TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Comments on the LPA Statement of Case prepared for Mr J Singh against the refusal of Hinckley and Bosworth Borough Council to grant planning permission for the change of use from retail to hot food takeaway and retention of external extractor flue (retrospective) 102 Rugby Road, Hinckley, LE10 0QE.

The application Ref 10/00241/FUL was refused by notice dated 17th May 2010.

27th September 2010

APP/K2420/A/10/2131597/NWF

In the report to Committee and the Statement of Case, the LPA describe the character of the area as both predominantly residential and also mixed use.

For the avoidance of doubt, attached is the committee report for the adjacent derelict Flude Factory that was granted permission for a substantial mixed use regeneration scheme on the 6th April 2010. The scheme is referred to in paragraph 2.5 in the Grounds of Appeal and paragraph 2.2 of the Statement of Case.

Under the heading “Impact on residential amenity” the Flude Factory committee report states:

“Situated to the north and north eastern boundary of the site are the rear gardens to a number of properties on Clarendon Road, Fabius Close, Coley Close, Royal Court and 102 Rugby Road. Willowbank Road serves as the access point to the car park and residential element of the site. It is proposed to retain and enhance an existing car park, which served the Fludes factory to facilitate the offices within the new development. Given the layout of the proposal and existing use of the site the development is not considered to result in any significant impact on the residential amenity of those properties. Situated to the west of the site are properties on the opposite side of Rugby Road. Concerns have been raised in respect of the height and potential overlooking from the commercial (mixed use) buildings. Again, given the layout and design of the proposal together with the distance between the new development and properties located on Rugby Road (with the busy road falling between) it is not considered that the development would result in any significant harm to the residential amenity of those properties.

A Noise Impact Assessment undertaken by WBM was submitted with the application. The report considered both the proposed and existing uses on site and concluded that road traffic is the dominant noise source. Mitigation measures have been incorporated into the design of the scheme and will be controlled by conditions. No concerns have been raised following consultation with Environmental Health Officers.”

It is unreasonable of the LPA to maintain the character of the area is predominantly residential when viewed in relation to the mixed use redevelopment of the Flude site to which both parties refer.

Item: **02**

Reference: **09/00810/FUL**

Applicant: **Mr Richard Anderson**

Location: **Flude House Rugby Road Hinckley**

Proposal: **MIXED USE DEVELOPMENT INCLUDING RETENTION, REFURBISHMENT AND EXTENSION TO EXISTING BUILDINGS AND DEMOLITION OF FACTORY BUILDINGS TO CREATE 50 DWELLINGS AND 6 APARTMENTS WITH ASSOCIATED PARKING**

Introduction:-

This application proposes the redevelopment of a former manufacturing site on the corner of Hawley Road and Rugby Road for a mixed use development comprising a range of commercial uses (A1, A2, A3, D1, and B1) and 56 units of residential development and associated works.

The application site is 2.14 hectares and lies on the south west of Hinckley Town Centre. The site is located on a prominent location on the gateway into the town centre. The site is predominantly vacant and currently comprises various buildings which previously provided 758sqm of office development, 9,778sqm industrial development and 1,914sqm of warehousing. A variety of uses including residential, commercial, and retail bound the site. The land levels across the entire site are varied with a rise of approximately 3 metres from west to east along Willowbank Road with the existing buildings constructed on a series of plateaus separated by retaining walls.

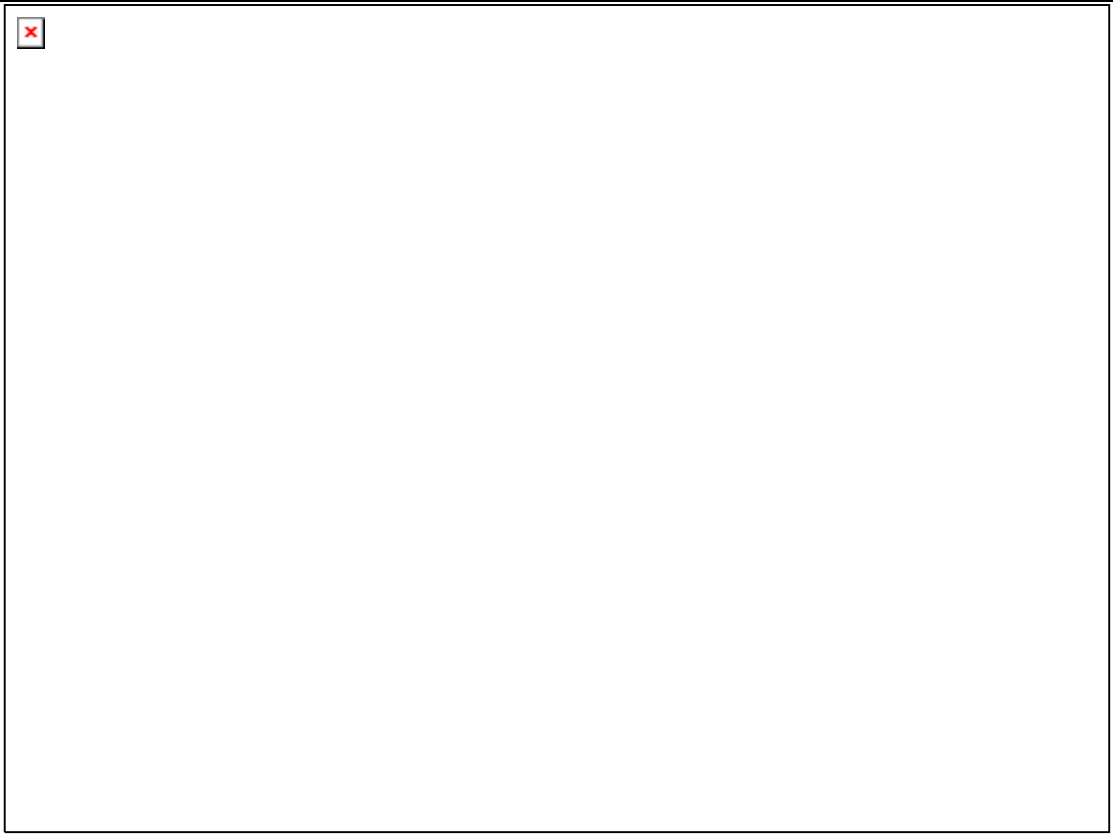
A number of technical reports/assessments were submitted with the application they include:

A Design and Access Statement, Affordable Housing Statement, Transport Assessment, Travel Plan, Ecology/Arboricultural Statement, Economic Viability Statement, Flood Risk Assessment, Environmental Risk Assessment.

