surrounds. Details have been provided on certain elements of the approach to the detailed design of the townhouses and where such information is appropriate it will be conditioned accordingly on any planning permission to be granted. Where the detail is lacking, or is considered inappropriate, then a condition will require the detail to be provided to ensure that there is significant control over the quality of the development to be brought forward.

The precise brick and tile which would be utilised in the development is also not known at this time and as such a condition would be required to ensure that any external materials are agreed given the need to ensure that appropriate quality external materials are utilised. A sample panel showing the approved brick, brick bond, mortar mix and pointing technique would also be conditioned to ensure the design quality envisaged is achieved through construction.

With regards to boundary treatments, it is considered that the amendments made to those treatments to the rear garden boundaries of plots 11 to 17 would be appropriate and are supported by the Council's Urban Designer. Whilst the treatments to the rear of plots 4 to 10 have not been altered it is considered that the rear gardens to these plots would sit at a higher land level than the Bath Grounds, and in particular public footpath O111 which would run to the immediate east of the site, and as such it is considered that an appropriate level of privacy would be maintained in the rear gardens of such plots.

Overall, the Council's Urban Designer is supportive of the proposals and subject to the imposition of conditions, it is considered that the design, appearance, and scale of the development would be acceptable and enable it to successfully integrate into the environment in which it is set. On this basis the proposal would be compliant with Policy D1 of the adopted Local Plan, the Council's adopted Good Design SPD, Policy S4 of the made Ashby De La Zouch Neighbourhood Plan and Paragraphs 126 and 130 of the NPPF.

Housing Mix

With regards to housing mix, Policy H6 of the adopted Local Plan outlines that a mix of housing types, sizes and tenures is expected on residential developments proposing 10 dwellings or more. When determining an appropriate housing mix the information contained within the Housing and Economic Development Needs Assessment (HEDNA) is one of the factors to consider alongside other criteria as outlined in Part (2) of Policy H6. The range of dwelling sizes (in terms of number of bedrooms) identified as appropriate in the HEDNA are as follows:

- 1 bed – 0-10% (Market) and 30-35% (Affordable);
- 2 bed – 39-40% (Market) and 35-40% (Affordable);
- 3 bed – 45-55% (Market) and 25-30% (Affordable); and
- 4 bed – 10-20% (Market) and 5-10% (Affordable).

The submitted scheme proposes the following (%):

- 1 bed – 0% (Market) and 0% (Affordable);
- 2 bed – 0% (Market) and 0% (Affordable);
- 3 bed – 18% (Market) and 0% (Affordable); and
- 4 bed+ - 82% (Market) and 0% (Affordable).

The market housing would be weighted more towards larger units than as suggested by Policy H6 of the Local Plan, although it is acknowledged that the policy indicates that the HEDNA mix is one of a number of criteria to be considered when applying the policy, and consideration should also be given to other factors such as the “*character and context of the individual site*” (criterion (f) of Part 2). Paragraph 124 of the NPPF also outlines that in terms of the efficient use of land planning decisions should support development which take into account, amongst other things:

- “*the desirability of maintaining an area’s prevailing character and setting (including residential gardens)*” (criteria (d)); and
- “*the importance of securing well-designed attractive and healthy places*” (criteria (e)).

The ‘*Enabling Development*’ section of this report below outlines that the development proposed is the minimum necessary to restore and re-use the Royal Hotel and to generate the funds required to meet the conservation deficit it has been necessary to provide townhouses which are predominantly 5 bedroomed, albeit three of the townhouses would have three bedrooms.

An important factor is that the application site lies within the Ashby De La Zouch Conservation Area and is adjacent to the Grade II* listed Royal Hotel and Grade II* listed Rawdon House and Rawdon Terrace.

In such circumstances it is considered that an intensification in the use of the site to provide dwellings which would suit the HEDNA mix, or dwellings of a more simplistic design, would detract from the setting of the identified heritage assets whilst also providing a form of design which would be discordant with that established in the immediate area (Rawdon Terrace itself comprising townhouses and Royal Mews comprising apartments). It would also increase the conservation deficit, therefore increasing the need to provide further development to meet this deficit, which in itself would also result in implications to the setting of the heritage assets and the character of the area.

In these circumstances, and on balance, it is considered that the compliance with criteria (f) of

Part (2) of Policy H6, as well as Paragraph 124 of the NPPF, would override the lack of compliance with the housing mix suggested by the HEDNA in this instance. Paragraph 125 of the NPPF also only seeks to ensure that residential developments are not built at low densities where there is a shortage of land available for meeting housing needs, this is not applicable in this case as the District Council currently has a five year housing land supply.

For the above reasons the proposed development would also not deliver any affordable housing and this matter is discussed in more detail in the 'Affordable Housing' sub-section of the 'Developer Contributions' section of this report below.

Part (3) of Policy H6 of the adopted Local Plan indicates that schemes of 50 dwellings or more should provide a proportion of dwellings suitable for occupation by the elderly (criterion (a)) as well dwellings which are suitable for occupation, or easily adaptable, for people with disabilities (criterion (b)).

As the proposed development results in the provision of 17 townhouses it would fall below the threshold where Part (3) of Policy H6 of the adopted Local Plan would be applicable.

Assessment of the objections received in relation to Design and the Impact on the Character and Appearance of the Streetscape

Objection	Officer Response
<p><i>The height of the townhouses being the same as the Royal Hotel means that they will dominate the westerly view from the Bath Grounds, whereas they need to be subservient.</i></p>	<p>See above assessment. Whilst the townhouses would be visible in conjunction with the Royal Hotel it is considered that the approach to the design would ensure that they would be subservient to the hotel and not detract from its importance within the streetscape or from views within the Bath Grounds. There is also a need to balance the proposed construction of plots 1 to 10 with the development previously approved on the former car park to the Royal Hotel which whilst of a reduced height had a greater width.</p>
<p><i>There will be no ability for the hotel to expand in the future given the development undertaken around it.</i></p>	<p>The development proposed is the minimum necessary to meet the conservation deficit to enable the restoration and re-use of the Royal Hotel. It has also been determined by the applicant that sufficient land would remain available to serve the hotel to meet future business needs.</p>

Residential Amenity

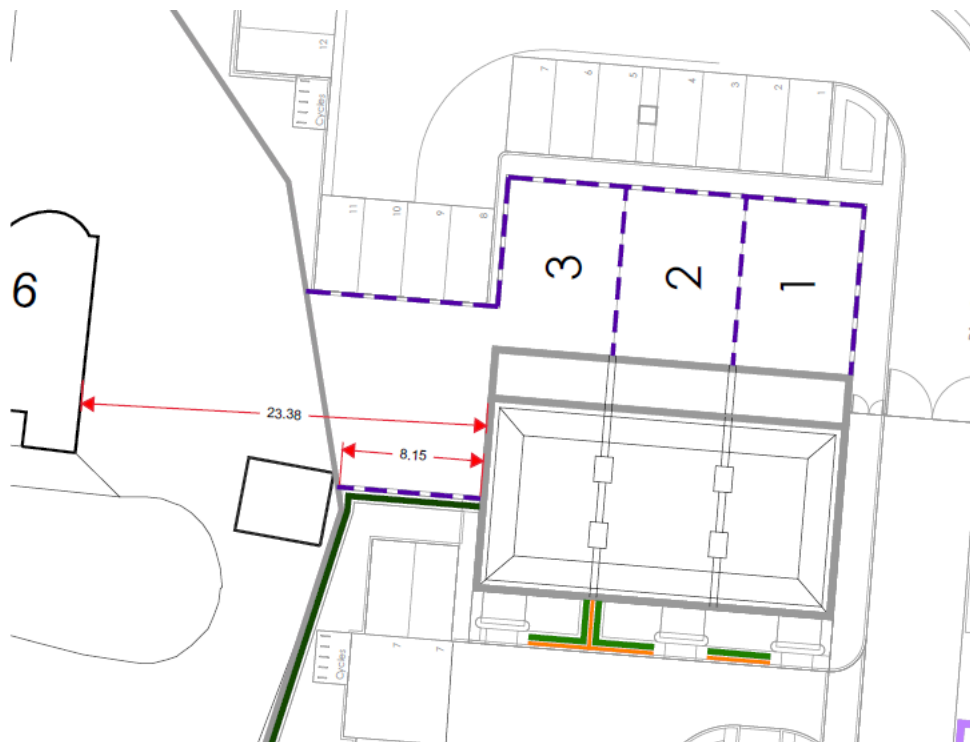
Policy D2 of the adopted Local Plan (2021) outlines that development proposals will be supported where they do not have a significant adverse effect on the living conditions of existing and new residents through loss of privacy, excessive overshadowing, and overbearing impacts, which is supported by the Council's Good Design SPD. Paragraph 185 of the NPPF states that planning policies and decisions should also ensure that new development is appropriate for its location considering the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

It is considered that the residential properties most immediately impacted on because of the development would be those which form Rawdon Terrace and in particular nos. 7, 8 and 9 which are the closest to the application site boundary. To a lesser extent residential properties within Royal Mews, Station Mews and Pithiviers Close may also be impacted but it is noted that they are separated from the application site by the presence of Station Road.

Plots 1 to 3

Plots 1 to 3 would be situated to the south of no. 9 Rawdon Terrace (a three storey end terrace) with plot 3 being the closest plot to this property. The image below shows that the northern (side) elevation of plot 3 would be situated 8.15 metres from the site boundary and 22.38 metres from the southern (side) elevation of no. 9 Rawdon Terrace which contains openings to all three levels.

Image Showing the Relationship between Plots 1 to 3 and no. 9 Rawdon Terrace



Plots 1 to 3 would comprise a three storey terrace with the properties having an overall ridge

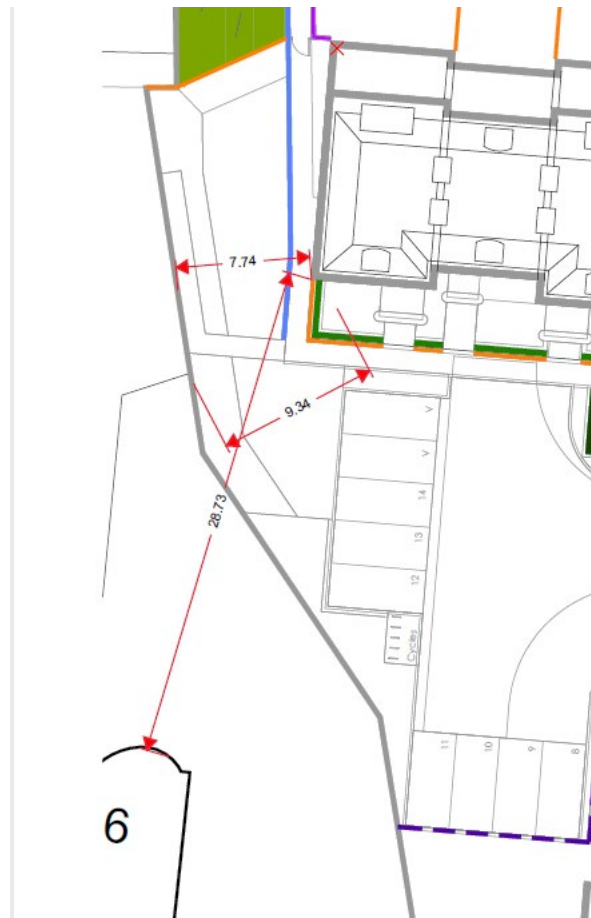
height of 12.2 metres with the submitted street scene indicating that the ground levels between Rawdon Terrace and the land on which plots 1 to 3 would be constructed is relatively consistent. Given that plots 1 to 3 are positioned so as to not be 'directly' in line with the southern (side) elevation of no. 9 Rawdon Terrace, and when accounting for the separation distances involved, it is considered that any overshadowing or overbearing impacts which may arise to the amenities of the occupants of no. 9 Rawdon Terrace would not be of such detriment that a reason to refuse the application could be substantiated.

In terms of overlooking impacts from plots 1 to 3, it is the case that plot 3 would contain no windows in its northern (side) elevation with any views from windows in the eastern (rear) elevation being at an oblique angle towards the rear garden of no. 9 Rawdon Terrace (and to a lesser extent the garden of no. 8 Rawdon Terrace which wraps behind that of no. 9 Rawdon Terrace), and over a considerable distance (at least 20 metres). It is also considered that any views established would be no greater than the views already established from rear windows in nos. 6, 7 and 8 Rawdon Terrace towards the same gardens. The retention of trees to the northern site boundary would also filter and restrict views between the properties. Views from the first floor roof terraces would also be restricted by the screen walls proposed and, in any event, would remain over a considerable distance. On this basis it is considered that any overlooking impacts arising from plots 1 to 3 would not result in significant detriment to the amenities of the occupants of nos. 8 and 9 Rawdon Terrace.

Plots 4 to 10

Plots 4 to 10 would be set to the south-east of nos. 8 and 9 Rawdon Terrace (three storey terraces) with plot 4 being the closest plot to the existing residential receptors. The image below shows that the western (front) elevation of plot 4 would be situated 9.34 metres from the boundary of no. 9 Rawdon Terrace and 28.73 metres from the eastern (rear) elevation of no. 9. It also shows that the northern (side) elevation of plot 4 would be 7.74 metres from the boundary of no. 8 Rawdon Terrace.

Image Showing the Relationship between Plots 4 to 10 and nos. 8 and 9 Rawdon Terrace



Plots 4 to 10 would comprise a four storey terrace with the properties having an overall ridge height of 12.75 metres with the ground levels reducing slightly between plots 1 to 3 and 4 to 10. Given that plot 4 would be offset from the rear elevation and boundary of no. 9 Rawdon Terrace it is considered that whilst the building would be of a significant height the separation distances involved would ensure that the building would not be of such dominance that it would result in a significantly adverse overbearing or overshadowing impact to the amenities of the occupants of no. 9 Rawdon Terrace particularly when accounting for the size of garden available to no. 9.

A greater separation distance would be established to the eastern (rear) elevation of no. 8 Rawdon Terrace, which is attached to no. 9 Rawdon Terrace to the north, but plot 4 would be closer to the boundary with no. 8 given that the garden of this property wraps around that of no. 9. Whilst closer to the boundary of no. 8 it is noted that the garden to this property is also substantial in size with plot 4 only impacting on the latter part of this rear garden. On this basis it is considered that any overbearing or overshadowing impacts arising would not be of such detriment to the amenities of the occupants of no. 8 that a reason to refuse the application could be substantiated.

Regard is also given to the fact that the extant permission under application reference 14/00104/FULM (as varied by 19/00890/VCUM) allowed for the creation of a two-storey pavilion building (of between 8 to 9 metres in height) which would be situated in a similar location to that

of plots 4 to 11 but was closer to the boundary with no. 8 Rawdon Terrace (at 2 metres away).

In terms of overlooking impacts the Council's adopted Good Design SPD outlines that a 'back to back' separation distance of a minimum of 20 metres should be provided and although the relationship, in this instance, would be 'front to back' it is considered that the same separation distance would apply given that the purpose of the separation is a means of preventing overlooking between properties.

As is identified above plot 4 would not sit directly behind no. 9 Rawdon Terrace (or no. 8 Rawdon Terrace) and based on the separation distance involved (as identified on the image above) it is considered that no direct overlooking would occur between the properties. No windows are proposed in the northern (side) elevation of plot 4 but the closest windows on the western (front) elevation would serve bedrooms at first, second and third floor levels. Given the position of the garden to no. 8 Rawdon Terrace it is considered that no adverse overlooking impacts would arise to the occupant's amenities given that only an oblique angle of view would be established towards this garden as any view would only be onto the latter part of the rear garden and would be restricted by the retention of the trees which would filter any views.

