Melton Borough Council

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Planning Committee

5 December 2023

Report of: Assistant Director for Planning

Reference number: 22/00601/VAC

Proposal: Variation of condition 21 (List of Approved Plans) of application Ref. 20/00318/VAC To allow a change to the parking arrangements for plot 73, an adjusted private drive and a re-routed non adopted footpath.

A revised viability assessment is also submitted to argue that the development is to make to reduced financial contributions in order remain viable.

Site: Field OS 4100 Lake Terrace Melton Mowbray

Applicant: GS Property Holdings Limited – Mr Mandeep Singh

Planning Officer: Andrew Cunningham

Report Author:	**Andrew Cunningham**, Senior Planning Officer
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Chief Officer Responsible:	**Sarah Legge**, Assistant Director for Planning
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Corporate Priority:	Delivering sustainable and inclusive growth in Melton
Relevant Ward Member(s):	Councillor Sarah Cox, Councillor Pat Cumbers, Councillor Marilyn Gordon (Melton Dorian)
Date of consultation with Ward Member(s):	17 June 2022
Exempt Information:	No

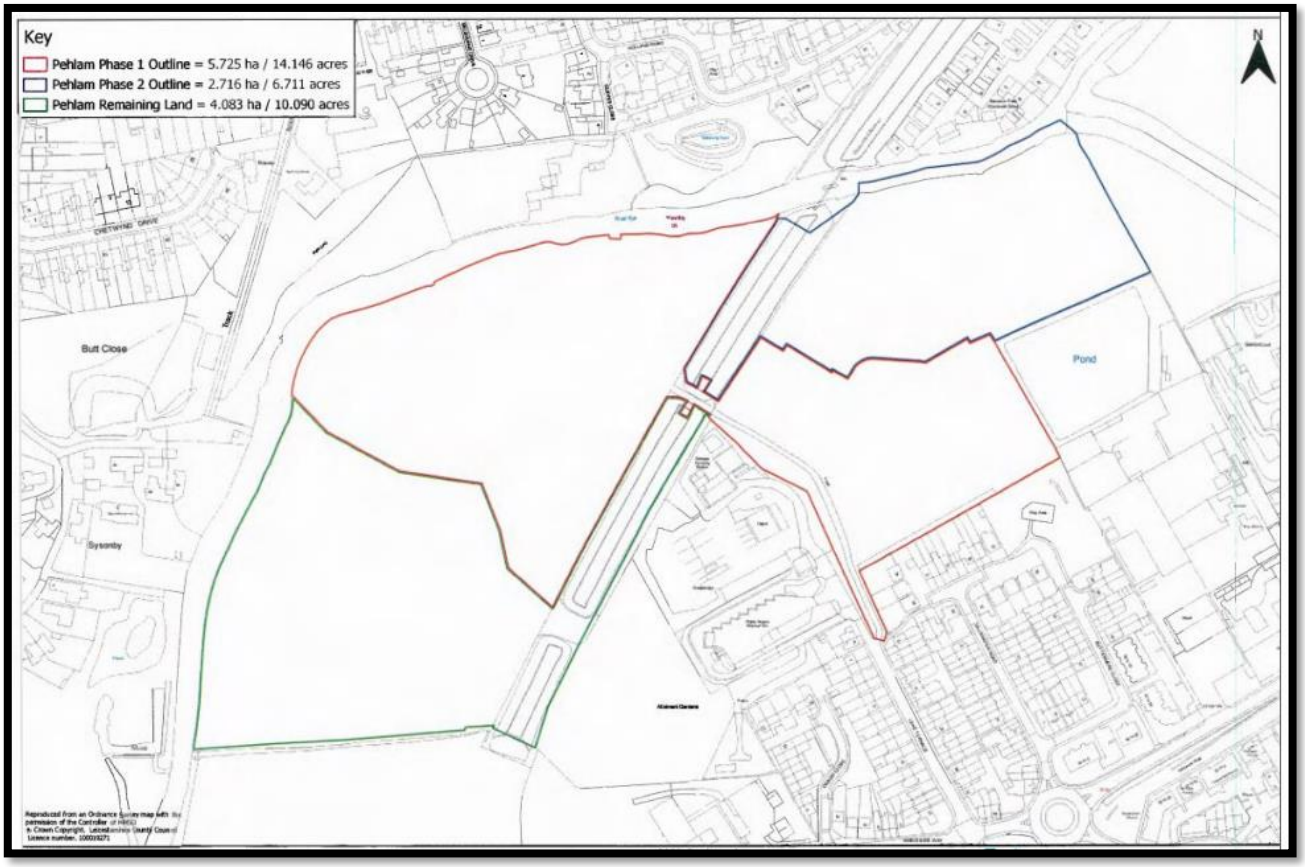
Reason for Committee Determination:
The Director for Growth and Regeneration (in consultation with the Chair of Planning Committee) considers this application as likely to raise matters which should be referred to the Committee.

Web Link:
https://pa.melton.gov.uk/online-applications/simpleSearchResults.do?action=firstPage

What 3 words:
https://what3words.com/gather.motion.earth

Previous committee report:
https://democracy.melton.gov.uk/documents/g815/Public%20reports%20pack%2014th-Jun-2018%2018.00%20Planning%20Committee.pdf?T=10 Agenda Item 4.5 Page 95 onwards.

Site Location Plan



RECOMMENDATION(S)
It is recommended that the application is **APPROVED** subject to 1. Conditions, as set out in section 10 of this report and 2. Deed of Variation to the previously completed agreed Section 106 Agreement to Continue to secure a percentage of the contributions towards (i) Secondary education provision - £185,936.44 (ii) Strategic road improvements - £613,063.56

Amend the on-site affordable housing provision
(i) From 40% to 100%

Remove contributions for
(i) £28,263.17 - health care
(ii) £7,700 - civic amenity
(iii) £2,720 - libraries
(iv) £720 per dwelling - bus pass
(v) £52.85 per dwelling - travel pack
(vi) £6,000 - Travel plan monitoring
(vii) LCC & MBC Monitoring fees

Include a Late Stage Review Mechanism

1 Executive Summary

1.1 The application seeks to vary condition 21 of approved planning permission reference 20/00318/VAC to allow

- A change to the parking arrangements for plot 73
- an adjusted private drive and a re-routed non adopted footpath

A viability assessment is also submitted to argue that the development is to make reduced financial contributions in order remain viable whilst providing a full 100% affordable housing scheme.

1.2 Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission. A Variation of Condition application allows an applicant to vary the list of approved plans to allow for amendments, there are limitations to the use of a variation of condition application in that it must not be used to vary the description of the development nor to impose any new or amended condition that is inconsistent with the description.

1.3 It is considered that the scheme would fall under the principles of a Section 73 application and consideration of the viability assessments is appropriate within the remit of this application.