The Design and Access Statement details the pre-application engagement steps that were undertaken and sets out the design principles that informed the layout of the scheme. It explains the complex landownership of the site, how this has established the phasing scheme enabling delivery, and a justification for the uses proposed.

History:-

05/01207/OUT	Residential development and associated works	Refused 25.01.2006
98/00559/OUT	Erection of a food store with vehicular and pedestrian access, car park and service	Dismissed at Appeal



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Consultations:-

No objections have been received from:-

E-On
Central Networks
The Leicestershire Constabulary Crime Reduction Officer.

No objection subject to conditions has been received from:-

Director of Environment and Transportation (Highways)
Severn Trent Water
Environment Agency
Head of Community Services (Land Drainage)
Head of Community Services (Pollution).

As a result of the Developer Contributions consultation, Leicestershire County Council has the following comments:-

a) Chief Executive (Ecology) has no objection but recommends that the developer be required to incorporate various measures to improve habitat opportunities for wildlife within the development.

b) Director of Children and Young People (Education) states that there is surplus capacity in the local high school however, requires for an education contribution of £237,000 for Westfield Infant and Junior Schools and John Cleveland College based on 50 houses with two or more bedrooms.

c) Head of Adults and Communities (Libraries) requires developer contributions of £3,130 towards the costs of an enhanced programme of refurbishment and improvements to facilities including equipment and other library materials.

d) Director of Environment and Transport (Civic Amenity) requires developer contributions of £2,542 for new or improved Civic Amenity Site Infrastructure for the nearest site at Barwell.

Chief Executive, LCC (Ecology) agree with the surveyor's statement that there are no constraints to the removal of the buildings and the trees on the site.

Head of Business Development and Street Scene Services (Waste Minimisation) provides details relating to waste and recycling areas.

Press and site Notices posted, neighbours notified. 4 letters of representation have been received objecting on the following grounds:-

- Unsuitable occupation of the landmark building;
- Vehicle movements/traffic congestion;
- Car parking provision;
- Highway safety;
- Pollution;
- Flooding;
- Privacy;
- Higher than existing building;
- Impact of commercial premises on neighbouring properties through noise and disturbance;
- Disturbance during construction;
- Imposing to surrounding area;
- Deliveries to existing businesses would be severely disrupted during construction;
- Objections from future residents about the deliveries would occur and make continuance of business at site impossible;
- Control over deliveries;
- Open space provision;
- LPG gas on All Hire premises should be considered;
- Requires more screening by the planting of trees on Hawley Road;
- Suggest climate assessment;
- CCTV should be restricted to omit surrounding properties and children;
- Proximity;
- Tenure;
- Antisocial behaviour;
- All Hire site left out of redevelopment site;
- Existing business detrimental to new development;
- Access and security of existing business if piecemeal.

6 letters of representation have been received stating:-

- Action is required with condition of site;
- Existing issues with dog fouling on the site;
- Requires demolition and rebuild;
- Support for redevelopment but should consider traffic generation;
- Development is quite sympathetic to the privacy needs of local residents;

- Request for vehicular access to properties (11-29 Clarendon Road) for parking or permit holder only parking;
- Request that Angus site be removed from application;
- Request a brick wall be built 2m-3m high to screen Angus site from development;
- Request 10 metres separation between Angus site boundary and development;
- Request for widening of Willowbank Road leading to the car park;
- Distinct improvement on present eye-sore;
- Rights to properties on Coley Close should be maintained;

At the time of writing the report no comments had been received from :-

Leicestershire Fire and Rescue
Primary Care Trust
Director of Corporate and Scrutiny Services (Green Spaces).

Policy:-

Central Government Guidance

Planning Policy Statement 1(PPS1): Delivering Sustainable Development refers to the delivery of sustainable development through the planning system. It promotes the more efficient use of land through higher density, mixed use development, and the re-use of suitably located previously developed land and buildings.

Planning Policy Statement 3 (PPS3): 'Housing' sets out the national planning policy framework for delivering the Government's housing objectives. Paragraph 10 seeks to ensure that housing developments are in suitable locations, which offer a good range of community facilities, with good access to jobs, key services and infrastructure. Paragraph 12 states that good design is fundamental to the development of high quality new housing. Paragraph 16 outlines matters to consider when assessing design quality and includes the extent to which the proposed development is easily accessible and well-connected to public transport and community facilities and services.

Planning Policy Statement 4 (PPS4): Planning for Sustainable Economic Growth incorporates the town centre and retail policy statements contained in PPS6 and the policies on economic development in urban and rural areas in PPG4, PPG5 and PPS7 into a single PPS. PPS4 places retail and other town centre development in a wider context, as 'economic development' which provides employment, generates wealth and/or economic growth.

Planning Policy Statement 9 (PPS9): 'Biodiversity and Geological Conservation' includes the broad aim that development should have minimal impacts on biodiversity and enhance it where possible.

Planning Policy Guidance 13 (PPG13): Transport promotes more sustainable transport choices both for carrying people and for moving freight.

Planning Policy Statement 25: (PPS25) Development and Flood Risk sets out the Government's policy on development and flood risk.

Government Circular 05/2005: Sets out the Secretary of State's policy on Planning Obligations, and would in practice be given significant weight by an Inspector on appeal.

