



Department for  
Communities and  
Local Government

Mr J Bompas  
Iceni Projects  
Flitcroft House  
114-116 Charing Cross Road  
London WC2H 0JR

Our Ref: APP/G2435/A/14/2228806

15 February 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MONEY HILL CONSORTIUM: MONEY HILL, LAND NORTH OF  
WOOD STREET, ASHBY-DE-LA-ZOUCH**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Braithwaite BSc (Arch) BArch(Hons) RIBA MRTPI, who held a public local inquiry on 8 and 10 September 2015 into your client's appeal against the decision of North West Leicestershire District Council (the Council) to refuse planning permission for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way, in accordance with application Ref 13/00335/OUTM dated 22 April 2013, at Money Hill, land north of Wood Street, Ashby-de-la-Zouch.
2. The appeal was recovered for the Secretary of State's determination on 3 December 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because it involves a residential development of more than 150 units on a site of more than 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed. For the reasons given below, the Secretary of State agrees with the Inspector and has decided to allow the appeal and grant planning

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permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

### **Procedural matters**

4. For the reasons in IR9 and IR64-66, the Secretary of State agrees with the Inspector that the amended scheme is not materially different to the original and is not so changed that the interests of any party to the appeal are compromised (IR67). He also agrees with the Inspector's conclusions in IR67 on the implementation of the original scheme. Like the Inspector, the Secretary of State has considered the original and amended schemes on their merits (IR67).
5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Furthermore, the Secretary of State wrote to the inquiry parties on 14 December 2015, inviting comment on: any implications the Ashby-de-la-Zouch Draft Neighbourhood Plan may have for the planning balance in the case; and on any material change in circumstances, fact or policy, which may have arisen since the close of the inquiry. The responses received were circulated for further comment on 11 January 2016. A list of the representations received is set out in Annex C to this letter. The Secretary of State has carefully considered these but is satisfied that they do not raise any new material considerations sufficient to affect the decision in this case. Copies of the representations listed in Annexes B and C can be made available on written request to the address at the foot of the first page of this letter.
6. In coming to his decision, the Secretary of State has taken into account the Environmental Statement (ES) and the ES Addendum prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, as amended (IR5 and 9). The Secretary of State is satisfied that the ES and the ES Addendum comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.

### **Policy considerations**

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the North West Leicestershire Local Plan 1991 – 2006 (LP), which was adopted in August 2002.
8. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations.
9. The Secretary of State notes that the main parties agreed that no weight can be attached to the emerging North West Leicestershire Local Plan, for the reasons in IR12. The Secretary of State notes that the Council recently undertook a

public consultation on a draft Local Plan, but does not consider that the emerging Local Plan can be afforded any more than very limited weight at this stage. The Secretary of State also notes that consultation has now closed on the Ashby-de-la-Zouch Draft Neighbourhood Plan (NP) and, given the stage it has reached in its progress towards adoption, affords it very limited weight.

10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the LB Act.

### **Main Issue**

11. The Secretary of State agrees with the Inspector that the main issue in this case, taking all relevant matters into account, is whether the proposal would be sustainable development (IR68).

### Development Plan

12. The Secretary of State notes that, for the reasons in IR14, the appeal proposal conflicts with LP policy S3; but that the LP's housing policies only made provision to meet the need for new homes in the district until 2006 and are consequently are out of date (IR14). He notes the Council's view that a new Local Plan will have to identify land outside the existing limits to development to meet the present and future need for housing, and that policy S3 is out of date (IR14). He agrees with the Council that, in the circumstances, no weight should be attached to the conflict with policy S3 (IR14).

### Sustainable development

13. For the reasons in IR82-84, he agrees with the Inspector that the proposed development satisfies the economic, social and environmental roles of sustainable development; and that it would be sustainable development (IR85).

### Housing need and supply

14. Paragraph 47 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Secretary of State notes that the appellant has not disputed the Council's contention that it has a five year supply of housing land (IR87). He agrees with the Inspector that local planning authorities must also plan for housing supply beyond the five year period and, as set out in paragraph 47 of the Framework, identify a supply of sites for 6-10 years and, where possible, 11-15 years (IR87). He agrees with the Inspector that there is also a current national imperative to boost the supply of housing and, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission (IR87). The Secretary of State attaches significant weight to the fact that the proposed development would provide for 605 new homes of which up to 182 would be affordable.

## Other matters

15. For the reasons in IR69-74, the Secretary of State agrees with the Inspector that the development, either in its original or amended form, would not compromise **highway safety** or result in any significant increase in **traffic congestion** (IR74). For the reasons in IR75, he also agrees that it would not have any significant effect on the **character of the area**. He also agrees that the development would not cause any demonstrable harm to the setting of **Ashby Conservation Area** or the setting of any **listed building** within it and therefore that paragraphs 133 and 134 of the Framework are not engaged (IR76). For the reasons in IR77-78, he agrees that the development would not place an unacceptable burden on **local infrastructure** (IR78); and, for the reasons in IR79-81, that, as well as easy access by cycle and walking to local services, residents of the development would have access to a mode of **transport** to the town centre other than the car (IR81).

## **Conditions and obligations**

16. The Secretary of State has considered the schedules of conditions included within the IR; the Inspector's comments at IR160; paragraphs 203 and 206 of the Framework and the Guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.
17. The Secretary of State has also considered the executed and signed Unilateral Undertaking; the Inspector's comments on this at IR61-63; paragraphs 203-205 of the Framework, and the Guidance. He considers that that the provisions offered by the Unilateral Undertaking would accord with the tests set out at paragraph 204 of the Framework and agrees with the Inspector that they would also comply with Regulations 122 and 123 of the CIL Regulations.

## **Planning Balance and Conclusion**

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in IR14 and 86, the Secretary of State agrees with the Inspector that LP policy S3 is out of date. For the reasons set out in this letter, the Secretary of State also considers that the emerging North West Leicestershire Local Plan and the Ashby-de-la-Zouch Draft Neighbourhood Plan should be afforded very limited weight.
19. The Secretary of State agrees with the Inspector that, taking all relevant matters into account, the proposed development would not cause harm to any matters of acknowledged importance; and that it satisfies the economic, social and environmental roles set out in paragraph 7 of the Framework and would be sustainable development (IR85). The appellant has not disputed the Council's contention that they have a five year supply of housing land (IR87). However, the Secretary of State agrees with the Inspector that local planning authorities must also plan for housing supply beyond the five year period; that there is also a current national imperative to boost the supply of housing; and that, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission (IR87). The Secretary of

State attaches significant weight to the fact that the proposed development would provide for 605 new homes of which up to 182 would be affordable.

20. Paragraph 49 of the Framework states that housing applications should be considered in the context of sustainable development, and paragraph 14 states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (IR88). The Secretary of State agrees with the Inspector that in this case there are no demonstrable adverse effects to take into account and the development would be sustainable development (IR88). He also agrees with the Inspector that, for this principal reason, determination of the appeal may be made other than in accordance with the development plan (IR88).

### **Formal Decision**

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for the amended scheme for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way, on land at Money Hill, land north of Wood Street, Ashby-de-la-Zouch, subject to the conditions listed in the Annex A to this letter.
22. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
23. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

24. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
25. A copy of this letter has been sent to the Council.

