



21/01213/VAC to Vary conditions 20 'Details of Open Space' and 21 'Maintenance and management of Open Space', to remove reference to play areas attached planning permission ref.16/00539/OUT at Field OS 6934 Bypass Road Asfordby

Corporate Priority:	Delivering sustainable and inclusive growth in Melton
Relevant Ward Member(s):	Councillor Ronnie de Burle & Councillor Steve Carter
Date of consultation with Ward Member(s):	3 November 2021
Exempt Information:	No

1 Summary



1.1 The application site is currently an area of open land between existing housing on Regency Road and the A6006 Asfordby bypass. Trees and hedge screening runs along

the northern boundary with Bypass Road. The site is accessed from Saxleby Road close to the village primary school. The approved scheme includes a further pedestrian access provided at the eastern end of the site onto Regency Road and there are some areas of public open space, including a surface water swale associated with a Sustainable Urban Drainage system (SUDs). There is a mix of 2 and 3 bedroomed dwellings across the site with on plot parking of a minimum two parking spaces. Some properties also have garages.

- 1.2 The approved scheme provides on-site affordable housing of 65% which is in excess of the policy requirement. Various financial contributions towards infrastructure were secured by the S106 agreement at outline stage, but this did not include play equipment or a play area.
- 1.3 The principle of residential development within the site has been established by outline planning permission ref. 16/00539/OUT and subsequent reserved matters application ref. 19/01291/REM. This application is an amended scheme which seeks to vary conditions 20 'Details of Open Space' and 21 'Maintenance and management of Open Space', attached to planning permission ref.16/00539/OUT. Specifically, it seeks to remove reference to play areas and play equipment within these conditions. There would be no change to the total amount of open space provided within the site.
- 1.4 The proposal was amended to omit the removal of condition 14 which requires the provision of new bus stops on Regency Road. It was demonstrated by the Local Highway authority (LHA) that the bus route still passed along Regency Road, and therefore condition 14 remains relevant.

RECOMMENDATION(S)
1. It is recommended the application is approved, subject to: (i) Conditions as set out in Appendix C

2 Reason for Recommendations

- 2.1.1 The principle of residential development on the site, and the access, has been established by planning permission ref.16/00539/OUT. Details of the site's appearance, landscaping, layout and scale were approved under planning permission ref.19/01291/REM. A number of conditions attached to these permissions have been discharged. This application seeks to vary conditions 20 and 21 attached to the outline planning permission ref.16/00539/OUT, specifically the removal of any reference to play areas and play equipment. The main consideration for this application is whether or not these conditions remain relevant or reasonable.
- 2.1.2 The indicative plans submitted as part of the outline application included areas of open space and the supporting documents referenced the provision of an equipped play area. It is also recognised that the Parish Council have expressed a desire for an equipped play area to be provided within the site. At the time planning permission was granted Melton Local Plan saved policy H11 formed part of the development plan. Policy H11 provides that planning permission will not be granted for residential development of 15 or more dwellings unless it makes provision for playing space in accordance with the Councils standards. At Appendix 6 of this Local Plan (on developments of 50 or more dwellings, every dwelling must be within a 5 minutes walk (240m straight line distance) of a LEAP (Local Equipped Area for Play). This policy has been superseded by Local Plan Policy

EN7 'Open Space, Sport and Recreation' which requires contributions towards open space, sport and recreation where there are identified local deficiencies.