In terms of the garden to no. 9 Rawdon Terrace, it is considered that given the positioning of the windows in plot 4 any 'direct' views would be over a distance of around 14 metres to the boundary of no. 9, and which would be predominately onto the latter part of the rear garden to this property which is substantial in size. In any event if a 'back to back' separation distance of 20 metres is deemed acceptable within the Council's adopted Good Design SPD this would suggest that the separation distance from the rear elevation to the boundary of the opposite property would be around 10 metres (i.e. the midpoint between the elevations), thereby establishing that a view from first floor windows over a distance of 10 metres to the boundary would not result in adverse overlooking impacts.

Given that the separation distance, at the closest point, is only just below 10 metres and would be to the latter part of the rear garden associated with no. 9 it is considered that any overlooking impacts arising would not be of such detriment that a reason to refuse the application could be justified on this matter. It is also the case, as with no. 8 Rawdon Terrace, that the retention of trees to the northern site boundary would assist in filtering and restricting any views.

Plots 11 to 17

Plots 11 to 17, comprising a four storey terrace with a ridge height of 12.75 metres, would be separated from properties at Royal Mews and Pithiviers Close by the presence of Station Road and screened by the retention of the existing mature tree planting to the western boundary of the application site. On this basis no adverse overbearing, overshadowing, or overlooking impacts to existing residential amenities would arise because of the construction of plots 11 to 17.

Future Amenities

On the basis of the above assessments, it is considered that the proposed dwellings would have an acceptable relationship with existing residential dwellings given the separation distances identified above and the orientation of existing residential properties on Rawdon Terrace to the north.

The only relationship which may be considered sensitive would be the ability for views to be established from the first and second floor windows in the southern (side) elevation of no. 9

Rawdon Terrace towards a secondary garden associated with plot 3 (such a garden being located to the north of this plot). It is, however, noted that any views would be over 12.8 metres and would be filtered and restricted by retained trees to the northern site boundary. On this basis any overlooking impact arising would not be significantly adverse to the amenities of any future occupants of plot 3, with any occupants of this plot being aware of this relationship prior to their purchase. This plot also benefits from a main garden to its east which would not be subject to the same extent of overlooking from no. 9.

It is also considered that the relationship between the plots themselves would be acceptable with the separation between the eastern (rear) elevations of plots 1 to 3 and western (front) elevations of plots 4 to 10 being more than 33 metres (over 23 metres to the garden boundaries) and relevant screens being provided between the roof terraces which would be formed.

Trees of a mature stature would be retained near plots 11 and 17 and as such there is the potential for shadowing implications to occur to these plots in the afternoon period given that the mature trees are to the south and west. It is considered that the proposed layout has been designed to ensure that these plots and their associated amenity areas are located in the most optimum locations, so as to lessen this impact, and as such the extent of shadowing would not be sufficiently detrimental as to warrant a refusal of the application particularly as the Council's Tree Officer has raised no objections to the application in this respect and any future occupants of these plots would be aware of this relationship prior to their purchase. Whilst trees of a mature stature are also retained close to plots 3 and 4 it is the case that such trees are located to the north and as such no shadowing impacts would arise.

The proposed townhouses would have a direct relationship with the Bath Grounds and the Royal Hotel with plots 11 to 17 being situated to the west of the cricket pavilion. Paragraph 187 of the NPPF indicates that planning decisions should *"ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them because of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."*

As part of the consideration of the application the Council's Environmental Protection Team have been consulted and no objections have been raised nor is it considered that any significant adverse impacts would arise to future residential amenity because of activities/events undertaken on the Bath Grounds or cricket pavilion which are predominantly held during social hours (rather than unsocial hours). The re-use of the Royal Hotel as a hotel is also not considered to result in significant detriment to the amenities of any future occupants given that the hotel (when previously operational) already had a direct relationship with residential receptors at Royal Mews and Rawdon Terrace.

In this context it is considered that Paragraph 187 of the NPPF would not be engaged, with future occupants of the townhouses being aware of the relationship with the Bath Grounds, Royal Hotel and cricket pavilion prior to their purchase. It is also the case that existing residential receptors within Royal Mews, Rawdon Terrace and on Warwick Way, Belvoir Drive and Bamburgh Close already have a similar relationship with the Bath Grounds and Royal Hotel.

Should a statutory noise nuisance arise then this would be investigated separately under Environmental Protection Legislation and appropriate action taken where necessary.

Other Residential Amenities Impacts

As is outlined above the Council's Environmental Protection Team have been consulted on the application and have raised no objections. Taking into account that a residential development is not a noisy use and, in any event, would not generate any greater noise than that previously associated with The Royal Hotel car park or kiosk and pavilion building which could be constructed on the site in accordance with the extant planning permission it is considered that no adverse noise or odour impacts would arise which would result in detriment to existing residential amenities.

Residential Amenity Conclusion

On the basis of the above assessment, it is considered that any impacts arising would not be of such detriment to the amenities of existing and future occupants that a reason to refuse the application could be justified and consequently the proposed development would be compliant with Policy D2 of the adopted Local Plan and Paragraph 185 of the NPPF.

Assessment of objections received in relation to residential amenity

Objection	Officer Response
<p><i>Events hosted on the Bath Grounds generate noise and disturbance which will be objected to by inhabitants of the townhouses and impact on their amenities. Such complaints from residents would also render the Bath Grounds unusable as a recreation area.</i></p>	<p>The Council's Environmental Protection Team have not raised any objections to the application or indicated the need for the development to provide measures to mitigate against events held on the Bath Grounds in the context of Paragraph 187 of the NPPF. It is also the case that existing residential receptors within Rawdon Terrace and on Warwick Way, Belvoir Drive and Bamburgh Close already have a similar relationship with the Bath Grounds.</p> <p>If a statutory noise nuisance was to arise, then this would be investigated separately under Environmental Protection legislation with it being the case that future occupants would be aware of the relationship with the Bath Grounds and cricket club prior to their purchase.</p>

Highways

Policy IF4 of the adopted Local Plan (2021) requires that development takes account of the impact upon the highway network and the environment, including climate change, and incorporates safe and accessible connections to the transport network to enable travel choice, including by non-car modes, for residents, businesses, and employees. Policy IF7 of the adopted Local Plan (2021) requires that development incorporate adequate parking provision for vehicles and cycles to avoid highway safety problems and to minimise the impact upon the local environment.

The County Council Highways Authority (CHA) have been consulted on the application with the assessment of the CHA being based on guidance within the Leicestershire Highways Design Guide (LHDG).

Site Access

The application site is located on Station Road, a Class C Road subject to a 30mph speed limit. At present there are two existing vehicular access points to the site being the northern access serving a public car park, which has been closed, and the southern access serving the cricket pavilion on the Bath Grounds to the east of the site.

It is proposed that the two vehicular access points would be maintained with the northern access serving plots 1 to 10 and the southern access serving plots 11 to 17, the proposed hotel car park and maintaining access to the cricket pavilion.

A transport statement (TS) submitted in support of the application details that the northern access would be designed as a private drive with a 5 metre carriageway width and 6 metre kerbed radii to allow access by the District Council's Waste Services vehicle. Vehicular visibility splays of 2.4 metres by 43 metres would also be provided at the junction of the northern access with Station Road in line with the guidance within the LHDG.

With regards to the southern access, it is proposed within the TS that the existing dropped kerb arrangement would be replaced with a 6 metre wide carriageway with 6 metre kerb radii and a 2 metre wide footway along the southern side of the access road. The existing pedestrian access into the Bath Grounds from Station Road via the woodland area to the south of The Royal Hotel would be closed and therefore pedestrians accessing the Bath Grounds from Station Road would access via the footway along the southern side of the access road.

Visibility splays of 2.4 metres by 43 metres would also be provided at the junction of the southern access with Station Road, in accordance with the LHDG, and part of the listed wall along Station Road which lies within the visibility splay would be relocated outside of the splay in line with the conditions of the extant consent (14/00104/FULM as varied by the permission granted under application reference 19/00890/VCUM).

A shared private drive from the southern access road would be provided to serve plots 11 to 17 which has a carriageway width of 4.8 metres for a minimum of 5 metres behind the highway boundary reducing to a minimum width of 3.7 metres to allow access by a fire tender. Such a drive would accord with the LHDG.

Overall, the CHA are satisfied that the site access designs are in accordance with the LHDG.

Highway Safety

The CHA has outlined that a total of five personal injury collisions (PICs) have taken place along Station Road within close proximity to the site, all of these PICs were classed as 'slight' with no more than two PICs taking place in any single location. No PICs attributable to the extant site accesses have been recorded.

On this basis the CHA would conclude that there are no patterns or trends denoting a cluster or length of PICs, as such the CHA consider that the proposed development would not exacerbate any known highway safety considerations.

Impact on the Highway Network

The TS contains a trip generation exercise which has calculated two-way AM flows of 14 trips and PM flows of 13 trips.

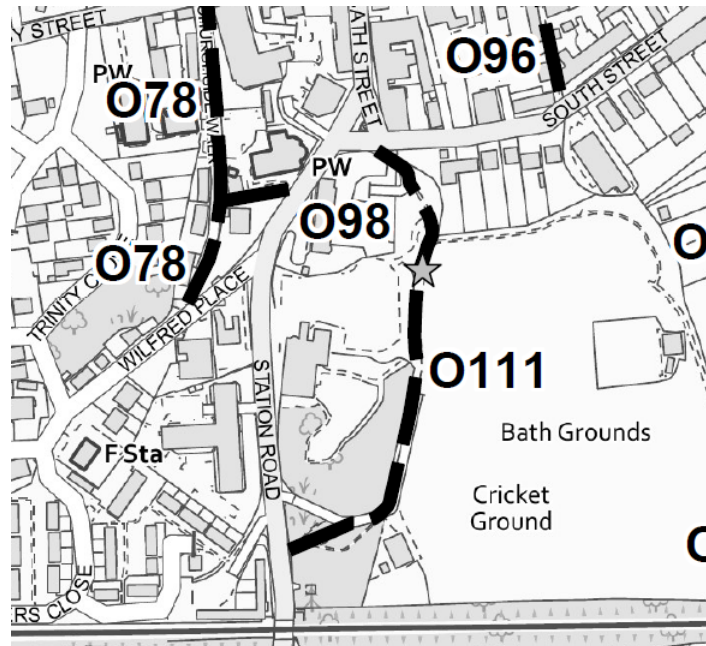
It is considered by the CHA that such a level of vehicular movements would not result in a severe impact on the highway network and therefore no detailed further assessment of junction capacity would need to be undertaken.

Transport Sustainability

The application site is located within approximately 400 metres of the town centre, which is accessible via existing footways. Town centre bus stops are served by frequent services to Burton upon Trent, Swadlincote and Coalville, alongside 2 hourly services to Loughborough. In addition to typical town centre amenities, there are churches, a tennis club and primary school located within 800 metres of the site. Cycle storage facilities are proposed within the development to encourage sustainable forms of travel.

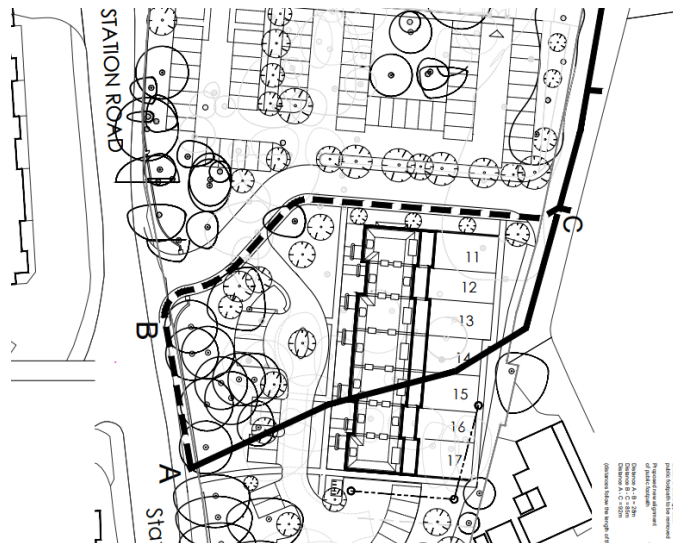
Public footpath O111 runs through the southern part of the application site (the part of the site where plots 11 to 17 would be constructed) with the legal route connecting Station Road with South Street as is shown on the extract from the definitive map below.

Public Footpath O111 – Extract from Definitive Map



An application to divert part of public footpath O111 was submitted in April 2021 when application reference 19/01752/FULM was under consideration, but the plans have since been updated to accommodate the development now proposed albeit the proposed diversion route has not altered from that originally proposed. The proposed diversion route is as shown on the below image with the hatched black lines indicating the proposed diversion.

Public Footpath O111 – Diversion Route



At present the Footpath Diversion Order (FDO) is under consideration with the Planning Inspectorate given that objections to the Order were received. The Planning Inspectorate will not decide on the FDO until such time as there is a resolution in place to grant planning permission for the development as without the development there would be no requirement for the footpath to be diverted. It should be noted that a grant of planning permission does not grant

permission for the amended footpath diversion, which is dealt with separately by the FDO. The DEFRA Rights of Way Circular (01/09) advises that a condition requiring the FDO to be approved before development commences on site is unnecessary as it duplicates the separate statutory procedure for diversions of rights of way.

Whilst objections were received to the FDO, no objections have been received against the planning application raising concerns in relation to the diversion of public footpath O111 which was only confirmed as a public footpath on the 28th of September 2020.

It is considered that the diversion route would not be inconvenient to users of the footpath given that the diversion route would only be 20 metres longer than the definitive route and would still maintain pedestrian access from Station Road to the Bath Grounds.

The use of the adopted highway (of Station Road) and internal pavements associated with the proposed development would also enable more suitable access to the Bath Grounds for those with disabilities, infirmities, or medical conditions, as well as those who may be using pushchairs or those of a younger or older age given that the route would be appropriately surfaced.

With regards to the public enjoyment of users of the footpath it is noted that the present legal route passes through a wooded area before transgressing onto an unmade track which currently provides access from Station Road to the off-street parking area associated with the Bath Grounds. Views of the Bath Grounds would be possible in views from the legal route with glimpsed distant views towards the remains of Ashby Castle possible at certain times of the year (autumn/winter).

In terms of the diversion route, it is accepted that the trees would be removed to facilitate the development, but trees would be retained alongside Station Road and within the grounds of the Royal Hotel. It is also considered that views towards the Bath Grounds, as well as the potential glimpsed distant views towards the remains of Ashby Castle would still be maintained on the diverted route albeit not to the same extent as those achieved on the current definitive route.

Whilst, therefore, the 'enjoyment' of the wooded area would be impacted by virtue of the proposed development, the proximity of the wooded area to Station Road does not lead to such an area being tranquil or peaceful, with there being no facilities (such as benches or picnic tables) which would encourage the stoppage of users whilst utilising this part of public footpath O111. As such any disadvantages to the public enjoyment of users of the public footpath would not be considered significant.

It is also considered that the diversion route would be a safer route given that the definitive route currently passes through a largely unlit wooded area whereas there is the potential for the diversion route to be appropriately lit (with any lighting scheme being appropriately secured by a condition on any planning permission to be granted) whilst also being subject to active surveillance by virtue of the provision of the townhouses and re-use of the Royal Hotel. As such there are safety advantages to the public footpath being diverted.

