



## Desford Neighbourhood Plan

### The Neighbourhood Planning (General) Regulations 2012 (Regulation 16) Publication of Plan Proposal Consultation

Wednesday 22 January to 5pm Wednesday March 2020

#### Response Form

How to respond:

- Complete our [planning policy contact form](#)
- Send a letter to the planning policy team
- Download, complete and return this Desford Regulation 16 response form
  - Please return to the Hinckley Hub or electronically using our [planning policy contact form](#)

Respondent Details	
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Organisation (if applicable):	Avison Young
Position (if applicable):	Associate

Your Representation on the Desford Neighbourhood Plan		
Overall do you support the plan, would support the plan with some modifications, or oppose the plan? (please tick one answer)		
Support <input type="checkbox"/>	Support with Modifications <input checked="" type="checkbox"/>	Oppose <input type="checkbox"/>
Please indicate whether you wish to be informed of any decision by Hinckley and Bosworth Borough Council to either make/adopt the Neighbourhood Plan or refuse to make/adopt the Neighbourhood Plan.		

<input checked="checked" type="checkbox"/>	Yes, please inform me of the decision
<input type="checkbox"/>	No, I do not wish to be informed of the decision

Please give details of your reasons for support/opposition	
Paragraph number/policy reference	Comments/Suggested Modifications
	Please refer to supporting letter
(Continue on additional sheets if necessary)	

Signature: Emily Hill	Date: 04/03/2020
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 All comments will be made available, and identifiable by name and organisation (where applicable) to the appointed examiner, Local Planning Authority, and Desford Parish Council. Please note that any personal information will be processed by the council in line with the Article 6(1)(e) of the General Data Protection Regulation and the Data Protection Act 2018

4 March 2020

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Dear Sirs,

**DES福德 NEIGHBOURHOOD PLAN 2018-2036 REGULATION 16 SUBMISSION  
CONSULTATION  
REPRESENTATIONS ON BEHALF OF JELSON LTD**

Avison Young is town planning advisor to Jelson Limited ('Jelson') and is instructed to make representations on its behalf, in response to the Regulation 16 consultation of the Desford Neighbourhood Plan (DNP).

Jelson is an interested landowner in Desford and has made representations to the draft DNP over the past 13 months, with the first engagement being made through the Regulation 14 consultation on the pre-submission version of the Plan. It has also met with members of the Parish and Working Group, to promote the benefits of its landholding at Hunts Lane, for residential development.

We provide in this letter:

- An overview of Jelson's interest in Desford;
- Jelson's engagement with the Parish Council to date; and
- Jelson's comments on the proposed DNP.

The above are addressed in turn.

**Jelson's Interest**

We append to this letter a location plan which shows land controlled by Jelson. The land lies to the immediate south of Hunts Lane and to the west of Gables Close and Lockeymead Drive, on the western side of the settlement. It extends to 4.19 ha and so has the ability to accommodate something in the order of 80 - 100 dwellings.

The site comprises a single large arable field. It is flat and easy to develop. Mature hedges and the occasional mature tree mark the sites boundaries but there are no trees, hedges or other landscape features within the site itself. The land is entirely within Flood Zone 1 (and so is at low risk of flooding), does not fall within an important view corridor, does not form part of the setting of a heritage asset and has no particular environmental quality, other than that associated with its agricultural use.

There are bus stops on Hunts Lane, just outside where the site would be accessed, and the centre of the settlement is easily accessible, as is Leicester to the east.

Development on this site would, in our view, make for a logical extension to the village, and when considered against the site assessment criteria, as defined by the Parish Council in the preparation of the DNP, would score highly in sustainability terms.

### Engagement to Date

As noted above, Jelson first engaged with the Parish Council and DNP Working Group through the **Regulation 14 consultation**. Representations were submitted in January 2019 following the publication of the pre-submission version of the DNP and shortly after Jelson acquired the land.

The pre-submission version of the plan suggested that 15 site options were appraised for consideration as a residential allocation and that this resulted in land at Barns Way being taken forward as the only allocation and to deliver up to 70 dwellings. The remaining "need" which is suggested to have been informed by the standard methodology, relies upon delivery from windfall sites.

At this time, we reviewed the Group's site selection methodology and applied the same assessment criteria and scoring matrix to Jelson's land. This identified a scoring of 'Green 14', which exceeds that for Barns Way (Green 12), and therefore in our view, makes it the most sustainable and least environmentally damaging site. Adding to this that the site is controlled by a developer, is available now, offers a suitable location for development, and is achievable, having a realistic prospect of delivering housing with five years, Jelson's representations supported allocation of its land for housing in the DNP.

In May 2019, we noted on the Parish Council's website that a further round of consultation was being undertaken prior to the submission of the Plan for examination. The purpose of this was to consider seven further sites for possible allocation. We were able to clarify through correspondence with the Parish and HBBC Officers that the additional sites were those which were submitted to HBBC in response to 'call for sites' exercises ran to inform its 2014 and 2017/18 Strategic Housing and Economic Land Availability Assessment (SHELAA). We were advised that any sites since drawn to the attention of HBBC were not being assessed, nor it appeared that any sites submitted directly to the Parish as part of the Regulation 14 consultation were being assessed. This therefore meant that Jelson's site was not assessed and so we raised our concerns with the approach and submitted further representations to the **Strategic Site Assessment consultation**.

We noted at this time the requirements of the plan-making process and noted in particular that the National Planning Policy Framework (NPPF) sets out that neighbourhood development plans (NDP) should support the delivery of strategic policies contained in local plans or development strategies and should shape and direct development that is outside of these strategic policies. The need for an NDP to be in general conformity with strategic policies in the Development Plan also forms one of the Basic Conditions that NDPs must meet in order to progress to examination.

In relation to housing allocations in NDPs, we noted that Planning Practice Guidance sets out that the qualifying body leading the NDP process should "*carry out an appraisal of options and assessment of individual sites against clearly identified criteria*".

It was our opinion at this time that based on the information provided by the Parish, we concluded that there was a failure to conduct an appropriate assessment of all potential sites and that there were fundamental failings with the approach taken.

Following Jelson's representations, we received a **Sustainable Site Assessment of Land at Hunts Lane** in July last year. We understand that this was undertaken and approved by the NDP Working Group on behalf of the Parish Council. It identified a score for Jelson's site of 'red minus 3'. Whilst Jelson

welcomed the consideration of its land, it had some significant concerns with the way in which the assessment appeared to have been undertaken. The assessment made a number of inaccurate assumptions about the site in respect of the different criteria and assumptions which appeared to take an overall negative view of the site. This was particularly noted to be the case when comparing the assessment against that which the Parish undertook for the site at Barns Way (i.e. the proposed allocation). We noted a number of matters in particular where either: the commentary is broadly similar for both sites but Barns Way scores a higher rating; the position is worse at Barns Way and yet it scores the same as Jelson's rating; or there is a general inconsistency around how different considerations are assessed. These inconsistencies were noted for the following criteria and set out in Jelson's response to the Parish:

- Landscape quality
- Important trees, woodlands and hedgerows
- Relationship with exiting pattern of built development
- Local wildlife considerations
- Safe pedestrian access
- Impact on existing vehicular traffic
- Noise issues

We met with members of the Parish Council and the Working Group on 26 July 2019 and discussed these matters and the site assessment in general, addressing each criterion in turn, and providing further clarity or information on matters where required. Following the meeting, Jelson received a revised Sustainable Site Assessment of its land which included amended criteria. The site increased to a score of 'Green 3'.

Jelson's latest formal engagement in the DNP process was through representations to the **Strategic Environmental Assessment (SEA) and Environmental Report**, in November 2019. The SEA was carried out by AECOM Ltd. and assessed the proposals against a set of sustainability / environmental objectives. The intention is to ensure that the Plan avoids adverse environmental and socio-economic effects and identify opportunities to improve the environmental quality of the designated area and the quality of life of the residents.