- 2.1.3 It should be noted that the overall level of open space provided within the site would remain unchanged under the current proposal, and although it would not be defined formally as a LAP, a flat, grassed area would be provided within the site bounded by timber bollards which could be used as an informal play space for young children. Other small areas of open space would be provided to the north of the spine road which would provide for informal social interactions. Following the adoption of the Local Plan, policy EN7 superseded saved policy H11. Policy EN7 'Open Space, Sport and Recreation' sets a different threshold for the provision of play areas as part of residential schemes. It requires the provision of play areas on developments of 10 houses or more where there is an identified local deficiency. There are no identified local deficiencies for play areas or play equipment within Asfordby, and for this reason there is very limited planning policy justification for the provision of a play area or play equipment within the site. Therefore the principle of the development is supported by Local Plan policy EN7 and on balance it is considered that the reference to the provision of a play area or play equipment in conditions 20 and 21 are no longer relevant to the development permitted, or reasonable in all other respects.
- 2.1.4 Appendix B of this report sets out the suggested conditions, these are numbered slightly differently to the conditions attached to planning permission ref.16/00539/OUT. The numbering has altered as the time limit condition for the implementation of the development and the submission of a reserved matters application is no longer considered necessary, also other details required at the outline stage have been submitted and agreed which has reduced the number of archaeology conditions required from 3 to 2. As a result conditions 20 and 21 attached to planning permission 16/00539/OUT are numbered 18 and 19 in Appendix B.

3 Key Factors

3.1 Reason for Committee Determination

- 3.1.1 The Director for Growth and Regeneration (in consultation with the Chair of Planning Committee) considers this application as likely to raise matters which should be referred to the Committee.

3.2 Relevant Policies

- 3.2.1 The Melton Local Plan 2011-2036 was adopted on 10th October 2018 and is the Development Plan for the area. The relevant policies are outlined in Appendix C however, Policy EN7 'Open Space, Sport and Recreation' is considered to be particularly relevant.
- 3.2.2 The Local Plan is up to date and consistent with the latest revised versions of Government Guidance as contained in the National Planning Policy Framework.
- 3.2.3 The Design of Development Supplementary Planning Document (SPD) was adopted on 24th February 2022. It forms part of the Development Plan.
- 3.2.4 The Asfordby Neighbourhood Plan is at the early stages of the adoption process and can therefore be afforded very limited weight.

3.3 Main Issues

- 3.3.1 As set out in the National Planning Practice Guidance para.55 the purpose of planning conditions are to enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.
- 3.3.2 Paragraph 56 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests set out in para.57:
1. necessary;
 2. relevant to planning;
 3. relevant to the development to be permitted;
 4. enforceable;
 5. precise; and
 6. reasonable in all other respects.
- 3.3.3 Section 73 of the 1990 Town and Country Planning Act allows applicants to make: "applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted".
- 3.3.4 Where an applicant makes a Section 73 application the Local Planning Authority is only permitted to consider the question of the conditions attached to the planning permission. If the application is granted, then the developer has two planning permissions which could be implemented and developed out. If the application is refused the developer still has the benefit of the original planning permission.
- 3.3.5 The key point is that an amendment must be able to be facilitated through the variation or deletion of a condition. The main issues for the consideration of this application therefore are the reasonableness and the relevance of the provision of a play area or play equipment within the application site.
- 3.3.6 Consideration will be given to the quality of the open space proposed within the development with the equipped play area removed, in terms of its impacts and benefits for residential amenity. The visual quality and safety of the play equipment given that it was not possible to find long term provision for the play equipment. As well as changes to planning policy, in particular the Development Plan following the adoption of the Local Plan on the 10th October 2018.

4 Report Detail

4.1 Position under the Development Plan Policies

- 4.1.1 The site is located on the northern edge of the main built up area of the settlement of Asfordby, and is an allocated site for residential development.
- 4.1.2 Policy C1 (A) 'Housing Allocations' provides for new housing to be delivered within the Local Plan on sites including the application site, referenced as ASF2. There is no requirement set out in Local Plan Appendix 1 'Site allocations and policies planning policy' for the provision of a play area or play equipment within the application site.

