

Residential development for up to 42 dwellings (Outline - details of access included)

Report Item No  
A1

Land At Spring Lane/Normanton Road Packington Ashby De La Zouch Leicestershire LE65 1WU

Application Reference  
13/00959/OUTM

Applicant:  
K Goodwin And B Moseley

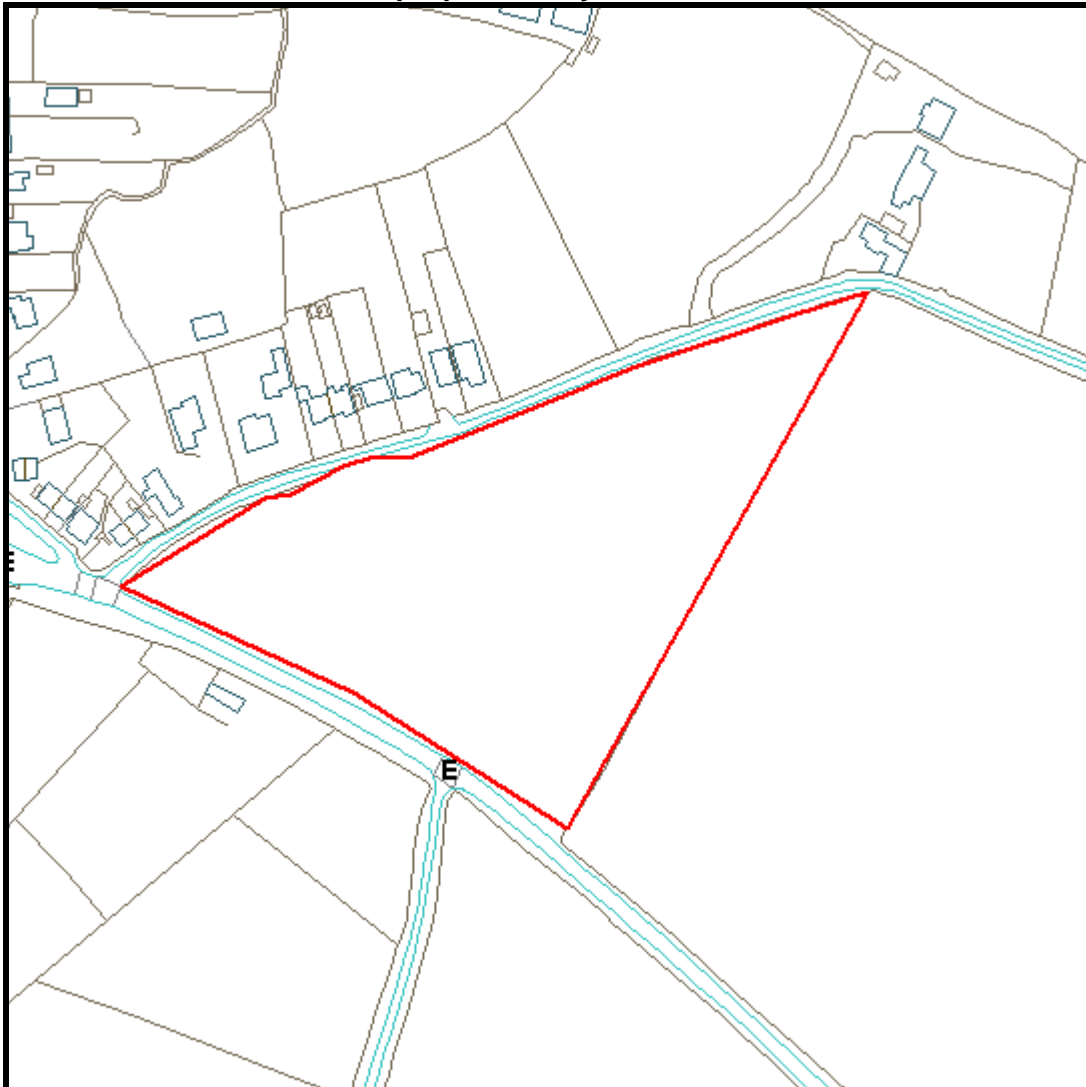
Date Registered  
26 November 2013

Case Officer:  
Hannah Exley

Target Decision Date  
25 February 2014

Recommendation:  
PERMIT Subject to a Section 106 Agreement

Site Location - Plan for indicative purposes only



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## **EXECUTIVE SUMMARY**

### **Background**

This application was previously reported to Members of the Planning Committee on 10 June 2014, with an officer recommendation of approval subject to the completion of a Section 106 agreement. The Agreement was completed and a decision notice was issued on 26 November 2014. Since then, a Judicial Review has been lodged against the decision made by the District Council and the decision has subsequently been quashed. The application proposal has been reconsidered by officers, having regard to current local and national policies and other material considerations and the following report has been prepared for Members consideration.

### **Proposal**

Outline planning permission is sought for the erection of 42 residential units including affordable housing and provision of sustainable urban drainage on a triangular piece of land at the corner of Spring Lane and Normanton Road, Packington.

The application is in outline at this stage with details of means of access included for consideration. Vehicular access into the site would be off Normanton Road and the centre point of the access would be approximately 90m from the junction with Spring Lane. Details of an indicative scheme are provided to show how the site could be developed but these are for illustrative purposes only and therefore, are not to be considered in the determination of the application.

### **Consultations**

Members will see from the main report below that objections have been received, including from Packington Parish Council, with over 100 letters being received from members of the public. There are no technical objections raised by any of the statutory consultees.

### **Planning Policy**

The application site lies outside Limits to Development as defined in the adopted North West Leicestershire Local Plan. Also material to the determination of the application, however, is the supply of housing in the context of the National Planning Policy Framework (NPPF).

### **Conclusion**

Whilst the site is a greenfield site outside Limits to Development, having regard to the site's general suitability for housing, with Packington considered to be a sustainable location for the level of development proposed, and the need to demonstrate and maintain a five year supply of housing land within the District, the proposals are considered to constitute sustainable development, and release of the site for residential development would be appropriate in principle.

The proposed development would be acceptable in terms of density, impact on countryside, the character of the area and the historic environment, impact on trees, residential amenities, transportation and highway safety issues, flood risk and drainage, ecological impacts and impact on the River Mease SAC and no other technical issues are considered to arise. Appropriate contributions to infrastructure would also be made so as to mitigate the impacts of

the proposals on local facilities/services.

The proposed development would, overall, therefore be considered to constitute sustainable development as defined in the NPPF and, as such, benefits from a presumption in favour of such development as set out in that document. It is therefore recommended that planning permission be granted.

**RECOMMENDATION:- PERMIT, SUBJECT TO SECTION 106 OBLIGATIONS, AND SUBJECT TO THE IMPOSITION OF CONDITIONS**

**Members are advised that the above is a summary of the proposals and key issues contained in the main reports below which provide full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed reports.**

## MAIN REPORT

### 1. Background and Update

This application was previously reported to Members of the Planning Committee on 10 June 2014 (copy of report and update attached as Appendix to this agenda item) with an officer recommendation of approval subject to the completion of a Section 106 agreement. The S.106 agreement was completed and a decision notice was issued on 26 November 2014. At the time the Planning Committee resolved to grant planning permission, the Council did not have a five year housing land supply, although by the time the decision notice was issued, the position had changed and the Council was able to demonstrate a five year housing land supply. At the time of writing this report, the Council has a five year housing land supply. The decision to issue planning permission was challenged by way of a Judicial Review which was issued on 19th December 2014. The planning permission has subsequently been quashed by Order of the Court. The Judicial Review raised six grounds of challenge; the Council conceded one of those grounds, which was that it had raised a legitimate expectation that the matter would be reported back to the Planning Committee prior to the issue of the decision notice. For this reason, the Court Order quashing the planning permission was made with the consent of both parties.

Whilst the Council conceded only one ground for challenge, it should be noted that the Court gave the Claimants permission to bring the Judicial Review on all 6 grounds. The Council clearly respects this decision and for this reason, as well as for the avoidance of doubt as to the planning judgment exercised in relation to each ground,, this report will address all of the grounds for challenge that were raised.

The six grounds for challenge and the Council's position with regards to those grounds can be summarised as follows:

#### Ground One

*The Defendant failed to have regard to and apply the statutory test in accordance with section 66 of the Listed Buildings Act 1990 [sic], which requires special regard to be had to the desirability of preserving a listed building's setting contrary to the Court of Appeal's rulings in East Northamptonshire DC v Secretary of State for the Community and Local Government/Barnwell Manor Mid Energy Ltd v East Northamptonshire DC [2014] 1 P & CR 22.*

The District Council did not concede this point and considers that it fully assessed the impact of the proposed development on the historic environment; including having special regard to the desirability of preserving the setting of nearby listed buildings. This is addressed in more detail below.

#### Ground Two

*The Defendant in reaching the decision failed to take material considerations into account namely paragraph 17 of the NPPF which states that planning decisions should recognise the intrinsic value of the countryside and the need for a Transport Assessment in accordance with Department for Transport (DfT) Guidance as a consequence of the level of growth identified.*

The District Council considers that it had regard to Paragraph 17 and recognised the intrinsic value of the countryside in its assessment of the proposal as well as considering impacts on the local highway network. The District Council did not concede this ground for challenge and this point is addressed in more detail below.

### Ground Three

*There was no screening opinion carried out and it was wrong to conclude that there were no significant environmental impacts based on the limited information provided. Further in applying or failing to apply various conditions to the respective permissions the Council have failed to take into account material considerations on the issue of the permission and consequentially failed to give adequate protection to European protected sites, species or other factors.*

The District Council carried out a screening opinion and no significant environmental impacts were identified. This was detailed in the original officer report, along with a comprehensive assessment of the potential impact of the proposed development on the protected species and the River Mease Special Area of Conservation. Appropriate conditions/notes to applicant were recommended to address matters raised by statutory consultees, which remain relevant. Consequently, the District Council did not concede this point which is addressed in more detail below.

### Ground Four

*The Council acted irrationally in that there was a failure to give reasons for taking an inconsistent and irrational approach to cumulative impacts of the Scheme. Further in using an out of date and unadopted figure for growth and having no reasonable explanation as to how conclusions were properly reached as to cumulative impact of two such large proposals being granted when the new overall level of growth of 17.3% was not considered, the Council also acted irrationally.*

The Council did not concede this ground for challenge which is addressed in more detail below.

### Ground Five

*The Council breached the statutory duties under s70(2) of the Town and Country Planning Act 1990 (as amended) and in s38 (6) of the Planning and Compulsory Purchase Act 2004 to have regard to "any other material considerations". The Council also failed to apply the approach in accordance with case of R(oao Kides) v South Cambridgeshire DC 2003 1 P&G CR 19. The approach adopted by the officer in this case in light of the acknowledged new material consideration of going from a position of having no 5YHLS to having one, falls far short of the test in Kides and he clearly erred in concluding that the matter should not be referred back to the committee for the reasons specified in the Grounds of Claim.*

The Council does not accept that there was a need to report the matter back to the Planning Committee for the reasons set out later in this report. When agreeing to quash the planning permission, the Council did not concede this point.

### Ground Six

*The failure to report the matter back to committee was in breach of the legitimate expectation raised by the Council that it would do so, created by their letter of the 9th October to the Parish Council on this issue.*

It is on this ground that the District Council consented to quashing the planning permission.

## **2. Publicity**

Neighbours have been re-notified

## **3. Consultations**

The Parish Council have been re-notified.

#### 4. Summary of Representations Received

There is no statutory requirement to undertake re-consultation with local residents and consultees in cases where the nature of the application has not changed. This application has not changed in any way since its initial consideration in June 2014. In this case, however, the District Council decided that it would be in the interests of justice to re-consult consultees relevant to the issues raised in the grounds of challenge, the Parish Council and neighbouring residents who had been written to about the original application or who had made representations about the original application.

**Packington Parish Council** is strongly opposed to the application as it is out of proportion to what is expected in a small rural village and are outside the development boundary of the village. The Parish Council also believe that as the sole reason for granting the applications in 2014 was the dubious fact that the Authority could not meet a five year land supply figure the applications should be refused as the authority now demonstrates a healthy land supply figure.

A letter of objection has been received from those residents that brought the Judicial Review, which is summarised as follows:

- The application should be refused for the following reasons and in light of the fact that the Council can demonstrate it has a five year housing land supply such that full weight can be accorded to local plan policies that are compliant with the NPPF:
- The proposals will have an adverse impact upon the Grade II Listed Packington House which should be given special regard and weight.
- The proposals will have a significant impact on the landscape and the rural setting of Packington resulting in unnecessary housing development in the Countryside (outside adopted built development boundaries) which does not constitute sustainable development and is contrary to local plan Policy S3 and paragraphs 7 and 17 of the NPPF.
- The proposals will also result in the loss of the BMV agricultural land contrary to Policy S3 and paragraph 112 of the NPPF, and which also renders the development unsustainable.
- The proposals will have a disproportionate impact on the size of the village, relating poorly to the existing built form and harmful to the character and appearance of the countryside contrary to Policy E4 and the NPPF.
- The applicants have failed to carry out an adequate assessment of the highways impacts of the developments given the lack of Transport Assessments contrary to Government policy and guidance set out in DfT Guidance on Transport Assessments 2007.

The full contents of this letter have been made available to members of the Planning Committee.

In addition, a further 111 letters of neighbour representation have been received as a result of this process. Of the objections raised in those letters of representation, the majority had already been raised when the application was previously reported to, and given consideration by, Members in June 2014. Of those representations that raise new issues, they are as follows:-

- since the previous decision, circumstances have changed as the District Council now has a 5 year housing land supply and does not need this amount of new housing and

therefore, infill sites within the village should be the preferred approach to housing growth in the village and more weight should be given to the protection of the countryside;

- The proposals will have a disproportionate impact on the size of the village, relating poorly to the existing built form and harmful to the character and appearance of the countryside contrary to Policy E4 and the NPPF.
- the two housing proposals would increase the size of the village by 14% and 10% (24%) which is out of scale with the village;
- there is a large brownfield site within the village that is currently for sale and should be developed first;
- a similar housing development has been refused in Blackfordby on the ground that it was contrary to Policy S3 (outside limits to development) and was not sustainable;
- inadequate consultation with local residents about the judicial review process, quashing order and subsequent reconsideration of the application;
- the previous decision was made on out-of-date information with regard to housing land supply;
- the proposal is contrary to the approach set out in the Core Strategy/Local Plan which requires villages to contribute only a small number of additional houses;
- more detailed information is required about why the decisions were quashed;
- impacts on areas of special residential character which form the character of the settlement;
- housing as proposed would go against what the National Forest should be;
- a bombardment of solar farm applications and HS2 passing close to the village are also threats to our village life and countryside beyond;
- local knowledge should be considered above that of statutory consultees.

For details of the original representations received, Members are advised to refer to the original officer report and update sheet which are attached as addendums to this report. In summary, 74 letters were received from members of the public including FLOAT (Packington Flood Action Team). The objections cover several different issues, broadly but not exclusively relating to the principle and sustainability of the proposal, adequacy of existing services/infrastructure, highway safety, impact on nearby residents and the character of the settlement, flood risk and drainage and impact on the historic environment and ecology.

The full contents of all neighbour representations, both from this current application and the 2014 application, are available for Members to inspect on the case file.

## **5. Relevant Planning Policy**

The proposal has not changed so the relevant policies remain the same as previously reported to Committee (report attached for information).

## **6. Assessment**

### **GROUND OF CHALLENGE**

As set out above, notwithstanding that the District Council only conceded one ground for challenge, the District Council has considered all six grounds of challenge when preparing this report, as follows:-

Ground One - *Failure to have regard to and apply the statutory test in accordance with section 66 of the Listed Buildings Act 1990 (sic).*

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, when considering whether or not to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building, or its setting or any features of special architectural or historic interest that the building may possess.

The built fabric of the nearby listed building and any special features of the building would not be affected by the proposed development which lies beyond the curtilage of the listed building. The development site falls within the rural setting of the listed building and, therefore, the impact of the development on the setting of the listed building should be given special regard and requires consideration, and this is discussed further below.

The NPPF defines a heritage asset as a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest.

Paragraph 131 of the NPPF requires planning authorities to take account of:-

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

The District Council has fully assessed the impact of the proposed development on the historic environment and paid special consideration to the tests set out in the Act as set out below:-

The Packington Conservation Area lies approximately 275 metres to the west / 200 metres to the north west of the site and the nearest listed building is the Grade 2 listed Packington House lying approximately 30 metres to the north. The Conservation Area and listed building are designated heritage assets as defined in the NPPF. The site may also contain buried archaeological remains and, if so, these would also form a heritage asset.

The site is well separated from the Conservation Area by intervening residential development which is predominantly twentieth century. As a result, the site would not be highly visible within views of or from the Packington Conservation Area. The site is bounded by Normanton Road to the south of the site, leading from Heather Lane to the west. It is acknowledged that some glimpses of the site would be possible within views along Heather Lane/Normanton Road.

When having regard to the distances involved (as set out above) and the modern nature of the intervening twentieth century development, it is not considered that the development of the site for housing would adversely affect the setting of the Packington Conservation Area.

Packington House lies 30 metres to the north of the site and has the following listing description:

*"House of late C18 and early C19. Red brick with brick dentilled eaves and plain tile roof with end stacks. Twin span, one of each date. The present entrance front, the earlier, is of 3 storeys, Flemish bond, stone coped gables, and 3 sashes: 3/3 2nd floor and 6/6 below. Stucco lintels and stone sill bands. Early C20 bay to left of central simple doorcase and canopy with part glazed 6-panelled door and overlight. 3 storey 1 window extension to right: attic 4/8 sash with casements below. 1 storey extension to left. The rear front is of 3 storeys of 4 windows grouped vertically in projecting brick sections. 3/6 sashes, flat lintels, to 2nd floor, and 6/6 cambered lintels, below. Stone sills. Centre right section has round arched doorcase: tripartite*



*with narrow 3-pane light either side of 4-panelled door. Right end rendered; on left end extension with casements".*

When considering the three factors contained within the Act, the District Council is satisfied that the proposal would not affect the built fabric of this listed building. Consideration needs to be given, however, to the impact of the proposed development on the setting of Packington House. The building's setting is somewhat compromised to the immediate north by the presence of a modern two-storey dwelling but to the south and south east (including the application site), the rural setting of Packington House survives. The Conservation Officer advises that, whilst the proposed development would be unlikely to affect the setting of the Conservation Area, it could affect the rural setting of Packington House. However, given the outline nature of the proposal, the design and layout of the development would need to be approved at the Reserved Matters stage and, therefore, there would be an opportunity for the impact of the development to be reduced through the design and layout of any detailed proposals, as these would need to have due regard to the potential impact of development on the setting of this listed building. The application site narrows to a point at its most northern point opposite Packington House which would naturally constrain built development towards the north of the site. When having regard to the need to provide on-site tree planting and the triangular shape of the site, it is considered that the site is capable of accommodating the amount of development proposed without any significant adverse affects to the setting of this heritage asset. Indeed the indicative layout shows how the proposed development could be separated from the listed building through the provision of tree planting at the northern tip of the site.

Paragraph 128 of the NPPF states that local planning authorities should require applicants to describe the significance of any heritate assets affected, including any contribution made by their setting. The level of detail should be no more than is sufficient to understand the potential impact of the proposal on their significance. In this case, the applicant has submitted a Heritage Impact Statement which has been taken into account in the determination of the application.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local planning authorities in the consideration of whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 133 of the NPPF sets out that where a proposed development will lead to substantial harm to, or total loss of significance of, a designated heritage asset, local planning authorities should refuse consent unless a number of conditions are made out. In this case, the District council does not consider that the proposals will lead to the total loss of significance of Packington House or substantial harm to the building because the proposals would not directly affect the built fabric of Packington House and the development site lies beyond the curtilage of this listed building.

Paragraph 134 of the NPPF goes on to say that where the proposed development leads to less than substantial harm to a heritage asset, the harm caused should be weighed against the public benefits of the proposal.

As discussed above, it is considered that the proposal would fall within the rural setting of Packington House and Officers have given special regard to this when assessing the merits of this application. However, when having regard to the distance available between the site and the listed building and the constraining effect of the triangular nature of the site on the northern part of the site making it more suitable for planting/landscaping, it is considered that a positive design approach could be adopted as part of any Reserved Matters submission to ensure that adverse impacts on the setting of the listed building would be limited as a result of the

development of the proposed site.

It is therefore considered that whilst the proposal could be harmful to the significance of the heritage assets it is unlikely that this would involve substantial harm or total loss of significance for the reasons set out above. The proposals amount to less than substantial harm to the significance of the heritage assets and would not result in significant detriment to the special architectural or historic interest, character or setting of the nearby listed building and would not adversely affect the character and appearance of the Conservation Area, thereby sustaining the significance of these heritage assets.

As set out above, Paragraph 134 of the NPPF requires harm to designated heritage assets that is less than substantial to be weighed against the public benefits of the proposal, including securing its optimum viable use. The harm to the heritage assets is, in this case considered on balance to be outweighed by the provision of 42 new homes to contribute to maintaining the District's housing land supply which includes affordable homes, contributions towards improving capacity within existing public services and, under the River Mease DCS, which will improve the quality of the River Mease SAC.

*Ground Two - the Failure to take material considerations into account, namely (i) paragraph 17 of the NPPF which states that planning decisions should recognise the Intrinsic value of the countryside and (ii) the need for a Transport Assessment and the level of growth identified.*

The District Council has had regard to Paragraph 17 and recognises the intrinsic value of the countryside when assessing the proposal and its impact on the local highway network. These issues are considered in turn below:

*(i) Intrinsic Value of the Countryside*

When undertaking the original assessment of the development, paragraph 17 was not specifically referred to in the 'Assessment' section, it was referenced in the 'Relevant Planning Policy' section of the original officer report.

The District Council acknowledges that the site lies within the countryside which policy seeks to protect, and that the proposed development would be contrary to that policy. However, it also recognises that regard must be had to other relevant material considerations and, it is in these circumstances that a balanced judgement must be made.

Paragraph 17 of the NPPF sets out the key principles that should underpin planning policy and, amongst other things, requires local planning authorities to take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.

The District Council recognises that the site, along with the adjoining arable fields, provides the rural setting for the village. In considering the impact of the proposal on the character of the area, the District Council has considered the location and appearance of the site. The site is located within a natural hollow within the landscape as land rises towards the east/north-east away from the edge of the settlement of Packington. The triangular site is bordered on all sides by mature hedgerows interspersed with trees and, consequently, is afforded some existing natural screening and appears as a self-contained field (separated into paddocks). It does not form part of a larger parcel of land. It has also been necessary to consider the short and long distance views of the site and how the site lies within the topography of the wider landscape, along with its relationship with the existing built development.

The site is situated in very close proximity to the existing development situated on Spring Lane. When having regard to the proximity of the site to the existing development and settlement boundary, the topography of the surrounding landscape, existing trees/hedgerows along the site boundaries and the scope for mitigation in the detailed layout, design and landscaping of the scheme referred to above, the District council considers that the visual impacts of the proposals would be reasonable and that, notwithstanding the site's location outside Limits to Development, unacceptable impacts on the amenities of the surrounding area (countryside) would not be likely to arise.

Whilst the District council accepts that Paragraph 17 of the NPPF requires local planning authorities to recognise the "intrinsic character and beauty of the countryside", the same paragraph also requires it to support thriving rural communities. In this regard, the increase in local residents arising from the proposed development could support and sustain existing services and facilities available within the village.

Overall, the proposal is considered to comply with the provisions of Policy E4 and H7 of the Local Plan and the provisions of the NPPF (which would include paragraph 17).

*(ii) Need for a Transport Assessment and consequently the level of growth identified.*

With regard to the impacts of the proposed development on the local highway network, the DfT document referred to in the Grounds of Challenge and letter of objection was withdrawn in October 2014. The County Highways Authority has been consulted and has confirmed that, in accordance with Leicester County Council's '6C's Design Guide' a Transport Assessment is not required to assess the two residential schemes either alone or in combination. The County Highways Authority has considered the impact on the local highway network and has advised that the traffic movement on the road network in Packington is generally light and, given that any increased traffic arising out of this development would be greatly dispersed before it reached junctions on the network that are exceeding, at, or approaching, their capacity, queuing and congestion in the peak hours is unlikely to be of any concern as part of an assessment of the impact of the proposed traffic from the two residential schemes currently proposed on either side of Normanton Road, either alone or in combination. Therefore, the County Highways Authority raises no concerns in relation to the proposal on its own or in combination with the development proposed opposite adversely affecting the capacity of the village road network. The proposal is considered acceptable for the purposes of T3 and T8 of the Local Plan.

Ground Three - *(i) no screening opinion was carried out and it was wrong to conclude that there were no significant environmental impacts and (ii) in applying or failing to apply various conditions, the Council have failed to take into account material considerations and consequentially failed to give adequate protection to European protected sites, species or other factors.*

Each of these matters is discussed in turn below:

*(i) No screening opinion was carried out*

The proposal has been assessed in respect of the Environmental Impact Assessment (EIA) Regulations 2011 in order to establish whether the proposal constitutes EIA development. The EIA Regulations define EIA development as development which is either Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location. The proposed development is classed as development under paragraph 10(b) of Schedule 2 to the Regulations. However, when having regard to the selection criteria for screening Schedule 2 development which include the

characteristics and location of the development and the characteristics of potential impact, it has been concluded that this proposal does not constitute EIA development under the 2011 Regulations as its impacts, both on its own and cumulatively with the other major housing proposal to the southern side of Normanton Road (13/01002/OUTM) are not considered to be significant and can be considered as part of the planning application.

When the challenge in this case was considered by the High Court, the Judge took the view that this point was not arguable as screening opinions can be very brief and, subject to certain exceptions relating to reasoning, can only be judicially reviewed on a 'Wednesbury' basis. Essentially, this means that a challenge can only be made if the decision reached by the Local Planning Authority falls outside of the range of reasonable decisions open to the authority.

*(ii) failure to give adequate protection to European protected sites, species or other factors*

The District Council had due regard to the requirements of Paragraphs 109 and 118 of the NPPF in its consideration of the potential impact of the proposal on protected sites and species. In consultation with the County Ecologist, Natural England and the Environment Agency, the District Council has undertaken a comprehensive assessment of the potential impact of the proposed development on protected species and the River Mease Special Area of Conservation, and this is set out in the original officer report. No objection was raised by Natural England, the Environment Agency or the County Ecologist and the conclusions reached with respect to these issues remain valid. In terms of the River Mease SAC, it can be ascertained that the proposed development on the site will, either alone or in combination with other plans or projects, have no likely significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI. The grounds of challenge suggested that conditions were not imposed to provide a buffer strip between the development and the brook (a tributary of the River Mease) or to protect a rare plant on the site. However, the imposition of Condition 5 of the planning permission granted in November 2014 required an ecological/landscape management plan to be submitted, along with explanatory notes to applicant setting out requirements with respect to buffer zones and the conservation of the rare plant and the re-imposition of this condition and note to applicant will ensure that adequate protection continues to be given in this respect. The County Ecologist has re-confirmed that the conditions remain relevant and accurately reflects their advice.

Ground Four - *The Council acted irrationally in that there was a failure to give reasons for taking an inconsistent and irrational approach to cumulative impacts of the Scheme. Further in using an out of date and unadopted figure for growth and having no reasonable explanation as to how conclusions were properly reached as to cumulative impact of two such large proposals being granted when the new overall level of growth of 17.3% was not considered, the Council also acted irrationally.*

*Cumulative impact assessment and using an out-of-date and unadopted figure of growth*

It is appropriate to consider the scale of the proposed development compared to Packington so as to understand its potential impact upon the scale and character of the village.

In terms of likely future needs, the original officer report referred to the GL Hearn Leicester and Leicestershire Housing Requirements Study, which was used to inform the housing requirement in the now withdrawn Core Strategy and included information regarding future natural change across the district. This study projected that a 23.4% increase in housing was required across the District from 2006-2031, which was reflected in the now withdrawn Core Strategy.

In terms of likely future needs, the joint Strategic Housing Market Assessment (SHMA) 2014

undertaken on behalf of all of the Leicestershire local planning authorities has provided the District Council with an up-to-date objectively assessed annual housing requirement, equating to 350 dwellings per annum from 2011 to 2031. This SHMA projected that 17.3% growth in housing would be required across the District to meet housing need. This is an average figure for the District as a whole and therefore, it is considered that it will be appropriate for locations that are sustainable to accommodate a higher level of growth than other settlements. As set out above, Packington is considered to be a sustainable settlement (particularly when having regard to its relationship with Ashby) and it is considered to be capable of accommodating above average housing growth.

It is estimated that there are 324 properties in the village of Packington within its main built up area. The number of properties within Packington has been calculated using 2011 Census information from the Office of National Statistics, which is considered to be a reputable source of information. However, local objectors to the development estimate that there are 300 properties within the village of Packington and it is considered prudent to consider the level of growth in both scenarios.

On the basis of 324 properties, this proposal for 42 dwellings would represent a 12.96% increase in the number of dwellings within the village. The 42 proposed dwellings alongside the outstanding commitments for 3 dwellings would equate to a 13.88% growth in the village since 2011.

On the basis of 300 properties, this proposal for 42 dwellings would represent a 14% increase in the number of dwellings within the village. The 42 proposed dwellings alongside the outstanding commitments for 3 dwelling would equate to a 15% growth in the village since 2011.

In both scenarios, the proposed development on its own, and with existing commitments, would represent a lower level of growth anticipated in the SHMA than that for North West Leicestershire as a whole. As set out above, when having regard to the sustainability credentials of the site and settlement, it is considered that the settlement is capable of accommodating some housing growth for the District. It is not considered that the scale of growth as calculated in either scenario above would result in a significant increase in housing development within the village.

When considered cumulatively with commitments and the other major housing proposal for the village reported later on this agenda (a maximum of 75 dwellings), this would equate to a 23.15% (based on 324 properties) or 25% (based on 300) increase in new dwellings within the village, which would represent a higher level of growth anticipated for the village than proposed across the District as a whole in both the GL Hearn Study and the SHMA.

Whilst the level of growth is considerably higher than the District-wide figure contained in the SHMA, when having regard to the sustainability credentials of Packington (including its close relationship with Ashby), it is considered that Packington is capable of accommodating an above average level of housing growth for the District. In this context, it is not considered that the scale of growth would result in a significant increase in housing development within the village.

*Ground Five - The Council breached the statutory duties under s70(2) of the Town and Country Planning Act 1990 (as amended) and in s38 (6) of the Planning and Compulsory Purchase Act 2004 to have regard to "any other material considerations". The Council also failed to apply the approach in accordance with case of R(Kides) v South Cambridgeshire DC 2003 1 P&G CR 19. The approach adopted by the officer in this case in light of the acknowledged new material consideration of going from a position of having no 5YHLS to having one, falls far short of the*

*test in Kides and he clearly erred in concluding that the matter should not be referred back to the committee for the reasons specified in the Grounds of Claim.*

*Housing Land Supply and Limits to Development*

The NPPF requires that the Council should be able to identify a five year supply of housing land with an additional buffer of 5% or 20% depending on its previous record of housing delivery.

