

**Blaby District Council  
Planning Committee**

**Date of Meeting** 11 January 2024  
**Title of Report** Applications for Determination  
**Report Author** Group Manager – Planning & Strategic Growth

**1. What is this report about?**

- 1.1 To determine planning applications as listed in paragraph 3.2 below and detailed in the attached report.

**2. Recommendation**

- 2.1 That the recommendations listed within paragraph 3.2 below and detailed in the attached report be approved.

**3. Matters to consider**

- 3.1 To avoid unnecessary delay in the processing of planning applications, the recommendations included in this list must often be prepared in advance of the closing date for the receipt of representations. This list was prepared on **02 January 2024** and information of representations received will be updated at your meeting. This updating will also cover any other information which may come to hand in the intervening period. Closing dates are given where they fall on or after the day of preparation of the list.

<b>3.2</b>	<b>Application No.</b>	<b>Page No.</b>	<b>Address</b>	<b>Recommendation</b>
	<b>21/1497/FUL</b>	<b>11</b>	<b>Abbey Farm, Lubbesthorpe Bridle Road, Lubbesthorpe</b>	<b>APPROVE</b>
	<b>22/1204/FUL</b>	<b>34</b>	<b>Land North East of Earl Shilton, Earl Shilton Road</b>	<b>APPROVE</b>
	<b>23/0094/DOC</b>	<b>35</b>	<b>Land to South West of Cork Lane, Glen Parva</b>	<b>APPROVE</b>
	<b>23/0622/VAR</b>	<b>49</b>	<b>Fosse Park Shopping Centre, Enderby</b>	<b>APPROVE</b>

### 3.3 Appropriate Consultations

Details of organisations / persons consulted in relation to the applications are included in the reports for each individual application. Members will be aware that full copies of correspondence received are available to view on the respective planning file and through the planning portal <https://w3.blaby.gov.uk/online-applications/>

### 3.4 Resource Implications

There are no specific financial implications arising from the contents of this report.

### 4. Other options considered

These are included where appropriate as part of the reports relating to each individual application.

### 5. Background paper(s)

Background papers are contained in files held in the Planning Division for each application being considered and are available for public inspection.

### 6. Report author's contact details

Kristy Ingles  
[planning@blaby.gov.uk](mailto:planning@blaby.gov.uk)

Development Services Manager  
0116 272 7705

21/1497/FUL

Registered Date  
21/12/2021

Mr Martin Ward, Mather Jamie  
for Trustees of ERB Drummond (Deceased)

**Restoration and Conversion of Abbey Farm site and buildings for 7 dwellings (6 net) and offices under use classes C3 and E(g)(i) and (ii) respectively, demolitions and new building works, laying out of the site including access works, surface and foul water drainage and package plant, parking areas, waste bin storage areas, pedestrian routes, screen walls and landscaping, including a new pond, tree and hedge planting and removals.**

**Abbey Farm, Lubbesthorpe Bridle Road, Lubbesthorpe**

**Report Author: Jill Sampson, Major Schemes Officer  
Contact Details: Council Offices. Tel: 0116 2727686**

**RECOMMENDATION:**

**THAT APPLICATION 21/1497/FUL BE APPROVED SUBJECT TO THE IMPOSITION OF THE FOLLOWING CONDITIONS;**

1. 3 year time limit
2. Approved plans & documents
3. Demolition method & construction environmental/traffic management plan to be submitted.
4. Remediation strategy to be submitted, along with a requirement to address any unexpected contamination found during development and a requirement for the submission of a verification report, following implementation of the approved remediation strategy.
5. Scheme to be carried out in accordance with agreed archaeology programme.
6. Detailed design of the proposed offsite highway works (passing bay and strip widening) prior to commencement.
7. Scheme for the treatment of the Public Right of Way W118 to be submitted to include provision for management during construction, surfacing, width, structures, signing and landscaping, together with a timetable for its implementation.
8. Bridleway / Public Right of Way management plan to be submitted, to include details of temporary diversion, fencing, surfacing, signing and a timetable for provision.
9. Elevation plans showing the location and type of integrated bat boxes to be submitted
10. Swallow mitigation scheme to be submitted.
11. New vehicular accesses not to be first brought into use until existing vehicular accesses to the courtyard on Lubbesthorpe Bridle Way that have become redundant as a result of the proposal have been closed permanently to all vehicular traffic and the proposed pedestrian only entrance gate at the site frontage, along with the highways and verge reinstatement works have been installed in accordance with the details shown. The new gated pedestrian

- access shall be retained and maintained as such, with no access for vehicular traffic in perpetuity.
12. Access arrangements including pedestrian and vehicular visibility splays as shown to be implemented in full and the parking and turning facilities including the provision of the proposed delivery bay to be implemented as shown. On-site parking, turning and delivery bay provision to be kept available for such uses in perpetuity.
  13. Statement of good practice letter, to include photographs of the integrated bat boxes in situ, signed by the consultant ecologist, to be submitted.
  14. Details and location of an historic interpretation board to be provided in accordance with agreed details.
  15. Landscape management plan to be submitted.
  16. Approved landscaping to be carried out within 12 months of completion and to be maintained & retained in perpetuity in accordance with approved details.
  17. No gates, barriers, bollards, chains or other such obstructions to be erected to the vehicular accesses.
  18. The development to be implemented in strict accordance with the approved Precautionary Method Statement (ecology).
  19. To avoid potential disturbance or harm to nesting birds and bats, works on all buildings to be retained shall only commence between the months of September - March inclusive.
  20. The commercial waste servicing arrangements for the development to be carried out strictly and only in accordance with the details contained within Technical Note JNY10507-07- Commercial Waste Collection. The commercial waste servicing arrangements for the site shall conform to the details within this document in perpetuity.
  21. No further gates, walls, fences or other means of enclosure within 15m of the Public Right of Way (W118).
  22. Drainage systems to be designed, installed, operated and maintained in accordance with manufacturer's instructions
  23. Development to be carried out in accordance with approved noise report and installed and maintained in accordance with the manufacturer's instructions, along with the submission of a verification report following completion of the noise related works.
  24. The buildings identified for offices and dwellings shall not be used for any purpose other than their approved uses; office E(g) (i & ii) and residential dwellings (C3) and for no other uses within Class E or outside of C3 unless otherwise agreed in writing by the LPA.
  25. Operational hours restrictions regarding the commercial uses 8am – 6pm Monday – Saturday. Unless otherwise agreed in writing.
  26. No further new openings, extensions, additions or out-buildings or any further fences, gates, walls, means of enclosure or free standing structures.
  27. Use of converted stables restricted as ancillary to the use of proposed commercial office use and/or dwellings and not to be sold, let or sub-let.

## **NOTES TO COMMITTEE**

### **Policy and Relevant Guidance and Legislation**

#### **National Planning Policy Framework (NPPF) (2021)**

## **National Planning Practice Guidance (NPPG)**

### **Blaby District Local Plan (Core Strategy) Development Plan Document (2013)**

CS1 – Strategy for Locating New Development  
CS2 – Design of New Development  
CS3 – Sustainable Urban Extension  
CS5 – Housing Distribution  
CS6 – Employment  
CS11 – Infrastructure, Services & Facilities to Support Growth  
CS12 – Planning Obligations and Developer Contributions  
CS13 – Retailing & Other Town Centre Uses  
CS14 – Green Infrastructure  
CS16 – Green Wedges  
CS20 – Historic Environment & Culture  
CS21 – Climate Change  
CS22 – Flood Risk Management  
CS23 - Waste  
CS24 – Presumption in Favour of Sustainable Development

### **Blaby District Local Plan Delivery Development Plan Document (2019)**

DM2 – Development in the Countryside  
DM3 – Employment Development on Unallocated Sites  
DM8 - Local Parking & Highway Design Standards  
DM12 – Designated & Non-Designated Heritage assets  
DM13 – Land Contamination & Pollution

### **Blaby District Character Assessment (2008)**

#### **Leicestershire Highways Design Guidance.**

#### **Consultation Summary**

**British Horse Society** – have not responded

**BT Open Reach** – have not responded

**Blaby District Council, Environmental Services** – have not objected subject to conditions.

**Blaby District Council, Neighbourhood Services (waste services)** – have not objected

**Environment Agency** – have not objected

**Historic England** – have not objected

**Leicestershire Fire & Rescue** – have provided an advisory

**Leicestershire County Council, Landscape & Arboriculture** – have not objected

**Leicestershire County Council, Archaeology** – have not objected subject to conditions

**Leicestershire County Council, Ecology** – have not objected subject to conditions

**Leicestershire County Council, Lead Local Flood Authority** – have provided standing advice

**Leicestershire County Council, Highways** – have not objected subject to conditions.

**Leicestershire County Council Historic Buildings Officer** – has not objected

**Lubbethorpe Parish Council** – Supports the application and has made the following comments:

*“The Council agreed to support the above planning application with the following comments.*

*i) It is important to preserve the historic nature of the site.*

*ii) The Council request that there are 2 parking spaces next to each property. Currently all parking is to one side of the development. It is felt that residents living in these houses will not always use the communal parking but will pull on the grass verge or leave their vehicles on the roadway as this would be more convenient.*

*iii) Security of the parking. The development is quite remote. The council would recommend that a gate be put onto the entrance of the parking area and also that the parking area has sufficient lighting.”*

**National Amenities Society** – have not responded.

**Ramblers** – have not responded

**Severn Trent Water** – have not objected subject to advisory note

### **Third Party Representations**

No letters of representation have been received from local residents,

### **Relevant History**

11/0100/1/OX - Approved 14/01/2014 - Outline application for 4,250 dwellings, a mixed use district centre and two mixed use local centres featuring a supermarket, retail, commercial, employment, leisure, health, community and residential uses, non-residential institutions including a secondary school, primary schools and nurseries, an employment site of 21 hectares, open spaces, woodlands, new access points and associated facilities and infrastructure, and detailed proposals for two new roads

bridges over the M1 motorway and M69 motorway, and two road access points from Beggars Lane and new accesses from Meridian Way, Chapel Green/Baines Lane and Leicester Lane (as amended).

## **EXPLANATORY NOTE**

### **The Site**

The application site is located within the boundary of the New Lubbesthorpe development, it extends to 0.839ha (8,390 sq.m) and includes all the land currently considered to form Abbey Farm, a contained and defined site comprising; an abandoned and derelict historic building complex with a three storey farmhouse and two quadrangles/courtyards enclosed by farm outbuildings. They include; stable range, iron column barn, arched hemmel cowshed, old barn, granary, smithy range and 3x cowsheds, all of which are no longer in use. There are some bull pens, pig pens and modern metal framed barns which are proposed for demolition/removal as part of the development.

Abbey Farm is one of two historic farm complexes within New Lubbesthorpe and the farm is said to have been built on the remains of an abbey although no documentary evidence exists for this. There is documentary evidence however for chapels at Abbey Farm (early medieval to early post medieval (1067AD-1699 AD) and the farm is documented as being built on the remains of the chapels. Post medieval features remain within the current farmhouse that may date from this period. Historic records also show that the farm was built on the remains of a later manor house built in the 1550's. The farm complex was modernised in around the late 18<sup>th</sup> early 19<sup>th</sup> century to update and reflect modern farming practices of that time and much of what remains of the farmstead is largely unchanged. Given its historic significance, Abbey farm is considered as a non-designated heritage asset.

The farm complex is set within an extensive area of retained open space which includes the Scheduled Ancient Monument (the buried remains of the deserted medieval and post medieval village of Lubbesthorpe) which is of national significance. The remains take the form of earthworks and buried features which represent areas of abandonment caused by the contraction and eventual desertion of the settlement. Previous archaeological evaluations have revealed evidence of a medieval settlement in the form of stone building foundations, post holes and large quantities of pottery dated between the 13<sup>th</sup> and 16<sup>th</sup> centuries.

The retained surrounding open space now forms parkland proposed as part of the New Lubbesthorpe development; The Commons and Brook Park. The site is located towards the southeastern edge of the New Lubbesthorpe development, to the west of the M1 motorway and north of the M69.

There are occupied residential properties nearby. The Bungalow is the nearest neighbouring dwelling and is located to the rear of the farmstead, its closest point being approx. 30 metres to the southeast. Hopyard Farm is approx. 100 metres to the west and Abbey Cottages, located outside of the Lubbesthorpe development site, are positioned approx. 200 metres to the northeast.

The surrounding land continues to be farmed for arable and pasture, with the land around the farm mostly in pasture given that it is within the Scheduled Monument area.

Lubbesthorpe Bridle Road runs along the front of the site. It once formed a vehicular road between Watgate Lane (Braunstone Town), Lubbesthorpe and beyond. However, it has been temporarily gated for several years now and is closed to all motorised traffic from Abbey farm into New Lubbesthorpe, other than for those vehicles associated with the farms. This link remains open for cycle and pedestrian access however. It is the intention that the Lubbesthorpe Bridle Road will be permanently closed to through motorised traffic in due course and will operate as through pedestrian, cycle and bridle access, with vehicular access for the nearby occupiers only.

A bridleway (W118) (aggregate surfaced track) runs along the western edge of the farm complex (application site) and continues over the M69 via the farm accommodation bridge. The part of the bridleway which forms the western boundary of the farmstead falls within the Scheduled area and any groundworks which impact on the monument are likely to require separate consent from Historic England in addition to planning consent. The applicant has been informed of this and an advisory will also be included on any decision as a 'note to applicant'.

The site is not connected to the gas main or sewer. Foul water is proposed to be treated by a Klargestor unit and associated ancillary equipment, details of which have been submitted. Blaby District Council's Environmental Services Officer has not objected to the drainage proposals subject to conditions. Severn Trent Water, Leicestershire County Council as Lead Local Flood Authority and the Environment Agency have not objected/provided formal comments but have all provided advice to be included on any decision.

The site is located within designated Green Wedge.

## **The Proposal**

The application seeks full planning permission for the restoration and conversion of the former agricultural site for residential and office use; including the sub-division of the farmhouse to provide 1x 3 bedroom and 1x 4 bedroom dwellings, the conversion of single storey out-buildings/barns to provide 1x 4 bedroom and 4x 2 bedroom dwellings (6 net new dwellings), 2x offices and 5x office 'pods'. Associated private gardens, car parking, which meets the requirements of the Leicestershire Highways Design Guide, shared courtyards and landscaping, including tree and shrub planting, pond, orchards and wildflower/grass planting are also proposed as part of the development of this site.

A structural survey carried out on behalf of the applicant found that the buildings are largely in good or reasonable condition given their age and exposure. Re-roofing repair works and brick repair work will be required on most of the buildings. Otherwise, no major structural defects were identified and no major alterations or substantial rebuilding works are proposed for the farmhouse and barns. The conversion of barns and the works to the farmhouse will not result in the raising of existing roof heights. Some modern barns and smaller structures/pens are proposed for demolition/removal.

The Abbey Farm site is owned by the Drummond Estate, who are also the landowners of the surrounding New Lubbesthorpe development site. The farmstead's restoration and conversion was originally envisaged as part of the New Lubbesthorpe development but details of any proposals did not form part of the outline planning permission and is the reason for the submission of this current application which seeks full planning permission.

The restoration and conversion works are being undertaken by The Drummond Estate and it is understood they are to retain ownership and manage the buildings as part of the retained wider Lubbesthorpe estate.

The Council has worked with the applicant over several years to arrive at a scheme which addresses the key national and local Policy requirements with regard the protection and enhancement of heritage assets along with all other relevant policy constraints.

The historically significant parts of the farmstead are to be retained and incorporated into the development. The works propose a restoration and conversion scheme which minimises harm to both the setting of the adjacent Scheduled Ancient Monument and to the significance of the non-designated heritage asset (farmhouse).

Currently, the farmyard is accessed from Lubbesthorpe Bridle Road but this will become a gated pedestrian access only. Parking for the new commercial offices is proposed to the northwest corner of the site and will be accessed off Lubbesthorpe Bridle Road. This small car park bounds both Lubbesthorpe Bridle Road and the bridleway to the west. The car park is to be screened from the road and surrounding open green space by a 1.8 metre high brick wall, post and rail fencing and hedgerow.

Parking for the residential dwellings will be located to the southwest, to the rear of the buildings, accessed off the Bridleway and out of view of the Lubbesthorpe Bridle Road. This car park will be screened from the Bridleway and the open green space to the south by landscaping. A lit and gated pedestrian access will link the residential car park to the internal courtyard and new dwellings.

Two shared courtyards are to be provided within the site for the dwellings and the commercial offices, with these courtyards being important features which retain the historic farmstead character of the site (hence parking being located away from here).

Private rear gardens are proposed for all dwellings, with shared access to orchards and wildlife pond.

The farmhouse works propose the conversion and subdivision of this single dwelling to provide 2 dwellings with a 3x bed dwelling in the northern wing and a 4x bed dwelling in the southern wing. A single storey extension is proposed in the eastern elevation replacing small ancillary outbuildings with a single storey extension, retaining the existing gable and chimney and rationalising the roof profile. The new materials will match those used in the existing dwelling.

The stables are located inside the entrance of the site and face the proposed commercial offices across the shared courtyard opposite (iron column barn & arched hemmel cowshed). Five small office 'pods' are proposed for the stable range and are proposed as either home office units in association with the new dwellings or additional space in association with the two larger commercial offices. A condition is considered appropriate in order to ensure the office pods remain ancillary to the main new uses. Alongside general repair works, new sympathetically designed windows and doors are proposed along with the removal of an existing lean-to.

The iron column barn & arched hemmel cowshed will provide approx. 170 square metres of new office space. These 2 barns form an L shape and will be linked by a shared entrance lobby and WC & kitchen. Entrance into the buildings is from within the shared courtyard (opposite the stables) and also from the commercial car parking area. Alongside general repair works, new glazing and oak boarding will be inserted behind the existing cast iron columns, with a retained, fixed closed cart door on this elevation fronting onto the Lubbethorpe Bridle Road. New glazing, doors, conservation rooflight and new high level (hayloft) window are also proposed.