4.1.3 Reasonableness and relevance

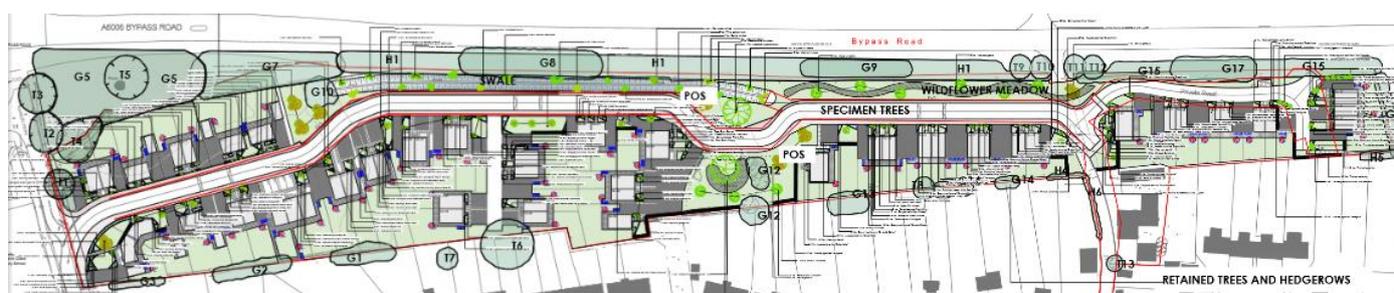
- 4.1.4 The provision of an equipped play area within the site was secured by planning conditions 20 'Details of Open Space' and 21 'Maintenance and management of Open Space' attached to planning permission ref.16/00539/OUT. The reason provided for the inclusion of condition 20 was: "To ensure the provision of adequate public open space" and for condition 21: "To ensure the future maintenance of public open space."
- 4.1.5 The provision of a play area was referenced in the outline application both in the Design and Access Statement which states: "The majority of the public amenity space is within the enhanced landscape buffer along the northern boundary with additional play area in the centre of the site alongside the pedestrian link path to the village." And in the Planning Statement: "Saved Policies H10 and H11 of the Adopted Melton Local Plan set out amenity space and playing space requirements. The submitted illustrative master plan shows how a small play area and other public amenity areas can be provided."
- 4.1.6 The Parish Council requested the provision of an equipped play area in their comments submitted to the outline application, in response to this the Committee Report states: "the application includes the provision of an equipped play area." The provision of an equipped play area therefore formed part of the consideration for the outline planning application and the fact that its provision was secured by a planning condition, condition 20, indicates that it was deemed necessary at the time to make the scheme acceptable in planning terms, in accordance with Local Plan Policy H11.
- 4.1.7 Policies relevant at the time of the outline application included, the now superseded, Local Plan Policy H11 which required developments of 15 or more dwellings to make provision for playing space in accordance with standards contained in Appendix 6. Appendix 6 required developments of 15 or more dwellings to include a Local Area for Play (LAP) within a 1 minute walk (60m straight line distance) of dwellings on the site and extend to a minimum area of 400 sqm and on developments of 50 or more dwellings, every dwelling must be within a 5 minutes walk (240m straight line distance) of a LEAP (Local Equipped Area for Play). The Draft Asfordby Neighbourhood Plan was also considered relevant at the time. Policy A22: 'Children's Play Areas' states: "*Local Areas for Play (LAP), normally small landscaped areas of open space designed for young children (under 6's), should be provided on new developments of ten or more dwellings. All homes on the development should be within five minutes safe walking time of a LAP, so on large developments more than one LAP may need to be provided. The design of LAPs should provide for a safe and attractive play area while encouraging the development of social skills. Their design should also aim to reduce the use by unintended visitors.*"
- 4.1.8 Policy H11 has subsequently been superseded by Local Plan Policy EN7 'Open Space, Sport and Recreation' which requires provision for children and young people (0.13ha/1000 population) where there are identified local deficiencies. As outlined in the 'Melton Space Study Open Space Assessment Support' (2014) current provision for children and young people is 0.13ha/1000 population in the 'Central Area', which includes Asfordby. It is therefore considered that there are no identified local deficiencies for play spaces for children in Asfordby.
- 4.1.9 The Draft Asfordby Neighbourhood Plan is useful in that it identifies the following existing equipped play areas in the plan area: Glendon Close, Asfordby, Jubilee Park, Asfordby, Brook Crescent, Asfordby Valley, and Compton Park, Asfordby Hill. Also at para. 7.22 in