Overall it is considered that in the balance of the public interest against interfering with an established right of way, there are some advantages to the losing the legal route and diverting the footpath, some of which are minor and some of which are more significant, and whilst there are some disadvantages to losing the legal route of the footpath and diverting it, these disadvantages are considered to be minor and not significant. On balance, the disadvantages resulting from the diversion of the footpath are outweighed by the advantages of diverting the footpath.

As part of the consideration of the application no objections have been raised by the CHA in relation to the diversion of public footpath O111 and they note the following details about the treatment of the public footpath:

- Where a public footpath crosses a carriageway, drop kerbs should be installed at the crossing points.
- No trees or shrubs should be planted within 1 metre of the edge of the Public Right(s) of Way. (PROW)
- Any trees or shrubs planted alongside a PROW, must be approved by the Local Planning Authority in accordance with the principles set out in the Leicestershire County Council's Guidance Notes for Developers.
- Any existing PROW furniture within the development should be improved or removed if appropriate, in accordance with the principles set out in the Leicestershire County Council's Guidance Notes for Developers.
- A signing scheme in respect of the PROW should be formulated by the developer and approved in accordance with the principles set out in the Leicestershire County Council's Guidance Notes for Developers.

It is considered that conditions and/or notes to the applicant on any planning permission to be granted can secure the requirements of the CHA in relation to the public footpath.

Internal Layout

The CHA is satisfied that the turning proposals within the site for vehicles associated with the townhouses and within the car park to The Royal Hotel would be acceptable and in line with the LHDG.

It was, however, outlined by the CHA that the applicant would need to consider how parking on the southern access road would be managed given that such an access road appears as an unrestricted length of private road which would be adjacent to a pay and display car parking facility (the new car park to The Royal Hotel). Parking on this access road could impede access to the Bath Grounds and as a private highway the CHA would have no jurisdiction over parking on this access road (given it is not adopted highway). In respect of this point the applicant has advised that the parking will be managed by a parking management company for both the hotel and residential areas which will include monitoring and issuing of parking fines (if necessary) to anyone attempting to park on the access road. In addition, road markings would be included on the highway along with signage to advise people not to park or obstruct the access road. A condition could be imposed on any planning permission to be granted to secure a scheme of road markings and signage to the southern access road.

In terms of refuse collection, the applicant has advised that a private waste contractor would be appointed to collect the waste receptacles from both the hotel and the proposed townhouses. Such waste vehicles are smaller in size than those operated by the District Council (being 7.9 metres (length) by 2.3 metres (width) compared with 11 metres by 2.5 metres) and therefore would be able to manoeuvre without utilising the turning head at the head of the southern access road (onto the Bath Grounds). It has been advised by the applicant that the provision of the turning head at the end of the private drive would still be available and would not impact on the off-street parking available to the Bath Grounds and this is not disputed by the CHA. In terms of the retractable bollards, the applicant has advised that they would only be utilised at times deemed appropriate by Ashby De La Zouch Town Council, who are to become the owners of the Bath Grounds, or the cricket club, but are principally proposed to prevent

undesirable parking in the Bath Grounds overnight. Whilst such bollards are not shown on the plans the CHA consider that this would not affect the acceptability of the site in highway safety terms.

Overall, the CHA have no objections to the internal layout which would be compliant with the LHDG. The views of the District Council's Waste Services Development Officer to the proposed bin collection arrangements is undertaken in the '*Waste Collection*' section of this report below.

Off-Street Parking

The submitted information details that the hotel would contain 29 bedrooms and a 60 seater restaurant with the methodology within the submitted TS indicating that whilst the restaurant would be open to the public, it is anticipated that most of the business generated would be via guests of the hotel.

Whilst the CHA queried whether such methodology demonstrates a worst case scenario, they note that the car park for the hotel would have a total of 63 spaces (59 standard and 4 accessible). Considering the analysis undertaken to calculate the traffic that could be generated by the hotel, it is indicated that a maximum accumulation of 38 vehicles across the day would be generated which would represent the arrival and departure of staff and guests. Consequently, this would leave a surplus of 21 spaces for customers of the restaurant and the CHA are therefore satisfied with such a level of parking for the hotel despite the methodology used.

It is also noted by the CHA that whilst there are no measures to prevent parking on the immediate local highway, a public car park off Coxons Mews is located within 250 metres of the site centre.

With regards to the proposed townhouses, the LHDG and Council's adopted Good Design SPD indicate that dwellings with up to three bedrooms should have a minimum of two off-street parking spaces and that dwellings with 4+ bedrooms should have a minimum of three off-street parking spaces. Based on the level of development proposed a minimum of 48 off-street parking spaces to serve the townhouses should be provided.

Plots 1 to 10 served by the northern access would be provided with a total of 30 spaces with two visitor spaces also being accommodated. Based on the bedroom numbers to the dwellings served by the northern access a minimum of 27 off-street parking spaces would be required and therefore the off-street parking to be delivered is more than that required.

Plots 11 to 17 served by the southern access would be provided with a total of 21 spaces with three visitor spaces. Based on the bedroom numbers to the dwellings served by the southern access a minimum of 21 off-street parking spaces would be required and therefore the off-street parking to be delivered would be acceptable.

Overall, the level of off-street parking to be delivered would be acceptable to the CHA.

Highways Conclusion

Paragraph 111 of the NPPF outlines that development should only be refused on highway grounds where “*there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*”

In the circumstances that there are no objections to the application from the CHA, subject to the imposition of conditions, it is considered that the proposal would be compliant with Policies IF4 and IF7 of the adopted Local Plan, Policies T1, T2 and T4 of the made Ashby De La Zouch Neighbourhood Plan as well as Paragraphs 107, 110, 111 and 112 of the NPPF and the DEFRA Rights of Way Circular.

Assessment of objections received in relation to highways

Objection	Officer Response
<p><i>The need for the Bath Grounds/cricket club parking area to be kept clear to accommodate a turning hammerhead for service vehicles would result in the loss of public parking spaces on land which would be owned or leased by the town council. The loss of such parking will significantly increase on-street parking in the vicinity.</i></p>	<p>See above assessment. The applicant has advised that the turning head to be provided would not impact on the parking available to the Bath Grounds and there is a requirement for a turning head to be provided should vehicles need to manoeuvre. It would also enable delivery vehicles connected with the cricket club to appropriately manoeuvre and exit in a forward direction.</p>
<p><i>The number of parking spaces within the hotel car park remains less than those approved as part of the extant consent. This will also encourage on-street parking within the vicinity of the site or within the Bath Grounds car park to the inconvenience of residents and users of the Bath Grounds and cricket club.</i></p>	<p>See above assessment. The CHA is satisfied with the level of off-street parking proposed to serve the townhouses and the hotel and consequently it is considered that the proposed development would not result in detriment to highway safety or the indiscriminate parking of vehicles on the surrounding highway network.</p>
<p><i>The development will result in significant additional pedestrian journeys from the hotel and townhouses to the centre of Ashby. This will involve the dangerous crossing at the bottom of South Street (at the South Street entrance to the Bath Grounds). A financial contribution should be secured towards the provision of a pedestrian crossing at this location as highlighted in the Ashby Neighbourhood Plan.</i></p>	<p>Policy T1 of the Ashby De La Zouch Neighbourhood Plan (ADLZNP) encourages the provision of traffic management measures that improve both vehicular and pedestrian safety with the supporting text to this policy referring to improved pedestrian access to the Bath Grounds on South Street.</p> <p>Whilst this is the case neither the CHA or the Ashby Town Council have indicated the need for such a traffic management measure to be implemented as part of the proposed development or that funds should be secured to provide such a traffic management</p>

	<p>measure. In the absence of any such justification demonstrating that the development should provide and/or fund such a traffic management measure or demonstrating the precise impacts arising from the development to pedestrian crossings on South Street, it would not be reasonable to secure this via condition or as part of a legal agreement.</p> <p>In any event it is outlined elsewhere in this report that the proposal comprises enabling development and therefore any funds generated are to be utilised to facilitate the restoration and re-use of the Royal Hotel. On this basis there would be no funds available to contribute towards such a traffic management measure even if a justified case was made.</p>
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Ecology

Vegetation, in the form of trees and other shrubs, are present on the site. Such features 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 2010 to have regard to the requirements of the Habitats Directive in the exercise of its functions.

In their initial consultation response, the County Council Ecologist indicated that the preliminary ecological appraisal (PEA) was acceptable and that an error associated with the candidate local wildlife site (cLWS) Ash tree, as outlined in a previous PEA, had been corrected and which demonstrated that the cLWS would be removed given its poor condition. Given the surrounding land use the County Council Ecologist did not object to the loss of the cLWS Ash.

The County Council Ecologist also did not raise any concerns regarding protected species, except for bats. In this respect the County Council Ecologist acknowledged that a significant number of trees would be removed, and which included some which had bat potential. The PEA recommended further surveys of the site, including the northern extensions to the hotel which are being demolished (in accordance with the consents granted under application references 14/00104/FULM (as varied by that approved under application reference 19/00890/VCUM) and 14/00105/LBC), but further bat roost assessments of the trees to be removed along with bat activity surveys were required.

It was also indicated by the County Council Ecologist that the Royal Hotel itself may support bat roosts that could be affected by the surrounding works and large amount of tree felling, with lighting also having the potential to cause further disturbance. The County Council Ecologist therefore considered it necessary to include the hotel within the further bat surveys to establish any roost entrances so that appropriate mitigation for disturbance during construction and afterwards could be made.

In terms of habitat losses, the County Council Ecologist outlined that they had no concerns

apart from the loss of trees and that a biodiversity net gain (BNG) calculation had not been done and was required. They also indicated that biodiversity gains were also not evident, but it would be acceptable for any gains to take place on the adjacent Bath Grounds.

A bat survey report was subsequently submitted by the applicant and following re-consultation the County Council Ecologist advised that this report showed that a single dusk emergence survey had been undertaken on the hotel ground floor extensions on 16th September 2022 with a bat activity survey undertaken on the 3rd of October 2022. The County Council Ecologist advised that both surveys were undertaken outside the optimal time periods for such surveys and therefore could only give a partial picture of bat activity at the site. It was, however, noted that no bats were observed emerging from the hotel.

The County Council Ecologist also outlined that trees within the site were only assessed for potential from the ground, on the 29th of November 2022, and therefore no emergence surveys on those trees with moderate-high potential (20 trees) will have been possible. As such they advised that two to three emergence surveys (between May – August) would be required on such trees before they were removed.

It was also outlined by the County Council Ecologist that the hotel loft voids had not been checked for evidence of bats and this was something that the County Council Ecologist advised be carried out with it being the case that such a survey could be carried out at any time of the year.

In terms of lighting, the County Council Ecologist indicated that the southern part of the site (where plots 11 to 17 would be constructed) was a valuable local resource for both foraging and commuting bats, and provided a useful connecting habitat to other wildlife corridors and therefore any lighting scheme would need to be designed to minimise the impacts.

Following further discussions with the applicant it was outlined to the County Council Ecologist that works associated with The Royal Hotel had already been granted consent under the extant consents and, more recently, 22/01492/LBC and consequently it did not seem necessary to survey the roof voids on the basis that the proposed development would not involve works to the Royal Hotel itself.

In terms of BNG, the applicant has acknowledged that the proposed development could not demonstrate a net gain in biodiversity (particularly given the tree loss) and would not be a viable development to deliver off-site mitigation through credits given that it comprises 'enabling development.' It is also noted that the Bath Grounds is in the process of being sold to Ashby De La Zouch Town Council and consequently would represent land which is no longer in the ownership of the applicant.

Following further consultation with the County Council Ecologist, they have accepted that no bat surveys of the roof voids within the hotel would be required but that their position in relation to further bat surveys of the trees to be removed would remain applicable given their high-moderate potential.

In terms of BNG, the County Council Ecologist accepts that the mandatory 10% net gain in biodiversity through the Environment Act 2021 has not yet been enacted (likely November 2023 for a development of the scale proposed) but that criterion (d) of Paragraph 174 of the NPPF does indicate that a 'measurable net gain' should be delivered. In this respect they advised that the integrated bird boxes and bat boxes would not achieve a 'net gain' in biodiversity, given they would not compensate for the tree loss.

Notwithstanding the above, the County Council Ecologist has suggested the imposition of the following conditions should planning permission be granted:

- (a) A construction environmental management plan (CEMP) for biodiversity;
- (b) That any trees to be removed are not removed until such time as further checks for bats (either by activity or endoscope surveys) are undertaken and provided;
- (c) That a bat and bird enhancement scheme is undertaken and provided;
- (d) That a detailed lighting strategy is undertaken and provided; and
- (e) That a detailed soft landscaping scheme is undertaken and provided.

Ecology Conclusion

Paragraph 99 of Circular 06/05 outlines that *“the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations before the permission is granted.”*

It is clear that, whilst the imposition of the suggested conditions of the County Council Ecologist, as outlined above, would serve to address ecological matters on the site there is conflict with Policy En1 of the adopted Local Plan and Policy NE4 of the made Ashby De La Zouch Neighbourhood Plan (in that the proposal would not conserve or enhance biodiversity (criterion (1)), Paragraphs 174 and 180 of the NPPF (given that a net gain in biodiversity would not be delivered) and the guidance within circular 06/05 (in that surveys are not provided pre-determination).

Although such conflict arises, it is noted above that the proposal comprises ‘enabling development’ to secure the future conservation of The Royal Hotel and consequently such conflict will be weighed in the overall balance as part of the ‘Enabling Development’ section of this report below.

Landscaping

The application site lies within the Ashby De La Zouch Conservation Area and as such trees on the site are protected by virtue of their location. Notwithstanding such a location, tree preservation orders (TPOs) do also exist and protect trees in the following areas:

- TPO T32 covers the three areas of trees within the southern part of the site (as shown on the below image);
- TPO 385 covers individual trees within the north of the site which comprise, from left to right, a Lime, a Lime, Sycamore, Lime, Lime, Sycamore and Hawthorn;
- TPO T1721 covers a group of 3 Sycamores; and
- TPO T32 also covers the area of trees above the word ‘Posts’ (as shown on the image below) and trees to the north-east of the site.

Image Showing Tree Preservation Orders on the Site and within the Vicinity of the Site



An arboricultural impact assessment (AIA) has been submitted in support of the application which follows the guidelines in BS5837:2012 (Trees in Relation to Design, Demolition and Construction Recommendations). It is outlined in the AIA that in order to facilitate the development a total of 81 trees would need to be removed, of which 13 are high quality (category A), 31 are moderate quality (category B) and 29 are low quality (category C). The remaining 8 trees are in such a condition that they are unsuitable for retention irrespective of any redevelopment of the site.

The initial consultation response from the Council’s Tree Officer assessed the development in three separate zones (northern, central, and southern) and commented as follows:

Northern Zone

The Council’s Tree Officer outlined that the existing tree cover in the northern zone is relatively low and consequently the impacts were not particularly significant. It is proposed that four trees would be removed which were of limited arboricultural value and therefore could easily be replaced by new planting. The initial AIA also identified that the proposed new parking areas would encroach into the root protection area (RPA) for several trees on the northern site boundary, but this would be mitigated by no-dig surfacing which was considered acceptable to the Council’s Tree Officer given the amount of existing hard surfacing.

Overall, the Council’s Tree Officer has no objections to the development within the northern zone.

