

UPDATE SHEET

PLANNING COMMITTEE – 03 December 2013

**To be read in conjunction with the
Head of Regeneration and Planning's Report (and Agenda)**

This list sets out: -

- (a) Additional information received after the preparation of the main reports;**
- (b) Amendments to Conditions;**
- (c) Changes to Recommendations**

MAIN REPORT

Items A1, A2 and A3: Contributions sought by Leicestershire Police - update

Leicestershire Police (LP) have requested that a legal Opinion, obtained from Counsel as to whether the request for a policing contribution meets the tests under the CIL Regulations 2010, reg.122, be considered as a late item by Members in arriving at a decision on this application.

The legal Opinion, dated 2 December 2013, challenges the reporting of LP's requests for policing contributions in these cases and the officer's view that the contributions requested do not appear to be justified as there appears to be a limited relationship between the contribution requested and the development proposed.

Members will be aware that there has been considerable controversy over a number of years concerning requests by LP for developer contributions towards policing, which has been fuelled by inconsistent appeal decisions regarding the compliance of such contributions with the CIL tests i.e. as to whether the requested obligations are:

- (i) necessary to make the development acceptable in planning terms;
- (ii) directly related to the development; and
- (iii) fairly and reasonably related in scale and kind to the development.

The issue is not one of principle – nor can it be, given the requirements of paragraph 58 of the Framework to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. The issue is, rather, whether LP in respect of each individual contribution request, can demonstrate that either on-site or off-site infrastructure is necessary and directly related to the impact of the development which is being granted consent, and that any contribution will in fact be used in order to pay for infrastructure which will actually be delivered. It is in this respect that officers remain to be persuaded that the requests in these cases are CIL compliant.

Whilst officers acknowledge that such requests have been accepted by Inspectors and the Secretary of State as being CIL compliant in recent appeal decisions in Leicestershire, and indeed the District, and that consistency in decision making is desirable as a matter of policy, a decision as to whether an obligation is directly related to a particular development is one that can only be made on its individual merits.

The continuing controversy surrounding policing contributions is, however, itself undesirable as it creates uncertainty both for LP and developers/landowners as to whether a request for a contribution is likely to be supported in any given case. The Leicestershire Authorities have therefore agreed jointly to seek an independent legal Opinion as to the correct approach to be adopted by local planning authorities to such requests. The contribution request in these cases, and the information provided by LP in support of the same, will be cited as specific examples in the instructions to Counsel.

Pending the receipt of Counsel's Opinion members are recommended not to express any view on whether a policing contribution would meet with the CIL tests in these cases, but to delegate these decisions to the Head of Regeneration and Planning to be informed by Counsel's Opinion in due course. Should Counsel advise that LP's requests in any or all of these cases are CIL compliant then the principle of requiring such contributions to be secured by way of S.106 planning obligations will be accepted by the Council and required to be paid, subject to any issues of viability being raised.

A copy of the Counsel's Opinion received from LP is attached; further issues in respect of Items A1, A2 and A3 are addressed under the relevant section below.

A1	13/00335/OUTM	Development of 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way (outline - all matters other than part access reserved) Money Hill Site, North of Wood Street, Ashby de la Zouch
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Additional Correspondence Received on behalf of the Applicants

As referred to in the main report, additional comments have been received on behalf of the applicants, and these are attached. It will be noted that this correspondence refers to "recent correspondence with officers" (a reference to correspondence prior to the publication of the main report). This correspondence includes a letter to the Chief Executive (copy also attached) and a subsequent e-mail confirming the applicants' view that:

- The proposed highway and access scheme is appropriate and has been found to be such by Leicestershire County Council and the Highways Agency
- The applicant is proposing securing the significant upgrade of the Ivanhoe Way (by contribution or the undertaking of works) in order to secure an enhanced town centre linkage and this would be encapsulated within a planning obligation
- Future phases of the development (if approved) would set out a further developed highway proposal, as necessary to support that phase

- Further discussion of an unnecessary highway / linkage solution would likely delay this application for at least another year with no guarantee of approval even then. This would further prejudice the current housing shortfall and, given the present policy vacuum, allow for opportunistic development by third parties elsewhere, prejudicing delivery of Money Hill as the District Council's preferred area for growth
- There is no good reason for the application to not be positively determined at the December 2013 committee meeting

Further to the receipt of Counsel's Opinion in respect of contributions to Leicestershire Police as set out above, the applicants have provided a copy of their own legal advice in respect of this matter (which indicates that the contributions requested would not meet the relevant tests); a copy is attached for information.

As reported on the Update Sheet to the Planning Committee meeting of 12 November 2013, the following matters should be taken into account alongside those matters contained within the main agenda.

Additional consultee responses reported to the 12 November 2013 meeting:

Highways Agency commented that, whilst work is progressing well with the District and County Councils in respect of the development of a contributions strategy, matters are not yet in a position whereby all necessary details have been resolved, and the TR110 Direction preventing granting of planning permission is maintained. Nevertheless, the Agency clarified that it is confident that the outstanding matters are capable of resolution and are unlikely, in the Highways Agency's view, to compromise the overall planning outcome. The Highways Agency also clarified that it does not object to the proposals and that the reason for maintaining the Direction relates solely to financial contributions.

Leicestershire County Council Education Authority confirmed that the County Council's position in respect of primary school provision remains that *either* (i) a new primary will be required on the site; *or* (ii) (in the event of a new school being provided elsewhere), a contribution of £1,756,776.26 would be required.

Additional Third Party Representations:

Five additional representations were received from individuals, raising objection in respect of the same issues already summarised in the main report, and also querying the advice of the County Highway Authority and, in particular (i) the extent of any improvement works requested in respect of public right of way O90; and (ii) the impact on traffic volumes using Wood Street and Nottingham Road.

