

MELTON LOCAL PLAN – ADDENDUM OF FOCUSED CHANGES  
(JULY 2017)

PART A: ABOUT YOU

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PART B: YOUR REPRESENTATIONS

FC4 HOUSING SITE ALLOCATION COMMENTS

Site Settlement: Great Dalby

Site Reference: GREA1 (SHLAA reference: MBC/003/17)

DO YOU BELIEVE THAT THIS POLICY/SECTION OF THE MELTON LOCAL PLAN  
FOCUSED CHANGE IS:

Legally Compliant: No

Sound: No

Complies with Duty to Co-operate: Yes

DO YOU CONSIDER THAT THE FOCUSED IS UNSOUND BECAUSE IT IS NOT ANY OF  
THE FOLLOWING (PLEASE TICK):

- 1) Not Positively Prepared:
- 2) Not Justified: Tick
- 3) Not Effective: Tick
- 4) Not Consistent with National Policy: Tick

5) PLEASE GIVE DETAILS OF WHY YOU CONSIDER THE FOCUSED CHANGE IS NOT  
LEGALLY COMPLIANT OR IS UNSOUND OR FAILS TO COMPLY WITH THE DUTY TO  
CO-OPERATE:

The National Planning Policy Framework (NPPF) states in paragraph 151 that a local authority exercising its statutory plan-making functions under section 39(2) of the Planning and Compulsory Purchase Act 2004 must ensure that its Local Plan is prepared with the objective of contributing to the achievement of sustainable development.

The NPPF makes it clear in paragraph 14 that a presumption in favour of sustainable development should be seen as a “golden thread running through both plan-making and decision-taking”. For plan-making this means that local planning authorities should positively seek opportunities to meet the objectively assessed development needs of their area unless (1) any adverse impacts of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or (2) specific policies in the Framework indicate development should be restricted, including policies relating to designated heritage assets.

To be considered *sound* and to deliver sustainable development, policies in a local plan should, inter alia, be consistent with the principles and policies set out in the NPPF. These include the direction of paragraph 152 that significant adverse environmental impacts are avoided and, wherever

possible, alternative options pursued.

It is also a requirement of the NPPF (paragraph 126) that local planning authorities should have a positive strategy for the conservation and enjoyment of the historic environment, one which recognises the desirability of sustaining and enhancing the significance of heritage assets consistent with the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The Government has provided further clarification of the legislative framework for planning and the historic environment in paragraph 002 of its Planning Practice Guidance on Conserving and Enhancing the Built Environment. This states “any decisions relating to listed buildings and their settings and conservation areas must address the statutory considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990 (in particular sections 16, 66 and 72) as well as satisfying the relevant policies within the National Planning Policy Framework and the Local Plan”.

It is my certain opinion that draft Melton Local Plan focused change FC4 in respect of the proposed allocation GREA1 does not comply with the statutory duty of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, nor does it conform with some or all of paragraphs 14, 126, 132, 134, 152, 157 and 169 of the NPPF, nor is it consistent with policies EN6 and EN13 of the draft Melton Local Plan. Given the harm that development of the site would cause to the Great Dalby designated conservation area, the proposed allocation must be revisited.

I consider the proposed allocation to be unjustified, ineffective and not fully consistent with national planning policy. Proposed allocation GREA1 is unsound because:

1. The Great Dalby appraisal in FC4.2 (Appendix 1) contains many factual errors. One such is the reference to the village's evolution which the Council asserts had its “origins as a linear settlement on Main Street which runs north-south”. In fact, as Melton Borough Council submitted in its Proof of Evidence to the 1991 appeal against the refusal of planning permission to develop the site now proposed as GREA1, “the village is set in attractive, undulating countryside and, although essentially linear in form, at one time formed distinct parts – the northern, Nether End, and the southern, Upper End. Since then built development has had the effect of joining the two halves [Main Street]”;

It is important that the site allocation process is well informed, not least about possible impacts on heritage assets. Historic England in its advice note on *Site Allocations in Local Plans (October 2015)* makes it clear that the site allocation process should be informed by an up-to-date and robust historic environment evidence base and an understanding of the contribution a site, in its current form, makes to the significance of the heritage asset(s). Only when assessment is informed by accurate and up-to-date evidence is it possible to identify what impact a proposed allocation might have on the asset's significance and to avoid harm.

Points 2 and 3 below also refer.