Central Zone

The Central Zone includes trees within the area to the east of the hotel building and it is proposed that a number of these trees would be retained and integrated within the new formal landscaping proposed to the rear of the hotel. It is, however, the case that a Lime tree (category A) and two Sycamore trees (category B) are proposed for removal, along with several low quality trees which have been felled since the original 2019 tree survey.

It is outlined by the Council's Tree Officer that they have no objections to the loss of two Sycamore trees but that the Lime tree was planted as landscaping to the hotel and has grown into a significant feature in the setting of the grounds. On the basis that no suitable justification exists for the removal of the Lime tree, which is not impacted on by the development, the Council's Tree Officer advised that the landscaping layout should be redesigned to retain the Lime tree. The Council's Tree Officer also advised that a Copper Beech tree (category A) was shown as being located within a proposed footpath and therefore this would also need to be redesigned.

Southern Zone

The majority of the site's existing tree cover is in the southern zone and currently provides mature canopy cover when viewed from the Bath Grounds to the east and Station Road to the west. It is proposed that 11 category A trees and 27 category B trees, together with several lower quality specimens would be removed to accommodate plots 11 to 17 and the parking for both the hotel and new residences.

It is considered by the Council's Tree Officer that this will have a significant impact on the existing tree cover by opening the views from the Bath Grounds, however the western views are unlikely to be changed to the same extent as the layout would retain sufficient trees along the Station Road boundary to ensure a suitable canopy screen is maintained.

The Council's Tree Officer accepts that if the principle of developing the southern part of the site is established then the loss of tree cover, to an extent, would be unavoidable. There are, however, concerns from the Council's Tree Officer that the layout has not been appropriately considered to ensure that the most significant trees are retained.

In this respect several category A and B trees are proposed to be removed for the new parking area to the south of the hotel building which include two mature Yew trees which, in arboricultural terms, would be as important to the historic setting of the site as the hotel itself. Given the absence of any arboricultural justification for the removal of such trees the Council's Tree Officer recommended that the parking scheme be redesigned to allow their retention.

Whilst the parking area did include an open area to allow the retention of a Lombardy popular tree (category B), the Council's Tree Officer considered that this tree would not be suitable for anything more than short term retention in the site layout, a view which also appeared to be shared in the original AIA. Consequently, the Council's Tree Officer considered that any redesign of the hotel car park should consider the removal of the Lombardy popular to allow the retention of more appropriate, better quality specimens.

The Council's Tree Officer also noted that the current parking layout did not allow sufficient allowance for the RPAs of retained trees and therefore any layout amendments would require input from an arboriculturist to ensure that any encroachment into the RPAs is both realistic and,

where unavoidable, appropriately mitigated.

It is accepted by the Council's Tree Officer that there would not appear to be much scope for any redesign of plots 11 to 17 to retain additional trees given that wherever these plots are located, the removal of some higher quality trees would be required. On this basis the Council's Tree Officer concluded that tree losses would need to be balanced against the overall benefits of the scheme with appropriate replacement planting included in the soft landscaping scheme for the proposed layout. Fortunately, the removal of selected individual trees from the category A groups (both Limes) would not have a significant impact to the screening provided by the overall groups which helps ensure that the current views from Station Road will be maintained as far as possible. In the medium to long term, views from the Bath Grounds would need to be addressed by the proposed soft landscaping infrastructure.

With regards to a large Ash tree (category U) which has been highlighted as significant for its potential biodiversity benefits, the Council's Tree Officer has commented that from an arboricultural perspective it would neither be practicable or safe to retain the tree, given its condition, and therefore its loss would be acceptable. The original AIA does indicate that the Ash tree would be reduced to a habitat monolith to retain some of its biodiversity value.

Council Tree Officer's Initial Conclusion

The Council's Tree Officer's initial conclusion to the development outlined that the overriding presumption in BS 5837:2012 is that the design of a new site layout should start with the intention of retaining all existing trees. As this would not obviously be practicable in most cases, the intention would therefore be to favour retention of the higher quality specimens. In this case the initial conclusion of the Council's Tree Officer was that the number of category A and B trees proposed for removal from the site was excessive and that the potential loss of tree cover and public amenity was of such significance to warrant an arboricultural objection to consent being granted. It was, however, acknowledged by the Council's Tree Officer that the impacts resulting from tree removals would need to be balanced against the overall benefits of the development and that there was scope for amendments to be made to the layout so as to lessen the impact of the losses.

A revised AIA and landscaping plan was subsequently submitted by the applicant and following re-consultation the Council's Tree Officer has commented as follows:

Northern Zone

As there have been no changes to the northern part of the proposed site layout the Council's Tree Officer maintains that they have no objections to development within this zone.

Central Zone

In their revised consultation response, the Council's Tree Officer has acknowledged that the Lime tree (category A) is now shown to be retained. However, the development has not been altered in a manner which would suggest the tree could be retained in the long term and in this respect sections 2.20 to 2.23 of the AIA identify that the proposed hard and soft landscaping will involve construction and raising ground levels within the RPA of the Lime tree. Whilst some justification and mitigation measures are suggested, given the level of impact the Council's Tree Officer is concerned that such mitigation will not be effective and consequently there is doubt that the Lime tree could be retained in good health for a long time in the new site layout. This is evidently a view shared by the AIA which states on section 2.23 that *"the extent of the proposed*

works within the tree's RPA is significant, and it is accepted they do not accord with standing guidance."

On this basis the Council's Tree Officer has maintained their objection to the loss of the Lime tree given that it has not been demonstrated that its long term retention will be viable from an arboricultural perspective.

In terms of the Copper Beech tree (category A), the Council's Tree Officer has acknowledged that the footpath layout has been altered so as to avoid this tree which would enable its retention.

Southern Zone

The Council's Tree Officer has commented that the parking area to the south of the hotel building now shows the retention of the two Yew trees (category A) in preference to the retention of the Lombardy poplar tree (category B) which was as suggested by the Council's Tree Officer. However, and as is the case with the central zone, the scheme has not been redesigned so as to enable the Yew trees to be sustainably retained in the long term given the development to be undertaken in the RPAs of these trees.

One of the Yew trees has open ground over its RPA and the Council's Tree Officer considers that the proposed hard surfacing would cover over 90% of this RPA. Best practice guidance within BS 5837:2012 is that new hard surfacing should not exceed 20% of an unsurfaced RPA and therefore whilst a no-dig specification would be utilised, as outlined in the AIA, the potential impacts to the Yew tree would be excessive and it would be unlikely to survive in its current good health and condition.

This again is a view which is shared by the AIA which confirms in section 2.24 that *"it is accepted the arrangement proposed will require extensive works within the RPA of both trees, well beyond thresholds recognised in BS 5837:2012. The RPAs of both trees will effectively transition from soft landscape environments to predominately hard surfacing."* The means of mitigation within the AIA also suggests that Yew is a species of tree which is resilient, however this is not a view shared by the Council's Tree Officer who considers that Yews are particularly susceptible to development damage and that there would be no species of tree which could be suggested as being suitable for the level of disturbance proposed.

Council Tree Officer's Revised Conclusion

Whilst the Council's Tree Officer welcomes the attempt to retain the important trees it is the case that unless the scheme is amended to appropriately integrate such trees, it is likely that those trees identified will be lost in the short term, irrespective of the intention to retain them. On this basis the Council's Tree Officer maintains their arboricultural objection to the application as without further revisions there is no reasonable prospect that the trees will survive and therefore the application should be assessed on the basis that such trees will be lost.

National Forest Company (NFC)

In terms of the NFC they have outlined that the site extends to 1.52 hectares and therefore, in accordance with Policy En3, 20% of the site (0.3 hectares) should be woodland planting and landscaping although, in exceptional circumstances, a commuted sum (calculated at £35,000 per hectare) may be agreed where the National Forest planting cannot be accommodated within or in close proximity to the development site. The NFC have outlined that there does not appear

to be an opportunity to accommodate National Forest planting on or adjacent to the site and as such the NFC request a financial contribution towards off-site woodland planting and associated works. This is discussed in more detail in the *'Developer Contributions'* section of this report below.

With regards to the loss of trees, the NFC acknowledge that the application proposes a significant loss of mature trees, and this loss would need to be scrutinised by the Council's Tree Officer (whose assessment is as above).

In terms of the soft landscaping proposals the NFC have commented that 69 new trees would be planted and that with the layout proposed there would be little opportunity for additional tree planting on the site. The proposed trees would be of a good size and the NFC consider that a condition requiring a management plan to ensure the success of the landscaping is required. Additionally they also recommend a condition requiring tree protection measures to be implemented during the construction stage.

Hard Landscaping

The submitted hard landscaping plan identifies the use of several types of hard surfaces including standard black tarmac (to highway running between Station Road and the Bath Grounds), porous black tarmac with grey chips rolled into the tarmac (to internal highways), sandstone paving slabs (to pathways around the dwellings and patios), block paving (to parking spaces) and gravel paths (through The Royal Hotel grounds). Grey chippings are now proposed to be rolled into the black tarmac to the internal highways following a request from the Council's Urban Designer.

Landscaping Conclusion

It is considered that the hard landscaping proposals would be acceptable and would be secured by condition on any planning permission to be granted.

Based on the comments from the NFC it is also considered that the proposed soft landscaping proposals would be acceptable and again would be secured by condition on any planning permission to be granted.

However, the proposal would result in the loss of 13 high quality trees (category A) and 31 moderate quality trees (category B) with the Council's Tree Officer raising an arboricultural objection to the likely loss of a Lime tree (category A) in the central zone and several trees in the southern zone (including two category A Yew trees). The loss of such trees would impact on the existing tree cover in the area thereby also impacting on public amenity.

The applicant was requested to reconsider the parking proposals following the receipt of the revised consultation response from the Council's Tree Officer and have commented as follows:

"The tension between car parking needs for the hotel and retention of trees has always been problematic. Our Design Team has discussed this at length and feel that we cannot make further changes to the parking. Whilst not ideal, we are hopeful that the referenced trees will be sufficiently protected."

On the basis that the scheme remains as proposed, and noting the comments of the Council's Tree Officer above, it is considered that the proposal would conflict with the aims of Policies En1 (which seeks to conserve and enhance biodiversity) and En3 (which seeks to contribute towards

the creation of the National Forest) of the adopted Local Plan and Policies NE4 (which seeks to conserve and enhance biodiversity (criterion (1)) and NE5 (which seeks to enhance the coverage of trees in the National Forest) of the made Ashby De La Zouch Neighbourhood Plan.

Although such conflict arises it is noted above that the proposal comprises ‘enabling development’ to secure the future conservation of The Royal Hotel and consequently such conflict will be weighed in the overall balance as part of the ‘*Enabling Development*’ section of this report below. This section will also balance the conflict arising with the extent of development permitted under the extant planning permission (14/00104/FULM, subsequently varied by 19/00890/VCUM), which approved the formation of a car park to the south of The Royal Hotel.

Assessment of objections received in relation to landscaping

Objection	Officer Response
<p><i>There is only minor mitigation for the loss of 81 trees (including 13 grade A and 31 grade B) and therefore additional tree planting elsewhere should be financed if it cannot be delivered on site.</i></p>	<p>The impacts arising from the removal of the trees is as assessed above with it being accepted that the conflict arising with policy will need to be balanced with the enabling development which is proposed. Given the financial constraints associated with meeting the conservation deficit it would not be possible to fund the planting of trees elsewhere.</p>

River Mease Special Area of Conservation/SSSI – Appropriate Assessment

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). The nearest tributaries to the river include the Gilwiskaw Brook which runs underground through the Bath Grounds around 129 metres to the east of the site. Discharge from the sewerage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Surface water flows can also adversely impact on the SAC.

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. 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 Drainage

As part of the consideration of application reference 14/00104/FULM (as varied by 19/00890/VCUM) it was established that the erection of the extension to the hotel, café kiosk and pavilion building would result in an increase in foul drainage discharge from the site, and that such foul drainage could adversely impact on the River Mease SAC given that it would pass through a treatment works within the catchment area of the River Mease and contribute towards raised phosphate levels in the river.

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 CIL Regulations and Paragraph 177 of the NPPF. DCS2 was adopted by the Council on 20th September 2016 following the cessation of capacity under DCS1.

In March 2022 Natural England published advice in respect of the nutrient neutrality methodology which can be used to mitigate against the impacts of additional phosphate entering the SAC from foul drainage associated with new development. The River Mease DCS is a mitigation scheme to mitigate against additional phosphate entering the SAC, and there is still capacity within the DCS to accommodate the proposed development (as outlined below). Therefore an assessment under the nutrient neutrality methodology is not required in this case.

A Section 106 agreement entered as part of the extant consent secured a River Mease Contribution of £8,725.00 to mitigate the impacts of the development on the River Mease SAC and which was calculated against the criteria for dwellings and occupancy rates (even though the development itself was not residential). It is noted that Natural England (NE) raised no objections to the extant consent subject to the applicant contributing into the DCS.

The flows from the proposal have been considered against the existing headroom at Packington Treatment Works (PTW) and at the time of the consideration of the extant consent no objection was received from Severn Trent Water (STW) to indicate that capacity was not available at PTW.

The flows from the 17 dwellings needs to be considered against the existing headroom at PTW. At March 2016 capacity was available for 3368 dwellings but this reduced by the number of dwellings that already have consent or are under construction at March 2016 (1444) and a further 390 which have subsequently been granted permission or have a resolution to permit in place, giving capacity for 1534 dwellings. As such it is considered that capacity is available at the relevant treatment works for the foul drainage from the site.

Based on the proposed development the contribution to be paid would be £10,221.00 and this would be secured in a new Section 106 agreement given that the proposed development would supersede that permitted under the extant consent. The payment of this contribution in line with the requirements of the legal agreement would mitigate the impact of an increase in foul drainage discharge from the site on the integrity of the River Mease SAC.

The applicant has indicated that they are willing to pay the required DCS contribution and the Council's solicitors have been instructed. NE have confirmed that the payment of the DCS contribution would mitigate the impacts on the River Mease SAC and therefore they have no objections.

Surface Water Drainage

With regards to surface water drainage, the initial comments from NE outlined that surface water from the southern area of the site would discharge to a surface water sewer, following the use of sustainable urban drainage system (SuDS) components including permeable paving, filter trenches and attenuation tanks, which was considered acceptable to NE given that such SuDS proposals would be in line with the CIRIA SuDS Manual C7532, and meet the requirements of the Simple Index Approach, set out in chapter 26 of the manual, including an additional treatment component. As such no further mitigation was required for flows from this area of the site.

It was, however, outlined by NE that the northern part of the site would discharge to the combined sewer and whilst such water would contain a lower concentration of Phosphorous than foul water, the increase in flow to the treatment works would give rise to additional phosphorous output to the river. On this basis additional mitigation needed to be provided to account for the increased phosphorous flow caused by surface water flowing to the combined sewer. NE did outline that the design of the surface water drainage system could be altered to prevent water flowing to the combined sewer and that all options should be explored first in line with the drainage hierarchy set out in the NPPG.

An amended drainage plan has subsequently been submitted by the applicant which shows that surface water from the northern part of the site would now be directed to the storm water sewer in the same manner as that proposed for the southern part of the site, with attenuation tanks and permeable paving also being utilised. Following re-consultation NE have confirmed that such an approach would be acceptable and consistent with that proposed to the southern part of the site and therefore they have no objections.

As is outlined in the '*Flood Risk and Drainage*' section of this report below, the Lead Local Flood Authority (LLFA) have requested that conditions be imposed on any permission granted to secure a precise surface water drainage scheme, as well as a management and maintenance plan for the surface water drainage scheme. It is considered that, in discharging such conditions, it could be ensured, in conjunction with the LLFA, that the discharge of surface water is to the storm water sewer and that SuDS features are included to ensure there is no adverse impacts on 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.

