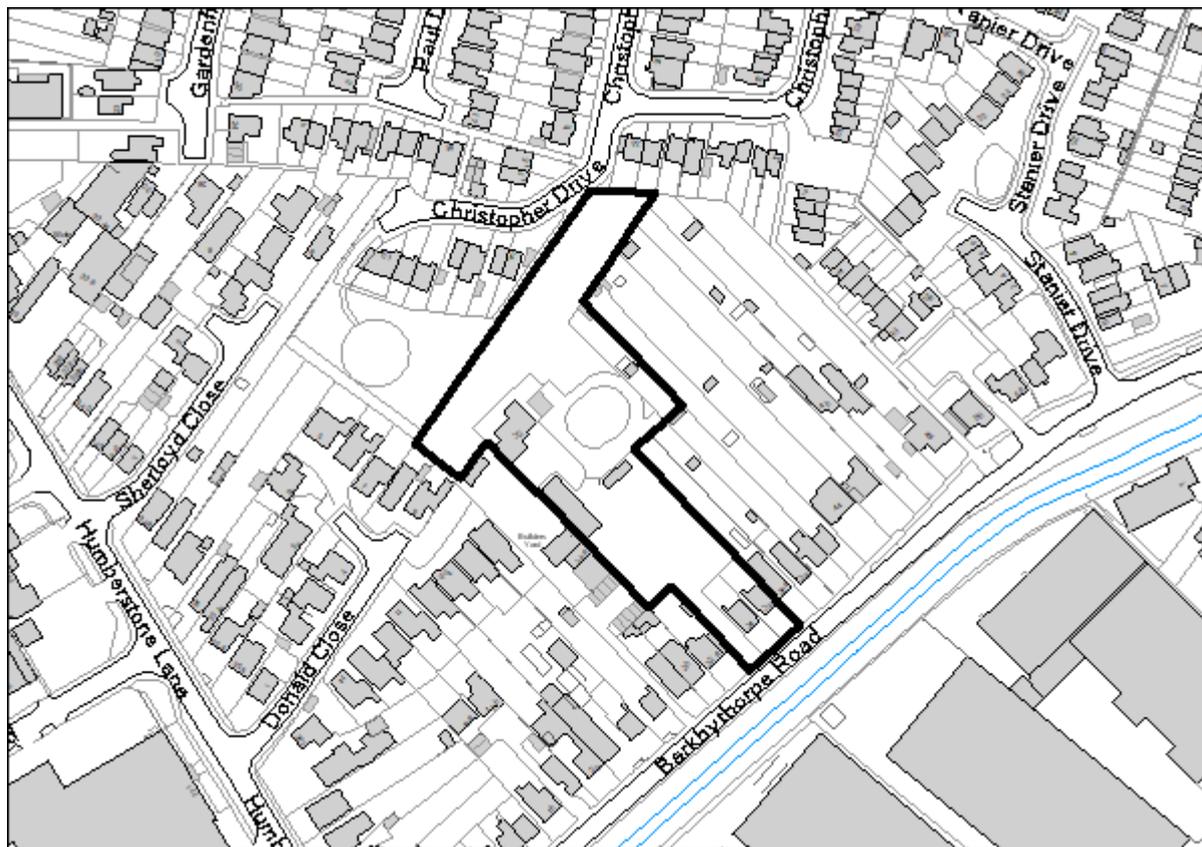


COMMITTEE REPORT

20232441	32, 34 & 36 Barkbythorpe Road	
Proposal:	Variation of condition 22 (Plans) attached to planning permission 20190377 (Demolition of existing 3 dwellings; Construction of 18 dwellings including associated external works (Amended plans) (S106 agreement) to allow for removal of the approved drawing 'P006c Landscape')	
Applicant:	Modus Partnerships Ltd	
App type:	Operational development - full application	
Status:	Smallscale Major Development	
Expiry Date:	2 April 2024	
ACB	TEAM: PE	WARD: Troon



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Summary

- Reported to committee due to the number of objections received and associated requests for enforcement action.
- 8 objections received on grounds of overlooking and flood risk
- The issues are the effect of the change in ground level on residential amenity.