Yours faithfully

*Philip Barber*

**Philip Barber**

Authorised by the Secretary of State to sign in that behalf

### Conditions

1. Save for the details of vehicular access into the site from Woodcock Way (if applicable) and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in respect of the relevant phase.
2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way(if applicable) and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.
3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.
4. The proposed development shall be carried out strictly in accordance with the following plans:
  - Application Boundary Plan – Rev A 29.06.2015
  - Site Access plans (06 Rev F)
5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details (or any alternatives subsequently agreed in writing by the Local Planning Authority).
6. A total of no more than 605 dwellings shall be erected on the area shown as 'residential' (18.23 hectares) and 'health centre/residential' (0.52 hectares) as shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015.
7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and

agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABE or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as intrusive site investigation works in respect of potential risks to the proposed development arising from former coal mining operations together with precise details of any required mitigation and a timetable for its implementation have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, Dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site - FRA sections 6.0 and 7.4, and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6;
- Management of Silt and the prevention of pollution of the watercourse during the construction phase - FRA section 7.3;
- Provision of safe access and egress within the site - FRA section 7.2;
- Finished floor levels - FRA section 7.1

Unless any alternative programme is first agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed

in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;



- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

14. Notwithstanding the submitted details and other conditions, no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11

Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the

specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routeing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to this Planning Permission shall be occupied until such time as the whole of the approved scheme is fully operational.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

## Annex B

**Correspondence submitted after the close of the inquiry or too late to be considered by the Inspector**

<b>Correspondent</b>	<b>Date</b>
Paul Andrew	17 November 2015
Ashby de la Zouch Civic Society	26 November 2015
the late Lorna Titley	2 December 2015
Iceni Projects	27 January 2016

## Annex C

**Representations received in response to reference back to parties**

<b>Correspondent</b>	<b>Date</b>
North West Leicestershire District Council	17 December 2015
David Price	2 January 2016
Iceni Projects	5 & 18 January 2016
the late Lorna Titley	7 & 18 January 2016
Ashby de la Zouch Town Council	7 & 18 January 2016
Nottingham Road and Wood Street Action Group (NORAG)	7 January 2016
Ashby de la Zouch Civic Society	7 & 17 January 2016
Paul Andrew	7 & 20 January 2016

# Report to the Secretary of State for Communities and Local Government

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 21 October 2015

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**TOWN AND COUNTRY PLANNING ACT 1990**

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**APPLICATION**

**by**

**MONEY HILL CONSORTIUM**

Inquiry held on 8 and 10 September 2015

Money Hill, Land north of Wood Street, Ashby-de-la-Zouch, Leicestershire

File Ref: APP/G2435/A/14/2228806

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**File Ref: APP/G2435/A/14/2228806**

**Money Hill, Land north of Wood Street, Ashby-de-la-Zouch, Leicestershire**

- The appeal was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 3 December 2014.
- The application was made by Money Hill Consortium to North West Leicestershire District Council.
- The application Ref 13/00335/OUTM is dated 22 April 2013.
- The development proposed is 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way.
- The reason given for the direction is that the appeal involves a residential development of more than 150 units on a site of more than 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Summary of Recommendation: The appeal be allowed.**

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**Procedural Matters**

1. The application was made in outline form with all matters except for part access reserved for future consideration.
2. The application was refused for four reasons, as set out in a Statement of Common Ground (ID4), but at a Planning Committee Meeting on 6 January 2015 North West Leicestershire District Council (NWLDC) resolved not to pursue the first three reasons for refusal. The fourth reason relates to housing and affordable housing supply.
3. The application was opposed by Leicestershire County Council (LCC) and by Leicestershire Police (LP). Prior to the Inquiry LCC and LP were granted Rule 6(6) status under the provisions of the Inquiries Procedure Rules. Their concerns related to mitigation of the effects of the development and to the provisions of the Unilateral Undertaking, made pursuant to Section 106 of the Town and Country Planning Act 1990, that has been put forward by the Appellant. A final draft of the Section 106 Undertaking was submitted at the Inquiry and a signed and dated version was submitted after the close of the Inquiry.
4. Though they have maintained the fourth reason for refusal of the application NWLDC did not present any evidence at the Inquiry. Instead, they made a position statement. This is reported below.
5. The proposed development is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The planning application was thus accompanied by an Environmental Statement (ES). The ES has been found to meet the requirements of the EIA Regulations.

**The Site and Surroundings**

6. The appeal site is 43.6 hectares of undulating open farmland, which rises roughly from the south to the north, to the north-west of Ashby-de-la-Zouch. The site is bounded to the west, south and south-east by existing town development, to the north by further farmland, and to the north-east by the A511 trunk road.



## **The Proposed Development as made to the Council**

7. The principal element of the proposed development is the construction of 605 dwellings, of which 60 units would be within an extra care centre, on 20.18 hectares at a density of 29.9 dwellings per hectare. The development would also include a primary school, a health centre, a community hall, neighbourhood retail use, public open space (9.88 hectares) and flood attenuation areas (3.87 hectares). The principal access into the site would be via a new roundabout junction on the A511 and a secondary access would be via Woodcock Way that has a junction with Nottingham Road, the main road into the town from the east.

## **The Proposed Development as amended prior to the Inquiry**

8. After the application was submitted to the Council the Money Hill Consortium 'lost control' of part of the application site. This part of the site is known as the 'Verney field'. The Woodcock Way access into the site is into the Verney field and the field has been the subject of a planning application (Ref. no. 15/00354/OUT) for up to 70 dwellings, which was refused by NWLDC and is the subject of an appeal (Ref. No. APP/G2435/A/14/3019451).

9. The amended development is the same as that generally described in paragraph 7 but would not include any development on the Verney field. Consequently, the area for residential development would reduce to 18.75 hectares, with a consequent increase in housing density to 32.2 dwellings per hectare, public open space would reduce to 8.77 hectares, and flood attenuation areas would reduce to 3.46 hectares. The amended scheme has been the subject of assessment under the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA) and an ES Addendum is included with the Inquiry Documents (ID23).

10. The Appellant maintains that the amendments to the original scheme are minor and has requested, under the principle established in *Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 233 (Wheatcroft)*, that the appeal be determined on the basis of the amended scheme. This matter is reported and concluded on below. ID5 is the plans that accompanied the application and ID6 is the plans for the amended development.

## **Planning Policy**

### **Local planning policy**

11. The development plan, for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, comprises saved policies of the North West Leicestershire Local Plan 1991 – 2006 (LP), which was adopted on 22 August 2002. LP policy S3 states that development will be permitted on land outside the limits to development, identified on proposals maps as countryside, but only if it is for one of five given purposes. General housing is not one of the five purposes.

### **Emerging local planning policy**

12. A draft Core Strategy was passing through the statutory process towards adoption but was withdrawn in October 2013. A revised draft CS has been prepared but it is not expected to pass through the statutory process to adoption before December 2016. The main parties agreed, as set out in the Statement of Common Ground (ID4), that no weight can be attached to the emerging CS.

## **The Case for North West Leicestershire District City Council (NWLDC)**

The material points of the case made by NWLDC are:

13. The Appellant proposes to deliver a balanced development of up to 605 new homes (of which 30 per cent would be affordable homes), new primary and nursery schools, a health centre, a community hall, a shop and open space on a green field site adjoining the north eastern edge of Ashby de la Zouch.

Planning policy framework

14. The development plan comprises saved LP policies. LP policy S3 restricts the development of new homes outside the limits to development that are shown on proposals maps. The appeal site lies outside the limits to development around Ashby de la Zouch. It therefore conflicts with policy S3. However, the LP's housing policies only made provision to meet the need for new homes in the district until 2006. Consequently they are out of date. Policy S3 is a counterpart to those policies in the sense that it restricts the development of new homes in the countryside in order to direct them to sites allocated for that purpose. Since it is inevitable that a new Local Plan will have to identify land outside the existing limits to development to meet the present and future need for housing policy S3 is also out of date. In the circumstances, no weight ought to be attached to the conflict with policy S3. Instead, the merits of the proposal should be assessed by reference to the National Planning Policy Framework (NPPF).