Impact on the Watercourse

As is outlined above the application site is 129 metres from a tributary of the River Mease, being the Gilwiskaw Brook which runs underground through the Bath Grounds to the east of the site.

Whilst the representation received from NE has not identified that construction activity associated with the proposed development is likely to have a direct impact on the identified tributary of the River Mease it is noted that the extant consent was subject to a condition requiring the submission of a construction and demolition management plan (condition no. 31) which was required to provide suitable mitigation measures so as to ensure the integrity of the River Mease was preserved.

Given that the potential implications to the integrity of the River Mease would not be materially different, it is considered reasonable to impose a similar condition on any planning permission to be granted.

On the above basis compliance with the proposed condition would ensure that construction work would not adversely impact on the integrity of the River Mease SAC.

River Mease Special Area of Conservation/SSSI – Appropriate Assessment Conclusion

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 Habitats Regulations 2017, Policies En1 and En2 of the adopted Local Plan, Policy NE4 of the made Ashby De La Zouch Neighbourhood Plan and the NPPF.

Assessment of the objections received in relation to the River Mease Special Area of Conservation/SSSI

Objection	Officer Response
<p><i>The properties are within the catchment area of the River Mease SAC/SSSI and there is no spare capacity at the Packington Sewerage Treatment Works to accommodate foul drainage from the development directed to the mains sewer. On this basis the proposed units will need to be served by cess pits and this is not addressed in the application. If the properties are permitted without cesspits, then they will pollute the River Mease SAC/SSSI.</i></p>	<p>As is concluded above capacity exists under the developer contribution scheme (DCS) to accommodate the proposed development given the extant planning permission which exists on the site. On this basis it would not be a requirement for the townhouses to be served by cesspits and there would be no adverse impacts to the integrity of the River Mease SAC/SSSI.</p>

Flood Risk and Drainage

Based on the Environment Agency (EA) flood risk maps detailed on the Government website, 10 of the proposed townhouses would be undertaken on land which lies within Flood Zone 1, which is the lowest risk of flooding, with the remaining 7 townhouses and hotel car park being on land which lies within Flood Zones 2 and 3a, and as such at a higher risk of flooding. However, the submitted flood risk assessment (FRA) outlines that the EA maps available on the Government website are illustrative and that the detailed flood maps from the EA within the FRA should be used for the purpose of the assessment. These maps would indicate that the application site is wholly within Flood Zone 1.

It is noted that the EA in their consultation response have not disputed this position and on the basis that the site is wholly within Flood Zone 1 there is no requirement to undertake a sequential or exception test in the context of Paragraphs 162, 163, 164 and 165 of the NPPF.

In terms of surface water flooding, the EA’s Surface Water Flood Map identifies that much of the site is not at risk of surface water flooding with only the area where the 7 townhouses would be located to the south of The Royal Hotel being at a low risk of flooding from surface water.

The Lead Local Flood Authority (LLFA) have outlined that surface water drainage would discharge at two separate outfalls both at 5 litres per second (l/s), via pervious paving and attenuation tanks to an existing surface water sewer. Following the submission of further information from the applicant which has appropriately detailed a drainage plan and has confirmed that Severn Trent Water (STW) would allow a connection into their drainage network, the LLFA have raised no objections to the application subject to the imposition of conditions on any permission granted so as to secure a precise surface water drainage scheme, that surface water is appropriately managed during the construction phase and that a scheme of maintenance of the surface water drainage scheme is approved. The EA have no comments to make on the application in the circumstances that the application site is wholly within Flood Zone 1.

On the basis that such conditions are imposed on any permission granted it is considered that the proposed development would not increase or exacerbate flood risk and as such it would be compliant with Policies Cc2 and Cc3 of the adopted Local Plan as well as Paragraphs 167 and 169 of the NPPF.

Insofar as foul drainage is concerned, it is indicated that this would be discharged to the mains sewer and consequently a connection to the sewer would need to be agreed with STW under separate legislation, albeit in principle STW will accept such a connection. In approving such a connection STW would be able to undertake a sewer modelling study to ascertain the level of flows which could be accommodated and carry out any improvements within the sewer network should additional capacity be required. This process would be separate to the planning process and on this basis the proposed development would accord with Paragraph 185 of the NPPF.

Contaminated Land

The Council's Land Contamination Officer has reviewed the application and has outlined that due to the potential for made ground to exist on the site any planning permission to be granted should be subject to conditions requiring the submission of a risk based land contamination assessment, along with any remedial scheme and verification plan should the assessment identify any unacceptable risks.

It is considered that the imposition of such conditions is reasonable in the circumstances that the land would be utilised for residential purposes, and therefore necessary to ensure the health and safety of any future occupants. Subject to the imposition of such conditions, the development would accord with Policy En6 of the adopted Local Plan as well as Paragraphs 174, 183 and 184 of the NPPF.

Developer Contributions

A request has been made for a Section 106 contribution towards on-site affordable housing provision, education, libraries, health, transportation, National Forest, and the River Mease SAC/SSSI. These requests have been assessed against the equivalent legislative tests contained within the Community Infrastructure Levy (CIL) Regulations (CIL Regulations) as well as Policy IF1 of the adopted Local Plan and Paragraphs 34, 55 and 57 of the NPPF.

Affordable Housing

The District Council's Affordable Housing Enabler recognises that the application seeks to develop 17 townhouses on the site with the intention being that the monies raised from the sale of such townhouses would be used to carry out improvements and refurbishment of the Royal Hotel itself. As such they accept that the regeneration aspects associated with the development may outweigh the requirement to meet an affordable housing need.

Nevertheless if affordable housing is to be considered, then the Council's Affordable Housing Enabler has indicated that based on the 17 units to be created two First Homes should be provided with it being expected that such units would comprise 3 bed 5 person houses with a minimum gross internal area (GIA) of 82 square metres.

In the circumstances that it is determined that the delivery of affordable housing would not be appropriate, given the circumstances of this application (i.e. enabling development), the Council's Affordable Housing Enabler would strongly request that the delivery of affordable housing is protected, either through the legal agreement or conditions, should the works to the Royal Hotel not be undertaken. They would also request that the viability of the proposal is regularly assessed and that this considers all section 106 contribution requests so that any reductions are spread across the contribution package (rather than simply omitting affordable housing in favour of other contributions).

The above is requested by the Council's Affordable Housing Enabler in the circumstances that affordable housing has not been provided previously in favour of community projects that were perceived to be achievable, but which were subsequently not delivered. If on-site affordable housing was not deliverable, then the Council's Affordable Housing Enabler would request that any legal agreement also covers the potential delivery of off-site affordable housing with any monies to be paid realistically reflecting the cost of providing comparable accommodation elsewhere.

Whilst acknowledging the comments raised by the Council's Affordable Housing Enabler the scheme comprises enabling development and therefore the monies to be raised as a result of the development are specifically for the restoration and re-use of the Royal Hotel (a heritage asset) with the Section 106 agreement specifically securing such works, and restricting certain aspects of the development until such time as specific works to the heritage asset are undertaken (this being as discussed in the '*Enabling Development*' section of this report below). The applicant has advised that the review of the viability of the scheme at certain intervals results in additional cost and thereby increases the conservation deficit which subsequently increases the pressures for further development to be provided. On this basis no such clause would be secured within the Section 106 agreement.

The absence of the delivery of affordable housing on site, or via a financial contribution off-site, would result in direct conflict with Policies H4 and IF1 of the adopted Local Plan.

Education

Leicestershire County Council (Education) have requested a secondary school sector contribution of £50,749.96 for Ivanhoe School on North Street and a Post-16 school contribution of £10,842.45 for Ashby School on Leicester Road. No requests are made for the primary or special schools' sectors.

Libraries

Leicestershire County Council (Library Services) have requested a contribution of £514.69 for improved stock provision (i.e. books, audio books, newspapers, periodicals for loan and reference use) at Ashby De La Zouch Library on North Street, or to enable the reconfiguration of the internal space within the library to enable additional uses of the building (i.e. resident meetings including book readings and activities).

Health

The NHS Leicester, Leicestershire and Rutland Clinical Commissioning Group have requested a contribution of £8,212.22 for enhancements and improvements at the Castle Medical Group on Burton Road which would mitigate against the increase in patients because of the proposed development.

Transportation Contributions

The County Highways Authority (CHA) have indicated that the following developer contributions would be requested in the interests of encouraging sustainable travel to and from the site and reducing private car use.

- Travel packs; to inform new residents from first occupation what sustainable travel choices are in the surrounding area (can be supplied by Leicestershire County Council (LCC) at £52.85 per pack). If not supplied by LCC, a sample Travel Pack shall be submitted to and approved in writing by LCC which may involve an administration charge.
- Two six month bus passes per dwelling (2 application forms to be included in the Travel Pack and funded by the developer); to encourage new residents to use bus services as an alternative to the private car and to establish changes in travel behaviour from first occupation (£360 per pass) (cost to be confirmed at implementation).

National Forest

It is outlined in the '*Landscaping*' section of this report above that in the circumstances that policy compliant woodland planting is not achievable on the site or close to the site, the National Forest Company (NFC) advise that a financial contribution for such planting to be provided off-site would be required.

Based on the site area of 1.52 hectares there would be a requirement for 0.3 hectares of the site to be dedicated to woodland planting and landscaping. Consequently the financial contribution would be calculated based on £35,000 per hectare and as such the contribution would be £10,500 (0.3 hectares x £35,000).

The NFC would request that such a contribution is secured in the Section 106 agreement.

River Mease Special Area of Conservation/SSSI

It is outlined in '*River Mease Special Area of Conservation/SSSI – Appropriate Assessment*' section of this report above that a financial contribution of £10,221 would be payable to mitigate the impact of the development on the River Mease Special Area of Conservation/SSSI.

The applicant is agreeable to the payment of the River Mease Special Area of

Conservation/SSSI contribution.

Open Space, Sport and Recreation Facilities

Policy IF3 of the adopted Local Plan outlines that open space, sport and recreation facilities should be sought on development proposals of 50 dwellings or more. Given that this proposal relates to 17 dwellings the terms of Policy IF3 would not be applicable.

Section 106 Total Contributions:

Because of the above the following contributions should be secured within a Section 106 agreement:

- Affordable Housing – 2 x 3 bed 5 person houses on site (or equivalent financial contribution for delivery off-site).
- Education - £61,592.41.
- Libraries - £514.69.
- Health - £8,212.22.
- Highways - £13,138.45.
- National Forest - £10,500.00
- River Mease Special Area of Conservation/SSSI - £10,221.00
- Total Financial Contribution - £104,177.96.

Developer Contributions Conclusion

Whilst it is considered that proposed contributions would accord with the principles of relevant policy and legislative tests outlined in Policy IF1 of the adopted Local Plan, Circular 06/05, the CIL Regulations and the NPPF, it is the case that the proposal comprises 'enabling development' so as to secure the future conservation of the Royal Hotel.

As such it is the case that the development would not be viable to pay the financial contributions or provide any affordable housing requested due to the finance generated being required to meet the conservation deficit and therefore enable the restoration of the Royal Hotel.

The only exception to this would be the payment of the River Mease Special Area of Conservation/SSSI contribution (£10,221.00) which would be mandatory to comply with the Habitats Regulations.

In the absence of the payment of the contributions the impact of the development on service provision would not be mitigated, nor would an appropriate level of affordable housing be provided, and consequently there is direct conflict with Policies IF1 and H4 of the adopted Local Plan as well as the guidance within the CIL Regulations and the NPPF.

Although such conflict arises, it is outlined above that the proposal comprises 'enabling development' to secure the future conservation of The Royal Hotel and consequently such conflict will be weighed in the overall balance as part of the '*Enabling Development*' section of this report below.

Waste Collection

The District Council's Waste Services Development Officer (WSDO) outlined that it needed to be established whether the internal access road serving the townhouses would be constructed to an adoptable standard given that this would be necessary should the applicant wish for the District Council's waste vehicle to collect waste receptacles associated with the townhouses. If it was the case that the District Council's waste vehicles were to serve the development, then an indemnity agreement would need to be entered into so as to ensure the District Council would not be liable for any damage caused to a private highway as a result of the collection of waste receptacles.

It was also outlined by the District Council's WSDO that if the District Council were to collect the waste receptacles then the bin collection point showing on the submitted plan serving plots 1 to 10 was suitably located, subject to an adequate turning circle being provided, but that for plots 11 to 17 an alternative bin collection point would be required given that the District Council's waste operatives would not collect the waste receptacles from the bin store identified. In this respect the District Council's WSDO recommended that the bin collection point be provided adjacent to Station Road.

Following discussions with the applicant they have outlined that the development could not be adapted to accommodate a turning circle within the vicinity of plots 1 to 10 and consequently it is proposed that a private waste contractor would be appointed to collect the waste receptacles rather than the District Council's waste operatives. Such a private waste contractor would also collect the waste receptacles associated with plots 11 to 17 as well as the hotel.

In terms of the bin storage points, these would be situated in locations which would be compatible with Part H6 of the Building Regulations which states that residents should not be expected to carry their refuse more than 30 metres to a storage point.

A note to the applicant would be imposed on any planning permission to be granted to make it clear that future residents are aware that their waste receptacles would be collected by a private waste contractor with conditions being imposed to secure the bin storage points and ensuring that they are suitably designed and sized. This would ensure that the integrity of the approach to the design of the development would be maintained.

Enabling Development

The Historic England (HE) document '*Enabling Development and Heritage Assets*' (2020) offers guidance and criteria to be used in the assessment of enabling development proposals. Paragraph 208 of the NPPF makes it clear that decision-makers will still need to assess whether the heritage and any other public benefits enabling development would provide, would outweigh the disbenefits of departing from planning policy. As part of that assessment it is also necessary to ensure that the asset is preserved not just for now but also into the future. The HE document details it is good practice to take the decision in the light of a realistic view of the consequences of refusal. The HE document provides guidance to a developer on making a case for enabling development.

The HE document also suggests following a number of steps, which can be one approach to providing a full case that meets the requirements within Paragraph 208 of the NPPF. They are:

- (i) Conservation needs/works assessment;
- (ii) Alternative solutions;
- (iii) Repair and maintenance costs assessment;
- (iv) Market value assessment;
- (v) Scheme design;
- (vi) Development appraisals; and
- (vii) Delivery plan.

Therefore, it is necessary to firstly satisfy that the scheme warrants a need for enabling development. Once, and only if this need is satisfied, an assessment of whether what is proposed is genuine 'enabling' development must be taken, before determining whether the benefit of the enabling development i.e. the preservation of the listed buildings represents a very special circumstance.

(i) Conservation needs/works assessment

The application is accompanied by a full and robust Condition Survey by Crosby Granger Architects, undertaken in 2020, which considers the condition of each external and internal elevation, the roof level, the basement, the ground floor, first floor, second floor, attic level, external drainage, and external grounds. It also identifies the condition of each element, describes the element, the works required, its priority, the type of work involved, photographs where applicable and the likely costs involved.

The Condition Survey indicates that sub-total of the facilitating works and building works would be £2,245,455 and that when including preliminaries (with a 14% allowance), main contractor's overheads and profits (8% allowance), contingencies (15% allowance) and inflation (based on the 3rd Quarter in 2022) the total cost would be £3,264,417.

In addition to the condition survey Crosby Granger have also produced a Condition Report which sets out the building in context, its setting and historical significance. It also sets out a commentary of the condition of the Royal Hotel and the works required.