The Circular advises, inter alia, that in some cases, perhaps arising from different site specific circumstances, it may not be feasible for the proposed development to meet all the requirements set out in local, regional and national planning policies and still be economically viable. In such cases, and where the development is needed to meet the aims of the development plan, it is for the local authority and other public sector agencies to decide what is to be the balance of contributions made by developers and by the public sector infrastructure providers in its area.

The Homes and Communities Agency (HCA) Good Practice Note: Investment and Planning Obligations, Responding to the Downturn: expands on the current economic position, the problems facing the development industry and the ways in which local planning authorities should and can encourage development. This guidance encourages a flexible approach to ensure development continues.

Regional Policy

The East Midlands Regional Plan (adopted March 2009) provides the development strategy for the East Midlands up to 2026. Policy 2 promotes better design including highway and parking design that improves community safety. Policy 3 directs development towards urban areas with priority being given to making the best use of previously developed land. Policy 43 seeks to improve safety across the region and reduce congestion.

Local Policy

The site is identified in the adopted Hinckley and Bosworth Local Plan as an employment site, in The Hinckley Town Centre Renaissance Masterplan and the Hinckley Town Centre Area Action Plan (AAP) (Proposed Submission Document) as a potential mixed use development site.

Local Development Framework - adopted Core Strategy (2009)

Policy 1: Development in Hinckley supports Hinckley's role as a sub-regional centre and sets out the criteria to achieve this.

Policy 5: Transport Infrastructure requires interventions to support the additional development proposed in and around the Hinckley sub regional centre.

Policy 15: Affordable Housing sets the criteria for the proportion of affordable housing.

Policy 16 seeks to ensure that all new residential developments provide a mix of types and tenures appropriate to the applicable household type projections.

Policy 19: Green Space and Play Provision sets the standards for green space and play provision.

Policy 20: Green Infrastructure sets strategic interventions

Policy 24: Sustainable Design and Technology sets the criteria for residential homes and office development.

Adopted Hinckley and Bosworth Local Plan (2001)

Policy BE1 seeks to ensure a high standard of design in order to secure attractive development and to safeguard and enhance the existing environment.

Policy EMP1 seeks to actively retain existing employment sites for employment purposes. The site is allocated as EMP1(b) which considers other employment activities or alternative uses on their merits.

Policy NE2 'Pollution' states that planning permission will not be granted for development which would be likely to cause material harm through pollution of the air or soil or suffer material harm from either existing or potential sources of air and soil pollution.

Policy NE12 'Landscaping Schemes' states that development proposals should make provision for further landscaping where appropriate.

Policy NE14 'Protection of surface waters and groundwater quality' protects the water environment.

Policy T5 refers to the application of appropriate standards for highway design and parking targets for new developments unless a different level of provision can be justified. Leicestershire County Council's document 'Highways, Transportation and Development' provides further design guidance.

Policy IMP1 requires contributions towards the provision of infrastructure and facilities to serve the development commensurate with the scale and nature of the development proposed.

Policy REC2 requires new residential development to provide outdoor play space for formal recreation.

Policy REC3 requires the appropriate level of open space to be provided within development sites. Alternatively, a financial contribution can be negotiated towards the provision of new recreational facilities within the vicinity of the site or towards the improvement of existing facilities in the area.

Other Policy Documents

The Hinckley Town Centre Renaissance Masterplan (Area 6) identifies the site for potential mixed use development incorporating new residential and commercial development providing a new gateway to the town centre.

Hinckley Town Centre Area Action Plan (Proposed Submission Document) Policy 6 - Rugby Road/Hawley Road sets the key principles and key requirements of the site.

The Borough Council's Supplementary Planning Document: Hinckley Town Centre Strategic Transport Development Contributions provides guidance on infrastructure requirements.

The Borough Council's Supplementary Planning Guidance on New Residential Development provides further guidance for developers on density, design, layout, space between buildings and landscaping/boundary treatments along with highways and parking.

The Play and Open Space Guide Supplementary Planning Document (2008) provides further guidance to developers in respect of the different types of open space and the level of financial contributions required.

Leicestershire County Council's document 'Highways, Transportation and Development' provides further highway design guidance.

Appraisal:-

The main considerations with regard to this application are the principle of development, design and conformity with the masterplan, transport, affordable housing provision, viability and infrastructure requirements and impact on residential amenity,

Principle of development

The site is allocated for employment in the adopted Hinckley and Bosworth Local Plan, it is identified as a site for a mixed use development in the Hinckley Town Centre Renaissance Masterplan (Area 6) and Policy 7 of the Hinckley Town Centre Area Action Plan (Proposed Submission Document), therefore the principle of the development is considered acceptable.

Furthermore, it should be noted that this site has been vacant for a considerable period of time and is a key regeneration site in the Hinckley Town Centre on a prominent entrance into the town, as such a scheme that brings about the regeneration of the site and an environmental improvement should be supported in principle.

Design and Conformity with the Masterplan

The ownership of the site is complex; the applicant owns the former H. Flude & Co (Hinckley) Limited site (0.22ha) including car park however, three other land owners have control over the remainder of the masterplan site (Huckerby 0.22ha, Alton 0.13ha and Angus 0.14ha). Whilst the applicant is not in control of the entire site a comprehensive scheme for the re-development of Area 6 has been submitted.

The application site layout embraces the principles set out in the Hinckley Town Centre Renaissance Masterplan. It achieves four of the five key aims set out in the masterplan which include:-

- Mixed use development including new residential development and commercial development;
- A landmark building at the junction of Rugby Road and Hawley Road;
- Commercial uses facing Hawley Road;
- Residential uses facing onto Willowbank Road.

The key principles of the Renaissance Masterplan are echoed in the proposed Town Centre AAP.