15. The NPPF places great weight on boosting significantly the supply of market and affordable housing. Where, as in this case, policies for the supply of housing contained in a local plan are out of date, the presumption in favour of sustainable development applies. That means planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. The factual question of whether development would actually cause harm is to be approached positively. Local planning authorities should look for solutions rather than problems and decision makers at every level should try to approve applications for sustainable development where possible.

Application of the NPPF to the appeal proposals

16. In May 2014 the Planning Committee refused to grant planning permission for the scheme because Councillors were not persuaded it constituted sustainable development. The notice of decision cited four reasons for refusal. In summary, they were: -

- a. The scheme did not make adequate arrangements for pedestrian access to the town centre. That was thought likely to cause new residents to place too much reliance on the private car, resulting in an unsustainable form of development;
- b. Woodcock Way was thought to be unsuitable for providing vehicular access to up to 30 dwellings;
- c. Highways England had issued a "holding objection" because they were concerned the scheme might prejudice the safe and efficient operation of the A42 Trunk Road;

d. The Appellants had not made adequate provision for affordable housing; the Council's Affordable Housing Supplementary Planning Document requires 30 per cent of the new homes to be affordable whereas the Appellant's offer was unclear and appeared to be likely to yield rather a significantly lower contribution.

17. The decision to refuse planning permission was not taken lightly. The Council knows it must build many more new homes for people to live in. It is also acutely aware of the need to build more affordable houses: the Leicester and Leicestershire Strategic Housing Market Assessment identifies a need to deliver around 209 such homes in the District each year. The Council also recognised that the appeal site had previously been identified for residential development in the first draft Core Strategy. Although that document has been withdrawn, that previous notation makes it very difficult to argue plausibly that in principle the development of houses at Money Hill is unsustainable. Instead the reasons for refusal highlighted concerns about the detail of what was proposed rather than the general suitability of Money Hill to accept significant housing development.

18. Matters did not rest there. The appeal process requires all parties to support their case with evidence which demonstrates clearly why planning permission ought to be refused. They are also required to act reasonably. As the Council set about gathering and testing its evidence, and through the preparation of the Statement of Common Ground, Officers were persuaded that it would be difficult to continue reasonably to contest the first three reasons for refusal. Specifically, it became apparent that: -

- a. A satisfactory bus service could be provided to and from the town centre. Further, there is potential to create convenient, safe and attractive routes for pedestrians and cyclists to and from shops, community facilities and jobs in the centre of Ashby (and elsewhere in the town);
- b. Woodcock Way is capable of serving 30 houses safely;
- c. The development would not prejudice the safe and free flow of traffic on the A42 trunk road.

19. Officers drew comfort for their conclusions from information supplied to them by the local highway authority, Leicestershire County Council, and by Highways England. Neither maintained an objection to the scheme (Highways England withdrew their holding objection on 22 December 2014). Adopting the "solution driven approach" that is advocated by the NPPF, Officers decided to report the matter back to Councillors with a recommendation that the first three reasons for refusal should be withdrawn. The Planning Committee accepted this recommendation on 15 January 2015. That change of stance has since been vindicated by the absence of any objection to the Appellant's highways proposals by either the local highway authority or Highways England. It is also relevant to note the Appellant's amended proposal deletes access from Woodcock Way.

20. Thus for the purpose of applying the presumption in favour of sustainable development the Council accepts that the scheme would not cause any harm to the safe and free flow of vehicular, cycle or pedestrian traffic. It is also satisfied that the appeal site is well located and will be properly serviced by sustainable forms of transport so that residents of the new homes will be able to travel to and from the town centre without necessarily having to resort to using their cars.

## Affordable housing

21. When the appeal proposals were considered by the Planning Committee the Appellant did not appear to be committed to providing a policy compliant contribution of 30 per cent affordable housing. That was unacceptable. Ashby de la Zouch is an attractive, historic market town. House prices held up well during the recession and the housing market remains healthy. The site is not constrained by problems that might impose exceptional costs on development and undermine its viability. In principle, therefore, a full policy compliant contribution of 30 per cent affordable housing ought to be made. Indeed an Affordable Housing Viability Study published in 2009 indicated the potential to deliver up to 35 per cent affordable housing on sites in the town. The Council cannot afford to be relaxed about achieving affordable housing targets. As has been noted, there is an acute need for affordable housing throughout the district. In that context sites which cannot satisfy this important social need but which consume the countryside might properly be regarded as failing to deliver sustainable development.

22. Happily, this difference between the parties has been resolved. The Unilateral Undertaking that has been submitted by the Appellant contains an obligation to provide 30 per cent affordable housing subject to an independent assessment of the viability of that level of contribution. The Council is satisfied that the terms of the undertaking are robust and equitable. They also give effect to the NPPF's injunction that development should be deliverable.

## The planning balance

23. Every household in the district should be able to obtain a decent home that they can afford. This is quite simply a top priority. The delivery of 605 new homes (of which up to 182 would be affordable) in a sustainable location close to shops, community facilities and employment would make a really substantial contribution towards meeting that priority. That should be accorded considerable weight. In the absence of an up-to-date LP the fact that a recent appeal proved the Council possesses a 5 year supply of deliverable land for housing does not diminish the weight to be attached to the Appellant's offer to build more new homes; a 5 year supply is the minimum amount of land that must be shown to be available. It is not a cap on development.

24. English Heritage has not objected to the scheme and the Council is satisfied that the development would not harm the setting of any listed building. The Appellant has addressed flooding and water quality issues to the satisfaction of the Environment Agency and Severn Trent Water. The County Ecologist and Natural England are satisfied the scheme would not adversely affect the River Mease Special Area of Conservation (SAC) or other ecological interests.

25. On the other side of the balance it is recognised that the scheme would result in the loss of countryside and good quality agricultural land. The countryside is not protected by any special designation. However, it is plainly valued by local people. Its loss is therefore a matter of regret. The Council also recognises local people are concerned about traffic congestion in the town. However, a balance has to be struck between meeting the need for new housing and causing some harm to the environment. In this case the need for new homes is decisive and it is not considered that the harm associated with this provision would be so great as to justify dismissing the appeal.

26. Other potentially adverse impacts of the scheme would be offset by the discharge of planning obligations contained in the undertaking which make contributions towards the cost of new schools and school places, open space, library, healthcare, police and community infrastructure. The Council supports each of these contributions. Other harm that might be caused by the scheme can be overcome by conditions that have been agreed between the parties.

### **The Case for Leicestershire County Council (LCC)**

The material points of the case made by LCC are:

27. Financial contributions are sought towards primary, secondary and upper school education, library facilities, and sustainable transport. The latter element includes a bus pass contribution, a travel pack contribution and a bus stop improvement and information display case contribution. The contributions are necessary because the new housing proposed would place additional demand on education and library resources and on the achievement of sustainable transport options for the intended residents of the development. The contributions are fairly and reasonably related in scale and kind to the development and are directly related to that development. The contributions therefore satisfy Regulation 122 of the Community Infrastructure Levy Regulations 2010.

28. The primary school contribution is directly related to the development because a new primary school would be constructed on the site. If circumstances dictate that this does not occur if the development is implemented then the contribution would be used to extend the primary school at the Holywell Spring Farm development in Ashby. This would be the first such contribution. The secondary school contribution would be the second such contribution towards an increase in capacity at Ivanhoe College and the upper school contribution would be the fifth such contribution towards addressing pupil capacity issues at Ashby College. The library contribution would be the fifth such contribution towards the reconfiguration of the existing library in Ashby and the sustainable transport contribution would be used to mitigate matters arising from the development itself. The financial contributions sought thus satisfy Regulation 123 of the Community Infrastructure Levy Regulations 2010.