A Maintenance Schedule & Cyclical Life Schedule for the Royal Hotel has also been produced by Crosby Granger, contained at appendix C of the Condition Survey, which sets out the maintenance regime for:

- (a) The structure;
- (b) External fabric;
- (c) Internal fabric;
- (d) Fittings and fixtures;
- (e) Services; and
- (f) External works.

The Maintenance Schedule & Cyclical Life Schedule is supported by a Budget Cost Plan produced by Cavendish Bloor Limited and this outlines that the total cost of the repair and renovation works would be £5,642,500 (including inflation).

This application does not propose any works to the Royal Hotel itself given that works associated with the repair and renovation of the hotel have previously been secured under listed

building consent application references 14/00105/LBC and 22/01492/LBC and planning permission reference 14/00104/FULM (as varied by 19/00890/VCUM). Should works outside of the scope of the above permissions be proposed then these would be subject to separate listed building consent applications and where such schemes would be assessed on their own merits with regards to ensuring that the significance of the Royal Hotel is preserved, as a minimum.

It is considered that the application is accompanied by sufficiently detailed plans and information to allow a thorough and robust assessment of the proposed scheme in terms of the works required to the listed building, to ensure its preservation but also the impact on its setting. The Condition Survey, Condition Report and Maintenance Schedule & Cyclical Life Schedule also follow good conservation values and are well-considered approaches to the development which would sustain the special heritage interest of this important listed building whilst securing its long-term retention.

On the above basis, step (i) is complied with.

(ii) Alternative Solutions

To establish if enabling development can be justified and therefore unavoidable, a range of possible alternatives need to be explored. The HE document details this may include public or charitable ownership, grant funding, alternative uses or ownership and enforcement remedies. It is important that a wide range of realistic possibilities is considered, not just the original or most recent uses although the original use may still be the most appropriate one. Evidence of attempts made to find alternative users or owners through appropriate marketing and the efforts made to find alternative sources of funding, for example from charitable foundations, is necessary.

The submitted planning statement indicates that the applicant is committed to the restoration and operation of the Royal Hotel and that as part of a pre-submission consultation event the overwhelming response from the public of Ashby De La Zouch was that the building should re-open as a hotel, a view which is also shared by the District Council and Ashby De La Zouch Town Council.

Notwithstanding this, the applicant has considered three alternative uses of the Royal Hotel which would comprise the following:

- Residential use – 15 apartments over three floors;
- Office use – providing 20 office spaces over three floors; and
- Mixed commercial use – providing a range of commercial uses over three floors.

The planning statement subsequently concludes that the office and mixed commercial use options are not viable. Whilst the residential use would need approximately £333,707 less enabling contribution than the hotel proposal, to make the residential apartments saleable it would involve substantial alteration/intervention to the building. It is considered that £333,707 would not make a significance difference to the amount of enabling development proposed and therefore the residential option is also considered not to be credible.

Alternative uses were also discounted for several other reasons such as:

- The approved plans of the hotel (under application reference 14/00105/LBC) highlight the significant areas of 'common space' which is taken up by the dining room, corridor, kitchen, foyer, and staircases which would not be incorporated into a scheme for the identified alternative uses. Such areas place a financial burden on the potential alternative uses given that a high management fee would arise. The 'common space' is also seen as an asset to the hotel. It is also considered that the size of the current hotel bedrooms do not lend themselves to be used as offices or residential space given they were built as short stay bedrooms.
- Conversion to apartments/offices would involve significant internal works which would impact on the fabric of the heritage asset if a residential/office scheme was to be attractive and deliverable.
- The provision of several apartment kitchens would necessitate internal and external works to the building fabric.
- The hotel use ensures public access, other uses would not.

As part of the consideration of the application Cushman & Wakefield (C&W) were appointed by the District Council to undertake an independent assessment of the applicant's enabling information and provide an appraisal of the Conservation Deficit.

In respect of the 'alternative solutions', C&W have concluded, in conjunction with their financial advisors Gardiner & Theobald (G&T), that the office use and mixed commercial uses are not viable given that both proposals would represent high development risk relative to the conversion and speculative nature of such developments which would make them un-fundable and undeliverable.

Whilst the residential use was considered more interesting to C&W, there was concern that the significant number of large apartments which, by their nature and location in Ashby, would take in the order of around 15 months to sell (around 1 a month) would appear over valued by around 10% which would reduce the gross development value (GDV) by around £700,000. As such, this would not necessarily present as being superior in financial viability terms to the hotel proposal.

The submitted planning statement indicates that market testing has not been undertaken given that the applicant considers that this would not *"add anything to the consideration."*

Notwithstanding this, C&W (and in particular their Head of Investor & Developer Services, Hospitality) have outlined that Ashby De La Zouch is a small tertiary hotel market with limited hotel demand orientated towards leisure tourists. The Royal Hotel is a small hotel which typically will appeal to individual investors or small private hotel companies who will operate the hotel directly without the need to be linked to an international hotel chain. The reputation and quality of the hotel product and service, rather than the recognised brand over the door, being critical to its success.

On this basis buyers for such hotels will make a judgement on the mid to long term returns that the business might yield based on the acquisition price and the further investment that may be required. Investors will make judgements on the total investment based on the likely future performance of the hotel so that the hotel is commercially viable. If there is significant investment required to a property than this can be off putting to the investors, who typically seek immediate return on capital employed. The market will therefore value the asset accordingly.

Therefore, a buyer for the Royal Hotel might decide not to invest the necessary funds to improve the property (returning to a good condition) preferring a business rationale that seeks to maximise operational profit from spending the least possible. It is difficult to say that the hotel would not attract a buyer if offered for sale, but it is fair to say that the amount of investment a buyer would be happy to commit, once the asset has been acquired, might be minimal and certainly not enough to refurbish the hotel to a good condition.

It is also considered likely that any buyer of the Royal Hotel would consider the surrounding land as being valuable for development, thus commercialising the investment. Doing this would at least, in part, help fund more extensive improvements to the hotel. Hence, it is difficult to see how another buyer would not seek to secure alternative development, in the same way that the current applicant is seeking.

In conclusion, C&W consider that the current proposal seeking enabling development provides a sensible commercial basis that allows additional capital to upgrade the hotel. This therefore appears the most likely way in getting the property back into habitable order and protecting the future of the Royal Hotel.

Although the submitted planning statement has not referred to other potential funding sources, and it was requested by the Council’s Conservation Officer that this be considered, it is understood that most donors do not deal with privately owned companies. This therefore means that the availability of funding is extremely limited as well as being extremely competitive.

The Heritage Lottery Fund (HLF) is currently the main provider of grants to historic buildings in England but does not typically fund any privately owned projects. Other grants are extremely limited and tend to be such a small sum in relation to the total amount of works that need to be undertaken. Following further review it is understood that obtaining funding for heritage projects is almost wholly dependent upon the involvement of and provision for “not for profit” organisations as part of the development proposal.

In summary, therefore, no third party has been identified that could provide funding to meet the conservation deficit. It is also appreciated that grant funding for historic buildings is extremely competitive and often lengthy, with funds being limited and finite.

An alternative solution that has also been considered by officers is ‘mothballing’ which has the aim of maintaining more limited ‘enabling’ development in order to secure the building over the short-to-medium term. It is, however, noted that such intervention would not alone prevent further dereliction of the Royal Hotel but potentially would ‘buy time’.

It is considered that the minimal works required to ‘secure’ the building would comprise those outlined in the following table, including the costs involved.

Item	Cost (£)
Enabling Works	£95,300
Basement	£43,600
External Elevations	£377,100
Roof	£307,600

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External Works and Drainage	£257,300
Repair Total	£1,080,900
Preliminaries (at 14%)	£151,326
Overheads and Profits (at 6%)	£73,933.56
Subtotal	£1,306,159.56
Contingency (at 10%)	£130,615.96
Grand Total	£1,436,775.52
Inflation from Q3 22 to Q2 23 (at 5%)	£71,838.78
Inflation to Q1 24 (at 2.5%)	£37,715.36
Total Rounded Cost	£1,546,329.65

Based on the figures it is the case that mothballing would require some form of enabling development to fund the deficit.

In considering 'mothballing' at this cost, market circumstances are of relevance (as set out in the HE document), particularly as in lower markets more enabling development may be necessary. Waiting for a more buoyant market may mean less enabling development. In this case, however, it is considered that irrespective of changes in the market (if an assumption is made that sale values go up, but costs do not – which is unlikely particularly as the cost of materials continues to increase) there would still be a requirement for enabling development. It is considered that a pause to allow market conditions to change would alter this need and level of intervention significantly particularly given the volatility of the current market.

To conclude the planning statement indicates that there is operator interest in the Royal Hotel and thus it concludes that the optimum viable use of the building is to maintain the existing hotel use. The applicant also outlines that mothballing the hotel is not a viable option given that this would simply result in ongoing costs with no optimum viable use which would generate a cash flow and value.

The applicant is also aware that there are essential works which are required to the hotel to ensure that it is wind and weatherproof and as such they are monitoring its condition. An urgent repairs notice was also served by the District Council on the applicant in November 2020 requiring the completion of works of repairs to the roof which such works being undertaken. Recently listed building consent has been granted for the undertaking of essential repair and maintenance works to the hotel roof (application reference 22/01492/LBC) which the applicant considers demonstrates their commitment to restoring the hotel. The applicant is also aware of the importance to the community and to tourists of there being a fully operational hotel in the centre of Ashby.

In relation to the above the applicant has recently advised that works have commenced on renovation works including the removal of asbestos from the basement and some of the old kitchen areas (week commencing 19th June 2023) with an intention to then demolish the single

storey areas in readiness for the provision of scaffolding (week commencing 26th June 2023) which when provided will enable commencement on the roof renovation (this being anticipated to commence in the first week of August 2023). Signage has now been displayed and fencing erected by the applicant to indicate the works which are being undertaken.

It is also considered that utilising the hotel for its original purpose will cause the least harm to the significance of the heritage asset and accords with one of the basic principles of good conservation practice, being that the best use of an historic building is that for which it was initially designed. The submitted Condition Survey also sets out that the significance of the Royal Hotel is primarily associated with its historical context as a hotel that served the now demolished Ivanhoe Baths. Therefore retaining the buildings use as a hotel is the most appropriate use in this historical context.

Although the curtilage of the Royal Hotel would be reduced because of the introduction of the enabling residential use, it is considered by the applicant that sufficient grounds would be retained for the building to function as a hotel with improvements being made to the landscape setting. In this respect the 'Highways' section of this report concludes that the level of off-street parking would be compliant with relevant guidance.

On the above basis, step (ii) would be complied with.

- (iii) *Repair and Maintenance Costs Assessment*
- (iv) *Market Value Assessment*
- (v) *Scheme Design*
- (vi) *Development Appraisals*

These four steps are considered below.

To understand if the amount of enabling development is the minimum amount necessary, it is necessary to examine the anticipated costs and receipts associated with the development.

As set out in step (i) above, a Condition Report, Condition Survey, Maintenance and Cyclical Life Schedule Plan and Budget Costs have been submitted and, as will be set out in more detail below, the costs associated with the repair and restoration of the Royal Hotel exceed the value of the hotel when completed. On this basis there is a Conservation Deficit.

The Conservation Deficit assessment submitted by the applicant shows a net position of £0 which in their view demonstrates that the proposed level of enabling development is sufficient to cover the deficit, whilst also demonstrating that the amount of enabling development would be the **minimum necessary** to repair and restore the Royal Hotel.

As is outlined in the 'Developer Contribution' section of this report above the financial contributions requested (excluding affordable housing) would be £104,177.96 which includes the River Mease Special Area of Conservation/SSSI contribution of £10,221. The submitted planning statement indicates that with the exception of the River Mease contribution (which would be necessary to make the development acceptable against the Habitats Regulations) no other financial contributions would be payable given that they would increase the conservation deficit.

In terms of the market value of the heritage asset, a Hotel Valuation Report was commissioned by Colliers on behalf of the applicant in September 2019 and updated Valuation Letter issued in December 2020 which they consider remain valid to date. These reports set out its valuation

approach and robustly assesses value.

The applicant has estimated the cost of the reasonably required repairs to the hotel and its restoration to the identified optimum beneficial use when completed at year 3 of trading show a conservation deficit of £2,733,707. This would be funded by the enabling development contribution associated with the sale of the townhouses and the sale of the Bath Grounds to Ashby De La Zouch Town Council.

In terms of the sale prices of the proposed townhouses the applicant has provided information from Whitehead Estates, an active local agent, who has advised of prices ranging from £650,000 (for the smallest 5 bed, 4 storey dwelling) to £845,000 (for the largest 5 bed, 4 storey dwelling). Notably, the smallest 5 bedroom type is slightly smaller in square footage than the 3 bedroom, 3 storey dwellings which also command a slightly higher value (£695,000).

The Cushman & Wakefield (C&W) Conservation Deficit Appraisal determines that the prices would range from £600,000 to £800,000 which provides a gross development value (GDV) some £585,000 less than the applicant. This is based on a pricing structure that caps sales price at £800,000 given that this is similar to the four bedroom dwelling at 83a Burton Road which sold for £785,000 on March 4th, 2022. Whilst no. 83a is smaller in square footage and has one less bedroom than the largest dwellings to be sold, it would have commanded a premium on its square footage given the preferable 2 storey configuration and spacious plot.

During the review by C&W, the applicant's residential sales advisor (Whitehead Estates) responded to C&W's position on sales values and commented that living within the heart of Ashby town centre would provide a unique lifestyle opportunity to both young and old given the ease of access to services and views onto the Bath Grounds (for certain plots). They also outlined that the evidence submitted is based on what has been sold in the immediate town centre and is not necessarily looking at what have been the most expensive property, that the comparable properties are really good equivalents that have all either completed or are currently subject to contact (STC) and that there are 3 properties (one on Prior Park Lane and one at Upper Packington Road) which sold at £850,000 and £775,000, respectively which Whitehead Estates consider resemble townhouses along with 8 Rawdon Terrace (which given its location and size would be the best comparable) which sold at £724,500. The difference between 8 Rawdon Terrace and the proposed scheme would be that Rawdon Terrace was built in the early 19th century and given the age and structure it would be expensive to run and would not be energy efficient in the manner the proposed townhouses would be.

In response to the above, C&W remain of the view that the applicant, in setting its proposed pricing structure, over emphasises the scale of the market for buyers looking to locate in Ashby town centre, whilst not giving sufficient weight to the relatively large number of new build dwellings proposed.

C&W consider that the development will be guided by the following key factors:

- (1) *There is not a distinct town centre living market as such in Ashby*
As such potential buyers at the subject site will weigh the benefits of living in a clearly attractive and unique town centre location in a new build terrace property, albeit one with a relatively small plot and no garaging, with larger detached properties outside the immediate town centre, with parking and large plots. As such the suburban comparables considered by C&W are material to the pricing of proposed townhouses at the subject site.

(2) The relatively large number (17) of new build dwellings proposed

All the town centre comparable evidence, presented by the applicant, have been transactional or asking prices relatively to existing dwellings of often notable and unique character, where the vendor, we assume, has been a private individual and not necessarily under financial pressure to achieve an expedient sale. It is C&W's view that in order to achieve 17 new build sales in the relatively short period proposed by the applicant (and indeed required to fund the works to the heritage asset), then the pricing of the proposed terraced properties will need to be set accordingly. C&W's proposed pricing structure is set out on this basis.

