



TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL BY BOWBRIDGE HOMES (NANPANTAN LTD.)

**OUTLINE PLANNING PERMISSION (INCLUDING POINT OF ACCESS)
FOR UPTO 30NO. DWELLINGS (CLASS C3) WITH ASSOCIATED
ACCESS, LANDSCAPING, OPEN SPACE AND DRAINAGE
INFRASTRUCTURE .**

LAND OFF LECONFIELD ROAD, NANPANTAN, LOUGHBOROUGH

PLANNING APPLICATION REF : P/20/2199/2

APPEAL REFERENCE : APP/X2410/W/22/3304644

CHARNWOOD BOROUGH COUNCIL APPEAL STATEMENT

1.0 INTRODUCTION

1.1 This is Charnwood Borough Councils Appeal statement in respect of the refusal planning application P/20/2199/2 registered with Charnwood Borough Council on the 13th December 2020, relating to Land off Leconfield Road, Nanpantan, Loughborough.

1.2 The application was presented to Plans Committee with an Officer recommendation of approval on the 24th February 2022 and the Committee resolved to refuse the application for the following reasons:

Reason 1. The proposed development would fail to protect and enhance the unique landscape character of the site and surrounding area. The development would be contrary to the requirements of Core Strategy Policy CS11 and National Planning Policy Framework paragraph 174 and the identified harm would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole.

Reason 2. The proposed development would result in significant adverse biodiversity impacts that would be contrary to the provisions of Core Strategy Policy CS13 and National Planning Policy Framework paragraphs 174 and 180.

1.3 The main issues to be considered in the determination of this appeal are therefore:

i) Whether the development would fail to protect and enhance the unique landscape character of the site and surrounding area.

ii) If the proposed development would result in significant adverse biodiversity impacts.

iii) and whether these harms outweigh any benefits accruing from the development

1.4 The Plans Committee report and the Plans Committee 'extras report' has been submitted the Inspectorate.

1.5 The Charnwood Draft Local Plan (2021 – 2037) was submitted for examination in December 2021 and an adjournment of hearing sessions took place, due to the matter of Leicester's unmet housing need. However, the

hearing sessions are about to resume (October 2022), and whilst at the time of the appeal application being presented to Plans Committee the emerging Draft Local Plan was given limited weight, due to its stage in the Examination process, the Council consider the weight given to the emerging Local Plan, should be decided at the hearing in January 2023 and subsequent decision, given the more advanced stages of the plan Examination process. Therefore the emerging draft policies are listed below for consideration by the Inspector. The Council will provide update as to the progress of the Examination in preparation for the Hearing.

1.6 In relation to other material considerations to be considered in the appeal hearing. The LPA prepared ‘a planning guidance for biodiversity’ which was presented and approved by Cabinet on the 9th June 2022. The adopted supplementary guidance (2022) is therefore a material consideration in the determination of this appeal, which carries significant weight.

1.7 Details of the planning history of the site are set out in Section 4.

2.0 THE APPEAL SITE AND ITS SURROUNDINGS

2.1 The application site is 1.69 hectares parcel of land situated to the west of Leconfield Road and Tyndale Road, within the Forest Road side of Loughborough, on the western side of the town. (site location plan – appendix 1) The land is currently an open field with some tree planting along the perimeter but otherwise, generally, open grassland. It is a greenfield site that is currently within the settlement limits of Loughborough. The site is immediately surrounded on three sides with residential development along Tynedale Road, Leconfield Road and Montague Drive with the backs of properties and rear gardens abutting the application site with Burleigh Wood abutting the site along the western boundary. The site has a raised topography in relation to the surrounding properties with the site rising from 80m AOD at the access by 5m to a high point at 85m AOD, which affords long distance views of the site from the surrounding landscape. The site is adjacent to the boundary with The Tudor Farmhouse (formerly known as Burleigh Farmhouse) a Grade II listed building which is approximately 12.3m to the boundary of the nearest indicative plot.

3.0 THE APPEAL PROPOSAL

- 3.1 The application proposed outline planning permission for up to 30no. dwellings with all matters reserved except for access. Appearance, landscaping, layout and scale remain reserved matters.
- 3.2 The application was accompanied by a site layout for illustrative purposes only showing how the development might be accommodated in the site.
- 3.3 The application was supported by a series of technical documents and appraisals as follows:
- Exploratory ground investigation report Phase II
 - Phase 1 Desk Study ground Investigation report
 - Transport Statement ADC1905 RP A v4
 - Flood Risk Assessment
 - Archaeological desk-based study
 - BS583 – 2012 Tree Survey
 - Landscape and visual impact assessment (LVIA)
 - Biodiversity Impact Assessment (BIA) x 2
 - Planning Statement
 - Application forms

4.0 RELEVANT PLANNING HISTORY

- 4.1 The appeal site has been subject of previous appcations, summarised as:

Reference	Description	Decision & Date
P/88/2599/2	Residential Development	Refused 15/12/1988
P/07/1974/2	Formation of agricultural access	Granted 26/10/2007

5.0 DEVELOPMENT PLAN POLICIES

- 5.1 Section 70(2) of the Town and Country Planning Act 1990 requires the decision maker to have regard to the development plan, so far as it is material to the application. Section 38(6) Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination

must be made in accordance with the plan unless material considerations indicate otherwise.

5.2 Charnwood Local Plan 2011-2028 Core Strategy

The Policies of the Core Strategy were Adopted 2015. This applicable to the appeal proposal are as follows:

Policy CS1 – Development Strategy – sets out the housing directions for growth over the plan period and establishes a settlement hierarchy of locations in terms of their sustainability.

Policy CS3 – Strategic Housing Needs – seeks to manage the delivery of the Borough’s housing need and ensure a good mix of house types, tenures and size of properties, having regard to identified housing needs and the character of the area.

Policy CS11 – Landscape and Countryside - requires new development to protect landscape character and reinforce a sense of place, requiring new developments to protect landscape character and to reinforce sense of place and local distinctiveness.

Policy CS12 – Green Infrastructure – sets out how the Council will seek to protect and enhance green infrastructure assets for their community, economic and environmental values and in particular sets out how the National Forest Strategy and the Charnwood Forest Regional Park will be protected and enhanced.

Policy CS13 – Biodiversity and Geodiversity - seeks to conserve and enhance the natural environment and which protects, enhances or restores biodiversity.environment, is of a design, layout, scale and mass compatible with the locality and utilises materials appropriate to the locality.

Policy CS15 – Open Spaces, Sports and Recreation – sets out how the Council will work with its partners to meet the strategic open space needs of our community.

Policy CS16 – Sustainable Construction and Energy – encourages sustainable design and construction and the provision of renewable energy including supporting developments that reduce waste, provide for the suitable storage of waste and allow convenient waste collections.

Policy CS17 – Sustainable Transport – sets out how the Council will seek to achieve a 6% shift from travel by private car, to walking, cycling and public transport.

Policy CS18 - The Local and Strategic Road Network – Seeks to maximise the efficiency of the road network by delivering sustainable travel.

Policy CS24 - Delivering Infrastructure – is concerned with ensuring development is served by essential infrastructure. As part of this it seeks to relate the type, amount and timing of infrastructure to the scale of development, viability and impact on the surrounding area.

Policy CS25 – Presumption in Favour of Sustainable Development – sets out that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

As the Borough of Charnwood Local Plan Core Strategy pre-dates the 2021 NPPF, paragraph 219 indicates that due weight should be given to relevant policies according to their consistency with the NPPF. These policies are considered to be broadly consistent with the aims to the NPPF and, as such, should be given significant weight.

5.3 Borough of Charnwood Local Plan

The following ‘saved’ policies of the Borough of Charnwoofd Local Plan (2004) are applicable to the development:

Policy ST/2 – Limits to Development - States that built development will be confined to allocated sites and other land within the Limits to Development identified on the proposals map, subject to specific exceptions.

Policy CT/1 – General Principles for Areas of Countryside, Green Wedge and Local Separation – states that development in these areas will be strictly controlled. Planning permission will be granted for the re-use and adaptation of rural buildings for uses suitable in scale and nature and small-scale built development where there would not be a significant adverse environmental impact and the proposal would (inter alia) be essential for the efficient long-term operation of agriculture, horticulture or forestry.

Policy EV/1 – Design - seeks to ensure a high standard of design and sets out nine design criteria which new developments should satisfy.

Policy TR/18 indicates that planning permission will not be granted for development unless off-street parking for vehicles, including cycles, and servicing arrangements are included to secure highway safety and minimize harm to visual and local amenities.

5.4 Draft Charnwood Local Plan 2021-2037

The Pre-Submission Draft Charnwood Local Plan (July 2021) was consulted upon from 12th July 2021 to 23rd August 2021 and submitted to the Secretary of State on the 3rd December 2021. The Plan will now proceed to examination during October 2022. The Plan sets out strategic and detailed policies for the period 2019-37 and will replace the adopted Charnwood Local Plan Core Strategy (2015) and the saved policies of the Borough of Charnwood Local Plan 2004.