### **The Case for Leicestershire Police (LP)**

The material points of the case made by LP are:

29. A contribution of £219,029 is sought towards Police infrastructure that would mitigate the impact of the proposed development. This figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 605 new homes on the appeal site.

30. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place additional

demand on Police resources in Ashby. The contribution therefore satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010.

31. LP confirms that no element of the contribution would be pooled with any other contribution to fund an infrastructure project. Indeed, the undertaking provides that the contribution would only be payable on receipt of written confirmation from LP that each component of the contribution would be spent on a project with no more than four other contributions. There is certainty therefore that the contribution satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.

### **The Case for Money Hill Consortium**

The material points of the case made by Money Hill Consortium are:

The proposed amendments to the application

32. The principle governing whether a planning application may be amended on appeal, as set out in *Wheatcroft*, is aimed at preventing unfairness where the development is "*so changed*" by the amendment "*that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation*".

33. This breaks down into two sub-issues. First, does the amendment involve a significant change to what has been applied for? Secondly, if it does, would there be a 'consultation deficit': i.e. have interested parties been deprived of the opportunity to comment on the amended scheme? If the answer to both these questions is 'Yes', then allowing the amendment would be unfair and unlawful. If the answer to either of those questions is 'no' then there is no unfairness and the amendment is permissible.

34. In the present case the answer to both questions is 'No'.

35. Firstly, the amendments involve minor, rather than significant, changes. No changes are proposed to the description of the development for which planning permission is sought. No alterations are proposed to the application red line, the amendments are confined to changes to the layout shown in the parameter plans to show that the Verney Land is not an integral part of the development, and the development can be delivered without the Verney Land (a scenario which has also been tested for EIA purposes in the ES Addendum). Given that layout is a reserved matter and the small size of the amendments proportionately to the scale of the overall application, these changes can properly be described as minor.

36. Secondly, there is no 'consultation deficit'. The proposed amendments have been subject to extensive consultation and publicity comprising the following: -

- a. The publication of a notice in the local press;
- b. The display of a site notice;
- c. Direct mailing to the extensive range of statutory consultees and local residents in the list provided by Mr Churchill in Examination in Chief (ID2);
- d. Depositing copies of the amended material for public inspection at the Council's offices and at the offices of the Appellant's planning consultants.

37. This consultation and publicity has thus at least matched that which would have been undertaken pursuant to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO) if the amendments had been pursued as a new planning application. In fact, it has exceeded the statutory requirements under the DMPO in that local residents, including not just those originally consulted by the Local Planning Authority but all those who objected to the original application, have been directly mailed with the amended plans (which is not a requirement of the DMPO).

38. Not only have members of the public been provided with an opportunity to comment on the amendments, very many of them have taken up that opportunity through the submission of written representations and through appearing at the Inquiry. Councillor Ball confirmed in cross-examination that the Town Council were aware of the amendments and that they had a meeting prior to the commencement of the inquiry at which they could have discussed the amendments; that they did not do so is a matter for them. What matters is they were given a reasonable chance to do so.

39. The observations submitted by email on 4 September by Ms Eri Wong of the Transport Department at the LCC do not alter the above analysis. Two points are made in the email:

1. The first relates to emergency access, but Ms Wong concludes in relation to that point that LCC is "prepared to take a flexible approach" in that regard and to defer to the views of the emergency services. The police, the NHS and the Fire and Rescue Service were all directly mailed with the proposed amendments and none have objected. Mr Cross for LCC confirmed on the first day of the Inquiry that "LCC does not take a point" in relation to emergency access. Mr Burbridge explained in examination-in-chief that there were multiple options for emergency access and that he was satisfied in his expert judgment that the development was capable of providing acceptable emergency access arrangements. His evidence was not challenged.

2. The second point in Ms Wong's email is, in essence, that (i) the amendments change the access arrangements for the appeal scheme in that the sole access for which permission would be granted is off the A511 and (ii) LCC has not had time to ascertain the implications of that change for the commercial viability of the proposed bus service. Ms Wong has not attended the inquiry and her observations have therefore not been able to be tested in cross-examination. That limits the weight to be given to what she says. Moreover, LCC has been given the same consultation period on the amendments that it would have had under the DMPO for a new application. In any event, Ms Wong's point is without merit for the following reasons:

a. The premise is incorrect: whilst the amendments clarify that the development of the Verney field is not an integral or necessary part of the appeal scheme, the access arrangements which would be within the scope of the permission (if granted) remain the same. In other words, if permission is granted, the Appellant will still be permitted, but will not be required, to bring forward access via Woodcock Way.

b. In any event, the premise does not justify the conclusion. The proposed conditions include a Grampian condition requiring prior approval of the details of the bus service including, in particular, its routing. If LCC considers upon reflection that the routing which is ultimately proposed pursuant to that condition means that the service would not be commercially viable, they will be able to make representations to that effect and if the Council agrees then the condition will not be discharged. The proposed amendments to the appeal scheme will therefore not deprive LCC of making such points as they see fit on this issue.

c. The critical question in considering whether dealing with the bus service by way of a Grampian condition is acceptable is whether there is some, as opposed to no, prospect of that condition being discharged within the lifetime of the permission. No one, including LCC, has suggested there is zero prospect of the condition being discharged. LCC did not object to the viability of the bus service when it was envisaged that the route would enter the site via the A511 and exit via Woodcock Way. As Mr Burbridge has explained, by reference to the email from Mr Jenkins (ID12), an expert in bus public transport matters, the additional journey time that would be involved if the route both entered and exited via the A511 is minimal and would not have any material effect on viability. It should also be noted that the 'Enhanced Connectivity Contribution' of £400k in the Section 106 package is drafted in terms that would cover seed-funding of the bus service, should that be considered necessary following the assessment by LCC of sustainable transport connectivity which itself is to be funded by the Section 106 obligations.

40. In the light of the foregoing points, the case for allowing the amendments to be made is compelling.

Submissions on the merits of the amended scheme

41. The principle of development has never been in dispute between the Council and the Appellant. Indeed the Council has even resisted development elsewhere on the basis that it conflicts with the preferred direction for future growth which is at Money Hill. None of the four reasons for refusal originally imposed by Members went to the principle of development.

42. As the Statement of Common Ground records (see in particular at 4.1), and as the Council has reiterated at this Inquiry, it is now common ground between the Council and the Appellants that the appeal should be allowed. Reasons for refusal 1-3 have been withdrawn. Reason for refusal 4, which relates to affordable housing, is agreed to be capable of being dealt with by a planning obligation and is therefore not put forward as a basis for dismissing the appeal.

43. Such a Statement of Common Ground between the Appellant and the Local Planning Authority ought not to be rejected without very sound reasons. The Inquiry procedure relies upon such Statements as narrowing the issues. There are no planning issues now between the Appellant and the Council. This unusual position reflects the long-standing hard work that has gone into the preparation and promotion of this scheme.



44. There are no sound reasons here for departing from the agreed position of the Local Planning Authority and the Appellant. The case for granting permission is compelling. The central points are as follows (without prejudice to the generality of the case put forward by the Appellant in its evidence and in the documentation accompanying the application).

45. First, whilst the appeal scheme is in limited breach of the ageing Local Plan which covered the period 1991-2006 (in particular saved policy S3), it is common ground that the Local Plan is out of date for the purposes of NPPF paragraph 14 (regardless of whether the Council can demonstrate a five year housing land supply) because the District's housing needs cannot be met by reliance solely on allocations contained within the Local Plan. Policy S3 can therefore be given limited weight.