The remaining 6 barns comprising 3x cow sheds, the old barn, granary and smithy, will be converted to provide 5x new dwellings. The works include general repairs, internal alterations, sensitively designed replacement windows and doors and new conservation rooflights. The scheme also proposes the removal of 3 large modern barns and smaller pen structures.

### **Planning Considerations**

Section 38(6) of the Town and Country Planning Act 1990 requires planning applications to be determined in accordance with the provisions of the Development Plan unless there are other material considerations which indicate otherwise.

### **National Planning Policy Framework**

The National Planning Policy Framework (NPPF) establishes the key principles for proactively delivering sustainable development through the development plan system and the determination of planning applications. It sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). These objectives are:

- An economic objective
- A social objective
- An environmental objective

Paragraph 11 of the NPPF sets out a presumption in Favour of Sustainable

Development. For decision-taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

Blaby District Council has recently published an updated housing land supply position. This update confirms that the Authority can currently demonstrate a 3.69 year housing land supply. This is notably less than the 5 year supply requirement outlined in paragraph 74 of the NPPF.

This means that for applications involving the provision of housing, the tilted balance applies and the application should be considered favourably unless the proposal conflicts with specified NPPF policies or the adverse impacts would significantly and demonstrably outweigh the benefits (NPPF paragraph 11). This matter is considered in more detail in the section of this report outlining relevant local plan policies and the 'Planning Balance and Conclusion' section at the end of this report.

#### Building a strong, competitive economy.

Chapter 6 of the NPPF (2021) states that planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas through the conversion of existing buildings and well-designed new buildings (paragraph 84). Paragraph 85 continues to say that planning policies and decisions should also recognise that sites, to meet local business and community needs in rural areas, may have to be found adjacent to or beyond existing settlements and in locations that are not well-served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

#### Ensuring the vitality of town centres.

Chapter 7 sets out the Government's approach to the growth, management and adaptation of town centres. Paragraph 89 states that the retail sequential approach should not be applied to applications for small-scale rural offices or other small-scale

rural development. The proposal consists of small-scale rural offices and therefore a sequential test for the proposed offices is not required.

### Conserving and Enhancing the Historic Environment.

Chapter 16 defines the setting of a heritage asset as “the surroundings in which a heritage asset is experienced.” Significance can be harmed or lost through development within a heritage asset’s setting and any harm or loss to significance (from its alteration or destruction, or from development within its setting) “should require clear and convincing justification.” Paragraph 202 states “where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.” Paragraph 203 states: “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

### **Blaby District Local Plan (Core Strategy) Development Plan Document (2013)**

The Council has reviewed and published an updated housing land supply position in September 2023. This confirms that the Council cannot demonstrate a 5 year supply of deliverable sites. As this proposal involves the provision of housing, the application is being considered in terms of its accordance with NPPF paragraph 11d and other material considerations. This does not mean that the policies of the Local Plan are ignored but that their requirements can be considered, and given weight, where they accord with the policies of the NPPF.

A housing land supply of 3.69 years is a notable shortfall and therefore significant weight should also be applied in favour of applications that can contribute to increasing housing supply.

The following policies are the most relevant to the proposed development:

#### Policy CS1 Strategy for Locating New Development

This Policy directs most new development in the district towards areas within and adjoining the Principal Urban Area (PUA) of Leicester. The PUA comprises the ‘built-up’ areas of Glenfield, Kirby Muxloe, Leicester Forest East, Braunstone Town and Glen Parva. The policy requires that a minimum of 8,740 houses will be developed in the District between 2006 and 2029.

A minimum of 68 hectares of employment land will be provided in the district, of which 97.67 hectares of employment land is built or committed to be built. Policy CS1 supports the re-use of previously developed land and underused land and buildings.

## Policy CS2 – Design of New Development

This Policy seeks to ensure that a high quality environment is achieved in all new development proposals, respecting distinctive local character, providing opportunities to enhance the natural and historic environment including improvements to green infrastructure and opportunities to promote bio-diversity. Policy CS2 seeks to ensure that design contributes towards creating places that provide a better quality of life for the district's local communities.

## Policy CS3 Sustainable Urban Extension

This policy identifies land west of the M1 as a preferred location for a mixed-use Sustainable Urban Extension (SUE) (now New Lubbethorpe). The policy required the SUE be a high quality, sustainable, mixed use development that is well connected and has a functional relationship with the wider area, but allows adequate opportunities to locally access services and facilities. The policy then prescribes the uses that the SUE should contain. The list of acceptable uses in this broad location includes:

- Housing,
- Employment opportunities including, but not exclusive to, those within the District and Local Centres, and
- Opportunities for 'live-work' accommodation.

## Policy CS5 Housing Distribution

This policy seeks to distribute housing by settlement in accordance with a settlement hierarchy. The site is in the Parish of Lubbethorpe, which policy CS5 identifies as part of the PUA; the PUA has a combined minimum housing requirement of 5,750 dwellings to provide between 2006 and 2029. At 1 April 2021, 7,078 dwellings were built or committed to be built in the PUA, some 1,328 dwellings over the minimum requirement. The Council's published residential land availability indicates that insufficient homes are likely to come forward before the end of the Plan period in the PUA and this proposal will support the delivery of further homes.

## Policy CS6 Employment

This policy seeks to provide the appropriate quantity, quality and mix of employment opportunities to meet the needs of the district's current and future populations, and to meet strategic employment, education and training needs. In order to deliver sufficient employment land and premises to meet strategic needs, the Council will:

- seek to enable the development of new smaller scale employment uses in other settlements, the scale and type of development will be determined by the needs of the area and the ability to accommodate employment growth in light of physical, policy or other constraints;
- seek to enable the provision of office uses in 'defined Town, Village and District centres';
- allow the re-use of agricultural buildings in rural areas for employment purposes, subject to the building being structurally sound and capable of conversion without the need for substantial rebuilding or alteration, suitable for

- conversion, and capable of being development without detriment to the residential or environmental amenity of the locality; and
- allow the provision of live-work units on residential properties, subject to these being capable of implementation without adverse impacts on amenity.

#### CS11 – Infrastructure, Services & Facilities to Support Growth

This Policy seeks to ensure the delivery of infrastructure, services and facilities required to meet the needs of the population of the district.

#### CS12 – Planning Obligations and Developer Contributions

This Policy seeks to ensure that the requirements for infrastructure, services and facilities arising from any development will be sought in accordance with the Council's latest *Planning Obligations and Developer Contributions* Supplementary Planning Document (SPD). However, as the scheme is for 6 new dwellings (net), the relevant thresholds have not been reached for developer contributions.

#### Policy CS13 Retailing and other Town Centre Uses

This Policy is relevant because the development proposes the provision of offices (which are defined as a 'town centre' use) in an out-of-centre location. The Policy requires proposals for retail, leisure and other main town centre uses, as defined in the National Planning Policy Framework to be subject to a sequential test. This requires the hierarchy for main town centre uses to be located within town centres, then edge of centre locations and then, only if suitable sequentially preferable sites are not available, in out-of-centre locations. This issue is fully set out further in the report.

#### CS14 – Green Infrastructure

This Policy seeks to ensure that the district's natural environment, wildlife, habitats, landscape and geology are considered and protected through good design practices, seeking to protect existing green spaces and provide new good quality, multi-functioning green networks and corridors. The application site is located adjacent to The Commons and Brook Park, to be provided as part of the wider New Lubbesthorpe Development. The rural nature and former agricultural use of this application site has been addressed in the design of the development and its proposed landscaping scheme.

#### Policy CS16 - Green Wedges

Green Wedges are designated in order to: prevent the merging of settlements, guide development form, provide a green lung into the urban areas, and provide a recreation resource. The need to retain Green Wedges will be balanced against the need to provide new development (including housing) in the most sustainable locations. Land use or development in Green Wedges should:

- A) retain the open and undeveloped character of the Green Wedge;

- B) retain and create green networks between the countryside and open spaces within the urban areas; and
- C) retain and enhance public access to the Green Wedge, especially for recreation.

The policy lists appropriate uses within areas of Green Wedge and this does not include housing or employment uses. This issue is fully set out and balanced further in the report.

#### Policy CS19 – Bio-diversity and Geo-diversity

Like Policy CS14, this Policy seeks to ensure that the district's natural environment, wildlife, habitats, landscape and geology are considered and protected through good design practices, seeking to protect existing green spaces and provide new good quality, multi-functioning green networks and corridors.

#### Policy CS20 - Historic Environment and Culture

This Policy recognises the contribution of heritage assets to local distinctiveness and it requires design solutions which preserve and enhance heritage assets where they are impacted by development. The Policy recognises that the district has a number of important buildings, sites and areas of historic value, some of which are at risk from neglect, decay or other threats and that they shall be preserved, protected and where possible, enhanced using a positive approach to their conservation in order to secure their viable and sustainable future through uses that are consistent with the heritage asset and its conservation. This issue is fully set out and balanced further in the report.

#### Policy CS21 - Climate Change

This Policy states that development which mitigates and adapts to climate change will be supported. The Council will contribute to achieving national targets to reduce greenhouse gas emissions by; focussing new development in the most sustainable locations, in accordance with Policy CS1 and CS5 and seeking site layout and sustainable design principles which reduce energy demand and increase efficiency. This site is located in the PUA, identified by Policy CS5 as the most sustainable location for new development.

#### Policy CS22 – Flood Risk Management

This Policy seeks to ensure that all new development minimises flood risk vulnerability, providing resilience to flooding by directing new development to locations at the lowest risk of flooding within the district, using sustainable drainage systems (SuDS) and managing surface water run off. The development is proposed in an area defined as Flood Zone 1, an area with the lowest flood risk. Leicestershire County Council as Lead Local Flood Authority have not objected to the proposal. The Environment Agency were also consulted and have not objected. They have provided an advisory note to be included on any decision.

### Policy CS23 – Waste

This Policy requires new developments ensure that waste collection is considered as part of the design. Given the specific and unusual limitations due to the site's rural location and heritage constraints, the existing bagged bin collection arrangement currently in place for the farmstead, which uses smaller council caged refuse trucks is to be continued for the residential element of the development. Similarly, the applicant has provided a Waste Management Strategy setting out that the waste servicing arrangements for the commercial element of the development will also be restricted to smaller collection vehicles. This is to be controlled by condition.

### Policy CS24 – Presumption in Favour of Sustainable Development

This Policy requires that when considering development proposals, Blaby District Council will take a positive approach that reflects the presumption in favour of sustainable development.

### **Blaby District Local Plan Delivery DPD (2019)**

The Delivery DPD was adopted on 4<sup>th</sup> February 2019 and full weight can be given to its policies. It sits alongside the Core Strategy to form part of the Development Plan for the District. The following Policies are considered to be the most relevant to this application;

#### Policy - DM2 Development in the Countryside

This Policy gives detailed guidance about development that is appropriate in the Countryside and the criteria that should be taken into account when determining planning applications. The site is not located in designated Countryside but Policy DM2 is relevant when development is proposed within designated Green Wedge where it is considered that a particular development would not be harmful to the Green Wedge function. This issue is fully set out and balanced further in the report.

#### Policy DM3 – Employment Development on Unallocated Sites

Like Policy CS6, this Policy seeks to provide the appropriate employment opportunities to meet the needs of the district's current and future populations. It recognises the strategic objectives of Policy CS1 which aims to direct most new development to locations within and adjoining the PUA. This scheme proposes an element of small scale office use in a rural location within the PUA.

#### Policy DM8 - Local Parking & Highway Design Standards

This Policy requires that housing development, including householder development that affects parking or garage space, will be required to provide an appropriate level of parking provision that:

- a) Complies with the most up-to-date Leicestershire Local Highway Guidance;

b) Is justified by an assessment of the site's accessibility, the type and mix of housing and the availability of and opportunities for public transport.

All new development and changes of use will be required to meet highway design standards as set out in the most up-to-date Leicestershire Local Highway Guidance.

Leicestershire County Council, as the Local Highways Authority, has not objected to the proposal subject to conditions. Highways considerations are set out further in the report.

#### Policy - DM12 Designated and Non-designated Heritage Assets

Like Core Strategy Policy CS20, this Policy seeks to preserve and enhance the cultural heritage of the district, recognising its contribution to local distinctiveness and to seek design solutions which preserve and enhance heritage assets where they are impacted by development, seeking to ensure that heritage assets are suitably considered and where necessary protected when affected by a development proposal.

Under this policy 'designated heritage assets' and their settings (including Listed Buildings, Scheduled Monuments and Conservation Areas) will be given the highest level of protection to ensure that they are conserved and enhanced in a manner appropriate to their significance and contribution to the historic environment.

In addition, with regard to 'non-designated heritage assets', a balanced consideration will be applied to proposals which may impact non-designated heritage assets. Proposals will be supported where the benefits of the scheme are considered to outweigh the scale of any harm or loss, having regard to the significance of the heritage asset. Historic England, along with Leicestershire County Council's Historic Buildings Officer and Archaeology Officers have not objected to the proposal, their comments have been considered and the issues are fully set out and balanced further in the report.

#### Policy - DM13 Land Contamination and Pollution

The strategic objectives of this policy aim to minimise the risk of flooding (and other hazards) to property, infrastructure and people. The site is located within Flood Zone 1, identified as having the lowest risk of flooding. Leicestershire County Council as Lead Local Flood Authority has not objected to the proposal. Blaby District Council's Environmental Services Officer provided comments in relation to; air quality, noise, drainage, land contamination. Blaby's Environmental Services Officer is satisfied with the findings and mitigation within the submitted reports subject to conditions.

#### Other Material Considerations

Planning applications must be determined in accordance with the provisions of the Development Plan unless there are material considerations which indicate otherwise, and whether those material considerations are of such weight that the adopted policies of the Development Plan should not prevail in relation to any proposal. The following are material planning considerations in the determination of this planning application:

## Principle of Development within the Green Wedge

The application site is located within an area designated as Green Wedge by the Blaby District Local Plan (Core Strategy) Development Plan Document (2013) and carried through into the Local Plan (Delivery) Development Plan Document (2019). The strategic objectives of Policy CS16 aim to;

- A) retain the open and undeveloped character of the Green Wedge;
- B) retain and create green networks between the countryside and open spaces within the urban areas; and
- C) retain and enhance public access to the Green Wedge, especially for recreation.

However, this Policy also recognises that the need to retain Green Wedges should be balanced against the need to provide new development (including housing) in the most sustainable locations.

In addition, Policy DM2 (Development within Countryside) recognises that where development is proposed in designated Green Wedge which would not harm its function, then the objectives of this policy will also apply.

The application proposes the re-use of existing abandoned buildings to provide 6 new dwellings (7 dwellings in total on site) and small office space on a rural site within Lubbesthorpe, an area defined by Policy CS5 as being within the PUA and considered by Policy CS1 as the most sustainable location within the Council's settlement hierarchy.

The site is located within a reasonable distance of the range of services and facilities offered (or soon to be offered) by both New Lubbesthorpe and Braunstone Town. The re-use of the buildings and materials to provide the sensitive restoration of the existing buildings and the provision of appropriate landscaping and parking which is contained within the existing parameters of the farmstead, is not considered would harm or adversely affect the open and undeveloped character of the Green Wedge.

The site is located adjacent and fronting Lubbesthorpe Bridle Road which, through agreements between the New Lubbesthorpe Landowners and LCC Highways officers as part of the wider development of New Lubbesthorpe, has already been closed to through traffic temporarily, with a permanent closure to non-access vehicular traffic envisaged as New Lubbesthorpe is built out.

Lubbesthorpe Bridle Road will form part of the pedestrian, cycle and bridle access linking the green network of New Lubbesthorpe to the wider urban area. In order to enhance the experience of this leisure resource and provide a better understanding of the area's historical context, the applicant has agreed to the installation an historical interpretation board at the site in order to explain the historic context of the site and allow users of the pedestrian/cycleway/bridleway a greater understanding of Abbey Farm, its historic past and how it relates to the buried remains of the adjacent medieval village of Lubbesthorpe. The provision of this will be secured by condition.

The proposals are considered to meet the criteria of Policy CS16 and it is therefore considered that the proposal would not be harmful to the functions of the Green Wedge.

In addition to the above, consideration has also been given to the permitted development rights under section 2, Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended), which allows (subject to a set of criteria) the conversion of rural farm buildings into dwelling houses without full planning permission. Although this application does not meet the criteria which would allow this particular development without planning permission, the provision under the above Order demonstrates that the Government recognises as a principle, new residential dwellings are an appropriate use within Green Wedges and countryside locations. This is a material consideration in assessing the principle of this development.

#### Impact on character and appearance of the area and neighbouring occupiers

Where new development within Green Wedge locations will not be harmful to the function of Green Wedges, the proposal must also conform to the requirements of Policy DM2 (Countryside). This Policy requires that new development be in-keeping with the appearance and character of the existing landscape, development form and buildings, and that new development will have a satisfactory relationship with other nearby uses that would not be significantly detrimental to the amenities currently enjoyed by the existing or new occupiers, including but not limited to;

- Over-development of the site due to factors including footprint mass or scale
- Privacy, light, noise, disturbance and over-bearing effect
- Vibration, emissions, hours of working, vehicular activity.

In addition, new development shall not undermine the vitality and viability of existing town, district and local centres.

Policy DM2 also sets out that development will be supported where the following criteria for the change of use and adaptation of existing buildings is met;

- The development must be carried out and sustained without need for complete or substantial re-building, alteration or extension; and, the building is structurally sound.