The following emerging policies are considered relevant:

Policy DS1 Sets out the Development Strategy for Charnwood between 2021 – 2037.

Policy DS3 Housing Allocations supports applications for housing on site identified in the policy.

Policy C1 - Countryside – manages development in the countryside to protect its largely undeveloped character, and its intrinsic character and beauty.

Policy H1 - Housing Mix – seeks a mix of house types, tenures and sizes to meet the overall needs of the Borough.

Policy H2 - Housing for older people and people with disabilities – expects the housing needs of the ageing population and those with disabilities to be met.

Policy H3 -Internal Space Standards – seeks to comply with national described housing standards.

Pollicy H4 - Affordable housing - seeks 30% affordable housing from all major housing developments with the exception of brownfield sites where 10% affordable housing will be sought.

Policy T3 - Car parking standards – seeks to ensure adequate provision for all users of residential and non residential parking in the Borough.

Policy CC1 - Flood Risk Management - manages flood risk by directing development to areas in the Borough with the lowest risk of flooding

Policy CC2 - Sustainable Drainage Systems - ensures developments include appropriate measures to manage flood risk in an integrated way that achieves wider benefits for communities and the environment.

Policy CC4 - Sustainable Construction - seeks to adapt to and mitigate against the effects of climate change, by requiring all new developments and refurbishments to take account of sustainable development principles.

Policy CC5 - Sustainable Transport - supports sustainable patterns of development which will minimise the need to travel and seek to support a shift from travel by private car to walking, cycling and public transport.

Policy CC6 - Electric Vehicle Charging Points – Seeks a significant increase the number of electric vehicle charging points in the Borough.

Policy EV1 Landscape - Manage developments to protect the Borough's distinctive landscape, by:

- requiring new development to protect landscape character and to reinforce sense of place and local distinctiveness; and
- requiring new development to maintain the separate identities of our towns and villages.

Policy EV4 - Charnwood Forest and the National Forest The Charnwood Forest Regional Park and National Forest seeks to protect and enhance the Charnwood Forest Regional Park and support the aims of the National Forest Strategy.

Policy EV6 - Conserving and Enhancing Biodiversity and Geodiversity – seeks to conserve, restore and enhance our natural environment for its own value and the contribution it makes to our communities and economy and ensure it is resilient to current and future pressures.

Policy EV7 Tree Planting - seeks to protect and enhance our natural environment by increasing the number of trees in Charnwood.

Policy EV9 - Open spaces, sport and recreation aims to meet the open space, sport and recreation facilities needs of our communities to support their health, well-being and cohesion.

Policy EV10 - indoor sports facilities - encourages healthier lifestyles across our communities and increase the amount of regular physical activity undertaken through the provision of indoor sports facilities.

Policy EV11 - Air Quality - expects developments to support our aim to improve air quality in the Borough

Policy INF1 - Infrastructure and Developer Contributions – seeks to secure infrastructure providers, developers and partner organisations to ensure the delivery of new and improved infrastructure necessary to support our development strategy and maintain sustainable and healthy communities.

Policy INF2 - Local and Strategic Road Network – seeks to mitigate the transport impacts of our development strategy and improve the efficiency of our local and strategic road network.

5.5 In accordance with NPPF paragraph 48, the relevant emerging policies in the plan may be given weight in determining applications, according to;

- the stage of preparation of the emerging plan (the more advanced its preparation, the greater weight it may be given),
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given),
- the degree of consistency of the relevant policies in the emerging plan to the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

5.6 The LPA consider the emerging Local Plan to be in strong accordance with the NPPF and a second round of Hearings took place in October 2022, and the emerging Plan is considered to be at well advanced stages of the Examination process. Whilst there are unresolved objections to policies in respect of the unmet housing need, which the Examination Inspector will adjudicate. Whilst the Council acknowledge the emerging Local Plan policies cannot be given significant weight at the time of preparing this appeal statement, the appeal Inspector is requested to review the weight given to the emerging plan at the hearing. The Council will advise all parties as to the progress of the Emerging Local Plan prior to and/or during the appeal hearing.

6.0 OTHER MATERIAL CONSIDERATIONS

6.1 National Planning Policy Framework (2021)

The NPPF is a material consideration in planning decisions. The NPPF contains a presumption in favour of sustainable development.

The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development and that there are 3 dimensions to this;

- An economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places to support growth and innovation
- A social role – supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations, and by creating a high quality built development with accessible local services;
- An environmental role – contributing to protecting and enhancing our natural, built and historic environment.

Paragraph 10 states at the heart of the Framework is a presumption in favour of sustainable development.

Paragraph 11 sets out the presumption in favour of sustainable development and makes it clear that where there is an under-supply of housing land, the most important policies for the determination of housing proposals would be considered out of date.

Paragraphs 15-33 set out that the planning system should be genuinely planned and that succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities and a platform for local people to shape their surroundings. Paragraph 31 states that the preparation and review of all policies should be underpinned by relevant and up-to-date evidence.

Paragraph 47 of the NPPF reiterates that planning law requires that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise.

Paragraph 60 states that to support the government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

Paragraph 62 sets out that the size, type and tenure of housing need for different groups in the community should be assessed and reflected in planning policies (including but not limited to, those who require affordable housing, families with children older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes.

Paragraphs 68-71 requires local planning authorities to significantly boost the supply of land and requires them to maintain 5 year housing land supply. It is acknowledged that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built out quickly. The paragraph then goes on to explain how such sites might be promoted.

Paragraph 74 sets out that local planning authorities are expected to maintain a 5 year housing land supply and should identify and annually update their supply of specific deliverable sites as measured against the overall housing requirement for the plan period. This should include a buffer and in Charnwood this is an additional 5% in order to ensure choice and competition in the market for land.

Paragraph 111 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Chapter 12 (Paras 126-136) of the NPPF is concerned with achieving well-designed places and sets out that good design is a key aspect of sustainable development. The use of visual tools and design codes is encouraged as is the development of design policies alongside local communities and neighbourhood plans.

Paragraph 174 requires that planning policies and decisions should contribute to and enhance the natural and local environment by (amongst further criteria):

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits.

Paragraph 180 - When determining planning applications, local planning authorities should apply the following principles:

(a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

(b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

(c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and

(d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

6.2 National Planning Practice Guidance (PPG)

The National Planning Practice Guidance (PPG) reinforces and provides additional guidance on the policy requirements of the Framework and provides extensive guidance on design and other planning objectives that can be achieved through getting good design. These include the consideration of local character, landscaping setting, safe, connected and efficient streets,

crime prevention, security measures, access and inclusion, efficient use of natural resources and cohesive and vibrant neighbourhoods.

6.3 National Design Guide (2019)

The National Planning Policy Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. This design guide, the National Design Guide, illustrates how well-designed places that are beautiful, enduring and successful can be achieved in practice. It forms part of the Government's collection of planning practice guidance and should be read alongside the separate planning practice guidance on design process and tools.

As well as helping to inform development proposals and their assessment by local planning authorities, it supports paragraph 134 of the National Planning Policy Framework which states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

6.4 Leicester and Leicestershire Housing and Economic Development Needs Assessment (HENA) – 2022 HENA

Provides an up-to-date evidence base of local housing needs including an objectively assessed housing need figure to 2036 based on forecasts and an assessment of the recommended housing mix based on the expected demographic changes over the same period. The housing mix evidence can be accorded significant weight as it reflects known demographic changes.

6.5 Housing Supplementary Planning Document (adopted May 2017 – updated December 2017)

The SPD provides guidance on affordable housing to support Core Strategy Policy CS3.

6.6 The Crime and Disorder Act 1998

This places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the determination of planning applications.

6.7 The Equality Act 2010

This Act requires local planning authorities, when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities in society. It consolidates 7 Acts including the Disability Discrimination Act. Whilst the accessible design of buildings is regulated by Part M of the Building Regulations, the Equality Act does require 'reasonable adjustments' to be made when providing access to goods, facilities, services and premises and this also applies to the design of proposed development. In terms of planning decisions, there is a need to have 'due regard' to the impact of planning application decisions and policies on anyone with a Protected Characteristic who may be affected by the decision.

6.8 The Leicestershire Highways Design Guide (2018)

This is a guide for use by developers and published by Leicestershire County Council, the local highway authority, and provides information to developers and local planning authorities to assist in the design of road layouts in new development. The purpose of the guidance is to help achieve development that provides for the safe and free movement of all road users, including cars, lorries, pedestrians, cyclists and public transport. Design elements are encouraged which provide road layouts which meet the needs of all users and restrain vehicle dominance, create an environment that is safe for all road users and in which people are encouraged to walk, cycle and use public transport and feel safe doing so; as well as to help create quality developments in which to live, work and play. The document also sets out the quantum of off-street car parking required to be provided in new housing development.

6.9 Landscape Character Appraisal

The Borough of Charnwood Landscape Character Assessment was prepared in July 2012. The purpose of the report was to assess the baseline study of the landscape character, at a sub-regional level that gives a further understanding of the landscape resource. The document 'provides a structured evaluation of the landscape of the borough including a landscape strategy with guidelines for the protection, conservation and enhancement of the character of the landscape, which will inform development management decisions and development of plans for the future of the Borough'.