The Conservation Deficit Appraisal by C&W has assessed the information as submitted by the applicant and in terms of the refurbishment costs it is concluded, by C&W's cost consultants Gardiner & Theobald (G&T), that these appear reasonable.

However, C&W have a difference in opinion regarding the viability of the scheme which is driven by:

- A difference in opinion on the enabling contribution of the townhouses; and
- A difference in opinion regarding the Conservation Deficit of the hotel.

Specifically the Conservation Deficit of the hotel is calculated to be £3,500,000 by C&W compared to the applicant's assessment of £2,733,707. This difference relates specifically to C&W's opinion regarding the development value of the hotel which has depressed due to significant outward movement in investment yields in the sector. Given C&W understand that the applicant is seeking external finance to fund the scheme they believe this unfavourable yield shift is a significant consideration.

The enabling contribution of the townhouses is calculated by C&W to be £1,591,000 compared to the applicant's assessment of £2,139,000. This difference relates specifically to C&W's lower opinion of the development value of the townhouses.

C&W therefore calculate a Conservation Deficit (assuming a 15% profit on value target for the townhouses – which would be £1,854,000) of approximately £730,000. Some £330,000 of this deficit relates to C&W's lower opinion on the value of the hotel, with the circa £400,000 balance relating to C&W's difference in opinion on the contribution from the townhouses 'enabling' development, as is outlined above.

The relative magnitude of this outstanding conservation deficit (of £730,000) does, however, require to be considered on a "stand back" basis. C&W notes that the apparent deficit represents just 4% of the total costs of the scheme, which suggests a marginal scheme, not an unviable scheme. The 4% deficit to cost position, in viability terms, is relatively small and could disappear with relatively minor changes to costs and values, which at this early stage of the development process cannot be ruled out.

Nevertheless, a shortfall remains a risk and as such C&W advise that the District Council should take action to mitigate against the effects of this risk being realised, on the integrity of the heritage asset. This could be achieved by way of the requirements set out in Section 106 agreement, requiring "enveloping" conservation repair works that safeguard the structural and historic integrity of the heritage asset to be completed at an appropriately early stage of the development process.

From the perspective of HE in their most recent consultation response, they have indicated that

the proposal shows a low profit margin which would be sensitive to increases in the borrowing rate or increases in costs across the scheme with them also considering that a 15% target of profit on value in relation to the townhouses would be low in the current market. HE was also concerned in relation to the applicant obtaining funding for the scheme and consequently have advised the District Council that we should ensure there is robust evidence that the necessary funding is in place.

HE has also indicated the need for a robust legal agreement to be in place to ensure the enabling development is not delivered without the Royal Hotel being fully repaired and operational as a hotel and this is discussed in the '(vii) *Delivery Plan*' sub-section of the '*Enabling Development*' section of this report below.

In terms of step (v) a design scheme associated with the repair and restoration of the hotel is as approved under the extant planning permission (14/00104/FULM as varied by 19/00890/VCUM) and associated listed building consents 14/00105/LBC and 22/01492/LBC. The suitability of the design of the proposed townhouse scheme is as assessed in the '*Impact on the Historic Environment*' and '*Design, Housing Mix and Impact on the Character and Appearance of the Streetscape*' sections of this report above.

On the above basis, steps (iii), (iv), (v) and (vi) would be complied with.

(vii) Delivery plan

Where a case for enabling development has been advanced and accepted, it is necessary to ensure the benefits are properly secured via an enforceable legal agreement. HE's guidance advises that in most cases, it is preferable that these benefits are secured as early as possible within the period of implementation of the development, prior to completion or occupation. Occasionally, the conservation works approved to the asset will be dependent on funds only available at a late stage of the enabling development. In these cases the justification of delayed payment(s) and works will need to be set out at an early stage and the agreed arrangements secured in advance. Where a phased approach to the enabling development is planned, agreed and enforceable trigger points should be identified.

Within the Conservation Deficit Appraisal, C&W advise that to address the risk presented to the heritage asset because of the enabling development not meeting the conservation deficit, by a small margin (as highlighted above), the Section 106 agreement should:

- Secure key enveloping works that safeguard the structural and historic integrity of the heritage asset at the earliest possible point (to be specified in the Section 106) in relation to the progress of the enabling works.
- Put the onus on the applicant to prove to the District Council, before the enabling works commence, that funding is in place to complete the enveloping works.

It is considered that the above advice of C&W would address the revised comments from HE in relation to the legal agreement being robust.

The District Council is in the process of liaising with the applicant in relation to the Section 106 agreement but at present it proposes the following phases of work:

Phase 1 Renovation Works (Roof Renovation)

The phase 1 works are focused on the repair and renovation of the roof structure of the building

to make it waterproof and protect it for the future. The phase 1 renovation works would consist of the:

- Full renovation of the roof; and
- Enabling works – including demolition of the single storey buildings and repair of the scarred areas.

Phase 2 Renovation Works (External Building Fabric)

The phase 2 works consist of the following works:

- Renovation of the elevations including repair and rendering of the stone clad elevations; and
- Repair/renewal of all windows, doors and guttering.

Phase 3 Renovation Works

The phase 3 works consist of the following:

- Internal renovation;
- New mechanical and electrical systems;
- Internal fitout and decoration; and
- External works including forming the new car parking area and new drainage system.

HE, in commenting on the application, have outlined that the key elements (in the drafting of the Section 106 agreement) will be to ensure that the works to address the condition of the listed building can be undertaken early on and completed to minimise any risk that these works are started but not finished, or worse not started at all. With that in mind, the schedule of works should set out what needs to be done, how it is to be done, and a timeframe for them to be done. Such a schedule would form part of the package of the approval and the implementation to be carried out in accordance with that approved.

The HE guidance also indicates that the purpose of enabling development is not just to repair the heritage asset, but also to secure its future, as far as reasonably possible. An obligation to secure maintenance of the hotel in the section 106 agreement is therefore desirable, and if problems do arise, is likely to be more effective than the use of statutory powers (such as an urgent works notice). In this respect, the submitted Maintenance Schedule & Cyclical Life Schedule could be incorporated into the Section 106 agreement to ensure that, following renovation, the Royal Hotel is appropriately maintained.

Paragraph 80 of HE's guidance also indicates that to secure the benefits of enabling development by monitoring and enforcing the obligations, it is good practice to appoint a monitor (which could either be within the District Council or an external consultant) as soon as the Section 106 is signed and require a formal arrangement in phased schemes for 'signing off' delivery of the benefits required before the next phase of the renovation works commences. It also outlines that monitoring of the quality of the historic building repair should also be undertaken.

It is considered that such matters should be reviewed and discussed as part of the processing of the Section 106 agreement should planning permission be granted.

With regards to triggers and timeframes within the draft Section 106 agreement these are

currently as follows:

Phase 1 Renovation Works

No more than 7 no. townhouses can be sold until the phase 1 works are completed.

Commencement on the first 7 no. townhouses under the new Planning Permission will not occur before:

- (i) The sum of £620,000 (less fees and costs) is deposited into an escrow account held in accordance with the Bath Grounds sales agreement, escrow agreement and Section 111 agreement;
- (ii) A further sum of £680,000 is deposited into the escrow account; and
- (iii) The phase 1 works have started in accordance with the above agreements.

Phase 2 Renovation Works

No more than 3 additional townhouses can be sold until the phase 2 works are completed.

Commencement of development of the next 3 no. townhouses will not occur before:

- (i) The phase 2 works have started in accordance with the above agreements.

Phase 3 Renovation Works

The final 7 no. townhouses may not be sold until the phase 3 works are complete.

Commencement of development of the final 7 no. townhouses will not occur before:

- (i) The phase 3 work have started in accordance with the above agreements.

The draft Section 106 agreement also outlines that obligation in the Bath Grounds sale agreements/Section 111 agreement shall include:

- (i) The owner of the hotel plot will be obliged to commence work on the schedule of Conservation Repairs as set out in the above agreement within 6 months of the completion of the sale of the Bath Grounds to Ashby De La Zouch Town Council, subject to necessary consents being granted; and
- (ii) Monthly drawdowns of the escrow monies to fund the renovation, will be monitored and approved by a monitoring surveyor under the terms of the above agreement.

In terms of the completion of the hotel building renovation the draft Section 106 outlines that:

- (i) The hotel building is to be fully renovated and re-opened to commence trading as soon as practically possible;
- (ii) Once the hotel building renovation is complete and building control completion certificate issued the escrow account will be closed and any surplus funds will be transferred to the Owner; and
- (iii) The Owner will be released of any further obligation(s) under the Section 106.

In addition to the above draft heads of terms, the Council would also secure 'step in rights' to access the escrow account for the purpose of completing the phase 1 and 2 enveloping works if the situation arose whereby the applicant was unable to complete those works for any reason. As such, it is considered that the draft heads of terms currently provide suitable restrictions to ensure the required renovation repair works to the hotel get carried out. However, negotiations on the final draft heads of terms are continuing and any further update will be provided to Members at the Planning Committee meeting.

To summarise, the Conservation Deficit Appraisal, produced by C&W, concludes that having reviewed the financial and market evidence presented by the applicant they are satisfied that:

- The form and scale of the proposed "enabling development" is consistent with Paragraph 208 of the NPPF, which defines enabling development as "*development that would not be in compliance with local and/or national planning policies, and not normally be given planning permission except for the fact that it would secure the future conservation of a heritage asset;*" and
- A hotel use remains the most viable use for the Royal Hotel.

On the above basis, step (vii) would be complied with.

Enabling Development Overall Conclusion

Based on the above assessment there is a clear enabling case in this instance. Whilst this is the case, this is not always determinative, needing to be weighed against all other material planning considerations, including whether the new build enabling development itself will cause harm to the character and setting of heritage assets. The conclusions in this respect would be as follows.

Impact on the Historic Environment (Policy He1 of the adopted Local Plan, Paragraphs 197, 199, 200, 202 and 208 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990)

The Council's Conservation Officer and Historic England (HE) have determined that less than substantial harm arises to the significance of the setting of Ashby Castle (Grade I listed and a Scheduled Monument), the Royal Hotel (Grade II* listed) and Rawdon House and Rawdon Terrace (Grade II*) as well as the significance of the Ashby De La Zouch Conservation Area. The view of HE is that the harm to the significance of the setting of the Royal Hotel is a high level of less than substantial harm.

Whilst noting the comments of both the Council's Conservation Officer and HE it is outlined in the '*Officer Conclusion to the Impact on the Historic Environment*' subsection of the '*Impact on the Historic Environment*' section of this report above that HE do not appear to have taken into account the impact arising to the significance of the heritage assets as a result of the implementation of the development permitted under application reference 14/00104/FULM (as varied by 19/00890/VCUM) which allows the development of a kiosk and pavilion on the former car park to the Royal Hotel (as well as providing a new car park to the Royal Hotel which would be constructed to its south).

Therefore, when accounting for the comments of the Council's Conservation Officer and HE, and officer assessment above (see '*Impact on the Historic Environment*' section), it is considered that the fundamental impacts to the setting of heritage assets are predominately because of the scale and design of the townhouses and the impact on the view of the heritage assets from the Bath Grounds.

It is the officer view that the approach to the design of the townhouses is positive, and one which in time would serve to compliment the existing heritage assets particularly when accounting for the previous withdrawn scheme of enabling development proposed under application reference 19/01792/FULM which would have had a more profound impact and was not positively designed. The views of the Council's Conservation Officer and HE are, however, accepted that from the Bath Grounds there will be a 'visual' competition established between the townhouses and the heritage assets given the wider field of view achieved from with the Bath Grounds, the loss of existing tree cover (albeit in time tree cover can be partially recovered by the implementation of the soft landscaping scheme) and the fact that plots 4 to 17 would be in the foreground given they are set further back from the Royal Hotel and Rawdon Terrace. It should, however, be noted that the pavilion building constructed in accordance with the extant consent would also result in a visual competition with the Royal Hotel and Rawdon Terrace given its placement within the foreground, this building was however accepted by HE as it was sited in the location of the former Ivanhoe Baths and had a lower overall height.

Because of the above it is considered reasonable to reduce the level of harm arising accordingly, albeit accepted the harm would still be *less than substantial*.

Paragraph 202 of the NPPF outlines that "*where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*" The NPPG also outlines that public benefits can include heritage benefits and that reducing or removing the risks to heritage assets constitutes a public benefit, it also states that harm "*may sometimes be justified in the interests of realising the optimum viable use of an asset...provided the harm is minimised.*"

Paragraph 208 of the NPPF also states that:

"Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies, but which would secure the future conservation of a heritage asset, outweigh the dis-benefits of departing from those policies."

The HE guidance acknowledges that in "*some circumstances it may be necessary to accept some harm if there are no reasonable alternative means of delivering or designing the scheme with less or no harm.*" In this circumstance the terms of Paragraph 208 of the NPPF should be considered.

For the proposed development it is considered that the public benefits would principally be the securing of the future of the heritage asset which has already deteriorated through disuse and is on HE's '*Heritage at Risk*' register. It should also be noted that there is local support for securing the re-use of the Royal Hotel, given its previous focus for the community as a meeting place and host of events and gatherings, and this would also be considered a public benefit.

It is also considered that economic, social and environmental benefits would arise which would fall within the remit of a public benefit as outlined in the NPPG. Such benefits would include:

- Substantial investment is required to restore the Royal Hotel to its established use (as a hotel) which would bring benefits to the local economy during the construction stage and when the hotel becomes operational (economic).
- The development of the 17 townhouses would also bring benefits to the local economy given the jobs created in the construction industry (economic).
- The potential creation of employment opportunities within the hotel, the majority of which are likely to reside in the local area. This in turn would support other jobs in the area through additional spending from the local workforce as well as through the supply chain for goods and service necessary to the day-to-day operation of the hotel (economic).
- The re-use of the Royal Hotel as a hotel will enable public access to the Grade II* listed building which would support the communities' social and cultural well-being (social).
- The renovations would also improve the energy performance of building which would assist in mitigating the effects of climate change (environmental).

The NPPG also provides specific examples of public heritage benefits, and the restoration and re-use of the Royal Hotel will enhance the significance of the heritage asset and avoid the risk of the heritage asset falling into future disrepair. In this respect it is outlined above that the Royal Hotel is on HE's '*Heritage at Risk*' register and has been subject to an urgent works notice served on the 16th of November 2020 with works completed in compliance with this notice by the 15th of December 2020. On this basis it is considered essential that a viable re-use for the heritage asset is secured to reduce further risks of deterioration and this can be achieved via the enabling development which is proposed (as discussed above) with the hotel use representing the original, and therefore most appropriate, re-use of the building.

As is outlined above the development is the minimum necessary to meet the conservation deficit and consequently any reduction in the scale of the development and/or loss of townhouses would only serve to increase the conservation deficit and result in pressure for further development to be proposed which would meet the conservation deficit. Without the development, the Royal Hotel is unlikely to be restored and re-used but development could still be undertaken within its setting in accordance with the extant planning permission. It is also considered that the scheme has been designed to minimise the impact to the significance of the heritage assets whilst also ensuring the conservation deficit is met.

There is a fine balance to be had between the case for enabling development and the overall impact on the setting of the heritage assets (the most significant being to the Grade II* listed Royal Hotel) but it is considered that the public and heritage benefits arising as a result of the restoration and re-use of the Royal Hotel would outweigh the less than substantial harm arising and consequently in the context of Paragraphs 202 and 208 of the NPPF the proposed development would be acceptable and thereby override the conflict with Policy He1 of the adopted Local Plan, Paragraphs 197, 199 and 200 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Policies

It is also concluded within the 'Archaeology', 'Ecology', 'Landscaping' and 'Developer Contributions' of this report above that there is tension and conflict with policies H4, IF1, En1, En3 and He1 of the adopted Local Plan, Policies HE2, NE4 and NE5 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP), Paragraphs 174, 180 and 205 of the NPPF and Circular 06/05.