The mix of uses proposed include 4,400sqm of B1 commercial space and 1,307sqm of flexible use space which includes A1 (Shops), A2 (Financial and Professional Services), A3 (Restaurants and Cafes), D1 (Non-residential institutions) and sui generis. The economic viability statement submitted with the application sets out the

justification for the A3 and A1 units on economic viability grounds and the consultant's response to the report supports this view. In addition the Town Centre Area Action Plan, Policy 7, seeks active frontages to Hawley Road. The proposed ground floor units seek to provide those active frontages and encourage public interaction and permeability. It is considered that subject to the careful control of the uses, through condition, particularly limiting the floor area of those uses and the A1 use solely for the sale of bulky goods, the flexible uses would be acceptable.

The Masterplan identifies the highly prominent corner at the junction of Hawley Road and Rugby Road as an opportunity for a high quality, landmark building in order to fully optimise a key strategic "gateway" opportunity into Hinckley. It suggests buildings of 4 and 5 storeys in height in order to achieve this. The proposal provides a landmark corner, ranging between 3-5 storeys in height, which is achieved through the retention, refurbishment and extension of both the existing Flude and substation buildings. This corner element proposes a variety of architectural styles incorporating a mix of materials including brick, render and glazing to add interest.

The commercial elements of the scheme are all accessed off Hawley Road and comprise three distinct parcels. A mixed use commercial scheme occupying the south west corner (former Fludes building and sub station); two new mixed use buildings (Huckerby Site) and a block of four, 3-storey self contained office buildings (Alton Site) with a separate access point. This presents key frontages to both Hawley Road and Rugby Road, between 3 and 5 storeys in height, in accordance with the aims of the Masterplan. Four of the five buildings proposed within the three parcels are 'layered' vertically to enable active frontages at ground floor which contribute to the street scene.

Both the Masterplan and Town Centre AAP require the provision of residential units; the AAP requires the provision of at least 30 units. The scheme presents 56 residential units in total, comprising 50 family homes and 6 apartments. It is arranged in two key areas accessed off Willowbank Road; the north west corner at the junction of Willowbank Road and Rugby Road and a series of terraces, orientated either north-south or east-west, accessed off the new internal site access road.

The residential layout has been guided by the sloping nature of the site together with the principles of Secure by Design New Home 2009. The residential element of the scheme aims to achieve 100% Secure by Design compliance. This has been confirmed in the consultation response received from the Police Architectural Liaison Officer.

Consideration has also been given to achieving 100% compliance with Lifetime Homes interiors criteria. The applicant states in the Design and Access Statement submitted with the application that 50 of the dwellings achieve the criteria however; it has not been possible to achieve the Lifetime Homes requirement for the apartments due to the location of the parking spaces.

The fifth aim of the Masterplan requires the provision of a new street structure linking Willowbank Road through to Hawley Road. The applicant has engaged in extensive pre-application negotiations to bring the site forward. In those discussions it was accepted that the schemes which were presented, which included those street structures, posed significant concerns and resulted in compromises to public safety and the sewer easement which crosses the site.

Whilst the scheme proposes two distinct elements of development; residential and commercial the overall design is inclusive and reads as one development. This is

echoed through the materials to be used in the development, vistas, circulation within the areas, and hard and soft landscaping measures. Whilst the scheme does not provided the street structures/new connected streets that the Masterplan indicated overall the proposal is considered to achieve the aims and aspirations identified in the Hinckley Town Centre Renaissance Masterplan and the emerging Hinckley Town Centre AAP.

Transport

A Transport Assessment, prepared by Mayer Brown, has been submitted with the application. The documents takes account of the existing uses on site and considers the existing and proposed traffic attraction potential of the site and its impact on the surrounding highway network. The report concludes that the development is well located for public transport access, has good pedestrian and cycle access and would have no significant impact on the operation of the local highway network. The County Highway Authority has assessed the application based on 'worst case scenario' in terms of the mix and flexible uses proposed. It has been identified that when comparing the 'without development' scenario with the 'worst case' scenario, the development would clearly have an impact in both the am and pm peaks at the Rugby Road/Hawley Road/Westfield Road roundabout. The impact would reduce the capacity of the roundabouts and increase the queue lengths on both the Rugby Road and Westfield Road approaches. The impact of the development will be mitigated against through contributions towards improvements to the roundabout.

The level of parking within the site is considered acceptable. However, considering the remoteness of parking associated with the Flude building a Traffic Regulation Order will be required to prevent indiscriminate parking with the public highway on both sides of Hawley Road between its junctions with Rugby Road and Station Road. Any indiscriminate parking could have implications in terms of highway safety and capacity. This is controlled through conditions.

In the interests of encouraging sustainable travel to and from the site contributions are requested for travel packs, bus passes and bus stop.

Affordable Housing Provision

The application proposes a scheme of 100% affordable housing. The applicant has already sought an RSL partner and this has enabled them to be involved in the pre-application discussions. The development provides a mixed tenure scheme of fifty six units which comprises:

Social Rented	Intermediate-	Shared Ownership	
1 Bed,	2 Person Flat	6	
2 Bed,	4 Person House	15	7
3 Bed,	5 Person House	15	13

Planning Policy Statement 3: Housing (PPS3) states that local planning authorities should be able to demonstrate the provision of an up to date five year land supply of deliverable sites for housing development. The Borough Council as of 1 October 2009, has a cumulative shortfall of 277 dwellings, equating to a housing supply of 4 years and 5 months.

Paragraph 71 of PPS3 states that "Where local planning authorities cannot demonstrate an up-to-date five year land supply of deliverable sites...they should consider favourably planning applications for housing....".

Core Strategy Policy 15: Affordable Housing seeks to deliver 2090 affordable homes within the Borough from 2008 to 2026. It should be noted that in the period 1 April 2009 to 1 September 2009, 64 affordable homes have been completed.

The adopted Supplementary Planning Document (SPD) on Affordable Housing seeks the provision of 40% affordable units therefore the scheme exceeds the requirements of the SPD. The Borough Council's Housing and Enabling Officer has been advising on the latest position in relation to the tenure/mix of the housing requirement and supports the mix proposed.

