

# Supplementary Agenda



<b>Meeting name</b>	<b>Meeting of the Cabinet</b>
<b>Date</b>	<b>Wednesday, 13 September 2023</b>
<b>Start time</b>	<b>4.30 pm</b>
<b>Venue</b>	<b>Parkside, Station Approach, Burton Street, Melton Mowbray, Leicestershire. LE13 1GH</b>
<b>Other information</b>	<b>This meeting is open to the public</b>

<b>Meeting enquiries</b>	Democratic Services
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<b>No.</b>	<b>Item</b>	<b>Page No.</b>
5.	<b>PLANNING ENFORCEMENT POLICY</b> A report to seek approval for the adoption of a Planning Enforcement Policy.	1 - 36
10.	<b>SUPPORTING THE DELIVERY OF MMDR SOUTH</b> To receive a report on supporting the delivery of MMDR South.	37 - 54

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Helping people | Shaping places



## Cabinet

13 September 2023

### Planning Enforcement Policy

<b>Report Author:</b>	<b>Louise Parker</b> , Planning Development Manager
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<b>Portfolio Holder Responsible</b>	<b>Councillor Margaret Glancy</b> - Portfolio Holder for Governance, Environment and Regulatory Services (Deputy Leader)

<b>Corporate Priority:</b>	3: Delivering sustainable and inclusive growth in Melton
<b>Relevant Ward Member(s):</b>	All
<b>Date of consultation with Ward Member(s):</b>	N/A
<b>Exempt Information:</b>	No
<b>Key Decision:</b>	No
<b>Subject to call-in:</b>	Yes

#### 1 Summary

- 1.1 Planning enforcement is a discretionary function of the planning system, but is nevertheless important and necessary to ensure ongoing public trust in the planning system. Planning enforcement powers are set out in the Town and Country Planning Act.
- 1.2 The purpose of this report is to seek approval for the adoption of a Planning Enforcement Policy that will help the Council in managing the planning enforcement function in a consistent, effective and compliant way.

## 2 Recommendation(s)

### That Cabinet:

- 2.1 **Approves the Planning Enforcement Policy (Appendix 1) plus the associated Appendices to the Policy (A-E) for adoption and publication on the Council's website.**

## 3 Reason for Recommendations

- 3.1 'Delivering sustainable and inclusive growth in Melton' and 'Protecting our built and natural environment' are key corporate priorities for the Council. Planning enforcement is an important tool available to the Council in achieving these priorities.
- 3.2 Melton Borough Council as a local planning authority is a responsible body for planning enforcement within the Borough.
- 3.3 The purpose of the Planning Enforcement Policy is to ensure effective and proper enforcement of planning controls is in place to protect the local environment and interests of the residents, visitors and businesses from the harmful effects of unauthorised development and breaches of planning control. It is important and necessary to ensure ongoing public trust in the planning system.

## 4 Background

- 4.1 The National Planning Policy Framework (NPPF, 2021) advises at paragraph 59:  
"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."
- 4.2 Central government advice on planning enforcement is set out primarily in the Planning Practice Guidance (PPG) 'Ensuring Effective Enforcement', which was most recently updated in July 2019. It emphasises the importance for local authorities to prepare and adopt local enforcement policies and plans.
- 4.3 Council approved a new post of Planning Enforcement Officer at its meeting in April 2022, and the post was created and subsequently recruited to in October 2022. The Officer set about writing the Council's new Planning Enforcement Policy (also responding to an audit requirement), alongside managing the substantial backlog of caseload relating to planning enforcement as there had been no dedicated resource since a council decision to remove it in 2015.
- 4.4 An audit of planning enforcement functions was undertaken last year by the internal audit team which highlighted the need for a Planning Enforcement Policy. This document represents a culmination of that work.

## **5 Main Considerations**

5.1 The Planning Enforcement Policy is necessary to summarise how the Council undertakes its enforcement duties using the powers that it has available to it. The policy covers the following details:

- How enforcement complaints can be made to the Council (including the minimum requirements)
- When we will and will not take action
- The legislative requirements
- How we prioritise enforcement complaints
- Enforcement options
- Powers / Notices that are available to the Council to take action
- Timeframes for complaints to be acknowledged

5.2 The approach to prioritisation of planning enforcement complaints as identified in the policy will inform future planning of the workload within the planning enforcement function of the Council, and assist in preparing the Planning Enforcement Plan which will be reviewed on an annual basis.

5.3 The Policy is expected to provide clarity to:

- All stakeholders regarding the Council's approach and process in dealing with alleged planning breaches.
- Complainants regarding how to complain and who to approach regarding identified or suspected breaches.
- Owners/occupiers/applicants regarding what actions Council would take.
- All stakeholders regarding options available to the Council and types of actions that could be taken in specific circumstances.
- All stakeholders regarding what can be dealt with by this policy and what is excluded.
- Council officers regarding process to follow and how to prioritise workload.
- Councillors regarding performance of the enforcement function.

## **6 Options Considered**

6.1 Not create / approve a Planning Enforcement Policy – this is not considered a viable option as it is an audit recommendation to have one in place.

6.2 Approve the Planning Enforcement Policy – recommended option as it is an audit requirement, and furthermore it assists the local community in understanding how the Council undertakes its enforcement duties, and the service that can be expected.

## **7 Consultation**

7.1 This policy has been prepared in consultation with planning and legal officers in the Council.

## **8 Next Steps – Implementation and Communication**

- 8.1 Following approval, the Policy will be uploaded to the website, and customers will be referred to it so that they can understand the processes and procedures we have in place to deal with enforcement complaints related to planning.

## **9 Financial Implications**

- 9.1 There are no financial implications associated with this decision

**Financial Implications reviewed by: David Scott, Assistant Director for Resources**

## **10 Legal and Governance Implications**

- 10.1 Planning enforcement is a discretionary function of the planning system and the Council but is important and necessary to ensure ongoing public trust in the planning system. Melton Borough Council as a local planning authority have powers available to take action where necessary.
- 10.2 Planning enforcement powers are mainly set out in legislation (primarily through the Town and Country Planning Act 1990) and the Policy reflects these legislative provisions. There are also considerations within national guidance (such as the National Planning Policy Framework and Planning Practice Guidance) that are reflected within the Policy.
- 10.3 Other statutory provisions may be engaged depending on the particular case (e.g. the Human Rights Act 1998 and the Equalities Act 2010) and reference is made within the Policy.
- 10.4 It is good practice to have a planning enforcement policy in place to govern and explain and how decisions will be made.

**Legal Implications reviewed by: Senior Solicitor**

## **11 Equality and Safeguarding Implications**

- 11.1 An Equalities Impact Assessment has been undertaken during the development of the policy.
- 11.2 There are no equality and safeguarding implications of the proposed policy.

## **12 Data Protection Implications**

- 12.1 A Data Protection Impact Assessment (DPIA) has not been completed for the following reasons:
- There are no data protection implications of the Policy.
  - Planning enforcement complaints are confidential – the Council does not share the details of the person making the complaint, but does require the person making the complaint to give their details.

## **13 Community Safety Implications**

- 13.1 None

## 14 Environmental and Climate Change Implications

14.1 Planning enforcement can often be associated with remedying harm caused when planning control is breached. This can include heritage, archaeology etc.