As officers will be aware, a key part of the SEA process is the assessment of reasonable alternatives for the plan. In the context of the DNP, the reasonable alternatives appear to relate to delivering the housing strategy, which as we note above, is one of the basic conditions that must be met. The report sets out the ways in which consideration was given to addressing the housing strategy. It suggests that the Parish first considered potential reasonable alternatives to be (i) accommodating need in Botcheston as opposed to Desford, and (ii) delivering the housing need on a large site to the south of Desford village which was put forward in the Hinckley and Bosworth SHELAA 2018. Consideration of these alternatives concluded that they were unreasonable. This therefore resulted in the housing strategy being determined through a comparison of reasonable site allocation options, which were considered against certain sustainability criteria (i.e. in accordance with the site selection methodology).

The Environmental Report confirms that the determination of the preferred site for allocation (i.e. Barns Way extension) was based primarily on the outputs from the site assessment exercise, as according to the DNP Working Group's assessment, it performs best overall. It notes that whilst some discounted sites perform better in respect of certain assessment criteria, the Parish Council considered the preferred site to perform better 'in the round'.

The Environmental Report does not evaluate the likely effects of each of the alternative sites in turn. Rather, it assesses the likely effects of the preferred allocation only and then the draft provisions of the Plan, against the SEA objectives / topics. The extent of effect is determined by considering whether the proposed allocation, or draft policies, will have a positive or negative effect on the key objectives when considered in the context of the baseline (i.e. the existing environmental characteristics of the designated area).

The SEA suggests that the plan is predicted to have mostly positive effects and for three objectives, significant positive effects, albeit with uncertainty over one (Heritage). It concludes:

*"The main benefits of the Plan relate to communities, as the delivery of new homes and high quality design will support the local population and improve their health and wellbeing. The allocated site contributes notably to these effects. In the instance that planning permission is granted on this site [Barns Way], the effects are only relevant should the permission lapse. Therefore, these positive effects could actually be minor in reality".*

Jelson's representations noted that permission has been granted for the allocation and so there is no requirement for the site to be allocated in the DNP. The homes have the benefit of planning permission and so, if delivered, will not be delivered because of the proposed DNP allocation. They will instead be delivered on the back of a planning permission. Therefore, in accordance with the conclusions of the SEA, the DNP is delivering little in the way of positive effects and so Jelson's representations concluded that additional allocations should therefore be made to bring the plan to a positive state in SEA terms.

### Jelson's Comments

Jelson's primary concerns of the Neighbourhood Plan relate to (i) the approach taken to identify suitable sites for allocation, and (ii) that the plan fails to seek to deliver positive benefits.

In relation to matter (i), whilst potential sites have been assessed against the same criteria, there are significant inconsistencies with the way in which sites have been scored and therefore determined for allocation.

By way of comparison, we have prepared a table which summarises the ratings identified for Jelson's landholding in relation to each of the strategic site assessment criteria by: the Parish in its original assessment; our assessment when adopting the same rating definitions; the Parish's revised assessment; and our comments to the changes and in particular, noting the inconsistencies with ratings for different sites. A copy of the table is **appended** to this letter.

There are a number of inconsistencies in the way sites are scored against the same criteria and our analysis notes this to be the case when just comparing two sites (Jelson's landholding at Hunts Lane, and the proposed allocation at Barns Way). This raises concerns around further inconsistencies that might be realised when comparing all of the assessed sites.

When considering the ranking order of the sites assessed by the Parish and as referenced in the SEA Environmental Report at table 4.1, we note the order from highest scoring to lowest as being as follows:

- 1) Desford - Barns Way Extension [the proposed allocation]
- 2) Botcheston – Rear of Snowdene main Street, and Botcheston – Hinds Quarters, Main Street
- 3) Desford – Meadow Way Extension
- 4) Desford – South of Hunts Lane [Jelson's land]
- 5) Desford – Hunts Lane Extension Site
- 6) Botcheston – Rear of 38 Main Street
- 7) Desford – Sewage Treatment Plant
- 8) Desford – Ashfield Farm Extension
- 9) Desford – Kirkby Road Extension
- 10) Botcheston – New Botcheston North of Main Street, and Lyndale boarding cattery
- 11) Desford – New Desford South Expansion, and Desford – Neovia New Desford Expansion.

The above ranking applies the Parish's latest site assessment scoring and places Jelson's land as 4<sup>th</sup>, or 5<sup>th</sup> when considering there are two equal scoring sites at position 2. We consider the top four in turn.

As noted above, it is not necessary to allocate Barns Way by virtue of its extant planning permission and as the Plan would achieve little by doing so.

The two sites scoring second place are located in Botcheston and the Parish concluded that allocations in this settlement would be "unreasonable" due to its lower ranking in the settlement hierarchy, as defined by Hinckley and Bosworth Borough Council in its adopted Core Strategy.

Outline planning permission for residential development on land at Peckleton Lane, otherwise referred to as 'Meadow Way Extension' by the Parish, has now been granted through appeal. This being taken forward as an allocation would therefore equally be unnecessary and result in minor benefits.

With the above in mind, we conclude that Jelson's land at Hunts Lane actually ranks highest and that it does so despite the inconsistencies in ratings across sites. When addressing the inconsistencies, we believe that Jelson's land scores significantly greater and indeed highest of all sites, including that for Barns Way. The appended table demonstrates that when applying the Parish's assessment criteria and when informed by technical assessments, Jelson's land scores 'Green 14'.

Turning to matter (ii), the appraisal of the draft Plan against the SEA topics suggests that the DNP could have some significant positive effects. However, it is clear from the concluding comments that the main benefits arise from the delivery of new homes and only where these houses do not already benefit from a planning permission. In the case of Barns Way, these are homes that now have the benefit of planning permission and so, if delivered, will not be delivered because of the proposed DNP allocation. They will instead be delivered on the back of a planning permission. Accordingly, the benefits being attributed to that allocation should be stripped out of the SEA and additional site allocations made so as to get the Plan back to a 'positive' state in SEA terms.

Notwithstanding the above, it is important to note the conclusions of the Planning Inspector when considering the appeal against refusal of outline planning permission for the development of up to 80 dwellings on land at Peckleton Lane on the south eastern edge of Desford (appeal ref: APP/K2420/W/19/3235401). The main issue considered was the effect of the development on the character and appearance of the landscape, due to the sites location outside of the settlement boundary. A copy of the Appeal Decision is appended to this letter.

At the time of consideration by the Inspector, outline planning permission had been granted for the development of up to 80 dwellings at Barns Way. The Inspector concluded that the Council can only demonstrate a deliverable supply of housing land of 4.15 years and that "*the shortfall is significant*". As a consequence, the policies which are most important for determining the application were considered out-of-date and therefore the tilted balance was engaged.

The Inspector noted some impact on landscape character and policy conflict in this respect but weighed this in the planning balance. He concluded that the dispute between parties as to whether the proposal would meet local needs in Desford does not detract from the fact that there is a borough-wide shortfall that has no immediate remedy in a plan-led system. He opined that in spite of Desford having seen housing growth in excess of the minimum requirement set out in the Core Strategy, it does not preclude any further development in the village if it is found to be sustainable.

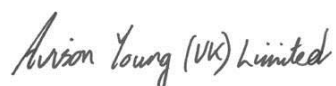
With all of the above in mind, we conclude that the Plan in its current form has been developed on the basis of inaccurate evidence and assessment of sites, and that it is failing to deliver positive benefits, which leads us to question whether it is supporting the delivery of strategic policies and therefore meeting its basic conditions. It seems to us that a further allocation(s) is needed.

This is supported by the conclusions of the Inspector and that there is a significant shortfall of housing in the Borough as a whole. Addressing this should not be restricted by local need considerations only. Where further development is found to be sustainable, the Inspector has concluded that it should be approved.