Ashby de la Zouch Civic Society objected on the following grounds:

- The Local Planning Authority's evidence at the Holywell Spring Farm public inquiry provided that the development of both the Holywell Spring Farm and Money Hill sites would increase the total housing provision in Ashby de la Zouch to 1,800 dwellings, placing a considerable infrastructure burden on the town, notably in terms of sustainable drainage
- Core Strategy sustainability appraisal only supported 1,450 houses for Ashby de la Zouch – approval would far exceed this target and negatively impact on sustainability of both Ashby and Coalville
- Proposals unbalance housing and employment provision, especially with the closure of the Arla dairy, resulting in commuting out of the town, contrary to the NPPF
- Unsustainable access arrangements by virtue of facing the development away from the town

- Unsustainable proposed bus route by virtue of routeing via the A511
- Traffic flows at major junctions will exceed capacity without adequate mitigation
- Key pedestrian link to the town centre is weak and undeliverable due to its incompatibility with the existing adjacent HGV business
- No appropriate assessment by the applicant and relies on the developer contributions scheme for permission to connect to the sewer – due to previous approvals, there is only capacity for 100 dwellings in Ashby de la Zouch at the Packington Sewage Treatment Works (STW), not the 605 proposed

The Civic Society has also written to Members of the Planning Committee raising the following concerns:

- Accessing 575 dwellings via the bypass would exceed the 400 recommended to be conditioned by the Local Highway Authority and a second roundabout would be needed
- Refusal would not be contrary to the relevant Highway Authorities' advice – the Local Highway Authority and Highways Agency do not support the proposals in that the County Council does not support 575 dwellings off one roundabout and the Highways Agency has issued a TR110 Direction preventing determination prior to February 2014
- Officers are ignoring the advice of the Local Highway Authority and the District Council's Urban Designer and a Secretary of State Direction
- Upgrade to Ivanhoe Way to provide a multimodal link to the town centre is neither designed nor deliverable
- Proposals for other development as suggested by the applicants are not part of the proposals under consideration
- Proposals are unsustainable
- Existing traffic problems do not justify additional development without mitigation
- New school, surgery and extra care facility are key facilities to support the development's sustainability but may be provided at Holywell Spring Farm instead
- Due to previous approvals, there is only capacity for 100 dwellings in Ashby de la Zouch at the Packington Sewage Treatment Works, not the 605 proposed
- Scheme cannot deliver the required infrastructure whilst remaining viable

In response to the Civic Society objections, the applicants comment as follows:

- The limitation of 400 dwellings accessed via the roundabout is related to emergency services not capacity constraints - an additional plan to show how this will work without the need for a constraint has been submitted and no objections have been received from the emergency services
- Leicestershire County Council does not object to the Woodcock Way proposals and its earlier concerns related to the proposed cap of 30 housing units accessed from there (i.e. the County Council wanted unrestricted access for all 605 new houses via Woodcock Way)
- The proposed Ivanhoe Way improvements are deliverable and funding has been allocated for the District Council to achieve this
- The Highways Agency Direction is purely an administrative issue relating to the Agency not yet advising to whom funding should be paid and has no bearing on the highways proposals themselves - Members can resolve to approve and a decision notice issued when the administrative issues with the Highways Agency are complete

NO CHANGE TO RECOMMENDATION

A2 **12/00922/OUTM** **Erection of up to 105 dwellings, public open space, earthworks, balancing pond, structural landscaping, car parking, and other ancillary and enabling works (outline - all matters reserved)**
Land South of Grange Road Hugglescote

A copy of a Hugglescote and Donington le Heath Parish Council Community Speedwatch Report has been forwarded by Councillor Legrys, advising that the speed reading results for Grange Road contradict those provided in the main report. A copy of the relevant results page for Grange Road is attached.

In response, the County Highways Authority team that deals with Community Speedwatch confirms as follows:

- The 85th percentiles shown are a “before” survey (i.e. before residents carried out their own survey), and that no “after” survey has yet been carried out
- The 85th percentiles are from a 72 hour period, and have not been adjusted for wet weather as per TA 22/81
- The results recorded by the volunteers trained to use a hand held radar are not a “true” picture of speeds on Grange Road in that volunteers are only asked to record the speed of vehicles that are travelling over 36mph (and, therefore, the average speed shown at 39.1mph is only the average of the 56 vehicles that were travelling above 36mph)

As such, the County Highway Authority advises that the two surveys (i.e. the Speedwatch and the County Highway Authority’s own surveys) have been carried out for different purposes with different criteria and are not therefore comparable.

Additional Correspondence Received on behalf of the Applicants

- Queries why Leicestershire Police has only now decided to respond at the eleventh hour when the application has was first reported to Committee at the beginning of September 2013
- Supports the position in the main report that the Police contribution requests are not CIL compliant as outlined in your report, and, furthermore, this contribution could potentially make the scheme unviable
- Disagree with comments made at the November 2013 Planning Committee suggesting that people use the lay-by as parking for the cemetery. Both gates to the cemetery are locked at all times, and it is understood that a key to access the cemetery must first be obtained from the church, so visitors would be more likely to park in the church car park. The applicants also comment that the most recent graves appear to date from over 20 years ago and are therefore unlikely to attract many visitors in any event.

NO CHANGE TO RECOMMENDATION

- A3 13/00818/OUTM Residential development of up to 135 dwellings including the demolition of 138,140 and 142 Bardon Road along with new access and highway improvements to Bardon Road and associated open space and landscaping (Outline - All matters other than part access reserved)**
Land adjacent to 138, 140 and 142 Bardon Road, Coalville

Additional information received:

A response has now been received from the District Council's Contaminated Land and Air Quality officer who raises no objection to the planning application subject to the inclusion of relevant conditions.

Officer comment:

Two additional planning conditions would be required in respect of contaminated land.