14.2 The Policy is considered a positive impact on the environment for these reasons.

## 15 Other Implications (where significant)

15.1 None

## 16 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	The Policy is not approved and therefore the Council continues to have no formal Planning Enforcement Policy.	Very Low	Critical	Medium Risk

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High				
	4 Significant				
	3 Low				
	2 Very Low			1	
	1 Almost impossible				

Risk No	Mitigation
1	Adopt the proposed Planning Enforcement Policy

## **17 Background Papers.**

17.1 None

## **18 Appendices**

- 18.1 Appendix 1: Planning Enforcement Policy
- 18.2 Appendix A: Reporting Procedure
- 18.3 Appendix B: Enforcement Options
- 18.4 Appendix C: Types of Formal Enforcement Proceedings
- 18.5 Appendix D: Roles and Responsibilities
- 18.6 Appendix E: Performance Indicators





# Planning Enforcement Policy

**September 2023**

## Document Control

Policy Title	Planning Enforcement Policy
Status / Version	Draft for Decision (V14)
Author	Planning Development Manager
Location of Policy	Public / Website
Lead Member Responsible	Cabinet Portfolio Holder for Governance, Environment & Regulatory Services
Equality Impact Assessment Approval	In progress
Partnership Involvement (If applicable)	N/A
Final Policy Approval Route	Cabinet (13 <sup>th</sup> September 2023)
Date Policy Approved	To follow
Date Policy Due for Review (maximum 5 years)	July 2028

## **CONTENTS**

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- 2. Legislative Framework and Government Guidance**
- 3. The objectives and key principles of planning enforcement**
- 4. Our approach to planning enforcement**
- 5. Scope of works and exclusions**
- 6. Enforcement priorities and Expediency**
- 7. Feedback, compliments and complaints handling**
- 8. Equality impact**
- 9. Review and Monitoring**
- 10. Record keeping protocols and data management**
- 11. Appendices**
  - A. Reporting procedure
  - B. Options for enforcement actions
  - C. Types of formal enforcement proceedings
  - D. Roles and responsibilities
  - E. Performance indicators

## 1. INTRODUCTION

- 1.1 Melton Borough Council is responsible for enforcing a wide range of legislation within the Borough. The planning system operates to regulate development and the use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of the residents, visitors and businesses from the harmful effects of unauthorised development.
- 1.2 There is an expectation that each council should develop and publish a planning enforcement strategy setting out how it will exercise its planning enforcement responsibilities and include details of:
- how and to whom a complaint about an alleged breach of planning of planning control should be made;
  - how the council will deal with alleged breaches of planning control; and
  - the timescales for dealing with different types of breaches of planning control depending upon their severity.
- 1.3 This Planning Enforcement Policy sets out the framework by which Melton Borough Council's authorised Officers will make decisions in respect of the Council's compliance and enforcement activities. It summarises how we prioritise our work, the enforcement tools available, and how complaints are investigated. The Council is committed to ensuring that all Officers abide by this policy.
- 1.4 The Council seeks to promote an efficient and effective approach to enforcement, which improves outcomes without imposing unnecessary burden. Planning enforcement is a very complex area of the planning system. It should be noted that the legal processes involved are often lengthy and complicated and an instant resolution cannot be guaranteed.
- 1.5 In Melton, the enforcement functions are carried out under the Scheme of Delegation to Officers. The Director of Growth and Regeneration has delegated authority to investigate and to take enforcement proceedings relating to Planning Enforcement. Many of these functions are further delegated to Officers according to their qualifications and competency.

## 2. Legislative Framework and Government Guidance

2.1	Local planning authorities have powers within the Town and Country Planning Act 1990 (as amended) to investigate alleged breaches of planning control and have powers to remedy proven breaches by statutory and other means.
2.2	The following sets out the legislative framework applicable to breaches of planning control.
2.3	The Council's powers in relation to planning enforcement are set out in the following Acts of Parliament, Orders and Regulations.
	<ul style="list-style-type: none"> <li>• The Town and Country Planning Act 1990 (as amended)</li> </ul>
	<ul style="list-style-type: none"> <li>• The Planning (Listed Building and Conservation Areas) Act 1990 (as amended)</li> </ul>
	<ul style="list-style-type: none"> <li>• The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)</li> </ul>
	<ul style="list-style-type: none"> <li>• Town and Country Planning (Tree Preservation) Regulations (England) 2012 (as amended)</li> </ul>
	<ul style="list-style-type: none"> <li>• The Town and Country Planning (General Permitted Development) Order 2015 (as amended)</li> </ul>
	<ul style="list-style-type: none"> <li>• The Town and Country Planning (Use Classes) Order 1987(England) (as amended)</li> </ul>
2.4	Advice from Central Government on planning enforcement is set out in the following documents:

The National Planning Policy Framework (July 2021) and National Planning Practice Guidance (NPPG) make it clear that the powers provided by the Act are discretionary and should only be used when it is expedient to do so. Any action taken should be commensurate with the seriousness of the breach of planning control and the harm caused or harm that may be caused. Section 59 of the NPPF states that: -

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”*

National Planning Practice Guidance (NPPG)	
2.5	Advice from Central Government on planning enforcement is set out primarily in the 'Planning Practice Guidance' (PPG) 'Ensuring Effective Enforcement' that came into effect on 1 March 2014, and was last updated in July 2019. It emphasises the importance for local planning authorities to prepare and adopt local enforcement policies and plans because they:-

- |  |
|--|
| <ul style="list-style-type: none"> <li>• Allow engagement in the process of defining objectives and priorities which are tailored to local circumstances.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Set out the priorities for enforcement action, which will inform decisions about when to take enforcement action.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Provide greater certainty for all parties engaged in the development process.</li> </ul>  |

2.6	The European Convention of Human Rights confers rights that are embodied in the Human Rights Act 1998. It would be unlawful for the Council to act in a way that is incompatible with a Convention right.
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2.7	The Public-Sector Equality Duty (Equality Act 2010)
	The general equality duty is set out in section 149 of the Equality Act 2010 eliminates unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. Advance equality of opportunity between people who share a protected characteristic and those who do not.

### 3. Key objectives

3.1 The main objectives of the Planning Enforcement Policy for Melton are:-

- To ensure enforcement of planning conditions in a fair and robust way
- To remedy undesirable effects of unauthorised developments
- To react proportionately and reasonably in response to notifications of breaches to planning approvals

3.2 Key Principles

The Legislative and Regulatory Reform Act 2006 sets out the following regulatory principles:

- a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent.

b) regulatory activities should be targeted only at cases in which action is needed.

3.3 The Council follows the principles of the central and local government Concordat on Good Enforcement (the Concordat). The Concordat sets out the principles of good enforcement practice. These are:

**Standards:** to publish clear standards of service and performance.

**Openness:** to provide information and advice in plain language, to discuss problems with anyone experiencing difficulties and to be transparent in decision making processes.

**Helpfulness:** to work with all parties to advise on and assist with compliance. To provide contact details for further information.

**Consistency:** to carry out duties in a fair, equitable and consistent manner.

**Proportionality:** to take action in proportion to the risks posed and how serious the breach is.

**Complaints about the Service:** to provide well publicised, effective and timely complaints procedures.

3.4 In all enforcement activity it is important that the Council adopts the legal concept that the guilt of an accused person cannot be presumed and that they must be assumed to be innocent until proven otherwise.

#### 4. Our Approach to Enforcement

- 4.1 We recognise that most people want to comply with the law. We want to cooperate with businesses and individuals to achieve compliance. If there is a problem, we want to resolve it by communicating clearly and encouraging people to behave responsibly. We will follow the '4 Es' approach to enforcement:



- 4.2 We will engage and explain how we think the person or business are not complying with Planning Legislation and encourage them to change their behaviour to reduce the risk to public health, safety, welfare or to the environment.
- 4.3 Formal enforcement action is always a last resort. The Council consider facts of the case and assess them against Planning Legislation, Local and National Policies.
- 4.4 The Council is committed to fair and objective enforcement ensuring that all its policies are applied in a non-discriminatory manner and aimed at promoting good community relations. This policy is applied in accordance with the principles of the Council's Equality Policy.
- 4.5 Melton Borough Council is a public authority for the purposes of the Human Rights Act 1998. The Council will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 4.6 Should Melton Borough Council conclude that a provision in this policy does not apply or is outweighed by another provision, it will ensure that any decision to depart from the policy will be properly reasoned, based on material planning evidence and documented.
- 4.7 Anonymous complaints, under normal circumstances, will not be actioned unless they are of a very serious nature, and it is in the public interest to do so.