To summarise the conflict arising in respect of the above identified policies this is due to the following:

Archaeology (Policy He1 (insofar as it relates to archaeology), Policy HE2 and Paragraph 205)

A site investigation is not to be undertaken pre-determination in relation to the southern part of the site (where plots 11 to 17 are located) where there is archaeological potential for medieval remains and where the subterranean tank associated with the former Ivanhoe Baths is located.

Ecology (Policy En1, Policy NE4, Paragraphs 174 and 180 and Circular 06/05)

The development does not demonstrate a net-gain in biodiversity, does not conserve or enhance biodiversity and would not provide relevant bat surveys before the determination of the application.

Landscaping (Policies En1 and En3 and Policies NE4 and NE5)

The loss of 13 high quality trees (category A) and 31 moderate quality trees (category B) would reduce the existing tree cover in the area thereby also impacting on public amenity.

Developer Contributions (Policies H4 and IF1)

Apart from the payment of the contribution in relation to the mitigation of the impacts on the River Mease Special Area of Conservation (SAC)/Site of Special Scientific Interest (SSSI), the proposed scheme would not deliver any other financial contributions (in relation to education, libraries, health or the National Forest) or provide affordable housing.

The overall level of conflict with such policies would be assessed as follows:

Archaeology (Policy He1 (insofar as it relates to archaeology), Policy HE2 and Paragraph 205)

It is considered that the requirement for any archaeological investigation to be undertaken pre-determination can only be applicable to the southern part of the site (where plots 11 to 17 are located) given that an extant planning permission exists (14/00104/FULM as varied by 19/00890/VCUM) for development on the other areas of the site, including the former car park associated with the hotel and the land within what would be considered the currently designated curtilage of the hotel. The extant planning permission was subject to a condition requiring an archaeological investigation to be carried out (condition 8) and therefore it was not deemed necessary to undertake archaeological investigations pre-determination.

Whilst it accepted that without the submission of an archaeological impact assessment (ARIA) pre-determination, the archaeological significance of the southern part of the site would be unknown, and consequently it would be difficult to mitigate against any impacts post determination should remain of some significance (outside the subterranean tank) be

discovered, it is highly probable that any archaeological investigation to be undertaken would seek to record and archive any medieval archaeological remains found on the site. It is also likely that the subterranean tank would be recorded in situ rather than being made publicly accessible as an archaeological feature given its 'buried' status.

The applicant would accept the imposition of a condition which would require an archaeological investigation to be undertaken prior to the commencement of the development in the southern part of the site but any further delays in obtaining planning permission by the ARIA needing to be carried out pre-determination will have ramifications to the conservation deficit.

It is considered that the imposition of such a condition would result in the overall conflict with the identified policies being low and heavily outweighed by the public and heritage benefits (as outlined above) attributed to the enabling development which result in the restoration and re-use of the Royal Hotel.

Ecology (Policy En1, Policy NE4, Paragraphs 174 and 180 and Circular 06/05)

In terms of biodiversity net gain the mandatory need to deliver a 10% net gain is not yet enacted through the Environment Act 2021 but the NPPF, at Paragraph 174, still seek net gains in biodiversity. Whilst no BNG information has been submitted, it is accepted that given the level of development proposed there would be an impact to biodiversity and it would not be possible to deliver any BNG off-site given that the applicant does not own additional land on which to deliver the BNG, nor could any credits be purchased given that the scheme is not viable to do so.

Also whilst relevant ecological surveys should be carried out 'pre-determination' it is the case that Paragraph 99 of Circular 06/05 suggests that in "*exceptional circumstances*" such surveys could be left to coverage under planning conditions. The impact predominately relates to the potential for bats to roost or forage in the trees which are to be removed but it is considered that an 'exceptional circumstance' exists in this instance given that the scheme comprises enabling development and any ongoing delays with determining the application could impact adversely on the conservation deficit.

Whilst accepting that the development results in impacts to ecology and biodiversity the County Council Ecology has recommended the imposition of conditions on any planning permission to be granted and consequently, whilst accepting that it is not best practice to condition the provision of surveys post determination, it is considered that the impacts which are likely to arise to bats as a result of the removal of the trees could be mitigated by the provision of bat boxes as part of the construction of the townhouses as well as their incorporation on retained trees.

On this basis it is considered that, subject to the imposition of the conditions, the overall conflict with the identified policies would be low and heavily outweighed by the public and heritage benefits which should be attributed to the enabling development which result in the restoration and re-use of the Royal Hotel.

Landscaping (Policies En1 and En3 and Policies NE4 and NE5)

It is accepted that the scheme results in the substantial loss of existing trees (including category A and B trees), however it is considered that such tree loss would need to be balanced with that associated with the extant planning permission. This is apart from the southern part of the site (where plots 11 to 17 are located) where development has not previously been approved. The extant permission was subject to conditions (nos. 15 and 16) which required the submission

of a scheme of protective fencing for retained trees and a soft landscaping scheme. The documents approved for such conditions show that both Yew trees (2906 and 2917) would be removed and consequently it has previously been determined that the loss of the Yew trees is acceptable.

In any event the current landscaping plans show that both Yew trees, as well as the Lime tree, would be retained, so irrespective of the concerns of the Council's Tree Officer, if the landscaping plan is approved as submitted, it would be necessary for that plan to be varied in the future if it was determined that the trees were required to be removed. The arboricultural impact assessment (AIA) also identifies the mitigation which would be implemented to retain such trees, and this could also be secured by condition.

The soft landscaping plan also shows the planting of 69 trees and whilst this would maintain a deficit of 12 trees, in relation to those being removed, it is considered that the planting of such a substantial number of trees has the potential to contribute positively to public amenity in the long term when those trees mature.

Whilst it is regrettable that trees must be removed, it is an essential requirement so as to allow the enabling development to proceed. It is also considered that whilst the conflict with the relevant policies would be significant, given the contribution such trees make to public amenity, it remains the case that such conflict would be outweighed by the public and heritage benefits associated with the renovation and re-use of the Royal Hotel.

Developer Contributions (Policies H4 and IF1)

The applicant is agreeable to the payment of the River Mease SAC/SSSI contribution given that this would be mandatory to demonstrate compliance with the Habitats Regulations.

Paragraph 58 of the NPPF outlines that it is up to the applicant to demonstrate whether circumstances justify the need for a viability assessment and that the *"weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case."* In this instance the Conservation Deficit Appraisal undertaken by C&W has determined that the scheme would not be viable to fund developer contributions, or provide affordable housing, given that the enabling development is in place to specifically fund the restoration and re-use of the Royal Hotel.

As is the case above, significant weight would need to be attributed to the public and heritage benefits arising from the restoration and re-use of the Royal Hotel and this weight would outweigh the limited conflict arising with the identified policies particularly when accounting for the terms of Paragraph 58 of the NPPF in that if a scheme is demonstrated to not be viable (as is the case in this instance) then it should not be expected to meet contribution requests.

Summary

In summary it is accepted by officers that there are risks involved in ensuring that the proposed enabling development delivers the restoration and re-use of the Royal Hotel, however based on the advice within the Conservation Deficit Appraisal by C&W it is considered that such 'risks' could be suitably mitigated by ensuring that the Section 106 agreement secures the completion of the 'enveloping' conservation repair works that safeguard the structural and historic integrity of the heritage asset at an early stage of the development process. To this end the Section 106 agreement will ensure the District Council have step in rights to access the escrow account and complete the 'enveloping' works should these not be completed by the applicant. Given the

current deteriorated state of the Royal Hotel, officers consider that such 'risk' is worth taking.

On this basis the enabling development case is accepted and in the context of Paragraph 208 of the NPPF the limited conflict with the policies identified above would be heavily outweighed by the benefits associated with the restoration and re-use of the Royal Hotel which comprises a Grade II* listed building thereby placing it within the top 5.6% of listed buildings in England.

Assessment of the objections received in relation to Enabling Development

Objection	Officer Response
<i>Is the proposed development the minimum necessary to raise the funds required to restore the hotel?</i>	See above assessment. The Conservation Deficit Appraisal has determined that the development is the minimum necessary to fund the restoration and re-use of the Royal Hotel.
<i>Can it be ensured that the hotel, as proposed, is a viable business enterprise once restored and unlikely to fail and drift back into another cycle of closure and deterioration?</i>	See above assessment. The Conservation Deficit Appraisal has determined that the business model is viable with an ongoing maintenance schedule also provided. Ultimately, however, the District Council cannot guarantee the success of the hotel given that this falls outside the remit of the planning process. What can be ensured is that the Royal Hotel is repaired and restored.
<i>Are the legal agreements associated with the proposed section 106 and Escrow agreements sufficiently robust to ensure that the funds raised from the developments are indeed used to restore the hotel in accordance with the repairs schedule and restoration proposals included?</i>	It will be ensured that the legal agreement secured to any planning permission granted will follow Historic England's guidance in relation to enabling development and therefore robust so as to ensure the Royal Hotel is restored.
<i>Can we be assured that the profits to be made from the whole package by the current owner are reasonable within the framework of Enabling Development guidance?</i>	See above assessment. The Conservation Deficit Appraisal has determined that the overall level of profit is reasonable and compliant with guidance.
<i>The means of sharing any excess profits with the people of Ashby in recognition of their £620k input for the purchase of the Bath Grounds should be explored.</i>	Because of the Conservation Deficit there would be no excess profits available which could be redistributed. In any event no case has been presented to demonstrate or justify what such monies would be utilised for and consequently such a request would not be considered compliant with the aims of

	Paragraph 57 of the NPPF or the community infrastructure levy (CIL) regulations.
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Other Matters

Objection	Officer Response
<p><i>The Bath Grounds offers not only a place of historic importance for Ashby but also a peaceful space to play and enjoy. The erection of the townhouses will spoil this. Given the amount of development in Ashby such houses are not necessary on this historic site with green spaces being important and therefore should be protected.</i></p>	<p>Whilst the Bath Grounds are designated as a 'Local Green Space' under Policy NE1 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) it is the case that the land on which plots 11 to 17 would be constructed is not protected by the same designation. It is also the case that a residential development is not a noisy use which would result in the Bath Grounds becoming an unpeaceful location.</p> <p>As the development is proposed as 'enabling development' to fund the restoration and re-use of the Royal Hotel it is necessary to provide the development on the application site which is partially greenfield in nature.</p>
<p><i>Townhouses as proposed should not be designed so as to overlook a recreational area and will make the experience of using the Bath Grounds unpleasant.</i></p>	<p>It is considered that it is not uncommon for residential properties to be designed to overlook a public space with design guides encouraging such a relationship to be established given it enables active frontage relationships and provides active surveillance which many would consider would make the Bath Grounds a safer place for public use.</p> <p>It is also the case that residential receptors within Rawdon Terrace and on Prior Park Road, Warwick Way, Belvoir Drive and Bamburgh Drive already provide views onto the Bath Grounds.</p> <p>As such it is considered that the experience of users of the Bath Grounds would not be significantly compromised or make the Bath Grounds unattractive for recreational use.</p>
<p><i>The exclusion of the Royal Hotel from the application site makes the proposed enabling development ineffective as the hotel should be included as part of the application.</i></p>	<p>The application itself does not propose any works to the Royal Hotel given that such works are secured under other consents (14/00104/FULM (as varied by</p>

	<p>19/00890/VCUM), 14/00105/LBC and 22/01492/LBC) and consequently it would not be a mandatory requirement for the Royal Hotel to be included in the 'red line' application site boundary given that the Section 106 to be secured will make it specific that the enabling development is proposed to renovate and re-use the hotel.</p> <p>The site location plan should indicate land which is within the ownership of the applicant which falls outside the application site boundary should it exist within the vicinity of the site (usually outlined in blue). During the course of the application an amended site location plan has been submitted which now shows the Royal Hotel within the blue edged area.</p>
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Conclusion

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 (2021) and the made Ashby De La Zouch Neighbourhood Plan (2018). The application site is within the defined Limits to Development and partly comprises a brownfield site, with the remainder of the development on a greenfield site, within Ashby De La Zouch which is defined as a 'Key Service Centre' and where a significant amount of new development would be undertaken. On this basis the principal of the redevelopment of the site is considered acceptable.

In addition to the need to determine the application in accordance with the development plan, regard also needs to be had to other material considerations (and which would include the requirements of other policies, such as those set out within the National Planning Policy Framework (NPPF)). In this respect it is noted that there is conflict with policies of the adopted Local Plan and NPPF, but the report demonstrates an appropriate form of enabling development in accordance with Historic England (HE) guidance and whilst less than substantial harm arises to the significance of heritage assets this is outweighed by public benefits as outlined in the report above.

The NPPF also contains a presumption in favour of sustainable development and when having regard to the three objectives of sustainable development, it is concluded as follows:

Economic Objective:

This objective seeks to ensure that sufficient land of the right types is available in the right places and at the right time to support growth, innovation, and improved productivity, and that the provision of infrastructure is identified and coordinated. It is accepted that, as per most forms of development, the scheme would have some economic benefits including the substantial investment made to restore the Royal Hotel which results in benefits to the local economy during the construction stage and when the hotel becomes operational and the creation of job opportunities during the construction stage and when the hotel is operational.

Social Objective:

The economic benefits associated with the proposed development would, by virtue of the social effects of the jobs created on those employed in association with the construction and operation of the development, also be expected to provide some social benefits. The NPPF identifies, in respect of the social objective, the need to ensure that a sufficient number and range of homes can be provided to meet the needs of present and future generations, and by the fostering of a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being.

The proposed development would provide a range of townhouses in a sustainable location to meet the needs of present and future generations and place future residents near services and facilities, including open space.

In terms of the social objective's stated aim of fostering a well-designed and safe environment, it is considered that, subject to the imposition of conditions to secure suitable design detailing and landscaping, that the scheme would be of an appropriate design which would successfully integrate into, and enhance, the environment in which it is set.

The re-use of the Royal Hotel as a hotel would also enable public access to the Grade II* listed building which would support the communities' social and cultural well-being.

Environmental Objective:

Ten of the townhouses would be constructed on a brownfield site which would be the most appropriate land for new development as outlined by Paragraphs 119 and 120 of the NPPF. Given the location of the development in relation to Ashby De La Zouch town centre, the site would also be well served by public transport and other facilities which would enable the development to contribute positively towards the movement towards a low carbon economy. It is also the case that the scheme's design would enhance the built environment with the renovations also improving the energy performance of the building which also mitigates the effects of climate change.

It is however the case that plots 11 to 17 would be constructed on a greenfield site, there would be a significant impact on local tree cover, harm would arise to the significance of heritage assets and a net gain in biodiversity would not be demonstrated. Whilst acknowledging such conflict with the environmental objective it is concluded above that the proposal comprises enabling development which will facilitate the restoration and re-use of the Royal Hotel which is a Grade II* listed building.

PLANNING APPLICATIONS- SECTION A

Having regard to the three objectives of sustainable development, and acknowledging that the scheme comprises enabling development, as well as the conclusions in respect of various technical issues as outlined above, it is considered that subject to the imposition of conditions and the securing of a Section 106 agreement the overall scheme would represent sustainable development and approval is recommended.