2. Despite draft Melton Local Plan policy EN13 (Heritage Assets) stating that the Council will take a positive approach to the conservation of heritage assets and the wider historic environment through, inter alia, ensuring that new developments in conservation areas are consistent with the identified special character of those areas, there has been a failure to fully appreciate the significance of the important special characteristics of the designated Great Dalby Conservation Area (as detailed in the Great Dalby Conservation Area appraisal). These include the historic, essentially linear, pattern of development, the contribution made by the swathes of open land north of Burrough End and east of Main

Street (of which the site proposed as GREA1 forms a key part) and why the conservation area boundary is so widely drawn;

3. The site of the proposed allocation GREA1 is identified in the Leicestershire & Rutland Historic Environment Record (MLE5943) as the Medieval and Post-Medieval Historic Settlement Core of the village. There is no mention of this in the GREA1 assessment and one can only conclude that the Council has failed to recognise the historic significance and archaeological interest of the site itself;
4. Draft policy GREA1 would be at odds with draft Melton Local Plan policy EN6 (Settlement Character) as the land proposed for development would lead to the loss of open space which (1) contributes positively to the individual character of the settlement, (2) contributes positively to the setting of the village's historic built form and features, and (3) contributes to the key characteristics and features of the Great Dalby conservation area;
5. Contrary to the assertion in the site assessment for GREA1/MBC-003-17 that there is no planning history, a planning application for the same site as that now proposed was refused on appeal in 1991 largely because of the significant harm that development would have on the character and appearance of the designated conservation area. It should be noted that a series of planning applications in this part of the conservation area have been refused on appeal. The most recent such appeal decision was dated 13 February 2017;

Melton Borough Council submitted in its proof of evidence to the 1991 appeal hearing the following principal reasons in support of its refusal of planning permission: “(a) the adverse impact on the character and appearance of the designated conservation area and rural setting of the village; and (b) the elevated land comprising the appeal site is an open area of land which is of particular significance to the village form, character and rural setting”. Those reasons are no less valid today;

6. NPPF paragraph 132 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. No such justification has been provided;
7. Paragraph 134 then directs that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The public benefit of the proposed allocation would essentially be the contribution it would make to meeting an objectively assessed housing need of 6,125 dwellings throughout Melton Borough in the period to 2036.

Paragraph 5.4.4 of Draft Local Plan Appendix 4: Focused Change FC4.1 states that the Rural Hub villages should collectively provide for 240 dwellings out of the overall housing requirement but notes that the land allocated for development in Rural Hubs can accommodate 333 dwellings. This indicated over-provision means that the proposed allocation GREA1 is not imperative and, in any case, GREA1 represents just 0.6% of the overall borough-wide housing requirement.

The optimum viable use for this field in the public interest is for it to remain as pasture land and maintain its important contribution to the special character of the Great Dalby

Conservation Area;

8. Draft Melton Local Plan policy EN13 (Heritage Assets) is prefaced by a reference to the NPPF which, it states, includes the need to assess the effect of a proposal on the significance of an asset, and the need for a balanced judgement about the scale of any harm or loss and the significance of the heritage asset. The impression given is that, having identified that there would be “less than substantial harm” to the heritage asset (such as with GREA1), the Council would consider that harm to be a material consideration in the planning balance to which it can attach such weight as it sees fit. However, that would be contrary to the statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [LBCA Act]. The Act places a general duty in the exercise of planning functions with respect to any buildings or other land in a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area;
9. The meaning of section 72 of the LBCA Act has been tested in the courts, most notably in the case of *The Forge Field Society and others versus Sevenoaks District Council and others*. In the judgement dated 12 June 2014 it was made clear that:
  - A local planning authority’s finding of harm to the character or appearance of a designated conservation area is not merely significant in the light of policy in the NPPF. There is also a statutory significance to it;
  - When applying paragraph 134 of the NPPF the decision maker must comply with the legal duties under section 72 of the LBCA Act. Paying special attention to the desirability of preserving or enhancing the character and appearance of a conservation area requires that there should be a strong presumption against a development which would result in harm to the conservation area;
  - The duty under section 72 does not allow a local planning authority to treat the desirability of preserving the character and appearance of a conservation area as a mere material consideration to which it can simply attach such weight as it sees fit. When an authority finds that a proposed development would harm the character or appearance of a conservation area, it must give that harm considerable importance and weight;
  - This does not mean that a local planning authority's assessment of likely harm to a conservation area is other than a matter for its own planning judgement, neither does it mean that the weight the authority should give to harm which it considers to be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But a finding of any harm to a conservation area gives rise to a strong presumption against planning permission being granted;
10. The fact that Melton Borough Council, as the local planning authority, has identified that development of SHLAA site MBC-003-017 would cause harm to the designated conservation area ought to have led it to conclude that there must be a strong statutory and planning policy presumption against it being included as a proposed allocation in the Melton Local Plan. Instead, for some reason, the Council's site assessment for MBC-003-117 (GREA1) in its Rural Hubs Update 3 of 3 dated 30 May 2017 has judged the identified “less than substantial harm” to the conservation area to be a positive factor in support of the proposed development!