the supporting text for Policy A15 'Children's Play Areas' it states: "The new housing developments we are planning are well located in relation to existing play areas." The application site is one of the new housing developments referred to. The centre of the application site is located approximately 600m from the equipped play area Jubilee Park, Asfordby and 650m from the equipped play area off Glendon Close, Asfordby.

4.1.10 The Fields Trust's guidance 'Guidance for Outdoor Sport and Play Beyond the Six Acre Standard' is referenced in the explanatory text for Policy EN7 at para.7.12.2. It sets out a number of benchmark guidelines including at Table 2 'Recommended Application of Quantity Benchmark Guidelines – Equipped/Designated Play Space' which advises developments of 11-200 dwellings should provide for a LAP and/or a LEAP, minimum sizes for these provisions are set out in table 4. Table 1 of the guidance sets out walking guidelines from houses to LAPs of 100m and LEAPs of 400m. These standards would have been applied had there been an identified local deficiency in Asfordby. The detailed landscaping plans submitted at the reserved matters stage did not include a play area, and no reference is made to a play area or play equipment in the submission. However, reference is made in the planning statement to the provision of small areas of open space to be used for informal social interaction. The Applicant has indicated that during pre-application discussions, prior to the submission of the reserved matters application, it was *"decided a development of this size did not, in itself, have enough scale to warrant formal play equipment and it was not considered reasonable for East Midlands Housing (EMH) to pay to maintain the play area for the benefit of the rest of the village. The question was then raised to the parish over whether they, or Melton Borough, were willing to adopt the play equipment. Neither organisation was willing to do so and therefore, it was agreed to not include any play equipment on the site."* Unfortunately there is no written record of this meeting however, the local councillor, Cllr. de Burle, agrees with the applicant that a requirement for a play area to be provided within the site was removed at an early stage of the planning application process. The question of adopting the play area has again been put to the Parish Council and Cllr de Burle, as chair of the Parish Council, has confirmed that the Parish Council would not wish to take on ownership or liability for an equipped play area within the site.

4.1.11 The proposal does not include a reduction in the overall level of open space provided within the site. In the space shown as a play area on the indicative plans submitted at the outline stage is a small area of open space bounded by timber bollards, protecting it from unintended users. The area would be level and mainly laid to grass with wildflower planting below a central tree canopy, and although it would not formally be provided as a play area it could be used by young children as an informal play space. The Applicant has confirmed that there are no limitations on the use of the open space within the site and they do not intend to do so.

4.1.12



- 4.1.13 The principle of the landscaping scheme was established under planning permission ref. 19/01291/REM, it was considered to enhance the visual amenity of the area, as well as provide biodiversity enhancements. An application to discharge condition 7 attached to this permission including details of all soft landscaping proposed on the completed development, including plant species, sizes and densities has been submitted under planning application ref. 20/01369/DIS. It is noted that both the County Council Ecology and Forestry departments are supportive of the proposed scheme.
- 4.1.14 .Although the proposal would not provide a formal LAP or LEAP it would provide small pockets of open green space along the spine road serving the application site. The areas of open space to the north of the spine road would be bounded by 1.2m high post and rail fencing including pedestrian gates. They would also provide opportunities for social interaction and for play, promoting social cohesion within the application site.

5 Consultation & Feedback

- 5.1 A site notice was posted on 09.11.2021 with responses due by 30.11.2021 with the proposal also being advertised in The Melton Times and letters sent to the immediate neighbours of the site and all contributors to planning application ref.19/01291/REM. No letters have been received from these households.