6.10 Supplementary Planning Document - Planning Guidance for Biodiversity
Planning Guidance for Biodiversity and a local list of receptor sites, to support the delivery of adopted Core Strategy Local Plan policy CS13 and emerging Local Plan policy EV6. The Guidance will assist applicants for planning permission on how to avoid biodiversity loss or to mitigate it on site, and where this is not possible, compensated for offsite. Once adopted, the Planning Guidance for Biodiversity will become a material consideration in decision making, in accordance with the NPPF.

7.0 AMLIFICATION OF THE REASONS FOR REFUSAL & RESPONSE ON APPELLANT’S STATEMENT OF CASE.

7.1 The starting point for decision making on all planning applications is that they must be made in accordance with the adopted Development Plan unless material considerations indicate otherwise. The most relevant policies for the determination of this application are listed above and are contained within the Development Plan for Charnwood which comprises the Charnwood Local Plan 2011-2028 Core Strategy (2015), those “saved” policies within the Borough of Charnwood Local Plan 1991-2026 (2004) which have not been superseded by the Core Strategy (for the reasons outlined above). It is acknowledged that several of these plans are over 5 years old; therefore it is important to take account of changing circumstances, particularly the emerging Charnwood Local Plan policies currently under examination.

7.2 The Principle of the Proposed Use and Housing Supply

The vision for the Borough as set out in the Charnwood Local Plan (2011-2028) Core Strategy (2015) confirms that by the end of the plan period, Charnwood will be one of the most desirable places with live, work and visit within the East Midlands. To achieve this, development will have been managed to improve the economy, quality of life and the environment.

7.3 As the Core strategy is now five years old the Authority must instead use the standard method to calculate a housing requirement. In light of this, the Authority cannot currently demonstrate a 5 year supply of housing land (the most up to date calculation identified 3.04 years), and as a result, any policies which directly relate to the supply of housing are out of date and cannot be afforded full weight if they restrict the provision of this supply.

7.4 The shortfall in the supply of deliverable housing sites means that housing supply policies are rendered out of date and, in accordance with the presumption in favour of sustainable development (at paragraph 11d of the

NPPF), any adverse impacts caused by the proposal must significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework, for planning permission to be refused (i.e. the 'tilted balance' is engaged).

- 7.5 The appeal site is located in Development Limits for Loughborough, as established under "saved" Policy ST/2 of the Borough of Charnwood Local Plan 1991-2026. However, the site is excluded from the settlement limits in the emerging draft Local Plan, following a study that supports the proposals in the emerging Local Plan confirms that settlement limits should more closely follow existing built form. Whilst it is recognised the emerging Draft Plan cannot be given significant weight at the time of preparing this appeal statement, the forward vision of Charnwood Council will place the site in the open countryside, for the purposes of the emerging development plan and the policies, which restrict new development in the countryside.
- 7.6 Furthermore, the site has been considered as a potential housing allocation in the emerging Draft Plan, following consideration of the local landscape sensitivity assessment of SHLAA site. In addition, a Local Plan biodiversity study confirmed that the site has significant ecological constraints. However, it acknowledged that the policies in the emerging development plan can not be given significant weight at the time of preparing this appeal statement, and NPPF paragraph 11d is to be applied, until the emerging Draft Local Plan is at advanced stages of adoption.
- 7.7 **Ground for refusal one - The Council considers significant harm will arise from the development arising from its landscape impact.**
- 7.8 At local scale, the appeal site lies within the Charnwood Forest Landscape Character Area, which is recorded as having the most distinct and strongest landscape character of all the areas in the Borough in the BoC Landscape Character Assessment (2012) (page 2). The Charnwood Forest landscape is a mosaic of fields of arable pasture and meadow with woodland. In The BoC LCA 2012 (para: 5.25, page 19) it notes that "landscape evidence is also important to plan positively for the creation, protection, enhancement and management of networks of green infrastructure." The assessment references ecology (para's 6.7, 6.8, 6.10 pages 22 and 29) in particular ancient woodland, the highest concentration of which lie in the Charnwood Forest Landscape Character Assessment (LCA (2008)) as well as the earlier Leicestershire County Council Charnwood Forest Landscape and Settlement Character Assessment 2008 recombining five sub areas into two. The

Appeal site and the adjacent Burleigh Wood fall within Charnwood Forest Core of Bradgate, Beacon, Ulverscroft and Charley.

- 7.9 The Council's Adopted Local Plan Policy CS11 requires new development to protect landscape character regardless of where it is proposed, reinforce sense of place and local distinctiveness, tranquillity and to maintain separate identities of settlements.
- 7.10 Adopted Policy CS12, and emerging policy EV1 – landscape seek to protect and conserve the countryside, and the Boroughs landscapes, in particular, the special characteristics of the Charnwood Forest. The NPPF at paragraph 174 requires that decisions should contribute to and enhance the natural and local environment by, in criterion (b), recognising the intrinsic character and beauty of the countryside.....and of trees and woodland; and, the importance of preserving and enhancing, such areas.
- 7.11 The site is located within the landscape of the Charnwood Forest Regional Park (The landscape character assessment for Charnwood Forest Regional Park 2019) and within an area of Loughborough that is defined by its edge of countryside location. It is an important and unique landscape character and type of national importance with strong geological and cultural associations.
- 7.12 The site is elevated and in part steeply sloping site together with its open nature makes an important contribution to the character of the area. Visually the sites upper gradients are prominent affording extensive views across Loughborough to the Wolds. The site is open greenfield land on rising landform, primarily under grassland with natural reversion to scrub to upper slope and adjacent to site perimeter, bounded by trees and hedges.
- 7.13 The site forms part of the lower slopes of the uplands range and rises to form a hill and is an integral part of the rising landform, which yields the rocky outcrops and uplands of the Charnwood Forest. While the site is bounded on three sides by residential housing it is more significantly abutted to the upper boundary by Burleigh Wood, an ancient woodland, part of a fragmented distribution of ancient woods which have a direct relationship landscape to the Jubilee – Outwoods ancient woodland complex to the south and southwest, in terms of landscape character.
- 7.14 It has a distinct landform overlain with small scale landscape features is moderately pastoral with established scrub to the upper gradient, a characteristic of natural transition from grassland to woodland. The site, therefore, has a strong landscape character association to the ancient

woodland, as opposed to the appellant's suggestion in stating the "*The site has some pleasant qualities*". The 'rough grass', better described as transitional pasture with a characteristic which is more naturally associated with the characteristic of woodland. In contrast, the fields to the west of the wood which form part of the Loughborough University Science & Enterprise Park (LUSEP) allocation, (Local Plan Core strategy CS23 Loughborough Science & Enterprise Park, page 125 and Emerging Draft Local Plan Policy LUC3: Loughborough Science & Enterprise Park page 114) were more intensively farmed and the arable crop sites close to the woodland edge; whereas the appeal site exhibits vegetation gradation from grass to scrub to woodland edge.

- 7.15 Whilst the Appeal site is partially enclosed and partially open to its upper gradients combining two distinct attributes being semi-enclosed to its lower gradient, but it also has visually distinctive skylines which are unique, and it affords a sense of separation from the bustle of the settlement and a strong degree of intimacy. It is a naturalistic transition from the built edge to the ancient woodland, boasting semi-natural habitat features complementing the adjacent woodland. It lies adjacent to a grade II listed farmhouse with which it has a strong historical association. This conveys 'time-depth'. It provides some contribution to the setting of the settlement by providing elevated views while also acting as an attractive backdrop combined with the wood to the settlement. Perceptually and experientially, it provides a sense of intimacy, tranquillity and of rural character/ scenic beauty to the immediate urban edge.
- 7.16 The Council consider the development for housing would fail to protect this pastoral transition to the wood, comprising the unique vantage for skyline panoramic views. This is unrivalled for any land public or private within the settlement or so close to the built urban form and the development is at odds with the settlement character, as the effect (additional to the immediate altering of the site character) is relational to the adjacent ancient woodland and the wider Charnwood Forest. Taking the LUC Landscape Sensitivity Study statement (page 75) "*development on these slopes may be out of keeping with the existing settlement pattern*", into account, this is harm that is substantial, as the proposed development fails to protect this natural sloping landscape, which provides a transition from urban character to intermediate rising landform toward the ancient wood. The harm is therefore significant at both site and local level having a major-moderate landscape effect which cannot be adequately mitigated. This, in turn, is detrimental to the intrinsic and integral character and beauty of the Charnwood Forest and, in particular to the ancient woodland (NPPF para. 174b) and its relationship to the settlement of Loughborough.