46. Secondly, the consequence of the Local Plan being out of date is that, applying NPPF paragraph 14, the presumption in favour of sustainable development means that permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits.

47. Thirdly, the benefits of the appeal scheme are substantial in number and in significance. They include:

- a. The delivery of a substantial amount of housing which would provide a telling contribution to boosting significantly the supply of housing in the District, in line with the objective set out in NPPF paragraph 47;
- b. The provision, as part of that housing contribution, of a significant amount of affordable housing (30% subject to viability), in a desirable location where market housing prices are robust;
- c. The provision of 60 units of extra care housing, which would promote the NPPF paragraph 50 objective of planning for a mix of housing based upon the needs of different groups in the community;
- d. The delivery of a range of substantial improvements to local infrastructure as set out in the Section 106 unilateral undertaking;
- e. Direct economic benefits associated with the new development, including over 125 full time jobs;
- f. The additional lifeblood that the development's population would generate to help sustain and enhance local facilities;
- g. Environmental benefits including new planting, a contribution towards the reduction of phosphate affecting the River Mease SAC, the long-term retention of existing trees and hedgerows, and the promotion of sustainable transport opportunities; and
- h. The delivery of all these benefits in a sustainable location.

48. Fourthly, such adverse impacts as there are do not come remotely close to significantly and demonstrably outweighing the benefits of granting permission. The converse is true: the benefits both outnumber and outweigh the adverse impacts. In particular:

- a. The development would not have any significant adverse impacts from a highways and transportation perspective. In this regard, as Mr Burbridge explained in examination-in-chief, regard has been had out of an abundance of caution to the cumulative impact of the appeal scheme together with the proposed but as-yet-unpermitted development on the Verney field – the combined effect of both schemes is acceptable regardless of whether the Verney field scheme were to take its access from Woodcock Way or from the A511;
- b. Whilst any greenfield development of this scale is bound to have some landscape and visual impact, that impact in the present case is limited due to the site being relatively visually contained;
- c. No unmitigable adverse impacts on ecology are alleged;
- d. The Council was satisfied that the development would not result in an undue loss of residential amenity by local residents and it is notable that those local residents who spoke at the inquiry did not focus on this issue;
- e. Whilst the development will result in the loss of some agricultural land, this was not considered by the Council to be an overriding consideration nor is it an uncommon feature of greenfield development which, in this District at least, has a necessary role to play in the delivery of market and affordable housing requirements; and
- f. In relation to heritage assets, our primary submission is that the development would not cause any harm. The English Heritage letter dated 31 May 2013 does not appear to take any great issue with this analysis; at its highest, it could be said to identify only a sliver of less-than-substantial-harm to the setting of Ashby Castle against the context that the view from the Castle to Money Hill *“does not appear to be an axis with particular special significance over and beyond being part of the landscape that was visible around town from the tower (in contrast say to views towards the medieval parkland...)”*. It is notable that Mr Tandy on behalf of the Ashby Civic Society did not, at the Inquiry, allege that the development would have any heritage impact. Whilst harm to heritage assets must be given considerable importance and weight, that weight must be tempered by the limited degree of the harm (if any) and it is clearly outweighed by the benefits of the proposed development.

49. Fifthly, for similar reasons to those already given above, the appeal scheme represents sustainable development; it makes significant contributions to each dimension of sustainable development referred to in NPPF paragraph 7.

50. Sixthly, the support that the NPPF provides for the development, and the benefits of the scheme that trigger that support, are material considerations that justify a decision other than in accordance with the development plan for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004.

51. It is inevitable that when a greenfield scheme of this size is proposed there will be a degree of resistance among local residents concerned about the effect that this will have. This case is no exception. However, whilst local residents who have made written and/or oral observations at the Inquiry, the truth is that they

have not provided any sound planning grounds to justify the dismissal of this appeal. Their principal concern relates to the impact of the development on the local highway network. Mr Burbridge has explained in oral evidence, consistently with the transport assessment work in the written documentation before the inquiry, that the development can be accommodated safely and satisfactorily in highway terms. In particular, most peak hour traffic would be heading away from Ashby to destinations further afield and would therefore not contribute to congestion within the town, whereas a range of options for accessing the town centre by sustainable means (on foot, cycling and by bus) would exist and would be developed further as the details of the development are worked up at the reserved matters stage. Mr Burbridge also explained that the assumptions in the traffic modelling were conservative and clearly had sufficient headroom to accommodate the various other developments consented in the locality. His evidence was not contradicted by any technical evidence before the inquiry, and LCC in its local highway authority role do not take issue with his conclusion that the development can be acceptably accommodated on the highway network. There is simply no evidential basis for dismissing the appeal on highways grounds.

Submissions on the merits of the original scheme

52. The above analysis applies equally to the appeal scheme in its unamended form. In particular, whilst the layout shown on the original parameter plans indicates some development on the Verney field, which is currently outside the Appellant's control: -

a. Given that layout is a reserved matter, there is no legal obstacle to reserved matters coming forward with a layout that redistributes the development away from the Verney Land. The ES Addendum has tested that scenario and so the possibility of such an outcome has been adequately subject to EIA and shown to be acceptable. Further EIA can also be required at reserved matters stage if the Council considers it necessary;

b. In any event, there is no requirement in planning law that the applicant for planning permission must have an interest in, let alone control over, all or even part of the land in respect of which permission is sought. Whilst the likely timing of a development's delivery is capable in principle of affecting the weight to be given to the claimed housing supply benefits, this is not a point that can be taken here even if there was no scope for reserved matters redistributing the development away from the Verney field. That is because the land ownership issue would only affect a relatively small portion of the development.

Conclusion

53. The proposed amendments to the appeal scheme should be allowed. They do not involve significant changes and in any event there is no 'consultation deficit' and therefore no unfairness in allowing them to be adopted.

54. The appeal scheme (amended or not) represents sustainable and beneficial development. Although it is in limited breach of the out-of-date LP, there are compelling material considerations that justify the grant of permission other than in accordance with the development plan.

## **Representations made by interested parties**

The material points of the cases made by those who appeared at the Inquiry and who submitted written representations are:

55. Ashby is a medieval market town of about 5000 dwellings where the town centre is protected by a conservation area. The first CS proposed an increase in the population of Ashby by the construction of 750 houses, solely at Money Hill, but since it was withdrawn the town has become a magnet for housing developers because development at other towns in the District, such as Coalville, is constrained. The 605 dwellings proposed at Money Hill would be only the first part of a development of 1800 new dwellings which would constitute, in itself and setting aside other developments, an increase of 36% in the size of the town. If a single development of such a scale is to be built then it must be done with proper consideration of the road network, schools, healthcare, drainage, sewerage, car parking and recreational facilities, which are all currently overstretched.

56. The principal concern is with regard to traffic problems on Nottingham Road/Wood Street, the main road leading into the town from the east. This road links the town to major edge-of town retailers and to the outside world via the A42 at junction 13. Its carriageways and footways are narrow and there have been many accidents over the years including a fatality. At the time of the 2002 LP examination it was recognised that the road had reached saturation point (17,600 vehicles per day) and that to allow more traffic would endanger highway and pedestrian safety. The opening of the A511 Ashby bypass provided massive relief and Nottingham Road is now used by 15,500 vehicles per day though queues in both directions are normal. The 1350 new dwellings already permitted will take traffic back beyond saturation point.

57. The A511 Ashby bypass, particularly its junctions with Nottingham Road and the A42, suffers severe congestion and would not cope with the 605 proposed dwellings on top of the 1350 already permitted. The Highways Agency has removed their holding objection on the impact on junction 13 of the A42 on the basis that a plan is funded and in place to upgrade this junction. No such plan is in place and no developer funding for any upgrade is committed. The Highway Authority are aware of these circumstances but have refused to object to the proposed development.

58. The late changes to the proposed development have raised unresolved issues. The only vehicular access into the town would require a two mile journey, a safe pedestrian access into the town is not certain, the bus route has been significantly modified and has not been tested for viability, and the single access to 605 dwellings and other uses from the A511 has not been tested and is contrary to the maximum of 400 dwellings permissible under Highway Authority policy. No viable traffic mitigation is proposed to ensure the sustainability of the proposed scheme and to avoid the gridlock that is projected.

59. Other concerns are with the impact of the development on the water environment and in particular the River Mease SAC, the impact of the development on the vibrancy of the town centre, and the insufficient capacity of the town's middle and senior schools to cope with the increase in pupil numbers. The Council can now demonstrate a five year housing land supply and LP policy S3 can therefore be considered up to date.

## **Conditions and Section 106 Unilateral Undertaking**

60. The Council and the Appellants have agreed a list of conditions for both the original and amended schemes (ID13 and ID14). These were discussed at the Inquiry as were conditions suggested by the Ashby Civic Society; which have either been addressed in the agreed conditions, are covered by provisions of the Section 106 undertaking, or do not relate to matters that need to be addressed by imposition of conditions. The agreed conditions have been amended where necessary in the interests of clarity and precision and to delete phrases that would allow the possibility of un-consulted alterations to previously agreed details. The conditions meet the tests for conditions set out in the National Planning Practice Guidance and are set out in schedules attached to this report. The reasons for the conditions are set out in the schedules.

61. A final draft Section 106 Unilateral Undertaking was submitted at the close of the Inquiry and a signed and dated version was submitted after the close of the Inquiry. The undertaking makes provision for the payment of contributions that would include the construction of a new on-site primary school or the expansion of an existing school, a sum of £1,081,508 for the provision of a new design centre at Ivanhoe College, a sum of £1,110,487 for the provision of a specialist teaching area at Ashby School, a sum of £201,878 to enhance healthcare facilities, a sum of £18,260 to enhance library facilities, a sum of £201,029 to support Police operations in the town, and a sum of £105,651 to upgrade and enhance public rights of way in the vicinity of the site.

62. The obligations of the Undertaking, other than that to support Police operations, are all related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement, setting aside the Police contribution, therefore complies with Regulation 122 of the CIL Regulations 2010. Furthermore, taking into account the submissions of NWLDP, LCC and LP, the Agreement complies with Regulation 123 of the CIL Regulations 2010.

63. The contribution of £219,029 towards Police infrastructure is not related to requirements of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contribution to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.

## Conclusions

*Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.*

### The amended scheme

64. The amended scheme, setting aside the application for 70 dwellings on the Verney field, is not appreciably different to the original scheme. Housing density would be slightly higher and there would be slightly less public open space but there is no reason to suppose that a detailed scheme put forward at reserved matters stage would be unacceptable. Flood attenuation areas would also be slightly reduced but there is no evidence to suggest that there would be any increased risk of flooding or any adverse consequences for the water environment. Furthermore, the amended scheme has been assessed against the EIA Regulations and this assessment has not raised any issues. The appeal site is the same in both schemes and the amendments can properly be described as minor. [35, 58]

65. There is the possibility, if this appeal is allowed and the appeal for the proposed development on the Verney field is successful, that the appeal land would be developed for 675 dwellings rather than 605. If all other factors are acceptable then this would constitute the efficient use of land and would result in an increased contribution to housing and affordable housing supply. The appeal for the Verney field development will be determined on its own merits as will the appeal that is the subject of this report. [48]

66. The Appellant has undertaken a consultation exercise for the amended scheme and all parties who made representations on the original scheme were consulted. The consultation period ended before the close of the Inquiry and all representations made have been taken into account. The consultation process undertaken by the Appellant was responsibly made and is afforded significant weight. [36-38, 58]

67. The amended scheme is not materially different to the original scheme and is not so changed that the interests of any party to the appeal are compromised. The original scheme, if allowed, could be implemented if the appeal for the Verney field is dismissed but, equally, if that appeal is allowed the original scheme could be implemented on the basis of amendments made to it at reserved matters stage. The original and amended schemes will thus be considered on their merits.

### The main issue

68. The main issue is whether the proposed development, taking all relevant matters into account, would be sustainable development

#### Traffic congestion and highway safety

69. The limit in Highway Authority guidance on the number of dwellings that can be accessed from a single access point is only a recommendation and neither the Authority nor any of the emergency services have commented on this aspect of the development. Residents of the town, if the appeal scheme is built out, envisage traffic congestion in the town returning to the level that existed before the A511 Ashby by-pass was brought into use. But there is no evidence to indicate that this would occur. Residents of the proposed dwellings, travelling by car to go to and return from work in locations outside Ashby, would not drive through the town; the A511, which would be the sole access into the site in the

amended scheme and the principal access into the site in the original scheme, provides access to other towns in all directions. [51, 56, 58]

70. It is also not likely that such residents would detour through the town to drop children at schools in the town because this would add significantly to their journey time and it would probably be quicker, given the proximity of the site to the town centre and schools, for these children to walk or cycle to school. In this regard the site is recognised to be in a sustainable location relative to the town centre and local infrastructure, and improvements to footpath links to the town centre and schools could be part of a detailed scheme at reserved matters stage.

71. In the original scheme no more than 30 dwellings would be accessed via Woodcock Way, which has a junction with Nottingham Road to the east of the town centre. Car journeys to and from work, resulting from such a limited number of dwellings and given that these journeys would almost certainly not pass through the town, would be inconsequential.

72. Whilst negotiations with a bus operator for a bus service to link the proposed development to the town are ongoing, based on negotiations to date and the size of the development which would be likely to provide sufficient passengers to sustain a service, there is every reason to suppose that a bus service would be initiated and maintained into the future. This service would provide another alternative mode of transport to the motor car for access by children to schools and would benefit all residents of the proposed development. [39, 58]

73. Just as school age children would be able to walk or cycle to school residents who work in the town would be able to do likewise. Some residents of the proposed development, possibly those who are infirm or who intend to make significant purchases in the town, might travel by car into the town centre. But it is unlikely that they would do so during the rush hour periods. Furthermore, there are two major supermarkets and other large retail outlets at the east end of the town and these could be accessed by car from the proposed development without the need to drive through the town. The proposed development is not likely to result in any significant or even discernible increase in traffic congestion in Ashby.

74. Nottingham Road/Wood Street does have bends but it is not unusually narrow or otherwise difficult to travel along in any type of vehicle. Pavements are narrow in places but not, in any location, so narrow that pedestrians are at any danger from passing vehicles. Footpath links from the site to the town centre, in any event, do not require use of the pavements to Nottingham Road/Wood Street. School children from the proposed development might need to cross Nottingham Road to Ashby School but no concern has been expressed for their safety in doing so. The Highway Authority, furthermore, has raised no concerns regarding the safety of highway users on Nottingham Road/Wood Street and there is no evidence to indicate that the development would prejudice the safe and free flow of traffic on the A511 or the A42 trunk road. The proposed development, either in its original or amended form, would not compromise highway safety or result in any significant increase in traffic congestion. [56]

The character of the area

75. There are very few comments about the effect of the proposed development on the character of the area in representations made either at application or appeal stage. This may be because it has long been envisaged that Money Hill,

given its sustainable location, would be developed for housing. Some residents have commented that they value the site and that the development would harm the character of the area. But, other than a footpath that extends along the south boundary of the site and veers through it slightly in two locations, there is no public access through the site. The site therefore has no recreational value and it can be valued only for the outlook that is available over it. The loss of this outlook for some residents and the loss of a part of the countryside surrounding the town, a part which is separated from further countryside by the A511, would be regrettable but the proposed development would not have any significant effect on the character of the area. [48]