1.4 The application seeks to amend a previously approved Section 73 application (reference 20/00318/VAC) and relates to the originally approved outline planning permission for 90 dwellings on land to the north of Lake Terrace in Melton Mowbray. The associated reserved matters (reference 20/00317/REM) has approved the layout, appearance, scale and landscaping of the development.

1.5 The amendments to the approved plans relate to the private driveway area serving plots 70-73, the parking for plot 73 and the non-adopted footpath which utilises the area to the front of plot 73. The changes are very minor in detail and would not significantly alter the overall scheme and could be considered an improvement by virtue of the tandem spaces now being proposed side by side.

1.6 A viability assessment has also been submitted in support of the application which seeks to demonstrate (with a 100% affordable housing scheme) that the scheme would not be viable to provide any off-site contributions to infrastructure. For members reference, the original

S106 secured 40% on-site affordable housing provision as well as off-site contributions totalling approximately £1.2 million.

1.7 The Council appointed an independent consultant to scrutinise the viability appraisal and carry out their own financial viability assessment and the findings are discussed in more detail within this report. The independent viability consultant concluded that the scheme (when providing a 100% affordable housing scheme) would still be able to provide off-site section 106 contributions of £799,000.

1.8 The applicant agreed with the outcome of the Council's independent viability assessment and therefore the scheme for consideration is a 100% affordable housing development with off-site contributions to Education and Strategic Highway improvements (in line with the Priority Setting in the Developer Contributions SPD) of £799,000.

1.9 The proposed development would therefore accord with Policies SS1, SS2, C2, C4, C9, EN1, EN2, EN3, EN6, EN11, EN12, IN1, IN2, IN3 and D1 of the Melton Local Plan and the overall aims of the National Planning Policy Framework.

Main Report

2 The Site

2.1 The application relates to a parcel of land to the north of Lake Terrace and Ullswater Road in Melton Mowbray. The site measures approximately 3.97 hectares and is made up of two fields separated by an existing disused railway line.

2.2 The site is bordered by housing to the south, by commercial uses to the west and by agricultural land to the north and east. The River Eye is located to the north and west of the site.

3 Planning History

3.1 **17/01500/OUT** - Residential development (up to 90 dwellings) including public open space, removal of material from existing disused railway, landscaping and alterations to existing vehicular access (outline - all matters reserved except access) – Permitted 22.10.2018.

3.2 **20/00317/REM** - Reserved Matters Application relating to: Appearance, Landscaping, Layout and Scale in relation to Previously Approved Outline Application 17/01500/OUT for 90 dwellings – Permitted 05.11.2020.

3.3 **20/00318/VAC** - Variation of Conditions: 14 - Flood Risk Assessment and 21 - Plans in respect of Application Reference Number 17/01500/OUT to allow consideration of a new Flood Risk Assessment and the retention of the former railway embankment – Permitted 04.09.2020.

3.4 **20/00332/FUL** - Formation of surface water attenuation features and ecological enhancements including a wetland habitat in association with previously approved application 17/01500/OUT – Permitted 08.01.2021.

3.5 **20/01457/DIS** - Discharge of Condition; 7 (Site Drainage Detail), 10 (Surface Water Drainage), 11 (Management of surface water during construction), 12 (Long term maintenance of surface water), 13 (Infiltration testing), 18 (Phase 2 site investigation and risk assessment), 19 (Remediation method statement in respect of previously approved application 20/00318/VAC – Permitted 30.11.2021

3.6 **20/01458/DIS** - Discharge of Conditions; 3 (Site Levels) and 8 (Site Drainage Details) in respect of previously approved application 20/00317/REM – Permitted 04.10.2021.

3.7 **21/00039/DIS** - Discharge of Conditions: 3 (Surface Water Drainage), 4 (Management of Surface Water During Construction) and 5 (Long Term Maintenance of Surface Water Drainage System) in respect of previously approved application 20/00332/FUL – Permitted 01.07.2021.

3.8 **21/01329/NONMAT** - Non material amendment in respect of reserved matters approval reference 20/00317/REM to replace reference to outline planning permission reference 17/01500/OUT with variation of conditions approval reference 20/00318/VAC – Permitted 13.12.2021.

3.9 **22/00404/FUL** - Erection of 73 dwellings with associated vehicular access, parking, landscaping and public open space – Pending Consideration.

3.10 **22/00608/VAC** - Variation of conditions 2 (Plans) and 7 (Attenuation Scheme) of Application Number: 20/00332/FUL in order to reflect the submitted Wetland Management Plan scheme drawing (ref RSE_5675 V3) and refer to the new Flood Risk Assessment – Permitted 21.10.2022.

3.11 **23/00252/DIS** - Application to discharge condition 2 attached to application 20/00317/REM (external materials) – Permitted 17.04.2023.

3.12 **23/00254/DIS** - Discharge of condition 4 attached to application Ref. 17/01500/OUT (construction management plan) – Permitted 22.08.2023

3.13 **23/00421/FUL** - Enabling works in association with proposed residential development under planning application ref: 22/00404/FUL - Erection of 73 dwellings with associated vehicular access, parking, landscaping and public open space (Amended Description) – Pending Consideration.

3.14 **23/00748/DIS** - Discharge of condition 4 attached to application Ref. 20/00317/REM (planting specifics) – Pending Consideration.

4 Proposal

4.1 The development of the site was originally approved in outline (reference 17/01500/OUT) in October 2018 for residential development for up to 90 dwellings. The consent was subject to a Section 106 agreement, including a contribution towards local infrastructure requirements of £1.2 million.

4.2 Reserved matters approval (reference 20/00317/REM) was permitted in November 2020 for the detail of the 90 dwellings.

4.3 A section 73 application (reference 20/00318/VAC) was subsequently approved seeking changes to the original outline permission.

4.4 This application seeks to vary one of the plans conditioned under the latest section 73 application to amend the private driveway, parking and non-adopted footpath to the front of plot 73 as well as consideration of a viability assessment regarding the affordable housing provision and off-site infrastructure contributions.

4.5 There are no other matters for consideration.

5 Amendments

5.1 Concerns were raised during the course of the application from the Local Highways Authority regarding the amendments to the size of the parking spaces and width of the non-adopted footpath. The applicant provided amended plans ensuring that the size of the

parking spaces for plot 73, as well as the width of the non-adopted footpath met the Local Highways Authority Design Guidance.

5.2 Also, during the course of the application, the independent reviewer of the Applicant's viability study requested additional clarification and information to ensure a thorough and robust examination of the viability considerations was undertaken. As such, this resulted in the applicant agreeing with the outcomes of the independent assessor's appraisal.

6 Planning Policy

6.1 National Policy

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- National Design Guide

6.2 Melton Local Plan

- The Melton Local Plan 2011-2036 was adopted by Full Council on 10th October 2018 and is the development plan for the area.
- The Local Plan is consistent with the National Planning Policy Framework and whilst it is now being updated, its policies remain relevant and up to date for the determination of this application.
- The relevant policies to this application include:
    - Policy SS1. Presumption in favour of Sustainable Development
    - Policy SS2. Development Strategy
    - Policy C2. Housing Mix
    - Policy C4. Affordable Housing Provision
    - Policy C9. Healthy Communities
    - Policy EN1. Landscape
    - Policy EN2. Biodiversity and Geodiversity
    - Policy EN3. The Melton Green Infrastructure Network
    - Policy EN6. Settlement Character
    - Policy EN11. Minimising the Risk of Flooding
    - Policy EN12. Sustainable Drainage Systems
    - Policy IN1. Melton Mowbray Transport Strategy (MMTS)
    - Policy IN2. Transport, Accessibility and Parking
    - Policy IN3. Infrastructure Contributions and Community Infrastructure Levy
    - Policy D1. Raising the Standard of Design

6.3 Other

6.3.1 Leicestershire Highway Design Guide

6.3.2 Affordable Housing and Housing Mix SPD

6.3.3 Developer Contributions SPD

6.3.4 Design of Development SPD

6.3.5 Planning Practice Guidance - Viability

7 Consultation Responses

Please Note: Below is a summary of responses and representations received.

The full responses can be found on the web portal if required.

Summary of Technical Consultation Responses

7.1 **Highways Authority (LHA) (responses dated 27.06.2022, 23.08.2023 & 13.09.2023)**

7.2 Initially the Local Highway Authority (LHA) noted that the revised site plan indicated two car parking spaces measured at 2.4 metres x 5.5 metres which remain bound by proposed planting at the end of each space. However, the LHA noted that the southernmost space is not bound elsewhere. Furthermore, the LHA noted that the northernmost space was to be proposed with a 0.5m tarmacadam buffer from the adjacent non adopted footpath where this was previously bound by proposed planting. On the basis of the revised drawing submitted, the LHA does not now object to the proposed variation of condition 21 attached to application 20/00318/VAC.

7.3 **Lead Local Flood Authority (LLFA) (response dated 06.07.2022)**

7.4 This application seeks a variation of conditions 21 set as part of the approval of application reference 20/00318/VAC. Having reviewed the proposal in comparison to the SuDS layout in former revisions it is advised the application has negligible impact on surface water drainage.

7.5 Leicestershire County Council as Lead Local Flood Authority (LLFA) advises the Local Planning Authority (LPA) that the application documents as submitted are sufficient for the LLFA to support the variation of condition 21.

7.6 **LCC Ecology (response dated 01.07.2022)**

7.7 No comments to make on the proposal.

7.8 **Historic England (response dated 07.07.2022)**

7.9 Historic England provides advice when our engagement can add most value. In this case we are not offering advice.

7.10 **Designing out crime officer (response dated 28.06.2023)**

7.11 The officer advised that they have reviewed the proposed variation and do not think the changes will impact on the original recommendations. The officer advised that they have no objections to the proposed variations.

7.12 **MBC Housing Policy Officer (response dated 21.11.2023)**

7.13 For the phase 1 VAC, the amount of 1, 2 and 3 beds for each tenure is acceptable. The internal space of each of the properties are smaller than both the Housing Quality Indicator (HQI) sizes and the Nationally Described Space Standards (NDSS) (shown below). The applicant will need to increase the sizes in order for them to be policy compliant with C3.

Tenure & Size	1 Bedroom / 2 Person (53sqm)	2 Bedroom / 4 Person (72sqm)	3 Bedroom / 5 Person (85sqm)	TOTAL
HQI & NDSS	(NDSS - 58sqm)	(HQI – 77sqm) (NDSS – 79sqm)	(HQI – 90sqm) (NDSS – 93sqm)	-

Affordable Rent	4	26	18	48
Shared Ownership	-	24	18	42
TOTAL	4	50	36	90

7.14 **Leicester, Leicestershire and Rutland Integrated Care Board (response dated 04.08.2023)**

7.15 Leicester, Leicestershire & Rutland Integrated Care Board (ICB) is writing in response to the Council's proposal to remove S106 healthcare contributions from the agreement relating to the above application, following a viability assessment by the developer, and wishes to register that the ICB strongly objects to the request.

7.16 Housing developments are known to put additional pressure on healthcare infrastructure by introducing new populations to overstretched services. To ensure that the health and well-being of the local community is protected. S106 funding is essential to help mitigate the effect of new development and support needs arising from an increase in population.

7.17 Any increase in patient registrations at a practice impacts a GPs clinical capacity and adds to their need to increase that capacity. The main practice in Melton is already experiencing capacity issues in relation to its premises, and the Council is in active dialogue with the ICB about how primary care services in Melton be best be expanded.

7.18 The Council has a responsibility under the Health and Care Act 2022 (alongside the ICB) to have regard to the assessed health needs and the health and wellbeing strategy when exercising any of its functions (including planning). To therefore propose that the healthcare contribution can be removed entirely is not acceptable to the ICB.

7.19 It is noted that officers are proposing revised contribution levels for Education and Strategic Highways, rather than removal of the contributions, which suggests the Council puts a greater emphasis on the importance for those provisions, above healthcare.

7.20 It is hoped the Planning Committee will recognise the importance of local healthcare, but if a reduction to the healthcare contribution is absolutely necessary, then the ICB proposes that a proportionate reduction is affected, in line with the reductions for Education and Highways, rather than a complete removal. This will provide assurance that health needs are at least equally as important as other infrastructure developments.

7.21 **LCC Developer Contributions (response dated 12.07.2023)**

1. The viability assessment demonstrates that the development cannot afford the £1,155,979.81 contributions sought by the County Council and agreed in the completed S106. We are satisfied with the C&W appraisal of the assessment.
2. The Melton Supplementary Planning Document (SPD) sets out a priority order for developer contributions towards infrastructure, with Essential Infrastructure including Education and Strategic Highways Infrastructure as priority 1, and Sustainable Travel and Civic Amenities included as priority 2c.
3. Therefore, LCC request that the remaining £799k outlined in the viability assessment is to be distributed across priority 1 items (Education and Strategic Highways Infrastructure) as follows;

Area	Amount in S106	Revised	Difference

Education	£246,691.15	£185,936.44	-£60,754.71
Strategic Highways	£813,382	£613,063.56	-£200,318.44

4. This means that the other obligations in respect of Sustainable Travel, Libraries, Waste, and County Council Monitoring Fees would fall away. Melton Borough Council confirmed to LCC that we will not be seeking any of the requested developer contributions for Healthcare, Open Space, or Monitoring.
5. The applicant would still be expected to pay any relevant legal fees associated with varying the S106.

   Please note that this decision is made based on the completed S106 for planning reference number 17/01500/OUT.

7.22 **Viability Reviewer – Executive Summary (response dated 03.01.2023)**

7.23 Cushman & Wakefield ('C&W') has been commissioned by Melton Borough Council ('the local planning authority') to prepare an independent financial viability assessment ('FVA') of the proposed development at Lake Terrace, Melton Mowbray ('the subject site') based on all relevant national and local planning policy requirements.

7.24 This FVA is prepared for planning purposes to test the financial viability of the proposed scheme, and reviews the applicant's viability case that the scheme cannot afford to make any Section 106 contributions.

7.25 The Planning Practice Guidance for Viability ('PPGV') (July 2018, updated May/September 2019) states that an executive summary of an FVA is to be made publicly available to promote a greater transparency and accountability within the viability assessment process.

7.26 The RICS Professional Statement Financial Viability in Planning: Conduct and Reporting (1st Edition, May 2019) also states that all FVAs must be accompanies by non-technical summaries to assist non-specialist in better understanding the report.

7.27 Accordingly, an executive summary has been prepared to present the findings of this FVA in a clear and concise manner. This executive summary should however not be considered in isolation from the full report.

7.28 We have prepare two appraisals as part of this FVA.

- The first appraisal incorporates the £1.2 million infrastructure contributions in the signed S106 agreement, alongside the now proposed 100% affordable scheme.
- The second appraisal is as the first appraisal, but excluding the £1.2 million infrastructure

7.29 We summarise the key findings in the table below which reflect the figures in the second appraisal:

Applicant	GS Property Holdings Ltd (Note, the land is now under the ownership of Nottingham Community Housing Association (NCHA), which is to develop the scheme)
Site	Field 4100 Lake Terrace Melton Mowbray

Proposed Scheme	Residential Development of 90 One, Two and Three Bedroom Houses, Provision of Public Open Space and Landscaping.
Net Realisation (Gross Development Value & Homes England Affordable Housing Grant)	£15.836 million
Total Development Costs (Excluding Developer's Profit)	£14.227 million
Developer's Profit	Nil
Residual Site Value	£1,609 million
Benchmark Land Value	EUV - £81,000 Landowner Premium – (*10 EUV) **BLV-**£810,000
Viability Surplus (Rounded)	£0.799 million
Proposed Developer Contributions	**Affordable Housing:** 100% **S106 Contributions:** £799,000

Scheme Viability and Key Conclusions

7.30 We have prepared an appraisal, excluding the £1.2 million S106 contributions from the appraisal. This projects a residual land value of £1.609 million, which is some £799,000 (rounded) above the benchmark land value of £810,000, suggesting that the scheme can support a reduced S106 contribution of £799,000.

7.31 If the S106 contribution of £1.2 million were to be included, the scheme would not be viable under this scenario as the residual land value of £325,000, is £485,000 below the Benchmark Land Value of £810,000.

7.32 This FVA therefore confirms the need for the LPA to consider flexing their policy requirements to support the delivery of the proposed scheme at the subject site, with a reduced Section 106 contribution of £799,000.

7.33 **Summary of Representations**

7.33.1 **Neighbours**

1 letter of objection has been received from 1 household,

- Development should not go ahead on a flood plain
- Demolition of the railway viaduct should not be allowed
- Should be used as pedestrian/cycle way connecting Asfordby Road and new developments.
- Melton has too many houses
- No new infrastructure being provided
- If development is not viable it shouldn't be built
- Developers S106 contribution should be increased not decreased

7.34 **Response to Consultations and Representations**

7.35 Comments regarding developing on a flood plain, demolition of a viaduct, pedestrian/cycle way, no need for houses are not for consideration within the application. The principle of development has already been approved by virtue of the outline planning permission and subsequent reserved matters approval. Only the changes sought in this application can be considered.

7.36 Comments are noted with regards to the financial information received, however the viability assessment has been rigorously reviewed independently of both the applicant and Melton Borough Council. Both National Planning Policy (NPPF) and the Council's own Supplementary Planning Documents (SPDs) do include viability as a consideration regarding the provision of affordable housing and off-site infrastructure contributions. On this occasion the results of the assessments demonstrate that the development would not be viable if the scheme was to be provided as originally approved.

7.37 Comments from the Leicester, Leicestershire and Rutland Integrated Care Board are also noted, however the adopted Developer Contributions SPD sets out the hierarchy for contributions if the viability of a site is considered, prioritising strategic highways and education above all other infrastructure. In this instance the contribution originally sought for healthcare will be removed in accordance with Priority Setting of the Developer Contributions SPD.

7.38 The Housing Policy Officer refers to space standards however, given that the layout and detail of the properties have already been approved at reserved matters stage and not for consideration here.

8 Planning Analysis

The main considerations are

8.1 Position under the Development Plan Policies

8.2 Principle of Development

8.3 Amendments to the private drive, parking for plot 73 and non-adopted footpath

8.4 Viability

a) Policy IN3, Developer Contributions SPD and Priorities List

8.5 Affordable Housing

8.6 Existing undischarged Conditions

Position under the Development Plan Policies

8.7 Melton Local Plan Policy SS1 sets out the principle in favour of sustainable development where planning applications are in accordance with the relevant planning policies of the Development Plan, they should be approved without delay, unless material considerations indicate otherwise.

8.8 Policy C4 of the Melton Local Plan seeks to secure affordable housing provision on housing developments.

8.9 Policy IN3 of the Melton Local Plan seeks to secure developer contributions to local infrastructure in proportion to the scale of its impacts.

8.9.1 The Affordable Housing SPD also provides guidance on the submission of Economic Viability Assessments and information that would be required to support an application where the development seeks a reduction or removal of affordable housing provision.

8.9.2 The Developer Contributions SPD states that the Council may refuse the application in line with the direction of Policy IN3 if the developer contributions cannot be made to mitigate the impact of a development and also seeks to prioritise types of infrastructure contributions.

8.10 **Principle of Development**

8.10.1 Outline planning permission has been granted for the erection of 90 dwellings (reference 17/01500/OUT).

8.10.2 Reserved matters have been approved for the layout, appearance, scale and landscaping of 90 dwellings (reference 20/00317/REM).

8.10.3 A further variation of condition application was approved to allow consideration of a new Flood Risk Assessment and the retention of the former railway embankment (reference 20/00318/VAC).

8.10.4 This application seeks to vary condition 21 of planning permission 20/00318/VAC to make minor changes to the approved plan as detailed above.

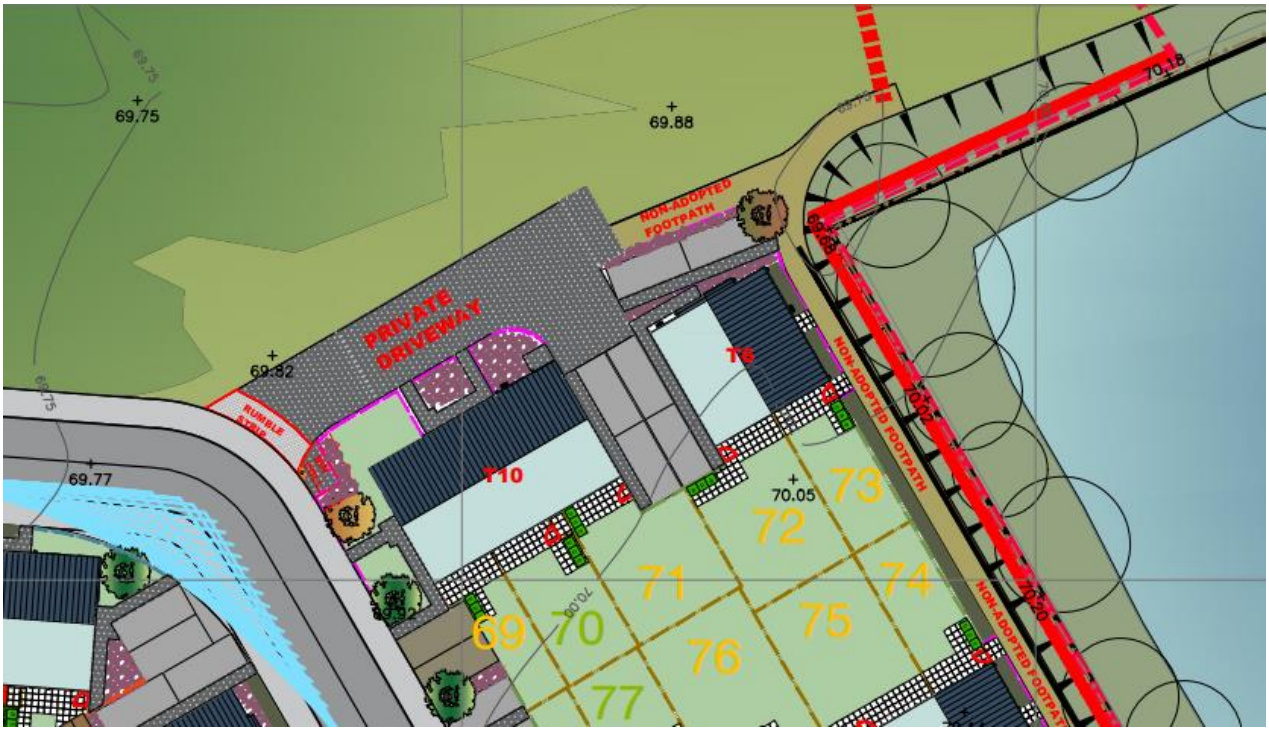
8.10.5 The application also seeks a deed of variation to amend the on-site affordable housing provision and off-site infrastructure contributions.

8.10.6 The principle of the development, given that the outline permission is still extant and development has commenced remains acceptable.

8.10.7 The main considerations here are the amendments to the scheme and the viability considerations, which is considered in full in the following sections.

8.11 **Amendments to the private drive, parking for plot 73 and non-adopted footpath**

8.11.1 The application seeks to amend the area to the north of plots 69-73. The plan below shows the approved plan where members please note the shortened private driveway, tandem parking spaces to the front of plot 73 and the non-adopted footpath.



8.11.2 The proposed plan for comparison is shown below, a slightly increased private driveway, spaces side by side for plot 73 and retained non-adopted footpath adjacent.

8.11.3 The changes proposed are very minor in the context of the overall scheme and would not be considered to adversely impact upon the character or design of the whole scheme, nor result in any adverse highway safety, residential amenity, biodiversity or flooding impacts.

8.11.4 As such the proposed amendments would continue to ensure that the development respects the landscape setting within which the application site sits.

8.12 **Viability**

8.12.1 A Section 106 Agreement relating to contributions towards the following was secured as part of the original outline approval.

- Education - £246,691.15
- Strategic Highways - £813,382
- Health care - £28,263.17
- Civic amenity - £7,700
- Libraries - £2,720
- Bus pass £720 per dwelling - £64,800
- Travel pack £52.85 per dwelling - £4,756.50
- Travel plan monitoring - £6,000
- LCC & MBC Monitoring fees - c. £500

- Totalling - £1,174,812.82 (excluding monitoring fees)

8.12.2 On-site affordable housing was also secured at 40%. Members should note that 40% was the previous Development Plan requirement, whereas the now adopted Melton Local Plan only requires 5-10% on-site affordable housing.

8.12.3 This application seeks to provide a 100% affordable housing scheme which is in excess of the policy requirement. The development is being supported by a Homes England funding

but only on the proviso that the scheme is for a 100% affordable housing scheme. The developer maintains that this makes the scheme financially unviable if all of the financial contributions required by the Section 106 Agreement remain payable.

8.12.4 A Financial Viability Appraisal (FVA) has been submitted with the application to demonstrate this. The viability report has been scrutinised by independent consultants appointed by the Council who also ran their own financial appraisal based on their evidence. As such, the applicant's assessment was not only dissected but the assessors used their own expert opinion based on viability guidance that the scheme would be viable with the provision of 100% affordable housing and off-site financial contributions of £799,000.

8.12.5 The main areas of discrepancy were in relation to the Affordable Housing investment yields which feeds into the Gross Development Value. Yield measures the income the investment returns over time, expressed annually as a percentage. The change in yield percentages would therefore have a significant impact upon the gross development value and therefore ability to provide off-site infrastructure contributions.

8.12.6 The following is an extract from the independent assessors report:

> "The Shared Ownership units appear to have a net value in the order of 60% of the open market value, and the Affordable Rented Units some 44% of open market value. Both of these appear to be on the low side – our experience of transfer values suggests rates of 50% for affordable rented, and of 70% for shared ownership
>
> In order to understand this apparent discrepancy, the assessor has sense tested the yields at which the applicant's viability appraiser has capitalised the rental income:
>
> > @6%, as applied by the applicant's viability consultant, the gross development value of the scheme is £10,248,583 (with Transfer Values, as a proportion of open market value, in the order of 60% for the Shared Ownership tenure units, and 44% for the Affordable Rent tenure)
> >
> > - @5%, as sense tested by the assessor, the gross development value of the scheme is £11,714,293 and the Transfer Values are in the order of 65% for the Shared Ownership tenure, and 55% for the Affordable Rent tenure
>
> From the Assessor's experience the 6% yield adopted by the applicant's viability agent appears on the high side, and this is borne out in the sense testing, above, which projects transfer values notably below the benchmarks.
>
> Notably, sense testing using a yield of 5%, the transfer value of the Shared Ownership tenure still appears lower than the benchmark (65% rather than 70%), and vice versa for the Affordable Rented units (55% rather than 50%).
>
> The assessor has thus further sense tested assuming a yield of 5.5% for the affordable rent, and 4.5% for the shared ownership, which projects transfer value of just under 70% for the shared ownership tenure, and around 49% for the Affordable Rented tenure. These projected transfer values are thus broadly consistent with the assessors experience, and thus have been adopted for the purpose of this viability assessment.
>
> Thus, the gross development value that the Assessor has adopted is £11.5 million, as below, which is some £1.2 million greater than the gross development value suggested by the applicant's viability consultant."

8.12.7 Hence, following the assessors detailed assessment above, the adoption of lower development yields – 4.5% (for the shared ownership), and 5.5% (for the affordable rent), compared to the applicant's 6%, would be acceptable based on market evidence in relation

to the location of the site, market conditions, likely availability of tenants and good prospect for rental growth.

8.12.8 There is an inverse relationship between yields and values, and for example a lower yield means a higher value. It is predominantly based around market conditions in relation to the attributes such as continued growth and buoyant economy; increased competition and lower risks which all lead to greater rewards - rising values. For example, if there is greater risk, a higher yield could be warranted as there would be no reason to pay significantly greater initially, for a riskier investment.

8.12.9 As such, based on the market considerations and factors set out above the lower yield would result in some £1.2 million greater gross development value than suggested by the applicant's viability consultant.

8.12.10 The viability assessor also reviews and examines the applicant's detailed costs, and aside from minor variations there are no significant issues arising from the applicant's viability appraisal. Concerns were raised regarding land payments however the applicant's figure has been disregarded in favour for a detailed cost per unit figure given the applicant statement mistakenly applied the whole sum to the Phase 1 land when the cost liability equally applies to the Phase 2 land (73 dwellings – currently pending consideration, reference 22/00404/FUL).

8.12.11 In terms of profit margins, the site is to be developed by Nottingham Community Housing Association (NCHA). Certain forms of contracts are in place for the organisation which limits and controls the exposure of NCHA to development risk, as such "developer" profit (which is relatable to risk) is not therefore required. This is agreed by the independent assessor.

8.12.12 With regards to Benchmark Land Value (BLV) the applicant's viability report states it being £980,000 however the independent assessor calculates (based on national guidance and available evidence and informed by professional judgement) have come to a reasonable Benchmark Land Value of the site to £810,000.

8.12.13 Therefore, when considering the overall viability position, as a result of

- the lower development yields;
  - resultant increase in gross development value
  - and therefore increase residual development value
- coupled with the reduced benchmark land value

- would result in an excess figure of some £799,000.

8.12.14 The conclusion of the consultant's report is that their assessment of the residual land value is significantly higher than that of the applicant, and therefore the scheme can support a proportion of off-site contributions.

8.12.15 The applicant has agreed to the outcomes of the council's independent assessment and agreed to provide off-site contributions totalling £799,000. How this is to be secured and for what infrastructure is set out below.

Policy IN3, Developer Contributions SPD and Priorities List

8.12.16 The original outline permission (reference 17/01500/OUT) secured contributions to local infrastructure, including education, strategic highways infrastructure, sustainable travel, NHS, library and civic amenities as detailed above, equating to approximately £1.2 million.

A revised figure of £799,00 is now to be provided following the viability considerations above.

8.12.17 Paragraph 3.3.1 of the Developer Contributions SPD states that the Council may refuse the application in line with the direction of Policy IN3 if the developer contributions cannot be made to mitigate the impact of a development. This is not considered to be the case here, given that Paragraph 3.3.2 states that some developments may not be able to make contributions towards all of the infrastructure that is required but may remain desirable for other reasons.

8.12.18 This application would provide a 100% affordable housing scheme. The provision of affordable housing is a key priority and there is a need for providing affordable housing as part of new developments. This would therefore be a significant benefit of the scheme which must be weighed heavily in the consideration of the application, especially as the Melton Local Plan only requires 5-10%.

8.12.19 In addition, the scheme would still be providing a significant off-site contribution to local infrastructure, a level of which it is considered sufficient to mitigate the impact of development when considering the affordable housing provision.

8.12.20 Paragraph 3.3.4 of the Developer Contributions SPD seeks to prioritise types of infrastructure contributions.

8.12.21 Priority 1 includes Strategic Highways Infrastructure and Education. Following discussions with LCC Developer Contributions, LCC confirmed that they were satisfied with the council's independent assessment and have requested that the £799,000 remaining from the viability review is split as follows: Education - £185,936.44 & Strategic Highways - £613,063.56.

8.12.22 Although Affordable Housing sits within priority 2a, and therefore below priority 1, the application is for a 100% affordable housing scheme, underpinned by £4.333 million of Homes England funding from its affordable housing programme. Therefore, it is not possible for a "trade-off" allowing for an increased S106 contribution by way of a reduced affordable housing provision. The grant from Homes England would fall away if the proposal is for any less than 100% affordable housing.

8.12.23 It should also be noted that if the S106 contribution of £1.2 million were to be included, the scheme would not be viable by £485,000 – and that is based on a 100% affordable housing provision. Therefore, if any percentage of AH was lower than 100%, the scheme would not be viable at all as the Homes England funding would disappear. There would be no financial benefits in this case of reducing the level of affordable housing.

8.12.24 It should also be noted that if the scheme was being developed not as a 100% affordable housing scheme then the developer would be carrying increased risk related to the market units. A developer profit would be required and borrowing costs would be higher as well, therefore also resulting in a scheme that would not be viable.

8.12.25 Therefore, officers consider that there is a significant benefit to the scheme overall which outweighs the harms – a 100% affordable housing scheme with a significant off-site contribution towards highways and education.

8.12.26 In terms of the remaining contributions, the development would not provide contributions to those which sit within Priorities 2b (Health care), 2c (Civic amenity and sustainable travel) and 3 (Libraries and Monitoring fees) – approximately £115,000.

8.12.27 Leicester, Leicestershire & Rutland Integrated Care Board raise concerns stating that it is imperative that healthcare contributions are secured to support the increased population

and therefore improve primary care services for the area. However, given that Education and Strategic Highways Infrastructure sits higher than healthcare contributions within the priorities list as set out in the SPD, the approach set out above is considered reasonable and consistent with the policy.

8.12.28 **Conclusion of Viability**

8.12.29 Overall, it is considered that up to date, acceptable and robust evidence of viability has been provided which demonstrates that the development is not capable of providing the full off-site contributions previously secured in the Section 106 agreement. The viability appraisal has been independently and robustly reviewed as part of the consideration of the application.

8.12.30 It is considered that the provision of a 100% affordable housing scheme would result in a scheme that would not be economically viable. As such, the reduced off-site contribution to infrastructure, is acceptable in light of the outputs of the viability assessment which has been robustly and independently assessed.

8.12.31 It is recommended that a late-stage review of the viability assessment is secured through the proposed Deed of Variation. The wording of the mechanism would require a review once a proportion of the units in the scheme are completed - in line with Section 3.3.5 of the Housing Mix and Affordable Housing SPD. Although the scheme does not include a developers profit, a late stage review is still recommended for any excess value that may be present which could result in additional contributions to off-site infrastructure.

8.12.32 Any additional outcome on top of the already secured contributions would be a further financial contribution prioritised in line with the Developer Contributions SPD.

8.13 **Affordable Housing**

8.13.1 The application proposes the following housing mix and affordable housing tenure.

Tenure & Size	1 Bedroom / 2 Person (53sqm)	2 Bedroom / 4 Person (72sqm)	3 Bedroom / 5 Person (85sqm)	TOTAL
Affordable Rent	4	26	18	48
Shared Ownership	-	24	18	42
TOTAL	4	50	36	90

8.13.2 The housing mix detailed here is the same as approved at the reserved matters stage (reference 20/00317/REM) and therefore not for consideration as already secured through the approved details. Just for members reference though, the proposed mix is more weighted towards smaller properties; however, this is considered acceptable for this site and would boost the Borough's supply of smaller properties.

8.13.3 In this area, the policy compliant position for affordable housing is 5-10%. This proposal at 100% exceeds this. There is a fairly equal split of 48 Affordable Rent and 42 Shared Ownership.

8.13.4 Although the amount proposed exceeds the amount which would be required, it has been identified that these homes of this tenure are needed. This is due to some of the Local Plan allocations, falling short of the policy compliant requirements.

8.13.5 Therefore the high proportion of affordable housing can meet local and wider needs for smaller affordable dwellings across the district and is a significant benefit of the scheme.

8.13.6 The current Section 106 requires the applicant to provide a full affordable housing scheme including for example the nomination agreement, forms of transfers and timing of transfer. This is not for consideration here so will need to be retained as part of the deed of variation.

8.13.7 The Housing Policy Officer advises that the amount of 1, 2 and 3 beds for each tenure is acceptable. However, the Officer also advises that the internal space of each of the properties are smaller than both the Housing Quality Indicator (HQI) sizes and the Nationally Described Space Standards (NDSS). Whilst that is the case as referred to at paragraph 7.13, it is not for consideration here given that the layout and detail of the properties have already been approved at reserved matters stage and not for consideration here.

8.14 **Existing undischarged Conditions**

8.14.1 In accordance with the regulations, S73 applications are required to re-impose conditions, where they continue to be applicable, where they have not been previously discharged under the original permission or the details are not included in the current S73 proposal.

8.14.2 Planning Permission 20/00318/VAC was granted subject to 21 conditions.

8.14.3 Condition 1 – Time compliance is no longer required as reserved matters has been approved and development commenced.

8.14.4 Condition 2 - Application for approval of reserved matters is no longer required as reserved matters has been approved.

8.14.5 Condition 3 – Access arrangements is required to be retained, albeit updated to reflect the plan submitted with this application.

8.14.6 Condition 4 – Construction traffic management plan has been approved under reference 23/00254/DIS and therefore this condition should be updated to reflect the approved details.

8.14.7 Condition 5 – Amended travel plan is currently pending consideration under reference 23/00976/DIS however has not been approved. Therefore the condition is required to be retained.

8.14.8 Condition 6 – Provision of visibility splays are required to be retained.

8.14.9 Condition 7 – Site drainage details has been approved under reference 20/01457/DIS and therefore this condition should be updated to reflect the approved details. This condition is also the same detail for condition 10 so is proposed to be amalgamated.

8.14.10 Condition 8 – Existing vehicular access to be closed permanently is required to be retained.

8.14.11 Condition 9 – Scheme for the treatment of the Public Right of Way has not been approved and shall be updated to require details to be submitted within 6 months of the date of permission.

8.14.12 Condition 10 – Surface water drainage scheme has been approved under reference 20/01457/DIS and therefore this condition should be updated to reflect the approved details.

8.14.13 Condition 11 – Management of surface water on site during construction has been approved under reference 20/01457/DIS and therefore this condition should be updated to reflect the approved details.

8.14.14 Condition 12 – Long term maintenance of the sustainable surface water drainage system has been approved under reference 20/01457/DIS and therefore this condition should be updated to reflect the approved details.

8.14.15 Condition 13 – Infiltration testing details has been approved under reference 20/01457/DIS and therefore this condition should be updated to reflect the approved details. Conditions 10, 11, 12 and 13 are proposed to be amalgamated into one condition.

8.14.16 Condition 14 – Development being carried out in accordance with the approved Flood Risk Assessment is required to be retained.

8.14.17 Condition 15 – Development being carried out in accordance with the approved mitigation measures is required to be retained.

8.14.18 Condition 16 – Submission of a Biodiversity Management Plan has not been approved and shall be updated to require details to be submitted within 6 months of the date of permission.

8.14.19 Condition 17 – Submission of an updated badger survey has not been approved and shall be updated to require details to be submitted within 6 months of the date of permission.

8.14.20 Condition 18 – Phase 2 site investigation and risk assessment has been approved under reference 20/01457/DIS and therefore this condition should be updated to reflect the approved details.

8.14.21 Condition 19 – Remediation method statement has been approved under reference 20/01457/DIS and therefore this condition should be updated to reflect the approved details. Conditions 18 and 19 are proposed to be amalgamated into one condition.

8.14.22 Condition 20 – Limitation of construction hours is required to be retained.

8.14.23 Condition 21 – Detail of the approved plans is being amended through this application.

9 Conclusion and Reason for Recommendation

9.1 The proposal accords with the requirements of Policies SS1 and SS2 which emphasise the need to provide housing in locations that can take advantage of sustainable travel and make appropriate provision for parking and ensure that there is not a significant impact.

9.2 The site has outline planning permission including access and reserved matters approval for the remaining details. There are no objections from technical consultees and the proposed amendments to the scheme would ensure that the development is in keeping with the character of the area.

9.3 The application has been supported by a viability assessment which indicates that the provision of a 100% affordable housing development would result in a non-viable scheme if all contributions to the agreed Section 106 were to be paid.

9.4 The Council have sought external and independent advice on the submitted viability assessment, the results of their assessment state that should 100% affordable housing be provided, then the scheme would still be economically viable to provide off-site contributions of £799,000. This is to be provided to LCC Education and Strategic Highways Infrastructure in line with the Priorities List set out in the Developer Contributions SPD.

9.5 Affordable housing is provided significantly in excess of the policy requirement and there would only be a reduced Section 106 off-site contribution of approximately £375,500.

9.6 The provision of affordable housing is a key priority and there is a need for providing affordable housing as part of new developments. This would therefore be a significant benefit of the scheme which must be weighed heavily in the consideration of the application.

9.7 In addition, the scheme would still be providing a significant off-site contribution to local infrastructure.

9.8 Overall, it is considered that up to date, acceptable and robust evidence of viability has been considered which demonstrates the above position set out in the recommendation is acceptable.

10 Planning Conditions

10.1 No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on drawing number 2587/P200 P have been implemented in full.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with Paragraph 109, of the National Planning Policy Framework 2018

10.2 The construction of the development shall be carried out in accordance with the approved details and timetable as set out within the approved Construction Management Plan ref. N21.009_ENG250 Rev. C received by the Local Planning Authority on 4th July 2023 and details contained within the email received 1st August 2023.

Reason: To reduce the possibility of deleterious material (mud, stones etc.) being deposited in the highway and becoming a hazard for road users, to ensure that construction traffic does not use unsatisfactory roads and lead to on-street parking problems in the area.

10.3 No part of the development hereby permitted shall be first occupied until an amended Travel Plan which sets out actions and measures with quantifiable outputs and outcome targets has been submitted to and agreed in writing by the Local Planning Authority. Thereafter the agreed Travel Plan shall be implemented in accordance with the approved details.

Reason: To reduce the need to travel by single occupancy vehicle and to promote the use of sustainable modes of transport in accordance with Chapter 9 of the National Planning Policy Framework 2018.

10.4 No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 metres by 19 metres and 2.4 metres by 47 metres have been provided at the site access as outlined on drawing number 2587/P200 L. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.

Reason: To afford adequate visibility at the access to cater for the expected volume of traffic joining the existing highway network, in the interests of general highway safety, and in accordance with Paragraph 32 of the National Planning Policy Framework 2012.

10.5 The new vehicular access hereby permitted shall not be used for a period of more than one month from being first brought into use unless the existing vehicular access on Lake Terrace that becomes redundant as a result of this proposal have been closed permanently and reinstated in accordance with details first submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of highway and pedestrian safety in accordance with Paragraph 109 of the National Planning Policy Framework 2018.

10.6 Within six months of the date of this permission, a scheme for the treatment of the Public Right of Way shall have been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include the provision for management during construction surfacing, width, structures, signing, and landscaping (as appropriate) together with a

timetable for its implementation. Thereafter, the development shall be carried out in accordance with the agreed scheme and timetable.

Reason: In the interests of amenity, safety and security of users of the Public Right of Way in accordance with Paragraph 104 of the National Planning Policy Framework 2018.

10.7 The development shall be constructed, developed and maintained in accordance with the following details

LTMM-BSP-ZZ-ZZ-DR-C-0175 P01_Construction_Stage_Drainage_Temporary_Works

LTMM-BSP-ZZ-ZZ-DR-C-0176-P01_Topsoil_Strip_Phasing_Plan

Received 31st August 2021

LTMM-BSP-ZZ-ZZ-DR-C-140 REV P06 10.0

DRAINAGE AREAS LTMM-BSP-ZZ-ZZ-DR-C-0145 REV P04

EXCEEDANCE FLOW PLAN LTMM-BSP-ZZ-ZZ-DR-C-0180 P01

STORM SEWER DESIGN LTMM-BSP-ZZ-ZZ-CA_P01

Received 10th May 2021.

Reason: To prevent an increase in flood risk, maintain the existing surface water runoff quality and to prevent damage to the final surface water management systems through the entire development construction, to prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site and to establish a suitable maintenance regime, that may be monitored over time; that will ensure the long term performance, both in terms of flood risk and water quality, of the sustainable drainage system within the proposed development.

10.8 The development shall be carried out in accordance with the submitted Flood Risk Assessment reference 2018s0876 Lake Terrace FRA Final v3.0 prepared by JBA Consulting dated February 2020 and the following mitigation measures it details:

- Provision of compensatory flood storage as detailed in Appendix J of the Flood Risk Assessment
- Finished ground levels for the development plateau to the West of the railway embankment shall be raised to a minimum of 70.80 metres above Ordnance Datum (AOD)
- Finished ground levels for the for the development plateau to the East of the railway embankment shall be raised to a minimum of 71.50 metres above Ordnance Datum (AOD)
- Finished floor levels for the properties situated to the West of the railway embankment shall be set no lower than 70.95 metres above Ordnance Datum (AOD)
- Finished floor levels for the properties situated to the East of the railway embankment shall be set no lower than 71.65 metres above Ordnance Datum (AOD)

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided.

10.9 These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: In the interests of preserving ecological interests that might be impacted by the development.

10.10 Within six months of the date of this permission, a Biodiversity Management Plan shall have been submitted to and been approved in writing by the Local Planning Authority. Such a scheme shall cover the compensation area and the retained semi-natural habitat on site, including the line of the dismantled railway.

Reason: In the interests of preserving ecological interests that might be impacted by the development.

10.11 Within six months of the date of this permission, an updated badger survey shall have been submitted to and approved in writing by the Local Planning Authority. Such a scheme find evidence of badgers then a subsequent mitigation plan will also be required. This is because badgers have been recorded within 300m of the site and the site provides suitable badger habitat.

Reason: To reduce the risk of contamination issues and to accord with Paragraph 170 of the NPPF.

10.12 The development shall be completed in accordance with the results of the investigations approved by the Local Planning Authority as follows:

10.13 GeoDyne phase 1 report dated 31 August 2016, GeoDyne baseline report (railway embankment) dated 30 September 2016 and GeoDyne phase 2 report dated 18 March 2019.

In the event that it is proposed to import further soil from that already approved onto site, the proposed soil shall be sampled at source such that a representative sample is obtained and analysed in a laboratory that is accredited under the MCERTS Chemical testing of Soil Scheme or another approved scheme. The result shall be submitted to the Planning Authority for consideration. Only the soil approved in writing by the Local Planning Authority shall be used on site.

Reason: To reduce the risk of contamination issues and to accord with Paragraph 170 of the NPPF.

10.14 In order to minimise noise disturbance to the occupiers of adjacent residential property, construction work, demolition work and deliveries to the site should be permitted between the following hours. Any deviation from this requirement shall be with the prior approval of the Environmental Health department of Melton Borough Council.

07:00 – 19:00 Monday to Friday

08:00 – 13:00 Saturdays

No works to be undertaken on Sundays or bank holidays

Reason: To ensure the development does not become a source of annoyance and overall detriment to the amenity of those already living close to the development site.

10.15 The development hereby permitted shall be carried out in accordance with the following plans and reports received by the local authority :-

- Proposed Site Plan 2587/P200 P
- Archaeological Evaluation by Roger Kipling of University of Leicester Archaeological Services

- Ramm Sanderson Ecology Enhancement Plan ref. RSE_864_L1_V1
- BSP Environmental Noise Assessment Project 17-0674

Reason: For the avoidance of doubt.

11 Informatives

11.1 This decision has been reached taking into account the requirements of the National Planning Policy Framework 2023 in approaching decisions on proposed development in a positive and creative way. The Local Planning Authority has endeavoured to use the full range of planning tools available to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area seeking to approve applications for sustainable development where possible.

11.2 Please be advised that you may require Building Regulations approval before work can commence. Please contact Building Control either via the online enquiry form found at www.melton.gov.uk/homepage/71/building_control or by emailing us at building.control@blaby.gov.uk or by telephone; 0116 272 7533.

12 Financial Implications

12.1 The proposal amends an existing Section 106 Agreement, through consultation with those signatories to the Section 106 Agreement no objection or no comment has been made.

Financial Implications reviewed by: N/A

13 Legal and Governance Implications

13.1 Legal implications are set out in the report where relevant. Legal advisors will also be present at the meeting.

Legal Implications reviewed by: Tom Pickwell (Solicitor)

14 Background Papers

14.1 The planning history is contained within Section 3 of the report and the details of which are available to view on line.