- 7.17 An LVIA submitted with the application assessed that the development would give rise to a major – moderate adverse landscape effect for the site and locality and minor for the wider Charnwood Forest to negligible for the subregional character assessment levels. Policy CS11 requires that developments protect the landscape character and reinforce the sense of place by taking into account the local LCAs. This engages NPPF paragraph 175, page 50 which states *“a strategic approach should be taken to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries”*. Furthermore, the LUC Landscape Sensitivity Study states *“development on these slopes may be out of keeping with the existing settlement pattern”*. The Council consider that that the assigned effects both before and after mitigation of the site, will be significantly harmful to the landscape setting of the ancient woodland and the wider Charnwood Forest as experienced from this edge of the built form, and is therefore contrary to the expectations of planning policy CS11 the LUC and the NPPF.
- 7.18 The effects of the development, in addition to the immediate altering of the site character and the adjacent ancient woodland and the wider Charnwood Forest, fails to consider the LUC Landscape Sensitivity Study statement *“development on these slopes may be out of keeping with the existing settlement pattern”*, and the Council consider the harm to be substantial, as the development of the site fails to protect this natural sloping landscape, which provides a transition from urban character to intermediate rising landform toward the ancient wood, which as agreed by the Appellant at para 4.20 that the raising landform is a characteristic feature of the sites landscape character.
- 7.19 The Appellants Statement of Case, at para 5.3 page 11 asserts that *“Whilst there is a loss of part of the currently undeveloped areas of the site, there are large areas which remain undeveloped and will be brought forward as public open space”*. It is further stated *“There is provision for **quite substantial areas of public open space (POS)** which will result in **genuine public access** to the site to utilise well designed spaces and spaces which retain, replace and enhance the existing physical and perceptual qualities”*. While the open space proposal is for just over a third of the site, the Council contests the description as “large areas”. The site itself is small (1.69Ha) and the open spaces smaller (0.66Ha). The interplay between the built form and the

open spaces would be that the massing of the houses would over-dominate the spaces and be visually prominent in the landscape.

- 7.20 It is acknowledged that the layout and landscaping plan will be deferred to the reserved matters application, however, given the constraints at the site, such as one access route and its relationship with the ancient woodland, there are restricted scenarios that can be applied in relation to design. If the Inspector is minded to allow the appeal, the site is likely to be developed following the layout and design principles, as submitted. The appellants state at para 2.2 in their landscape appeal statement that the *“proposals respect the topography of the site, and the contours of the site”* ... *“and this is reflected through the curved nature of the street scene”*, however, based on the layout provided, the Council considers the layout is ubiquitous housing tailored only to the fact the site is sloped. The proposed play area designed within the woodland buffer which, whilst a quantum of open space provision in accordance with planning policy, will appear incongruous to the passive low impact needs of a transitional vegetated landscape character / ecological buffer to a woodland.
- 7.21 The Appellant statement goes on to say at para. 5.3 page 11 that planting would *“enhance key characteristics of the existing character”*. However, it is not clear what or how any key characteristics are directly proposed to be ‘enhanced’ by the development. The Design and Access Statement states the proposal is designed to work with the topography, however much of the landform will be blanketed by built form, so the Council is not persuaded that the proposed planting would be *“appreciable and legible as a feature of the site”*, (para.5.5 page 11) to provide mitigation, or enhancements.
- 7.22 There is confusion about the status of viewpoints in regard to comments made during the application process. The LUC sensitivity assessment of the site on pages 75 and 76 highlighted the skyline views from the site. This was assessed under an established criteria of the landscape character for the study. The Landscape Officer’s makes it clear, that it is irrelevant to that point out whether the site is public or private or, publicly accessible. These skyline views are an intrinsic character attribute of the site. The panoramic view will not be seen across a sloping gradient of grassland but over a roofscape, and housing in place of grassland with roofscape framing, and the Council consider the proposed panoramic views of the site offer an ‘enhancement’, as expected by adopted planning policy or the NPPF.
- 7.23 In the Appellants SoC Landscape, at para 2.4 page 4 it states, “there is almost an entire green link around the site boundary”. This would be experienced via a narrow path between residential boundaries which could

be prone to misuse and antisocial behaviour. While the landscaping/tree planting could be controlled by a condition, this should be provided throughout a design scheme this is best done in a positive coherent design, and the management and access of the narrow “*green link around the site boundary*” is likely to be highly problematic.

- 7.24 Conceptually green infrastructure should to lead somewhere to connect different habitats wildlife and provide access routes for people through varied character types, and not be an isolated space. While a proposed buffer could adjoin the boundary of the ancient woodland spatially, it is not high quality green infrastrucutre as the destination is a dead end. Experientially one would travel through housing uphill but without the experience of walking through natural grassland to glimpse through the roofscape remnants of the views. The buffer would feel very close to the housing and not have the sense of getting away from built form because the built from would be advanced.
- 7.25 The submitted LVIA recognises the importance of the adjacent ancient wood. It acknowledges the development would yield a major –moderate landscape effect. Whilst the LVIA notes the likely change in visual setting from more distant views, the Council considers that it downplays the impact of constructing dwellings on this elevated landform as part of the setting for the ancient wood. Notwithstanding the site being surrounded on three sides by housing, this elevated and in part steeply sloping site together with its open nature makes an important contribution to the character of the area and the Charnwood Forest. The proposed buffer open space adjacent to the ancient wood is shown as amenity grass with some trees and a play area. It fails to address the stated need for planting of native species as transitional woodland edge habitat as set out in Natural England’s response which reminds us of Loughborough University’s Burleigh Wood and Holywell woodland Management Plan. As already stated above, while the layout plan is indicative only, it is considered by the Council that the proposed buffer would not be adequate to mitigate direct and indirect harm to the woodland edge character. There remains a likelihood that the edge of the woodland would be eroded through informal access.
- 7.26 The Open Spaces team, also raised concerned regarding the placement of active play in the buffer zone, during the application process, stating: “*The siting of children’s play equipment and Amenity open space within the buffer/green corridor adjacent to Burleigh wood is incompatible with the main objectives of this area. Encouraging play and informal games/recreation in close proximity and immediately adjacent to this Local Wildlife Site will potentially have an adverse impact on the protection of habitat and wildlife*”

and should not be encouraged” and “The proposed Amenity Open Space provision is of little recreational benefit. It is poorly located within the Burleigh Wood buffer area (for the reasons stated above) and immediately in front of plot 21 (potential nuisance for residents of this property e.g. informal ball games/play).” and “I am uncertain what the proposed provision includes for Parks other than a footpath adjacent to the SuD. This would not meet Parks quality provision requirements.”

- 7.27 It was further advised that *“If provision is to be made on site we would encourage creation of a usable, good quality amenity Open Space and facilities for children that meet the needs of residents within a dedicated and defined open space area. This area should be located away from the Burleigh Wood buffer corridor to reduce the risk of harm to this sensitive habitat and in the case of equipped children’s play at least 20 metres away from the nearest dwelling.”* Given the modest size of the site, and the constraints as previously mentioned above, the Council consider the required open space can not be achieved, that meets the requirements.
- 7.28 The topographical mapping at fig 7 page 41 in the FPCR Charnwood Forest landscape character assessment is of particular interest. It indicates that most of Loughborough is in the Soar Valley not the Charnwood Forest. It also indicates that much of Loughborough is low lying concentrated at or below 80AOD. The appeal site and the south-eastern corner of the Burleigh wood are in the 80-100AOD range. This is the topographical lower slopes of the uplands of Charnwood. While it can be argued there are parts of the settlement within this range, the site is more sensitive in terms of its geographical relation to both the Burleigh Wood and the Charnwood Forest upland to the south. This combination makes it the most sensitive development proposal. This contrasts with, say, the Garendon Park allocation which is more removed from the upland range.
- 7.29 The Settlement pattern at analysis Figure 11 Settlement, (page 51) indicates the distribution of larger settlements forms a ring around the central Forest area. This confirms that larger settlements are concentrated to peripheral low-lying generally flatter areas. Landcover and vegetation map (Figure 13 page 55) shows the interplay between arable grassland and woodland. We can more easily see from this the archipelago of the ancient woodlands which form ‘steppingstones’ toward the larger Jubilee-Outwoods. The Appeal site can be seen as the last sensible transition buffer between the existing urban edge and the woods. Therefore the development of the site will weaken the connection to the larger ancient woodlands, which is contrary to the aims of

the adopted Planning Policies CS11, NPPF para. 174 (b), and Policy EV1 of the the emerging Draft Local Plan and other materials considerations.