The scheme proposes some repair and sensitive build works, with demolition proposed to some minor outbuildings associated with the farmhouse, along with demolition of some modern barns and small structures, bull pens etc. Works are required to repair damage to the fabric of buildings including brickwork, roof repairs, replacement glazing and doors and internal works to allow for the conversion from farm buildings to habitable accommodation. The palette of materials for the building works and the ancillary works (paths, drives, boundary walls, railings and gates etc) have been chosen to either match, are in-keeping with or are reclaimed from the site in order to respect and be sensitive to the existing and historic agricultural use and its open countryside location. No new buildings or major structural works are proposed. The works will therefore not result in buildings which are at odds with, or out of

character with that of the surrounding area. A materials palette has been provided as part of the submission and this will be controlled by condition.

The application seeks permission for an element of new office use and this use will be controlled by condition to prevent any further intensification or new incompatible uses given the proposed close arrangement of dwellings and offices within the site. Similarly, hours of use restrictions in the form of a condition are considered appropriate in order to limit any adverse impact from the office uses on the occupiers of the new dwellings.

Consideration has also been given to the impact from existing/historic farm vehicle use against the types of traffic and movements associated with 6 new additional dwellings and office uses. There is no doubt that the proposal will see an increase in smaller vehicle movements coming and going from the site. However, the impact on existing surrounding occupiers and uses is likely minimal given the separation distances between the nearest dwellings. The Bungalow is the nearest residential dwelling and is located to the southeast, with the new residential car park proposed on the southern side of the site, approx. 60 metres from The Bungalow. A landscaping belt of hedgerow, apple orchard, new tree and shrub planting and a wildlife pond will separate the car parking area from the edge of the application site (approx. 17 metres in depth) with a green open area of approx. 45 metres separating this part of the site edge and The Bungalow. Hopyard Farm is the second closest property and is located approx. 100 metres to the west of the site. The parking for both the offices and the dwellings is located away from the new dwellings, screened by buildings and boundary walls to limit impact of vehicle noise, headlight sweep and door slamming etc.

#### Town centre uses outside defined centres

The scheme proposes a modest 160 square metres of office space (and 5 small ancillary office pods). Policy CS6 aims to provide offices in defined town, village and district centres but also recognises the need to enable the development of new smaller scale employment uses in other settlements, with the scale and type of development being determined by the needs of the area. This Policy also allows the re-use of agricultural buildings in rural areas for employment purposes, subject to certain criteria (set out earlier in the report) and recognises the need for the provision of live-work units on residential properties, subject to these being capable of implementation without adverse impacts on amenity. The NPPF (2021) also recognises the need for small-scale rural offices or other small-scale rural development and therefore sets out that a retail sequential approach should not be applied to applications for such development.

A planning condition that restricts the use of the office floorspace to Use Class E(g)(i) and (ii) only and for no other uses within Use Class E is considered appropriate in these circumstances. The reason for this is that the proposed office floorspace is small-scale, in a rural location and therefore does not require the submission of a sequential test (as set out above). Changes to another use, or mix of uses, within Use Class E do not require planning permission and this could lead to the provision of “town centre uses”, such as retail shops, in an ‘out of town’ location when a retail sequential test has not been undertaken for such uses. These other types of ‘town centre’ uses are not considered appropriate in this location.

Further, a condition restricting the use of the small office 'pods' so that they remain ancillary to the new dwellings and/or offices, and cannot be sold, let or sub-let separately, is also considered appropriate.

### The impact on heritage assets

As set out above, the site is located adjacent to a Scheduled Ancient Monument (designated heritage asset) and given the historical context of Abbey Farm, its farmhouse and historic barns, whilst not Listed Buildings, have been identified as non-designated heritage assets.

When considering development proposals on, in or adjacent to historic sites, areas and buildings, Policy CS20 of the adopted Core Strategy seeks to ensure development protects and enhances heritage assets and their settings. Policy CS20 also expects new development to make a positive contribution to the character and distinctiveness of the local area.

Similarly, Policy DM12 seeks to ensure that heritage assets are suitably considered and where necessary protected when affected by development.

The NPPF (2021) also places great weight on the retention and protection of heritage assets, Section 16, para 190 requires that local planning authorities consider the impact of development upon any heritage assets, taking into account their particular archaeological and historic significance. The NPPF requires planning authorities to identify and assess the particular significance of any heritage asset that may be affected by the proposal and any harm or loss caused by the development.

The NPPF goes on to state that when considering the impact of a proposed development on the significance of a 'designated heritage asset', great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of assets of the highest significance, including scheduled monuments should be wholly exceptional. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

The NPPF further states that the effect of an application on the significance of a 'non-designated heritage asset' should be taken into account in determining the application. In weighing applications that directly or indirectly affect 'non-designated heritage assets', a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

National Planning Practice Guidance (NPPG) requires that a clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimize harm.

The scheme proposes the sensitive restoration of the farm buildings which will see the retention and re-use of this historic abandoned and deteriorating farmstead, preventing its eventual loss from the landscape. The farm forms part of the setting of the nationally important adjacent Scheduled Ancient Monument and both of these heritage assets appear to share a connected history. It is therefore considered that any loss of the farmstead would to some extent lead to a loss of the understanding of the nationally significant adjacent Scheduled Ancient Monument.

Archaeology surveys, a Heritage Statement and Impact Assessment and structural surveys of the farmhouse and barns were submitted as part of the application. In accordance with statutory duty, Historic England has been consulted and they have not objected to the proposals. They have requested the applicant is reminded that any groundworks affecting the Scheduled Ancient Monument will require separate consent from themselves. This advisory will be included on any permission.

Leicestershire County Council's Historic Buildings Officer and Leicestershire County Archaeology, were consulted for their comments on this application and did not object to the proposals. Conditions have been requested from Leicestershire Archaeology to ensure the works are carried out in accordance with the agreed written scheme of investigation to include a set of criteria and the requirement for recording and publication of archaeological material, in line with standard practice.

It is considered that the retention of the historically significant farmstead buildings, albeit into new uses, through sensitive preservation will minimize harm to both the setting of the adjacent scheduled ancient monument and to the significance of the non designated heritage asset (farmhouse and buildings) and will provide local distinctiveness and variety to the area. Along with the provision of an historical interpretation board at the site (location and details to be agreed by condition), the development is therefore considered will enhance an understanding of both the farmstead and its relationship with the scheduled ancient monument (the buried remains of the medieval village). It is therefore considered that any limited harm caused by the change of use of the buildings to the significance of the heritage assets is outweighed by the public benefits gained through the overall retention of the deteriorating buildings and an enhanced understanding of their setting.

### Highways Impact

The site itself is somewhat and understandably constrained by its existing agricultural use, heritage status and proximity to the nationally significant scheduled ancient monument. A Transport Statement was produced by the applicant as part of the application submission, along with technical notes as part of the consultation process with the Highways Authority. The potential impact of the development on highway safety has been considered by officers at Leicestershire County Highways Authority (HA).

The applicant has worked with the HA over many months to provide an acceptable scheme in terms of highways safety and to ensure the scheme complies with the requirements of the Leicestershire Highways Design Guide in terms of car parking, accesses and visibility.

The HA have provided a full response to the submission and have not objected subject to conditions. Their requested conditions include; requirements for the submission of the detailed design of a lay-by/passing bay to be located outside of the site on Watergate Lane, details of the way in which the public rights of way will be managed during construction, the provision of a construction traffic management plan, and conditions requiring the accesses, parking and visibility splays to be provided in accordance with the approved plans. In addition, a condition is required in order that the new uses are not first brought into use until the existing vehicular access to the front of the site is permanently closed off to motorised vehicles. All of the HA conditions are précised in the report above.

The HA are satisfied that in its view, the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe. Based on the information provided, the development therefore does not conflict with paragraph 111 of the National Planning Policy Framework (2023), subject to the conditions set out in the report.

### Landscaping and ecology

The scheme is located within an established agricultural setting. The Commons and Brook Park are proposed for this surrounding area as part of the future wider Lubbesthorpe development. The site is also located within designated Green Wedge which separates the settlements of Lubbesthorpe and Braunstone Town. The applicant has provided a proposed landscaping scheme for the site which includes; new tree, shrub and hedge planting, shared orchards and a wildlife pond which is considered acceptable and appropriate for this open, agricultural location and the proposed new uses. Leicestershire Landscape officers have not objected to the proposals.

Leicestershire County Ecologists have reviewed the submitted ecology reports and noted that no protected species have been recorded on site. The applicant has submitted a detailed landscaping scheme setting out grass and wildflower planting to further enhance on-site habitat and foraging opportunities. A Precautionary Method Statement for bats has also been submitted which County Ecologists consider acceptable. The proposed external lighting scheme is also considered by them to be acceptable. County Ecologists have requested the submission of a landscape management plan, conditions to protect species during demolition and construction including details of proposed locations of bat boxes and Swallow nesting opportunities along with a statement of good practice to demonstrate the nesting boxes have subsequently been installed in accordance with the agreed details. A condition requiring the submission of a landscape management plan has also been requested.

### **Planning Balance and Conclusion**

In determining planning applications, the District Planning Authority must determine applications in accordance with the Development Plan unless material considerations indicate otherwise.

The NPPF, which is a material consideration in decision making requires that planning authorities identify a 5 year supply of deliverable housing sites. Where Planning Authorities cannot identify a 5 year supply of deliverable sites then the provisions of paragraph 11 of the NPPF apply. As stated earlier in this report, this means granting permission for development, unless the application of policies in the framework that seek to protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The proposal does not conflict with NPPF policies that seek to protect areas or assets of particular importance listed in Paragraph 11, footnote 7. In accordance with paragraph 11 of the NPPF, this means that the so called 'tilted balance' is engaged and any harm arising from the proposal must be weighed against the benefits.

Officers have fully considered the application against local and national policy and guidance and against all relevant material considerations as set out above.

The proposal, whilst only limited in scale, would make a meaningful contribution towards increasing housing delivery in a sustainable location in the PUA. Given that the Council cannot demonstrate a 5 year housing land supply, the, the provision of new homes represents a very significant benefit of the proposal.

The proposals will make limited provision for new employment provision which will have an overall beneficial impact on the local economy. The proposal will also support the economic re-use of redundant agricultural buildings in compliance with Policy CS6. The conversion of buildings would also provide a short-term boost to the local economy. Overall, a small to moderate economic benefit is likely.

The scheme proposes the sensitive restoration of the farm buildings which will see the retention and re-use of this historic abandoned and deteriorating farmstead, preventing its eventual loss from the landscape. The retention of the buildings, which are located within intimate proximity to and share an historical connection with the adjacent buried medieval village (scheduled ancient monument), along with the provision of a public historical interpretation board, will enhance public understanding of the nationally significant important heritage asset. Overall, it is considered that any limited harm associated with the proposed change of use of the buildings would be outweighed by the restoration and retention of the otherwise deteriorating, historically significant buildings and an enhanced understanding of their setting. On balance, it is considered that the proposals would have a moderate beneficial weight in respect of heritage considerations.

No technical objections have been received in relation to the proposed development and it is considered that any impacts from the proposal have been addressed through the design of the scheme or can be appropriately mitigated through the use of appropriate planning conditions which are set out above. In this regard a neutral or at worse, slight adverse effect in respect of impacts of the Green Wedge, neighbour amenity, ecology, landscape and highways is identified within the report.

Officers have fully considered the application against local and national policy and guidance and against all relevant material considerations. It is considered that any harm identified from development can be mitigated through the use of conditions and does not significantly and demonstrably outweigh the benefits of the proposed scheme. Permission for this scheme should therefore be granted without delay in accordance with the provisions set out in paragraph 11 of the NPPF.



**22/1204/FUL**

**Registered Date  
13.12.2022**

**Mr Andrew Mott, Exagen SPV02 Ltd**

**Construction and operation of battery energy storage facility, along with associated structures, access and landscaping**

**Land North East Of Earl Shilton, Earl Shilton Road, Earl Shilton**

**Report author: Tom White Senior Planning Officer  
Contact Details: Council Offices. Tel 0116 250 3078**

**RECOMMENDATION:**

**THAT APPLICATION, 22/1204/FUL, BE APPROVED SUBJECT TO THE IMPOSITION OF CONDITIONS.**

***Report to follow.***

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23/0094/DOC

Registered Date  
06.02.2023

Mr Justin Langton  
Countryside Partnerships

**Partial discharge of condition 11 (parts i, ii and iii) (scheme to deal with risks associated with contamination of the site) attached to planning permission 15/0176/OUT**

**Land To South West Of Cork Lane, Glen Parva**

**Report Author: Kristy Ingles, Development Services Manager  
Contact Details: Council Offices. Tel: 0116 2727705**

### **RECOMMENDATION:**

**That the application for approval of details reserved by condition 11 parts i, ii and iii of planning permission 15/0176/OUT is APPROVED.**

### **NOTES TO COMMITTEE**

#### **Policy and Relevant Guidance and Legislation**

##### **Blaby District Local Plan Delivery DPD (2019)**

DM13 – Land Contamination & Pollution

**National Planning Policy Framework (NPPF) (2023)** paragraphs 189, 190, 191

##### **National Planning Practice Guidance (NPPG)**

#### **Consultation Summary**

**Blaby District Council, Environmental Health** – on 27.03.23 - in summary raises comments in relation to:

- Requests clarification on the status of the information submitted in relation to the 4<sup>th</sup> element of the condition
- Results from the monitoring undertaken since June 2022 have not been supplied
- The proposed specification for floor slabs, gas proof membranes and subfloor ventilation appear to be reasonable
- Expect all plots to receive detailed verification inspections and all verification reports to be submitted to the LPA for approval
- Further inspection visits must be undertaken, and any additional works completed until the plot(s) achieve the required standards
- The list of items to be included in a verification certificate appear reasonable
- Applicant needs to confirm the garage foundations with associated gas protection measures
- Northern boundary monitoring – will need to receive ongoing consideration

- Southern boundary monitoring – how gas monitoring results are to be assessed and actioned appear to be reasonable but details of the procedure for the reporting of monitoring results needs to be included
- Regardless of the risk that is associated with the northern and southern boundaries the approach for using gas monitoring results should be consistent to assess the need for additional remedial works and monitoring results reported to the LPA with any recommended additional work for prior approval.
- The proposals for placing clean cover appear to be generally reasonable. The thickness of emplaced topsoil at all plots should receive validation.
- Discovery Strategy for addressing unidentified contamination appears to be reasonable and control needs to be retained to facilitate the consideration of any amendments to the Remediation Strategy
- Sufficient planning controls need to be retained over the process of deciding the on-going monitoring and any mitigation results

**Blaby District Council, Environmental Health** – on 20.06.23 - in summary raises comments in relation to:

- Gas Protection Measures:
  - The proposal has been changed so that all plots are verified and reports submitted to the LPA for approval
  - The proposal has been changed so that further inspection visits would be undertaken, and any additional works completed until the plot(s) achieved the required standards
  - The proposal has been changed to state that piled foundations with gas protection measures will be adopted for detached garages
- Boundary Monitoring:
  - Issue of lack of a procedure for reporting monitoring results to the LPA for approval has not been resolved
  - The details submitted address the previous issue with regard to the approach for using gas monitoring results to assess the need for additional remedial works and monitoring results reported to the LPA with any recommended additional work for prior approval.
- The revised document has a proposal to validate the thickness of emplaced soil at a frequency of 1 in 4 plots and this is insufficient and all plots should received such validation
- The proposal has been changed to align the validation of clear cover with gas protection measures

**Blaby District Council, Environmental Health** – on 30.08.23 - in summary raises comments in relation to:

- The proposal has been revised to refer to ‘trigger points to be set with an associated action plan’ rather than ‘a risk assessment’ which appears to be an improvement
- The proposal for verification has been changed to all plots including integral / detached garages
- The confirmation of foundation type for detached garages is helpful. However further settlement testing would appear to be relevant to the protection of any building elements not supported by piles (eg services).

- The boundary monitoring procedure for reporting of results has been addressed.
- The duration of post-construction monitoring needs further consideration, as the proposed one year once the agreed place has been completed seems too short
- The details of how the clean cover relates to materials imported or re-used on site is a reasonable approach
- Remain of the opinion that validation of thickness of emplaced soil should be for each plot
- The clarification on protection for water supply pipes is helpful

**Blaby District Council, Environmental Health** – on 26.09.23 – finds the advice provided to the Council by Dr Card to be reasonable.

**Environment Agency** – states its position as:

*“Subsequent to discussions with the Technical Specialist Landfill Groundwater and Contaminated Land Officer, we have the following comments to make.*

*We have reviewed the documents provided. The majority of the Ground Investigation Reports & Gas Risk Assessments are older documents that the Agency has already provided comprehensive comments on.*

*The Letter Report produced by GeoRisk Management, namely “Remediation Strategy-Monitoring for Off-Site Gas Migration” Ref 18039/LO.004updated/AIB”, dated 1st July 2022, provides an update on further gas monitoring results obtained from the 8 deeper off-waste boreholes installed along the northern boundary of the development site, as recommended by the Environment Agency. It is detailed that a further 8 gas monitoring return visits were undertaken between 21st October 2021 & 24th June 2022. The results indicate no gas concentrations or associated flows of concern were found. The monitoring visits were also undertaken over representative atmospheric conditions (ie covered both low pressure & high pressure events).*

*This is seen as encouraging, with regard to the current gassing regime and would appear to demonstrate a low risk of migration off site exists at present. It is also encouraging to note that further Environment Agency recommendations for monitoring of these boreholes during and post construction will also be undertaken to confirm this risk remains the same, with more detailed requirements for these being included within a further report provided as part of this consultation, namely “Construction Phase Remediation Strategy & Validation Plan” Report Reference 18039/4 dated February 2023. Should gas migration be observed during or post-development within these perimeter boreholes, which necessitates further measures to be taken, a 3m wide easement area has been agreed in which installation of additional gas protection measures can be provided. An indicative gas curtain wall design has been included within the submitted Remediation Strategy.*

*The Construction Phase Remediation Strategy & Validation Plan Report, dated February 2023, appears to clearly set out the remediation measures required to be installed during the construction of dwellings to adequately protect future inhabitants from potential landfill gas emissions. A precautionary approach has been undertaken*

by classifying the development site as CS3 (characteristic situation 3) with regard to the level of gas protection measures required. This applies to all plots. Subsequently all plots will be required to have the provision of:

- Sub-floor ventilation to allow for any ground gas emissions to be diluted to safe levels
- Provision of a gas membrane in the floor construction which will be sealed where a drainage pipe intersects
- Ensure that the existing capping depth on the site is a minimum of 1m.