There is a fundamental need to boost the supply of housing and the DNP is not proposing to support this. It should therefore be looking to allocate a sustainable site(s) so that housing will be delivered as a direct result of a DNP allocation. The Parish's own assessment of Jelson's land concludes that it is sustainable by virtue of its overall green scoring and when reviewing the Parish's list of sites above, and making the relevant discounts as we set out, it sits at the top. We therefore conclude that the further allocation should be Jelson's land, south of Hunts Lane

We hope that the above clearly sets out Jelson's concerns with the Submission Version of the Desford Neighbourhood Plan. However should you require any further information, or wish to discuss the matters raised further, please contact Emily Hill of this office ([emily.hill@avisonyoung.com](mailto:emily.hill@avisonyoung.com)). We would be grateful if you could please confirm receipt of this letter and thereafter keep us informed on the progress of the DNP.

Yours faithfully

A handwritten signature in black ink that reads "Avison Young (UK) Limited". The signature is written in a cursive, flowing style.

For and on behalf of Avison Young (UK) Limited



**Appendix I**

Site Location Plan



Ordnance Survey © Crown Copyright 2019. All rights reserved.  
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**Appendix II**

Strategic Site Assessment Comparison for Jelson's Land at Hunts Lane

Land south of Hunts Lane, Desford

Desford NDP Strategic Site Assessment: Comparisons

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
<b>Site capacity:</b>	Approximately 62 units (three bed houses).	Red	Approximately 62 units (three bed houses).	Red	Approximately 62 units (three bed houses).	Red	Not disputed and no change to scoring
<b>Current Use:</b>	The site covers a large arable field in current use, therefore the existing use needs to be relocated.	Amber	The site currently comprises a large arable field which is used for growing maize. The site is owned by Jelson and let out for agricultural uses on a short term basis. The tenancy may be terminated at any time. There is no requirement for the agricultural use to be relocated and no risk of the termination of the tenancy resulting in the closure of the farm business.	Green	The site covers a large arable field set to maize and in current use, therefore the existing use needs to be relocated.	Amber	Amber rating has been retained, however this is consistent with that applied for other similar sites, including Barns Way Extension.
<b>Adjoining Uses:</b>	The site sits on the edge of the current built form and is surrounded on one side by an arable field and allotments in current use. The cemetery is found on the other side of the B582 Hunts Lane to the North and Lockeymead Drive to the Eastern boundary with Shericles Way to the	Amber	The site sits on the edge of the current built form and is surrounded on one side by an arable field and allotments in current use. The cemetery is found on the other side of the B582 Hunts Lane to the North and Lockeymead Drive to the Eastern boundary with Shericles Way to the Southern boundary.	Amber	The site sits on the edge of the current built form and is surrounded on one side by an arable field and allotments in current use. The cemetery car park is found on the other side of the B582 Hunts Lane to the North and Lockeymead Drive to the Eastern boundary with Shericles Way to the Southern	Amber	Not disputed and no change to scoring

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
	Southern boundary.				boundary.		
<b>Topography:</b>	A relatively flat site.	Green	A relatively flat site.	Green	A relatively flat site.	Green	Not disputed and no change to scoring
<b>Greenfield or Previously Developed Land</b>	A wholly greenfield site.	Red	A wholly greenfield site.	Red	A wholly greenfield site.	Red	Not disputed and no change to scoring
<b>Good Quality Agricultural Land</b>	The whole site is classified as grade 2 agricultural land by Natural England, this is agricultural land of very good quality. The Natural England best practise recommendation is for no development of grade 2 land.	Red	Natural England's ALC Mapping indicates that the land is Grade 2.  [Note: Jelson will be testing the quality of the soils on site to confirm the Grade of the land. In the meantime, we agree that it is sensible to assume that the land is Grade 2 and attribute a Red score in this category. However, the Parish Council should note that there is no prohibition, either in law or policy, on the use of Grade 2 agricultural land for development. The NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the economic and other benefits of best and most	Red	The whole site is classified as grade 2 agricultural land by Natural England: this is agricultural land of a very good quality. The Natural England best practice recommendation is for no development of grade 2 land as it is a scarce National resource. The previous HBBC policy position was to not allow development of such land.	Red	Not disputed and no change to scoring

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			versatile agricultural land				
<b>Site availability - Single ownership or multiple ownership</b>	One owner (??).	Green	Single owner – housebuilder.	Green	Single owner–housebuilder.	Green	Not disputed and no change to scoring.
<b>Landscape Quality Overview Visual Impact Assessment (LVIA)</b>	Open long distance vistas are found to parts of two boundaries and the site feels very rural in character and is of very high quality. Inside the Desford Vales landscape character assessment area. The site Eastern boundary delineates the current built form and a location on the other side of Hunts Lane is set out in the pre-submission draft of the neighbourhood plan as an important view: one that needs to be protected from development.	Red	<p>The site does not form part of an important view, it has no special or distinctive character and it does not form part of a valued landscape in NPPF terms.</p> <p>[Note: Jelson has commissioned a full LVIA and this will be shared with the Parish Council in due course].</p> <p><u>In comparison with Barns Way:</u> The commentary on both sites refers to “open long distance vistas” and that the sites feel “very rural in character”. Both sites are also inside the Desford Vales Landscape Character Assessment Area.</p> <p>For Barns Way it references open long distance views on three sides and provides a RAG rating of Amber, whereas for Hunts Lane, it references long distance views on only two boundaries</p>	Green	The site is not a part of a valued landscape, although open vistas are found to parts of two boundaries and the location feels rural in character and is of a medium quality. Inside the Desford Vales landscape character assessment area. The site Eastern boundary delineates the current built form and a location on the other side of Hunts Lane is set out in the pre-submission draft of the neighbourhood plan as an important view that needs to be protected from development.	Amber	<p>The rating has been amended to Amber but the Parish disagrees with our assessment.</p> <p>Whilst the scoring is comparable to that for Barns Way, it is considered that either Jelson’s site be amended to Green, or Barns Way amended to Red, as Barns Way is considerably more open and would have a significantly greater visual impact on landscape views when leaving and approaching the village.</p> <p>No reference is made to the fact Jelson’s site is largely hidden from</p>

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			and rates it Red. There appears to be little difference in comparison between the two and yet different ratings are attributed.				view from the vast majority of vantage points, with the exception of localised views from overlooking properties, or when on the PROW along the western boundary of the site.
<b>Important Trees, Woodlands &amp; Hedgerows</b>	There are a number of mature trees dispersed within the site boundary and most boundaries are surrounded by hedgerows. A high quality design solution would not have a major effect on these green assets.	Amber	<p>The site does not contain any important trees or hedgerows. There are, however, a number of trees on the site boundaries and the boundaries are marked by hedgerows. The overwhelming majority of these could be retained as part of any development. Tree / hedgerow loss would be minimal and limited to that required to form an appropriate access.</p> <p><u>In comparison with Barns Way:</u> Both sites are noted as having mature trees along their boundaries and it is acknowledged that a high quality / sensitive design solution could mitigate any impact. However Jelson's site</p>	Green	There are a number of mature trees dispersed within the site boundary and all of these boundaries are comprised of hedgerow. A high quality design solution would not have a major effect on these green assets, although a minimal tree and hedgerow loss is required to form an appropriate vehicular access.	Amber	<p>The scoring remains Amber and therefore in conflict with the assessment for Barns Way, which is scored green.</p> <p>It is understood that a scoring of no greater than amber must be attributed to this criteria if a single tree should be removed to facilitate development and that Barns Way scores Green as no trees are to be removed to achieve an access or accommodate</p>

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			is rated Amber and Barns Way is rated Green.				development.  This understanding is incorrect. The planning application for residential development at Barns Way confirms that three trees are to be removed. Barns Way should therefore be changed to Amber or Hunts Lane changed to Green for consistency.
<b>Relationship with existing pattern of built development</b>	The site is adjacent to the current settlement boundary and would extend the village in a Westerly direction towards Newbold Verdon. Although visible from a range of sources, planting would mitigate the effects of the development.	Amber	There is existing housing development to the immediate east and south of the site and allotments to the immediate west. Development on this side of the settlement would extend it slightly in the direction of Newbold Verdon but there is no risk of either perceived or actual coalescence. The site would make for a logical extension that would be limited in extent by the allotments and an existing Farm access  In comparison with Barns	Green	The site is adjacent to the current settlement boundary and would extend the village in a Westerly direction towards Newbold Verdon. Although visible from a range of sources, planting would mitigate the effects of the development. The site will be limited by the allotments that will be retained to the Western boundary.	Amber	The NDP scoring remains Amber and therefore in conflict with that for Barns Way. Both sites continue to be noted as being adjacent the settlement boundary and capable of mitigating impact through planting.  In respect of the Hunts Lane site, there would be no extension to the



Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			<p><u>Way</u>: Both sites are noted as being adjacent to the current settlement boundary and are referred to as providing extensions to the village. It is also noted in both that planting could mitigate visibility. Despite this, Barns Way is rated Green whereas Hunts Lane is rated Amber.</p>				<p>village in the direction of Newbold Verdon as the allotments are situated to the west of the site. This can be seen to mark the edge of the village. Notwithstanding this, there is significant separation geographically and visually between the two settlements so that there would be no impact of coalescence.</p>
<p><b>Local Wildlife considerations</b></p>	<p>Although birds and small mammals have been identified, this is a small to medium impact on wildlife that can be easily mitigated with careful building design.</p>	Amber	<p>The site has very little ecological value. Areas of limited interest are confined to the site boundaries. Apart from where the site access is formed, these will be retained. The development of the site presents an opportunity to deliver significant gains in terms of biodiversity.</p> <p><u>In comparison with Barns Way</u>: Both site assessments reference birds and small mammals as being present,</p>	Green	<p>Although birds and small mammals have been identified these are mainly confined to the site boundaries, a small impact on wildlife that can be easily mitigated with careful building design.</p>	Green	<p>The scoring has been increased to green. This is now consistent with Barns Way.</p>

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			however Barns Way is rated Green against this criteria, and Hunts Lane rated Amber.				
<b>Listed Building or important built assets</b>	In this edge of village location no listed or important built assets are visible or affected.	Green	In this edge of village location no listed or important built assets are visible or affected.	Green	In this edge of village location no listed or important built assets are visible or affected.	Green	Not disputed and no change to scoring
<b>Impact on the Conservation Area or its setting</b>	The site is outside of the conservation area and far enough from it to be of no negative influence upon it.	Green	The site is outside of the conservation area and far enough from it to be of no negative influence upon it.	Green	The site is outside of the conservation area and far enough from it to be of no negative influence upon it.	Green	Not disputed and no change to scoring
<b>Safe pedestrian access to and from the site</b>	A narrow footpath exists along Hunts Lane, so a pedestrian route can be gained through the destruction of a small section of hedgerow. Connectivity with the village centre would be fairly straight forward with significant improvement.	Amber	<p>There is a footpath on the southern side of Hunts Lane which links the site to the centre of the village. This could be widened as part of any development.</p> <p><u>In comparison with Barns Way:</u> Both sites are rated Amber in the assessments, however we consider that Jelson's site is in conflict with the scoring matrix. In relation to this matter, the matrix states that sites with "no footpath but can be created" are to be rated Amber and that those with an "existing footpath" are to</p>	Green	A narrow footpath exists along Hunts Lane so a pedestrian route can be gained through the destruction of a small section of hedgerow. Connectivity with the village centre would be fairly straight forward with potential new footpaths linking from Hunts Lane, Lockeymead Drive and/or Shericles Way.	Amber	The Parish in its revised assessment appear to have accepted that any improvements would not be 'significant'. The scoring has remained the same however which is considered to remain in conflict with the scoring matrix, in particular where it states that amber is for sites where there is no footpath but one can be created.

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			<p>be rated Green. The Hunts Lane assessment notes the presence of a footpath, and yet rates it the same as Barns Way which has no footpath.</p> <p>In addition, we note that the assessment considers that the improvements required to the Hunts Lane footpath would be "significant". We would not consider such improvements to be "significant". This further differentiates Jelson's site from that at Barns Way.</p>				Green scores are where footpaths exist, which is the case for land at Barns Way.
<b>Impact on existing vehicular traffic</b>	A large scale negative impact from this large number of units in this Western edge location.	Red	<p>The development of the site would generate additional traffic and this would have an impact but technical work undertaken in respect of two other development proposals adjacent to Desford has confirmed that additional housing can be satisfactorily accommodated in highway terms.</p> <p>[Note: Jelson has commissioned a Transport Assessment of its proposals for the Hunts Road land and we will share the results of this with the Parish Council in due</p>	Green	A site of this size will generate a large scale, negative, additional traffic impact. Due to its location at the Western edge of the current built form and the direction of likely vehicular flow, this will have a medium scale impact on the congestion in the current village centre.	Amber	The NDP revised scoring is amended to Amber, which is consistent with that for Barns Way.

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			<p>course]</p> <p><u>In comparison with Barns Way:</u> The assessment for Barns Way considers that impact would be “medium scale negative” from the number of units possible (i.e. 80 dwellings) and that it is in a sensitive highways location.</p> <p>For Jelson’s site however, it is rated Red as it considers impact to be “large scale negative” but yet this is based on a lower number of units (i.e. 62 dwellings as noted under site capacity section) and is not noted as being in a sensitive highways location. This is contrary to the assessment and rating attributed to Barns Way.</p>				
<b>Safe vehicular access to and from the site</b>	Minimal existing provision is in place to allow access for farm machinery and there are no visibility splays at present. It is possible to build new highway access arrangements to meet safety standards with significant improvements.	Amber	<p>There is an existing access off Hunts Lane. This would need to be widened to serve a housing development but such works could be undertaken on land controlled by the land owner and appropriate visibility splays could be provided also.</p> <p>[Note: Jelson has</p>	Green	Minimal existing provision is in place to allow access for farm machinery and there are no visibility splays at present. An access to the allotment site is also found nearby and this will need to be maintained. The parking for the cemetery is on the other side of Hunts Lane and this may require relocation. It	Amber	The NDP scoring is not amended. Whilst this is consistent with that for Barns Way, it is considered that the land at Hunts Lane is more aligned with the Green scoring definition i.e. “appropriate access can be

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			commissioned access design work and we will share the results of this with the Parish Council in due course]		appears possible to build new highway access arrangements to meet safety standards with significant improvements and the support of the Highways Authority (and potentially the Parish Council).		easily achieved".  An existing point of access is in place and used safely. Whilst improvements would be required to support an access for major residential development, the creation of a suitable access would not require the relocation of the cemetery parking area, nor would it require 'significant' improvements.
<b>Safe access to public transport</b>	Yes, the nearest bus stop is on Hunts Lane with services in both directions, this is about a 260m distance.	Amber	Yes, the nearest bus stops are located on Hunts Lane (Newbold Road bus stops) with services in both directions. The distance from the bus stops to the site access is approximately 104 – 160m	Green	Yes, the nearest bus stop is on Hunts Lane with services in both directions, this is about a 260m distance.	Amber	The NDP scoring remains unchanged as distances are understood to be taken from the centre of the site.
<b>Distance to designated</b>	A distance of about 900m.	Red	A distance of about 900m.	Red	A distance of about 900m.	Red	Not disputed and no change to

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
village centre.							scoring
Distance to GP/health centre	A distance of about 950m.	Red	A distance of about 950m.	Red	A distance of about 950m.	Red	Not disputed and no change to scoring
Distance to Primary school	A distance of approximately 520m.	Red	A distance of approximately 520m.	Red	A distance of approximately 520m.	Red	Not disputed and no change to scoring
Current existing informal/formal recreational opportunities on site	Dog walkers and ramblers use the footpath on the Western boundary of the site.	Amber	There are no formal or informal recreational opportunities on or across the site. The footpath along the western boundary of the site which is used by dog walkers and ramblers would be unaffected by development proposals.	Green	None identified.	Green	The revised NDP scoring has been amended in line with our assessment.
Ancient monuments or archaeological remains	None identified.	Green	None identified.	Green	None identified, although Roman relics are anecdotally claimed to have been found in this location.	Green	Not disputed and no change to scoring
Any existing public rights of ways/bridle paths	Yes, a public footpath is found along the Western edge of the site so any development will need to protect the integrity of its setting. Development of the site will cause detriment to the ROW as it will change the open	Amber	There are no public rights of way across the site. There is a public footpath running along the western boundary of the site but this would be unaffected by any development	Green	Yes, a footpath to Newbold Verdon is found within the Western edge of the site so any development will need to protect the integrity of its setting. Development of the site will cause minor detriment to the ROW as it will require a minor re-	Amber	The NDP scoring remains unchanged.

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
	countryside feel.				alignment to allow site access and development will have a negative effect upon the current open countryside feel.		
<b>Gas and/or oil, pipelines and &amp;electricity transmission network (not water/sewage)</b>	Two large mobile telephone masts are found at the top section of the site. Re-siting of these masts may not be possible, subject to the contractual obligations in place.	Red	There are two mobile telephone masts within the site, close to Hunts Road. However, these are not insurmountable obstacles and could either be designed around or relocated.	Green	Two large mobile telephone masts are found at the top section of the site: these are not insurmountable obstacles and could either be designed around or more probably, relocated. Re-siting of an existing utility cable that passes across and through the site will certainly be required.	Amber	The scoring has been amended to amber. It is considered that it should be improved to green as the masts can be retained in development proposals and so will not require relocation.  It should not be considered 'certain' that utility cables would need to be re-sited. It may be possible to design around these where present.
<b>Any noise issues</b>	Some noise from the B582 which is a main road.	Amber	The only noise generator close to the site is the B582 but the noise caused by road traffic in this location is not sufficient to constrain or limit development (see planning permission granted in respect	Green	Noise is generated from the B582 which is a main road with a 50 mph speed limit in this out of settlement location. The noise will probably not constrain development	Amber	The revised NDP score remains unchanged and therefore in conflict with that for Barns Way.

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
			<p>of land to the immediate east).</p> <p><u>In comparison with Barns Way</u>: The assessment for Barns Way considers there to be no noise issues and therefore rates it Green in this respect.</p> <p>For Jelson's site however, it references its location in proximity to the B582 and considers this to present some noise with it being a main road. The site is therefore rated Amber.</p> <p>The Barns Way site is also adjacent to the B582 and so the assessments contradict one another.</p>		but mitigation measures may be necessary.		
<b>Any contamination issues</b>	None identified.	Green	None identified.	Green	None identified.	Green	Not disputed and no change to scoring
<b>Any known flooding issues</b>	The site is within flood zone 1; no previous flooding has been confirmed although given the scale of the development a Sustainable Urban	Green	The site is within flood zone 1; no previous flooding has been confirmed although given the scale of the development a Sustainable Urban Drainage System	Green	The site is within flood zone 1. No previous flooding has been confirmed although given the scale of the development a Sustainable Urban Drainage System (SUDS)	Green	Not disputed and no change to scoring



Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
	Drainage System (SUDS) would be required.		(SUDS) would be required.		will be required.		
<b>Any drainage issues</b>	The fall of the land means that a large pond is found adjacent to the Eastern boundary of the site, with water pooling. This will require professional assessment but it is thought that remediation is readily achievable through a SUDS solution.	Amber	There are no known drainage issues and there is sufficient land available to provide for sustainable as well as traditional drainage systems  [Note: Jelson has commissioned a flood risk and drainage assessment of the site and the results of this will be shared with the Parish Council in due course]	Green	There are no known drainage issues and there is sufficient land available to provide for sustainable as well as traditional drainage systems.	Green	Revised NDP rating amended to Green.
<b>Distance to nearest employment site.</b>	The large employment activities (Academy) are in excess of a 1km distance, from the centre of the site.	Red	The large employment activities (Academy) are in excess of a 1km distance, from the centre of the site.	Red	The large employment activities (Academy) are in excess of a 1km distance, from the centre of the site.	Red	Not disputed and no change to scoring

Sustainability Criteria	Original NDP Assessment	Original Rating	AY Comments provided to Parish	AY Rating	Revised NDP Assessment	Revised NDP Rating	AY Comments
Provisional Summary		Red-10 Amber-12 Green-7 <b>A RED SCORING SITE OF MINUS 3.</b>		Red- 7 Amber-0 Green-21 <b>A HIGH GREEN SCORING OF 14</b>		Red-7 Amber-12 Green-10 <b>A LOW GREEN SCORING SITE OF 3.</b>	The changes to some of the criteria are welcomed however as above, we believe there to be inconsistencies and errors in the scoring which should increase the Hunts Lane score or reduce the Barns Way score.

**Appendix III**

Appeal Decision for Land at Peckleton Lane, Desford



## Appeal Decision

Inquiry Held on 27-29 November 2019

Site visit made on 26 November 2019

**by David Wallis BSc (HONS) PG DipEP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18<sup>th</sup> December 2019**

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### **Appeal Ref: APP/K2420/W/19/3235401 Peckleton Lane, Desford, Leicester LE9 9JU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Glenalmond Developments Limited against the decision of Hinckley & Bosworth Borough Council.
  - The application Ref 18/01252/OUT, dated 7 December 2018, was refused by notice dated 29 July 2019.
  - The development proposed is outline planning application for up to 80 dwellings with associated works.
- 

### **Decision**

1. The appeal is allowed and outline planning permission is granted for up to 80 dwellings with associated works at Peckleton Lane, Desford, Leicester LE9 9JU in accordance with the terms of the application, Ref 18/01252/OUT, dated 7 December 2018, subject to the attached schedule of conditions.

### **Preliminary Matters**

2. The application is in outline form with all matters reserved except for access. Nonetheless, submitted with the application were indicative layout and landscape plans, which were referred to in evidence. I have considered the appeal on this basis.
3. In agreement with the main parties, I undertook an unaccompanied site visit prior to the opening of the Inquiry, following a walking and driving route prescribed to me in advance.
4. A Unilateral Undertaking, dated 29 November 2019, made under Section 106 of the Town and Country Planning Act 1990, was submitted to address affordable housing, highways, landscaping, education and open space provision. Both Leicestershire County Council (LCC), who had requested to appear at the Inquiry as a Rule 6 party, and the Council accepted that the proposed contributions relating to relevant infrastructure fully addressed their requirements. Only a contribution requested by the University Hospital Leicester was challenged by the Council as not complying with the Community Infrastructure Levy (CIL) Regulations 2010. I address this planning obligation later in my decision.

## **Main Issue**

5. The main issue is:

- the effect of the development upon the character and appearance of the landscape

## **Reasons**

### *Character and appearance of the landscape*

6. The appeal site comprises a single agricultural field to the south of and abutting the settlement boundary for Desford. The 3.76-hectare field is enclosed by hedgerows on all sides with trees at intermittent intervals, with a wider agricultural landscape to the east and a mix of community and employment uses to the south. Footpath R/99 passes through the appeal site on its southern boundary whilst footpath R/98 runs broadly parallel with the appeal site's eastern boundary, offset by a short distance.
7. The proposed development would be adjacent to existing housing in Meadow Way and Peckleton View, which are on lower ground than the appeal site. The roofs of these properties still appear in panoramic views of Desford as a whole because of the undulating topography. The appeal site is also adjacent to housing along Peckleton Lane, including Kingfisher Close, to the west, which I saw provides a relatively hard edge to the settlement wholly visible from Footpath R/99 where it crosses the appeal site.
8. Located outside of the current settlement boundary, it was common ground that the proposal would, on its face, conflict with Policies 7 and 8 of the Hinckley and Bosworth Core Strategy 2009 (the Core Strategy) and Policy DM4 of the Site Allocations and Development Management Policies Development Plan Document, adopted 2016 (the SADMP).
9. Neither the appeal site itself, nor the land that surrounds it, is subject to any national or local landscape designation. Whilst I am in no doubt that the landscape is valued by local residents, it was a matter of agreement between the parties that it is not a valued landscape in the terms of paragraph 170 of the National Planning Policy Framework 2019 (the Framework). Common ground was also reached insofar as the footpath network has a localised importance rather than being part of a national route or an attraction in its own right. I have no reason to come to a different view on the evidence before me.
10. The appeal site is a component of the Newbold and Desford Rolling Farmland Landscape Character Area (LCA) as defined in the Council's 2017 Landscape Character Assessment. The extent to which the appeal site represented the key characteristics of the LCA was a matter of dispute.
11. Whilst the appeal site contains large-scale views of the surroundings, these are largely influenced by Desford's townscape. The fields to the northeast find a backdrop against the Bosworth Academy whilst other features such as wind turbines, though not prominent, give a human element to the landscape. The expansive employment uses and sport facilities to the south of the appeal site, though not appreciable from within it, also have an urban influence on the landscape along the route of Peckleton Lane on the approach into Desford.

12. The appeal site benefits from a high degree of visual enclosure, being contained by historic hedgerows. Whilst there would be some cut back of the hedgerow fronting Peckleton Lane to facilitate the proposed access, this would be of limited scale given the overall length of the hedgerow. The Council's landscape witness, whilst raising concern that the development would feature on the skyline above the eastern boundary hedgerow when viewed from Footpath R/98, recognised that after 10 years the visual effect on the locality from the proposal would be moderate even during the winter months. In my view the degree of containment would lead to any visual effects of the development being highly localised.
13. This does not mean that the effects would not be adverse. Indeed, the development proposed would clearly have a permanent adverse impact on the landscape character of the appeal site itself. Where the permissive path R/99 enters and crosses the appeal site, the visual change would be stark. The Council would nonetheless have control over the final layout of any residential scheme and its associated landscaping, which could ensure built form is kept away from the footpath and planting undertaken to soften its appearance.
14. The townscape view of Desford from within the appeal site would be lost from Footpath R/99 and I do not accept that the spire of St Martins Church would be visible to the same extent post-development as it is now. However, views of the church spire, which are not a key characteristic of the LCA, would remain to users travelling towards the appeal site from the south on Footpath R/99 as well as the wider footpath network. The loss of views within the site would again be highly localised.
15. The degree to which the appeal site's landscape quality was heightened because it constituted Best and Most Versatile agricultural land (BMV) was disputed. BMV is regarded for its productive qualities in an economic context, which I shall explore later in this decision. In my view, the ability to grow different types of crops, which would be grown on a transitional and seasonal basis including periods where the land is 'empty' through harvest or fallow, holds very limited weight in contributing to landscape quality. BMV is certainly not responsible for the key characteristics of the landscape stated in the LCA.
16. Through landscaping and the creation of public open space, including the areas indicatively shown for sustainable urban drainage features, the proposal would enhance biodiversity on the appeal site. I acknowledge the indicative layout shows a physical gap between the existing edge of the settlement and the proposed dwellings within which the public open space would sit. From Footpath R/98 the proposed development could be perceived as being separate from the existing settlement. However, the gap would only be perceptible directly due east from the appeal site because of the existing housing in Meadow Way being visible in the same skyline views and thus I do not find the development would be seen as being out of context in this regard.
17. To conclude, the proposed development would cause some harm through the loss of a small part of the landscape character type identified. However, given the visual containment of the site, and with the use of conditions to secure the retention and enhancement of existing boundary vegetation, I am satisfied that the development would not be unduly intrusive to the wider countryside. As such, the harm would be limited. Nevertheless, this harm would mean that there would be some conflict with Policy DM4 of the SADMP.

18. There was some discussion as to whether Policy DM4 is consistent with the Framework, inasmuch as it sets out at the start that it seeks to protect the intrinsic character, beauty, open character and landscape character of the countryside. However, it is clear that it is protection from unsustainable development that is sought, rather than a blanket protection of all countryside. In that regard, I find no conflict with the Framework, which sets out a presumption in favour of sustainable development. However, the matter of whether a development can be considered sustainable or not is a product of the overall planning balance, a matter to which I return later.

## **Other Matters**

### *Highways and Accessibility*

19. The Framework 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.
20. In respect of highway safety, the application was accompanied by a Transport Assessment and a Road Safety Audit undertaken using established methodologies. A study of accident data demonstrates that there are no particular safety concerns on the highway network in the vicinity of the appeal site that warrant mitigation as part of the scheme.
21. The vehicular access into the appeal site would be engineered with wider visibility splays than necessary for a 30mph zone, in recognition of recorded vehicular speeds above the speed limit on this part of Peckleton Lane. This design would improve visibility and provide for a safer point of egress from the proposed development. Whilst sun glare would affect visibility, this phenomenon is already experienced on the local roads and driver behaviour would be more cautionary in such conditions in any event.
22. There is currently only grass verge on the eastern side of Peckleton Lane where people access and egress Footpath R/99. Pedestrians, for safety reasons, would likely immediately cross to the western side of Peckleton Lane to where a made footpath exists. Whilst the primary school is on the western side of Desford, it was confirmed in evidence that the walking route is via Parkstone Road, which is some distance to the north of the appeal site. Therefore, pedestrians from the proposed development would have no compelling reason to immediately cross Peckleton Lane at the point where they would exit the proposed development. Neither the Council nor the Highway Authority raise pedestrian safety concerns and, on the evidence before me, I do not find reason to come to a different view.
23. With regard the wider highway network, there is an existing issue with traffic flows at the Desford Crossroads, which is currently a traffic light junction. A funding programme from LCC is in place to deliver a roundabout junction, which is projected to reduce journey times from 221 seconds to 10 seconds per vehicle. The proposal would contribute to the funding of this improvement, although the roundabout would not likely be in place until 2026. In any event, the proposed development of up to 80 dwellings would not contribute significant numbers of vehicles into existing traffic flows to cause a severe impact on the functioning of this junction.

24. On my site visit I observed some congestion at the Peckleton Lane, Kirkby Road, High Street junction caused in part by on-street parking. The parked vehicles appeared to be either overspill from the public car park just north of the junction or belonging to residents living in the vicinity. Evidence was given, albeit unsubstantiated, that vehicles currently divert around the junction through nearby housing areas to access the B582.
25. Whilst the parties are in dispute about the assignment of vehicles to this junction, the proposed development would not contribute significant volumes of traffic to the detriment of the junction's performance. The scale of any delays to motorists would not, in my view, be substantially worsened through the proposal. Also, given that most facilities are well within acceptable walking distances of the appeal site, it would be unlikely that the proposed development would intensify the demand for the public car park or for on-street parking space. It is reasonable to suggest occupiers of the proposed development would walk to the shops when evidence showed that Footpath R/99 is a well-used walking route for locals.
26. With Desford being described as a key rural centre in the Core Strategy, there is recognition that the village has a range of services and facilities available. A regular bus service is available and whilst it might not provide a late-night service into Leicester, vehicles making such a movement would be doing so out of peak times when traffic flow would be at a faster rate. The proposed development would be able to utilise the existing public transport network.
27. At the inquiry the concepts of a one-way system being introduced through Desford and potentially a bypass to the south were raised in evidence, but neither proposal was purported to be at any meaningful stage of discussion and so I afford such matters very limited weight.
28. Whilst the proposed development would cause additional vehicular movements on the local roads, I conclude that it would not give rise to severe residual impacts on the highway network. On the issue of highways and accessibility, I conclude that the proposal would be acceptable.

*Local residents' concerns*

29. The construction period for any development would generate the potential for noise and disturbance for a time-limited duration. Adequate controls through condition or through other legislation would be available to the Council to mitigate against any noise impacts during that phase of the development.
30. In respect of ecology, the submitted Ecological Appraisal provides a suitable assessment of the potential for fauna and flora at the appeal site as well as a range of mitigation measures. I am satisfied that, subject to a condition ensuring implementation of the recommendations in the Ecological Appraisal, the proposal would not have an adverse effect on local ecology.
31. The strip of land proposed across the northern boundary of the site would provide separation between existing and proposed housing areas. Evidence was heard at the inquiry relating to how the land would be sculpted on the west side to ensure properties are on a comparable level to those dwellings currently fronting Peckleton Lane. Consequently, I find that there would not be any overbearing impact from the development.



32. Written concerns about the potential for the proposed development to affect future plans at the nearby employment areas were received and briefly explored at the inquiry with the main parties. No strong views were put forward and it is my view that the proposals would not prejudice any other development projects in the area, which would be subject to their own planning considerations.

### *Infrastructure and Obligations*

33. As mentioned at the outset, the appeal is accompanied by a planning obligation in the form of a Unilateral Undertaking. Together, the Community Infrastructure Levy (CIL) Regulations 2010 (Regulation 122) and paragraph 56 of the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms; directly related to the development; and be fairly and reasonably related in scale and kind to the development. Should I determine that any obligation provided for does not comply with CIL Regulations 122 and so attach no weight to that obligation in determining the appeal, then the Undertaking includes a provision whereby that obligation would not be enforceable and would cease to have effect.
34. Subject to the usual contingencies, the Undertaking sets out covenants that would be imposed on the owners in favour of the Borough Council. This includes provision of affordable housing to a policy-required tenure split with a scheme to be submitted to the Council. It also binds the owners to providing and then transferring the on-site open space area to a management company, together with a maintenance contribution or, in the alternative, requesting that either the Borough Council or the Parish Council maintain it.
35. Covenants would also be imposed on the owners in favour of Leicestershire County Council, principally in respect of highway contributions but also towards primary and secondary education, library facilities and a monitoring fee.
36. At the request of LCC the Undertaking includes a monitoring fee, which was confirmed at the Inquiry as not requiring to be justified against the CIL Regulations. The inclusion of a monitoring fee is a matter of planning judgement. At up to 80 dwellings, the scheme would likely be delivered in phases and the other clauses in the undertaking are worded to reflect various milestones in the delivery of housing releasing various contributions. I therefore find the payment of a monitoring fee would be necessary to make the development acceptable in planning terms.
37. I recognise that the modest scale of the development means that any corresponding increase in use of the civic amenity site in Barwell would be modest. However, the evidence of LCC is that the facility already struggles to cope with existing demand, especially at peak times. To accommodate the increase in demand, I consider that a contribution towards the necessary works is justified in this case, as set out in LCC's statement.
38. In relation to the library contribution, the LCC statement advises that the development would place increased pressure on the limited services of Desford library. There would be a need to increase resource materials such as books, audiobooks, newspapers and reference documents. To be justified, a financial contribution must assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. In this instance I find that a

development of up to 80 dwellings would clearly have the potential to increase demand on library services, and the evidence before me demonstrates that the existing resources at the library would struggle to meet the demand. The contribution is justified therefore against the CIL Regulations.

39. The Council's CIL compliance statement sets out that the contribution towards the University Hospital Leicester would be unlawful with regard to regulation 122 (2) of the CIL Regulations as it is unnecessary, not relatable to the proposed development and unreasonable. On review of the responses from the University Hospital on this matter, I conclude that there is insufficient evidence from the consultee to warrant or justify the contribution sought against the CIL Regulations and as such I afford this obligation no weight in my determination of this appeal.
40. The other provisions, namely the provision of affordable housing, arrangements relating to the open space area, contributions towards education and highways infrastructure are all fully justified as set out in LCC's submission and the CIL compliance statement and meet the relevant tests. LCC, the Council and the Rule 6 party were satisfied that such contributions would mitigate the effects of development upon local infrastructure. I have therefore taken them into account in coming to my decision.

#### *Planning Balance*

41. For the purposes of this appeal, the most relevant development plan policies are contained in the Core Strategy and the SADMP. Whilst the Council is in the process of preparing a replacement Local Plan, it is still at a relatively early stage such that only very limited weight can be afforded to it and neither party relied on it in making their respective cases. The Desford Neighbourhood Plan has not yet been subject to Regulation 16 consultation and evidence was heard that substantive unresolved objections remain even at the current stage of preparation. I afford very limited weight to this emerging plan as a result.
42. The Council can only demonstrate a deliverable housing land supply of 4.15 years although I recognise that there has been no significant under-delivery of housing in recent years when measured against relevant requirements. It was also confirmed that, in granting planning permissions on sites beyond development boundaries, the Council has been applying its policies flexibly to ensure that its housing supply has remained strong. Be that as it may, the Council now finds itself in a position where it cannot currently demonstrate a five-year supply of housing land against its current requirement, and the shortfall is significant. Although a very late submission to the Inquiry suggested a planning obligation had been signed following a resolution to grant permission for 200 houses, my conclusions are not altered.
43. As a consequence, with regard to paragraph 11 of the Framework and its associated footnote 7, the policies which are most important for determining this application are to be considered out-of-date, thus engaging the so-called tilted balance. In such circumstances, permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits.
44. I have noted some conflict with Policy DM4 due to adverse impacts of the development upon landscape character, albeit such harm is tempered to a localised level as explained earlier. Although there is conflict with Core Strategy

- Policies 7 and 8, these are policies rendered wholly out-of-date in view of the lack of a five-year housing land supply. Whether or not the spatial strategy has failed, as suggested by the appellant, does not change this position nor the pursuit of sustainable development set out in paragraph 11 of the Framework.
45. A case was made that Policy DM10 'Development and Design' is applicable and that the proposal is in conflict with its terms. The reasoning was two-fold being firstly that the proposal would have a poor layout causing a loss of outlook to residents of nearby dwellings and secondly that the proposal would not complement or enhance the character of the area.
  46. On the first issue, DM10 does not appear on the face of the decision notice and it was explicit common ground between the parties that there was no harm to the living conditions of nearby occupiers with regard to outlook. On the second issue, the overall design and landscaping strategy would be subject to reserved matters submissions. The Council's suggested conflict with DM10(c) is therefore of limited weight given that full details of scale, layout, density, mass, design, materials and architectural features were not before the inquiry for determination. I therefore give very limited weight to this policy and in any event find no conflict with its terms.
  47. The proposal would provide both market and affordable housing contributing to economic growth and a prosperous rural economy, that the Framework attributes significant weight towards. The dispute between the parties as to whether the proposal would meet local needs in Desford does not detract from the fact that there is a borough-wide shortfall that has no immediate remedy in a plan-led system. The fact that Desford has already seen housing growth in excess of the minimum requirement set out in the CS demonstrates this and does not preclude any further development if found to be sustainable. I do not therefore reduce the weight to the economic benefits of housing in this instance, nor the social benefit of affordable housing provision.
  48. The loss of circa 9 acres of BMV would only have a marginal economic impact on a much wider agricultural holding purported as being over 1,000 acres and as such only carries limited weight in the balance. Its loss would be clearly outweighed by the economic benefits of the development itself.
  49. The proposals incorporate obligations to support local infrastructure and this investment has both economic and social benefits to the community. There would also be some environmental benefits because of biodiversity gains through additional planting and provision of open space, and these are to be given moderate weight because of their modest scale.
  50. Given that Footpaths R/99 and R/98 are well used routes by the local residents, there is every expectation that prospective occupiers of the proposed development would access services by walking and cycling. I note the appeal site is not a preferred location for development in the emerging Neighbourhood Plan, but this does not diminish the site's accessibility credentials.
  51. Whilst other appeal decisions have been presented to me on both sides, none of the examples have the same landscape or spatial characteristics as the current appeal site. I confirm, in this regard, that I have considered the development before me on its own merits.

52. In my view, the limited localised landscape harm would not significantly and demonstrably outweigh the significant benefits of the proposal when assessed against the Framework as a whole. In these circumstances, I consider that the appeal scheme would comprise sustainable development and the presumption in favour of such, as set out in the Framework, applies. That is a significant material consideration that outweighs any conflict with some elements of the development plan. Therefore, for the reasons set out above, I conclude on balance that the appeal should succeed.

### **Conditions**

53. Possible conditions were discussed in detail at the Inquiry, on a without prejudice basis, in the light of the related advice in the Framework and the Government's Planning Practice Guidance. The conditions and wording set out in the attached schedule reflect that discussion and are based on the wording in Inquiry Document 10.
54. Conditions 1 and 2 are necessary to ensure the reserved matters application comes forward in a timely manner, with the appellant committing to a shorter submission period in light of the housing shortfall. Condition 3 is for certainty as to the access arrangements hereby permitted whilst condition 4 is necessary to ensure protection of the hedgerows that contain the appeal site. Condition 5 seeks to mitigate the visual effect of the development whilst 6 is reasonable in the interests of ensuring a policy compliant housing mix to meet local needs.
55. Conditions 7 and 8 are necessary to bring forward suitable landscaping works and biodiversity improvements. Conditions 9 and 10 are necessary to address any concerns regarding noise, dust, vibration and highway safety during the construction phase of the development.
56. Condition 11 is necessary to ensure continued operation of and safety for those pedestrians using the public footpaths at the appeal site. Condition 12 is reasonable given the topography of the site and to limit the risk of surface water flooding.
57. Condition 13 is necessary and relevant to ensure that important species are protected and mitigated for using the most up-to-date evidence. Conditions 14 and 15 are relevant and required in the interests of highway safety for all users of the highway and the development.
58. Condition 16 is necessary so as to maintain presence of the public footpath network where it crosses the appeal site in the interests of retaining connectivity to the countryside. Condition 17 is reasonable to require appropriate facilities to be in place to manage waste in the public interest.
59. A number of conditions listed above constitute pre-commencement conditions for which the appellant's agreement must be obtained prior to imposition. The conditions are based upon those formulated during the Inquiry and document ID10 produced at the Inquiry by both parties contains the appellant's written agreement accordingly.

## Conclusion

60. In light of the above, I determine the appeal should be allowed subject to the terms of the unilateral undertaking and to the attached schedule of conditions.

*David Wallis*

INSPECTOR

## Schedule of Conditions

- 1) Approval of the following details (hereinafter called "reserved matters" shall be obtained from the local planning authority in writing before any development is commenced:
  - i) The layout of the site including the way in which buildings, routes and open spaces are provided and the relationship of these buildings and spaces outside the development;
  - ii) The scale of each building proposed in relation to its surroundings;
  - iii) The appearance of the development including the aspects of a building or place that determine the visual impression it makes;
  - iv) The landscaping of the site including treatment of private and public space to enhance or protect the site's amenity through hard and soft measures.

The development shall be implemented in accordance with the approved details and retained as such thereafter.

- 2) Application for the approval of reserved matters shall be made within 18 months from the date of this permission and the development shall be begun not later than one year from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the approved Location Plan, Access Plan – T18555/002/Rev B, T18555/001/Rev A
- 4) No more than 80 dwellings shall be constructed on the site including no development within 5 metres of any of the boundary hedgerows or within the Root Protection Areas of Mature Trees within the hedgerows, whichever is the greater.
- 5) Any reserved matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings in relation to existing ground levels. The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.
- 6) Any reserved matters application shall be accompanied by a scheme which details the proposed market housing mix for the development

which should be in accordance with the Council's adopted Development Plan and the housing needs of the area. The development shall then be completed in accordance with the approved details.

- 7) Development shall not commence until details of all trees, shrubs and hedges to be retained, including any trees located outside but adjacent to the site boundary, together with the means of protecting them from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.
- 8) No development shall commence on site until a Landscape and Ecological Management Plan (LEMP) for the site which shall set out the site-wide strategy for protecting and enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed, has been submitted to the local planning authority for their approval in writing. The submitted plan shall include all retained and created habitats including SUDs. Development shall be implemented and thereafter maintained in accordance with the approved Management Plan.
- 9) No development shall commence on site until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority and the approved details shall then remain in force throughout the construction period. 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 plan shall detail how such controls will be monitored and a procedure for the investigation of complaints. Site preparation and construction hours shall be limited to between 0730 to 1800 Monday to Friday and 0800 to 1300 on Saturdays. There shall be no working on Sundays and Bank Holidays.
- 10) No development shall commence on the site until such time as a construction traffic management plan, including as a minimum detail of the routing of construction traffic, wheel cleansing facilities, vehicle parking facilities and 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.
- 11) No development shall commence on site until a Footpath Management Plan has been submitted to and approved in writing by the local planning authority. Such a plan shall include details of temporary diversion, fencing, surfacing, signing and a time table for provision. The approved details shall then be implemented in full on site prior to the commencement of development and retained throughout the construction period.
- 12) No development shall commence on site until a Surface Water Management Scheme has been submitted to and approved in writing by the local planning authority. The submitted scheme should include details of the following:

- i) Infiltration testing to confirm (or otherwise) the suitability of the site for the use of infiltration as a drainage element and should ensure that surface water does not drain into the Public Highway;
- ii) Management of surface water on site during construction of the development; and
- iii) The long-term maintenance of the sustainable surface water drainage system within the development.

Development shall be carried out in accordance with the approved details and retained as such thereafter.

- 13) In the event that development is not commenced by June 2020, no development shall take place until details of further surveys to establish the presence of badgers which could be affected by the proposed development, and a mitigation/compensation scheme if required, have been submitted to and approved in writing by the local planning authority. Mitigation/compensation works shall be carried out in accordance with the approved scheme.
- 14) No part of the development hereby permitted shall be occupied until such time as the access arrangements and gateway treatment shown on approved Drw No: T18555/002/Rev B and T18555/001/Rev A have been implemented in full.
- 15) No part of the development hereby permitted shall be occupied until such time as the offsite works which includes the extension of the public footpath along Peckleton Lane and the crossovers as shown on approved Drw No: T18555/002/Rev A and T18555/001/Rev B have been implemented in full.
- 16) No development above foundation level shall commence until a signing and waymarking scheme in respect of the Public Right of Way R99 has been submitted to the local planning authority for approval in writing. The approved scheme shall then be carried out in full prior to the occupation of the first dwelling hereby approved and retained as such thereafter.
- 17) Prior to the occupation of any of the dwellings hereby approved, a scheme which makes adequate provision for waste and recycling storage of containers and collection across the site has been submitted to and approved in writing by the local planning authority. The details should address accessibility to storage facilities and confirm adequate space is provided at the adopted highway boundary to store and service wheeled containers. The scheme shall then be implemented in accordance with the approved details and retained as such thereafter.





- ID4 Opening Statement on behalf of the Council
- ID5 Personal Details and Supplementary Notes of Bernard Grimshaw
- ID6 Community Traffic Survey
- ID7 Highways Technical Note 2 – Journey Time Runs
- ID8 Council response to the Desford Neighbourhood Plan Pre-Submission Draft
- ID9 Bus timetables
- ID10 Updated suite of conditions
- ID11 Closing statement for the Council
- ID12 Closing statement of the Appellant