Viability and Infrastructure Contributions

The proposal attracts the sum of £1,129,313.20 towards infrastructure improvements arising from the development.

At the time of writing the report no response had been received from both Leicestershire NHS Trust or Leicestershire Fire and Rescue.

The contributions requested include:-
Education £237,000
Civic Amenity £2,542
Libraries £3,130
Town Centre Infrastructure £801,000.00 (based on 56 residential units @£5,500 and 5800m2 commercial @ £8,500)
Affordable Housing (40% which equates to 22 units).
Play and Open Space £85,641.20 calculated as follows:-

Capital Provision:-

Formal Open Space £17,592.60
Children's Equipped Play Space £25,026.30
Informal Children's Play Space £5,035.80

Maintenance Contribution:-

Formal Open Space £14,388.00
Children's Equipped Play Space £19,265.75
Informal Children's Play Space £4,332.75

The contributions requested by the Director of Environment and Transportation (Highways) are included within the Town Centre Infrastructure contribution.

The application has been accompanied by a viability statement which provides an appraisal of the financial position in respect of the development together with a Counsel opinion on developer contributions for the site. The purpose of the applicant submitting the reports is to seek to justify the shortfall in developer contributions offered up which totals £146,522. The sum offered up equates to 12.97% of the required contributions.

The Council has commissioned an independent team of consultants to assess the sites contained in the Hinckley Town Centre AAP. Lambert Smith Hampton has assessed viability through the calculation of residual land values based on an assumed profit level of 20% on cost. In addition to this study, a separate independent study has been undertaken which assesses the details submitted within

the application. The assessment takes into account the grant funding available from the HCA which dictates the immediate build out of the housing element and the landownership constraints which dictate the deliverability of some aspects of the masterplan site.

In the consultants analysis of the development it is suggested that on balance they are reasonable and fair, with a reasonable developer return on cost. It is advised that typically developers will seek between 20% and 25% on return on cost, although, as in the residential case here, lower returns are accepted on pre-sold developments. It is clear that the phase one residential development will progress rapidly due to the HCA funding conditions. The consultants advise that in order to bring forward the commercial development on the frontage of the site the developer should be encouraged to market the site to secure interest. It must be appreciated that the commercial development may not come forward swiftly and therefore it is advised that the developer should be encouraged to improve the site, making it ready for development.

In considering cases of reduced contributions such as this it is vitally important to give consideration to the Government Guidance contained within Circular 05/2005, paragraph B5 which requires that a planning obligation must be:-

(i) Relevant to planning;
(ii) Necessary to make the proposed development acceptable in planning terms;
(iii) Directly related to the proposed development;
(iv) Fairly and reasonably related in scale and kind to the proposed development; and
(v) Reasonable in all other respects.

In this case the applicant, through the submission of the viability assessment and Counsel opinion has sought to demonstrate that the requirements of any planning obligation at full requested rates fails to satisfy the requirements of the Circular and is not fairly and reasonably related in scale and kind to the proposed development; and is therefore unreasonable in all other respects.

Saved Policy IMP1 of the adopted Hinckley and Bosworth Local Plan states that "planning permission will be granted ...where the developer has made or will make a contribution towards the provision of the necessary on site and off site infrastructure and facilities to serve the development commensurate with the scale and nature of the development proposed".

In assessing whether this proposal satisfies the requirements of Policy IMP1 the key issue for consideration is whether the contribution is commensurate with the scale and nature of the development proposed. The independent viability assessments that have been undertaken have supported the evidence submitted by the applicant. It demonstrates that the development is unable to support the full contributions requested. In addition, whilst the development requires 40% affordable housing through the SPD, the applicants are proposing a scheme which includes the provision of 100% affordable housing which is to be supported by grant aid assistance through the HCA. Therefore, on the basis of the evidence submitted, it has been demonstrated that the contributions are not commensurate with the scale and nature of the development proposed.

In respect of the schemes compliance with the Council's adopted Protocol on Renegotiating Contributions required for Infrastructure Improvements. The scheme complies with the provisions set out in the protocol. Deferred payment and phased

payments have been considered however, it has been demonstrated that on the basis that a large proportion of the contributions are required to support the proposed housing provision and the scheme is being supported by the HCA through funding the developer would not be in a position to enter into a legal agreement that will have implications on the RSL. On the basis that the scheme proposes the development of a brownfield masterplan site which offers significant regeneration the scheme complies with the adopted Protocol.

On the basis that the developer has demonstrated that the scheme can afford a developer contribution of £146,522 the allocation of this contribution will need to be appropriately distributed across the necessary infrastructure services.

Whilst the necessary bodies can demonstrate why they requested their necessary contributions, there is no sequential way of being able to rank the importance of the infrastructure to aid the distribution of the developers proposed contribution. Therefore, in the absence of any input on this issue at this stage from the County Council, and rather than try to draw up a list of infrastructure priorities for delivery it is considered fairer and more appropriate to split the developers £146,522 contribution proportionally, whereby each service area should receive 12.97% of their requested figure. This results in the following contributions:

Education £30,749.41
Civic Amenity £329.81
Libraries £406.10
Town Centre Infrastructure £103,925.22
Play and Open Space £11,111.46 calculated as follows:-

Capital Provision :-

Formal Open Space £2,282.54
Children's Equipped Play Space £3,247.02
Informal Children's Play Space £653.37

Maintenance Contribution:-

Formal Open Space £1,866.76
Children's Equipped Play Space £2,499.62
Informal Children's Play Space £2,282.54

At the time of writing the report no agreement, in respect of the reduced contributions, has been secured with the County Council. The opinions of Leicestershire County Council will be reported as a late item.