The historic heritage of the area

76. Part of the south boundary of the site abuts the Ashby-de-la-Zouch Conservation Area (ACA). Within the ACA are many listed buildings including Ashby Castle, which is on the south side of the town centre and which is a Grade I listed building. From the top of the ruined keep of the castle there is a view across Money Hill, as well as views in other directions. The proposed development would replace a section of countryside in this view but it would be seen in the context of existing development to the west and south-east. English Heritage has not raised any substantive concerns with regard to heritage assets and Mr Tandy, at the Inquiry and appearing on behalf of Ashby Civic Society, did not either. The proposed development would not cause any demonstrable harm to the setting of Ashby Conservation Area or to the setting of any listed building within it. Paragraphs 133 and 134 of the NPPF are not therefore engaged. [48]

Local infrastructure

77. Ashby is not a large town and the proposed development is within easy walking and especially cycling distance of all existing services and facilities. It is a thriving town and the additional population resulting from the development would help to sustain these existing services and facilities. Section 106 undertakings would result in financial contributions for many elements of local infrastructure. These contributions would include the construction of a new on-site primary school or the expansion of an existing school, a sum of £1,081,508 for the provision of a new design centre at Ivanhoe College, a sum of £1,110,487 for the provision of a specialist teaching area at Ashby School, a sum of £201,878 to enhance healthcare facilities, a sum of £18,260 to enhance library facilities, a sum of £201,029 to support Police operations in the town, and a sum of £105,651 to upgrade and enhance public rights of way in the vicinity of the site. [26, 47, 59]

78. The proposed development includes a community hall, a neighbourhood retail use, and public open space that would be accessible to new and existing residents of the town. Taking these factors into account and the various aforementioned provisions of the Section 106 Unilateral Undertaking, the proposed development would not place an unacceptable burden upon local infrastructure.

Transport options

79. Negotiations with a local bus operator on the original scheme envisaged the provision of a bus service that entered the site from the A511 and exited the site via Woodcock Way. LCC raised no concerns with the viability of such a service. A bus service for the amended scheme would enter and exit the site via the A511 but the route would not be significantly longer than that for the original scheme



and there is no reason to suppose that it would be any less viable. The provision of a bus service is not included in the Section 106 undertaking because there is no detailed agreement with a bus operator in place. However, a recommended condition would require this matter to be addressed before development is commenced and there is, given the negotiations that have already taken place and on the evidence available, a real prospect that a bus service for either scheme would be provided, as agreed by the local planning authority, and before 131 dwellings have been constructed in accordance with the condition. [39, 58]

80. The Section 106 undertaking includes the payment of an enhanced connectivity contribution of up to £400,000 to assess existing public transport, cycle and pedestrian connectivity and permeability in the town, and to implement measures to improve cycle and pedestrian connectivity between the site and the town centre. The undertaking also includes the payment of £650 per dwelling for the purpose of providing each dwelling with two six month bus passes and the payment of £11,674 to upgrade two bus stops on Nottingham Road. The undertaking is drafted so that part of the connectivity contribution would go towards 'seed funding' the bus service thus ensuring its initial viability before the development is completed and, as is likely, the service becomes viable. [39]

81. There is a real prospect that the aforementioned condition would result in a bus service being provided and there is also a real prospect that, given the size of the development, the bus service would become viable. As well as easy access by cycle and walking to local services, residents of the proposed development would have access to a mode of transport to the town centre other than by motor car.

Paragraph 7 of the NPPF

82. Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. In terms of the economic role, the development would result in the creation of construction jobs, new and existing employment opportunities in the town would have a greater pool of potential employees to draw from, and the new residents of the town would contribute to the vitality of the town's shops and facilities. The proposed development satisfies the economic role of sustainable development. [47]

83. In terms of its social role the most important factor is the provision, through the Section 106 undertaking, of 30% affordable housing and a 60 unit extra care facility. There is a significant shortfall in the provision of affordable housing in the District and the provision of extra care units is nationally less than it should be. Furthermore, there is no reason to suppose that the development would not be of high quality and all parts of the development would be within easy walking and cycling distance of shops, facilities and services in the town. The proposed development satisfies the social role of sustainable development. [21, 47]

84. There is no evidence to indicate that ecology or biodiversity interests would be harmed and the development would not threaten the environment of the River Mease SAC. The site is subdivided by hedgerows and it has other biodiversity credentials. But the proposed development would have significant areas of open space and all residential gardens, to a lesser or greater extent, include features and opportunities for the enhancement of biodiversity. The proposed development would result in the loss of agricultural land but, on balance, the proposed development satisfies the environmental role of sustainable development. [48, 59]

## Conclusion

85. The proposed development, having taken all relevant matters into account, would not cause harm to any matters of acknowledged importance. The proposed development, furthermore, satisfies the economic, social and environmental roles set out in paragraph 7 of the NPPF and would be sustainable development.

86. Planning applications must, with regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF postdates the LP. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework and paragraph 216 states that the weight to be given to policies in emerging plans should accord to the stage of preparation of the plan. With regard to paragraphs 215 and 216, LP policy S3 is out-of-date and the emerging CS is afforded no weight.

87. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Appellant has not disputed the Council's contention that they have a five year supply of housing land. But local planning authorities must also plan for housing supply beyond the five year period and, as set out in paragraph 47, identify a supply of sites for 6-10 years and, where possible, 11-15 years. There is also a current national imperative to boost the supply of housing and, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission.

88. Paragraph 49 of the NPPF states that housing applications should be considered in the context of sustainable development, and paragraph 14 states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. There are no demonstrable adverse effects to take into account and the development would be sustainable development. Determination of the appeal, for this principal reason, may be made other than in accordance with the development plan.

## Recommendations

89. I recommend that planning permission be granted for the amended scheme subject to conditions set out in a schedule appended to this report, or, if this recommendation is not accepted, for the original scheme also subject to conditions set out in a schedule appended to this report.

90. I recommend that planning permission be granted for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way on land at Money Hill, Land north of Wood Street, Ashby-de-la-Zouch.

*John Braithwaite*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr T Leader Of Counsel instructed by Ms A Lowe,  
Solicitor to NWLDC

He was assisted by

Mr A Murphy BA(Hons) MSc MRTPI Director of Stansgate Planning

### FOR THE APPELLANT:

Mr C Banner Of Counsel instructed by Icen Projects  
Limited

He called

Mr D Churchill MRTPI Director of Icen Projects Limited

Mr C Burbidge BSc(Hons) MSc  
MCIHT MCILT MRTPI Director of Icen Projects Limited

### FOR LEICESTERSHIRE COUNTY COUNCIL (LCC):

Mr A Cross Solicitor

He was assisted by

Mr A Tyrer BA(Hons) MRTPI Development Contributions Officer at  
Leicestershire County Council

### FOR LEICESTERSHIRE POLICE (LP):

Ms J Wigley Of Counsel

She was assisted by

Mr M Lambert Growth and Design Officer at  
Leicestershire Police

### INTERESTED PERSONS:

Mr M Ball	Ashby Town Council
Ms L Titley	Local resident
Mr T Gregory	Local resident
Mr C Tandy	Vice President of Ashby-de-la-Zouch Civic Society
Mr D Price	Local resident

## **INQUIRY DOCUMENTS LIST**

- 1 NWLDC's letter of notification of the Inquiry and list of those notified.
- 2 List of those notified on the amended scheme.
- 3 Appellant's Opening Statement.
- 4 Statement of Common Ground.
- 5 Plans of the original scheme.
- 6 Plans of the amended scheme.
- 7 Statement by Mr M Ball on behalf of Ashby Town Council.
- 8 Statement by Mr C Tandy on behalf of Ashby-de-la-Zouch Civic Society.
- 9 Statement by Mr T Gregory.
- 10 Letter from Macpherson Coaches to Icen Projects Ltd dated 25 July 2014.
- 11 Letter from Macpherson Coaches to Icen Projects Ltd dated 25 July 2013.
- 12 E-mail from Mr D Jenkins to Icen Projects Ltd dated 5 September 2015.
- 13 Suggested conditions for the original application.
- 14 Suggested conditions for the amended application.
- 15 Notes on conditions for the original and amended applications.
- 16 Suggested conditions for the original application by Ashby-de-la-Zouch Civic Society.
- 17 Suggested conditions for the amended application by Ashby-de-la-Zouch Civic Society.
- 18 Submission by Ashby-de-la-Zouch Civic Society.
- 19 Extract from The Definitive Map of Rights of Way.
- 20 Final draft of Section 106 Unilateral Undertaking.
- 21 Closing Statement by the Local Planning Authority.
- 22 Appellant's Closing Submissions.
- 23 Environmental Statement Addendum.

## **SCHEDULE 1 – RECOMMENDED CONDITIONS FOR ORIGINAL APPLICATION**

1. Save for the details of vehicular access into the site from Woodcock Way and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in for the relevant phase.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

4. The proposed development shall be carried out strictly in accordance with the following plans:

- Site location plan (020 Rev J 21.03.2013)
- Parameters plans (021 Rev K 2.07.2013, 023 Rev J 21.03.2013, 024 Rev J, 21.03.2013 and 025 Rev J 21.03.2013)
- Site Access plans (06 Rev F)

Reason: In the interests of certainty.

5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details.

Reason: To ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner, and to ensure that the proposed development delivers the proposed residential and non-residential development at the appropriate time.

6. A total of no more than 605 dwellings shall be erected pursuant to the planning permission hereby granted.

Reason: To define the scope of the permission.

7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

Reason: To ensure the development and associated impacts take the form envisaged in the Environmental Statement.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABE or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

Reason: To ensure an appropriate form of design, and to comply with Policies E4 and H7 of the North West Leicestershire Local Plan.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as site investigation works in respect of potential risks to the proposed development arising from former coal mining operations, together with precise details of any required mitigation and a timetable for its implementation, have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

Reason: To ensure the safe development of the site.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site (FRA sections 6.0 and 7.4 and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6);
- Management of silt and the prevention of pollution of the watercourse during the construction phase (FRA section 7.3);
- Provision of safe access and egress within the site (FRA section 7.2);
- Finished floor levels (FRA section 7.1).

Unless any alternative programme is agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

Reason: To prevent flooding by ensuring the satisfactory storage / disposal of surface water from the site and to reduce the risk of flooding to the proposed development.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial and 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure the development is provided with a satisfactory means of drainage.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will

be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;
- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

Reason: To avoid adverse impact on flood storage, to reduce the risk of flooding to the proposed development and future occupants, to reduce the risk of flooding to adjacent land and properties, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

Reason: To protect local watercourses from the risk of pollution.

14. Notwithstanding the submitted details and other conditions no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land



Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011 + A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 as amended and The Conservation of Habitats and Species Regulations 2010.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

Reason: To protect controlled water receptors.

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

Reason: In the interests of nature conservation.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

Reason: In the interests of nature conservation.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of

phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

Reason: In the interests of nature conservation.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

Reason: To ensure the environmental integrity of the scheme is secured.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

Reason: To ensure the development takes the form envisaged by the Local Planning Authority, for the avoidance of doubt, and to ensure satisfactory control over the impact of the development on nearby centres.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;

- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

Reason: To ensure satisfactory archaeological investigation and recording.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

Reason: In the interests of amenity and to ensure that the development is appropriate in its National Forest setting.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

Reason: To ensure that existing trees are adequately protected during construction in the interests of the visual amenities of the area.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

Reason: To provide vehicular access to the site, including for construction traffic, and in the interests of highway safety.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to the planning permission shall be occupied until such time as the whole of the approved scheme is fully operational.

Reason: To ensure adequate steps are taken to provide a choice in mode of travel to and from the site.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: In the interests of highway safety and to prevent unacceptable on-street parking.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

Reason: To limit access to the site off Woodcock Way.

## **SCHEDULE 2 – RECOMMENDED CONDITIONS FOR AMENDED APPLICATION**

1. Save for the details of vehicular access into the site from Woodcock Way (if applicable) and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in respect of the relevant phase.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way(if applicable) and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

4. The proposed development shall be carried out strictly in accordance with the following plans:

- Application Boundary Plan – Rev A 29.06.2015
- Site Access plans (06 Rev F)

Reason: In the interests of certainty.

5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details (or any alternatives subsequently agreed in writing by the Local Planning Authority).

Reason: To ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner, and to ensure that the proposed development delivers the proposed residential and non-residential development at the appropriate time.

6. A total of no more than 605 dwellings shall be erected on the area shown as 'residential' (18.23 hectares) and 'health centre/residential' (0.52 hectares) as shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015.

Reason: To define the scope of the permission.

7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

Reason: To ensure the development and associated impacts take the form envisaged in the Environmental Statement.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABI or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

Reason: To ensure an appropriate form of design, and to comply with Policies E4 and H7 of the North West Leicestershire Local Plan.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as intrusive site investigation works in respect of potential risks to the proposed development arising from former coal mining operations together with precise details of any required mitigation and a timetable for its implementation have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

Reason: To ensure the safe development of the site.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, Dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site - FRA sections 6.0 and 7.4, and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6;
- Management of Silt and the prevention of pollution of the watercourse during the construction phase - FRA section 7.3;

- Provision of safe access and egress within the site - FRA section 7.2;
- Finished floor levels - FRA section 7.1

Unless any alternative programme is first agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

Reason: To prevent flooding by ensuring the satisfactory storage / disposal of surface water from the site and to reduce the risk of flooding to the proposed development.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure the development is provided with a satisfactory means of drainage.



12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;
- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

Reason: To avoid adverse impact on flood storage, to reduce the risk of flooding to the proposed development and future occupants, to reduce the risk of flooding to adjacent land and properties, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

Reason: To protect local watercourses from the risk of pollution.

14. Notwithstanding the submitted details and other conditions, no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 as amended and The Conservation of Habitats and Species Regulations 2010.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the

approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

Reason: To protect controlled water receptors.

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

Reason: In the interests of nature conservation.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction

work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

Reason: In the interests of nature conservation.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

Reason: In the interests of nature conservation.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

Reason: To ensure the environmental integrity of the scheme is secured.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

Reason: To ensure the development takes the form envisaged by the Local Planning Authority, for the avoidance of doubt, and to ensure satisfactory control over the impact of the development on nearby centres.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);

- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

Reason: To ensure satisfactory archaeological investigation and recording.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

Reason: In the interests of amenity and to ensure that the development is appropriate in its National Forest setting.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

Reason: To ensure that existing trees are adequately protected during construction in the interests of the visual amenities of the area.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

Reason: To provide vehicular access to the site, including for construction traffic, and in the interests of highway safety.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to this Planning Permission shall be occupied until such time as the whole of the approved scheme is fully operational.

Reason: To ensure adequate steps are taken to provide a choice in mode of travel to and from the site.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: In the interests of highway safety and to prevent unacceptable on-street parking.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

Reason: To limit access to the site off Woodcock Way.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

#### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.