RECOMMENDATION: PERMIT, SUBJECT TO SECTION 106 OBLIGATIONS AND SUBJECT TO CONDITIONS AS SET OUT IN THE MAIN REPORT, AND AS BELOW

- 21** No development (except any demolition permitted by this permission) shall commence on site until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:

- BS10175 Year 2011 Investigation Of Potentially Contaminated Sites Code of Practice;
- BS 8576 Year 2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs)
- BS8485 Year 2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall

be implemented in accordance with the approved details and retained as such in perpetuity, unless otherwise agreed in writing by the Local Planning Authority.

Reason - To ensure that the land is fit for purpose and to accord with the aims and objectives of paragraph 120 of the NPPF.

22 Prior to occupation of any part of the completed development, a Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

Reason - To ensure that the land is fit for purpose and to accord with the aims and objectives of paragraph 120 of the NPPF.

A4 13/00266/FUL Erection of 2 no. 250 KW wind turbines and associated infrastructure including access track at land off Farm Town Lane, Farm Town, Coleorton

Additional Representations:

Following the publication of the Committee report, three additional letters of objection have been received which can be summarised as follows:

- insufficient time has been allowed following the publication of the committee agenda to enable residents to prepare their case and present it to the Planning Committee;
- the development would not impact on the applicant who does not reside in Farm Town;
- the application has been submitted for monetary benefit;
- the local community will not benefit from the proposal;
- the proposal will spoil the local habitat, trees and wildlife;
- the turbines will deter walkers from the area;
- the noise from the turbines will be unbearable;
- the local road network cannot sustain the build and future maintenance will lead to unsafe conditions;
- 16 objectors to the proposal constitutes all residents within the catchment area;
- the application should be refused.

A copy of a letter sent to the local MP and local Councillors has also been received. The letter makes reference to an appeal decision for a wind turbine at Elms Farm, Appleby Parva which has been refused at appeal.

Although the letter refers to policies for a neighbouring local authority that would not be relevant to application proposals within North West Leicestershire, the comments drawn from the appeal can generally summarised as follows:

- community consultation of the proposals should be widespread;
- wind power developments should be sensitively sited in relation to existing land form and landscape features in order to minimise their visual appearance;
- the countryside should be protected for its own sake;

When considering the current proposal against the outcomes of the appeal, the objector questions:

1. how putting two turbines half way up a hillside in this location could constitute a sensitive siting, and,
2. why the site is less sensitive than the one at Elms Farm.

It is considered that all the planning concerns that have been raised by the objectors have already been covered in the main report.

Error in the Main Report:

The following document was also omitted from the Relevant Planning Policies section of the report in error.

- Planning practice guidance for renewable and low carbon energy (DCLG) dated July 2013.

This guidance provides advice on the planning issues associated with the development of renewable energy. It should be read alongside other planning practice guidance and the

National Planning Policy Framework and can be a material consideration in planning decisions and should generally be followed unless there are clear reasons not to.

Planning for Renewable Energy: A Companion Guide to PPS22 is cancelled and therefore, should not be considered in the determination of the application.

RECOMMENDATION: NO CHANGE TO RECOMMENDATION

27 November 2013

Dear Councillor

I am writing on behalf of the Money Hill Consortium.

As you are aware, on the 12 November 2013, your Planning Committee deferred the determination of the Money Hill planning application for the erection of 605 dwellings, including 60 extra care dwellings, a new primary school and provision for health, community and retail uses pending the receipt of further information.

Further to recent correspondence with officers (which we trust you have been provided with) the planning application is to be determined at the next meeting of the Committee on 3 December 2013 (i.e. next Tuesday).

As advised in the officer correspondence, we now write to provide you with further information as to the evolution of the scheme as submitted and our aspirations for the future phased development of the Money Hill site.

The Scheme

The Money Hill application for 605 homes was submitted in May 2013 following pre-application discussions with officers and other key stakeholders stretching back a number of years.

The form of the development proposed in the application was specifically designed to accord with the Council's stated preference for housing development at Money Hill, as per the emerging Core Strategy policy, and was refined through a series of consultation and engagement meetings with the local community, the Council and key stakeholders. Details of the pre-application engagement are set out in the Report of Community and Stakeholder Engagement that was submitted with the application.

Post-Submission Discussions

Further to the submission of the application, we continued to work closely with officers of both the Council and County Council in refining the application. In particular, a significant amount of time has been spent finalising the proposed highways and access strategy, with all viable options being thoroughly tested. This included an agreement to limit the secondary access onto Nottingham Road—the main route into Ashby from the A42 and the source of most concerns from local people—to just 30 new homes with the remaining 575 homes only accessed from the A511 by-pass.

You will be aware that the County Council and Highway Agency have both confirmed that they are satisfied that the highway and access strategy for this application is acceptable. This confirmation would have been secured earlier but for difficulties in officer availability leading to our client having to deal with two separate officer teams within the County Council.

In addition to this amended highways and access strategy, our client is proposing a significant financial contribution, to be used for sustainable transport and access improvements in the vicinity of the site. Our client has suggested that this contribution be used (in whole or in part) towards the comprehensive upgrade of the Ivanhoe Way so as to provide an additional multi-modal link from Money Hill to the town centre.



Green Issues Communiqué

Next Steps

We understand that the application was deferred in order for concerns over highway and access arrangements to be addressed. It is understood that those concerns relate to a residual preference on the part of Members for the provision of highway access on (as yet unidentified) land outside of the Money Hill Consortium's ownership (and of the present application boundary).

From what we understand, this ambition is predicated upon the issue of further development at Money Hill for a greater quantum of housing (and related development) in due course.

The highway and access scheme and mitigation measures proposed in relation to the current application are acceptable to the District and County Officers and fully comply with the statutory tests. In addition, the current highways and access arrangements will not in any way compromise the acceptability of further future development of the wider site. To the contrary, as and when the site is the subject of an application for further development, many of the ambitions which we understand Members to have in terms of access and connectivity will be fully addressed.