Impact on residential amenity

Situated to the north and north eastern boundary of the site are the rear gardens to a number of properties on Clarendon Road, Fabius Close, Coley Close, Royal Court and 102 Rugby Road. Willowbank Road serves as the access point to the car park and residential element of the site. It is proposed to retain and enhance an existing car park, which served the Fludes factory to facilitate the offices within the new development. Given the layout of the proposal and existing use of the site the development is not considered to result in any significant impact on the residential amenity of those properties. Situated to the west of the site are properties on the opposite side of Rugby Road. Concerns have been raised in respect of the height and potential overlooking from the commercial (mixed use) buildings. Again, given

the layout and design of the proposal together with the distance between the new development and properties located on Rugby Road (with the busy road falling between) it is not considered that the development would result in any significant harm to the residential amenity of those properties.

A Noise Impact Assessment undertaken by WBM was submitted with the application. The report considered both the proposed and existing uses on site and concluded that road traffic is the dominant noise source. Mitigation measures have been incorporated into the design of the scheme and will be controlled by conditions. No concerns have been raised following consultation with Environmental Health Officers.

Conclusion

The application site is located in a prime location on the entrance into Hinckley Town Centre and is therefore classed as a key gateway site. This predominantly vacant site and buildings has become prone to criminal activity which has had a detrimental impact on the quality of the surrounding area. It is considered that the submitted scheme will play a significant part in the regeneration and environmental improvement of the town centre and provides a much needed mix of affordable housing that has been purposefully designed to satisfy the Council's immediate housing needs.

The proposed development fulfils the majority of the criteria set out in the Hinckley Town Centre Renaissance Masterplan and Hinckley Town Centre Area Action Plan (Proposed Submission Document). It is considered that where there are deviations from the criteria they are not significant enough to impact on the overall aspirations for the development of this important 'gateway' site. PPS4 states that local planning authorities should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably.

The importance of this site and the positive economic impact and community benefits which will come from the re-development of the site will assist in future redevelopment of other masterplan sites in the town centre. The consultant's findings suggest that the finances applicable to the development are sound and reasonable given the nature of the development and the current market conditions. As such it is considered on balance that the regeneration benefits to the town centre as a whole outweigh the shortfall in developer contributions.

RECOMMENDATION:- That subject to: the execution of an Agreement under Section 106 of the Town and Country Planning Act 1990 and Section III of the Local Government Act 1972 towards, the provision and maintenance of public play and open space facilities, education, library facilities, highways improvements, civic amenity facilities, town centre infrastructure improvements requirements; by 6 April 2010, the Director of Community and Planning Services be granted powers to issue full planning permission subject to the conditions below. Failure to do so by 6 April 2010 may result in the application being refused.

Summary of Reasons for Recommendation and Relevant Development Plan Policies :

Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below, it is considered that subject to compliance with the conditions attached to this permission,

the proposed development would be in accordance with the development plan.

Local Development Framework: adopted Core Strategy (2009):- Policies 1, 5, 15, 19, 20 and 24.

Hinckley & Bosworth Borough Council Local Plan (2001):- Policies BE1, EMP1, NE2, NE12, NE14, T5, IMP1, REC2, REC3.

Hinckley Town Centre Renaissance Masterplan.

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2 This permission relates to the application as revised by amended plans Mrp/0750/Ppsd/10c, MRP/0750/Ppsd/11b, Mrp/0750/Ppsd/12b, Mrp/0750/Ppsd/13b, Mrp/0750/Ppsd/14b, MRp/0750/Ppsd/15b (Sht 1 of 2), MRP/0750/Ppsd/16b (Sht 2 of 2), MRP/0750/Ppsd/30b, MRP/0750/Ppsd/31a, MRP/0750/Ppsd/32b, MRP/0750/Ppsd/50, MRP/0750/Ppsd/51, MRP/0750/Ppsd/52a,
MRP/07500750/Ppsd/53a received by the Local Planning Authority on 12 February 2010 and original plans MRP/0750/Ppsd/40a, MRP/0750/Ppsd/41a, MRP/0750/Ppsd/42b, MRP/0750/Ppsd/43b, MRP/0750/Ppsd/44a, Bir.3260_01, Bir.3260_02, Bir.3260_03, Bir.3260_05, Bir.3260_06 dated 5 January 2010.

3 Prior to the commencement of each phase of development a detailed schedule, including samples, of all external materials and colour finishes shall be submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with those details.

4 Notwithstanding the submitted information no development shall take place until full details of both hard and soft landscape works for each phase of development have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:-

(i) proposed finished levels or contours;
(ii) means of enclosure;
(iii) car parking layouts;
(iv) other vehicle and pedestrian access and circulation areas;
(v) hard surfacing materials;
(vi) minor artefacts and structures (e.g. boundary/retaining walls, canopies, decking, furniture, refuse or other storage units, CCTV, lighting, barriers preventing access/egress, etc.);
(vii) proposed and existing functional services above and below ground (e.g. drainage, pipelines, manholes, supports, etc.);
(viii) planting plans;
(ix) written specifications;
(x) schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate;
(xi) implementation programme.

5 The approved hard and soft landscaping scheme shall be carried out in accordance with the approved details. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this

period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

6 The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, for the relevant phases of development have been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the relevant phase of the development is brought into use.

7 There is a public sewer which crosses the site. No building shall be erected or trees planted within 10 metres of this 1050mm sewer.

8 Notwithstanding the submitted information prior to the commencement of development (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:-

1) a preliminary risk assessment which has identified:-

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors;
- potentially unacceptable risks arising from contamination at the site.

2) a site investigation scheme, based on (1) to provide information for a details assessment of the risk to all receptors that may be affected, including those off site.

3) the site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The scheme shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

9 Prior to development commencing on site, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved

verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

10 Reports on monitoring and maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.

11 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

12 If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained approval in writing from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

13 The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment (FRA) Revision A dated 17 November 09, Ref: NTW/378/FRA, undertaken by BWB Consultancy and the mitigation measures detailed within the FRA.