6 Financial Implications

- 6.1 No financial implications have been identified.

Financial Implications reviewed by: N/A

7 Legal and Governance Implications

- 7.1 No legal or governance issues have been identified.

Legal Implications reviewed by: Tom Pickwell (Solicitor)

8 Background Papers

- 8.1 Committee report for planning application ref. 16/00539/OUT
8.2 Committee report for planning application ref. 19/01291/REM

9 Appendices

- 9.1 A: Consultation responses
B: Recommended Conditions
C: Applicable Development Plan Policies
D: Site Photographs

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Appendix A : Summary of Statutory Consultation Responses

The Ward Councillor: Cllr. de Burle, in summary, supports the application in relation to the removal of condition 14, based on the supporting information. However, he is unable to support the changes to conditions 20 (open space and play equipment), and item 21 (maintenance and management of open space and play equipment) without more clarity on what is being proposed or intended. Open space and its maintenance on a small development like this one, is of high importance, in a village environment, and play equipment equally so. He does not believe any change to these conditions should be allowed without full and open dialogue, and most certainly not as a delegated decision.

Parish Council: In summary the Parish Council agreed unanimously to object because the council and parishioners only supported the development in the first place because of this provision.

LCC Highways as the Local Highway Authority (LHA): The Highway Authority objected to the removal of condition 14, in summary, on the grounds that there is still a bus service registered to route along Regency Road and therefore the LHA cannot agree to the removal of the condition.

Appendix B : Recommended Conditions

1. The development shall be carried out in accordance with the reserved matters including details of the layout, scale, external appearance of the buildings, and the landscaping of the site approved under planning permission ref.19/01291/REM
2. The reserved matters as required by condition 1 above, shall provide for a mixed of types and sizes of dwellings that will meet the area's local market housing need.
3. The development shall be carried out in accordance with the approved material schedule no.3739-60 Rev.D submitted on 15th October 2020.
4. A Landscape Management Plan, including a maintenance schedule and a written undertaking, including proposals for the long term management of landscape areas (other than small, privately occupied, domestic garden areas) shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner.

5. The approved landscape scheme (both hard and soft) shall be carried out before the occupation of the buildings or the completion of the development, whichever is the sooner; unless otherwise agreed in writing by the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
6. The approved surface water drainage scheme: 'Technical Note: Discharge of Planning Conditions 5 & 7 November 2010 ref.21511-01-TN-01a' submitted on 18 November 2020 shall be fully implemented and subsequently maintained, in accordance with the timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing by the local planning authority.
7. Prior to the first occupation of the development the approved acoustic fencing, and any other physical noise mitigation features detailed on drawing no.3739-52 Rev.B submitted on 10 March 2020 and 2019-PL1-02 submitted on 19 November 2020 shall be fully implemented and retained for the lifetime of the development.
8. The development shall be carried out in accordance with the approved details and timetable set out in the Construction Management Plan received on 6 August 2020, tracking and visibility drawing no.21511_03_110_03 received on 18 August 2020, Construction Method Statement v 1.4 received on 21 August 2020, and Temporary Access drawing 21511_03_020_02 rev.B received on 21 August 2020.
9. Notwithstanding MEC drawing 21151_08_020)01 revision A appended as Appendix H within the submitted Transport Statement, the entire extent of forward visibility shall fall within existing or prospective adopted highway as detailed in the approved 'Section 278 Road Setting Out Plan' drawing no.21511_03_050_01 Rev.A submitted to the Local Planning Authority on 1 September 2021.
10. The existing field vehicular accesses that become redundant on Saxelby Road and Regency Road as a result of the development shall be closed permanently and the existing vehicular crossings reinstated in accordance with a scheme that shall be first submitted to and approved in writing by the Local Planning Authority within one month of the new site access being brought into use.
11. There shall be no vehicular through routes from the development site onto Regency Road; the sole point of vehicular access shall be on Saxelby Road
12. Traffic Calming Scheme in the vicinity of Captain's Close Primary School on Saxelby Road shall be implemented in accordance with the approved scheme as detailed in amended drawing no.21511_03_080_01B and The Road Safety Audit submitted on 21 October and 19 January 2021.
13. Prior to first occupation, the nearest pair of bus stops shall be upgraded to include flags, poles and information display case on Regency Road the details of which shall be first submitted to and approved in writing by the Local Planning Authority and thereafter implemented in accordance with the approved details.
14. No development shall take place until a scheme for protecting the occupants of the

proposed development from noise from the A6006 By-Pass Road has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

15. No demolition/development shall take place other than in accordance with the Archaeological Desk Bases assessment by Border Archaeology dated April 2019, Written Scheme of Investigation by Border Archaeology dated April 2019, and Archaeological Field evaluation by Border Archaeology dated September 2019.
16. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation by Border Archaeology dated April 2019; and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
17. All development to be in accordance with the recommendations of the Ecological Appraisal and Protected Species Survey.
18. No development shall take place until a scheme for the provision of all open space has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include details of the laying out and construction of the open space and a timetable for its provision.
19. No development shall take place until details of the implementation, maintenance and management of the open space provided in accordance with condition 18 above has been submitted to and approved in writing by the Local Planning Authority. The provision of the open space shall be implemented and thereafter managed and maintained in accordance with the approved details.

The details of the scheme shall include:

- a) a timetable or its implementation; and
- b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by a public body or statutory undertaker, or any other arrangements to secure the maintenance of the open space throughout its lifetime.

The reasons for the conditions are:-

1. The application is in outline only.
2. To ensure that the housing needs of the borough are met.
3. To ensure the external appearance of the development is acceptable.
4. To ensure that due regard is paid to the continuing enhancement and preservation of amenity afforded by landscape areas of communal, public, nature conservation or historical significance.
5. To provide a reasonable period for the replacement of any planting.
6. To prevent flooding by ensuring the satisfactory storage of and disposal of surface water

from the site.

7. To ensure that these features are integrated into the overall design and layout of the site.
8. To reduce the possibility of deleterious material (mud, stones etc.) being deposited in the highway and becoming a hazard to road users, and to ensure that construction traffic/site traffic associated with the development does not lead to on-street parking problems in the area.
9. In the interests of highway safety.
10. To protect footway users in the interests of pedestrian safety, and to reduce the number of vehicular accesses to the site to reduce the number of potential conflict points.
11. In the interests of highway safety and to reduce the number of vehicular accesses to the site to reduce the number of potential conflict points.
12. In the interests of highway and pedestrian safety on Saxelby Road.
13. To provide improved public transport facilities to encourage modal shift and to inform new residents of the nearest bus services.
14. In order to control the noise in the interest of residential amenity.
15. To ensure satisfactory archaeological investigation and recording.
16. To ensure satisfactory archaeological investigation and recording.
17. In the interests of the ecology of the area.
18. To ensure the provision of adequate public open space.
19. To ensure the future maintenance of public open space.

Appendix C : Applicable Development Plan Policies

Melton Local Plan

SS1 – Presumption in favour of sustainable development

SS2 – Development Strategy

C1 (A) – Housing Allocations

C2 – Housing mix

C4 – Affordable Housing Provision

D1 – Raising the standard of Design

EN1- Landscape

EN2 – Biodiversity and Geodiversity

EN6 – Settlement character

EN9 – Low Carbon and Energy Efficiency

EN11 – Minimising the risk of Flooding

EN12 – Sustainable Drainage Systems

ASF2 – Asfordby Housing Allocation

IN2 – Transport, accessibility and parking

Draft Asfordby Neighbourhood Plan

A5: Water Management

A6: Biodiversity

A8: Design

A13: Affordable Housing

A15: Children’s Play Areas

A17: Infrastructure