In order to illustrate this, we attach an indicative masterplan for the delivery of the wider site. These proposals remain at a conceptual stage and will be subject to further evolution through community and stakeholder engagement, but include:

- Capacity for 1,575 residential dwellings
- Provision of 12.8 hectares of employment land
- Extra care/elderly provision
- Provision of open space in accordance with National Forest
- Provision for health, education, community and neighbourhood retail uses as necessary

Whilst the highway measures will also be the subject of consultation and engagement in due course, you will note that the indicative masterplan envisages (amongst other things) the provision of two points of access onto the A511, the upgrading of the A511/Smisby Road Junction, provision of direct bus routes onto North Street and Nottingham Road (via Woodcock Way) and pedestrian/cycle accesses onto:

- Smisby Road;
- North Street;
- Wood Street;
- Woodcock Way;
- Plantagenet Way;
- Featherbed Lane;
- Potential for connectivity with the Arla Dairy site; and
- The existing footpath network around the site.

It would be deeply unfortunate if an ambition to fully realise the later stages of Money Hill's development, in highway and accessibility terms, led to the rejection of the present application. Any such refusal would be contrary to the advice of the County Council and Highway Agency (being the relevant expert bodies) as well as those of your own officers and would ignore the full package of mitigation measures offered by way of a planning obligation.

We understand that Money Hill remains the Council's preferred location for growth and note that it has been repeatedly endorsed as the most sustainable potential major housing site in the district by repeated studies commissioned by the Council. Given the on-going policy vacuum occasioned by the withdrawal of the Core Strategy and the Council's inability to demonstrate a five year housing land supply, further delay to the approval of the application would not only compound the Council's present difficulties in respect of housing delivery but would also risk giving rise to opportunistic development of less (or un-) sustainable housing sites.

We look forward to your consideration of the application next Tuesday and respectfully urge that the application be granted, in order that we can work with Members and officers on securing the future sustainable development of Ashby.

Yours sincerely,



RICHARD SUTCLIFFE-SMITH.

Executive Director

RE: LEICESTERSHIRE POLICE CONTRIBUTIONS REQUEST

OPINION

Introduction

1. I am instructed in this matter by Michael Lambert, Growth and Design Officer for Leicestershire Police (“LP”) and I am grateful to him for forwarding me the Committee Reports and associated requests by Leicestershire Police concerning three major applications in North West Leicestershire to be considered at the forthcoming Planning Committee (3rd December 2012).
2. Those applications are:
 - (i) 605 residential units and accompanying development at Money Hill Ashby De la Zouch for which the contribution requested is £203,187 - broadly £335.85 per dwelling;
 - (ii) 105 dwellings at Grange Road for which the contribution requested is £35,844 - broadly £341.37 per dwelling ; and
 - (iii) 135 dwellings at Bardon Road, Coalville for which the contribution requested is £55,174 - broadly £408.70 per dwelling
3. I am asked to provide an urgent Opinion as to whether the contribution requests meet with the tests under the CIL Regulations 2010, reg. 122. To satisfy the regulation, the requested obligations must be:
 - (i) Necessary to make the development acceptable in planning terms;;
 - (ii) Directly related to the development ; and
 - (iii) Fairly and reasonably related in scale and kind to the development.
4. LP have asked that my Opinion be considered as a late item by Members in arriving at a decision on these applications. Having worked with LP for some time, and being familiar with the evidence base presented in respect of these requests, I can’t but endorse the principles of the contributions as CIL compliant

subject to any minor adjustments to reflect changes in circumstances between the time the consultation response was given by LP and the point at which any 106 Agreement is signed .

Opinion

6. As a starting point, it can't be forgotten that police seek contributions because there is planning policy justification at both national and district level. The Inspector considering the Land at Melton Road Appeal (a Secretary of State decision) at para. 291 accepted that

“the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services for example,”

7. The Inspector went on to conclude ;

“Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... “take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs”, can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, “safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.”

8. That conclusion was endorsed by the Secretary of State.
9. The current revenue sources e.g. Council tax receipts, are insufficient to respond to growth in residential development, and Police, like most other providers, are unable to fund much needed infrastructure to mitigate the additional demand placed on police resources by that growth. That position was examined and verified by external consultants employed by Local Councils in the Leicestershire Growth Impact Assessment of 2009 and is obvious through the financial accounts that I have seen, which are regularly presented (and unchallenged) at Planning Inquiry and which were presented to all LPAs in January of this year.

10. There is no spare capacity in the existing infrastructure to accommodate new growth and if additional infrastructure is not provided alongside new houses by the developers, new development will impact on the ability of the police to provide a safe and appropriate level of service, and to respond to the needs of the local community in an effective way. That outcome would be contrary to policy, and without the contribution the development would be unsustainable and unacceptable in planning terms.
11. It is right, as the Inspector accepted in the Melton Road decision (APP/X2410/A/12/2173673), that adequate policing is fundamental to the concept of sustainable communities. It is therefore necessary for the developer to provide a contribution so that adequate infrastructure and effective policing can be delivered.
12. Further my understanding is that the contributions sought are solely to be spent on mitigating the impacts of the development in question and not to meet with a funding deficit elsewhere, or to service existing development. They are not contributions towards general policing. The contributions sought are therefore directly related to the development.
13. The Committee should also be aware that nationally, Police have taken advice from Ian Dove QC, as to the responsibility of Planning to deliver Policing infrastructures in plan making and decision taking which concluded.

“There is no reason, however, in principle to suggest that contributions towards Police infrastructure cannot be sought from a Section 106 obligation from an individual site. It will however be necessary to demonstrate that either on-site or off-site infrastructure is necessary and directly related to the impact of the development which is being granted consent. Furthermore it will obviously be necessary to demonstrate that any contribution will in fact be used in order to pay for infrastructure which will actually be delivered.”

14. I am sure that Advice can be made available to the Committee should they require it.
15. In LPs request, a number of policies within the National Planning Policy Framework which confirm and justify the contribution requests are referred to. The Committee Reports however do not consider this compelling policy context, or the weight given to it by Inspector’s and the Secretary of State in recent appeal decisions; see above.

16. LP have also referred in consultation responses to the hard work by the Council and Police to agree content on a Topic Paper concerning infrastructure requirements for the District as a result of growth proposed by the Council there.
17. Again the reports are silent on this which is remarkable. It cannot be the case that infrastructure is required generally to be funded by development but that for some inexplicable reason, these three developments are excluded from that requirement.
18. AS far as I am aware, LP have sent copies of all recent appeal Inspectors reports and decisions to the Council. The approach that has been taken in respect of these development is consistent with the approach to the appeals. . One of these decisions related to Moira Road (APP/G2435/ A/13/2192131) in the **same settlement** in the **same District** as the largest of these applications. The report is silent on the conclusions in these cases which all found that the requests put forward by LP were CIL compliant, and so necessary to make the developments acceptable in planning terms.
19. In that overwhelmingly persuasive context, I understand that some Officers have also taken a different view to that which has been expressed across these three applications to the extent that in a Planning application, in respect of a 450 unit development in Measham in the District, the necessity of a Policing contribution was supported by Officers and Members alike. LP have also pointed out that a another developer in Ashby has recently taken a similar view and have communicated to the Council their acceptance of the Police contribution request. LP have confirmed that the developer at Money Hill has accepted that a Policing contribution may be required there. The report is silent on all of this background in NW Leicestershire which is frankly, a startling omission.
20. Turning to what is in the reports, perhaps the first thing to note is that there appears to be a common or blanket approach taken by Officers that the requests are not compliant. That is of concern because each request that LP have made is different - see calculations at para 2. They have to be to satisfy the test that what is requested is only that which is related to the development and the individual impacts of it. They should be tested individually.
21. I see there is a criticism that; *“On the basis of the information submitted, it is not clear how the requests are directly associated with the proposed housing scheme and not clear as to why, if not provided, this would make the scheme unacceptable in planning terms.”*

22. Further there is an assertion that what is requested is a general contribution towards Policing costs in the area. The assertions are not explained or justified in the reports. It seems to me that what is inferred is patently incorrect in any event. LP have provided detailed costings on each capital item that will be impacted by the development and demonstrate how this is linked to each particular application and the additional homes therein. Further LP make it clear in requests that none of the contributions relate to the revenue costs the Police incur to deliver the service to the existing community. LP also identify other capital infrastructures which are not the subject of the request. It seems to me that what appears to be a blanket assumption is flawed in all these respects. There is absolutely no indication whatsoever that what is sought be general contributions to Policing costs, or unrelated to the developments in question. Quite the opposite!
23. LP have gone to great trouble to look at each development in its locality to identify and provide information about impacts in terms of local Policing demand and crime levels and patterns. LP have accurately demonstrated how the development will add to this by reference to the nature of each development and similar development in the local Police beat. Forecasting on this comparable basis is entirely reasonable - I can see no better way of anticipating future crime than to look very carefully and very narrowly at the existing local circumstances. Indeed I am at a loss to know what other way Policing impacts might be anticipated other than by reference to the locality of the particular development - the existing crime rates and police deployment and the number of new homes to be added.
24. It is said that LPs requests are not clear with regards to compliance and yet each individual item is subjected to an assessment against all three tests of reg. 122. If such criticism is to be made, it should be made properly, and supported by evidence. It is not, and so the case advanced on behalf of LP is clearly to be preferred.
25. In each request LP are clear that Police maintain their infrastructures to the minimum capacity necessary to deliver the service to the existing community. Thus there is no spare capacity to accommodate additional growth with the additional demands it will bring. It follows, logically, that adding this growth without providing the necessary infrastructure can only negatively impact on the ability of the Police to provide a safe and appropriate level of service, and to respond to the needs of the local community in an effective way. It is useful to remind ourselves of the Inspector's words in the Melton decision at para. 291 :

“the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services for example,”

26. In LPs requests, the extent of infrastructure currently deployed and its capacity it assessed to identify what impact and additional demands each development will place on existing resources. LP identify in relation to each application and each infrastructure the additional investment required to achieve sustainable delivery of Policing at the same level as provided to the existing communities. On the basis of known and demonstrated existing policing costs LP identify in detail, and precisely, the additional cost required to mitigate the impact of each development on each infrastructure. As a result LP derive fair and proportionate contributions for each development and in respect of each infrastructure.
27. The Officers Report does not consider this evidence. In reviewing it now, it is plain that inadequate consideration has been given to the contribution requests. There can be little doubt that each request is individually tailored to what is necessary and reasonable for each development - If nothing else a simple comparison of each request in each report demonstrates this.
28. There is perhaps a further factor demonstrated by these three applications being considered as part of the same agenda and that is the cumulative impact of these schemes on Policing across the District. Indeed reference should also be made to the 7138 houses that are the subject of consideration in the Councils Core Strategy work. It beggars belief that such an impact could be dismissed so easily by Officers when the Framework is clear that planning should achieve places which promote safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion [para. 69].
29. I can only advise that the impact on Policing is inescapable and that bearing in mind the scale of the development and the evidence provided by LP, the impact will be profound if unmitigated through the Planning process.
30. For all these reasons and in reference to each of LPs requests and against each development there is a clear demonstration that the contribution sought is necessary. As LP conclude in the requests by reference to the justification in NPPF, the developments would be unacceptable in planning terms, and in fact unsustainable, if permission were granted for any of these applications without

providing for appropriate mitigation. Inadequate policing would have long term negative impacts on the safety and security of local communities and is an outcome would be contrary to national and local policy.

31. There is one final word to be said about consistency in decision making which is of course vital to good administration and something the Council should be keen to implement. The principle is clear - like cases and like situations should be treated alike unless the decision maker gives reasons for departing from a previous course of action or decision. The Council are in receipt of a number of appeal decisions, and are aware of circumstances within their own district where LPs contribution requests have been found to be CIL compliant. Unless Officers are able to distinguish between those matters, which all involve housing development, and all involve contributions to police infrastructure calculated by reference to a local evidence base and the number of new dwellings to be built, then the conclusions in the Committee Report I have sight of are fundamentally inconsistent with previous decision and as such, are prejudicial and irrational.

32. If I can be of any assistance please do not hesitate to contact me in Chambers.

THEA OSMUND-SMITH

2nd December 2013

**RE: LEICESTERSHIRE POLICE
CONTRIBUTIONS REQUEST**

OPINION

Michael Lambert
Growth and Design Officer
Force Headquarters
St Johns Enderby
Leicester
LE19 2BX

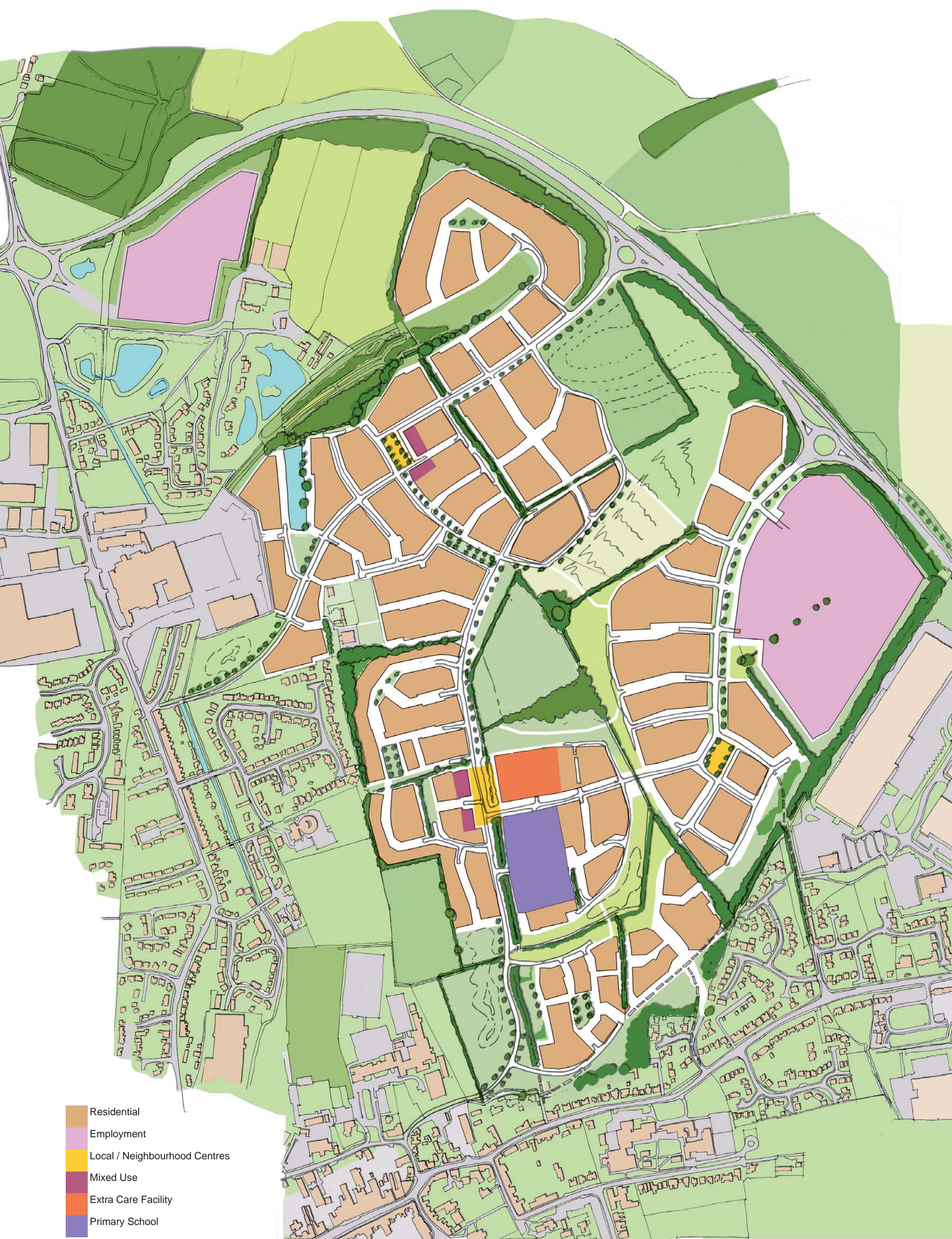
Thea Osmund-Smith



London • Birmingham • Bristol

Tel: 01216060500

Email: theaos@no5.com



Money Hill, Potential Masterplan Redraft of the Wider Area

1:2,500@A1 / 1:5,000@A3

25 November 2013

Paul Drew Design for Cogent Land LLP

IN THE MATTER OF:
OUTLINE PLANNING APPLICATION FOR 605 ADDITIONAL DWELLINGS
AT MONEY HILL, ASHBY

AND

REQUEST BY LEICESTERSHIRE POLICE FOR A FINANCIAL CONTRIBUTION
UNDER S106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

OPINION

Introduction

1. I am instructed to advise the Money Hill Consortium (“MHC”) in connection with the consultation response of Leicestershire Police (“LP”) to North West Leicestershire District Council (“the Council”) regarding MHC’s application for planning permission for 605 dwellings at Money Hill, Ashby de la Zouch (“the Development”).
2. LP have requested the Council to require MHC to enter into a planning obligation under s.106 of the Town and Country Planning Act 1990 (“the 1990 Act”) to pay LP £203,187 in order to meet the additional demand on LP’s resources allegedly generated by the Development. The letter in which this response was made asserts that *“the impact of this development will be very significant in terms of crime, demand for Policing and community safety”* (p.2), because it *“will increase the overnight population of this settlement by 1446 people”* (p.10). It is also contended that this approach was *“accepted by the Inspector in the recent Moira Road appeal”* (p.3).
3. I am asked to advise on the legal merits of LP’s request.