The draft Melton Local Plan leaves an impression that the approach to the conservation of heritage assets is not as robust as would be expected by the National Planning Policy Framework. The draft Local Plan broadly conforms with NPPF paragraph 156 in setting out the strategic priority of safeguarding valued heritage and local landscapes, and in setting objectives to (1) conserve the

historic environment and Melton Borough's heritage assets and (2) to protect the rural character of the Borough. However, it falls short when it comes to some of the means to achieve this.

Paragraph 157 of the NPPF states that the Local Plan should, crucially, identify land where development would be inappropriate, for instance because of its environmental or historic significance. The Great Dalby appraisal omits to do this. Nor is there any reference to land where development would lead to a loss of historic significance elsewhere in the draft Local Plan. The section concerned with Heritage is silent on the matter, and no such study is identified in the evidence base.

The NPPF states (paragraph 169) that Local Planning Authorities should have up-to-date evidence about the historic environment in their area and use it to assess the significance of historic assets and the contribution they make to their environment. They should also use it to predict the likelihood that currently unidentified heritage assets, particularly sites of historic or archaeological interest, will be discovered in future; Local Planning Authorities should either maintain or have access to a historic environment record. As stated earlier, the appraisal for GREA1 has failed to recognise the potential archaeological significance of the site which is listed in the Leicestershire & Rutland Historic Environment Record under MLE5943, the Medieval and Post-Medieval Historic Settlement Core of the village.

### **In conclusion**

The proposed allocation GREA1 is unsound. It should be removed from the draft Melton Local Plan.

Acknowledged harm to the Great Dalby Conservation Area that would result from development of GREA1 has not been justified nor, given the important heritage constraints in particular, would it be consistent with national planning policy, nor, in the light of court decisions in respect of the Planning (Listed Buildings and Conservation Areas) Act 1990, would it be realistically deliverable. The strong statutory and policy presumptions against planning permission being awarded for development that would cause harm to a designated conservation area render the proposed allocation ineffective.

Melton Borough Council, as the local planning authority, has identified that the proposed housing allocation would be harmful to the conservation area but has failed to address the finding of harm as called for in the NPPF and as required by the Planning (Listed Buildings and Conservation Areas) Act. When applying paragraph 134 of the NPPF to "less than substantial harm to the significance of a designated heritage asset" the Council is required under section 72 of the Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the Great Dalby Conservation Area. It is evident that draft allocation GREA1 would do neither.

Further, draft allocation GREA1 would be in conflict with draft Local Plan policies EN6 and EN13 as the proposed development would be generally inconsistent with the identified special character of the designated conservation area and would lead to the loss of an open area which makes an important contribution to the Great Dalby settlement character.

Nothing has changed on the ground since the 1991 appeal hearing when Melton Borough Council identified the adverse impact on the character and appearance of the designated conservation area and the importance of the open area of land to the significance of the village form, character and setting as its principal objections to outline planning permission being awarded for housing development on the site.

There is no justification for draft allocation GREA1 in the Melton Local Plan to outweigh the strong statutory and policy presumptions against the proposed development. Despite the Council's most recent appraisal not having fully appreciated the significant adverse impact that GREA1 would have on the character and appearance of the Great Dalby Conservation Area, the Council has assessed that GREA1 would be harmful to the conservation area. As required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act, considerable importance and weight must be given to that "less than substantial harm" in the planning balance.

GREA1 may not be an isolated example of the draft Melton Local Plan's apparent failure to deliver on its strategic priority of safeguarding valued heritage by, inter alia, conserving the historic environment and the borough's heritage assets. Here, the Council has not appreciated the desirability of sustaining and enhancing the significance of the heritage asset as expected by NPPF paragraph 126 nor, contrary to the policy approach of NPPF paragraph 132, has it given great weight to the designated heritage asset's conservation in its site assessment. The Council has also omitted to apply the welcome approach of draft local plan policy EN6 and there are shortcomings as regards the policy advice of NPPF paragraphs 157 and 169.

Under the circumstances I consider that all draft Melton Local Plan allocations should be revisited and, where harm to designated heritage assets is identified, the site assessment should be re-examined to ensure that there is full national planning policy compliance.

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Finally, there is the question of legal compliance.

On the face of it, the proposed allocation is legally compliant as it appears to conform with section 20(5) of the Planning and Compulsory Purchase Act 2004 that it should satisfy the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents.

However, the Council has failed to comply with the statutory requirement of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which establishes a general duty in the exercise of planning functions to pay special attention to the desirability of preserving or enhancing the character or appearance of a designated conservation area. In bringing forward proposed allocation GREA1 the Council has omitted to have a proper regard to this statutory duty.

**6) PLEASE SET OUT WHAT CHANGE(S) YOU CONSIDER NECESSARY TO MAKE THE FOCUSED CHANGE LEGALLY COMPLIANT OR SOUND:**

For all the reasons identified in section 5 above, proposed allocation GREA1 is fundamentally unsound and should be removed from the draft Melton Local Plan.