- 7.30 The Appeal site rises from the east up toward Burleigh Wood, a locally significant ancient wood. The character of the site is open with vegetation cover of scrubby grassland. It is fairly prominent within the locality. Development of 2 storey housing on this land is likely to be visible from several vantages. This would give rise to adverse impacts on the setting of the ancient Burleigh Wood. Proposed dwellings would dominate and overlook surrounding housing and bring pitched roofs prominent in relation to the wood. The proposal would be detrimental to the visual amenity of the area. The proposals LVIA concluded there would be adverse short-term and long-term visual effects of a major-moderate nature from a number of views.
- 7.31 The Appellants landscape consultant confirms in VP02 verified photomontage that the propose housing prevents direct visual corridor through the site to the adjacent ancient wood. This verdant view corridor is curtailed by the housing roofscape. The verified views presented are not the worst-case scenario and do not take into account views in winter, when the leaves have fallen. (GLVIA para 6.28). Neither the LVIA nor the ASoCL have taken the effects on residents adjacent to the site sufficiently into account, as highlighted by GLVIA para 6.33 residents and para 6.36 *“that residents may be particularly susceptible to changes in their visual amenity.”*
- 7.32 The Appeal site is a small semi-enclosed field with moderately steep gradient rising to form a hill from which extensive unrivalled unique skyline views across Loughborough towards the Wolds. It has a close character relationship to the ancient Burliegh woodland and its topographical position to the wider Charnwood forest uplands, and the site has a transitional landscape between the built form of Loughborough and the wider Charnwood forest. The development would result in harm to landscape and visual character from loss of a small semi-enclosed field on rising landform which is a particularly special association to the adjacent woodland.
- 7.33 Whilst the appeal site is influenced to a degree by the adjacent housing it is to a greater degree influenced by the adjacent ancient woodland by virtue of its superior relational position to the site. Developing the site as proposed fails to enhance or protect the sites and its intrinsic qualities. The proposed proposed mitigation would not be beneficial or prevent the loss of the verdant framing to the skyline views nor to the existing visual contribution of the ancient woodland as a backdrop to the existing residential locality. It would adversely alter the skyline by juxtaposition with roofscape obscuring the visual

connectedness to the ancient woodland, a significant landscape feature of the locality.

- 7.34 The Council considers the landscape impact is at odds with the objective requiring new development to protect landscape character and to reinforce a sense of place and local distinctiveness and therefore contrary to Policy CS11 of the Charnwood Local Plan (2011-2028) Core Strategy (2015), and EV/1 of the Borough of Charnwood Local Plan which demands that development “respects and enhances” the local environment. For the same reason it is contrary to the NPPF requirement to “contribute to and enhance the natural and local environment”.
- 7.35 Paragraph 7.10 of the Charnwood Local Plan (2011-2028) Core Strategy (2015) “*Our landscapes have their own distinctive character and are valued highly by our community*”. Policy CS12 provides that the Charnwood Forest Regional Park will be defined, protected and enhanced and the aims of the National Forest Strategy will be supported. Greater detail about the special qualities of Charnwood Forest Regional Park/National Forest are provided at paragraphs 7.18 – 7.25 of the Core Strategy.
- 7.36 NPPF Para 174 requires that “decisions should contribute to and enhance the natural and local environment”. It sets out that the means of doing so are, in summary: by recognising the intrinsic character and beauty of the countryside.
- 7.37 Both the Charnwood Forest Regional Park and National Forest are recognised for the unique quality and character they provide in this part of the Borough. Their special value brings with them various policies which make specific reference exclusively to them – the National Forest Strategy (2014 – 2024) and, of more direct concern to planning decisions, policy CS12 of the Charnwood Local Plan 2011-2028 Core Strategy referred to above, which demands protection and enhancement of the Charnwood Forest Regional Park and support of the aims of the National Forest Strategy.
- 7.38 Development within this landscape is unavoidably harmful to the natural environment and cannot be seen to ‘contribute to’ or ‘enhance’ such an environment as required by para. 174. Therefore, the proposal cannot be seen to be meeting this objective, either in itself nor by recognising its intrinsic character and beauty and as such is contrary to NPPF para 174 under the approach set out in sub – para. (b).

Ecology

- 7.39 **Reason for refusal two – the Council consider the proposed development would result in significant adverse biodiversity impacts that would be contrary to the provisions of Core Strategy Policy CS13 and National Planning Policy Framework paragraphs 174 and 180.**
- 7.40 The Council's position with regard to development on this site has been established through the Emerging Local Plan Review of Ecology Evidence and the site was withdrawn from allocation in the local plan, largely because of concerns about the risk of ecological impact from development. This included the loss of priority habitat and adverse impact upon irreplaceable habitat. The final "D" grade awarded reflects an understanding that development on the site would have to be significantly restricted if unacceptable ecological harm were to be avoided. (Ecology addendum 2.15, ecology report Final; section 4.15-4.16). [Ecology Assessment Addendum.pdf \(charnwood.gov.uk\)](#)
- 7.41 This position was set out to through a pre-application meeting in March 2020 where the applicant was advised
- a) that a significant buffer to the ancient woodland would be required
 - b) that the inclusion of a 20m buffer and SuDS would contribute towards ecological mitigation but that development proposals should seek to provide additional onsite mitigation sufficient to avoid a biodiversity net loss
 - c) that it was likely that the development area would need to be significantly reduced in order to avoid an on site biodiversity loss and
 - d) that the site had good potential for ecological restoration by virtue of its location and on site habitats, that it was suitable as a biodiversity offsetting site and that this would provide an alternative means of realising an economic return on the site.
- 7.42 The applicant has provided two ecological appraisals to support the application, both of which are considered to be significantly flawed:

- 7.43 The first of these (Core Document CD.2.16) prepared by Geotechnical and 2for assessment on the 24th November 2021, did not include a Biodiversity Impact Assessment (BIA) and fails to provide a reliable representation of the impacts of the proposed development for a number of reasons, including the following. It fails to record that the adjacent Local Wildlife Site (LWS), Burleigh Wood is Ancient Semi-natural Woodland, assigning it the Phase 1 habitat code A1.3.1 for mixed semi natural woodland (page 20 of CD.2.16). This assumes a minimum cover abundance by conifers of 10% and is factually inaccurate. It also states that the distance between the wood and the application site is 78m. The report's methodology refers to CIEEMs recommended approach for determining the significance of ecological impacts (section 2.4 of CD.2.16) but draws no clear conclusion about the losses that would result from the development proposals. It does recommend a buffer of 30m for Burleigh Wood, but in the context of mitigating impacts on badger, not in relation to protecting the woodland against the adverse impact of development (section 4.1, page 26 of CD.2.16). The potential for indirect impact upon the woodland is not discussed and the report fails to identify on-site habitat loss as an ecological constraint, although it does propose that the loss of grassland will "require mitigation in the form of new landscaping" (table 4 of CD.2.16). It is stated on Page 25 of CD.2.16 that "this report is not intended to be a suitable alternative to an Ecological Impact Assessment in accordance with CIEEM guidelines 2016". Accordingly the Council consider this report is inadequate to assess the ecological impact of the development proposals.
- 7.44 The second ecological appraisal prepared by Ramm Sanderson Ecology and received by the Council for assessment in August 2021 is entitled "Low Impact Ecological Assessment" although it is unclear whether this refers to the methodology or the conclusion of the report. There are two versions of this report: One, Core Document CD.2.19, does not include the first version of a BIA undertaken by the ecologist and the second, RSE_4942_01_V2, **found at appendix 3** does include a summary of the ecologist's first version of a BIA). It does recognise that Burleigh Wood comprises Ancient Semi Natural woodland. However, the proposed mitigation (fencing the woodland to prevent public access) is considered unlikely to be effective in mitigating any adverse ecological impact on the woodland resulting from increased recreational use.
- 7.45 The second report also proposes mitigation for onsite habitat loss in the form of a buffer to Burleigh Woods and an appropriately designed SuDS feature. However, the conclusion that this would be sufficient to prevent a biodiversity net loss is unsound and at odds with subsequent submissions for the following reasons:

- 7.46 As stated above RSE_4942_01_V2 includes a summary of a BIA using the DEFRA metric v2 which shows a net gain of 3.37% (figure 4, p19). However, this relies on a poor representation of the predominant habitat type within the calculation. The field survey uses the JNCC Phase 1 assessment method, (found at <https://hub.jncc.gov.uk/assets/9578d07b-e018-4c66-9c1b-47110f14df2a>) assigning the habitat type “poor semi-improved grassland” (section 4.3, p 14). This is appropriate given that the grassland has a fairly low species richness but a structure that provides suitable habitat for a range of species including some small mammals, reptiles and invertebrates.
- 7.47 However, in the BIA spreadsheet , which uses a different habitat classification system (UKHab) <https://ukhab.org/> this is represented as “modified grassland” in “poor condition”; (RSE BIA, Habitat Baseline tab, line 11) an assessment most appropriate for intensively managed agricultural grasslands, domestic lawns and sports pitches. In addition, the field survey failed to identify the presence of acid grassland on site or record this within the BIA spreadsheet. The presence of acid grassland on site was initially refuted by the applicant’s ecologist in a rebuttal letter (CD.21.17) As a result the baseline value of the site was significantly underestimated and on this basis alone the projected 3.37% net gain is implausible. The BIA submitted with the appeal still does not recognise the location of this habitat area, giving its location as being in the south east corner of the site. As explained to the applicant during the application process the location of this area is towards the centre of the site. The assessment of the application was made particularly onerous because of inconsistencies and shortcomings in the ecological assessments provided to support it.
- 7.48 Following revisions based on information from site visits and advice by the Council’s ecologist, an additional BIA was accepted (Core document CD.2.21). In accordance with the Council’s Biodiversity Planning Guidance this was conducted using the Warwickshire County Council Metric v19.1. The calculation shows a net loss of approximately 69%. This is considered to be an indicative figure only since the assessment of post development habitat value was based on an indicative layout. In contrast to the assertion (Core Document CD.2.16 section 5.1) that “affects on all ecological receptors were nugatory” the BIA (Core Document CD.2.21) shows that the development proposals would lead to an adverse ecological impact that is significant and demonstrable at least at the scale of the site. That this loss is significant 48; development would result in the loss of an area of acid grassland which although small represents a local priority habitat which is both characteristic of and rare within Charnwood (Ecology report final- table 1 on p15 case study H

p115) Local Plan evidence base ([Ecology Assessment Addendum.pdf](#) ([charnwood.gov.uk](#)) It is a specific objective of the Leicestershire Biodiversity Action Plan https://www.lrwt.org.uk/sites/default/files/2020-01/space_for_wildlife_llrbap_2016-26_part_3.pdf

that there should be no further losses of acid grassland (space for wildlife part 3- heath grassland action plan objectives on p107). This is a habitat type which depends upon thin soils associated with exposed or near surface bedrock. Accordingly, this habitat type is practically irreplaceable in Charnwood, therefore the application conflicts with adopted planning policy CS13 and paragraphs 174 and 180 of the NPPF.