Legal framework

4. A section 106 obligation may only lawfully be entered into if it **serves a planning purpose**: see *R. v. South Northamptonshire District Council, ex p. Crest Homes plc* [1993] 3 P.L.R. 75.

5. The provision or non-provision of a particular s.106 obligation may only be taken into account in determining a planning obligation if that contribution is **necessary to make the development acceptable**. See para. 204 of the National Planning Policy Framework, Regulation 122 of the Community Infrastructure Regulations 2010 and *R (Sainsbury's Supermarkets Ltd.) v. Wolverhampton City Council* [2011] 1 A.C. 437. Para 204 of the NPPF further provides that a planning obligation must also be **directly related to the development and fairly and reasonably related in scale and kind to the development** if it is to be insisted upon by the local planning authority.
6. The former Circular 05/2005 *Planning Obligations* (the thrust of which is preserved, albeit in more concise form, by the NPPF) indicated at para. B9 that that the underlying principle was that *“developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development”* and goes on to state that, by contrast, *“planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision”*.

Analysis

7. In my opinion, LP's consultation response fails to demonstrate that the contribution which they request is either relevant to planning, or directly related to the development, or necessary to make the development acceptable.
8. Where a new residential development of this scale is proposed, contributions towards matters such as the local transport infrastructure, public open space and education will often satisfy these tests on the basis that it is necessary for the population of the new development to have safe and convenient public sustainable options and to be able to access key facilities without travelling too far. The relevance of such contributions to planning and their relationship to the development are obvious. They arise not from the existence of the people who will live in the development (who absent the development would in any event be living somewhere else) but from the fact that they will be located on the site of the development.
9. By contrast, the request for additional policing is founded on the proposition that the Development will generate a new, otherwise non-existent population which would not otherwise create a policing demand for LP. That assumes, without any evidence, that the population of the Development would otherwise

live outside the area of LP's responsibility. (If they would be within LP's area in any event they would still place a demand on LP's resources in the absence of the Development.) Given that the Development is intended to meet a local housing shortfall, that assumption is not only unevidenced but also far-fetched. It cannot therefore properly be concluded that the additional demand for policing is directly related to the Development or necessary to make it acceptable.

10. Further, and in any event, I find it difficult to see how a contribution of this nature could properly be said to serve a planning purpose. First, the need to investigate crime and enforce the law is a consequence not of development but of individual acts of members of the public. Secondly, the functions and duties of the police are the subject of a bespoke legal regime under the Police Acts and associated legislation, and I am aware of nothing in those Acts which indicates an interrelationship with the Planning Acts or with spatial planning decisions.
11. The above analysis is not undermined by the recent Moira Road appeal decision. Whilst the Inspector's list of the various contributions offered included a contribution of £24,903 (a small fraction of what is sought in the present case) towards the capital costs of policing the development and went on to make the generic conclusion at para. 39 *"evidence submitted to the inquiry showed that, without these contributions, the development would not be acceptable in planning terms because of its harmful impact on infrastructure"*, no specific reasons are given in relation to why this conclusion was reached in relation to the police contribution not is it clear whether and if so to what extent that contribution was in dispute. In any event, the Inspector's decision is not legally binding. If, as I have concluded, the police contribution in the present case does not meet the necessary legal tests, it would be manifestly wrong in law for the Council to insist upon it just because an apparently similar contribution was not objected to by the Inspector in the Moira Road decision.

Conclusion

12. For any or all of these reasons, I consider that LP's request for a contribution is legally misconceived. Refusal of planning permission based upon a failure to provide such a contribution would not be reasonable and would leave the Council and/or LP open to an application for costs under DCLG Circular 03/09 *Costs awards in appeals and other planning proceedings*.

13. I have nothing to add as currently instructed but would be happy to answer any questions on the above or to advise further if required.

A handwritten signature in blue ink, appearing to read "Charles Banner", with a horizontal line underneath.

CHARLES BANNER

**Landmark Chambers
180 Fleet Street
London
EC4A 2HG**

29 July 2013

Christine Fisher, Chief Executive
North West Leicestershire District Council
Council Offices
Whitwick Road
Coalville
Leicestershire
LE67 3FJ

19 November 2013

07/057
BY POST & EMAIL

Dear Ms Fisher,

13/00335/OUTM - LAND AT MONEY HILL, NORTH OF WOOD STREET, ASHBY-DE-LA-ZOUCH

We note that the above application was due to be discussed at the meeting of the Council's planning committee last Tuesday (12 November). The application was recommended for approval by officers and was supported (or otherwise not objected to) by all statutory consultees.

Without forewarning and apparently as a result of a meeting as between Members and officers immediately prior to the meeting, the application was deferred from the meeting, pending the resolution of (what were expressed to be) 'fundamental concerns regarding highway and access arrangements'. No further detail as to those matters was provided to our client, nor was there any opportunity to raise questions in this regard.

Having since had the opportunity to speak with your David Hughes (by telephone, last Thursday), it has been confirmed that Members have a putative concern that the presently proposed highway solution is inadequate and that additional land (i.e. outside of the present application boundary and being as yet unidentified) is necessary to realise a more acceptable proposal. As far as we understand it, this objection (which would in fact require the submission of an entirely new application) would comprise the sole reason for refusal should Members make a decision on the application.

With respect, this position is simply not understood. The proposed highway and access arrangements have been the subject of lengthy discussion with two separate teams of highway officers at the County Council, both of whom have confirmed that they are acceptable. As far as we understand it, Members are disregarding this professional advice (and that of our own consultants) without recourse to any other evidence of likely harm. To the contrary, it is understood that Members are concerned not so much with the present proposals but with the scope for the further development to come forward in the future.

The current application includes (amongst other things) materially improved linkages to the town centre and a new junction on the Ashby bypass, both of which find support in adopted policy. Moreover, the scheme would lay the foundation for further highway improvements should further development come forward to the north-east of Ashby, being the Council's preferred location for growth.

In this respect: as discussed on several occasions with senior officers, future applications would incorporate separate, tailored highway arrangements based on their assessed impact. Importantly, several of the highway proposals raised by Members (as reported to us by David Hughes) in the context of questioning the current application would likely form part of future phases of the scheme. In this way, the improvements Members are seeking would be delivered at the appropriate time. To demand the delivery of highway works that

are unnecessary and otherwise unrelated to the scheme presently before the Council is unreasonable and unlawful (per regulation 122 of the Community Infrastructure Levy Regulations 2010). Please let us know if you require any further information in this respect.

Having sought legal advice, we are advised that (in view of the clear sustainability credentials of the site, housing land supply generally and the robustness of our client's highway evidence) any appeal would have very strong prospects for success. We are also advised that, in view of the above, our client would have strong grounds for seeking an Order for its costs of any such appeal against the Council.

We note that it is open to our client to appeal the application now for non-determination; however, given our positive working relationship with officers to date, we are loath to do this in response to an apparent misunderstanding by Members, given that it would likely give rise to further delay and cost (which we consider would be ultimately borne by the Council).

We note that our client had requested a meeting with officers but has since been informed that the earliest date available is 12 December. Given the extensive time which has already elapsed since the application was submitted, the unwarranted deferral of the application and the present Development Plan vacuum, our client does not consider this further delay to be justified. Whilst we are keen to address any issues of concern on the part of Members, we consider this letter adequately sets out the position and repeat our offer to provide any further clarification necessary.

Given the above, we trust that you will understand that our client has little choice but to pursue an appeal (the costs of which it would seek to recover from the Council) unless you can assure us that the application will be positively dealt with by Members at the next committee meeting, on 3 December.

We look forward to hearing from you as soon as possible.

Yours sincerely

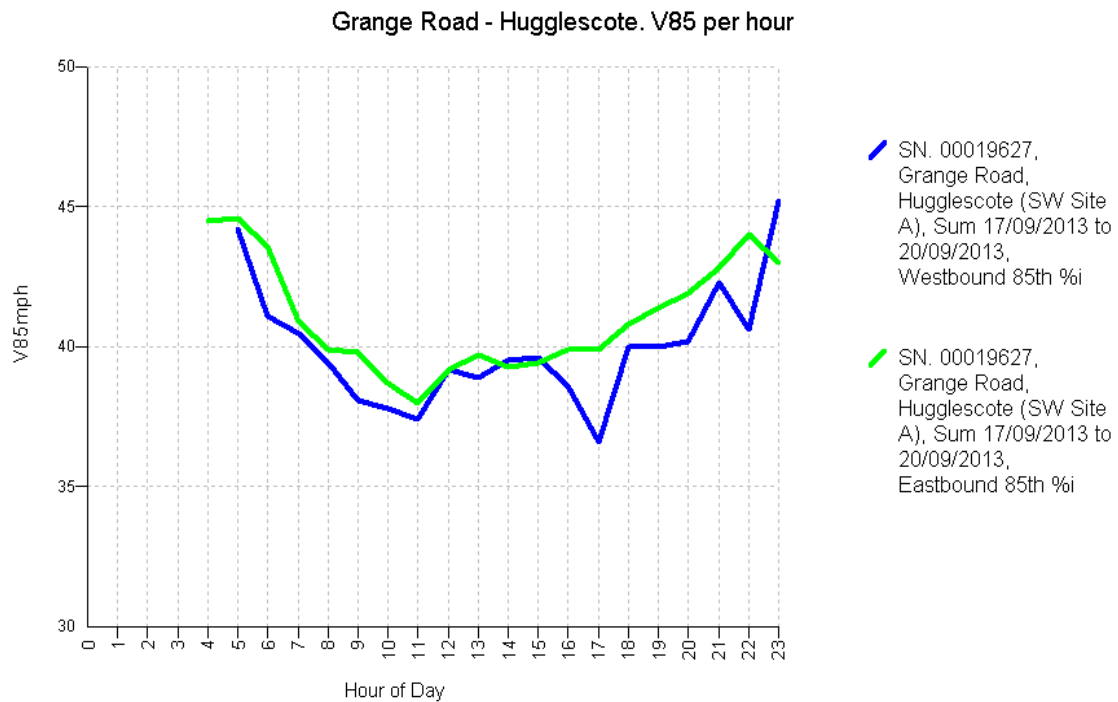


David Churchill
DIRECTOR

cc: Cllr David Stephenson
Steve Bambrick
David Hughes
Chris Elston

Grange Road 30 mph

Results of covert data (black box) showed the volume and speeds of vehicles as:



	Total	Mean	85th	<-- %	Above	30 Mph	-->	
	Vol.	Ave.	%ile	By 0	ACPO	By 10	By 15	
				Mph		Mph	Mph	
24hour	2593	31.6	39.4	56.8	29	8.4	1.3	← Weekdays
24hour	2334	33.9	40.6	68.7	39	12.7	2.3	→ Weekdays

Results recorded by volunteers using hand held radar showed:

Number of times campaigned	4
Total	56
Average Speed	39.1mph
Highest	52mph
36 to 39mph	36
40+mph	19
50+mph	1