The Validation Plan also requires these works to be only undertaken by suitably qualified Installers (the specific requirements are detailed within the Plan), overseen and reported/certified on by a qualified Third Party. Again these were recommendations made by the Agency as part of previous comments. The actual approval of the “Construction Phase Remediation Strategy & Validation Plan” is for Blaby District Council and therefore not within the remit of the Environment Agency.

The Agency also welcomes the proposal to install new gas monitoring wells along the inside of the southern boundary (ie development side of the existing vent trench), with gas monitoring requirements to be carried out prior to and during development to demonstrate that there is no migration of landfill gas across the southern boundary.

The Agency has no further comments to make”.

### **Third Party Representations**

None.

### **Relevant History**

14/0216/1/OX	Proposed residential development (max 165 dwellings) associated landscaping and public open space with vehicular access from Cork Lane (Outline)	Refused 17.10.14 Appeal withdrawn
15/0176/OUT	Proposed residential development (max 165 dwellings) associated landscaping and public open space with vehicular access from Cork Lane (Outline) (Re-submission)	Approved 02.08.16
19/0813/RM	Proposed residential development of 165 dwellings (Reserved Matters in relation to outline permission 15/0176/OUT).	Refused 25.05.22 Allowed on appeal 04.01.23
23/0187/DOC	Discharge of condition 13 (Construction Method Statement) attached to planning permission 15/0176/OUT	Pending
23/0188/DOC	Discharge of conditions 3 (materials) 4, (foul and surface water drainage) 5 (scheme for surface water drainage) and 6 (finished ground and floor levels) attached	Pending

to planning permission 15/0176/OUT

23/0296/DOC	Application to discharge condition 13 (piling method statement) attached to appeal decision APP/T2405/W/22/3302956	Pending
23/0511/NMAT	Substitution of previously approved drawing G128-BRP-00-00-DR-A-8002 for new drawing GPA003-BRP-00-ZZ-DR-A-SIT-0002-P17 Site Layout - As Proposed	Approved 03.11.23
23/0710/NMAT	Substitution of previously approved drawing House Type Pack P19-2940_07K Dated January 2021 for new drawing G128 Cork Lane Glen Parva - HT Pack.	Pending

### **EXPLANATORY NOTE**

This application is brought to committee as it was agreed by Members that should the reserved matters application be allowed at appeal that the subsequent application for approval of the details reserved by condition 11 of the outline planning permission would be determined by the Planning Committee.

### **The Site and Planning History**

The application site extends to 12.5 hectares and is bordered by development on three sides which includes residential development to the north and south and commercial development to the east. The land was historically a brickworks and clay pit followed by a landfill site that ceased operation in the 1990s. The site is elevated relative to its surroundings and the southern part of the site features a steep slope dropping down to Navigation Drive. There are public rights of way along the site's northern and eastern boundaries, the latter of which also forms part of The National Cycle Network. The Grand Union Canal (also a Conservation Area) lies a short distance to the south and west, and the Glen Parva and Glen Hill Local Nature Reserved is approximately 500m to the north-west.

An outline planning application at the site was originally submitted to the Council under reference 14/0216/1/OX on 3 March 2014. This sought outline planning permission for the development of up to 165 dwellings and associated infrastructure. The application was refused planning at Planning Committee on 16 October 2014. The Decision Notice dated 17 October 2014, sets out the single reason for refusal as:

*“The proposal is contrary to policy M2 – Unstable Land and Policy M3 – Contamination of the Blaby District Local Plan (1999) and insufficient evidence has been submitted in respect of ground contamination issues”*

Following refusal of 14/0216/1/OX an appeal was lodged by the applicant but withdrawn on 13 April 2015 due to a resolution to grant planning approval for the scheme described below.

A subsequent outline planning application was submitted on 15 February 2015 and resolved to be approved at committee on 2 April 2015, (15/0176/OUT). This application included more detailed information relating to contamination and its contamination mitigation methodology on the site.

As part of the consideration of the outline application a remediation strategy was considered which included:

- Removal of the top 3m of the landfill to allow any organic material to be segregated and removed. The reason for this was to remove any compressible or biodegradable material that may consolidate and cause ground movement as well as remove a potential source of current or future landfill gas generation;
- Dynamic compaction of the underlying 2.5m of landfill to consolidate the formation increasing its stiffness and bearing capacity;
- Replace the top 3m with clean processed material to be placed and compact in layers to an engineering specification to similarly increase stiffness and bearing capacity;
- Adopt raft foundations founded onto the compacted formation – designed to NHBC standards and incorporating all appropriate gas precautions;
- Place a capping layer/growth media layer comprising 600mm of clean verified topsoil and subsoil in garden and landscaped areas;
- Produce interim validation and final validation reports to demonstrate that the works had been undertaken in accordance with the remediation strategy.

The outline permission was granted taking into account the remediation strategy set out above. However, this approval did not restrict the reserved matters to that approach as further investigations were required.

The decision notice issued on 2 August 2016 was subject to a Section 106 legal agreement relating to the payment of developer contributions and to ensure delivery of affordable housing. The application was also subject to three conditions relating to land contamination:

- “10. Unless agreed by the District Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 11 and 12 have been complied with”.*
- “11. No development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the District Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the District Planning Authority:*
- i. A preliminary risk assessment which has identified:- all previous uses and potential contaminants associated with those uses, a conceptual*

- model of the site indicating sources, pathways and receptors, potentially unacceptable risks arising from contamination at the site.*
- ii. A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.*
  - iii. The results of the site investigation and detailed risk assessment referred to in (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.*
  - iv. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.*

*Any changes to these components require the express written consent of the District Planning Authority. The scheme shall be implemented as approved”.*

- “12. If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the District Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the District Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the District Planning Authority. The remediation strategy shall be implemented as approved.”*

A reserved matters submission was subsequently made in July 2019 (19/0183/RM). Details of the remediation scheme were accordingly submitted in support of the reserved matters application. The details submitted proposed a different remediation strategy to that proposed at the outline stage. The proposal sought to leave the source of the contamination in situ and design the dwellings and their associated infrastructure in a way that protected them from the contamination below. These measures included a physical membrane and barrier and venting mechanisms. In essence the revised strategy relied on a combination of the existing capping layer and surrounding geology to prevent the migration of gas alongside physical mitigation measures largely built into the fabric of the buildings.

The Council subsequently refused reserved matters application 19/0183/RM for the following reasons:

*“The District Planning Authority considers that the applicant has failed to satisfactorily demonstrate that the proposed layout could enable remediation and mitigation works to be undertaken to address the risk posed to future occupants and surrounding residents as a result of the site’s previous use as a landfill site. It has not been satisfactorily demonstrated that the proposed layout would not result in the development being contrary to Policy DM13 of the Blaby District Local Plan (Delivery) Development Plan Document (2019) and to the advice contained within paragraphs 183, 184 and 185 of the National Planning Policy Framework (2021)”.*

An appeal against the Council's decision was submitted to the Planning Inspectorate and a Public Inquiry was held in November 2022. Dr Geoffrey Card of GB Card & Partners was appointed by the Council to provide technical advice and evidence.

Before the Inquiry was held discussions took place between the applicants, their advisors and the Council and its legal and technical advisors. Subsequently the applicant amended the layout of the development to allow for the implementation of an acceptable remediation strategy. The amended plan allowed space for the installation of a virtual gas curtain (should this be required) to the northern side of the site and a 3 metre easement. As a result, before the start of the Inquiry, the Council signed a Statement of Common Ground with the applicant which agreed:

- a) the site can be remediated satisfactorily;
- b) the occupiers of the proposed dwellings can be protected from any threat or risk to human health posed by landfill gas through measures that can be incorporated into the construction, design and fabric of the proposed dwellings and by steps being taken to increase the thickness of the existing capping layer to 1 metre in places which it is less than this; and
- c) any threat or risk that landfill gas poses to human health off site can be satisfactorily addressed by:
  - i) carrying out further monitoring for gas migration across the southern boundary through the installation of additional monitoring wells and monitoring of the existing vent stacks; and
  - ii) carrying out further monitoring for gas migration across the northern boundary and, if necessary, installing a virtual gas curtain along the length of this boundary.

In January 2023 the Planning Inspectorate issued the appeal decision allowing the appeal and approving the reserved matters of appearance, landscape, layout and scale subject to conditions.

In the decision letter the Inspector concluded that:

- *“The proposal would not have an unacceptable effect on the public health of the future occupiers of the proposal and the occupiers of nearby residential properties by way of land contamination. As a result, it would comply with Policy DM13 of the Council's Local Plan (Delivery) Development Plan Document (2019) (Delivery DPD) where it states that proposals will be required to clearly demonstrate that any unacceptable adverse impacts related to land contamination, landfill, land stability and pollution can be satisfactorily mitigated, and will be supported where they are accompanied by a detailed investigation of the issues and appropriate mitigation measures are identified to avoid any adverse impact upon the site or adjacent areas, including where land is (or has the potential to be) subject to land contamination or land stability issues, amongst other considerations”.*

- *“The proposal would also comply with Policy CS2 of the Local Plan (Core Strategy) Development Plan Document (2013) and Policy DM1 of the Delivery DPD in as far as addressing land contamination can be seen as a constituent of good design”.*
- *“The proposal would also comply with paragraphs 183, 184 and 185 of the National Planning Policy Framework (Framework) where they concern ground conditions and any risks arising from land instability and contamination, that responsibilities for securing a safe development rests with the developer and/or landowner, and that decisions should also ensure that new development is appropriate for its location taking into account the likely effects, including health and living conditions”.*

### **The application submission**

The application for approval of details reserved by condition 11 parts i, ii and iii of outline planning permission 15/0176/OUT was submitted to the Council in February 2023.

Condition 11 states:

- “11. No development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the District Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the District Planning Authority:*
- i A preliminary risk assessment which has identified:- all previous uses and potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, potentially unacceptable risks arising from contamination at the site.*
  - ii A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.*
  - iii The results of the site investigation and detailed risk assessment referred to in (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.*
  - iv A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.*

*Any changes to these components require the express written consent of the District Planning Authority. The scheme shall be implemented as approved”.*

And the reason for the imposition of the condition is:

*“National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Government policy also states that planning policies and decisions should also ensure that adequate site investigation information, prepared by a competent person, is presented (NPPF, paragraph 121)”.*

Approval of details reserved by part iv of condition 11 is not included with the current application.

The discharge of condition application as first submitted was accompanied by:

- Ground Investigation Strategy and Outline Remediation Statement dated March 2019
- Phase 2, 3 & 4 Ground Investigations Report dated March 2020
- A letter dated 1 July 2020 titled “Additional Gas Monitoring Data and Assessment
- A letter dated 8 January 2021 titled “Results of zone loading and settlement tests and review of foundations for detached garages”
- A letter dated 1 July 2022 titled “Remediation Strategy – Monitoring for off-site gas migration”
- Ground-Gas Risk Assessment dated 18 April 2019
- Ground data, photograph record & ground-gas risk assessment
- A construction phase remediation strategy and validation plan dated February 2023

The Council appointed Dr Geoffrey Card of GB Card & Partners to provide technical advice. Dr Card also advised the Council during the reserved matters appeal.

During the assessment of the application and following meetings between the Council and Dr Card and the applicant and their consultants the following additional and amended documents have been submitted to the Council:

- Revised construction phase remediation strategy and validation plan - 11 May
- Further revised construction phase remediation strategy and validation plan - dated July 2023
- A letter dated 9 August 2023 titled “Remediation strategy – southern boundary monitoring for off-site gas migration”.
- Technical Note: Trigger Levels for Off Site Gas Migration dated 31 August 2023
- A slope stability assessment submitted September 2023.
- A drawing titled “Trench dam detail”.
- A copy of a document in relation to the north and western perimeter gas / fluid interception and dispersal system at New Bridge Road was submitted in October 2023.
- Soil-Gas and Groundwater Monitoring Results – various
- Response to BDC comments on Technical Note for Trigger Levels
- Technical Note: Review of October and November 2023 gas monitoring

All documents submitted by the applicant are available in full on the Council's website together with the advice provided to the Council by Dr Card and consultees <https://pa.blaby.gov.uk/online-applications/> (reference number 23/0094/DOC).

Council Officers have attended gas monitoring site visits with the applicant's consultants during September, October and November 2023. This monitoring data has been submitted.

### **Applicant's non-technical summary of proposals**

In the applicant's non-technical summary of their investigations and mitigation proposals undertaken on their behalf, the applicant states:

#### **"Findings of the investigation works so far:**

*Following the initial stages of gas monitoring prior to any works commencing on site, it has been noted that no significant gas concentrations of concern have been identified. Increased migration during the construction phase remains a low risk, however the below measures have been put into place as part of the ongoing monitoring / mitigation and remediation of the site. This will ensure safe development and occupation of the site.*

#### **Extent of Construction Phase Remediation / Mitigation works:**

- **Ongoing monitoring**

*Gas monitoring is ongoing and will continue throughout the construction phase of the project and beyond. "Traffic Light" trigger levels are being set to aid the monitoring process and action levels on the site. It will be this data that will ultimately inform the requirement for a gas curtain to the northern boundary, the expectation is that trigger levels will not be exceeded, due to the low levels of gas producing land fill material.*

- **Additional monitoring points**

*New gas monitoring points have been installed along the inside of the southern boundary, this again will be monitored prior and throughout the construction phase of the development to demonstrate that there is no migration of any residual landfill gas across the southern boundary.*

- **Installation of gas membranes – CS3**

*Gas membranes are being installed to all plots and will be inspected and verified as correctly installed by an independent 3rd party inspector. The NHBC are providing their 10 year warranty to all properties on the development and will ensure quality and compliance with the Building Regulations.*

- **Ventilation measures**

*Each dwelling will have a minimum 150mm ventilated sub floor void. There will be additional air vents around the perimeter of each property (exceeding the Building Regs requirement of 1500mm<sup>2</sup>/m run of wall).*

- **Clay cap verification**

*Following the investigation of the clay cap, where areas of less than 1m have been encountered, additional material will be placed to increase its thickness to meet the 1m requirement.*

- **Garden and landscape areas**

*There will be import and placement of 150mm clean topsoil in all garden and landscaped areas”.*

### **Monitoring during development**

A system of gas regime trigger criteria is proposed with action plans should gas measurements exceed agreed values during development construction, particularly groundworks stage. The monitoring to be undertaken by the developer includes:

- Weekly monitoring during piling activities
- Monthly monitoring during other construction activities
- Post construction
  - Monitoring to be undertaken monthly for 3 consecutive months.
  - If results are below the amber trigger point monitoring will revert to every 3 months
  - 3 monthly monitoring will be undertaken for at least a period of one year from completion of construction
  - All boundary wells will be monitored on every inspection visit
  - All monitoring wells will be protected by placed 1m high concrete manhole rings over the wells. If wells are damaged or destroyed they will be repaired or replaced within one week
  - If gas levels are above the trigger point the agreed action plan will be followed

The action plan sets out that the gas levels which would be classed as “Green”, “Amber” and “Red”.

#### At “Green”

- no action is required beyond the monitoring strategy

#### At “Amber”

- Immediately increase frequency of gas monitoring to daily and monitor vent bollards to existing gas barrier;
- Within 3 weeks install continuous gas monitoring equipment with flow rates;
- Assess results and determine likely cause of increase within 7 weeks of first increased result;
- Begin preparatory works to install gas barrier.

#### At “Red”

- If not already being done, immediately increase frequency of gas monitoring to daily and monitor vent bollards to existing gas barrier;
- Install continuous monitoring equipment with flow rates within 3 weeks;
- Assess results and determine likely cause of increase within 7 weeks of first increased result and whether current barrier can manage the increase;

- If results sustained for more than 2 weeks install additional gas barrier over affected length of boundary within 10 weeks of first elevated result.

### **Technical Advice to the Council**

A summary of Dr Card's opinion and recommendations is set out below. The full report of Dr Card dated 16 November 2023 setting out his advice to the Council is available on the Council's website - <https://pa.blaby.gov.uk/online-applications/> (reference number 23/0094/DOC).

- Gas protection on site

All ground gas data collected to date supports the recommendation that a Characteristic Situation CS3 in accordance with the British Standard is adopted for all residential units on the site.

- Gas protection off site

By adopting a trigger value action plan it can be determined whether or not inground gas barriers are or will be required to prevent off site gas migration from the site.

The concentration of carbon dioxide is generally higher along the northern boundary compared to the concentrations recorded in the wells installed in the Made Ground along the southern boundary.

Given the sensitivity of the southern boundary, and the fact that the base of the Made Ground was not proven in, adopting a separate set of lower trigger values for the southern boundary of the site is considered appropriate.

The proposed trigger values proposed by the Applicant are acceptable.

Occasional elevated concentrations of carbon monoxide and carbon dioxide were recorded in some monitoring wells. The potential long-term exposure risk to these gases is adequately addressed for residents of the development by the proposed gas protection measures. It is recommended that a monitoring plan is incorporated into any construction method statement and/or risk assessments by the applicant to address the short-term risk from these gases for construction workers in confined spaces during the redevelopment of the site.

- Ground conditions and slope stability

A slope stability analysis has been undertaken to confirm the stability of the southern slope with due regard to the development. It

It has been demonstrated that the long-term stability of the slope on the site is satisfactory even under the worst case conditions.

- BDC Environmental Services

Officers in the Council's Environmental Services Team have accompanied the applicant's consultants at a number of gas monitoring site visits. Officers in the Team have also been involved in meetings with Dr Card and the applicants.

There are a number of matters outstanding for which Environmental Services require clarification:

- Validation of depth of clean cover material per plot
- Retention of appropriate planning controls over the acceptance process for validation certificates as they are submitted to the Council
- The Council needs to retain powers for the consideration and approval of monitoring data associated with the agreed trigger points and for monitoring the implementation of the agreed actions should trigger points be reached.

An update on these matters will be provided at the Planning Committee meeting:

### **Conclusions**

Subject to agreement being reached on the matters detailed above, it is concluded that the details submitted for condition 11 parts i, ii and iii) of planning permission 15/0176/OUT can be approved.

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**23/0622/VAR**

**Registered Date  
19<sup>th</sup> July 2023**

**Marks and Spencer Plc**

**Variation to condition 8 attached to planning permission 08/0833/1/VY to specify the net sales area to be used for the sale of food.**

**Fosse Park Shopping Centre, Fosse Park Avenue, Enderby**

**Report Author: Stephen Dukes,  
Development Services Team Leader**

**Contact Details: Council Offices. Tel: 0116 2727520**

**RECOMMENDATION:**

**THAT APPLICATION 23/0622/VAR BE APPROVED SUBJECT TO THE CONDITIONS SET OUT BELOW.**

1. The car parking areas shall not be used for any purpose other than for the parking of vehicles unless otherwise agreed in writing by the District Planning Authority.
2. No outside storage of waste materials shall take place on the site at any time except within purposely designated locations which shall first have received the approval of the District Planning Authority.
3. Any oil installations shall be adequately bunded to contain loss or spillage, and surface water draining from such areas and from areas of oil usage and vehicle parking shall be passed through a suitable oil interceptor before discharge.
4. Only uncontaminated surface water shall be discharged into any watercourse.
5. That shall be no overall raising of existing ground levels within the washlands area without the prior written consent of the District Planning Authority.
6. No individual unit hereby permitted shall be less than 929 square metres gross external measurement save that within the terraces washed yellow on plan 06/191A/P21(7) no more than six units at any one time may be occupied in units each of less than 929 square metres gross external measurement
7. Save as specified in condition 8 the buildings shall not be used for the sale of food other than confectionery and such food which may be sold within ancillary snack-bars, restaurants or coffee shops to be provided.
8. Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (or any subsequent reenactment with or without modification) no more than 20,000 sq ft (1,859 sqm) net sales space within the unit edged yellow on the plan 0369-LFP173-A-415 shall be used for the sale of food, and no more than 5% of the net sales area of any other 3 retail units shall be used for the sale of ancillary food and drink for consumption off the premises. This restriction shall not apply to any instore café or restaurant.
9. The access roads shall retain suitable provision for access to the Severn Trent Water Authority Pumping Station and allow for possible future access to the gravel deposits in the river valley.

## **NOTES TO COMMITTEE**

### **Relevant Planning Policy**

**National Planning Policy Framework (NPPF)**

**National Planning Practice Guidance**

**Blaby District Local Plan (Core Strategy) Development Plan Document (2013)**

Policy CS1 – Strategy for locating new development

Policy CS2 – Design of new development

Policy CS10 – Transport Infrastructure

Policy CS13 – Retailing and other Town Centre Units

Policy CS24 – Presumption in favour of sustainable development

**Blaby District Local Plan (Delivery) Development Plan Document (Adopted Feb 2019)**

Policy DM1 – Development within Settlement Boundaries

Policy DM8 – Local Parking and Highway Design Standards

### **Consultation Summary**

Consultation letters were initially issued in August 2023. Reconsultation was carried out in December 2023 following changes to the scope of the application.

**Active Travel England** - No comment

**Blaby District Council, Environmental Health** - No objection to the proposal.

**Enderby Parish Council** - No objection.

**Highways England** – No objection.

**Leicester City Council** (included in full) -

*“The application seeks to gain clarification of whether the net or gross floorspace applies to planning permission 08/0833/1/VY, this is in the interest of clarity around condition 8 attached to this planning application, thus increasing the total developable floorspace for food use. The application from 2008 refers to Fosse Park North, so we are of the understanding that this application for the variation to the condition is also relating to just Fosse Park North.*

*This variation would see that the threshold of maximum area for sale of food (apart from sale of food permitted by condition 7, which includes the sale of confectionary and ancillary snack bars, restaurants or coffee shops) is changed from 20,000 sq ft of implied gross area to 20,000 sq ft (1,858 sq m) net sales area, which would result in around 25,600 sq ft (2,462 sq m) of gross floor area overall. This would increase the*

net floorspace area by around 604 sq m in Fosse Park North in comparison to the original planning application, which is around a fifth increase of the already implied consented figure.

The cover letter submitted with the application states that the agent is acting on behalf of the retailer 'Marks And Spencer' who currently occupy a unit at Fosse Park and possess around 105,000 sq m of gross floorspace. This unit currently offers a mixture of convenience and comparison goods selling food, clothes, homeware and other items. The cover letter submitted as part of the application to vary this condition indicates that part of the floorspace is likely to be converted from floorspace for the sale of clothes and homeware to floorspace for the sale of food. It is noted that M&S already sell some food within the unit, so this appears to be in aid of expanding their food offer.

The hierarchy of shopping centres is established within Blaby's Core Strategy policy CS13. The policy places the City Centre, including Leicester City Centre, at the top of the hierarchy with town, district and local centres listed next before finishing with out of centre retail area. The areas outside of the administrative boundaries, including the city centre, all have a functional relationship with the district. This hierarchy is supported by the city to help maintain the vitality and viability of Leicester and its city centre.

Fosse Park is specifically mentioned within this policy as an out-of-centre retail facility and contained within the 'Motorways Retail Area'. As part of the policy relating to the motorway service area, the most pertinent criteria in relation to:

'New development or extensions will be required to demonstrate that:

i There would be no unacceptable impacts on existing centres'

iii. They are capable of being well integrated with the existing retail facilities

The change of this use for an expansion of food space is likely to have a detrimental impact on nearby local centres and Leicester city centre. The application appears to vary the condition for all of Fosse Park North but appears to be in aid of expanding the food offer at the Marks & Spencer unit. This is large high street store and an increase in floorspace would change convenience shopping habits in Fosse Park but also locally from the city centre. It would be useful to confirm if this specifically would apply to the Marks & Spencer unit as it is unclear from the application forms.

Regardless of which specific unit is involved, it should be considered that this increase would accumulate and potentially encourage further non policy compliant applications to be submitted to the detriment of other centres.

The site has extensive planning history and conditions have previously been utilised to manage growth in a sustainable way. Whilst it is acknowledged that the growth of Fosse Park will develop over time, we have concerns that this is deviating from the original planning consent significantly and is concentrating retail growth in the Motorways area, at the subsequent impact to the city centre. For example, a loss of comparison floorspace may encourage development of this in a smaller unit elsewhere in Fosse Park, a small unit that could be suitable in Leicester City Centre or nearby local centres.

*The city council would recommend that this planning application should be refused in the interest of protecting the vitality and viability of nearby centres, including Leicester City Centre.*

*However, if this is approved, we would request that suitable conditions are attached to the consent, which would be in the interest of making sure that the development takes place in a sustainable way. We would recommend that these conditions seek to:*

- Ensure that approval is specific to the Marks & Spencer unit The applicants have emphasised in their cover letter that this proposal will not result in a loss of floorspace but a transferral of floorspace from comparison shopping to convenience. This very much appears to relate to the Marks & Spencer unit. However, if approved this would grant consent for all of Fosse Park North. Approval will allow smaller units to open up for the sale of food up to the threshold in place of being contained in a specific unit.*
- Prevent any subdivision of the unit. The original consent given on this application specified that two units should be over 35,000sq m in floorspace. Again if this is specific to Marks & Spencer, and as the unit is over 100,000 sq m, it would be valuable for this unit to be retained in accordance with the outline consent and to ensure that smaller units do not open to the detriment of other centres vitality. If the unit did subdivide further down the line, this would result in smaller businesses moving in that could be accommodated in nearby centres and the City Centre.”*

**Leicestershire County Council, Highways**– No objection. Given the scale and nature of the wider retail park, the LHA does not consider that the proposed variation of condition 8 would materially impact the adopted highway network. The LHA therefore has no objection to the proposed variation of condition 8.

### **Representations**

None received.

### **Relevant History**

#### **86/1429/1/OX – Outline - Retail Park including Ancillary Uses – Approved**

This outline application was granted planning permission by the Secretary of State for the Environment on 30 June 1988, subject to a number of conditions.

The relevant conditions restricting retail floor space are as follows:

- Condition 16 - The development hereby permitted shall include at least 2 units of more than 35,000 sq ft gross floorspace and without the prior written consent of the Local Planning Authority no individual unit shall be less than 10,000 sq ft gross.*

- *Condition 17 - Save as specified in condition 18, the buildings shall not be used for the sale of food other than confectionary and such food which may be sold within ancillary snack bars, restaurants or coffee shops to be provided.*
- *Condition 18 - Not more than 20,000 sq ft out of the permitted gross retail floorspace of 265,000 sq ft shall be used for the sale of food except as permitted by condition 17 above.*

### **88/1498/1/MX – Reserved Matters – Details of Retail Park and Garden Centre including ancillary uses – Approved**

This reserved matters application was granted by the District Planning Authority on 25 October 1988. The following conditions of the outline planning permission were repeated:

- *Condition 17 - Save as specified in condition 18, no food sales other than confectionary and other ancillary items.*
- *Condition 18 - Not more than 20,000sq ft to be used for food sales except as permitted by condition 17.*

### **08/0833/1/VY – Variation of condition 16 of planning permission 86/1429 to allow the subdivision of specified units to create up to 6 smaller units of less than 929 m<sup>2</sup> (10,000 sq ft) – Approved**

This was a Section 73 (Variation of condition) application which allowed for the subdivision of specified units to allow some units to be smaller than permitted in the original planning permission. The conditions relating to sale of food are as follows:

- *Condition 7 - Save as specified in condition 8, the buildings shall not be used for the sale of food other than confectionary and such food which may be sold within ancillary snack-bars, restaurants or coffee shops to be provided.*
- *Condition 8 - Not more than 20,000 sq ft (1,858 sq m) shall be used for the sale of food except as permitted by condition 7.*

## **EXPLANATORY NOTE**

### **The Site**

Fosse Park is a large out of town shopping centre located in Enderby close to Junction 21 of the M1 accessed by the dual carriageways of Soar Valley Way and Narborough Road South.

The Marks and Spencer (M&S) unit to which this application relates is sited within 'Fosse Park North', the first phase of the development, originally approved in 1988 by the Secretary of State (ref. 86/1429/1/OX). Fosse Park South was subsequently approved on appeal in 1995 (ref. 93/1340/1/OX). Most recently, Fosse Park West was granted planning permission in 2017 (ref. 15/0577/FUL) and Food Central in 2018 (ref. 18/0550/FUL).

## The Proposal

The application proposes the variation of a condition attached to a 2008 Fosse Park permission (08/0833/1/VY) which was itself a variation of the original outline approval (86/1429/1/OX).

The premise of the application is to enable M&S to change some of its non-food retail floorspace to food retail floorspace to create an improved shopping experience for customers as part of a proposed renovation of the store.

As aforementioned in the planning history above, the relevant conditions from the 08/0833/1/V permission relating to food retail are as follows:

- *Condition 8 - Not more than 20,000 sq ft (1,858 sq m) shall be used for the sale of food except as permitted by condition 7.*
- *Condition 7 - "Save as specified in condition 8, the buildings shall not be used for the sale of food other than confectionary and such food which may be sold within ancillary snack-bars, restaurants or coffee shops to be provided."*

These conditions were similar to conditions 17 and 18 originally imposed on planning permission 86/1429/1/OX:

- *Condition 17 - Save as specified in condition 18, the buildings shall not be used for the sale of food other than confectionary and such food which may be sold within ancillary snack bars, restaurants or coffee shops to be provided.*
- *Condition 18 - Not more than 20,000 sq ft out of the permitted gross retail floorspace of 265,000 sq ft shall be used for the sale of food except as permitted by condition 17 above.*

## Original proposal

In the application as originally submitted (as set out in the applicant's covering letter dated 19<sup>th</sup> July 2023), the proposal was to add the word "net" to the condition limiting the amount of food retail space to 20,000sq ft (1,858sq m), to reword condition 8 of 08/0833/1/VY to the following:

*"Not more than 20,000 sq ft (1,858 sq m) net sales area shall be used for the sale of food except as permitted by condition 7".*

Whilst the original 1986 permission referred to gross retail floorspace, the 2008 permission did not include the word net. However, the District Planning Authority's view is that the maximum 20,000 square foot of retail floorspace to be used for food referred to gross floor space rather than net floor space, given that this is what the original permission referred to. The change from gross to net would therefore represent an increase in food floor space at Fosse Park North, rather than just being a clarification of the existing permission.

## Revised proposal

In the revised proposal (as set out in the applicant's covering letter dated 14<sup>th</sup> November 2023, and amended on 21<sup>st</sup> December 2023), the applicant now wishes to vary condition 8 of 08/0833/1/VY to the following:

*“Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (or any subsequent re-enactment with or without modification) no more than 20,000 sq ft (1,859 sq m) net sales space within the unit edged yellow on the attached plan shall be used for the sale of food, and no more than 5% of the net sales area of any other 3 retail units shall be used for the sale of ancillary food and drink for consumption off the premises. This restriction shall not apply to any instore café or restaurant.”*

## Explanation of the changes

The addition of the word 'net' sales space in relation to the 20,000 square foot of floor space permitted for the sale of food is acknowledged by the applicant to be an increase in the amount of food floor space at Fosse Park North. The applicant has commented that using a net figure is an easier mechanism for calculating the amount of floor space permitted in a mixed sales store such as M&S where, for example, ambient foods may be stored in the same back-of-house areas as clothes or home items.

The Competition Commission has adopted a definition of net sales floorspace as follows:

*“The sales area within a building (i.e. all internal areas accessible to the customer) but excluding checkouts, lobbies, concessions, restaurants, customer toilets and walkways behind the checkouts”.*

By contrast, the term 'gross floorspace' is one which is used in the National Planning Policy Framework, and the Blaby Local Plan, and is defined in the Planning Practice Guidance as follows:

*“Gross retail floorspace (or gross external area) is the total built floor area measured externally which is occupied exclusively by a retailer or retailers, excluding open areas used for the storage, display or sale of goods”.*

The applicant has indicated that the food floorspace amounts in the M&S store are as follows:

- Existing net food sales area is 14,367 sq foot. This is estimated at approximately 18,500 sq foot as a gross figure (but with a degree of uncertainty).
- Proposed net food sales area is 18,496 sq foot. This is estimated at approximately 24,000 sq foot as a gross figure (but again with a degree of uncertainty).

In order to restrict the proposed increase in food sales at Fosse Park North, the applicant proposes that this increase be limited to the unit occupied by M&S. In practice, M&S already 'use up' over 90% of the permitted food sales area at Fosse

Park North (approximately 18,500 sq foot of the 20,000 sq foot as a gross figure). This will still be the case after the increase and change to a net figure (with M&S proposing to occupy 18,500 sq foot of the 20,000 sq foot as a net figure).

As noted above, a separate condition (condition 7) permits any unit at Fosse Park to sell confectionary, and food in ancillary snack bars, restaurants and cafes in addition to the 20,000 sq foot of food sales. However, there are currently three units which sell other food which would not be classed as 'confectionary' (for example, Boots sell sandwiches in their unit). As such, the applicant proposes to also amend condition 8 to permit three other units at Fosse Park North to have up to 5% of their sales areas for the sale of food. This is reflective of the current situation which already exists.

The applicant has commented in the covering letter dated 14 November 2023 as follows:

*"As one of Fosse Park's original stores, M&S has been represented at this location since it's construction in 1989. For over 30 years, M&S has operated as one of the two required anchor stores referenced in the original planning permission (86/1429/1/OX) for the shopping park, with the first part of Condition xvi (which is no longer in effect, as referenced in further detail below) requiring the inclusion of at least two units of more than 35,000 sqft gross floorspace. The store has always included a food hall element, serving as the only location within Fosse Park providing fresh groceries.*

*As referenced in the Covering Letter to the S.73 application, the intention of the submission is to provide clarity of the wording of the current condition restricting the area that can be used "for the sale of food" (specifically with regards to the lack of reference to the figure as either net or gross). This clarity is required to provide M&S with the comfort to proceed with proposed plans for significant investment in the existing store, including a number of qualitative improvements to enhance the overall shopping offer."*

Further correspondence received on 21<sup>st</sup> December 2023 comments:

*"The current application proposal is for an amendment to the condition relating to an existing 10,670 sq m (gross) store, which would transfer up to 604 sq m of floorspace from 'non-food' to 'food'. This is primarily to provide M&S shoppers with an improved retail experience by offering a more appealing in-store experience through, inter alia, wider aisles and circulation space, and more engaging product displays."*

## **Planning Policy**

### **National Planning Policy Framework**

The National Planning Policy Framework establishes the key principles for proactively delivering sustainable development through the development plan system and the determination of planning applications. It sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). These objectives are:

- An economic objective
- A social objective
- An environmental objective

For decision-taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The relevant policies of the NPPF referring to retail development (Chapter 7 of the NPPF) are summarised below:

- Paragraph 90 refers to the role of town centres and requires local planning authorities to define a network and hierarchy of town centres.
- Paragraph 91 introduces the 'sequential test' to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. This requires main town centre uses to be located in town centres, then edge of centre locations, and only if suitable sites are not available (or expected to become available) should out of centre sites be considered.

The glossary to the NPPF defines main town centre uses as: *“Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).”*

- Paragraph 92 states that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

- Paragraph 94 introduces the 'impact assessment'. This requires local planning authorities to require an impact assessment for retail development outside of town centres (or not in accordance with an up-to-date plan) if the development is over a proportionate, locally set threshold (or over 2,500 sq metres of gross floorspace if no threshold is set). This should include assessment of the impact on planned public and private investment in centres in the catchment area and the impact on town centre vitality and viability.
- Paragraph 95 states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact in one or more of the considerations in paragraph 94, it should be refused.

## **Blaby District Local Plan (Core Strategy) Development Plan Document (2013)**

### Policy CS1 – Strategy for locating new development

Policy CS1 sets out the overall strategy for locating new development in the district. It states that most new development will take place within and adjoining the Principal Urban Area (PUA) of Leicester, comprising the 'built-up' areas of Glenfield, Kirby Muxloe, Leicester Forest East, Braunstone Town and Glen Parva. Outside of the PUA, development will be focused within and adjoining Blaby and the settlements of Enderby, Narborough, Whetstone and Countesthorpe (the 'Larger Central Villages').

### Policy CS2 – Design of new development

Policy CS2 seeks to ensure that a high quality, safe and socially inclusive environment is achieved in all new development proposals, respecting distinctive local character and contributing towards creating places of high architectural and urban design quality. New development should also provide opportunities to enhance the natural and historic environment.

### Policy CS10 – Transport infrastructure

Seeks to reduce the impact of new development on the highways network by locating new development so people can access services and facilities without reliance on private motor vehicles. Opportunities for safe sustainable and accessible transport modes (including walking, cycling and public transport) will be maximised.

### Policy CS13 – Retailing and Other Town Centre Uses

The policy mirrors the sequential approach to site selection set out in the NPPF. It states that proposals for retail, leisure and other main town centre uses, as defined in the NPPF, will be subject to a sequential test. This requires main town centre uses to be located within town centres, then edge of centre locations and then, only if suitable sequentially preferable sites are not available, in out-of-centre locations.

The Policy contains the Blaby District Retail Hierarchy which sets out the list of centres both inside and outside the District boundary which have a functional relationship to the district:

- City Centre – Leicester City Centre
- Town Centres – Blaby, Beaumont Leys, Hinckley, Wigston, Market Harborough, Lutterworth
- District Centres – Enderby, Glenfield, Narborough, South Wigston, Oadby, Broughton Astley, Narborough Road (Leicester), Anstey
- Rural Centre – Stoney Stanton
- Local Centres – Cosby, Glen Parva, Huncote, Sapcote, Whetstone, Countesthorpe, Leicester Forest East, Kirby Muxloe, Ratby, Groby, Burbage
- Out of Centre – Motorways Retail Area (Fosse Park, Grove Farm Triangle, Asda) and St Georges Retail Park.

The Policy states that ‘managed growth’ will be facilitated within the Motorways Retail Area in a form which is complementary to the achievement of the Blaby Town Centre Masterplan. The Blaby Town Centre Masterplan is a regeneration project dating back to 2006 which aimed to improve and enhance Blaby Town Centre, making it more attractive and appealing as a shopping and leisure venue. The reference in Policy CS13 to the Blaby Town Centre Masterplan is one element of this policy and the fact that this Masterplan has not been updated recently does not otherwise prevent the ongoing application and use of Policy CS13.

Policy CS13 does also state that new development or extensions in the Motorway Retail Area will be required to demonstrate the following:

- (i) There would be no unacceptable impacts on existing centres;
- (ii) There are no sites suitable, available and viable and which are in sequentially preferable locations within or on the edge of existing centres;
- (iii) They are capable of being well integrated with the existing retail facilities; and
- (iv) They incorporate the provision of proportionate sustainability measures, including:
  - Public realm, design and architectural improvements;
  - Improved accessibility to the site by means of public transport, walking and cycling;
  - Greater connectivity and ease of access between disparate parts of the MRA, particularly for pedestrians;
  - Improvements to the local and wider transport network resulting from development;
  - Retail units maintaining the minimum floorspace thresholds identified in the original consent.
  - Mitigation of any material impacts on flooding that might occur.

Policy CS13 also sets a local floorspace threshold for the requirement for retail impact assessments. It states that all applications for new retail and leisure developments in excess of 929 sq m (10,000 sq ft) gross and not within an existing town, district, rural or local centre will be required to provide impact assessments. Similar to the NPPF it states that impact assessments will be required to demonstrate:

- The impact of the proposal on the vitality and viability of any centre, including local consumer choice and trade in the centres; and

- The impact of the proposal on existing, committed and planned public and private investment in any centre.

#### Policy CS24 – Presumption in Favour of Sustainable Development

Indicates that when considering development proposals Blaby District Council will take a positive approach that reflects the presumption in favour of sustainable development.

### **Blaby Local Plan Delivery Development Plan Document (Delivery DPD) (2019)**

#### Policy DM1 - Development within the settlement boundaries

This Policy seeks to support suitable development located within the boundaries of existing settlements where the proposal:

- would not unduly impact on neighbouring uses,
- is in-keeping with the character and appearance of the area,
- is not overdevelopment,
- is acceptable in layout design and external appearance; and would not prejudice the development of a wider area.

#### Policy DM8 – Local Parking and Highway Design Standards

Seeks to provide an appropriate level of parking provision which complies with Leicestershire Local Highway Guidance and is justified by an assessment of the site's accessibility, type and mix of housing and the availability of and opportunities for public transport.

### **Leicestershire Highways Design Guide**

The Design Guide sets out the County Council's principles and policies for highways Development Management. The guidance is intended to be used in the design development layouts to ensure they provide safe and free movement for all road users.

#### **Planning Considerations:**

Planning applications must be determined in accordance with the provisions of the Development Plan unless there are material considerations which indicate otherwise. All material considerations must be carefully balanced to determine whether the negative impacts outweigh the positive impacts to such a degree that the adopted policies of the Development Plan should not prevail.

This section will consider the proposed changes which the applicant wishes to make to planning permission 08/0833/1/VY, considering the following:

- Retail policy summary
- Background to the Fosse Park North permission and the restrictions on food floorspace;
- The proposed change from gross to net retail floor space for food

- Consideration against policy background, in particular the application of the sequential and impact assessments
- The restriction of the 20,000 square foot floor space to the M&S unit
- The 5% allowance for food sales in three other units and the relationship with condition 7 which allows confectionary.
- Leicester City Council objection
- Overall planning balance and conclusion

### Retail policy summary

The above policy section sets out both the national and local policy position in relation to retail development. However, for clarity, the overall strategy, in both national and local policy is a 'town centre first' approach, whereby retail development in existing town centres is given priority over edge or out of centre locations. Blaby's Local Plan identifies the 'Motorways Retail Area' (including Fosse Park) as an allocated out-of-centre location as it is not located at the heart of an existing settlement, and it therefore sits at the bottom of the retail policy hierarchy.

### Background to the Fosse Park North permission and the restrictions on food floorspace

The planning permission for Fosse Park North was granted by the Secretary of State in 1988 (86/1429/1/OX). As summarised earlier in this report, condition 8 limited the amount of food floor space permitted to 20,000 sq foot of the overall gross floor space figure. It is assumed that the 20,000 square foot allowance was put forward by the applicant to allow for an M&S store (which includes a mixture of food, clothes and home sales) to locate at Fosse Park. The restriction was presumably to reflect the intention for Fosse Park to consist predominantly of units for the sale of comparison goods rather than convenience goods and a condition was imposed to ensure there was no adverse impact upon other shopping destinations within the wider locality.

Comparison goods are generally classed as those items which have a higher value and are purchased less often, such as household items, electrical goods, clothes and shoes. Customers may visit several shops to compare items before buying them. Convenience goods are those items that are bought nearly every day such as bread and milk and other food and are readily available.

The restriction on the amount of food floor space permitted at Fosse Park North would have served to ensure that units permitted at the site were predominantly for the sale of comparison goods, which would also help to protect the vitality and viability of centres higher up the retail hierarchy (such as Leicester City Centre and Blaby Town Centre) and their roles in providing for convenience shopping (as well as comparison). Similarly, a restriction permitting no individual unit to be less than 10,000 square foot gross on the 86/1429/1/OX permission would also help to protect retail centres by ensuring that only those retailers too large to be accommodated in smaller units in existing centres could locate at Fosse Park.

The retail market has dramatically changed since planning permission was granted for Fosse Park North in 1988. The majority of convenience shopping now takes place in large supermarkets which are usually located in edge-of-centre or out-of-centre

locations (such as the Sainsburys and Asda close to Fosse Park North), or via online sales. There are no large supermarkets in Leicester City Centre. An 11,260 sq foot Sainsburys store on Humberstone Gate closed in 2022. There are smaller convenience stores, run both by national chains and 'corner shop' type stores in Leicester City Centre, as well as an M&S Food located in the city centre M&S store. Tesco, Morrisons, Aldi and Lidl store are located in what could be described as 'edge of centre' locations in Leicester. Blaby Town Centre, meanwhile, contains Aldi and Iceland stores. Both national and local planning policy on retail development exists to protect the vitality and viability of existing centres and is not to prevent or stifle competition between individual retailers, as this is not a planning matter.

The 2008 permission (08/0833/1/VY) was to vary a condition to allow the subdivision of specified units to create up to six smaller units of less than 10,000 sq foot. The original condition limiting no more than 20,000 square foot of floor space for food was carried forward. The reason for the imposition of the condition was stated as follows:

*"To ensure that there is no adverse impact upon other shopping destinations within the wider locality".*

Whilst taking into account changes in shopping habits and the retail market over the last 35 years, it is still considered appropriate to restrict the amount of floorspace for food sales at Fosse Park. Without any restriction, the character of Fosse Park could potentially change substantially, with it no longer being predominantly a location for comparison retail sales. It is also noted that convenience and comparison shopping habits differ, with customers undertaking convenience shopping being likely to make more trips for shorter periods of time. A substantial increase in convenience shopping could potentially have impacts on traffic and parking at Fosse Park.

This application proposes a limited increase in the floor area for food sales by changing from a gross to net sales area (and allowing a very small proportion of up to three other units to be used for food sales). However, it still proposes to impose a restriction on food floorspace to retain the existing characteristics of Fosse Park and limit the impact on other retail centres.

#### The proposed change from gross to net retail floor space for food

Whilst the initial submission wishes to clarify that the limit on food floorspace in condition 8 of 08/0833/1/VY referred to net floorspace, it is now acknowledged by both the applicant and the District Planning Authority that the inclusion of the word 'net' does represent an increase in the floorspace permitted for food sales.

Whilst the original 86/1429/1/OX referred to a permitted 20,000 square foot of the overall gross amount, the word 'gross' was somehow omitted in the 08/0833/1/VY permission. However, it is considered that the 20,000 square foot was still intended to be a gross figure as this is what the original permission referenced, and retail planning policy tends to refer to gross figures.

However, the challenges with calculating the amount of gross floor space designated for food in a store selling a mixture of food and non-food (such as M&S) are acknowledged. The Competition Commission offers a clear definition of 'net sales

floorspace' (as outlined earlier in this report) and the applicant has indicated that using this definition the existing net floor space for food sales is 14,367 sq foot, which they wish to increase to 18,496 square foot (a net sales floor space increase for food of 4,129 square foot or 384 sq metres). The applicant considers that expressing this as a gross figure is more problematic to calculate, but it is estimated that the gross floor space for food would increase from 18,500 sq foot to 24,000 sq foot (a gross sales floor space increase for food of 5,500 square foot or 511 square metres). For the avoidance of doubt, the increase in the area for food sales does not represent an increase in the overall sales space through extending the store or increasing the front-of-house area. Rather, the increase would be achieved through repurposing some of the areas currently used for clothes or home items as part of the applicant's proposed investment in the M&S store.

Whilst national and local policy and the Planning Practice Guidance generally refers to retail floor space as a gross figure, it is not considered that using a net figure instead would be problematic, providing the definition of net is appropriately defined. The Competition Commission provides such a definition, which could be used within the condition reason or as a note to the applicant in any future permission.

The impact of the proposed increase in the floorspace for food sales will now be considered against both national and local retail planning policy.

#### Consideration against policy background, in particular the application of the sequential and impact assessments

The relevant policies of the NPPF and Blaby Local Plan are set out earlier in this report and so are not repeated here. Planning law requires applications to be considered against the Local Plan, unless material considerations indicate otherwise. In this context, the National Planning Policy Framework is a material consideration.

#### *Sequential test*

In considering the application of the sequential test in this application, Policy CS13 requires proposals for retail uses to be subject to a sequential test. The NPPF similarly indicates the sequential test should apply for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan.

This application does not propose a new retail or main town centre use. The Use Class will not be altered (but will remain within Use Class E) and there are no extensions proposed to any units. Rather, the applicant proposes to repurpose some of the floorspace within the M&S store for food. Fosse Park North is an established allocated retail development and the application proposes a relatively minor change to the level of food retail floorspace which is in accordance with Policy CS13 of the Blaby District Local Plan. There is no greater retail floorspace being created by this proposal. In such circumstances there is no need for the sequential test to be applied.

Furthermore, case law has demonstrated that where the sequential test is applied, the suitability of alternatives for the whole proposal needs to be considered. Whilst the Planning Practice Guidance states that consideration should be given to any scope for flexibility in the form and/or scale of the proposal, if requiring the sequential test to

be applied to M&S, it would be the whole of the M&S store which would need to be applied. The applicant's agent indicates that they are not aware of any sequentially preferable sites in the surrounding area that would be able to accommodate the full store (i.e. 10,670 sq m). In addition, it is considered unreasonable to require the application of the sequential test in this instance given the proposal is only for a repurposing of the internal floor space and no new floor space or use.

Furthermore, it is considered that the supporting text to Policy CS13 in paragraphs 7.13.11 to 7.13.14 of the Core Strategy provides some support to the proposal. This refers to managing the growth of Fosse Park so as not to undermine the principles underlying the original planning permission which sought to deter 'high street' style development (7.13.13) and recognising the importance and success of the Motorways Retail Area and its ability to meet the needs of certain types of retailers, i.e. in terms of floorspace requirements (7.13.14). It also states that "*should opportunities arise to improve the facilities and environment within the Motorways Retail Area, the Council will explore these and seek improvements to the area in line with the criteria set out in the policy*".

Improvements have been made in recent years to the buildings and external spaces in parts of Fosse Park North. It is noted that these improvements are set to continue with M&S proposing improvements to its store. A separate planning application (23/1020/FUL) is currently under consideration for "*External alterations, external plant to roof, along with a new delivery canopy to the M&S store*". This will improve the external appearance of the building, and through discussions with M&S it is understood that the increase in food floorspace forms part of a comprehensive proposal to overhaul the internal environment and experience for shoppers. It is noted that the existing Food Hall within M&S features fairly narrow aisles and can become cramped at busy times.

#### *Impact assessment*

Policy CS13 applies a 10,000 sq foot (929 sq m) gross threshold above which all applications for new retail and leisure developments not within an existing town, district, rural or local centre will be required to provide an impact assessment (the NPPF applies a higher threshold of 2,500 square metres if there is no locally set threshold).

As the application does not propose an increase in floor space but proposes to replace existing non-food floor space with food retail floorspace, this is not considered to constitute 'new retail development'. By virtue of Article 3 of the Use Classes Order 1987 (as amended), the change from non-food retail to food retail is also not a material change of use (both fall within Use Class E) and therefore does not constitute development.

Furthermore, if the change were to be considered 'new retail development', a 4,129 square foot increase in net floor area for food is proposed within the M&S unit (estimated as a 5,500 square foot gross increase). This falls well below the threshold set by Policy CS13. The increase is only approximately 4,000 square foot if taking into account that M&S currently does not quite use all of the 20,000 square foot limit for food itself. It would be unreasonable to require an impact assessment when the

existing consent approves 20,000 square foot of the estimated 24,000 square foot retail floor space proposed for food.

However, it may reasonably be contended that the level of additional food retail floorspace which is proposed to be permitted by the 5% ancillary food retail for the further units ought to also be considered as forming part of the overall change from non-food to food. However, given those units which currently sell some food (aside from confectionary), namely Boots, Superdrug and WHSmith are much smaller units than M&S, the 5% allowance allows for some ancillary food to continue to be sold, but would not push the overall amount over the 10,000 sq foot threshold.

As such, based on the interpretation of both Policy CS13 and the NPPF, it is not considered that a retail impact assessment is required to support this application for a relatively modest change in the amount of food floor space at Fosse Park North.

#### The restriction of the 20,000 square foot floor space to the M&S unit

The 20,000 square foot permitted gross floor space for food is currently free to be used by any unit at Fosse Park North. In practical terms, the M&S unit currently takes up the vast majority of this allowance (estimated at 18,500 square foot gross). M&S propose to vary condition 8 so that the 20,000 square foot (changed to a net floorspace figure) is exclusive to the unit edged yellow on the submitted plan (i.e. the unit currently occupied by M&S). Given that M&S have had a presence at Fosse Park North since the shopping centre was built, no other retailer which sells food either exclusively or as a significant proportion of their sales area has been permitted to locate at Fosse Park North.

By limiting the food floor space to the unit outlined yellow on the submitted plan, this does not grant a personal permission to M&S but rather limits the food floorspace to the unit they occupy and so provides certainty and clarity that the M&S effectively 'uses up' the limit.

#### The 5% allowance for food sales in three other units and the relationship with condition 7 which allows confectionary.

Notwithstanding the above, the applicant wishes to include in the proposed amended condition 8 a provision to allow 5% of the floor area of three other units on Fosse Park North to be used for food sales. This is in recognition that three existing units (occupied by Boots, Superdrug and WH Smith already include a very small amount of food sales). It could be argued that condition 7 of 08/0833/1/VY already permits this. However, condition 7 only allows for the sale of confectionary and such food which may be sold within ancillary snack-bars, restaurants or coffee shops. The 5% allowance in three units would allow for foods other than confectionary to be sold in these units (for example, Boots sells baby food and sandwiches). The suggested condition does not indicate whether this is a net or gross floor space figure but to allow consistency with the proposed condition 8 it is suggested that this should also be a net figure.

It is noted that the recent permission to provide Fosse Park West (15/0577/FUL) includes a similar condition to allow for 5% of units to be for food sales as follows:

*“Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (or any subsequent re-enactment with or without modification) the Class A1 retail floorspace hereby approved shall be restricted to non-food retail purposes only save that no more than 5% of any retail unit shall be used for the sale of ancillary food and drink for consumption off the premises. This restriction shall not apply to any in-store café or restaurant.”*

*Reason: In order to ensure that the uses within the development are appropriate, the parking level remains adequate and the overall retail impact on surrounding centres has been assessed in accordance with Core Strategy policy CS13 as well as saved policy T6 of the 1999 Local Plan.”*

The 5% floor space allowance for food sales at Fosse Park West was for any unit, and so limiting this to three units at Fosse Park North would be more restrictive. The permission for Fosse Park West, however, does not include the equivalent of condition 7 of permission 08/0833/1/VY which allows for confectionary sales (and therefore it is assumed that confectionary falls within the 5% allowance at Fosse Park West).

It has been considered whether the proposed wording of condition 8 causes conflict with condition 7 and could be difficult to enforce. Condition 7 allows for confectionary to be sold from any unit with no stated floorspace limit, whilst condition 8 would allow for three units to have up to 5% of their floor area for the sale of food other than confectionary. The applicant has been asked to provide further information on the amount of floor space that this 5% allowance would amount to and this information is awaited. The overlap between the proposed condition 8 and condition 7 could be confusing and make enforcement difficult and one potential solution would be to exclude the application of condition 7 to three specified units.

#### Leicester City Council objection

Leicester City Council (LCC) raised an objection following the original consultation, setting out that the expansion of the food space would be likely to have a detrimental impact on nearby local centres and Leicester city centre, by changing convenience shopping habits in Fosse Park but also locally from the city centre. Leicester City Council has recommended refusal of the application but if approved has suggested conditions ensuring that approval is limited to the M&S unit and to prevent future subdivision.

There is a calculation that the 20,000 square foot if net food retail floorspace, equates to around 25,600 sq foot of gross retail floorspace which would appear to be of the correct order (based on the applicant's estimations) and therefore would be an increase of about a fifth of the food retail floorspace currently permitted.

The LCC letter correctly identifies that Policy CS13 establishes the retail hierarchy with Leicester city centre at the top and Fosse Park North forming part of the Motorways Retail Area at the bottom. Policy CS13 is quoted in part:

*“New development or extensions will be required to demonstrate that:  
i There would be no unacceptable impacts on existing centres’*

*iii. They are capable of being well integrated with the existing retail facilities”*

LCC indicate that the increase could lead to further non-policy compliant applications to be submitted to the detriment of other centres. However, it is considered that potential future applications to expand the food floor space further (for example introducing new food units) would need to be considered on their own merits. The applicant’s proposal would limit the small increase in food floor space to the unit occupied by M&S (whilst allowing for some ancillary areas of three other stores which are already used for food sales to continue).

LCC also comments that, whilst acknowledging that growth of Fosse Park will develop over time, there are concerns that this is deviating from the original planning consent significantly and is concentrating retail growth in the Motorways Retail Area, at the subsequent impact to the city centre. However, whilst the proposal would reallocate a small amount of floor space to food, as part of a comprehensive investment in the M&S unit, it does not increase the retail floor space overall. An example is given of a loss of comparison floorspace potentially encouraging development of this in a smaller unit elsewhere at Fosse Park, a small unit that could be suitable in Leicester City Centre. However, it is noted that the existing restrictions on minimum unit sizes at Fosse Park North (as set out in condition 6) will continue to exist.

Leicester City Council has been reconsulted following the changes to the scope of the application and a further response is awaited.

**Overall Planning Balance and Conclusion**

In summary, the applicant proposes to vary the 08/0833/1/VY permission for Fosse Park North (itself a variation of the original 86/1429/1/OX permission) to allow for an increase in the amount of floor space permitted for the sale of food, by specifying this as a net floor area, and limiting this increase to the unit occupied by M&S. Simultaneously, the applicant proposes to allow for 5% of the net sales area of three other units at Fosse Park North to be used for ancillary food sales to reflect the current situation, alongside retaining a condition which already allows confectionary to be sold at any unit, alongside ancillary snack-bars, cafés and restaurants.

The proposed change would be part of a comprehensive investment in the M&S unit to provide qualitative improvements to enhance the overall shopping offer. This would complement improvements made across Fosse Park North over the last few years, and proposed changes to the exterior of the M&S unit.

The proposed increase in the area for food sales would not increase the overall retail floor space at Fosse Park North and as such, it has been considered through a review of both national and local planning policies that neither a sequential test or a retail impact assessment need be applied in this instance. Furthermore, given that M&S is an established retailer at Fosse Park North, requiring a sequential test to establish whether the entirety of the retailer could be accommodated in higher order retail centres when no increase in retail floor space is proposed would be wholly unreasonable. The Use Class of the units would not change and no built development is proposed and so the proposal does not amount to development. Rather, an application is only required due to the restrictive conditions placed on the previous

planning permissions. Even if the proposal were classed as 'new development', the increase in food floorspace does not exceed the threshold in CS13 to require an impact assessment.

Furthermore, the proposed increase in food floor space at Fosse Park North is small (estimated at a fifth of the existing amount) and being restricted to the M&S unit (except for ancillary food sales in three other units), together with the existing effect of condition 7, would not alter the overall character of Fosse Park North by allowing other food or convenience goods retailers to occupy the site.

When considering the section of Core Strategy Policy CS13 which refers to 'The Motorways Retail Area' (which includes Fosse Park), it is considered that the changes would comprise of 'managed growth' which would not cause unacceptable impacts on existing centres. It would be well integrated with the existing retail facilities, would complement public realm, design and architectural improvements proposed in a separate application, and would maintain the overall minimum floorspace thresholds identified in the original consent.

Overall, the proposed changes to condition 8 of planning permission 08/0833/1/VY are considered acceptable when considering the development plan as a whole, taking into account any other material planning considerations, and it is recommended that planning permission is granted.

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**23/0845/OUT**

**Registered Date  
10 October 2023**

**Mr. M. Woodward**

**Development of eight serviced plots to deliver self-build and custom dwellings (outline application for access only).**

**Land at Strawberry Cottage, Hinckley Road, Sapcote**

**Report Author: Charlene Hurd, Senior Planning Officer  
Contact Details: Council Offices. Tel: 0116 272 7705**

**RECOMMENDATION:**

**THAT APPLICATION 23/0845/OUT BE APPROVED SUBJECT TO:**

**The applicant entering into an agreement pursuant to Section 106 of the Town and Country Planning Act to secure the plots for self-build or custom dwellings:**

**AND SUBJECT TO THE IMPOSITION OF THE FOLLOWING CONDITIONS:**

1. 3-year condition for submission of reserved matters and expiry date 2-years after approval of the reserved matters.
2. Approval of details for buildings, landscaping, layout and scale.
3. In accordance with approved plans.
4. Permission for a maximum of 8 dwellings only and designed to accord with the approved Design Code.
5. Programme of Archaeological work (WSI) to be submitted.
6. No occupation of any dwelling until site investigation (archaeology) carried out.
7. 5 metre protection of the southern boundary hedgerow.
8. Requirement to submit a Construction Ecological Management Plan.
9. Biodiversity Management Plan required to be submitted and approved.
10. Foul water drainage scheme to be submitted.
11. Surface water drainage scheme to be submitted.
12. Details of surface water management on site during construction to be submitted and agreed.
13. Access arrangements to be implemented as shown on the plans before first occupation.
14. No dwelling to be first occupied until vehicular visibility splays have been provided.
15. No gates, bollards, chains etc to be constructed across the access.
16. Prior to commencement of construction a Construction Method Statement to be submitted, agreed and subsequently implemented.
17. No dwelling shall be first occupied until the pedestrian/footpath crossing has been installed.
18. Ground Remediation Statement to be submitted and agreed.
19. Any identified Ground Remediation Works to be carried out.
20. Reporting of unexpected contamination.
21. Development to be constructed in accordance with the Arboricultural Impact Assessment (AIA).

## **NOTES TO COMMITTEE:**

### **Relevant Planning Policy, Guidance and Legislation**

#### **Blaby District Local Plan (Core Strategy) Development Plan Document (2013)**

Policy CS1 – Strategy for Locating New Development  
Policy CS2 – Design of New Development  
Policy CS5 – Housing Distribution  
Policy CS10 – Transport Infrastructure  
Policy CS18 – Countryside  
Policy CS19 – Bio-diversity and Geo-diversity  
Policy CS20 – Historic Environment and Culture  
Policy CS21 – Climate Change  
Policy CS22 – Flood Risk Management  
Policy CS24 – Presumption in Favour of Sustainable Development

#### **Blaby District Local Plan (Delivery) Development Plan Document (2019)**

DM2 – Development in the Countryside  
DM8 - Local Parking & Highway Design Standards  
DM10 – Self and Custom Build Housing  
DM12 – Designated and Non-designated Heritage Assets

#### **Fosse Villages Neighbourhood Plan (Referendum Version) (2020)**

Policy FV7 – Housing Provision  
Policy FV8 – Windfall Housing

#### **National Planning Policy Framework (NPPF) (2023)**

#### **Other Supporting Documents**

Blaby Landscape & Settlement Character Assessment (2020)

Leicestershire Highway Design Guide

#### **Consultation Summary**

**Blaby District Council, Environmental Services** – Has no objections subject to the imposition of conditions relating to land contamination and the requirement for a scheme for foul and surface water drainage to be submitted for approval in writing.

**Leicestershire County Council, Archaeology** – Has no objections subject to the imposition of conditions requiring appropriate archaeological mitigation and archaeological investigation and recording.

**Leicestershire County Council, Ecology** – Has no objections subject to the imposition of conditions requiring protected species mitigation plans and requirement for a Construction Environment Management Plan.

**Leicestershire County Forestry** – Notes that the trees identified for removal to facilitate the development are lower value trees within the site. It is also noted that the majority of trees can be satisfactorily retained in accordance with the Arboricultural Impact Assessment.

**Leicestershire County Council, Highways** – Has no objections subject to the imposition of conditions relating to the requirement for a Construction Traffic Management Plan, details of site drainage, the implementation of the access arrangements, provision and retention of pedestrian and vehicular visibility splays.

**Sapcote Parish Council** – Objects to this application on the following grounds:

*“Policy CS18 of the Core Strategy states that the need to retain Countryside will be balanced against the need to provide new development (including housing) in the most sustainable locations. However, this is not a sustainable location, it is outside the settlement boundary, and doesn't have footpath access to the village. Therefore, the occupiers would be dependent on private motor vehicles, which is an unsustainable arrangement.*

*The development would exacerbate the piecemeal ribbon development along Hinckley Road, which is not a sustainable form of development.*

*In addition, the internal road terminates in a manner that appears to suggest that the remainder of the Strawberry Fields site may be further developed, and we would seek assurances that measures be put in place to control planned and possible future development on this site, should permission be given.*

*It is also important to consider the management of the landscaping outside of the properties themselves because this forms part of the buffer between the development and the Limes estate which contributes to the surrounding visual amenity.”*

**Ramblers Association** – No comments received.

### **Representations**

1 letter has been received from a local resident neither objecting or supporting the proposal covering the following points:

- Concern for access onto the Hinckley Rd in regard to traffic speeds.

10 letters of support have been received from both the local area and outside the District covering the following points (it is noted that one of these responses came from the applicant):

- Support from outside the district for self-build plots allowing people the opportunity to create a home that they want.
- From two supporters on the self-build register who consider that the council do not delivers plots and are searching for land.
- A neat and well-thought out proposal.
- Provides badly needed self-build plots.

- The plots are well hidden behind mature hedgerow and trees off a main road with good sight lines.
- It appears to comply with Blaby council policies and local plans and meets local needs.
- Not enough large plots in Sapcote.

### **Relevant Planning History**

02/0135/1/OX	Demolition of existing dwelling and erection of a replacement dwelling (Outline).	Approved 07.05.02
02/0829/1/PX	Demolition of existing dwelling and erection of a replacement dwelling and reposition of site access.	Approved 10.03.03
12/1023/1/PX	(Adjacent site) Proposed residential development of 128 dwellings with associated access, landscaping and infrastructure (Revised Scheme)	Approved 27.03.13
18/1740/FUL	(Adjacent site) Erection of 28 dwellings on existing open space	Withdrawn
19/0264/OUT	Erection of 8 detached dwellings (outline)	Withdrawn
20/0373/OUT	Erection of 8 detached self-build and custom dwellings including associated access (Outline with some matters reserved) (Revised Scheme).	Refused Appeal dismissed

### **EXPLANATORY NOTE**

#### **The Site**

The application site is some 0.8 ha in area. It is located to the south and east of the existing garden area of 'Strawberry Cottage', which is positioned between private allotment land to the east and 'Oakley Grange' to the west, being opposite Sapcote Garden Centre. The Linden Homes development lies beyond the site, on higher ground to the south.

#### **The Proposal**

This outline planning application is submitted with the matters of appearance, landscaping, layout and scale reserved for future approval, but with access included for full approval at this stage.

The indicative plans notionally show the provision of 8 'self-build' detached dwellings served by an access point to the east of the existing access for the dwelling 'Strawberry Cottage'. The application has been accompanied by a Design Code and Self and Custom Build Supporting Statement which provides some justification for this self-build proposal.

The following documents have also been submitted as part of the outline planning application:

- Landscape Appraisal and Site Views
- Tree Survey
- Great Crested Newt Mitigation Report
- Planning Statement
- Transport Technical Note and Traffic Surveys
- Draft Unilateral Undertaking.
- BNG Small Sites Metric

The submitted Design Code has the following statement on how the self-build plots would be delivered:

- 1.2. *‘On receipt of outline planning permission, the applicant will deliver and construct the site wide infrastructure, including the site access and internal road layout, laying of utilities, services and drainage, and implementing the first phase site landscaping’.*
- 1.3. *‘The plots will be placed on the open market with the individual purchasers attending to further planning matters, including the submission of reserved matters planning applications’.*
- 1.4. *‘The reserved matters applications will deal with the size and scale of each dwelling, the materials to be used, the internal layout of the dwelling and other matters for determination’.*
- 1.5. *‘This Design Code sets out a framework to guide and inspire the construction and design of each dwelling, which will contribute to the delivery of a high quality development, enabling each purchaser to build a property to their specification and needs’.*

The applicant has also submitted a draft Unilateral Undertaking to ensure that the individual plots are offered (at least initially) to the market as self-build plots. This would be for a period of two years and subject to agreeing a Marketing Strategy.

### **Planning Considerations**

Section 38(6) of the Town and Country Planning Act 1990, requires planning applications to be determined in accordance with the provisions of the Development Plan unless there are other material considerations which indicate otherwise. This section of the report will first consider the proposed development against the policy background and then consider any other material considerations.

## **National Planning Policy Framework (NPPF) (2023)**

The National Planning Policy Framework establishes the key principles for proactively delivering sustainable development through the development plan system and the determination of planning applications. It sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). These objectives are:

- An economic objective
- A social objective
- An environmental objective

For decision-taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Blaby District Council has recently published an updated housing land supply position. This update confirms that the Authority can currently demonstrate a 3.69 year housing land supply. This is notably less than the 5 year supply requirement outlined in the NPPF.

This means that for applications involving the provision of housing, the tilted balance applies and the application should be considered favourably unless the proposal conflicts with specified NPPF policies or the adverse impacts would significantly and demonstrably outweigh the benefits (NPPF paragraph 11). This matter is considered in more detail in the section of this report outlining relevant local plan policies and the 'Planning Balance and Conclusion' section at the end of this report.

## **Development Plan**

### **Blaby District Local Plan (Core Strategy) Development Plan Document (2013)**

The Council has reviewed and published an updated housing land supply position in September 2023. This confirms that the Council cannot demonstrate a 5 year supply of deliverable sites. As this proposal involves the provision of housing, the application is being considered in terms of its accordance with NPPF paragraph 11d and other material considerations. This does not mean that the policies of the Local Plan are ignored but that their requirements can be considered, and given weight, where they accord with the policies of the NPPF.

A housing land supply of 3.69 years is a notable shortfall and therefore significant weight should also be applied in favour of applications that can contribute to increasing housing supply.

The following policies are the most relevant to the proposed development:

#### **Policy CS1 – Strategy for Locating New Development**

Most new development, including housing and employment, will take place within and adjoining the Principal Urban Area (PUA) of Leicester and encouragement will be given to the use of previously developed land and underused land and buildings. Outside the PUA, development is directed to a number of defined settlements and the scale of development depends on their position in the hierarchy. Sapcote is located outside of the PUA.

A minimum of 8,740 homes are required during the plan period 2006 to 2029, of which at least 5,750 will be provided within the PUA and at least 2,990 homes will be developed in areas outside of the PUA. The 5-year Housing Land Supply at 1<sup>st</sup> April 2023 shows a shortage of 2394 dwellings being delivered within in the district, however new housing in the Non-PUA has exceeded the requirement for the plan period.

#### **Policy CS2 – Design of New Development**

Policy CS2 seeks to ensure that a high quality environment is achieved in all new development proposals, respecting distinctive local character and contributing towards creating places of high architectural and urban design quality. The design of new development should also be appropriate to this context.

#### **Policy CS5 – Housing Distribution**

Policy CS5 sets out the classifications for the different settlements to allow future development to be focused in the best and most suitable and sustainable locations. Policy CS5 identifies Sapcote as being within the Medium Central villages (with Littlethorpe, Huncote, Cosby and Croft) having a combined housing requirement of 815 houses (2006-2029), but this needs to be considered in the context of existing completions and commitments.

In terms of completions and commitments, monitoring of the Core Strategy requirements shows the position at 1 April 2023 as follows:

Dwellings	Requirement	Total Completions & Commitments	Balance Required
Medium Central Villages	815	978	-163
Non-PUA	2,990	3750	-760

The table above shows that the minimum housing requirements set out in the Core Strategy for the Medium Central Villages and the Non-PUA have already been exceeded by a significant margin. For the Medium Central Villages, the completions and commitments as at 1 April 2020 have exceeded the requirement by 489 dwellings and for the Non-PUA as a whole the requirement has been exceeded by 760 dwellings. This monitoring data shows that there is no outstanding need for additional housing in Sapcote at this time, however the District has a shortfall and currently can only demonstrate 3.69 5 Year Housing Land Supply at 1<sup>st</sup> April 2029, therefore there is an overall shortage.

#### Policy CS10 – Transport Infrastructure

Policy CS10 seeks to limit the impacts of new development on levels of vehicle movements by reducing the need to travel by private car by locating new development so people can access services and facilities without reliance on private motor vehicles.

#### Policy CS18 – Countryside

Policy CS18 – Countryside states that within areas designated as Countryside, planning permission will not be granted for built development, or other development which would have a significantly adverse effect on the appearance or character of the landscape. The need to retain Countryside will be balanced against the need to provide new development in the most sustainable locations. The policy continues to say that the detailed boundaries of Countryside will be determined through the Allocations, Designations and Development Management DPD (now known as the Delivery DPD).

The figures set out above show that there is no outstanding requirement for additional housing in Sapcote, however the District cannot demonstrate a 5-year housing land supply, therefore the benefits of the scheme and its adverse impacts need to be considered against the policies as a whole. Given the housing completions and commitments position and the fact that the boundaries for the Countryside were recently reviewed through the Delivery DPD and so can be considered up-to-date, the balance referred to in this part of Policy CS18 weighs in favour of providing dwellings

within the district subject to consideration of other impacts. The proposal while contrary to Policy CS18, may be acceptable when considering the current land supply.

#### Policy CS19 – Bio-diversity and Geo-diversity

Indicates that important areas of the District's natural environment, landscape and geology will be protected and enhanced, where appropriate, and seeks to maintain and extend natural habitats where appropriate.

#### Policy CS20 – Historic Environment and Culture

This Policy seeks to protect heritage assets, which would include archaeological remains.

#### Policy CS21 – Climate Change

Policy CS21 seeks to focus new development in the most sustainable locations in accordance with Policies CS1 and CS5 above in order to contribute to a reduction in greenhouse gas emissions.

#### Policy CS22 – Flood Risk Management

The objective being to ensure all development minimises vulnerability and provides resilience to flooding. The application site is within Flood Zone 1 and it is therefore at a low risk of flooding.

#### Policy CS24 – Presumption in Favour of Sustainable Development

Policy CS24 indicates that when considering development proposals Blaby District Council will take a positive approach that reflects the presumption in favour of sustainable development.

### **Blaby District Local Plan (Delivery) Development Plan Document (2019)**

The adopted Delivery DPD (February 2019) is part of the Development Plan for the District of Blaby. It is an up-to-date plan that is consistent with National Policy and as such, the policies of the Delivery DPD should be given full statutory weight. The following policies are the most relevant to the proposed development:

#### DM2 – Development in the Countryside

Development proposals that are consistent with Core Strategy Policy CS18 will be supported where various criteria are met, including whether it is in keeping with the appearance and character of the existing landscape, development form and buildings.

#### DM8 - Local Parking & Highway Design Standards

Housing Development will be required to provide an appropriate level of parking provision and meet highways design standards.

## DM10 Self and Custom Build Housing

Policy DM10 Self and Custom House Building says that proposals for self and custom build housing will be supported in suitable locations. Consideration needs to be given to whether the site is a suitable location in accordance with the policies of the development plan. This proposal may in regard to Core Strategy Policy CS18 Countryside be considered acceptable in that it will provide up to 8 self and custom build plots and at a point that the District cannot demonstrate 5-year housing land supply. The site previously was not considered to be a suitable location, however the undersupply of housing has triggered paragraphed 11d) of the National Planning Policy Framework.

## DM12 Designated and Non-designated Heritage Assets

All new development should seek to avoid harm to heritage assets.

## **The Fosse Villages Neighbourhood Plan**

### Policy FV7 – Housing Provision

The Fosse Villages Neighbourhood Plan has set out minimum housing requirements for certain villages in the plan area. Policy FV7: Housing Provision shows that the housing requirement for Sapcote is 415 dwellings to be provided between 2006 and 2029. This figure will be met by existing commitments and development within the Limits to Built Development in accordance with Policy FV8. The Neighbourhood Plan notes that at 1<sup>st</sup> April 2023 there are 628 dwellings that have been built or are committed to be built in Sapcote and therefore there was no outstanding requirement to identify any further land for new homes in Sapcote. Consequently, no reserve housing sites are proposed to be allocated in Sapcote in the Neighbourhood Plan.

### Policy FV8 – Windfall Housing

Policy FV8: Windfall Housing says that proposals for housing development within the Limits to Built Development of named settlements will be supported. The site is located outside of the Limit to Built Development of Sapcote and so is in Countryside. Policy FV8 continues to state that:

“Outside the Limits to Built Development, Areas of Separation and Green Wedges, support for proposals for housing development will be limited to:

- A. The re-use and adaptation of redundant rural buildings in the most sustainable locations, assessed against the need to retain Countryside;
- B. Small scale housing in the most sustainable locations, assessed against the need to retain the Countryside;
- C. Replacement dwellings of a similar scale and with no greater impact on the Countryside than the existing dwelling;
- D. Dwellings to meet an essential need associated with small-scale employment and leisure development subject to the consideration of its impact;
- E. Dwellings to meet the essential need for a rural worker to live permanently at or near their place of work in the Countryside; and

## F. Rural Exception Sites.”

While development on the site would be contrary to Policy FV8 of the Neighbourhood Plan, due to the 5-year housing land supply not currently being demonstrated this policy is considered out of date and Paragraph 11d) of the NPPF is triggered.

### **Other Material Considerations**

Planning applications must be determined in accordance with the provisions of the Development Plan unless there are material considerations which indicate otherwise, and whether those material considerations are of such weight that the adopted policies of the Development Plan should not prevail in relation to any proposal.

In addition to the policy considerations set out above, there are substantive material considerations that relate to the development of this site, which are:

- Impact on character and appearance of the area
- Highways considerations
- Safeguarding residential amenity
- Self-build and Custom Housebuilding Legislation

### **Impact on Character and Appearance of the Area**

The site is located within Countryside within the open and undeveloped spacious garden area of ‘Strawberry Cottage’. The Linden Homes development exists to the south and east, this housing development is separated from the application site by an open area of land and mature boundary vegetation, which acts as an ecological buffer. The main section of this existing housing development, which is located adjacent to Hinckley Road is also further separated by an area of private allotments. ‘Oakley Grange’ lies immediately to the west of the site and it comprises an extended dwelling, again located in spacious and largely undeveloped grounds. Sapcote Garden Centre is detached from the application site, being on the opposite side of Hinckley Road to the north. On this basis, it is considered that the site has more affinity with the open countryside rather than with the segregated built development to the south.

While the proposal would represent an unwarranted encroachment of development beyond the well-defined edge of the built-up area of Sapcote representing visual intrusion in the Countryside, this needs to be considered in the context of the current housing land supply position and the weight in favour of self and custom builds. The development would be subject to further applications to address reserved matters, therefore details regarding design, scale, layout and landscaping can be addressed at a later stage.

### **Highways Considerations**

The Leicestershire County Highway Authority has considered this application and have advised as follows:

*‘It is noted that application 20/0373/OUT was refused on highway and transport grounds in line with the advice of the LHA. It is also noted that, whilst the subsequent*

*appeal was dismissed, the Inspector concluded that the development would not result in an unacceptable impact on highway safety’.*

*‘It is proposed to improve an existing gated vehicular access onto Hinckley Road to serve the proposed development. Hinckley Road is a classified B road subject to a 50mph speed limit, although it is noted that the speed limit reduces to 30mph some 150 metres to the east of the proposed access.*

*The submitted Technical Note indicates that the site access would have a minimum effective width of 5 metres and would have 10 dropped kerbs (9.2 metres). This would be in accordance with Figure DG17 of Part 3 of the LHDG, which outlines design guidance for unadopted shared drives serving up to 25 dwellings.*

*The Applicant’s Automatic Traffic Count (ATC) Speed Survey indicates 85th percentile vehicle speeds of 47mph for eastbound traffic and 46mph for westbound traffic. The LHA confirms that a permit was issued for this survey. In accordance with Table DG4 and Figure DG2a of Part 3 of the LHDG, vehicular visibility splays of 2.4 metres by 160 metres are required in both directions. It is noted that the Horizontal and Vertical Junction Visibility Layout drawing only indicates vehicular visibility splays of 2.4 metres by 120 metres to the east of the site access. However, notwithstanding this, the LHA is satisfied that vehicular visibility splays of 2.4 metres by 160 metres could, in practice, be achieved in both directions.*

*The LHA is satisfied that 1 metre by 1 metre pedestrian visibility splays could be provided on both sides of the site access in accordance with Figures DG17 and DG19 of Part 3 of the LHDG.*

*The Technical Note indicates that Swept Path analysis has been undertaken for a refuse collection vehicle and large car, however these assessments have not been included on the Planning Scheme drawing or Horizontal and Vertical Junction Visibility Layout drawing as indicated in the Technical Note. Nevertheless, as the proposed access has been designed in accordance with the LHDG, the LHA is content that the proposed access would be suitable for a large car. Furthermore, as refuse collection is a fairly infrequent movement (typically once or twice a week), and considering that the access width has been increased to accommodate refuse collection vehicles, the LHA would not seek to resist the application on this basis’.*

*As only one personal injury collision had been recorded in the locality of the site within the last five years, it does not present any existing highway safety concerns.*

*No trip generation is required. LCC Highways commented on the internal layout however note that this is to be considered under a subsequent application and not this outline application.*

*LCC Highways commented on the development in regard to transport sustainability:*

*‘The site is located within 800 metres of the village centre and there is a footway on the northern side of Hinckley Road (opposite the site) linking to the village. However, it should be noted that there is currently no footway on the southern side of Hinckley Road and no such footway is proposed in this application. Sapcote has access to key*

*services, including: local convenience shops; a Post Office; public houses; community facilities; and recreational facilities.*

*Notwithstanding the submitted Design and Access Statement (Mair Land & Planning Consultants Ltd., reference MLP-23-J012), bus service X55 has now been withdrawn, and there are no scheduled bus services within 800 metres of the site. However, the site is covered by an on-demand bus service.*

*The LHA is satisfied for the LPA to include this transport context in its wider sustainability considerations for the site’.*

The applicants were requested to provide a footpath link from the development site to the existing footpath on the opposite side of the road, the following information was sought by LCC Highways to provide a suitable link: ‘a 2 metre wide footway should be provided to the eastern corner radii of the proposed access to provide an integrated link, and amended plans may be required to show this. This should also provide an appropriate transition to any shared-surface within the site’. This detailed would be secured by means of condition and enhances the sustainability of the development through footpath links.

The dismissed appeal was also reviewed when considering this application in regard to the sustainability of the development where the Inspector wrote that: *‘Even though there are likely to be more sustainable locations for self and custom build housing within the settlement boundaries of larger settlements, I acknowledge that the site is located in relatively close proximity to the services, facilities and public transport links that Sapcote has to offer’.*

On the basis of the advice as set out above, previous planning history and amendments to enhance footpaths around the site, the application proposal is considered to be acceptable on highway grounds.

### **Safeguarding Residential Amenity**

The proposed indicative development is generally orientated in such a manner which would help to limit its impact upon neighbouring properties at the adjoining residential development known as Lime Avenue to the south, to ‘Oakley Grange’ to the west and to ‘Strawberry Cottage’ itself. Acceptable separation distances could be provided between the proposal and adjoining dwellings to ensure levels of intrusion, including day and sunlight loss are minimised. However, it is not possible to determine the degree of impact upon adjoining residents’ amenities without final details of layout, scale and appearance. The scope of any overlooking towards these neighbouring properties would also be assessed at the Reserved Matters stage if the scheme was deemed to be acceptable.

### **Self-build and Custom Housebuilding Legislation**

As the planning application form indicates that the application is for 8 self-build dwellings, consideration needs to be given to government legislation on Self-build and Custom Housebuilding. This comprises: Self-build and Custom Housebuilding Act, 2015 (as amended by the Housing and Planning Act 2016); Self-build and Custom

Housebuilding Regulations, 2016; and, Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations, 2016.

The Council is required by law to keep a register of individuals and associations of individuals (two or more people who wish to acquire a serviced plot of land to accommodate more than one self-build home) who are seeking to acquire serviced plots of land in the District in order to build their own homes. A serviced plot of land is defined as land that either has access to a public highway and has connections for electricity, water and waste water, or in the opinion of a relevant authority, can be provided with access to those things within the duration of a development permission granted in relation to that land.

There is a duty placed on the Council to have regard to the demand for self-build and custom housebuilding within the District when carrying out the Council's planning, housing, land disposal and regeneration functions. Government guidance states that the Council should consider the evidence of demand for self-build and custom housebuilding in their area from the Register when making a decision on a planning application.

The Council is also required by law to grant enough planning permissions to meet the demand on their Register. To-date, the Council has not knowingly granted any planning permissions for self-build housing to meet demand on the Register, i.e. no planning applications have been determined by the Council that explicitly request planning permission for a self-build home and have been conditioned accordingly or secured through a legal agreement.

However, in the regulations there are no penalties for not granting enough planning permissions to meet the demand identified on the Council's Self-build Register. This may be in recognition that there are various ways to support self-build and custom housebuilding in Council's administrative areas including developing policies in the Local Plan (as the Council has done so through the provision of Policy DM10 of the Local Plan Delivery DPD) and seeking opportunities to use their own land (if available and suitable) for self-build and custom housebuilding.

Members are also reminded of the comments of the Inspector in their appeal decision on application 20/0373/OUT where they state:

*"I have concluded that the countryside would not be an appropriate location for development and the proposal would result in adverse harm to the character and appearance of the area. In the context of the Council's positive housing land supply position, these are matters which amount to very significant harm" [Emphasis added].*

*"I have found that the provision of 8 self-build plots has the potential to attract very positive weight in favour of the development. However, this weight is somewhat diminished in the absence of a signed and dated planning obligation to secure the dwellings as self-build plots. Even if the planning obligation provided had been signed, and notwithstanding the Council's concerns in respect of the relatively short period of 9 months marketing specified before the dwellings could be released to the open market, the provision of self-build units would not in this instance outweigh the very significant harm identified".*

While the location of the application site within Countryside is generally not considered to be a suitable location for self-build and custom housebuilding, it is clear when considering the development against Paragraph 11d) of the National Planning Policy Framework (and the comments of the previous Inspector who gave great weight to the Council's previous position of having a demonstrable 5 year housing supply) that the impacts of the development now need to be significantly adverse and demonstrably outweigh the benefits. When applying the tilted balance to this proposed development, it is considered that the provision of 8 self and custom build houses now carry significant weight in their favour.

### **Overall Planning Balance and Conclusion**

The three dimensions of sustainable development have been considered (economic, social and environmental) as set out in the NPPF (2023) as well as taking into account the adopted Development Plan and all other material considerations.

The housing figures set out above show that there is an outstanding requirement for additional housing in the District. Given the housing completions and commitments position, the policies and framework are out-of-date and, the balance referred to in this part of Policy CS18 of the Local Plan Core Strategy (2013) weighs in favour of providing housing. Policy DM10 of the Local Plan Delivery DPD (2019) states that proposals for self and custom build housing will be supported in suitable locations, which based on the land supply and location near to other dwelling sand through the provision of a new footpath on the edge of the site linking to existing footpaths, the development is considered acceptable on balance.

The site is located outside of the Limits to Built Development of Sapcote, as identified in the Fosse Villages Neighbourhood Plan (Referendum version) (2020), and therefore is in conflict with policy FV7 Housing Provision. The application proposal is not considered to be in a suitable or sustainable location for additional development and is thus also contrary to Policy FV8 of the Neighbourhood Plan. However, based on the Districts Land supply the policies are considered to be out-of-date.

It is acknowledged that the District Council cannot currently demonstrate a five-year supply of deliverable housing sites and therefore paragraph 11d of the NPPF is engaged. This applies a tilted balance to decision making where it states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The proposal, whilst only limited in scale, would make a contribution towards increasing housing delivery. Given that the Council cannot demonstrate a 5 year housing land supply, the provision of new homes represents a very significant benefit of the proposal.

Officers have fully considered the application against local and national policy and guidance and against all relevant material considerations. It is considered that any harm identified from the development can be mitigated through the use of conditions and does not significantly and demonstrably outweigh the benefits of the proposed scheme. Permission for this scheme should therefore be granted without delay in accordance with the provisions set out in paragraph 11 of the NPPF.

Based on the above considerations, it is considered that the proposal is acceptable in planning terms and therefore the recommendation is to **APPROVE** the application subject to the imposition of conditions and signing of a Unilateral Undertaking or other Agreement under Section 106.

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