- The application is recommended for approval subject to conditions and variation of s106

The Site

The application site formerly comprised of 3 bungalows and a storage yard. It is located within a residential part of the City. There is a play area to the north-west of the site. Melton Brook is on the opposite side of Barkbythorpe Road and there is an industrial area beyond this. The former buildings on the site have all been demolished and the site is currently being developed for 18 two storey houses.

The site is within a 250m landfill buffer, flood zone 2 and a critical drainage area.

Background

In August 2021 planning permission 20190377 was granted for the demolition of the buildings on the site and the construction of 18 dwellings. The permission was subject to 22 conditions.

Conditions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 and 21 required details to be agreed and all have now been agreed.

An enforcement report was received that the ground levels of the site had been raised and this was not shown on the approved plans. Investigations found that the ground level towards the rear of the site had been raised, meaning that plots 11-15 were 0.5m higher than shown on the approved plans.

The Proposal

The application is for the variation of condition 22 of planning permission 20190377 in relation to the approved plans and is to allow for the removal of plan P006 relating to landscaping from the list of approved plans as this is the only plan that shows the ground levels of the site.

The applicant advises that the plan is no longer relevant as the landscaping scheme for the site has since been agreed under an application to discharge the condition relating to it and that the raised ground level has been required as a result of the need to ensure effective installation of the drainage scheme approved under condition 10 of the above permission.

Policy Considerations

National Planning Policy Framework (NPPF) (2023)

Paragraph 2: applications for planning permission must be determined in accordance with development plans unless material considerations indicate otherwise.

Paragraph 11: A presumption in favour of sustainable development.

Paragraph 60 places an emphasis on the importance of a sufficient amount and variety of land to come forward where it is needed and that the needs of groups with

specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

Paragraph 115 states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 131: the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Paragraph 135 sets out criteria for assessing planning applications and requires decision makers to ensure that development proposals function well and add to the overall quality of the area, are visually attractive as a result of good architecture, are sympathetic to local character and history, establish or maintain a strong sense of place, optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and create places that are safe, inclusive and accessible and which promote health and well-being.

Development Plan policies

Development plan policies relevant to this application are listed at the end of this report.

Supplementary Planning Documents (SPD)

Residential Amenity SPD

Consultations

Local Lead Flood Authority – No objections

Representations

7 objections have been received from 7 city addresses. The grounds of objection are.

- Increase in ground level has resulted in the buildings having a greater impact on the amenity of neighbouring properties.
- The access road has been built closer to the neighbouring property than approved
- Trees that were supposed to be protected during the development were not and have had roots severed and are showing signs of degradation further impacting on privacy.
- Effect on property value (Not a material planning consideration)
- Increase in flood risk from higher land level
- The new properties now tower above the area due to the change in ground level.

Claudia Webbe MP has also objected to the proposal and supports the views expressed by residents in their objections.

Consideration

Principle of development

As planning permission for the development of the site has already been granted and implemented, the principle of the development has already been established. The only issues under consideration in this application are therefore the impact on residential amenity and flooding.

Residential amenity (*neighbouring properties*)

The dwellings have been constructed in the positions shown on the approved plans and the separation distances are over 21 metres (25 metres between the rear windows of the development and the nearest house on Donald Close) which complies with those set out in the Residential Amenity SPD. Whilst increase in ground level means that the ground floor windows may now be visible from properties on Donald Close, the separation distances comply with the Council's applicable policy and therefore remain acceptable in planning terms. I do not consider that the change in ground level would result in significant additional overlooking to the properties on Donald Close sufficient to justify a refusal nor to support enforcement action to address the situation.

There is a builders storage yard adjacent to the site at 28a Barkbythorpe Road. There have been no applications to develop the site and I do not consider that the proposal would prejudice development of the site.

I therefore consider that the application is not contrary to saved policy PS10 of the City of Leicester Local Plan and complies with paragraph 135 of the NPPF 2023.