14 The development hereby approved shall not be commenced until such time as a scheme to install oil and petrol separators has been submitted to, and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved scheme.

15 Notwithstanding the submitted information prior to the commencement of development a scheme for noise protection shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall include:-

- the protection of the proposed dwellings and units from the noise of Rugby Road and Hawley Road; and
- the protection of the proposed dwellings from noise from the proposed commercial premises.

The approved scheme shall be implemented in accordance with the agreed details and before the dwellings are first brought into use.

16 No commercial development shall take place until a scheme for ventilation of the premises, which shall include installation, maintenance and management has been submitted to and agreed in writing with the Local Planning Authority. The approved scheme shall be implemented in accordance with the agreed details before the premises are first brought into use for the development hereby approved and maintained in use thereafter.

17 Prior to commencement of development, a revised drawing showing the provision of a ghost island junction on Hawley Road, including a pedestrian refuge across the vehicular access to the Flude and Huckerby sites, shall be submitted to and approved by the Local Planning Authority in consultation with the Highway Authority.

18 Prior to the first occupation of the Flude and Huckerby sites, the highway works to provide a ghost island junction on Hawley Road, including a pedestrian refuge across the vehicular access to the Flude and Huckerby sites, shall be completed to the satisfaction of the Highway Authority.

19 Prior to the first occupation of any dwelling hereby permitted, the highway works to increase the radii of the junction of Willowbank Road and Rugby Road as shown on Mayer Brown Limited drawing no. MRPFLUDE.1/02 shall be completed to the satisfaction of the Highway Authority.

20 Prior to the first occupation of any part of the development site, the highway works to provide pedestrian crossing points on Rugby Road and Hawley Road as shown on Mayer Brown Limited drawing no. MRPFLUDE.1/02 shall be completed to the satisfaction of the Highway Authority.

21 Prior to the first occupation of any part of the development site, the developer shall carry out a review of the existing Traffic Regulation Orders on both sides of Hawley Road between its junctions with Rugby Road and Station Road with the intention of introducing no waiting restrictions.

22 If any vehicular access gates, barriers, bollards, chains or other such obstructions are to be erected to the Flude/Huckerby or Alton sites they shall be set back a minimum distance of 15.0 metres behind the Highway boundary and shall be hung so as to open inwards only.

23 If any vehicular access gates, barriers, bollards, chains or other such obstructions are to be erected to the access to the car park on the unadopted section of Willowbank Road they shall be set back a minimum distance of 5.0 metres behind the Highway boundary and shall be hung so as to open inwards only.

24 No walls, planting or fences shall be erected or allowed to grow on the Highway boundary exceeding 0.9 metres in height above the level of the adjacent carriageway.

25 The gradient of the access drives to the Flude/Huckerby and Alton shall not exceed 1:12 for the first 15.0 metres behind the Highway boundary.

26 Prior to first occupation of the Flude and Huckerby sites, turning facilities shall be provided within the site in order to allow vehicles to enter and leave in a forward direction. The turning area so provided shall not be obstructed and shall be available for use at all times.

27 Prior to first occupation of the Alton site, turning facilities shall be provided within the site in order to allow vehicles to enter and leave in a forward direction. The turning area so provided shall not be obstructed and shall be available for use at all times.

28 The existing vehicular accesses shall be closed permanently within one week of the new accesses being brought into use and the existing vehicular crossings reinstated to the satisfaction of the LPA in consultation with the Highway Authority.

29 For the period of the construction of the development within the site, vehicle wheel cleansing facilities shall be provided within the site and all vehicles exiting the site shall have all tyres and wheels cleaned, as may be necessary, before entering the Highway.

30 Before the development commences, details of the routeing of construction traffic shall be submitted to and approved in writing by the Local Planning Authority. During the period of construction, all traffic to and from the site shall use the agreed route at all times unless otherwise agreed in writing by the Local Planning Authority.

31 For the period of the construction of the development, vehicle parking facilities shall be provided within the site and all vehicles associated with the development shall be parked within the site.

32 No part of the Flude, Huckerby or Alton sites shall be occupied until details of a Green Commuter Plan containing a travel to work, car use and car parking management strategy has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Highway Authority.

33 Before first occupation of any dwelling hereby permitted, car parking provision shall be made within the development site on the basis of MRP Developments Services drawing no. MRP/0750/ppsd/10c. The parking spaces so provided shall not be obstructed and shall thereafter permanently remain available for car parking.

34 Before first occupation of the Flude site, car parking provision shall be made within the site on the basis of MRP Developments Services drawing no. MRP/0750/ppsd/10c including the existing car park accessed from Willowbank Road. The parking spaces so provided shall not be obstructed and shall thereafter permanently remain available for car parking.

35 Before first occupation of the Huckerby site, car parking provision shall be made within the site on the basis of MRP Developments Services drawing no. MRP/0750/ppsd/10c. The parking spaces so provided shall not be obstructed and shall thereafter permanently remain available for car parking.

36 Before first occupation of the Alton site, car parking provision shall be made within the site on the basis of MRP Developments Services drawing no. MRP/0750/ppsd/10c. The parking spaces so provided shall not be obstructed and shall thereafter permanently remain available for car parking.

37 Before first use of each phase of development hereby permitted, cycle parking provision shall be made to the satisfaction of the LPA and once provided shall be maintained and kept available for use thereafter to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

38 Before first use of the development hereby permitted the access drives to the Flude/Huckerby and Alton sites and any turning space shall be surfaced with tarmacadam, concrete or similar hard bound material (not loose aggregate)

for a distance of at least 15.0 metres behind the Highway boundary and shall be so maintained at all times.

39 Before first use of the development hereby permitted, 2.0 metre by 2.0 metre pedestrian visibility splays shall be provided on the Highway boundary on both sides of all accesses with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway, in accordance with the current standards of the Highway Authority and shall be maintained thereafter.