- 7.49 Secondly, the site occupies over 10% of the woodland's perimeter, it has an area equivalent to around 20% of Burleigh Wood and provides over half the remaining semi-natural habitat immediately adjoining it. The majority of the land surrounding Burleigh Woods is formed by arable land and sports pitches. It is therefore likely that the site as a whole provides a significant area of supporting habitat for the adjacent woodland. The woodland's designated status as ancient woodland and Local Wildlife Site follows from its age and vegetative composition, but its ecological importance is also attributable to its fauna, including but not limited to bats, badgers, amphibians, birds and invertebrates. The extent to which populations of these species within the woodland rely upon the adjacent grassland would be extremely difficult to determine. However it is not reasonable to assume that the site does not function as supporting habitat to faunal populations within the woodland. Therefore the precautionary principle should be applied.
- 7.50 Beyond these direct impacts, the Council consider the development would result in an increase to informal recreational access to the woodland; both because of the increase in the number local residents immediately adjacent to the woods and because of the loss of grassland within the application site that is currently used for informal recreation, albeit without the landowner's consent. The current management plan for Burleigh Wood specifically identifies recreational use of the woods as a harmful activity which needs to be controlled (Woodland management plan-table 6, page 8). [Woodland-Management-Plan-2018-2023.pdf](#).
- 7.51 Contrary to the appellant's assertion (biodiversity statement of case para 1.10) that the Ecological Appraisal (Core Document C.2.19) was accepted by the Council as providing a satisfactory assessment of the appeal site, the overall findings of the report were successfully challenged through a BIA process. This indicates a likely net loss of 4.83 Habitat Units, equivalent to 71.5% of the site's current ecological value of 6.75 Habitat Units. This

provides a markedly different evaluation of the development proposals to that presented by either of the two ecological appraisal submitted with the application or the revised ecological appraisal submitted for the appeal. It is incorrect to assume that the acceptance of a baseline ecological value of the site following protracted revisions of the applicant's ecological appraisal is equivalent to lending support to the application.

- 7.52 It can be shown that the adverse ecological impact resulting from the Proposed Development would be significant and demonstrable but deciding between this and the benefit 30 additional houses is not straightforward because the two things are not easy to compare. That said, there are aspects of these divergent properties that can be directly compared:

Firstly, whilst the development of 30 houses on this application site would result in very small contribution towards the housing supply in Charnwood, the harm to the application site and the adjacent woodland would be permanent and irreversible.

Secondly, despite the existence of a shortfall in housing supply, the draft local plan demonstrates that the housing need in Charnwood could be met elsewhere and that building homes on this site is not an option of last resort (as CS13 requires it to be). By contrast the acid grassland on the application site and the adjacent ancient woodland are both irreplaceable. There is no reasonable prospect of locating them elsewhere. By these two measures alone the Council considers significant harm resulting from the Proposed Development would outweigh its benefit.

- 7.53 The appellant proposes that these on-site losses could be compensated by an offsite habitat creation and enhancement scheme that would result in a net gain of over 36%. However the submitted details do not give confidence that the proposal would either be adequate or achievable for a number of reasons:

- (i) It does not form supporting habitat for an ancient woodland;
- (ii) It is far from clear that site, has the characteristics required for the creation of acid grassland;
- (iii) the ecological appraisal recommends generic seed mixes which do not include characteristic species of acid grassland;
- (iv) there is no clarity about how or whether the duration of the offset would match that of the impact or about whether the habitat (if created in the first place) would be retained beyond the 30 year management period.

7.54 Having undergone several revisions during the application process the appellant's ecological assessment ultimately reflected the view of the Council, set out in Local Plan evidence and in pre application advice, that the proposed development would result in a significant and demonstrable biodiversity loss, which includes the loss of priority habitat and indirect adverse impact upon irreplaceable habitat. Furthermore, the Council does not accept that the additional information submitted during the appeal process adequately addresses the second reason for refusal. The revised BIA provided for the appeal (Appellant's statement of case (Biodiversity) Appendix 2) is not accepted as adequate for a number of reasons: some elements of the baseline assessment are different to those previously provided and include habitats that were not mapped or described in any of the ecological assessments (See: Appellant's Statement of Case (Appendix A) Phase 1 Habitat Plan, page 38), elements of the of the "Habitat Creation" are questionable, including the assessment that in excess of 19% of the new development will be comprised of new tree planting and because, as explained above, there is low confidence that the offsetting proposals could or would be delivered. On this basis the proposals do not meet the requirements of either of CS13 or NPPF paragraphs 174 or 180s.

7.55 Heritage and Archaeology

While it is recognised that development of the site has the potential to result in some degree of harm to the setting of a grade II listed building and that it is an outline application with all matters reserved except for the point of access, the amended indicative layout and associated parameters plan demonstrates that there is potential to develop the site whilst achieving an acceptable relationship with the listed building.

7.56 Amenity Impact

Policy CS2 of the Core strategy and EV/1 of the Local Plan requires new development to protect the amenity of existing and future residents. The Charnwood Design SPD (2020) also provides spacing standards and guidance to ensure an adequate level of amenity.

- Impact upon Neighbours – the Council does not contest that the scheme could be designed to provide adequate safeguard to the amenities of existing properties.
- Impact to potential occupiers – the Council does not contest that a scheme could be developed on the site with appropriate standards of amenity.

7.57 Housing Mix/Affordable Housing

The application in respect of the housing development is submitted in outline form therefore it is not known at this stage what the housing mix will consist of. Policy CS3 seeks an appropriate mix of housing having regard for identified housing need. Housing need in Charnwood is identified by the Leicestershire Housing and Economic Development Needs Assessment (HENA) 2022, which replaces the HEDNA which forms the evidence base for the policy, is up-to-date and should be given significant weight in the determination of planning applications. When seeking an appropriate mix, regard should be had for a number of factors which include the nature of the development site and the character of the wider area, as well as economic viability.

7.58 The Council is content that the appropriate provision, including the tenure and mix of affordable housing, can be secured by legal agreement.

7.59 Parking and Highway Issues

The Council does not contest that no unacceptable highway impacts would arise from the development subject to mitigation that can be achieved via conditions and/or s106 provisions.

7.60 Flood Risk and Drainage

The application site is entirely within Flood Zone 1. The application is accompanied by a Flood Risk Assessment and Drainage Strategy and, subject to conditions, the Council is satisfied that adequate drainage can be provided.

7.65 Loss of agricultural land

The site includes an isolated parcel of grade 3 agricultural land. It does not appear that the site has been actively farmed in recent years but while the economic and other benefits of the existing agricultural land at this site is noted, it is not of the highest quality and the LPA do not consider the loss of the site to housing would impact on agricultural and farming activities.

7.61 Flood Risk and Drainage

The application site is entirely within Flood Zone 1. The application is accompanied by a Flood Risk Assessment and Drainage Strategy and, subject to conditions, the Council is satisfied that adequate drainage can be provided.

7.62 Infrastructure capacity and developer contributions

The application attracted requests for a series of contributions towards infrastructure as follows, to off set and mitigate its impact:

- Improvement of facilities at Loughborough Library
- Improvements to Forest Edge surgeries in Loughborough
- Raised kerb
- Travel Packs
- Six Month bus passes
- Improvements of the facilities at Shephed Waste and recycling
- Offsite contribution using cost model ECCv19.1 for a project within the vicinity of the development
- Off-site open space improvements as follows:
 - (i) Provision for Children - an onsite multifunction green space
 - (ii) An on-site natural and semi open space
 - (iii) An on-site amenity green space
 - (iv) An on-site LEAP facility
 - (v) On-site provision for young people.
 - (vi) On-site provision or up to a £9,881.00 contribution towards off-site outdoor sports facilities
 - (viii) On-site provision or up to a £3,388.00 contribution towards off-site provision or enhancement of allotment facilities in Loughborough.
- Monitoring Fees

7.63 These are derived from consultation undertaken at the time of the application in 2021 and early 2022. The Council has collaborated with the applicant to produce a s106 agreement/obligation to update and address these requests. In the event of disagreement between the parties will be addressed in the Statement of Common Ground in advance of the Hearing.

8.0 Issue 3 : whether the identified harm outweighs benefits accruing from the development

8.1 The principal benefit of the appeal proposal would provide a modest contribution of new homes at a time when the Council has a shortfall of available housing land and would subsequently contribute to delivery. These homes would include affordable homes and an appropriate mix of housing type and tenure could be secured. These would be provided within one of the most sustainable settlements in the Borough.

- 8.2 It is recognised that there are no technical constraints in terms of flooding, drainage or access, and no impacts arise from the development on the heritage assets. The Council recognises the economic benefit of the scheme or by means of off site provisions.
- 8.3 Balanced against the benefits are the harm that has been identified to the landscape and in terms of landscape character and how the proposed development would fail to protect and enhance the unique landscape character of the site and surrounding area.
- 8.4 The significance and seriousness of the shortfall in housing land supply is a matter for the judgement of the Inspector. Whilst regarded as ‘significant’ by the inspector in APP/X2410/W/21/3271340 (para 59) that decision was made in October 2021 before the new local plan had been completed (to submission stage) and submitted for Examination. It cannot be contended that the advancement of the Local Plan is not progress towards resolving the land supply shortfall and as such the position has improved.
- 8.5 The landscape impacts of the proposal are considered to fail in protecting and enhancing the unique landscape character, and the surrounding area, and the impact on ecology would be permanent and irreversible. As such, the Council considers that the resultant harm is sufficient to outweigh *‘significantly and demonstrably’* the scheme’s benefits within the context of the shortfall.
- 8.6 Furthermore, their significance is such that they give rise to conflict with the NPPF itself (Para 174 and para 180) and in terms of the balancing exercise required by para 11(d) these are not diminished in weight. It bears repeating that the balancing exercise should be carried out on the basis of the policies in the Framework itself and as such there is no reason they should be considered to carry less weight to the housing supply content of the Framework.
- 8.7 Taken together, the Council recognises that there are benefits to the proposal in terms of satisfying NPPF requirements on housing supply. However these are outweighed by conflicting with the natural environment requirements of the NPPF of equal standing, at para’s 174 and 180.
- 8.8 There are a series of issues the parties agree are ‘neutral’ in the balancing exercise – technical issues such as access, drainage, flooding etc, and those which can be safeguarded by reserved matters and/or conditions.

8.9 Planning decisions must be taken in accordance with the development plan unless other material considerations indicate otherwise. The principal parties agree the proposal is contrary to the Development Plan. As set out above, there are a series of material considerations in play. However many are 'neutral' and others, derivative of policy within the NPPF, weigh both in favour and against. The Council recognises there are benefits accruing for the scheme, in particular contribution to housing supply, but because of the quantity concerned this is considered to be moderate in the weight it should attract. However the identified adverse impacts significantly and demonstrably outweigh the benefits. Even if the appellants contention that the weight to be afforded to the provision of housing and affordable housing is accepted as significant, the Council consider that the adverse impacts significantly and demonstrably outweigh those benefits owing to their severity.

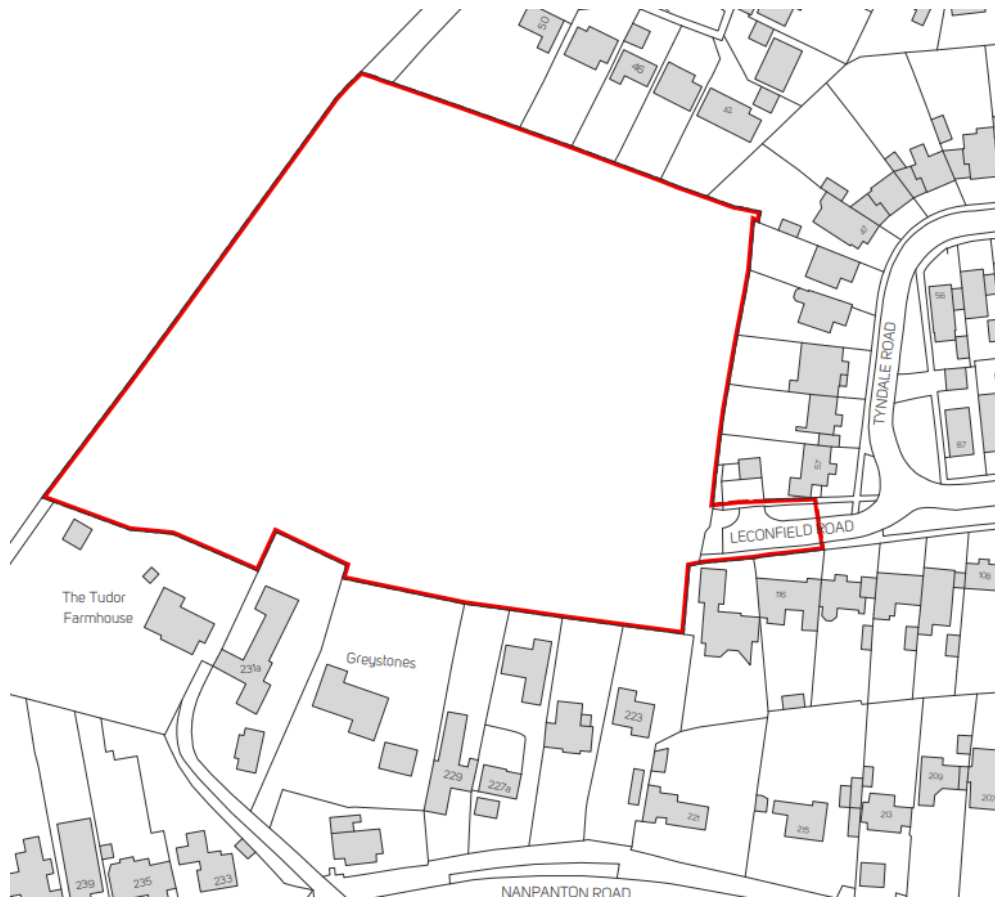
8.10 It is therefore respectfully requested that the appeal be dismissed. However, if the Inspector is minded allow the appeal and grant planning permission, a list of suggested conditions follows as **Appendix 2**.

9.0 APPENDICES

1. Location plans of the appeal site
2. Suggested planning conditions.
3. Biodiversity BIA - RSE_4942_01_V2

APPENDIX 1

Appeal site shown outlined in red



APPENDIX 2

SUGGESTED PLANNING CONDITIONS

1. Application for approval of reserved matters shall be made within three years of the date of this permission and the development shall be begun not later than two years from the final approval of the last of the reserved matters.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. No development shall commence until details of the appearance, landscaping, layout and scale, (“the reserved matters”), have been approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.

REASON: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall be carried out in broad accordance with the following approved plans: N1249 010A Parameter Plan N1249 400A POS Provision Plan Tree Survey P2164 /1020 /02 23/11/2020 ADC1905-DR-100 Revision P4 Access arrangement

REASON: To provide certainty and define the terms of the permission

4. The reserved matters shall comprise a mix of market and affordable homes that has regard to both identified housing need for the borough and the character of the area.

REASON: To ensure that an appropriate mix of homes is provided that meets the Council’s identified need profile in order to ensure that the proposal complies with Development Plan policies CS3, and the advice within the NPPF.

5. The landscaping details submitted pursuant to condition 2 above shall include:

- i) the treatment proposed for all ground surfaces, including hard surfaced areas;
- ii) planting schedules across the site, noting the species, sizes, numbers and densities of plants and trees; including tree planting within the planting belt to the east of the site;
- iii) finished levels or contours within any landscaped areas;
- iv) any structures to be erected or constructed within any landscaped areas including play equipment, street furniture and means of enclosure.
- v) functional services above and below ground within landscaped areas; and
- vi) all existing trees, hedges and other landscape features, indicating clearly any to be removed.

REASON: To make sure that a satisfactory landscaping scheme for the development is provided so that it integrates into the landscape and surrounding area and complies with policies CS2, CS11 of the Development Plan

6. The details submitted pursuant to condition 2 above shall include full details of existing and proposed ground levels and finished floor levels of all buildings relative to the proposed ground levels.

REASON: To make sure that the development is carried out in a way which is in character with its surroundings and ensure compliance with policies CS2 and of the Development Plan and associated national and local

7. No development shall commence on the site until such time as a construction traffic management plan, including as a minimum detail of:

- a) the routing of construction traffic,
- b) wheel cleansing facilities,
- c) vehicle parking facilities, and
- d) a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.

REASON: To reduce the possibility of deleterious material (mud, stones etc.) being deposited in the highway and becoming a hazard for road users, to

ensure that construction traffic does not use unsatisfactory roads and lead to on-street parking problems in the area.

8. Prior to commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The plan shall detail how, during the site preparation and construction phase of the development, the impact on existing and proposed residential premises and the environment shall be prevented or mitigated from dust, odour, noise, smoke, light and land contamination. The CEMP shall be in broad accordance with the Construction and Ecological Management Plan (RSE_492_02_V2 August 2021). The plan shall detail how such controls will be monitored and a procedure for the investigation of complaints. The agreed details shall be implemented throughout the course of the development.

REASON: To reduce the possibility of adverse impacts on nearby SSSIs and ecology in accordance with Policy CS13 and the NPPF and to minimise disruption to the neighbouring residents in accordance with Policy CS2 of the Core Strategy and saved Policy EV/1 of the Local Plan (2004).

9. Construction work of the development, hereby permitted, shall not take place other than between the hours of 07:30hrs and 18:00hrs on weekdays and 08:00hrs and 13:00hrs on Saturdays and at any time on Sundays and Bank Holidays.

REASON: To minimise disruption to the neighbouring residents in accordance with Policy CS2 of the Core Strategy and saved Policy EV/1 of the Local Plan (2004)

10. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on ADC drawing number ADC1905-DR- A33 100 Revision P4, ' Onsite Highway General Arrangement', have been implemented in full.

REASON: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with the National Planning Policy Framework (2019).

11. A Biodiversity Impact Assessment shall be submitted with the 'Reserved Matters' to assess the impact of the development in relation to the site ecology based on the agreed Baseline ecology measurement as set out in the

BIA (December 2021) and shall include the provision of mitigation measures to offset any negative impact on habitat along with timescales for implementation. The approved ecological mitigation shall then be fully implemented in accordance with the approved timescales.

REASON: To ensure the design and construction of the development does not result in the loss of any biodiversity features, habitats or protected species in accordance with Policy CS13 and the NPPF.

12. No development approved by this planning permission shall take place until such time as a surface water drainage scheme has been submitted to, and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: To prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site.

13. No development approved by this planning permission shall take place until such time as details in relation to the management of surface water on site during construction of the development has been submitted to and approved in writing by the Local Planning Authority. The construction of the development shall thereafter be carried out in accordance with the approved details.

Reason: To prevent an increase in flood risk, maintain the existing surface water runoff quality, and to prevent damage to the final surface water management systems though the entire development construction phase in accordance with Paragraph 169 of the NPPF.

14. No occupation of the development approved by this planning permission shall take place until such time as details in relation to the long-term maintenance of the surface water drainage system within the development have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be maintained in future in accordance with the approved details.

Reason: To prevent an increase in flood risk, maintain the existing surface water runoff quality, and to prevent damage to the final surface water management systems though the entire development construction phase in accordance with Paragraph 169 of the NPPF.

15. No development approved by this planning permission shall take place until such time as infiltration testing has been carried out (or suitable evidence to preclude testing) to confirm or otherwise, the suitability of the site for the use of infiltration as a drainage element, has been submitted to and approved in writing by the Local Planning Authority.

Reason: To demonstrate that the site is suitable (or otherwise) for the use of infiltration techniques as part of the drainage strategy in accordance with Paragraph 169 of the NPPF.

16. Prior to the occupation of any dwelling a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all public open spaces, ecological mitigation areas and surface water drainage system, shall be submitted to and approved in writing by the local planning authority. The approved landscape management plan shall then be fully implemented.

REASON: To ensure that public open spaces are maintained so that they are of good quality and that drainage systems retain full function. This is to make sure the development remains in compliance with Development Plan policies CS2, CS11, CS15 and CS16.

17. The existing hedges and trees located within the application site boundaries, other than at the point of the new access shall be retained and maintained at all times. Any part of the hedge removed, dying, being severely damaged or becoming seriously diseased shall be replaced, with hedge plants of such size and species as previously agreed in writing by the local planning authority, within one year of the date of any such loss.

REASON: The hedges and trees are an important feature in the area and its retention is necessary to help screen the new development.

18. No development, including site works, shall begin until the hedges and trees located within the application site boundaries that are to be retained, have been protected, in a manner previously agreed in writing by the local planning authority. The hedges shall be protected in the agreed manner for the duration of building operations on the application site.

REASON: The hedges and trees are an important feature in the area and this condition is imposed to make sure that it is properly protected while building works take place on the site.

19. The details submitted pursuant to condition 2 above shall include the following minimum amounts and typologies of open space:

- i. An on-site multi-function green space (minimum 0.02ha)
- ii. An on-site natural and semi open space (minimum 0.14ha)
- iii. An on-site amenity green space (minimum 0.03ha)
- iv. An on-site LEAP facility
- v. On-site provision for young people or off-site contribution as per the S106

REASON: To ensure that the open space needs of future residents are met at a level that complies with Development Plan policies CS15

Informative Notes

1. Planning Permission has been granted for this development because the Council has determined that it is generally in accordance with the terms of Development Plan policies CS1, CS2, CS3, CS11, CS13, CS14, CS16, CS24, CS25, ST/2, CT/1, CT/2, EV/1, TR/18, because the benefits of the proposal are not significantly and demonstrably outweighed by the harm identified. There are no other issues arising that would indicate that planning permission should be refused.

2. The Local Planning Authority has acted pro-actively through early engagement with the Applicant at the pre-application stage and throughout the consideration of this planning application. This has led to improvements with regards the development scheme in order to secure a sustainable form of development in line with the requirements of Paragraph 38 of the National Planning Policy Framework (2019), and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3. This permission has been granted following the conclusion of an agreement under Section 106 of the Town & Country Planning Act 1990 relating to the provision of infrastructure contributions necessary to make the development acceptable in planning terms.

4. Planning Permission does not give you approval to work on the public highway. To carry out off-site works associated with this planning permission, separate approval must first be obtained from Leicestershire County Council as Local Highway Authority. This will take the form of a major section 184 permit/section 278 agreement. It is strongly recommended that you make contact with Leicestershire County Council at the earliest opportunity to allow

time for the process to be completed. The Local Highway Authority reserve the right to charge commuted sums in respect of ongoing maintenance where the item in question is above and beyond what is required for the safe and satisfactory functioning of the highway. For further information please refer to the Leicestershire Highway Design Guide which is available at <https://resources.leicestershire.gov.uk/lhdg>

5. To erect temporary directional signage you must seek prior approval from the Local Highway Authority in the first instance (telephone 0116 305 0001).

6. All proposed off site highway works, and internal road layouts shall be designed in accordance with Leicestershire County Council's latest design guidance, as Local Highway Authority. For further information please refer to the Leicestershire Highway Design Guide which is available at <https://resources.leicestershire.gov.uk/lhdg>

7. All work shall follow recognised good practice such as those detailed in BS 5228 "Noise control on construction and open sites", the BRE report "Control of Dust from Construction and Demolition Activities. A36

8. There shall be no burning of waste on the site.

9. The surface water drainage scheme shall include the utilisation of holding sustainable drainage techniques with the incorporation of sufficient treatment trains to maintain or improve the existing water quality; the limitation of surface water run-off to equivalent greenfield rates; the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year return period event plus an appropriate allowance for climate change, based upon the submission of drainage calculations.

10. Full details for the drainage proposal should be supplied including, but not limited to; construction details, cross sections, long sections, headwall details, pipe protection details (e.g. trash screens), and full modelled scenarios for the 1 in 1 year, 1 in 30 year and 1 in 100 year plus climate change storm events.

11. Details should demonstrate how surface water will be managed on site to prevent an increase in flood risk during the various construction stages of development from initial site works through to completion. This shall include temporary attenuation, additional treatment, controls, maintenance and protection. Details regarding the protection of any proposed infiltration areas should also be provided.

12. Details of the surface water Maintenance Plan should include for routine maintenance, remedial actions and monitoring of the separate elements of the surface water drainage system that will not be adopted by a third party and will remain outside of individual householder ownership.

13. The results of infiltration testing should conform to BRE Digest 365 Soakaway Design. The LLFA would accept the proposal of an alternative

drainage strategy that could be used should infiltration results support an alternative approach.

14. Where there are any works proposed as part of an application which are likely to affect flows in an ordinary watercourse or ditch, the applicant will require consent under Section 23 of the Land Drainage Act 1991. This is in addition to any planning permission that may be granted. Guidance on this process and a sample application form can be found via the following website: <http://www.leicestershire.gov.uk/flood-risk-management>

15. Applicants are advised to refer to Leicestershire County Council's culverting policy contained within the Local Flood Risk Management Strategy Appendix document, available at the above link. No development should take place within 5 metres of any watercourse or ditch without first contacting the County Council for advice.

16. Overland flow routes as shown on the update map for surface water should be considered such that buildings are not placed directly at risk of surface water flooding. Such flow routes should be utilised for roads and green infrastructure.

17. Where a drainage ditch adjoins or flows through a development, provision should be made such that the ditch can be made throughout the life of the development. A37 The ownership and responsibility for maintenance of the ditch should also be clearly identified and conveyed to the relevant parties.

18. Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under, The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building