Landscaping

Condition 3 of planning permission 20190377 states that *"Prior to the commencement of any development a detailed landscaping scheme and ecological management plan (LEMP) showing the treatment and maintenance of all parts of the site which will remain unbuilt upon shall be submitted to and approved in writing by the City Council as local planning authority. This scheme shall include details of: (i) the position and spread of all existing trees, shrubs and hedges to be retained or removed; (ii) new tree and shrub planting, including plant type, size, quantities and locations; (iii) means of planting, staking, and tying of trees, including tree guards; (iv) other surface treatments; (v) boundary treatments; (vi) any changes in levels; (vii) the position and depth of service and/or drainage runs (which may affect tree roots). The approved LEMP scheme shall contain details on the after-care and maintenance of all soft landscaped areas and be carried out within one year of completion of the development. For a period of not less than five years from the date of planting, the applicant or owners of the land shall maintain all planted material. This material shall be replaced if it dies, is removed or becomes seriously diseased. The replacement planting shall be completed in the next planting season in accordance with the approved landscaping scheme. (In the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core*

Strategy policy CS03 and CS17. To ensure that the details are agreed in time to be incorporated into the development, this is a PRE-COMMENCEMENT condition.)”

The details required by this condition were agreed under application 20222157 which showed a revised landscaping scheme from that shown on plan P006 on the original approval. I therefore consider that the landscaping scheme has been agreed through that application and the removal of plan P006 from the list of approved plans would not result in the landscaping scheme for the site not being delivered. A revised condition 3 is proposed to secure the implementation of the revised landscaping scheme.

Drainage

The site is within an area at risk of flooding from a 1 in 1000 year event. Details of the drainage scheme for the site have been agreed as acceptable by the Lead Local Flood Authority and I consider that the proposal will not result in an increase of the flood risk in the area to justify refusal. The raised ground level is required to achieve the drainage flow towards Melton Brook where the flow into the brook is controlled by a flow control device. I therefore consider that the proposal is not contrary to policy CS02 of the Leicester Core Strategy and will therefore support drainage and flood management objectives.

Other matters

One of the objections refers to trees on the site having not been protected by fencing and subsequently damaged. This matter has been investigated and the tree fencing was installed as soon as it was requested. As the trees are not covered by a Tree Preservation Order and the site is not within a conservation area no offence would have been committed by damage being caused to the tree and the Council cannot take any further action in this matter. The Landscaping condition requires the landscaping material to be replaced if it dies, is removed or becomes seriously diseased in five years.

One of the objections also refers to the road being not in accordance with the approved plans. This has also been investigated and the road has been built in a straight line rather than curving slightly at the exit. This alteration has no significant material impacts upon nearby occupiers and was approved in the application to discharge condition 21 of planning permission 20190377.

Section 106 agreement

The 2019 planning permission was subject to a section 106 agreement which secured the provision of affordable housing and included developer contributions towards education facilities and open space improvements. I have requested that a deed of variation to the agreement be submitted to reflect the revised details and secure the contribution, and recommend that approval of this application should be subject to this variation being agreed.

Conditions

As this is an application for variation of conditions attached to a planning permission the Council must review the other conditions attached to the original permission to ensure that these are still relevant.

Condition 1

This is a condition limiting the period for commencement of the development. It has been complied with and I recommend a revised condition with a date to reflect the original limitation.

Condition 2

This required the details of materials to be agreed. The condition has been discharged and I recommend a revised condition to reflect the agreed details.

Condition 3

This relates to the landscaping scheme and has been discharged. The landscaping scheme has not yet been installed and I recommend a revised condition to require the approved scheme to be installed and maintained.

Condition 4

This relates to the protection of trees. The condition has been discharged and the protection measures are in place on the site. I recommend a revised condition to ensure that the measures remain in place.

Condition 5

This requires bird and bat boxes to be installed. The condition has been discharged but the trigger for compliance has not been reached. I therefore recommend a revised condition to ensure that the approved boxes are installed.

Condition 6

This required a protected species survey to be carried out and any required mitigation measures to be installed. The condition has been discharged and development commenced before a further survey was required. I recommend a revised condition to require the mitigation measures to be continued to be complied with during development.

Condition 7

This requires hedgehog boxes and gaps within fences. The condition has been discharged but the trigger point has not been reached. I therefore recommend a revised condition to require the agreed measures to be installed.

Condition 8

This required a survey to be carried out to ascertain ground conditions and potential for landfill gas. The condition has been discharged and the survey found that there was no indication of landfill gas on the site and no mitigation measures were required. I therefore consider that the condition is no longer required.

Condition 9

This required a contaminated land survey to be carried out prior to development. The condition has been discharged and the survey found that there was some contamination of the site. The contamination has been removed and this has been confirmed by further surveys. I therefore condition is no longer required.