40 Any shared private drive serving more than 5 but no more than 25 dwellings shall be a minimum of 4.8 metres wide for at least the first 5 metres behind the Highway boundary and have 6 metres kerbed radii at its junction with the adopted road carriageway. The access drive once provided shall be so maintained at all times.

41 Any windows or doors at ground floor level on the road frontage shall be of a type other than outward opening and shall thereafter be so maintained.

42 The overall amount of A1 floor space shall not exceed 662 square metres in total, including mezzanine floors and shall be limited to the sale of bulky goods only.

43 The overall amount of A3 floor space shall not exceed 454 square metres in total, including mezzanine floors.

44 The overall amount of veterinary practice floor space shall not exceed 191 square metres in total, including mezzanine floors.

Reasons:-

1 To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2 To define the permission.

3 To ensure that the development has a satisfactory external appearance to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.

4 To ensure that the work is carried out within a reasonable period and thereafter maintained to accord with policy NE12 of the adopted Hinckley & Bosworth Local Plan.

5 To ensure that the work is carried out within a reasonable standard and period and thereafter maintained to accord with policy NE12 of the adopted Hinckley & Bosworth Local Plan.

6 To ensure that the development is provided with satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution to comply with Policy NE14 of the Hinckley and Bosworth Local Plan.

7 To maintain essential access for maintenance, repair, renewal and to protect the structural integrity of the public sewerage system to comply with Policy NE14 of the Hinckley and Bosworth Local Plan.

8-12 To ensure the protection of controlled waters to accord with Policy NE14 of the Hinckley and Bosworth Local Plan.

13 To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site to accord with Policy NE14 of the Hinckley and Bosworth Local Plan.

14 To ensure the protection of controlled waters to accord with Policy NE14 of the Hinckley and Bosworth Local Plan.

15 To ensure that the use remains compatible with the surrounding area to accord with Policy BE1 of the Hinckley and Bosworth Local Plan.

16 To ensure that the development does not have an adverse impact of the amenities of surrounding properties in terms of odour and noise to accord with Policy BE1 of the Hinckley and Bosworth Local Plan.

17-19 In the general interests of Highway safety to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

20 In the interests of pedestrian safety to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

21 In the general interests of Highway safety to accord with policy T5 of the Hinckley and Bosworth Local Plan.

22&23 To enable a vehicle to stand clear of the highway whilst the gates are opened/closed and protect the free and safe passage of traffic, including pedestrians, in the public highway to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

24 To afford adequate visibility at the access/junction to cater for the expected volume of traffic joining the existing highway network and in the interests of general highway safety to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

25 To enable vehicles to enter and leave the highway in a slow and controlled manner and in the interests of general highway safety to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

26 To enable vehicles to enter and leave the site in a forward direction in the interests of the safety of road users to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

27 To enable vehicles to enter and leave the site in a forward direction in the interests of the safety of road users to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

28 To reduce the number of vehicular accesses to the site and consequently to reduce the number of potential conflict points to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

29 To reduce the possibility of deleterious material (mud, stones etc) being deposited in the highway and becoming a hazard for road users to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

30 To ensure that construction traffic associated with the development does not use unsatisfactory roads to and from the site to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

31 To ensure that adequate off-street parking provision is made to reduce the possibilities of development of the site leading to on-street parking problems in the area during construction to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

32 To ensure that adequate steps are taken to provide a transport choice/a choice in mode of travel to and from the site to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

33-35 To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking problems in the area to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

36 To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking problems in the area.

37 In the interests of the sustainability of the development and to encourage alternative transport choice to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

38 To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

39 In the interests of pedestrian safety to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

40 To ensure that vehicles entering and leaving the site may pass each other clear of the highway and not cause problems or dangers within the highway to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

41 In the interests of the safety of users of the Highway immediately adjacent to the front wall of the building to accord with Policy T5 of the Hinckley and Bosworth Local Plan.

42 To protect the vitality and viability of Hinckley Town Centre to accord with Policy Retail 1 of the adopted Hinckley and Bosworth Local Plan.

43 To protect the employment status of the site to accord with Policy EMP1 of the adopted Hinckley and Bosworth Local Plan.

44 To ensure that the development is compatible with the surrounding properties/units to accord with Policy BE1 of the Hinckley and Bosworth Local Plan.

Notes to Applicant:-

1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3 As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).

5 With reference to condition No. 6 above the scheme you are referred to the comments of The Environment Agency dated 8 February 2010.

6 Your attention is drawn to the attached comments of the Borough Council's Environmental Health Officer.

7 With reference to condition No. 32 above :

The plan shall comprise proposals to reduce car dependence and vehicle emissions and to establish and encourage the use of alternative transport modes for journeys to and from work and during working hours. Details of the proposals shall include measures to secure increases in car sharing, public transport use, cycling and walking, proposals for car parking restrictions and controls and details of on-site facilities to promote alternative modes of travel to the site.

The plan shall make provision for relevant surveys, review and monitoring mechanisms, targets, timescales, phasing programmes and on-site management responsibilities. It shall be implemented and subject to regular review in accordance with the above approved details.

8 With reference to condition No. 40 above:-

If the access is bounded immediately on one side by a wall, fence or other structure, an additional 0.5 metre strip will be required on that side. If it is so bounded on both sides, additional 0.5 metre strips will be required on both sides.

9 All details of the proposed development shall comply with the design standards of the Leicestershire County Council as contained in its current design standards document. Such details must include parking and turning facilities, access widths, gradients, surfacing, signing and lining (including that for cycleways and shared use footway/cycleways) and visibility splays and be submitted for approval by the Local Planning Authority in consultation with the Highway Authority before development commences.

Your attention is drawn to the requirement contained in the Highway Authority's current design guide to provide Traffic Calming measures within the new development.

10 Your attention is drawn to the attached comments of Leicestershire County Council Director of Environment and Transport.

Contact Officer:- Cathy Horton Ext 5605