The five year supply of housing has been assessed against the joint Strategic Housing Market Assessment (SHMA) 2014 and the Local Planning Authority is currently able to demonstrate a five year supply, including a 20% buffer. Having regard to this and the approach set out in Paragraph 49 of the NPPF, saved Local Plan Policy S3 is, for the purposes of deciding this application, considered to be up-to-date in the context of Paragraph 49. It is accepted that this proposal would be contrary to Policy S3 of the Local Plan. However, given that the Limits to Development as defined in the adopted Local Plan were drawn having regard to housing requirements only up until the end of that Plan Period (i.e. to 2006), this needs to be taken into account when considering the weight to be applied to any conflict with this policy.

In addition, the NPPF's provisions do not specifically seek to preclude development within the countryside, and consideration must therefore be given to whether the proposals constitute sustainable development (including in its economic, social and environmental roles) given the presumption in favour of such as set out in the NPPF.

Having regard to the three dimensions of sustainable development, it was previously recommended in the original officer report and accepted by the Planning Committee that the contribution to the economic growth associated with the proposed development, together with appropriate contributions towards affordable housing, play area provision and the inclusion of appropriate contributions to local services would ensure that the scheme would sit well in terms of the economic and social dimensions. Insofar as the environmental role is concerned, whilst the proposed development would result in the development of land outside of the defined Limits to Development, the proposed development would not result in any unacceptable impacts on the natural, built or historic environment and, by virtue of its location, close to the existing built up area and associated services, and its accessibility to public transport, would perform reasonably well in terms of need to travel and the movement towards a low carbon economy.

It is accepted that the site lies outside limits to development, that Policy S3 of the Local Plan is not out of date and the Council can now demonstrate a five year land supply. However, there has been no material change in circumstances that would lead to a different conclusion in respect of the sustainability credentials of the site as previously reported to the Planning Committee in June 2014 and the proposal is still considered to constitute sustainable development in NPPF terms. Therefore, the existence of a five year housing land supply is not a reason for refusal of a sustainable development and given the need to maintain a five year supply of housing, it is considered that release of the site would still remain appropriate.

*R (Kides) v South Cambridgeshire District Council*

The tests contained in this case sets out that, faced with a change in the 5 year housing land supply, the planning officer ought to have reported this matter back to committee unless s/he was satisfied that members would have reached the same decision. For various reasons, the planning officer in this case reached the conclusion that members would, once again, approve the application.

In any event, the matter is now being reported back to committee due to the fact that the planning permission has been quashed and so the challenge on the basis of *Kides* falls away.

Grounds Six - *legitimate expectation to report the matter back to committee*

The District Council conceded Ground Six is made out and the application is being reported back to Planning Committee.

**OTHER MATTERS**

*Best and most versatile agricultural land*

One of the objections raised is based upon the loss of BMV agricultural land. This was considered in the original report and members are asked to have regard to the contents of that report in this regard. However, to summarise, the Council accepts that the proposed development would not sit particularly comfortably with the requirements of the NPPF and, in particular, the aims of paragraph 112. However, this would need to be weighed against other material considerations and, whilst there would be adverse impacts in this regard, these concerns would not be so significant as to outweigh the considerations in favour of the scheme. When given the overall conclusions in respect of whether the site constitutes sustainable development in NPPF terms, and given the need to maintain a five year supply of housing, it is considered that the potential agricultural land quality issue is not sufficient to suggest that planning permission should be refused, particularly given the relatively limited extent of the potential loss (i.e. 2.2ha).

*Section 106 Contributions*

In terms of the Section 106 contributions requested in the original officer report, from April 2015, no more than five obligations can be pooled by the charging authority to provide for the same item of infrastructure. Accordingly it will be necessary for the relevant consultees, in relation to the requests previously made, to demonstrate that no issues arise in respect of pooling (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

In terms of the request made by the Police, it is considered that, in principle, contributions towards policing may be capable of being justified in terms of satisfying the relevant NPPF and CIL Regulations tests. However, officers are of the view that, subject to the Police being able to demonstrate in a robust manner that the assumed levels of increased policing activity are appropriate given the scale of the proposed development, of the contributions previously requested, only those in respect of the start up equipment for additional staff and vehicles have the potential to satisfy the relevant NPPF and CIL tests. It would also be necessary for Leicestershire Police to demonstrate that no issues in respect of pooling would arise (insofar as the limitations on pooled contributions as set out within the CIL Regulations are concerned).

*Original officer report/update sheet*

Where there has been no change in the District Council's consideration in respect of particular issues which have not been superseded by this report, the content of the original officer report/update sheet (attached) remains valid and Members should also take this into account in the determination of this application.

**RECOMMENDATION - PERMIT, subject to the signing of a S106 Agreement and subject to the previously imposed conditions.**