Condition 10

This condition required details of a Sustainable Drainage System (SuDS) and its long term maintenance. The condition has been discharged and I recommend a revised condition to ensure that the agreed system is installed before occupation of the properties.

Condition 11

This condition required details of the proposed heating system to be agreed. The condition has been discharged and I recommend a revised condition to ensure that the approved system is installed and retained.

Condition 12

This condition required an acoustic survey to be carried out to establish the level of noise from the industrial area. The results of the survey showed some impacts of noise and proposed mitigation measures in the form of insulation to the proposed dwellings, details of which have been provided including measures to prevent overheating of the dwellings. I therefore recommend a revised condition to ensure that these measures are installed prior to occupation of any of the dwellings.

Condition 13

This condition requires redundant footway crossings and other altered or damaged areas of highway to be reinstated. The trigger point has not been met and I therefore recommend that the condition is repeated.

Condition 14

This condition requires sight lines to be provided at each vehicle access before occupation and is still a required condition.

Condition 15

This condition requires street works to be carried out in accordance with the Street Design Guide and is still a required condition.

Condition 16

This condition required details of a Construction Method Statement. The condition has been discharged. Originally, the development was not proceeding in accordance with the approved details but this has been rectified. I therefore recommend a revised condition to require the approved statement to be adhered to throughout the rest of the construction phase.

Condition 17

This condition required details of a residents travel pack to be provided before occupation. The details have been agreed and I recommend a revised condition to ensure that the approved packs are provided.

Condition 18

This condition required a programme of archaeological work to be carried out. The condition has been discharged but requires some ongoing compliance and I recommend a revised condition to cover this.

Condition 19

This condition requires the dwellings and their parking and access to be constructed as accessible and adaptable dwellings and the trigger point for compliance has not been reached. I therefore recommend that the condition be repeated.

Condition 20

This condition relates to the floor levels of the development and I consider that it is still required and I recommend that the condition shall be repeated.

Condition 21

This condition relates to visibility splays on Barkbythorpe Road. The condition has been discharged and I recommend a revised condition to ensure that they are provided prior to occupation of any of the dwellings.

Condition 22

This condition lists the approved plans. The condition is relevant and I recommend that the plans are updated to take account of the approved details and that the plan relating to landscaping is replaced with the approved details.

There are also a number of notes to applicants linked to conditions and I propose that these are repeated where necessary.

Conclusion

In conclusion I consider that the increase in ground level was required to provide the approved drainage scheme and that the raised level does not have a significant impact on the residential amenity of neighbouring properties sufficient to justify refusal.

I recommend that this application is APPROVED subject to conditions and the completion of a Section 106 Deed of Variation.

CONDITIONS

1. The development shall commence by no later than 4 August 2024. (To comply with Section 91 of the Town & Country Planning Act 1990.)
2. The materials to be used for the development shall be as approved under application 20230098. (In the interests of visual amenity, and in accordance with Core Strategy policy CS03.)
3. The landscaping scheme approved under application 20222157 shall be carried out within one year of completion of the development. For a period of not less than five years from the date of planting, the applicant or owners of the land shall maintain all planted material. This material shall be replaced if it dies, is removed or becomes seriously diseased. The replacement planting shall be completed in the next planting season in accordance with the approved landscaping scheme. (In the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS03.)
4. The fencing surrounding all existing trees, shrubs or hedges to be retained on the site as approved under application 20222157 and in accordance with British Standard BS 5837:2012 shall be retained and maintained until all equipment, machinery and any surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition. (To minimise the risk of damage to trees and other vegetation in the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS03.)
5. Prior to occupation of each dwelling, bird and bat boxes/bricks shall be installed to that respective dwelling in accordance with details approved under application 20231970. The boxes/bricks shall be retained thereafter. (In the interest of biodiversity and in accordance with Policy CS17 of the Core Strategy).
6. Prior to occupation of each dwelling, hedgehog boxes and gaps or holes within fences to allow free movement of hedgehogs shall be installed to that respective plot in accordance with the details approved under application 20231970. The boxes and gaps or holes in fences shall be retained thereafter. (In the interest of biodiversity and in accordance with Policy CS17 of the Core Strategy).