## **5. Scope of works - What we deal with**

- 5.1 The Council has a duty to investigate alleged breaches of planning control. A breach of planning control broadly means the carrying out of development without the grant of planning permission from the Council, or deemed permission by government order. A breach will also include the carrying out of development without compliance with the approved plans or any conditions attached to a planning permission.
- 5.2 The Council has powers to remedy proven breaches by statutory and other means. It is our policy to exercise these powers appropriately so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission. The purpose of this policy is to ensure that councillors and officers, external agencies and the general public are aware of the Council's approach to its planning enforcement responsibilities.
- 5.3 Unauthorised works to listed buildings, trees covered by Tree Preservation Orders, trees within a Conservation Area and advertisements also come within the scope of planning control, but unlike the breaches identified above constitute a criminal offence.
- 5.4 The Council also investigates offences under the Hedgerows Regulations 1997 and High Hedge Complaints under Part 8 of the Anti-Social Behaviour Act 2003.

## **5.5 Exclusions**

- Complaints where there is no supporting evidence to substantiate an allegation.
- Neighbour boundary disputes.
- Property and land ownership issues.
- Dangerous structures
- Persistent complaints that we have previously investigated, and we consider have been resolved.
- Breaches of covenants between landowners or trespass issues.
- Civil matters relating property deeds.
- Anonymous complaints
- Malicious or vexatious reports
- Fly posting.
- Loss of views.
- Alleged reduced value of property or land.
- Competition between businesses.
- Offences specifically defined under the Highways Act 1980.

## 6. Enforcement Priorities

- 6.1 A set of priorities are proposed for investigating alleged breaches of planning control or reported criminal offences. To make the most effective use of available resources, the Council will investigate alleged breaches of planning control in accordance with the priorities listed in Table 1 below.
- 6.2 The priorities take into account the significance and impact of the breach, the level of harm caused and also the need to react expediently. For example, unauthorised works to listed buildings often require immediate investigation in order to prevent loss of historic features which may be irreplaceable. Other complaints are minor in nature such as certain breaches of conditions which may not be causing any direct harm and therefore do not require immediate investigation.
- 6.2 As an investigation of a particular case proceeds, for example after a site visit, it may become necessary to change the priority level.

**Table 1: Enforcement Priorities**

<b>Priority</b>	<b>Type of Breach</b>
Priority 1 - High	<ul style="list-style-type: none"><li>• Works to listed buildings (demolition/alteration/disrepair);</li><li>• Demolition or significant development in a conservation area</li><li>• Works to trees covered by a Tree Preservation Order or in a Conservation Area</li><li>• Development causing serious and immediate/irreparable harm, particularly to protected ecology or causing serious danger to the public</li></ul>
Priority 2 - Medium	<ul style="list-style-type: none"><li>• Operational development already in progress;</li><li>• Development where potentially immune from enforcement within 6 months</li><li>• Development causing serious harm to amenity;</li><li>• Breaches of condition/non-compliance with approved plans causing serious harm to amenity</li></ul>

Priority 3 - Lower	<ul style="list-style-type: none"> <li>• Other operational development which is complete;</li> <li>• Changes of use resulting in some harm to amenity;</li> <li>• Advertisements (other than flyposting);</li> <li>• Breaches of condition/non-compliance with approved plans causing non-serious harm to amenity</li> </ul>
Priority 4 - Low	<ul style="list-style-type: none"> <li>• Changes of Use resulting in no harm to amenity;</li> <li>• Untidy land (other than where comes under Environment &amp; Health legislation)</li> </ul>

6.4 Upon receipt of a reported breach of planning control or reported criminal offence as set out in section 2, the Council will endeavour to conduct an initial site inspection in accordance with the priorities listed in table 1 and within the timescales detailed in Table 2 (below).

**Table 2 – Anticipated site inspection timescales**

<b>PRIORITY</b>	<b>SITE INSEPCION TIMETABLE</b>
Priority 1 – High	Within 5 working days
Priority 2 – Medium	Within 14 working days
Priority 3 – Lower	Within 21 working days
Priority 4 - Low	Within 28 working days

6.5 We can make visits out of normal working hours where it is appropriate and considered necessary to do so, and where the breach is of substantial immediate concern.

6.6 Planning Enforcement Officers are not empowered to physically stop unauthorised works on site but can issue enforcement proceedings which can

lead to prosecution. Considerable back office support is required to administer enforcement proceedings and accordingly investigations are contained to normal office hours.

## 7. Expediency

- 7.1 When it is technically possible to take enforcement action the Council is required to decide whether such formal action would be 'expedient'; this means that formal action is discretionary as defined within National Policy and Guidance, and all the relevant planning circumstances must first be considered.
- 7.2 In considering "expediency" the decisive issue is whether the breach would unacceptably harm public amenity. Any enforcement action should be proportionate to the breach. This duty means that we would not be acting correctly if we enforced against every breach of planning control in the Borough. There will be cases where there is a breach of planning legislation, but the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.
- 7.3 In cases where it has been established that a breach of planning control has occurred at the initial stage, the planning enforcement officer will undertake an assessment of expediency to determine which course of action should be taken. This expediency test will take account of:-
- Whether the breach is in accordance with the policies of the Melton Local Plan.
  - The breach against any other material planning considerations.
  - Whether, had a planning permission been submitted before the development occurred, permission would have been likely to be granted.
  - Whether the breach unacceptably affects public amenity.
  - Whether the breach unacceptably affects any existing land use or buildings.
  - Which merit protection in the public interest.
  - Whether action would be proportionate with the breach to which it relates.
  - Whether action would be in the public interest.
- 7.4 In deciding, in each case, what is the most appropriate way forward, the Council will refrain from taking formal enforcement action where: -
- There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area.
  - Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development.
  - In their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

- 7.5 The vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier. According to the Council's adopted approach, formal action only takes place where it is expedient to do so and where other means to resolve the problem have failed. Ordinarily formal action will only be taken as a last resort and when the breach of planning control is causing significant or irreparable harm to the amenity of the area or is a breach of local planning policy.
- 7.6 The impact of some development is more harmful than others and therefore enforcement action must always be appropriate to the seriousness of the breach of planning control.
- 7.7 The focus of our service is to remedy serious breaches of planning control not to punish those who are in breach of legislation. It is therefore acceptable that those concerned are given the opportunity to remedy any identified breach. This may be through a retrospective planning application or negotiating a solution acceptable to the Council in line with national guidance, best practice and local planning policies. Just because something is a breach of planning control is not, in itself, a justifiable reason to take enforcement action.
- 7.8 Whilst not condoning wilful breaches of planning control, the Council will not take disproportionate action and will not seek to 'punish' those responsible by taking action against technical breaches that cause no serious harm to public amenity.

## **8. Feedback, compliments and complaints handling**

- 8.1 Customer feedback is very important to us, whether it's a general comment or observation about a service we provide, a compliment about something we've done well or a complaint about something you are not happy with.
- 8.2 The Council is committed to listening to your feedback and acting on what we hear, to continually improve the quality of, and access to, the services it provides.
- 8.3 We will use your views to look at our services and see how we can continue to build on the good aspects and how we can improve those you feel are not as good as they could be.
- 8.4 Feedback, compliments and complaints are part of our Customer Services processes, and the information you give to us is covered by the Customer Services Enquiries Privacy Notes.
- 8.5 Please note that if your complaint is about a data protection matter, this will be referred to the Council's Data Protection Officer.
- 8.6 Details on our Complaints Policy can be found here: <https://www.melton.gov.uk/strategies/digital-customer-service-and-communications/customer-feedback-and-complaints-policy/>
- 8.7 Conduct Towards Officers

The Council is committed to ensuring that its Officers are able to carry out their work safely and without fear and will use legal action to prevent abuse, harassment or assaults on Officers.

## **9. Equality Impact Statement**

- 9.1 The Planning Enforcement Policy has been subject to an Equality Impact Assessment to ensure that the objectives and actions contained in the Plan fully consider positive outcomes on the grounds of age, disability, gender, race, religion/belief, sexuality and socio-economic circumstances.
- 9.2 If you need this information in large print, Braille or another language please telephone 01664 502502 or email [contactus@melton.gov.uk](mailto:contactus@melton.gov.uk)



## **10. Review and Monitoring**

- 10.1 This policy will be reviewed and updated with changes in legislation, guidance or other circumstances which may impact on the principles set out in this document. It will be routinely reviewed every five years.
- 10.2 The performance of the Planning Enforcement Policy will be monitored in accordance with the Council's performance management framework. Quarterly updates will be provided to the Cabinet on corporate measures and an annual update will be presented at the meetings of Planning Committee as well as the Council on the performance of agreed indicators.

## **11. Record Keeping Protocols and Data Management**

- 11.1 In accordance with section 188 of the Town and Country Planning Act 1990, we hold a register of all enforcement notices, stop notices and breach of condition notices served. This is available for inspection by the public. Anyone wishing to view the register via prior appointment, should do so by contacting the Council's Planning Development Manager.
- 11.2 In accordance with the General Data Protection Regulation (and Data Protection Act 2018), Freedom of Information Act 2000 and Environmental Information Regulations 2004, the Council will not disclose any information relating to the identity of a complainant. However, as any occupiers of land or buildings close to the breach of planning control will usually be the most affected, it is possible that an individual subject of an investigation will make their own assumptions as to who may have informed the Council.

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## Appendix A: Reporting Procedure

1. Breaches of planning control can be reported to the Council by completing our on-line Planning Enforcement Complaints Form or contacting our Customer Service Centre on 01664 502502, or Email: [planningenforcement@melton.gov.uk](mailto:planningenforcement@melton.gov.uk).
2. The Council will endeavour to acknowledge receipt of a reported breach of planning control within 5 working days. The acknowledgement will either be by letter, e-mail or telephone and will provide the name and contact details of the investigating officer and a case reference number.
3. If on initial receipt of a complaint it is obvious that it is not a planning matter or there is deemed to be no breach of planning control the complainant will be notified. If the reported breach relates to a function or activity enforced by another Council service (e.g. fly tipping or statutory nuisance) the complaint will be forwarded to the relevant department.
4. We will update the complainant as our investigation is progressing. This may be to explain that a planning application is going to be made, that we are monitoring the situation or that we are considering taking formal action.
5. To avoid the unnecessary use of resources in responding to hoax or malicious allegations; anonymous reports of suspected breaches of planning control will only be pursued where an initial site visit reveals a clear breach of planning control. All other anonymous reports will not be pursued beyond an initial site visit.
6. When a complaint is made, it is treated in confidence and the details of the complainant are not shared. If, however, the breach is serious enough that we decide to prosecute, we would need to name the complainant at that point. We would contact the complainant where this is necessary.

## **Appendix B: Enforcement Options**

On completion of the initial site visit, the findings will be assessed, and a view taken as to how the investigation will proceed.

### **Option 1 - No further action**

1. The Council may, following initial investigation decide that there has been no breach of planning control or that the breach is minor or insignificant in nature, or that there is insufficient evidence to pursue the matter. In this case, the Council may decide to take no further action.

### **Option 2 - Further investigation required**

1. It may be necessary to carry out further investigations from the initial site inspection to determine whether a breach of planning control has occurred. This may involve additional site inspections, research, seeking advice from other services or agencies or further information from the complainant, site owner or other parties.
2. In certain cases, the Council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach. If the person reporting the suspected breach of planning control is unwilling to assist, they will be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence being available.
3. Where it appears to the Council that a breach of planning control may have occurred, it will consider serving a Planning Contravention Notice or Requisition for Information to obtain information relating to the suspected breach or site ownership details.

### **Option 3 - Negotiate a solution**

1. Where it has been established that a breach of planning control has occurred, the Council will normally attempt to negotiate a solution to regularise the breach

of planning control without recourse to formal enforcement action (see paragraph 9.1 above).

2. Such negotiations may involve the reduction or cessation of an unauthorised use of activity, or the modification or removal of unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, the Council will consider whether or not it is expedient to take formal enforcement action.

#### **Option 4 - Retrospective application for planning permission**

1. Where a breach of planning control has occurred, but no harm is being caused, or any harm might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such circumstances, it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take formal enforcement action

#### **Option 5 - Formal enforcement action**

1. Where it has been established that a breach of planning control has occurred, the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers listed in Table 3 below is discretionary and will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach of planning control and each case is assessed on its own merits.
2. The Decision to take enforcement action or commence a prosecution will be taken in accordance with the delegation arrangements detailed in the Council's Constitution.
3. There are rights of appeal to the Secretary of State against an Enforcement

Notice / Listed Building / Conservation Area Enforcement Notice. In the case of Breach of Condition Notices and Temporary Stop Notices there is no right of appeal to the Secretary of State, and these may only be challenged by application for judicial review to the High Court. In the case of Section 215 Notices, prosecutions and injunctions, appeals must be made through the Courts.

## **Appendix C: Types of Formal Enforcement Proceedings**

### **C1 : Enforcement Notice**

1. The Council will consider the service of an Enforcement Notice where unauthorised operational development or change of use has taken place and it is considered expedient to do so.
2. Where a breach of planning control exists and any harm caused would be removed or alleviated by the imposition of conditions on a planning permission, but the invitation to submit a retrospective planning application or rectify the breach voluntarily has been declined, the Council will consider the expediency of serving an Enforcement Notice.
3. If the breach of planning control relates to a Listed Building, or unauthorised demolition within a Conservation Area, the Council will consider the expediency of serving a Listed Building Enforcement Notice or a Conservation Area Enforcement Notice and where appropriate, commencing a prosecution in the Courts.
4. The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.

### **C2. Stop Notices**

1. Where a breach of planning control is causing very serious harm to public amenity and the environment, and this harm could not be removed or alleviated by the imposition of conditions on a planning permission, the Council will consider the expediency of serving a Stop Notice (after the service of an Enforcement Notice) in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related Enforcement Notice.

2. The Stop Notice will refer to the Enforcement Notice to which it relates, specify the activity or activities that are required to cease, and the date that it takes effect.

### **C3: Temporary Stop Notice**

1. The effect of issuing a Temporary Stop Notice will be to halt the breach of planning control, or the specified activity immediately. Before issuing a Temporary Stop Notice, the local planning authority must be satisfied that there has been a breach of planning control and that “it is expedient that the activity which amounts to the breach is stopped immediately.
2. A Temporary Stop Notice requires that an activity which is a breach of planning control should stop immediately.

### **C4: Breach of Condition Notice**

1. A Breach of Condition Notice is mainly intended as an alternative to an Enforcement Notice for remedying a breach of condition – but it may also be served in addition to an Enforcement Notice, perhaps as an alternative to a Stop Notice, where the local planning authority consider it expedient to stop the breach quickly and before any appeal against the Enforcement Notice is determined.
2. Any recipient of a Breach of Condition notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased.

### **C5: Section 215 Notice (Untidy Land Notice)**

1. In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider the expediency of serving a Notice under s.215 of the Town and Country Planning Act 1990.
2. The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it takes effect.



## **C6: Community Protection Notice**

1. In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider the expediency of serving such Notice under the Anti-Social Behaviour Crime and Policing Act 2014.
2. A Community Protection Notice (CPN) is aimed to prevent unreasonable behaviour that is having a negative impact on the local community's quality of life. Examples include persistent untidy land and motor repairs on driveways.

## **C7: Prosecution**

The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.

- I. Enforcement Notice
- II. Proceeds of Crime Act (POCA)
- III. Listed Building Enforcement Notice
- IV. Breach of Condition Notice
- V. Section 215 Notice
- VI. Stop Notice

The Council will also consider commencing a prosecution in the Courts where:

- Unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area.
- An Advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored.
- Unauthorised works have been carried out to a Listed Building.
- Unauthorised demolition has taken place in a Conservation Area.
- The recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information.

Before commencing any legal proceedings, the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

## **C8: Injunctions**

1. Where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Courts for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing, or likely to cause, exceptional harm.
2. An injunction can stop unauthorised works from carried out.

## **C9: Direct Action**

Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether it is expedient to exercise its power under s.178 of the Town and Country Planning Act 1990 (as amended). The Council can:

- enter the land and take the steps required;
- recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

### **1. Right of entry**

- a. Local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes (sections 196A, 196B and section 196C of the Town and Country Planning Act 1990). This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control.
- b. The Act specifies the purposes for which entry to land may be authorised (section 196A(1) of the Town and Country Planning Act 1990), namely:
  - To ascertain whether there is or has been any breach of planning control on the land or any other land;
  - To determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
  - To determine how any such power should be exercised; and
  - To ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

## **2. Unauthorised Encampments**

- The travelling community can experience difficulties finding an approved place to stay. This means that sometimes they stop on land without permission, including highway verges and lay-bys. This Council's approach is based on preventing unlawful occupation of land.
- Encampments on Council land will result in legal proceedings to evict the travellers. In the case of highway land, such as verges and lay-bys, the matter will be taken up with Leicestershire County Council, which is the local highway authority.
- Trespassing on land is a civil matter, with prevention of trespass being the responsibility of the landowner. Landowners will need to seek appropriate legal advice in these circumstances.

## **3. Proactive Enforcement**

- Paragraph 58 of the National Planning Policy Framework states "Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.
- The Council will undertake a programme of monitoring a sample of developments to ensure that:-
  - any necessary planning permission has been obtained
  - development has been carried out in accordance with plans approved on planning permissions
  - conditions attached to planning permissions have been complied with. Investigation Officers will use information from the Council's Building Control Service to help organise the programme.
- A percentage of permissions will be selected for monitoring. The Council will not select monitoring cases based on the developers involved.

# Appendix D: Roles and Responsibilities

## Responsible Person - Planning Development Manager

### Duties including

- Overall responsibility for the management and delivery of Planning Enforcement service in accordance with the Council's policies and procedures
- Provide professional leadership of the Council's Enforcement Team ensuring a level of quality assurance
- Signing enforcement notices in accordance with the constitution / scheme of delegation
- Monitoring and reporting on performance indicators to Senior Leadership Team and Planning Committee
- Responsible for preparation, implementation, monitoring, reporting and reviewing of the planning enforcement policy
- Ensuring training, qualifications and resource requirements for the team to enable the implementation of the policy

## Competent Persons -

### Planning Enforcement Officer

### Duties including

- Responsible officer for handling planning enforcement cases, including major breaches of planning controls
- Investigate planning enforcement complaints, identifying appropriate courses of actions ensuring all relevant legislation is considered and followed
- Updating customers, managers and members as appropriate
- Maintaining accurate and up to date records
- Taking necessary action where breaches of planning control have been identified
- Gathering evidence for prosecution / legal action
- Attending briefing and committees as and when required and giving evidence in court
- Assisting the Development Manager with data collection and monitoring in respect of key performance indicators
- Keep the qualifications, CPD and training updated at all times

### Planning Officers

### Duties including

- Assisting the Planning Enforcement Officer where necessary, for instance in site visits where the site is known to the Officer
- In the absence of enforcement officer, perform all the above mentioned duties of the planning enforcement officer as directed by the managers
- Liaising where appropriate with the Planning Enforcement Officer to ensure that recommended conditions are enforceable
- Advising customers how to make enforcement complaints

### Planning & Enforcement Technical Officer/ Planning Admin Officers

### Duties including

- Receipt and acknowledgement of incidents, notifications of breaches and complaints
- Registration and allocation of cases
- Maintaining accurate and up to date records

- Updating customers as appropriate
- Assist the planning enforcement officers and planning officers in undertaking responsibilities for minor cases as directed
- Taking necessary action where minor breaches of planning control have been identified
- Assisting the Development Manager with data collection and monitoring in respect of key performance indicators

## Legal Officers

### Duties including

- Providing support with expert advice and guidance regarding complex enforcement issues
- Provide direction to ensure compliance with the Council's governance policies
- Ensure prosecution files meet court standards
- Present prosecution files via the court system

## Senior Leadership Oversight

### Director of Growth and Regeneration and Assistant Director of Planning

### Duties including

- Signing enforcement notices in accordance with the constitution / scheme of delegation
- Providing strategic oversight of the service

## **Appendix E: Performance Indicators**

Key Performance Indicators to monitor the performance at service level are as below:

### **Corporate level indicators: (reported to Cabinet on quarterly basis, and planning committee on annual basis)**

- Number of enforcement cases resolved this quarter
- Number of enforcement notices issued this quarter

### **Service level indicators: (reported to planning committee on annual basis)**

- Number of enforcement cases received this quarter
- Average number of days taken to determine enforcement cases (end to end)
- Number of outstanding enforcement cases (enable identification of backlogs)
- Number of complaints received for the service
- Number of compliments received for the service
- Number of successful prosecutions
- Number of people satisfied with the service received (based on survey)

### **PS1/2 returns (reported to Government on quarterly basis and planning committee on annual basis)**

- Number of enforcement notices issued
- Number of stop notices served (excluding temporary stop notices)
- Number of temporary stop notices served
- Number of planning contravention notices served
- Number of breach of condition notices served
- Number of enforcement injunctions granted by High Court or County Court
- Number of injunctive applications refused by High Court or County Court

Annual data cleanse to be undertaken on the Uniform system to ensure information integrity.



Helping people | Shaping places



## Cabinet

13 September 2023

### Supporting the Delivery of MMDR South

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<b>Portfolio Holder Responsible</b>	<b>Councillor Pip Allnatt</b> - Leader of the Council & Portfolio Holder for Housing and Landlord Services
<b>Corporate Priority:</b>	3: Delivering sustainable and inclusive growth in Melton 4. Protect our climate and enhance our rural, natural environment
<b>Relevant Ward Member(s):</b>	All
<b>Date of consultation with Ward Member(s):</b>	Ongoing
<b>Exempt Information:</b>	The Report contains exempt information in an exempt appendix. The information is exempt on the basis that it contains information relating to the financial or business affairs of a particular person or authority as defined in Schedule 12 of the Local Government Act 1972 (as amended).
<b>Key Decision:</b>	No
<b>Subject to call-in:</b>	No Not key decision

#### 1 Summary

- 1.1 This paper sets out the background to the Melton Local Plan, the key infrastructure delivery requirements to maintain an up-to-date Plan and the necessity for all elements of the Melton Mowbray Distributor Road (MMDR), North, East and South to support this.
- 1.2 Additionally, the paper sets out the detail of this Council’s existing commitments to Leicestershire County Council in respect of the MMDR South (and other infrastructure in Melton) and its importance to the relevance of the Melton Local Plan.

- 1.3 Leicestershire County Council (LCC) wrote to Melton Borough Council on 27 June 2023 (Appendix A) setting out its requests of this Council to ensure that it continues to proceed with the MMDR South project. This report details the requests and our responses to them.

## 2 Recommendation(s)

### That Cabinet:

- 2.1 **Confirms Melton Borough Council remains fully committed to:**
- (i) supporting the delivery of the Melton Mowbray Distributor Road South (MMDRS) scheme;**
  - (ii) honouring its obligations under the Staged Payment Agreement (SPA) with Leicestershire County Council dated November 2021; and**
  - (iii) discharging any other obligations arising from documents approved by Cabinet at its Meetings in September, October and December 2021.**
- 2.2 **Confirms it remains committed to securing the delivery of the MMDRS in partnership with LCC. To that end, Cabinet:**
- (i) notes the progress made in collaboration with LCC following receipt of their letter at Appendix A.**
  - (ii) confirms it will explore the options and opportunities to further boost the delivery of housing and associated contributions towards the provision of road infrastructure in the short and medium term, and endorses the approach set out in paragraph 6.3 below; and,**
  - (iii) confirms it will explore the potential to secure 3<sup>rd</sup> party funding for the road should the opportunity arise.**

## 3 Reason for Recommendations

- 3.1 The MMDR schemes are essential to the delivery of the Melton Local Plan, and to the success of the town as set out in the Corporate Strategy and its Priorities. Without the Local Plan the borough would be subject to unplanned speculative development which would undermine local communities' confidence in the planning system and be likely to undermine the Council's strategy for sustainable development.
- 3.2 Following the May 2023 Local Elections, and recent correspondence with Leicestershire County Council (see appendix A), the Council's new administration wishes to publicly reaffirm the Council's commitment to the terms of the agreements entered into with Leicestershire County Council (LCC) in 2021.
- 3.3 The Council also wishes to set out the basis upon which it will continue to support LCC in delivering the MMDRS, bearing in mind constraints imposed by the legal system within which it must operate.

## 4 Background

- 4.1 Melton Mowbray is identified as a Key Centre for Regeneration and Growth in the Leicester and Leicestershire Strategic Growth Plan (2018). Based on further Leicester and Leicestershire (L&L) wide evidence, Melton Borough Council (MBC) has also committed



through a Statement of Common Ground to accommodate some of Leicester City's unmet needs as part of the Duty to Cooperate, alongside most of the other L&L authorities. The number of homes can be accommodated within the existing headroom of the Local Plan housing allocations (i.e. the current Local Plan meets all identified unmet needs and no more housing has to be found in the Plan Period).

- 4.2 The Melton Local Plan sets out to deliver a total of 6125 dwellings in the period 2011- 2036. The Plan has an adopted stepped housing trajectory which started with 170 dwellings per year (from 2011) and is now at 240 homes per year. It will rise to 320 from 2026/27 to the end of the plan period. The adopted housing targets are based on the government's standard method, evidenced delivery rates (considering market capacity) and the Council's positive appetite for growth to bring forward substantial investment into the town (including the MMDR). To date the Plan has been performing well against these targets.
- 4.3 Delivery of the MMDRS is essential to the delivery of one of the two Sustainable Neighbourhoods as allocated in the adopted Melton Local Plan (2011-2036). Policy SS4 of the Plan allocates land for housing and employment purposes in the Melton South Sustainable Neighbourhood (MSSN). The policy seeks to deliver 2000 homes, of which 1700 homes are to be delivered before 2036 (the end of the Plan Period). This is approximately one third of the total housing that the Plan is set to deliver across the Borough. To date, 555 homes have been permitted in the MSSN and are under construction. Additionally, the MMDRS, when coupled with the MMDR N&E, will allow for through-traffic HGVs to be routed away from the town centre, improving air quality and reducing traffic noise as part of a wider transport strategy.
- 4.4 Without the housing and employment land that the MMDRS supports (in addition to the MMDR North and East currently under construction), the delivery of housing around Melton would be at risk. The Melton Local Plan would then be likely to become "out of date". In that event, the Borough would become susceptible to speculative unplanned development.
- 4.5 During 2020/21 in seeking to support delivery of the MMDRS, MBC acknowledged the significant investment that is to be made in Melton by LCC and made clear commitments to assist in mitigating these risks where possible, whilst ensuring the Council was not unduly exposed to financial or legal risks. MBC duly agreed to provide a package of measures to support LCC's bid for Homes England Grant Funding from the Housing Infrastructure Fund (HIF). MBC responded positively to updates provided to LCC's Cabinet in July and September 2021 which set out a number of requirements they wished MBC to meet in order for LCC to sign the Grant Determination Agreement (GDA) and deliver the scheme.
- 4.6 All of the commitments entered into by MBC were carefully considered to avoid exposing the Council to undue financial or legal risks.
- 4.7 MBC subsequently discharged all of the obligations that it had accepted, including:
  - a) Adoption of a Developer Contributions Supplementary Planning Document ([Cabinet 23 September, 2021](#))
  - b) Approval of Masterplans for both the Melton North Sustainable Neighbourhood (MNSN) ([Cabinet 13 October, 2021](#)) and Melton South Sustainable Neighbourhood (MSSN) ([Cabinet 08 December, 2021](#)).

c) Approval to enter a Staged Payment Agreement (SPA) up to a cap of £1.75m plus indexation to support LCC with the costs associated with the scheme and related infrastructure ([Council 02 November, 2021](#)).

- 4.8 Bolstered by MBC's commitment, LCC entered into a GDA with Homes England in early 2022.
- 4.9 The projected costs of the MMDRS scheme have increased substantially in recent years, this would increase the financial cost to LCC unless alternative sources of funding can be secured. The additional costs also increase the risk associated with the significant level of developer contributions, which need to be forward funded, and would not be received until after the road is built. In 2019 the scheme was estimated to cost about £27.5m. The outturn cost is now projected to be as much as £61.4m. Homes England's grant funding remains at £18.5m. This is in addition to the MMDR N&E scheme for which the County Council was successful at securing grant funding from Department for Transport of £49.5m. The costs of that scheme have also increased substantially since the inception of the project from about £70m to approximately £125m.
- 4.10 The increased cost of the project has caused Homes England to require LCC to formulate a "Remediation Plan" which demonstrates the delivery of the MMDRS is still viable. LCC has sought MBC's support of the Plan, and as a part of this process wrote to MBC under cover of a letter dated 27 June 2023 setting out the ways in which MBC might provide it with further assistance. A copy of that letter is attached as Appendix A to this report.

## 5 Main Considerations

### Melton Local Plan

- 5.1 The Melton Local Plan sets out the strategy for growth of the Borough over the period 2011-2036 and was adopted in October 2018 following successful examination in public. The adoption of the Plan was the culmination of around 5 years work, and resulted in a Plan which has been performing well to date. The Plan is currently under review as per the requirements set out in the National Planning Policy Framework as it approaches its fifth anniversary of adoption in October 2023.
- 5.2 The Council has a substantial supply of land for housing, which currently stands at 9.1 years. It is also delivering new homes at a rate in excess of the targets set out in the Plan. The housing is being delivered in accordance with the Plan's Strategy. Overall, the Plan is thus performing well.
- 5.3 The MMDR N&E scheme is now under construction, and this is ensuring that the Melton North Sustainable Neighbourhood is delivering the development as set out in the Local Plan (Policy SS5). This is also a key piece of infrastructure required to both deliver the Plan and alleviate traffic congestion in Melton Mowbray.
- 5.4 However, if the MSSN and the MMDRS (in addition to the MMDR N&E and the MNSN) are not delivered that is likely to frustrate or significantly delay the delivery of new homes. Put another way, the substantial supply of housing land will not be "translated" into the delivery of new homes. In those circumstances, it is probable that the Melton Local Plan will be rendered "out of date" in terms of the National Planning Policy Framework. That would seriously undermine the utility of the Local Plan as a mechanism for delivering local people's aspirations for Melton and the rest of the Borough.

- 5.5 Should the Melton Local Plan be deemed out of date, the problems that would create could endure for some time; the preparation of a new Plan would take (under the current regulations) c. 3-5 years. The Levelling Up and Regeneration Bill (which is likely to become law in autumn 2023) provides that the last date to submit a Local Plan for examination under the current regulations will be 30 June 2025. This is the date that the Council is working towards for submission of the Local Plan Review Update. Therefore, the Council cannot begin work on a new Local Plan until the regulations associated with the new legislation are published. That is expected to be in mid-2024. The Council would therefore be without an up-to-date adopted or emerging Local Plan for a considerable length of time, further risking unplanned and speculative planning applications.
- 5.6 At its [Cabinet Meeting on 13 July 2022](#), MBC agreed to sign a Statement of Common Ground (SoCG) on housing and employment need across Leicester and Leicestershire. The SoCG forms part of the Council's legal duty to cooperate and is based on Leicester and Leicestershire wide evidence on housing needs. The SoCG agrees to an apportionment of Leicester City's unmet housing and employment land needs up to 2036. MBC agreed to assist with Leicester City's unmet housing needs and deliver an additional 69 dwellings per year. This was possible because the Council was proactive in the preparation of its Local Plan in acknowledging that the City's unmet needs would need to be dealt with in the coming years. Consequently, the housing target that Melton Borough Council chose to pursue is more than required. The current housing land supply trajectory can deliver this unmet need within the existing housing allocations.
- 5.7 Should the development strategy in the adopted Plan be undermined by the non-delivery of the MMDRS and the MSSN, MBC would not be able to continue to accept its apportionment of Leicester City's unmet needs as per the SoCG. This adversely affects both Leicester City's draft Local Plan (due to be submitted for examination imminently), and the apportionment of housing across the entire Leicestershire area, potentially affecting other Plans currently under examination (Charnwood).

### **Melton South Sustainable Neighbourhood Masterplan**

- 5.8 The requirement for housing that is specified in the Local Plan is a "minimum" not a maximum amount of housing. In that context, the MSSN Masterplan demonstrates that a further 830 dwellings can be delivered in excess of the Policy requirement defined within the Plan Period. The Masterplan also demonstrates delivery of around 24 hectares of employment land, some 4 hectares over the policy requirement. The Masterplan anticipates some of the additional homes may be built on land which is allocated for employment. The latest evidence is that the Council may need to find a further 10ha of employment land during the Plan Period. Consequently, it is unlikely to be feasible to contemplate the loss of further employment land to housing.

## **6 Consideration of 'Additional Planning Options'**

- 6.1 In its letter of 27 June 2023 (Appendix A), LCC have asked MBC to explore potential planning solutions to support them in ensuring that the project can proceed. MBC has previously demonstrated this commitment by our timely delivery of masterplans and the Developer Contributions SPD as referred to above at paragraph 4.7.
- 6.2 MBC were therefore keen to discuss what was envisaged by LCC and any potential further planning solutions, whilst recognising they need to continue to operate within the

boundaries of ensuring compliance with the relevant legislation, whilst also noting the upcoming regulatory changes anticipated.

- 6.3 In response to the letter (Appendix A), officers met with LCC colleagues on 09 and 16 August 2023. Additional information was provided by email on 29 August 2023 to provide additional clarity and discussions are ongoing to consider potential solutions. The Council's current position in relation to each point is discussed below:

**1. The political leadership of MBC should resolve at a Full Council meeting to confirm MBC's commitment to the November 2021 contract.**

Noted, please see the content of this report. As there is no decision to be taken it is not a resolution at Council that is required in this instance, hence the matter is presented to Cabinet.

**2. Secondly, there should be a resolution at a MBC Full Council meeting in support of towards finding planning solutions so this project can proceed, as proposed below:**

- a) **MBC will, consistent with its legal obligations, continue to prioritise the Strategic Transport Contributions (STC) in any relevant S106 agreements in line with MBC's adopted Supplementary Planning Document**

Agreed, MBC will continue to utilise and promote the Developer Contributions SPD.

- b) **MBC will support a review of the STC to reflect the latest cost estimates enabling an immediate uplift, applicable to all applications where final observations have not been issued, recognising that viability considerations will be relevant to final requests just as they are now. This review would be followed by an annual uplift in the STC, in line with inflation.**

Agreed, recognising the inflationary pressures since 2017, MBC officers will support the review in accordance with CIL Regulations.

- c) **MBC will expedite the delivery of applications that contribute STC to minimise forward funding by LCC, subject to developers engaging with MBC and submitting applications for planning permission.**

MBC will work continue to work positively and pro-actively with all developers to grant planning permission as soon as possible where a scheme is acceptable. This commitment applies in particular to schemes for allocated sites or sites with outline planning permission that will assist the delivery of strategic infrastructure such as the MMDRS. MBC welcomes LCC's support in ensuring timely responses as a statutory consultee to ensure this happens.

- d) **MBC will encourage its planning officers to cooperate with LCC in relation to addressing any planning applications concerned with the delivery of education provision (e.g. in the event that LCC considers it necessary to alter its development plans to build fewer but larger schools, to minimise land take, in or around Melton).**

Agreed in principle. However, care will need to be taken to ensure existing planning obligations are not prejudiced by any new arrangements.

- e) **MBC will facilitate the delivery of additional housing to provide for future need (subject to the receipt of the planning applications for housing), in addition to the current allocation, to increase STC to support the viability of necessary infrastructure delivery.**

LCC has indicated the delivery of MMDRS would be assisted by the delivery of an additional 850 dwellings (minimum) within 10 years of completion of the road, or by the end of the Plan Period, whichever is soonest. One (but only one) of the benefits of providing these additional dwellings would be in part to help reduce the funding gap for the road. MBC is content to explore this proposal in so far as it is consistent with the strategy of the adopted Local Plan, or a review of the Local Plan, and provided the work that is carried out complies with the relevant provisions of the Planning Acts and Local Plans Regulations.

In order to give further assurance to LCC, MBC proposes that as part of the Local Plan Review and Update, a change is tabled to policy IN1: Melton Mowbray Transport Strategy (MMTS) to ensure that STC's continue to be valid for all developments within a defined area (to be evidenced by LCC on the basis of transport modelling through the Local Plan Review & Update / Duty to Cooperate process). This could form part of an 'area-based contribution strategy' for the Melton Mowbray Transport Strategy, including the MMDR scheme as a whole. STC's could continue until it could be demonstrated that the scheme had been paid for in full.

- f) **MBC will facilitate the redistribution of current employment allocations to allow for additional housing within the Sustainable Neighbourhood to support the viability of necessary infrastructure delivery.**

MBC will consider any proposal to develop housing on employment land on its merits having regard to the provisions of the development plan and other material considerations. In general, however, the question whether employment land should be systematically redesignated as housing land ought to be considered by a review of the Local Plan.

- g) **MBC will seek to secure appropriate 3<sup>rd</sup> party investment (e.g. levelling up funding) to reduce the funding gaps if the scheme proceeds.**

Agreed in principle provided an application does not prejudice existing funding for the MMDRS.

- 6.4 It is important to note that MBC is required to comply with all relevant laws, regulations and guidance regulating the exercise of its planning powers. For the avoidance of doubt, no part of this report is intended to fetter the discretion of MBC's planning committee.

## **7 Options Considered**

- 7.1 MBC discontinues support for LCC through withdrawing from the Staged Payment Agreement (SPA). This option has been discounted for the reasons as set out above, particularly in respect of the impact on the Local Plan. Furthermore, this Council entered into a legally binding agreement to support LCC to deliver the infrastructure that Melton

requires. The reputation of the Council would be substantially adversely impacted should we decide to no longer proceed with the SPA.

- 7.2 MBC seeks to renegotiate the SPD with the County Council. This option is only likely to involve requests for additional funding from the County Council given the macro-economic circumstances in regard to inflation and interest rates substantially increasing build costs. For this reason, this is not a recommended option.
- 7.3 Acknowledge the existing agreement (SPA) and continue to support LCC in delivering the MMDRS to allow delivery of the adopted Local Plan. This option is the preferred and recommended option for the reasons as set out above in the 'background' and 'main considerations' within the report.

#### **Options that MBC could consider should LCC not deliver the MMDR South**

- 7.4 Should the MMDRS not proceed, the Council will be required to consider further alternative options, with the first consideration to be to protect the integrity of the adopted Local Plan, or else be required to develop a new Local Plan (subject to the constraints outlined above at paragraph 5.5).

## **8 Consultation**

- 8.1 Consultation has been ongoing with members for many years post the adoption of the Local Plan, including post-2023 elections involving newly elected members.
- 8.2 The decisions to approve the Masterplans, and to adopt the Developer Contributions SPD were made by this Council's Cabinet in late 2021. The Staged Payment Agreement was signed following a decision made by Council in December 2021 (following recommendation by Cabinet). These documents are linked in paragraph 4.7 above.
- 8.3 The Local Plan Review was approved to commence in April 2022 by Council. The results of the Review are due to be heard by Council in September 2023, with a view to updating the Local Development Scheme and commencing the first statutory consultation, Issues and Options (Regulation 18) in the autumn. This should enable the Plan to be updated and submitted to the Planning Inspectorate prior to the deadline of 30 June 2025.

## **9 Next Steps – Implementation and Communication**

- 9.1 N/A

## **10 Financial Implications**

- 10.1 Should members support the recommendation as outlined above there would be no further financial implications to the Council other than those previously identified through the reports detailing the SPA.

**Financial Implications reviewed by: David Scott, Assistant Director for Resources**

## **11 Legal and Governance Implications**

- 11.1 Members are not being asked to sign a new agreement or make a decision other than to continue to support LCC as previously agreed by Cabinet and Council. It is therefore not considered that there are any further legal implications to be considered at this stage.

**Legal Implications reviewed by: Alison McKane, Assistant Director for Governance and Democracy**

## **12 Equality and Safeguarding Implications**

- 12.1 None

## **13 Data Protection Implications (Mandatory)**

- 13.1 A Data Protection Impact Assessment (DPIA) has not been completed for the following reason:

- i) There are no data protection implications of this report as there is no personal data being shared, discussed or disclosed.

## **14 Community Safety Implications**

- 14.1 None

## **15 Environmental and Climate Change Implications**

- 15.1 Should the MMDRS proceed there will be less HGV related noise and pollution in the town centre, and improvements to air quality should be seen.
- 15.2 The MMDRS would be constructed in accordance with all relevant legislation and regulations, particularly in respect of ecology, biodiversity and archaeology. The submission of planning documents will detail this in full once the relevant surveys etc. have been completed.

## **16 Other Implications (where significant)**

- 16.1 None other than those set out above in respect of the Melton Local Plan.

## 17 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	LCC fail to build the MMDRS, rendering the Melton Local Plan out of date.	Significant	Critical	Medium Risk
2	This Council fails to uphold the existing agreement/s with LCC in respect of the MMDRS and infrastructure (so long as LCC builds the road)	Very Low	Critical	Medium Risk

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High				
	4 Significant			1	
	3 Low				
	2 Very Low			2	
	1 Almost impossible				

Risk No	Mitigation
1	Cabinet agree to the recommendations of this report and officers continue to work closely with LCC to bring the MMDRS forward.
2	Cabinet agree to the recommendations of this report and continue to support the SPA.

## 18 Background Papers.

18.1 None, hyperlinked through the document.

## 19 Appendices

19.1 Appendix A: Letter to Melton Borough Council from Leicestershire County Council dated 27 June 2023.

Appendix B: Exempt information





Alison McKane  
Interim Assistant Director for Governance and  
Democracy (Monitoring Officer)  
Melton Borough Council  
Burton Street  
Melton Mowbray  
Leicestershire LE13 1GH  
By email only: [amckane@melton.gov.uk](mailto:amckane@melton.gov.uk)

Date: 27<sup>th</sup> June 2023  
My Ref: F. McM  
Your Ref:  
Contact: Fiona McMillan  
Phone: 0116 305 2024  
Email: [fiona.mcmillan@leics.gov.uk](mailto:fiona.mcmillan@leics.gov.uk)

Dear Ms McKane,

## **Funding of the MMDR (South) Scheme**

I am writing on behalf of Ms Lauren Haslam (Director of Law & Governance), who is currently away from the office on annual leave.

I note the contents of your correspondence dated 7<sup>th</sup> June, in which you clarified Melton Borough Council's position in relation to the funding of the MMDR (South) Scheme and stated "*The Council remains fully committed to supporting Leicestershire County Council deliver the relief road, including the southern section, and will honour all financial and contractual commitments made.*"

Leicestershire County Council ("LCC") is of course grateful for your confirmation of MBC's willingness to adhere to its existing contractual obligations.

However, the funding agreement between MBC and the LCC was concluded in November 2021. At the time that funding agreement was concluded, the inflationary pressures impacting in 2022, which continue largely unabated, could not have been foreseen. As you may be aware, following a cost review, the current most likely budget estimate for MMDR (South) is £61.4m, which represents an increase of £24m from the previous budget estimate plus an associated £8m increase in portfolio risk.

At a project board meeting on 29 March 2023, it was disclosed to attendees including MBC' officers that Homes England had triggered the need for the County Council to produce a remediation plan. The practical effect of Homes England's decision was to require LCC to review the MMDR (South) project and develop a plan demonstrating how the County Council could actually afford to deliver the project notwithstanding the escalating costs.

If Homes England is not satisfied with the remediation plan produced by LCC then it could withhold grant funding. If Homes England were to do so, that would likely prove fatal to the progression of the MMDR (South) project, at least for the foreseeable future. Should

**Chief Executive's Department**

Leicestershire County Council, County Hall, Glenfield, Leicestershire LE3 8RA  
Telephone: 0116 232 3232 Fax: 0116 305 6161 Minicom: 0116 305 6870

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Lauren Haslam LLB(Hons), Dip.L.G., Director of Law and Governance

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that occur, the agreement concluded between LCC and MBC in November 2021 would be frustrated. Homes England and DLUHC are aware that this letter is being sent to you.

The Council accepts that MBC's contribution is contractually limited and also that it would be financially difficult for MBC to increase its direct financial contribution. Nevertheless, LCC sees scope for MBC to co-operate to support the project, which would help to demonstrate to Homes England that the remediation plan is deliverable as well as helping to support the economic viability of the project more generally.

Such support would be comprised of a number of elements: -

- (1) Firstly, the political leadership of MBC should resolve at a Full Council meeting to confirm MBC's commitment to the November 2021 contract.
- (2) Secondly, there should be a resolution at a MBC full council meeting in support of towards finding planning solutions so this project can proceed, as proposed below:
  - MBC will, consistent with its legal obligations, continue to prioritise the Strategic Transport Contributions (STC) in any relevant s106 agreements in line with MBC's adopted Supplementary Planning Document.
  - MBC will support a review of the STC to reflect the latest cost estimates enabling an immediate uplift, applicable to all applications where final observations have not been issued, recognising that viability considerations will be relevant to final requests just as they are now. This review would be followed by an annual uplift of the SCT, in line with inflation.
  - MBC will expedite the delivery of applications that contribute STC to minimise any forward funding by LCC, subject to developers engaging with MBC and submitting applications for planning permission.
  - MBC will encourage its planning officers to co-operate with LCC in relation to addressing any planning applications concerned with the delivery of education provision (e.g., in the event that LCC considers it necessary to alter its development plans to build fewer but larger schools, to minimise land take, in or around Melton).
  - MBC will facilitate the delivery of additional housing to provide for future need (subject to receipt of the planning applications for housing), in addition to the current allocation, to increase STC contributions to support the viability of necessary infrastructure delivery.

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**Lauren Haslam LLB(Hons), Dip.L.G., Director of Law and Governance**

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- MBC will facilitate the redistribution of current employment allocations to allow for additional housing with the sustainable neighbourhood to support the viability of necessary infrastructure delivery.
- MBC will seek to secure appropriate 3<sup>rd</sup> Party investment (e.g., levelling up funding) to reduce the funding gaps if the scheme proceeds.

The Council recognises that MBC is required to comply with all relevant laws, regulations and guidance regulating the exercise of its planning powers. There is, of course, no intention of trying to fetter the discretion of MBC's planning committee and no expectations that due process should be curtailed in order to develop new policy.

I look forward to hearing from you.

Yours sincerely,



**Fiona McMillan**  
**Head of Law (Deputy Monitoring Officer)**

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
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