7. Prior to the occupation of any of the dwellings the Sustainable Drainage System (SuDS) approved under application 20221758 shall be implemented. It shall thereafter be managed and maintained in accordance with the approved details. (To secure surface water runoff and to secure other related benefits in accordance with Core Strategy Policy CS02).

8. Prior to occupation of any of the dwellings the heating scheme and PV panels approved under application 20230277 shall be implemented and retained thereafter. (To ensure that the development reduces greenhouse gas emissions and contributes towards the mitigation of climate change and in accordance with policy CS02 of the Core Strategy).

9. Prior to occupation of any of the dwellings the noise mitigation measures and overheating mitigation measures approved under application 20221758 shall be installed and retained thereafter. (In the interest of residential amenity and in accordance with City of Leicester Local Plan policy PS10 and PS11 and Core Strategy Policy CS03.)

10. No part of the development shall be occupied until any redundant footway crossings and/or damaged or altered areas of footway or other highway have been reinstated in accordance with the Council's standards contained in the Street Design Guide. (For the safety and convenience of pedestrians and other road users, and in accordance with policy AM01 of the City of Leicester Local Plan and Core Strategy policy CS03.)

11. No part of the development shall be occupied until the 2 metre by 2 metre sight lines on each side of each vehicular access have been provided, and they shall be retained thereafter. (In the interests of the safety of pedestrians and other road users, and in accordance with policy AM01 of the City of Leicester Local Plan and Core Strategy policy CS03.)

12. All street works shall be constructed in accordance with the Council's standards contained in the Street Design Guide. (To achieve a satisfactory form of development, and in accordance with policy AM01 of the City of Leicester Local Plan and Core Strategy policy CS03.)

13. The construction of the development shall continue in accordance with the Construction Method Statement approved under application 20222157. (To ensure the satisfactory development of the site, and in accordance with policies AM01, UD06 of the City of Leicester Local Plan and Core Strategy policy CS03.)

14. Prior to the first occupation of each unit, the occupiers of that dwelling shall be provided with a 'Residents Travel Pack' details of which have been approved under application 20221758. (In the interest of promoting sustainable development, and in accordance with policy AM02 of the City of Leicester Local Plan and policy CS14 of the Core Strategy)

15. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under application

20222157, and the provision made for analysis, publication and dissemination of results and archive deposition has been secured, unless agreed in writing with City Council as local planning authority. (To ensure that any heritage assets that will be wholly or partly lost as a result of the development are recorded and that the understanding of their significance is advanced; and in accordance with Core Strategy policy CS18.)

16. The dwellings and the associated parking and approach shall be constructed in accordance with 'Category 2: Accessible and adaptable dwellings M4 (2) Optional Requirement. On completion of the scheme and prior to the occupation of the dwellings a completion certificate signed by the relevant inspecting Building Control Body shall be submitted to the City Council as local planning authority certifying compliance with the above standard. (To ensure the dwellings are adaptable enough to match lifetime's changing needs in accordance with Core Strategy policy CS06)

17. Finished floor levels within the proposed development shall be set no lower than existing finished floor levels and flood proofing/resilience techniques shall be incorporated in accordance with 'Improving the Flood Performance of New Buildings' (Department of Communities and Local Government, 2007). (To minimise the risk of damage in times of flooding, and in accordance with policy CS02 of the Core Strategy).

18. Prior to the occupation of any of the dwellings the 54m visibility splays in both directions on Barkbythorpe Road shall be installed in accordance with the details approved under application 20222021 and they shall be retained thereafter. (In the interests of the safety of pedestrians and other road users, and in accordance with policy AM01 of the City of Leicester Local Plan and Core Strategy policy CS03.)

19. This consent shall relate solely to the following plans:

P001 site location submitted with application 20190377.
5422/MP/22/003 rev T10 proposed site plan submitted with application 20231515.
FW2237-C-03 rev A2 Section 38 layout submitted with application 20222021.
5422-103-T6 Type A1 elevations submitted with application 20230098.
5422-203-T6 Type A2 elevations submitted with application 20230098.
P101b type A1 & A2 plans submitted with application 20190377.
P201a type B floor plans submitted with application 20190377.
5422-303-T7 type B elevations submitted with application 20230098.
P301b type C plans submitted with application 20190377.
5422-403-T7 type C elevations submitted with application 20230098.
P401b type S plans submitted with application 20190377.
5422-503-T7 type S elevations submitted with application 20230098.
P501a type T plans submitted with application 20190377.
P502c type T elevations submitted with application 20190377.
P801b street elevations submitted with application 20190377.
22.1708.005 rev B and 22.1708.005 rev B Landscape Proposals submitted with application 20222157.

(For the avoidance of doubt)

NOTES FOR APPLICANT

1. The Highway Authority's permission is required under the Highways Act 1980 and the New Roads and Street Works Act 1991 for all works on or in the highway. For new road construction or alterations to existing highway the developer must enter into an Agreement with the Highway Authority. For more information please contact highwaysdc@leicester.gov.uk. With regards to the Travel Pack the contents of the pack are intended to raise the awareness and promote sustainable travel, in particularly for trips covering local amenities. The applicant should contact highwaysdc@leicester.gov.uk for advice.

2. The City Council, as local planning authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received. This planning application has been the subject of positive and proactive discussions with the applicant during the process (and/or pre-application).

The decision to grant planning permission with appropriate conditions taking account of those material considerations in accordance with the presumption in favour of sustainable development as set out in the NPPF 2023 is considered to be a positive outcome of these discussions.

3. To meet condition 16, all those delivering the scheme (including agents and contractors) should be alerted to this condition, and understand the detailed provisions of Category 2, M4(2). The Building Control Body for this scheme must be informed at the earliest opportunity that the units stated are to be to Category 2 M4(2) requirements. Any application to discharge this condition will only be considered if accompanied by a building regulations completion certificate/s as stated above.

Policies relating to this recommendation

2006_AM01	Planning permission will only be granted where the needs of pedestrians and people with disabilities are incorporated into the design and routes are as direct as possible to key destinations.
2006_AM02	Planning permission will only be granted where the needs of cyclists have been incorporated into the design and new or improved cycling routes should link directly and safely to key destinations.
2006_AM12	Levels of car parking for residential development will be determined in accordance with the standards in Appendix 01.
2006_BE20	Developments that are likely to create flood risk onsite or elsewhere will only be permitted if adequate mitigation measures can be implemented.
2006_PS10	Criteria will be used to assess planning applications which concern the amenity of existing or proposed residents.
2006_PS11	Control over proposals which have the potential to pollute, and over proposals which are sensitive to pollution near existing polluting uses; support for alternative fuels etc.

- 2006_UD06 New development should not impinge upon landscape features that have amenity value whether they are within or outside the site unless it can meet criteria.
- 2014_CS01 The overall objective of the Core Strategy is to ensure that Leicester develops as a sustainable city, with an improved quality of life for all its citizens. The policy includes guidelines for the location of housing and other development.
- 2014_CS02 Development must mitigate and adapt to climate change and reduce greenhouse gas emissions. The policy sets out principles which provide the climate change policy context for the City.
- 2014_CS03 The Council will require high quality, well designed developments that contribute positively to the character and appearance of the local natural and built environment. The policy sets out design objectives for urban form, connections and access, public spaces, the historic environment, and 'Building for Life'.
- 2014_CS06 The policy sets out measures to ensure that the overall housing requirements for the City can be met; and to ensure that new housing meets the needs of City residents.
- 2014_CS07 New residential development should contribute to the creation and enhancement of sustainable mixed communities through the provision of affordable housing. The policy sets out the broad requirements for affordable housing.
- 2014_CS08 Neighbourhoods should be sustainable places that people choose to live and work in and where everyday facilities are available to local people. The policy sets out requirements for various neighbourhood areas in the City.
- 2014_CS13 The Council will seek to maintain and enhance the quality of the green network so that residents and visitors have easy access to good quality green space, sport and recreation provision that meets the needs of local people.
- 2014_CS14 The Council will seek to ensure that new development is easily accessible to all future users including by alternative means of travel to the car; and will aim to develop and maintain a Transport Network that will maximise accessibility, manage congestion and air quality, and accommodate the impacts of new development.
- 2014_CS15 To meet the key aim of reducing Leicester's contribution to climate change, the policy sets out measures to help manage congestion on the City roads.
- 2014_CS17 The policy sets out measures to require new development to maintain, enhance and strengthen connections for wildlife, both within and beyond the identified biodiversity network.
- 2014_CS18 The Council will protect and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets.