



Department for  
Communities and  
Local Government

Our Ref: APP/R1038/W/15/3133527

Mrs Emma Lancaster  
Spawforths  
Junction 41 Business Court  
Thorpe Road  
Leeds, WF3 2AB

19 December 2016

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY MARSH GREEN ESTATES LTD  
LAND AT THE JUNCTION OF NARROWLEYS LANE AND MOOR ROAD, ASHOVER  
APPLICATION REF: 14/00766/OL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of J C Clarke BSc BTP MRPTI, who held a public local inquiry on 24, 25 and 26 May and 9 June 2016 into your client's appeal against the decision of North East Derbyshire District Council to refuse outline planning permission for the erection of 26 dwellings and garages (including 10 affordable units/40%) served from a single access road onto Moor Road, and incorporating areas of public open space/play areas and the provision of pedestrian paths, in accordance with application reference 14/00766/OL dated 4 August 2014.
2. On 12 July 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for residential development of over 25 units in an area where a qualifying body has submitted a neighbourhood plan to the local authority but the relevant plan has not been made.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to allow the appeal and to grant outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Policy and statutory considerations**

4. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be

determined in accordance with the development plan unless material considerations indicate otherwise.

5. In this case the development plan consists of the saved policies of the North East Derbyshire Local Plan (NEDLP). Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated Planning Practice Guidance ('the Guidance').

#### *Emerging Plan*

6. The Council has started to prepare a new local plan (eLP). The Secretary of State notes that, whilst evidence has been prepared in connection with the eLP, the final version has yet to be published, consulted upon or submitted to examination. He therefore agrees with the Inspector that it is too early to confirm whether the new plan will set a housing target for Ashover and, if so, what this would be or whether it will include Special Landscape Areas ("SLAs") or a similar approach to landscape protection (IR11.12). Therefore, having regard to paragraph 216 of the Framework, he gives no weight to the eLP.
7. The draft Ashover Parish Neighbourhood Plan (APNP) was submitted to the Council in March 2016. It contains proposed Settlement Development Limits (SDLs) for Ashover and states, in Policy AP3, that development outside of these would only be allowed in 'exceptional circumstances'. The appeal site is outside these proposed SDLs and is not proposed to be allocated for housing development in the draft APNP. For the reasons given by the Inspector at IR11.13, the Secretary of State agrees that, in accordance with paragraph 216 of the Framework, the emerging APNP can be afforded very limited weight.

#### **Main issues**

8. The Secretary of State agrees with the Inspector that the main issues are those set out at IR11.1. He also notes that the Council and the Appellant agree (IR6.2) that the Council can only demonstrate a supply of deliverable sites sufficient to provide a 1.79 year supply of housing land so that, in accordance with paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date.

#### *Policy*

9. The Secretary of State agrees with the Inspector (IR11.4) that, in the context of paragraph 49 of the Framework, Policies H3, GS1, GS6, NE1 and NE2 of the NEDLP must be considered out-of-date as policies for the supply of housing. As set out at IR11.7-11.8, Policy GS1(b) is not wholly consistent with the Framework and Policy GS6 is linked to the outdated SDLs. This also indicates that these policies should carry little weight.
10. Furthermore, the Secretary of State agrees with the Inspector at IR11.10 that the requirement in Policy NE2(a) - that development should not adversely affect the setting of any heritage asset - does not reflect the approach of balancing harm to such assets against the public benefits resulting from the appeal proposal, as indicated in paragraphs 133 to 135 of the Framework, and that this aspect of Policy NE2 therefore carries reduced weight.

11. The Secretary of State also notes (IR11.11) that Policy NE2 allows there to be some landscape harm, provided this would not materially detract from the surrounding area (IR11.11).

#### *Landscape character and appearance*

12. The Secretary of State notes that the appeal site is in a visually sensitive location and falls within the locally designated SLA. It forms part of a valued landscape. However, it is not subject to any national landscape designation (IR11.70). Having carefully considered the Inspector's analysis of landscape at IR11.15-11.30, the Secretary of State agrees with his conclusion at IR11.31 that, if suitably designed and laid out, the proposal could read as an extension to the dispersed character of Ashover.

13. The Secretary of State accepts that it would cause some visual harm - mainly from viewpoints in the immediate vicinity of the site, and that it would therefore conflict with the relevant provisions of Policies NE1, NE2(a) and GS1 (prefatory text and (d)) of the NEDLP. The Secretary of State recognises that these policies accord, insofar as they relate to landscape matters, with the approach set out in paragraphs 17 and 109 of the Framework when applied to sites within a 'valued landscape'. However, in the absence of any national landscape designation to justify giving substantial weight to the protection of the appeal site as being of more than local significance, he gives this moderate weight having regard to the scope for designing the scheme sensitively as an extension to the dispersed character of Ashover. Furthermore, although the Secretary of State agrees with the Inspector at IR11.32 that the landscape and visual harm associated with the proposal would conflict with Policy GS6(b) and (f) of the NEDLP, he also agrees that, for the reasons given at paragraph 9 above, this policy carries little weight.

#### *Highways*

14. For the reasons given in IR11.34-11.44, the Secretary of State agrees with the Inspector that the proposal would give rise to fairly limited levels of traffic which would be dispersed around the highway network away from the immediate environs of the site and that it would comply with the provisions of Policy T2 and H12(f) of the NEDLP and with the terms of the Framework (IR11.43). He therefore regards this as a neutral factor in the overall planning balance.

#### *Assessment of any other harm*

15. The Secretary of State agrees with the Inspector at IR11.45 that, although paragraph 17 of the Framework encourages effective use of previously developed land, it does not prevent green field sites from being developed before previously developed sites or other sites within the current built up area and so he gives no weight to this consideration.

16. The Secretary of State also notes (IR11.46) that the Derbyshire Wildlife Trust raised no objections to the proposals subject to conditions being imposed to implement the measures set out in the submitted ecological reports. He agrees with the Inspector that the evidence before him does not suggest that substantial ecological harm would arise from the proposal. He therefore regards this as being a neutral factor in the overall balance.

17. The Secretary of State agrees with the Inspector (IR11.47) that the appeal site would not be substantially less accessible to jobs and services by a choice of transport modes than other potential housing sites in the village including those being promoted in the draft

APNP. Additionally, for the reasons given at IR11.48, the Secretary of State agrees with the Inspector that there would not appear to be any service or infrastructure constraint which would justify withholding permission for the appeal proposal or which would indicate that Ashover is not a sustainable location for an appropriate level of future housing development. The Secretary of State also agrees with the Inspector (IR11.49) that there is no evidence to suggest that the site should be subject to the protection which should be given to Best and Most Versatile Land under paragraph 112 of the Framework; and he regards all these factors as being neutral in the overall balance.

18. The Secretary of State further agrees with the Inspector (IR11.50) that the proposal would not harm the setting of the Grade I All Saint's Church, any Grade II listed buildings in Ashover, or Ashover Conservation Area - all of which are located a considerable distance from the site. He also agrees that, while the proposal would cause a degree of harm to the setting of non-designated heritage assets by interfering with their open outlook, this would not add substantively to the landscape and visual harm relating to this settlement edge. The Secretary of State therefore gives it little weight.

#### *Housing*

19. Having carefully considered the Inspector's discussion at IR11.52-11.63, the Secretary of State agrees with him that the contribution that the proposal would make to boosting the supply of market and affordable homes, whilst being fairly modest in scale, would constitute a significant benefit from the proposal in the context of the extremely low rates at which housing has been delivered across the District in recent years and of projected future completions until at least 2018/19. The Secretary of State gives substantial weight to this consideration.

#### *Other benefits*

20. The Secretary of State agrees with the Inspector that only limited weight can be attributed to the benefits in terms of the creation of construction jobs and associated spending (IR11.65). He also agrees (IR11.66) that, although a large proportion of the site would be made available for recreational public open space and that this constitutes a benefit of the scheme, there is no evidence to suggest that existing outdoor recreational provision in Ashover is deficient in quantitative and qualitative terms so that this benefit carries limited weight. Additionally, for the reasons given by the Inspector, he agrees that it is not clear that a substantial net increase in biodiversity interest within the site would be achieved (IR11.66) and so he gives that no weight.
21. Furthermore, the Secretary of State agrees with the Inspector (IR11.67) that limited weight should be given to the contribution which the appeal scheme would make to the retention of services which would otherwise be threatened or the provision of new services; or on the impact of the proposal on the age profile and household composition split of Ashover (IR11.68). He also agrees with the Inspector at IR11.69 that, as there is no evidence which demonstrates that the awards of NHB and Council Tax would help make the proposal acceptable in planning terms, these should be given no weight.

#### **Planning conditions**

22. Having given consideration to the Inspector's analysis at IR10.1-10.6, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance, the Secretary of State is satisfied that the conditions recommended by the Inspector comply with the policy test

set out at paragraph 206 of the Framework and that they should form part of his decision as set out at Annex A.

### **Planning balance and overall conclusion**

23. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies NE1, NE2(a), GS1, GS6 of the development plan and, therefore, that it is not in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
24. As outlined at paragraphs 8 and 19 above, the Council cannot demonstrate a five-year supply of deliverable housing sites. This means that the Secretary of State considers that the relevant policies for the supply of housing (policies H3, GS1, GS6, NE1 and NE2) are out-of-date through the operation of paragraph 49 of the Framework so that paragraph 14 of the Framework is engaged. The Secretary of State has therefore also gone on to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
25. The Secretary of State agrees that the appeal site is in a visually sensitive location and, whilst not subject to any national landscape designation, is part of a valued landscape. In fact, it is locally designated as part of the SLA. He agrees with the Inspector that even a well-designed scheme would cause some harm to the landscape character and appearance of the area but that it would be primarily concentrated in the local area and, having regard to the reasons outlined in paragraph 13 above, he gives this moderate weight.
26. Against this, the Secretary of State gives substantial weight to the contribution which the appeal scheme would make to helping to achieve the Government's aim of boosting the supply of housing in a district where the supply of suitable housing sites is heavily constrained and there is a clear need for more market and affordable housing to be delivered, with a particular need for more affordable housing in the village of Ashover. Hence, notwithstanding the fairly modest scales of the proposal compared to housing needs in the District, the Secretary of State considers that the contributions that the proposal would make to meeting market and affordable housing needs in the area constitute significant benefits - which would be supplemented by the other limited benefits of the scheme identified in paragraphs 20 and 21 above. Overall, therefore, the Secretary of State does not consider that the adverse impacts of allowing this appeal would significantly and demonstrably outweigh the benefits when assessed against the Framework policies as a whole and he finds that there are material considerations which indicate that the proposal should be determined otherwise than in accordance with the Development Plan.

### **Formal decision**

27. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission subject to the conditions set out in the Annex A to this letter for the erection of 26 dwellings and garages (including 10 affordable units/40%) served from a single access road onto Moor Road, and incorporating areas of public open space/play areas and the provision of pedestrian paths, in accordance with application reference 14/00766/OL dated 4 August 2014.

28. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

**Right to challenge the decision**

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

30. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

31. A copy of this letter has been sent to North East Derbyshire District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

Richborough Estates

## Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No part of the development hereby permitted shall take place until a scheme for the provision of affordable housing as part of it has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing contained in the National Planning Policy Framework or any future policy or guidance in force at that time that replaces or supplements the Framework. The scheme shall include:
  - (i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of the housing units hereby approved;
  - (ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing if no Registered Social Landlord is involved);
  - (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - (v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 5) No later than the date of submission of the first reserved matters application an assessment of the risks posed by any contamination shall be submitted to and approved in writing by the local planning authority. The assessment shall comprise a Desk Top Study (Phase I) to identify any likely contamination on the application site and any necessary Intrusive Site Investigation (Phase II) together with the timing for its implementation. If any contamination is found during Intrusive Site Investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the approved development (phase III), including the timescale for its implementation, shall be submitted to and approved in writing by the local planning authority.

The site shall be remediated in accordance with the approved measures and none of the dwellings hereby approved shall be occupied until a verification report has been submitted to and approved in writing by the local planning authority in respect of that dwelling. If, during the course of the approved development, any contamination is found otherwise than as part of the approved Intrusive Site Investigation, the development shall be suspended and additional measures of remediation shall be submitted to the local planning authority for approval. The remediation of the application site shall incorporate the approved additional measures, which shall also be covered by the verification report to be submitted to and approved in writing by the local planning authority before each dwelling is occupied.

- 6) Details to be submitted to and approved in writing by the local planning authority for approval as part of the reserved matters shall:
- (i) Include areas of built form and open space which are in the general locations shown in the Design and Access Statement (January 2015 revised May 2015), the Indicative Site Plan (Drawing No. 14-456-10 and Pegasus Design's Landscape Masterplan (Drawing No. D0373\_09 Rev A);
  - (ii) provide for the retention of the mature oak tree within an area of open space within the application site; and
  - (iii) provide for the retention of the existing boundary hedgerows to the perimeter of the site.
- 7) Details to be submitted for approval as part of the reserved matters shall include a detailed design for a proposed single vehicular access onto Moor Road, the new road(s), any shared surface(s) and / or accesses to them within the application site and a timetable for their implementation.
- 8) There shall be no vehicular access off Narrowleys Lane and not more than one vehicular access onto Moor Road.
- 9) No dwelling hereby permitted shall be occupied until any road(s) or private driveway to serve that dwelling have been laid out, constructed and surfaced in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The road(s) and driveways shall be retained as such thereafter.
- 10) No part of the development hereby permitted shall take place until a scheme for the laying out and provision of a children's play area and amenity area for use by members of the public has been submitted to and approved in writing by the local planning authority. The scheme shall include details of public use, future management and maintenance arrangements for the play area and amenity area and a timetable for implementation. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. The play area and amenity area shall thereafter remain available for public use for its designated purpose in accordance with the approved details.
- 11) No part of the development hereby permitted shall take place until details of a sustainable drainage system to serve the development have been submitted to and approved in writing by the local planning authority. Those details shall include:
- (i) information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - (ii) a timetable for its implementation; and
  - (iii) a management and maintenance plan which shall secure the effective operation of the sustainable drainage system throughout the lifetime of the development.

The sustainable drainage scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 12) No part of the development hereby permitted shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed dwellings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 13) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and hedgerows and the working methods for the protection



of the trees and hedgerows has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and hedgerows shall be carried out as approved.

- 14) No part of the development hereby permitted shall take place until a mitigation and monitoring strategy in respect of Great Crested Newts and a timetable for its implementation, allowing for the need to obtain any statutory licences or approvals, has been submitted to and approved in writing by the local planning authority. The approved scheme shall then be implemented as approved.
- 15) No part of the development hereby permitted shall take place until a scheme for the provision of ecological habitats in accordance with the Detailed Ecological Mitigation Proposals (November 2015) document and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. The scheme shall provide details of how the positive nature conservation management of all retained and created habitats will be funded, maintained, implemented and managed and made available for use by members of the public. The approved proposals shall be implemented in full accordance with the approved details and timetable and shall be retained as such thereafter.
- 16) No part of the development hereby permitted shall take place until a scheme(s) for the recruitment of employees for the construction period of the development, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The scheme(s) shall be operated as part of the development in accordance with the approved details.
- 17) No part of the development hereby permitted shall take place until a scheme(s) for the storage of refuse and recycling bins and access for refuse collection vehicles has been submitted to and approved in writing by the local planning authority. None of the proposed dwellings shall be occupied until the refuse collection and recycling storage facility for that property has been provided in accordance with the approved scheme.
- 18) No part of the development hereby permitted shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - (i) the parking of vehicles of site operatives and visitors;
  - (ii) loading and unloading of plant and materials;
  - (iii) storage of plant and materials used in constructing the development;
  - (iv) wheel washing facilities;
  - (v) measures to control the emission of dust and dirt during construction;
  - (vi) construction working hours; and
  - (vii) the arrangements, to include hours of operation, and routing for delivery and construction vehicles to and from the application site.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 19) No street lighting or lighting of public areas associated with the development hereby permitted shall be carried out except in accordance with details which have previously been submitted to and approved in writing by the local planning authority.
- 20) No part of the development hereby permitted shall take place until a scheme to provide for pedestrian movement to, from and within the application site has been submitted to and approved in writing by the local planning authority. The scheme shall take account of any pedestrian desire lines and provide details of the design and construction of new footpaths,

the arrangements for their future management and maintenance and a timescale(s) for implementation. The scheme shall be implemented in accordance with the approved details and timescale(s) and shall thereafter be retained in accordance with the approved details.

Richborough Estates

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# Report to the Secretary of State for Communities and Local Government

by J C Clarke BSc BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 15 September 2016

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TOWN AND COUNTRY PLANNING ACT 1990

NORTH EAST DERBYSHIRE DISTRICT COUNCIL

APPEAL BY MARSH GREEN ESTATES LTD

Richborough Estates

Inquiry held on 24/25/26 May and 9 June 2016

Land at the Junction of Narrowleys Lane and Moor Road, Ashover

File Ref: APP/R1038/W/15/3133527

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**File Ref: APP/R1038/W/15/3133527**

**Land at the Junction of Narrowleys Lane and Moor Road, Ashover**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Marsh Green Estates Ltd against the decision of North East Derbyshire District Council.
- The application Ref 14/00766/OL, dated 4 August 2014, was refused by notice dated 19 June 2015.
- The development proposed is the erection with all matters reserved for future consideration of 26 dwellings and garages (including 10 affordable units/40%) served from a single access road onto Moor Road, and incorporating areas of public open space/play areas and the provision of pedestrian paths.

**Summary of Recommendation: The appeal be dismissed.**

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**1. PROCEDURAL MATTERS**

- 1.1 The Inquiry took place at the North East Derbyshire District Council (NEDDC) offices on 24-26 May 2016 and on 9 June 2016. In view of the high level of public interest and to allow attendance by members of the public who otherwise may not have been able to attend an extra session was held on the evening of 25 May 2016 at Ashover Village Hall. I carried out an accompanied site visit on 27 May 2016 and unaccompanied visits to the area on 23 and 27 May 2016.
- 1.2 The Council refused the application for 3 reasons. Before the Inquiry it confirmed that it no longer wished to contest reasons 2 and 3, concerning highways and ecology issues. These matters have been raised by other parties and I have addressed them in my report. At the Inquiry the Council only contested reason for refusal number 1 which relates to landscape and visual impact.
- 1.3 A Statement of Common Ground (SOCG) and library of Core Documents were provided before the Inquiry, the latter of which are listed in Appendix 2 to this report. I use the reference numbers from that list in my report. Additional documents made available during the Inquiry are also listed in Appendix 2.
- 1.4 The Secretary of State recovered the case for determination under Section 79 of the Town and Country Planning Act 1990 on 12 July 2016, on the grounds that the appeal involves a proposal for residential development of over 25 units in an area where a qualifying body has submitted a neighbourhood plan to the local authority but the relevant plan has not been made.

**2. THE SITE AND SURROUNDINGS**

- 2.1 The site, which is next to the corner of Narrowleys Lane and Moor Road and has an area of 2.3 hectares<sup>1</sup>, is one of a number of open fields to the west of the village of Ashover. Its boundaries are marked by a mix of dry stone walls, mature hedges and intermittent trees, and a large oak tree exists in the main body of the site. The site has the character of pasture land.

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<sup>1</sup> Statement of Common Ground - paragraph 2.3

2.2 The site is in the well defined Ashover valley, which is characterised by a patchwork of open pasture, woodland, steeply sloping valley sides, villages and smaller settlements. Ashover Parish has a recorded population of 1,905<sup>2</sup>. Ashover village contains a primary school, village shops, public houses, a Parish Hall, playing fields and GP consulting rooms. The nearest towns are Clay Cross, Matlock, and Chesterfield, which are about 3.5, 4.5 and 7.2 miles away respectively<sup>3</sup>.

### **3. PLANNING POLICY**

3.1 The relevant development plan is the North East Derbyshire Local Plan (NEDLP) 2005. Although the Plan period for the NEDLP expired in 2011, relevant policies within it were "saved" by the Secretary of State for Communities and Local Government in 2008.

3.2 The site falls just outside the Settlement Development Limits (SDLs) for Ashover identified in the NEDLP. Policy GS1 of the NEDLP states that, unless indicated in the Local Plan, all development proposals will be located within the SDLs, unless the development is acceptable in the countryside or over-riding exceptional circumstances can be demonstrated. Policy GS6 states that in the countryside new development will only be permitted where it meets strict criteria including, for example, that it is in keeping with the countryside, and does not represent a prominent intrusion into the countryside.

3.3 The site also falls within the Ashover Valley Special Landscape Area (SLA). Policy NE2 of the NEDLP establishes that within SLAs development will be permitted provided for example that it would not materially detract from the surrounding landscape. The SLA surrounds but does not include Ashover village. The SDLs for Ashover and the SLA boundary run approximately along the stretches of Narrowleys Lane and Moor Road which bound the appeal site.

3.4 The Council has started to prepare a new Local Plan which, following the abandonment in August 2015<sup>4</sup> of its previous approach of preparing a two stage Plan, will take the form of a single new Local Plan. This is proposed to involve a Green Belt review to help meet development needs in the District. The outcomes of the Green Belt review had yet to be published at the time of the Inquiry and the Council had yet to undertake pre-publication consultation on the new Plan itself. The areas which are currently designated as Green Belt are some distance from Ashover.

3.5 The Council's Interim Planning Policy for New Housing Development in North East Derbyshire 2010<sup>5</sup> was prepared outside the Local Plan process. It states that, in the absence of a 5 year supply of housing land, the Council will consider proposals for new housing development outside the SDLs subject to various criteria including that the site should adjoin an SDL and not form a prominent intrusion into the countryside.

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<sup>2</sup> Census 2011, Mr Hindle's proof of evidence, paragraph 4.7

<sup>3</sup> Statement of Common Ground paragraph 2.2

<sup>4</sup> Core Document E16

<sup>5</sup> Core Document E9

- 3.6 The draft Ashover Parish Neighbourhood Plan (APNP)<sup>6</sup> was submitted to the Council in March 2016<sup>7</sup>. It contains proposed Settlement Development Limits for Ashover and states, in Policy AP3, that development outside these would only be allowed in 'exceptional circumstances'. The appeal site is outside these proposed SDLs and is not proposed to be allocated for housing development in the draft APNP.
- 3.7 At the time of the Inquiry, the draft APNP was being checked by the Council for legal compliance prior to undergoing its submission stage consultation. It had yet to undergo its Examination stage and was the subject of objection from the Appellant.

#### **4. PLANNING HISTORY**

- 4.1 An outline application<sup>8</sup> submitted in 2008 for the construction of 18 affordable dwellings, a car park for the school and a bowling green on the appeal site was refused by NEDDC. After the Council refused outline permission for the appeal proposal in June 2015, it also refused permission for a similar proposal<sup>9</sup> in December 2015, for reasons related to landscape and visual impact and transport sustainability issues.

#### **5. THE PROPOSAL SUBJECT TO APPEAL**

- 5.1 The application subject to appeal originally included the erection of 40 dwellings, but this was reduced to 26 dwellings before it was determined by the Council. The header of my report includes a revised description of development as set out by the parties<sup>10</sup>. The application was in outline with all matters reserved for future approval. Proposed site layout and elevation drawings submitted by the Appellant are indicative.

#### **6. OTHER AGREED MATTERS**

- 6.1 The Council has agreed that the proposal does not require an Environmental Impact Assessment.
- 6.2 The Council and Appellant agree that the Council can not demonstrate a supply of deliverable sites sufficient to provide five years worth of housing against its housing requirement, and that the District currently has a 1.79 year housing land supply<sup>11</sup>. This figure is based upon the housing requirement of 300 new dwellings per annum proposed in the North East Derbyshire Local Plan (2011-2031) Initial Draft 2015<sup>12</sup>. It also includes a buffer of 20% as, in the context of paragraph 47 of the National Planning Policy Framework (the 'Framework'), the Council accepts that there has been a record of persistent under delivery of housing, and a further allowance for past under delivery.
- 6.3 The Council agrees that, as it can not demonstrate a five year supply of deliverable housing sites, relevant policies for the supply of housing in the NEDLP should not, in accordance with paragraph 49 of the Framework, be

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<sup>6</sup> Submission Consultation Version

<sup>7</sup> Core Document E18

<sup>8</sup> Reference NED/08/00544/OL

<sup>9</sup> Reference NED/15/00848/OL

<sup>10</sup> Statement of Common Ground – paragraph 3.1

<sup>11</sup> Inquiry Document 8

<sup>12</sup> Core Document E4

considered up-to-date<sup>13</sup>. The Council also agrees that under the 4<sup>th</sup> bullet point of paragraph 14 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

- 6.4 The Council agrees that under current case law<sup>14</sup> 'relevant policies for the supply of housing' in the context of paragraph 49 of the Framework include, as well as those which provide positively for the delivery of new housing, those which influence the supply of housing land by restricting the locations where new housing may be developed<sup>15</sup>.
- 6.5 The Council and the Appellant agree that the development would result in the loss of a greenfield site in the open countryside within a Special Landscape Area and the loss of some sections of dry stone wall<sup>16</sup>.
- 6.6 The Council agrees that the proposal would have no appreciable impact on the character or appearance of Ashover Conservation Area and has raised no objections to the proposal concerning the setting of heritage assets or resources<sup>17</sup>. It has also agreed that matters of design detail could follow the principles in the submitted Design and Access Statement and be considered at reserved matters stage.
- 6.7 The Council and Appellant agree that the principle of allowing residential development on the site is acceptable from a highway perspective, that the location and design of the proposed main vehicular access off Moor Road are acceptable in highway safety terms and that the application was accompanied by appropriate evidence concerning the highways and traffic impacts of the development<sup>18</sup>.
- 6.8 The Council and Appellant agree that Derbyshire Wildlife Trust, the Council's ecology consultee, was satisfied with the findings and recommendations of the submitted Ecological Appraisal with regard to protected species. They also agree that flooding, drainage, subsidence, contamination and archaeology issues can be satisfactorily addressed by imposing conditions, that the development need not give rise to overlooking or overshadowing of any nearby residential properties, and that landscaping and open space provision can be agreed at the detailed design stage<sup>19</sup>.
- 6.9 The Council initially identified a need for a financial contribution to be made towards provision of primary and secondary school places. However, on the basis of revised evidence concerning schools capacity in an e-mail dated 4 May 2016 from Derbyshire County Council<sup>20</sup> it has agreed that no such contribution is required. The Council has also agreed that affordable housing provision, public open space and drainage requirements can be covered by condition, and that as a result no planning obligation is required.

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<sup>13</sup> Council closing submissions para 6

<sup>14</sup> Core Document G2

<sup>15</sup> Council closing submissions para 9

<sup>16</sup> Statement of Common Ground para 7.2

<sup>17</sup> Statement of Common Ground paras 7.2 and 7.7

<sup>18</sup> Statement of Common Ground para 7.3

<sup>19</sup> Statement of Common Ground paras 7.4 to 7.9

<sup>20</sup> Inquiry Document 9



6.10 Many of the matters set out above are disputed by interested parties from the local community.

## **7. THE CASE FOR THE COUNCIL**

7.1 This section of the report sets out, in summary form, the material points made on behalf of the Council at the Inquiry.

### *Policy*

- 7.2 Whilst relevant policies for the supply of housing are out of date and the first limb of paragraph 14 bullet 4 of the Framework is engaged, the Framework does not displace the statutory 'presumption in favour of the development plan'<sup>21</sup>. The Framework does not modify the statutory framework for determining planning applications and it is for the decision maker to decide what weight should be given to Framework policies relating to the proposal in question.
- 7.3 Policies NE1 and NE2 of the NEDLP, which relate to the protection of high quality landscape in the countryside, are consistent with the approach to protection of valued landscapes in the Framework and should be attributed significant weight<sup>22</sup>. In such circumstances, there will be many circumstances where restrictive policies will be given sufficient weight to justify the refusal of planning permission despite the absence of a 5-year supply of deliverable housing sites<sup>23</sup>. Planning decisions should be taken in the public interest and should not be used as a form of sanction on Councils in such circumstances. The fact that the relevant countryside and landscape area designation policies may be interpreted as being 'relevant policies for the supply of housing' is not determinative.
- 7.4 Although the previously emerging draft Local Plan did not include the SLA designation this has been withdrawn and it would be incorrect to regard the SLA designation as being out of date for this reason. The significance of local landscape designations has if anything been reinforced by the letter from Brandon Lewis in March 2015<sup>24</sup>.
- 7.5 The prefatory text and criterion d) within Policy GS1, the whole of Policy NE1 and the first part of criterion a) of Policy NE2, all of which relate to landscape protection, should be given full weight. The approach to the planning balance suggested on behalf of the Appellant is therefore erroneous<sup>25</sup>.

### *Landscape value*

- 7.6 The appeal site is an integral part of an area which is designated as an SLA in the NEDLP. The SLAs were originally identified in the Derbyshire Special Landscape Area Local Plan (DSLALP) 1988, based upon broad strategic guidance in the then Structure Plan, following a comprehensive and transparent selection exercise. This included a long process of consultation and its own specific public

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<sup>21</sup> Council's closing submissions para 11

<sup>22</sup> Council's closing submissions para 14

<sup>23</sup> Council's closing submissions para 15

<sup>24</sup> Core Document F8

<sup>25</sup> Council's closing submissions para 46

inquiry to examine those areas proposed to be designated as SLAs<sup>26</sup>. The exercise aimed to only include those areas which, in a countywide context, have a very high intrinsic quality because of their strength and variety of features<sup>27</sup>. As a result several areas originally identified were not confirmed as SLAs. There is no more up to date information to justify undermining the conclusion of this process.

- 7.7 The NEDLP confirms that the SLAs are examples of the finest Derbyshire landscape outside the Peak District National Park and represent those areas of landscape which are most similar to the National Park<sup>28</sup>. The DSLALP<sup>29</sup> identifies that the features of the SLAs include steep slopes, undulation, woodland, patterns of hedgerows or boundary walls, areas of water and heritage features, and that they contain few detracting features. The DSLALP also confirms that, due to the highly selective process in defining the SLAs they are relatively limited in extent and represent only the finest countryside within which it is appropriate to apply very restrictive policies.
- 7.8 The site forms part of National Character Area 50 'Derbyshire Peak Fringe and Lower Derwent National Character Area', the published description of which<sup>30</sup> identifies NCA50 as a picturesque transitional area, often referred to as the gateway to the Peaks, between the natural beauty of the Peak District and the largely urban areas to the east. The description recognises the influence of the characteristic geology of the area, that it was seriously considered for inclusion in the nearby Peak District National Park in 1950, and that it remains of "...extremely high quality"<sup>31</sup>.
- 7.9 The appeal site and wider SLA clearly form a valued landscape for the purposes of the Framework and their protection is consistent with the Framework core planning principle that the countryside be protected for its own sake. Significant weight should be given to this matter<sup>32</sup>. Furthermore, the appeal site forms an important part of the mosaic of landscape characteristics which are fundamental to the SLA as a whole.
- 7.10 The settlement edge next to the site has historically contained development to the east of Narrowleys Lane and north of Moor Road. This articulated edge and the way it presents as the setting of the settlement and distinctive features such as the Victorian houses fronting towards the site from across Moor Road are important. They reflect the historic evolution of the settlement and its current largely bucolic and pastoral setting<sup>33</sup>.

#### *Landscape and visual effects of the proposal*

- 7.11 The adverse impacts of undertaking the proposed development would significantly and demonstrably outweigh its benefits.

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<sup>26</sup> Council's closing submissions para 23

<sup>27</sup> Council's closing submissions para 25

<sup>28</sup> Council's closing submissions para 20

<sup>29</sup> CD E25 para 2.5 and Council closing submission para 25

<sup>30</sup> Ms Bolger's proof of evidence, appendix 2, page 3

<sup>31</sup> Council's closing submissions para 27

<sup>32</sup> Council's closing submissions para 28

<sup>33</sup> Council's closing submissions para 39

- 7.12 The approach to the assessment of landscape effects of the appeal proposal suggested on behalf of the Appellant, predicated upon an assessment of whether it would cause harm to the SLA as a whole, is flawed. If the evaluation of the effects of a proposal on a designated landscape depend upon an evaluation of harm to the totality of the designation then it is hard to see how any development could be contained, even in a National Park or Area of Outstanding Natural Beauty.
- 7.13 Whilst the design of the proposals was subject to consultation with OPUN as it emerged, the responses from that organisation confirm that the principle of allowing the development in this sensitive location has yet to be established and a convincing justification is required<sup>34</sup>. The site's sensitivity remains a concern to OPUN.
- 7.14 The proposal would irrevocably change a pastoral field on the edge of Ashover which forms an important part of the setting of the village. Its adverse visual impact would be particularly evident in views to and from Narrowleys Lane and Moor Road and in particular in views to the south. Irrespective of its final design, the development would not have the current imposing or historic character of the existing settlement edge. It would represent a loss of part of the SLA and harm the distinctive transition between the edge of Ashover and the SLA.
- 7.15 The proposal would materially detract from the SLA landscape and be at variance with the provisions of the Framework and Policies NE1 and NE2 of the NEDLP relating to this matter<sup>35</sup>.

#### *Benefits of the proposal*

- 7.16 There is no provision or mechanism for ensuring that any sums derived from New Homes Bonus or Council Tax as a result of the development would be applied to Ashover or its locality. The contributions that the proposed development would make to New Homes Bonus and Council Tax receipts would not help to make the development acceptable in planning terms and are not, having regard to the law and the national Planning Practice Guidance (PPG)<sup>36</sup>, a material planning consideration.

#### *The 'planning balance'*

- 7.17 As the evidence submitted on behalf of the Appellant fails to consider landscape harm in the planning balance, and takes into account financial factors which should not be taken into account, it is fundamentally flawed. This is particularly the case in view of the ministerial letter concerning environmental matters<sup>37</sup>.
- 7.18 It is a matter of judgement as to whether the absence of a 5 year supply of sites for housing justifies the release of the site given its landscape impact. Evidence submitted on behalf of the Appellant identifies no cases where an Inspector has granted permission for development whilst also identifying the relevant site as a 'valued landscape' within the terms of paragraph 109 of the Framework.

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<sup>34</sup> Council's closing submissions para 31 to 33

<sup>35</sup> Council's closing submissions para 43

<sup>36</sup> Reference ID: 21b-011-20140612 (provided as Core Document F2)

<sup>37</sup> Core Document F8

- 7.19 Whilst the provision of both market and affordable housing is a factor to which weight may properly be attributed, the suggestion that the provision of a site for 26 dwellings would represent a 'key component' in that supply is fanciful.
- 7.20 In summary, the proposal is for housing on a greenfield site within an SLA which is recognised for its high quality and is 'valued' in the terms of the Framework. The proposal does not comply with the relevant provisions of the NEDLP or the Framework. Notwithstanding the absence of a demonstrable 5 year land supply the site is not appropriate for housing. The adverse impacts of undertaking the proposed development would significantly and demonstrably outweigh its benefits<sup>38</sup>.

## **8. THE CASE FOR THE APPELLANT**

- 8.1 This section of the report sets out, in summary form, the material points made on behalf of the Appellant at the Inquiry.

### *Policy*

- 8.2 The NEDLP is time expired as it only provided for development needs up to 2011. The saving direction issued by the Secretary of State in 2008 warned of the age of the Plan and the need to address the supply of housing.
- 8.3 Under paragraph 49 of the Framework, the relevant 'policies for the supply of housing' in the NEDLP are out of date. Having regard to case law, these include Policies NE1, NE2, and H3 as they bear upon the principle of sites being developed for housing<sup>39</sup>.
- 8.4 The SDLs in the NEDLP only provide for development needs up to 2011 and the Council's Interim Policy for Housing Development 2010 recognises the need to release land beyond the SDLs. The Council officer report concludes that the proposal complies with the Interim Policy. The fact that the SDLs are out of date is re-emphasised by the Council's decision to undertake a Green Belt review to identify sufficient housing land<sup>40</sup>.
- 8.5 The reference to open countryside in the Council's remaining reason for refusal is not relevant as it relates to the out of date SDLs. The Council accepts that development will be needed on greenfield sites, the Framework sets no sequential approach requiring previously developed land to be brought forward before greenfield sites and there is no evidence that development of the site would hinder the prospects of developing any previously developed land. The remaining reason for refusal is therefore reduced to the contention that the proposal would cause harm to the landscape which is not outweighed by its benefits<sup>41</sup>.
- 8.6 The site's location within an SLA does not in itself act as a bar to development. Policy NE2 clause a) provides that development will be permitted where '*...it would not materially detract from the surrounding landscape...*' and therefore

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<sup>38</sup> Council's closing submissions para 54

<sup>39</sup> Appellant's closing submissions para 10

<sup>40</sup> Appellant's closing submissions para 12

<sup>41</sup> Appellant's closing submissions para 25

allows there to be adverse impacts upon the site itself and a degree of adverse impact upon the surrounding landscape<sup>42</sup>.

- 8.7 Whilst the Council was preparing a two stage replacement Plan to cover the period 2011 to 2031, it has resolved to abandon this and pursue a single composite plan<sup>43</sup>. The new Plan is at a very early stage with consultation on the draft Plan not expected to take place until late 2017 with the possibility of an examination in summer 2018. There is likely to be slippage, particularly as the new Plan entails a Green Belt review<sup>44</sup>.
- 8.8 The process of preparing the emerging Ashover Parish Neighbourhood Plan is flawed as it is being prepared in advance of the new Local Plan, with potential inconsistencies. For example, whereas the previous draft Local Plan proposed that 115 dwellings be built in Ashover village the draft APNP proposes only 98 in Ashover Parish (which is substantially larger than the village itself). The draft APNP is based on no objective assessment of housing needs and has included no transparent site selection process. The sites chosen in the Plan are too small to provide affordable housing. The draft Plan is not at a stage where any weight can be given to it<sup>45</sup>.

#### *Landscape value*

- 8.9 There is only limited information about the original reasons for the SLA designation and how the criteria concerning these relate to the site in question. The Derbyshire Special Landscape Area Local Plan<sup>46</sup>, within which the SLAs were first defined, emphasises that the high intrinsic quality of the landscape was based on the strength and variety of features as opposed to individual features and that the boundaries had been drawn to follow features easily seen on the ground. Not all areas within the SLA are therefore of the same quality<sup>47</sup>.
- 8.10 Under Policy NE2, the impact of a development on the SLA as a whole must be assessed, having regard to the fact that the SLA is an extensive valley landscape the quality of which derives from the strength and variety of its features, and that the appeal site is just one rectangular field with simple boundary walling and hedges. It does not contain the mosaic of features which is an important characteristic of the SLA or make any significant contribution to it and is enclosed on two sides by the built form of Ashover<sup>48</sup>. As a simple field on the valley floor it does not contribute to the combination of wooded and pastoral qualities set on steeply sloping land which is identified by the Council as being important<sup>49</sup>.
- 8.11 The Framework stresses, in paragraph 113, the need to recognise distinctions between different categories of landscape designation. Land within the SLA should not be treated as if it were in, or comparable to land within, a National Park<sup>50</sup>. The SLA should not be given equivalent weight to a National Park.

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<sup>42</sup> Mr Peachey's proof of evidence - paras 9.33 to 9.35

<sup>43</sup> Mr Bedwell's proof of evidence - para 7.8

<sup>44</sup> Appellant's closing submissions para 3

<sup>45</sup> Appellant's closing submissions para 14

<sup>46</sup> Core Document E25

<sup>47</sup> Appellant's closing submissions para 28

<sup>48</sup> Appellant's closing submissions para 29

<sup>49</sup> Appellant's closing submissions para 30 and 31

<sup>50</sup> Appellant's closing submissions para 32

- 8.12 The village of Ashover, whilst not being designated as part of the SLA, derives its pattern, form and amenity value from the SLA and forms an integral element of its character<sup>51</sup>. It therefore follows that an extension to Ashover can be in keeping with the SLA.
- 8.13 It is agreed that Ashover and the surrounding landscape read as one and Ashover was only excluded from the SLA to allow for development within it, the policies of the SLALP having prohibited development in the SLA. This is important as it is now recognised that development beyond the SDLs is needed.
- 8.14 The SLA forms a dated approach to landscape protection, having been only included in the NEDLP to reflect the provisions of the then Structure Plan which has subsequently been rescinded. The Inspector's Report into the NEDLP and the work for the abandoned new Local Plan confirmed an intention not to carry the SLA approach forward<sup>52</sup>.

*Landscape and visual effects of the proposal*

- 8.15 Whilst the appeal proposal would change the appeal site, it would not significantly affect the main landscape elements which characterise it or impact upon the surrounding landscape. The surrounding area is an agricultural and settled landscape with a wide variety of built infrastructure which already accommodates this form of development<sup>53</sup>.
- 8.16 As recognised by the Council's original landscape consultants, the proposal would be seen within the context and backdrop of the village, will not significantly alter the balance of landscape components relating to Ashover and its distinctive valley side context and would reflect the past expansion of Ashover which has resulted in a settlement pattern with significant open space within and reaching into the village. Change resulting from the proposal would be localised and there would be no inter-visibility from most parts of the village. Longer views would be seen in the context of the existing settlement edge and the distinctive broken settlement form of Ashover<sup>54</sup>.
- 8.17 The Council's earlier landscape consultants (who broadly supported the proposal) took into account how the current transition between Ashover and the SLA contributes positively to the character of the village and the SLA, and the degree to which historic boundaries to the village would be affected<sup>55</sup>.
- 8.18 The Council's case shifted because its reason for refusal did not refer to views across the site, the alleged transition between the village and the surrounding SLA, or the alleged historic boundaries. There is no previous recognition of the claimed zone of transition or historic boundary, or definition of its precise alignment in the vicinity of the site<sup>56</sup>. The historic area of Ashover, defined by the Conservation Area boundaries which have been the subject of review, is some distance from the site and is not impacted upon by the proposal.

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<sup>51</sup> Appellant's closing submissions para 33

<sup>52</sup> Appellant's closing submissions para 35

<sup>53</sup> Appellant's closing submissions para 36

<sup>54</sup> Appellant's closing submissions para 37

<sup>55</sup> Appellant's closing submissions para 39 and 40

<sup>56</sup> Appellant's closing submissions para 43

- 8.19 It is not clear that the area considered to form the village of Ashover extended historically along the stretch of Moor Road which runs next to the appeal site. The village was centred on Church Road and the section of Moor Road to the east of the site in 1872. Whilst there was a loose collection of properties in the area known as Rattle, this was separated from Ashover by large areas of open land. Similarly, Narrowleys Lane was largely undeveloped at that time with the exception of the school and one other property.
- 8.20 Even if Moor Road next to the site was considered to form a boundary in Victorian times, it was not significant and its nature has subsequently changed substantially. The contention that this was a Victorian boundary is unfounded<sup>57</sup>.
- 8.21 Ashover has expanded significantly since Victorian times into areas which would have been regarded as countryside, for example along Narrowleys Lane, and estate development has been involved, for example on Malthouse Lane<sup>58</sup>.
- 8.22 As it is agreed that there is no distinction between the appeal site and the adjacent fields, the appeal site itself can not mark the "transition" claimed by the Council between Ashover and the adjacent countryside. The Council accepted that the transitional zone was the whole area between Moor Road and Butts Road. Only a small part of this would be removed by the appeal proposal<sup>59</sup>.
- 8.23 There is no basis for the historic boundary or transition zones and no policy support for preserving the current boundary or open area. There is also no significance to be attributed to the views to and from Moor Road, or recognition of these in any policy document or other document addressing the character of the SLA or Ashover. Extensive views of the wider valley landscape are not a characteristic of Ashover. Grove House and the Victorian semi detached buildings on Moor Road, whilst attractive, are not Listed and have no particular importance for the SLA or Ashover. In views towards Ashover they form part of an expansive view forming part of a wide range of built form extending across and seen cascading down the hillside<sup>60</sup>.
- 8.24 Views from Moor Road towards the other side of the valley, and views back towards Grove House would, in any event, be retained by the proposal. Insofar as there would be changes to the views they would be in the context of the view already containing and being affected by built development associated with Ashover. Changes in views do not provide a basis for resisting much needed development and the changes in the views would not significantly impact upon the SLA beyond the appeal site. The proposal does not breach Policy NE2<sup>61</sup>.
- 8.25 The Council's evidence fails to take into account the character and nature of Ashover and its interaction with the wider landscape, the way that open space penetrates the settlement, or the way that development spreads across and cascades down the hillside. Even if one were to accept the Council's approach, it would still be necessary to consider all material considerations<sup>62</sup>.

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<sup>57</sup> Appellant's closing submissions para 45

<sup>58</sup> Appellant's closing submissions para 46

<sup>59</sup> Appellant's closing submissions para 49

<sup>60</sup> Appellant's closing submissions para 51

<sup>61</sup> Appellant's closing submissions para 52 and 53

<sup>62</sup> Appellant's closing submissions paras 55 and 56

### *Benefits of the Proposal*

- 8.26 There is a severe and chronic shortfall in housing provision and a very poor housing land supply. The agreed position is that there is a current supply of just 1.79 years<sup>63</sup>.
- 8.27 There has been under provision of housing since 2009/10 and significant under provision in each of the years since 2011, with only 49 completions in the last recorded year of 2013/14 set against an annual requirement of 300 dwellings<sup>64</sup>. In the 5 year period from 2009 to 2014 the total provision was just 673 units, which represents an under provision of 987 units. Over the whole of this period only about 40% of the requirement was provided and since 2011 this has worsened to only 36%<sup>65</sup>.
- 8.28 The Council projects that under provision against the annual requirement will continue in each of the years to 2018/19, meaning that the existing historic deficit will become progressively even greater over this period<sup>66</sup>. The provision of housing is therefore vital.
- 8.29 The position with regard to affordable housing is even worse. The 2013 Strategic Housing Market Assessment identifies that there is a district wide need of 482 affordable homes each year up to 2031<sup>67</sup>. Since 2009/10 less than 5% of this figure has been provided and in 2013/14 (the last recorded year) there was a net negative provision of affordable housing<sup>68</sup>.
- 8.30 There are currently few active housing development sites in the District, and the Council was unable to identify substantial additional sites which would materially alter this position<sup>69</sup>.
- 8.31 The appeal proposal could be wholly developed well within a 5 year period. The Council's suggestion that less weight should be attributed to this benefit due to the scale of the proposal is misconceived. The Framework is clear about the need to increase the supply of housing and the importance to be attached to this irrespective of the size of the sites being considered. The appeal proposal would make a major contribution and the Council will need to bring forward many sites of this size to address its land supply problems<sup>70</sup>. The appeal site is confirmed as being developable in the NEDDC Strategic Housing Land Availability Assessment (SHLAA) site appraisals 2013<sup>71</sup>.
- 8.32 As the preparation of the new Local Plan is still at a very early stage, this will not address the housing land supply shortfall in the foreseeable future. There is a pressing need for unallocated sites outside the SDLs to be brought forward in the meantime<sup>72</sup>. There is clear evidence both of housing need and demand, the latter being evidenced by the number of applications coming forward.

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<sup>63</sup> Appellant's closing submissions para 4

<sup>64</sup> Core Document E15 – page 6, figure 2

<sup>65</sup> Mr Bedwell's proof of evidence - paras 10.25 and 10.26

<sup>66</sup> Appellant's closing submissions para 6

<sup>67</sup> Core Document E15 para 8.1

<sup>68</sup> Core Document E15 page 11, figure 7

<sup>69</sup> Appellant's closing submissions para 8

<sup>70</sup> Appellant's closing submissions para 9

<sup>71</sup> Core Document E12

<sup>72</sup> Appellant's closing submissions para 13 and 15



- 8.33 Ashover is one of the larger settlements in the western part of the District and has repeatedly been identified as a sustainable location for housing development, for example in the adopted NEDLP, the Settlement Role and Functions Study, and the Settlement Hierarchy paper. The 2015 draft Local Plan identified it as being suitable to accommodate 115 dwellings and the evidence base which underpinned this approach remains valid. This is particularly significant because the Council decided to abandon that Plan as it was failing to identify sufficient housing land, including in the western part of the District in which Ashover is located<sup>73</sup>.
- 8.34 Ashover benefits from a range of locally accessible services and there is no service or infrastructure constraint affecting the suitability of further housing development in the village<sup>74</sup>.
- 8.35 The site was included in the Council's Strategic Housing Land Availability Assessment (SHLAA) 2013, following the Council's "call for sites" exercise in 2010, with estimated delivery from 2018, and part of it was identified for development in the Council's Schedule of Potential Sites 2015. Only two other sites were identified in Ashover, with a combined capacity of just 19 new dwellings.
- 8.36 The site is in a well located, sustainable position in Ashover, roughly at the centre point where the northern and southern parts of the village meet, and is well related to the facilities in Ashover and immediately next to the bus stop<sup>75</sup>.
- 8.37 The details of the appeal proposal have been developed in consultation with OPUN, whose final letter<sup>76</sup> accepts the justification for the development and concludes that the design issues raised are capable of being addressed at reserved matters stage.
- 8.38 The Council officer's report on the application supports the proposal and recognises its benefits. The proposal would result in construction spend in the region of £2.6 million, 23.6 full time construction jobs for over 1 year plus an additional 25.7 Full Time Equivalent indirect jobs in associated industries. It would provide housing for around 60 new residents, 31 of whom could be expected to be economically active and in employment. This could be expected to provide £635,400 additional household spending per year of which about £95,000 would be likely to be spent in the village<sup>77</sup>. There would be an increase in Council Tax revenues and New Homes Bonus payment of between £191,638 and £234,224 over a six year period<sup>78</sup>. Increasing the population of working age would help to address the negative demographic change in Ashover, the population of which is ageing compared to that in the East Midlands and England as a whole. Addressing this issue will bring a number of benefits<sup>79</sup>.
- 8.39 The proposal would bring social benefits by adding to the variety of housing, providing for social housing, aiding the retention of services and enabling people with connections to the village to stay within it or return to it.

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<sup>73</sup> Appellant's closing submissions para 17

<sup>74</sup> Appellant's closing submissions para 18

<sup>75</sup> Appellant's closing submissions para 20

<sup>76</sup> Mr Bedwell's proof of evidence, appendix 4, page 3

<sup>77</sup> Mr Hindle's proof of evidence para 5.8

<sup>78</sup> Mr Hindle's proof of evidence para 5.8

<sup>79</sup> Mr Hindle's proof of evidence paras 5.10 to 5.13

### Highways

8.40 Whilst the Council initially rejected the proposal on highway grounds, this was contrary to the advice that it had received from the highway authority<sup>80</sup>, which raised no objection. The evidence demonstrates that there are no highway safety, capacity or other operational issues in the vicinity of the site<sup>81</sup>. The technical information provided shows that a safe means of access can be provided<sup>82</sup> and the modest nature of the proposal means that it would not generate any significant impacts. The proposal allows scope to improve the local footways. The ANFA case on highways is inconsistent in that whilst arguing that the road network is substandard they are promoting development through the Neighbourhood Plan process<sup>83</sup>.

### Other matters

- 8.41 The site is Grade 4 farmland which does not fall into the category of Best and Most Versatile agricultural land, and no case has been made to resist its development on agricultural land grounds<sup>84</sup>.
- 8.42 ANFA's position regarding sustainability of Ashover is inconsistent in that, whilst arguing that Ashover is not a sustainable location, they are promoting development through the Neighbourhood Plan.
- 8.43 Whilst interested parties have raised the issue of ecology, the Council has withdrawn its reason for refusal relating to this matter and no matters of substance have been raised to provide any basis for refusing permission<sup>85</sup>.

### The 'planning balance'

- 8.44 Under paragraph 14 of the Framework, permission should be granted unless the adverse impact would *significantly* and *demonstrably* outweigh the benefits. This is not an even playing field where a finely balanced exercise finding that the impacts just outweigh the benefits would suffice.
- 8.45 The planning balance exercise undertaken on behalf of the Council incorrectly, in the light of the importance that national policy attaches to boosting the supply of housing and the five year supply tool for this purpose, gave only limited weight to the housing land supply position. It also incorrectly gave moderate weight to the Neighbourhood Plan despite the early stage that it has reached and the outstanding objections to it.
- 8.46 Other flaws in the approach of the planning balance exercise in the Council evidence included: giving substantial weight to a perceived conflict with the NEDLP despite this being out of date; downplaying the value of the housing to be provided by the appeal proposal on the basis that it would be insignificant; appearing to question the sustainability of Ashover and thereby reducing the weight to be given to the sustainability benefits of the proposal; and appearing to question the economic benefits of the proposal<sup>86</sup>.

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<sup>80</sup> Mr Bedwell's proof of evidence – appendix 3, para 2.4

<sup>81</sup> Mr Bedwell's proof of evidence – appendix 3, paras 5.2 and 5.4

<sup>82</sup> Mr Bedwell's proof of evidence – appendix 3, para 5.6

<sup>83</sup> Appellant's closing submissions para 60

<sup>84</sup> Appellant's closing submissions para 61

<sup>85</sup> Appellant's closing submissions para 64

<sup>86</sup> Appellant's closing submissions para 68

- 8.47 The Council withdrew its draft Local Plan because even more land is needed to be identified for development beyond that shown for Ashover. This should be taken into account in the planning balance<sup>87</sup>.
- 8.48 The development would not materially detract from the landscape and therefore complies with Policy NE2<sup>88</sup>. Even if this Policy is given full weight this would not therefore change the overall planning balance. Even if it is accepted that there is limited harm to the landscape and the contribution to New Homes Bonus is removed from consideration this would not change the overall planning balance.

## **9. THE CASE FOR INTERESTED PARTIES**

- 9.1 This section of the report summarises the material points made by those who spoke against and for the appeal proposal at the Inquiry and also briefly summarises the matters set out in written representations. Its role is not to set these matters out in detail.

### **Interested parties who spoke against the proposal at the Inquiry**

#### ***Councillor Barry Lewis***

- 9.2 The site is part of a very important Special Landscape Area, which is likely to have been excluded from the Peak District National Park solely for economic reasons, as there is active quarrying in the area. The Ashover Dome is an area underlain by limestone whereas the wider area is largely underlain by gritstone. The presence of Ogstone Water (raised in the Inquiry) does not make the area any less special. The landscape of the area has influences from the pre-historic to the industrial age, including rock art which is present in the grounds of Ashover Primary School. The proposal would constitute a substantial landscape and visual intrusion and there are concerns regarding the access to the site.

#### ***Mr Richard Fidler speaking on behalf of Ashover Parish Council***

- 9.3 The proposal does not meet criteria in the Localism Act. The wishes of the community are reflected in the emerging Neighbourhood Plan. It is not true that the local community does not want to see appropriate local development in the village. Applications proposing 88 dwellings in total have been approved since 2011 and there is capacity for 29 further dwellings in outstanding current applications excluding that subject to appeal. The proposal is contrary to District wide policies and would lead to the loss of an undeveloped site. There are more sustainable alternative sites in the village and the proposal would place un-necessary pressure on the facilities in the village. Due to County Council cutbacks the limited bus services for the village are also likely to be cut.
- 9.4 The proposal would conflict with the emerging Neighbourhood Plan, is not sustainable and is not required or supported by the local community. The Neighbourhood Plan has been prepared in accordance with relevant statutory processes and has been informed by consultation with the local community. At the time of the Inquiry a screening report was being prepared and it was anticipated that the Neighbourhood Plan would be submitted for its Examination following a further 6 weeks of consultation.

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<sup>87</sup> Appellant's closing submissions para 69

<sup>88</sup> Appellant's closing submissions para 71

### ***Act Now for Ashover***

9.5 In addition to the harm that the proposal would cause in landscape terms, there are serious limitations in the highway network serving the site, inadequacies in the level of submitted information concerning potential ecological damage, and problems with the sustainability of the location. The proposal is also contrary to the wishes of the community.

#### *Policy*

- 9.6 Whilst the NEDLP is time-expired most of its policies have been 'saved' and should form the basis for determining the application.
- 9.7 The proposal is contrary to Saved Policies GS1, GS6, NE1, NE2, H3, H12 and T2 of the NEDLP and contrary to Policies AP3 and AP18 and the Settlement Development Limits of the Ashover Parish Neighbourhood Plan. These are not relevant policies for the supply of housing, are fully compatible with the Framework and should be accorded full weight<sup>89</sup>. Relevant housing policies are not out of date and the presumption in favour of granting permission does not apply<sup>90</sup>.
- 9.8 Policies NE1, NE2, GS1, GS6 and H3 of the NEDLP are all policies for the protection of the countryside and consistent with the policies of the Framework which seek to protect and enhance valued landscapes. Brandon Lewis's letter to the Planning Inspectorate on 27 March 2015 indicates that such landscapes should be protected.
- 9.9 Policy H3 of the NEDLP prohibits the building of open market housing on sites outside the SDLs. This principle was upheld by the Council's refusal of permission for a dwelling on a neighbouring field in 2016<sup>91</sup>.

#### *Landscape value*

9.10 The site is within a highly valued Special Landscape Area<sup>92</sup> that reflects the best landscapes in the Peak District and there are volcanic Tuff features found close to the village which are not found elsewhere in the SLA. The SLA concept is not out-dated and is being carried forward in the emerging Neighbourhood Plan.

#### *Landscape and visual effects of the proposal*

- 9.11 The site is green field and the proposal would constitute a visual intrusion from the village and the steeply rising sides of the Ashover Valley, from which it would be highly visible. There is little opportunity to mitigate these effects as the site is overlooked.
- 9.12 As Ashover has developed on one side only, the countryside penetrates to the core of the village and many houses look directly out onto it. The current proposal is contrary to that historic pattern of development and would close in parts of Moor Road and Narrowleys Lane, dramatically altering the current interface between the settlement and the countryside.

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<sup>89</sup> ANFA closing submissions page 7

<sup>90</sup> ANFA closing submissions page 5

<sup>91</sup> ANFA closing submissions pages 2 and 7

<sup>92</sup> ANFA closing submissions page 1

9.13 The site is one of the most productive fields in the parish and its loss would be contrary to DEFRA's responsibility to increase domestic food production and protect employment opportunities in the countryside. The site is productively used by a tenant farmer and is in year 5 of a 10 year High Level Environmental Scheme under the stewardship of Natural England.

*Benefits of the proposal*

9.14 Despite recognising that the rural west of the District requires special treatment due to its high quality landscape, the Council has not objectively assessed the need for housing in this area as required by the Framework<sup>93</sup>.

9.15 Whilst the Council tried to establish a settlement hierarchy within the rural west of the District as a basis for distributing housing, this has been discredited and withdrawn with the draft new Local Plan in favour of an approach which would allocate more housing in areas currently occupied by Green Belt, which would relieve pressure on the rural west of the District.

9.16 The Appellant has not shown that there is any demand for affordable housing in Ashover Parish, or that there are no alternative sites available in the SDLs as required by saved policy H9. The last survey of affordable housing need in the Parish was prepared long before the current planning period. Two thirds of those listed as being in need of affordable housing were owner occupiers who wished to release their capital and most of the remainder were already in social housing but wished to move to a house with different amenities. Net need for new affordable housing is negligible as reflected in the occupancy statistics for 2013.

9.17 The limited demand for affordable housing in Ashover parish was demonstrated by the Council's withdrawal of a Community Lettings Plan in 2013 on the grounds that 60% of all new lets were to people who had no connection with the community. Since 2013 the level of unoccupied affordable housing in the parish has been 43% above the level at which there would be considered to be a surplus of affordable housing stock. Of 3 affordable housing units which became available in the past year, 2 were let to people from outside the District who had no local parish connection.

9.18 The proposal should not be permitted as it is contrary to Policy H3 of the NEDLP which is a Policy for the protection of the countryside and excludes the building of open market housing outside the SDLs except where it meets certain conditions which are not met by the appeal proposal.

9.19 Since 2011, an average of 14.6 new dwellings per annum have been permitted in Ashover parish compared to just 9 to 10 dwellings per annum proposed in the now withdrawn draft Local Plan. Most of these approvals relate to previously developed land in accordance with the approach in the Framework, unlike the substantial release of green field land proposed in the current appeal. These approvals demonstrate that there is no backlog of housing approvals in the parish, against a tentative target which was at twice the rate proposed for the District as a whole<sup>94</sup>. There is an abundance of open market housing in Ashover

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<sup>93</sup> ANFA closing submissions page 5

<sup>94</sup> ANFA closing submissions page 6

parish which, despite providing a range of accommodation in generally good condition, is only turning over very slowly.

- 9.20 There are better sites available for development within the SDLs, including those subject to applications 16/00472/OL, 16/00071/OL, 15/01212/OL, and 15/01302 for 5,9,10 and 5 houses respectively, none of which intrude into the SLA.
- 9.21 The Appellant's view that each new dwelling would contribute about £70 per week in spending power to support local businesses is a substantial over-estimate.
- 9.22 Little weight should be attached to the contributions that the proposal would make to provision of open market or affordable housing, or to the revenue flows of local businesses.

### *Highways*

- 9.23 The local highway infrastructure has serious and unacceptable shortcomings which would be exacerbated by the appeal proposal<sup>95</sup>. The access roads have a narrower corridor than the 7.5 metres recommended in the Highway Authority's 6Cs Design Guide for a residential access way serving up to 50 dwellings. There is congestion in Narrowleys Lane and Moor Road associated with the Ashover primary school and care homes.
- 9.24 The access roads serving the site have no footways along part of their length and are shared by vehicles, pedestrian and equestrian traffic. The Manual for Streets requires careful attention to be paid to avoid problems such as vulnerable road users feeling threatened by having no space protected from vehicles. There is a history of traffic accidents in the area which the Highway Authority has not been able to mitigate. Occupiers of the proposed dwellings would be almost entirely dependent on private transport and the current unacceptable situation would be exacerbated by the estimated 1820 additional vehicle movements per week which would use the approach roads converging on the site entrance alongside the Grove Park care home.
- 9.25 An appeal concerning a proposal for housing development at Duckmanton (in North East Derbyshire District) was dismissed, and a recent application for 24 dwellings at Vernon Lane in Ashover parish was refused by the Council, both on highway impact grounds. Saved Policies H12 and T2 of the NEDLP, which set requirements which new developments should meet concerning the safety of highway users and the standard of the road network, are consistent with paragraph 32 of the Framework and should be accorded full weight.
- 9.26 The impacts of the proposal on highway infrastructure, and on how such infrastructure will be provided have not been fully explained, contrary to the House of Commons report on the operation of the Framework dated December 2014.

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<sup>95</sup> ANFA closing submissions page 2

### *Other Matters*

- 9.27 The attention paid to ecology issues is superficial. The submitted studies have been copied from studies undertaken for other sites. By virtue of their shortcomings they are insufficient to make an informed decision about the ecological impacts of the proposal<sup>96</sup>.
- 9.28 Ashover, for all its strengths is not a sustainable community as referred to in the Framework<sup>97</sup>. Employment opportunities in the village are limited and those that exist are fully occupied. The proposal would offer no new employment opportunities once construction is completed. The bus service serving the village is so limited that most journeys to work, shopping and leisure would be by private transport. There is no secondary school in Ashover and the reception and year 2 classes in Ashover primary school are full to capacity. The need for a contribution to further primary school capacity being made is only avoided by redirecting pupils who travel to the parish for their schooling to other schools elsewhere. The range of goods sold from the grocers shop and post office in the village is very limited and shopping patterns are centred on Matlock, Chesterfield, Clay Cross and the internet.
- 9.29 The village medical centre is close to its operating limit and the NHS has confirmed that it is not disposed to fund its expansion. New housing in the community would therefore cause the service offered to the community to deteriorate.
- 9.30 The proposal would be unsustainable in terms of the extra burden of private and commercial transport that would be generated. The permanent intrusion of the housing into the Special Landscape Area would be contrary to the requirements relating to sustainable development set by paragraphs 7 and 28 of the Framework.
- 9.31 The Council's advice that no Section 106 contributions are required is inconsistent with its approach concerning a recent application (16/00071/OL) for a smaller development in the village where it decided that a contribution of £283,000 was required.

### *The 'planning balance'*

- 9.32 Because the proposal is not sustainable under the terms of the Framework, the presumption in favour of granting permission and the requirement to balance harm and benefit should not apply<sup>98</sup>. The benefits of the proposal are minimal and are, in any event, significantly and demonstrably outweighed by the harm that it would cause<sup>99</sup>.

### ***Councillor William Armitage***

- 9.33 There are significant highways issues associated with the proposal, which could make it difficult for ambulances to gain access to the Peak Care residential care and assisted living homes on Moor Road. It would also damage habitats including those of water voles, kestrels and sparrowhawks and the submitted

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<sup>96</sup> ANFA closing submissions page 3

<sup>97</sup> ANFA closing submissions pages 3 and 4

<sup>98</sup> ANFA closing submissions pages 4 and 7

<sup>99</sup> ANFA closing submissions page 7

ecology report had significant shortcomings. Similar proposals have been submitted to the Council on three occasions.

***Doctor Nigel Early***

9.34 The Ashover valley is formed by a limestone anticline with a base layer of tuff, which makes it unique in geological terms and which shapes its landscape. The isolation of the valley has shaped its culture. The valley is just 2.5 kilometres from the Peak District National Park. Between 2001 and 2011 the population of Ashover ward increased by 109 persons and the number of households by 65, illustrating that the valley is 'alive and kicking'. The doctor's practice is now very full.

***Ms Trisha Scott***

9.35 The submitted evidence does not demonstrate the true situation regarding affordability which is an issue or fully address the cost of housing. The highway issues would be exacerbated as the roads are not gritted when it snows. Sustainability and tourism need to be supported.

**Interested parties who spoke in support of the proposal at the Inquiry**

***Mr John Wardle***

9.36 The proposed houses are needed to help meet national targets, and sufficient land is likely to be needed in Ashover to accommodate 150 homes sooner or later. The proposed housing should be acceptable provided it is well thought through and reflects the style of the village.

***Mrs Rhodes***

9.37 The proposal would bring benefits which would be important for the future of the village. The traffic using surrounding highways quickly disperses and would not be made significantly worse by the appeal proposal.

***Mr Proctor***

9.38 The proposal would help to meet a significant need for affordable housing in Ashover, in which housing is too expensive. The scale of development proposed is acceptable and would help to meet the needs of a growing population.

***Mr Stephen Haslam***

9.39 The site is suitable for the development proposed and is similar to other fields nearby. The proposal would support the sustainable growth of Ashover. Off road parking could be provided. The layout submitted is indicative and a suitable layout and design could be provided.

**Written Representations**

9.40 Written representations were received before the Inquiry in response to the appeal on behalf of ANFA and Ashover Parish Council. 22 letters and e-mails



were also received at that stage<sup>100</sup>, mainly on behalf of local residents, all of which expressed objections to the proposal.

- 9.41 The matters raised in the written representations referred to above overlap to a considerable extent with those raised at the Inquiry, and I therefore do not set them out in detail. They claim (in summary) that the appeal proposal would cause harm due to its effects on: the landscape and appearance of the area; tourism and recreational use of the area; highways safety and circulation; biodiversity (for example relating to habitats for Great Crested Newts and Pipistrelle and Brown Long Eared bats); drainage; sustainability issues for example in terms of local employment availability, transport and village facilities; trees (including those which are protected by Tree Preservation Order); the currently green field nature of the site; agricultural land and an existing agricultural tenancy; and the heritage of the village including the Ashover Conservation Area.
- 9.42 The matters raised in the written representations also include claims that the appeal proposal would conflict with NEDLP Saved Policies all of which should carry full weight; case law and other appeal decisions concerning the definition of 'relevant policies for the supply of housing' (for example in relation to Policy H3 of the NEDLP); the emerging Ashover Parish Neighbourhood Plan; and public opinion in the area.
- 9.43 The written representations also include claims that the benefits of the proposal would be limited; there is a lack of need for affordable housing in the area; there is no established assessment of Objectively Assessed Need for housing in the rural west of the District; and the planning balance does not indicate that permission should be granted. The matters raised include concerns that the evidence submitted in support of the proposal has shortcomings particularly in relation to ecology and transportation (for example concerning the submitted traffic counts and accident records). They also include references to: the number of new dwellings which have been subject to planning permission in Ashover since 2011; the need to be consistent with other decisions including for example the Duckmanton appeal decision (referred to by ANFA at the Inquiry); and alleged errors in the Council officer advice to Planning Committee. They include concerns about the level of public transport services; capacity issues at the village medical practice; educational provision; and potential precedent for future development proposals in the area. The matters covered also include the size of the site and the suburban character of the indicative site layout.
- 9.44 Derbyshire County Council, in its role as Highway Authority, wrote in response to the appeal confirming (in summary) that in its view there is no evidence to conclude that the proposal would be likely to lead to impacts on the operation of the highway network which would justify a refusal of planning permission, subject to the imposition of conditions listed in its letter.

## 10. CONDITIONS

- 10.1 The Appellant and the Council agreed a list of conditions which was discussed during the Inquiry. A revised list was then submitted<sup>101</sup>. I attach at Appendix 3

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<sup>100</sup> Representations from several hundred individual representations were received by the Council before it determined the application

<sup>101</sup> Inquiry document 10

a list of conditions which, taking account of the agreement of the main parties and the discussion at the Inquiry but incorporating some minor changes of wording, I would recommend be imposed if permission is granted.

- 10.2 Conditions 1 to 3 are standard conditions concerning the approval of reserved matters and time limits. Condition 4 would require that 40% of the dwellings be provided and retained as affordable housing, in accordance with the broad approach of Policy H7 of the NEDLP and the Council's Affordable Housing Supplementary Planning Document 2008. This condition is necessary as there is no planning obligation covering this matter.
- 10.3 Condition 5 would require that any potential contamination which is present on site is assessed and remediated in the interest of public safety. Condition 6, which would set parameters relating to the general locations of the built area and open space and retention of trees and hedges, would be needed in the interests of visual amenity and landscape character.
- 10.4 Conditions 7, 8 and 9 would cover various highway matters in the interests of highway safety and circulation. Conditions 10 and 20, concerning the laying out of a public open space incorporating a children's play area and footpaths respectively, would be needed to serve the open space needs of the development and ensure that its benefits in these respects are delivered.
- 10.5 Condition 11, covering drainage, is required to minimise the effects of the development on local surface water run off rates. Condition 12, controlling ground levels, condition 13 covering the means by which trees and hedges would be protected, condition 17 covering bin storage, and condition 19 covering street lighting, would be needed in the interests of visual amenity. Conditions 14 and 15 would be needed to ensure that any effects of the proposal in respect of ecological habitats are effectively monitored and managed.
- 10.6 Condition 16 would be needed to ensure that a scheme for the recruitment of employees, which forms a part of the 'planning balance', is implemented. Condition 18 would be needed to ensure the satisfactory management of site operations during the construction period in the interests of safety and of protecting the local environment during that period.

## **11. INSPECTOR'S CONCLUSIONS**

- 11.1 On the basis of the evidence which has been presented, I consider the main issues to be:
- a) The effect of the appeal proposal on the character and appearance of the area, including the designated Special Landscape Area in which it would be situated;
  - b) Whether there would be any adverse effects on highway safety that could not be adequately addressed by conditions; and
  - c) The planning balance between any benefits and any harm that may arise from the proposed development.
- 11.2 In the section below I set out my findings on issue a) under 'Character and Appearance' and issue b) under 'Highways'. These findings, together with those set out under 'Policy', 'Assessment of any other harm' and 'Benefits of the Proposal' inform my findings under issue c), which are set out under 'Overall

Planning Balance'. The numbers in square brackets refer to paragraphs in this report.

### **Policy**

- 11.3 Although the Plan period for the NEDLP expired in 2011, under the relevant legislation<sup>102</sup>, the appeal must be determined in accordance with its Saved Policies unless material considerations indicate otherwise [9.6]. The Framework sets out current national policy and is an important material consideration in this context [7.2].
- 11.4 In the context of paragraph 49 of the Framework (referred to in paragraphs 6.3 and 6.4 of my report) current legal precedent<sup>103</sup> has established that 'relevant policies for the supply of housing' include policies which restrict the locations where housing may be developed, as well as those which provide positively for its delivery. On this basis, Policy H3 of the NEDLP must, notwithstanding the submissions made by ANFA, be considered out of date along with Policies GS1, GS6, NE1 and NE2 insofar as these apply to housing [8.3][9.7][9.8].
- 11.5 The appeal proposal would not constitute one of the forms of development which Policy H3 or, unless exceptional circumstances can be demonstrated, GS1(a) of the NEDLP identify as being acceptable outside the SDLs. However, the restriction on housing development outside the SDLs set by these Policies forms an integral part of a strategy which is time expired and has failed over many years to provide housing in the District at a rate which approaches that which has been identified as being required. This approach conflicts with the clear aim of the Framework that objectively assessed needs for housing should be fully met. Under paragraph 215 of the Framework, I have therefore attributed substantially reduced weight to Policies GS1(a) and H3 [8.2][8.4][9.7][9.8].
- 11.6 Although the Council's Interim Planning Policy for New Housing Development, 2010<sup>104</sup> carries no statutory weight as it was prepared outside the Local Plan process, this clearly signalled the Council's acceptance that development outside the SDLs is required.
- 11.7 There is also no evidence which demonstrates that the appeal proposal would satisfy the sequential approach set by Policy GS1(b) of the NEDLP, which requires 'full use' to be made of previously developed land before greenfield sites. However, as this approach is more stringent than the requirement in paragraph 17 of the Framework to '*...encourage the effective use of land by reusing land...*' which is previously developed, Policy GS1(b) also carries reduced weight.
- 11.8 With regard to Policy GS6 of the NEDLP, which sets strict controls over new development in the 'countryside', paragraph 1.49 of the NEDLP explains that the term 'countryside' means the area outside the SDLs. Due to this link to the out-dated SDLs and as the negative presumption in its first sentence conflicts with the presumption in favour of sustainable development set by the Framework this Policy also carries reduced weight [8.5][9.7][9.8].

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<sup>102</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004

<sup>103</sup> Core Document G2

<sup>104</sup> Core Document E9

- 11.9 As relevant NEDLP policies are out of date, paragraph 14 of the Framework requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, or specific policies in the Framework indicate development should be restricted [9.7].
- 11.10 The requirement in Policy NE2(a) that development should not adversely affect the setting of any heritage asset does not reflect the approach of balancing harm to such assets against public benefits which would result from a proposal set by paragraphs 133 to 135 of the Framework. This aspect of Policy NE2 therefore carries reduced weight.
- 11.11 The weight that can be attributed to other aspects of Policy NE2, and Policy NE1 insofar as these apply to the appeal proposal is linked to whether it would fall within a 'valued landscape' as referred to in paragraph 109 of the Framework, which I address later in my report [7.3][7.5][9.8]. Policy NE2 allows there to be some landscape harm, provided this is limited to the site itself or would not materially detract from the surrounding area [8.6]. Policy NE2 does not require the landscape effects of a development to be assessed in relation to the affected SLA as a whole, as the Policy and its supporting text do not link the phrase '...surrounding landscape...' to the entirety of the SLA [7.12][8.10].
- 11.12 As the North East Derbyshire Local Plan Initial Draft 2015<sup>105</sup> formed part of a Plan process which has been abandoned, it can not be relied upon as an indication of the future strategy for development of the District or of Ashover. Whilst evidence has been prepared in connection with the proposed new Local Plan, the final version of the Plan has yet to be published, consulted upon or submitted to its Examination. It is too early to confirm whether the new Plan will set a housing target for Ashover and if so what this would be [8.33][8.47] or whether it will include SLAs or a similar approach to landscape protection [7.4][8.14][9.10][9.15].
- 11.13 The emerging APNP has a high level of support amongst the local community and provides a potentially powerful tool to shape future development in Ashover. However paragraph 184 of the Framework requires the ambition of the neighbourhood to be aligned with the strategic needs and priorities of the wider area. Until the new Local Plan is further advanced it is unclear whether this will be the case. Furthermore, at the time of the Inquiry the emerging APNP had yet to be independently examined and was subject to unresolved objection from the Appellant. In accordance with paragraph 216 of the Framework, I have given it very limited weight [8.8][9.4][9.7][9.10].

### ***Landscape character and appearance***

- 11.14 The evidence of the main parties, in accordance with national best practice<sup>106</sup>, addresses landscape character and visual impact issues separately. I address these issues in turn below.

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<sup>105</sup> Core Document E4

<sup>106</sup> Guidelines for Landscape and Visual Impact Assessment, third edition, Landscape Institute and Institute of Environmental Management and Assessment 2013

- 11.15 The landscape of the Ashover Valley SLA was identified in the DSLALP in 1988 as encompassing '*...the most distinctive and characteristic areas of countryside around the Peak District National Park*'<sup>107</sup>. Whilst there is now limited information concerning how the SLAs were identified, I consider that the process was therefore a selective one aimed at only identifying the highest quality areas outside the National Parks [7.6][7.7]. The process would also have been subject to extensive independent scrutiny as part of the Plan processes before the DSLALP and then the NEDLP were adopted.
- 11.16 Whilst the area covered by National Character Area 50 'Derbyshire Peak Fringe and Lower Derwent' (NCA 50) does not correspond with that of the SLA, its identification in its published profile as being of '*...extremely high quality...*' provides more recent evidence of the landscape value of the area in which the appeal site is located <sup>108</sup>[7.8].
- 11.17 Within a large area such as that covered by the SLA it is almost inevitable that there will be variations in the quality of the landscape [8.9]. As can be expected given that it is just one site, the appeal site also does not display all of the elements which make up the landscape character of the SLA or of NCA50<sup>109</sup>. However, as one of the patchwork of green fields to the west of Ashover, with densely scattered hedgerow trees and lengths of dry stone walling, it contributes substantially to the mosaic of landscape elements which make up the bucolic rural character of the area [7.9][8.10]. Whilst the village itself, due to its traditional and varied built form also contributes to the landscape character of the surrounding SLA, this is as a subordinate element to the green and pastoral scene which surrounds it.
- 11.18 Historic maps of the area demonstrate that before 1914 the original core of Ashover (to the east of the site) and Rattle (to the north) formed separate settlements and that as a result the stretches of Narrowleys Lane and Moor Road next to the site do not form a longstanding historic settlement boundary. They do, however, now form a well defined interface between Ashover village in its current form and the patchwork of fields to its west including the appeal site [7.10][8.18][8.19][8.20][8.21]. The appeal site, by virtue of its location on the corner of Narrowleys Lane and Moor Road, is at a key point along this interface. The sensitivity of the site, including the views across it from these highways to the countryside beyond, is reflected in the comments of OPUN<sup>110</sup> [7.13][8.37][9.2].
- 11.19 Furthermore, many of the existing buildings facing across the appeal site from beside Moor Road and Narrowleys Lane have a strongly outward looking design emphasis which strengthens the definition of the current built up area boundary along these roads. Grove House and the adjacent semi detached Victorian villas on Moor Road present imposing façades and are particularly important in this respect. These points, and the fact that the site helps to bring the surrounding

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<sup>107</sup> Derbyshire Special Landscape Areas Local Plan 1988 (DSLALP) – Core Document E25

<sup>108</sup> Ms Bolger's proof of evidence – appendix 2

<sup>109</sup> The site falls within the Wooded Slopes and Valleys Landscape Character Type (LCT), as identified in the 'Landscape Character of Derbyshire', Derbyshire County Council (CD E20). This LCT is characterised by, amongst other elements, permanent pasture for sheep or cattle, moderate to steep slopes, undulating ground rising up to moorland, densely scattered woodland, densely scattered hedgerow trees and the widespread use of dry stone walls.

<sup>110</sup> Mr Bedwell's proof of evidence, appendix 4

countryside into the heart of Ashover, emphasise the role of the site in defining the character of the area.

- 11.20 Whilst to my knowledge there is no recognition of the importance of the interface provided by Narrowleys Lane and Moor Road in any document which defines the character of the SLA or Ashover, and the Ashover Conservation Area is some distance away, these points do not detract from the sensitivity to new development of this interface within the fields adjacent to these roads including the appeal site [8.18][8.23].
- 11.21 I agree that the village of Ashover has a broken and dispersed form and the appeal site is fairly close to the geographical centre point of what is now the built up area of Ashover. However, these points do not undermine the landscape importance of the site in its current form or necessarily mean that development within it would not be harmful.
- 11.22 None of the evidence at the Inquiry leads me to conclude that the appeal site or its immediate surroundings are of a lower quality than other parts of the SLA or of NCA50. Furthermore, whilst areas with a local landscape designation do not have as high a status in policy terms as nationally designated areas [8.11], I consider the appeal site and its surroundings to be an integral part of a 'valued landscape' in the context of paragraph 109 of the Framework, which states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. The protection of their intrinsic character and beauty afforded by the development plan would be entirely consistent with the Core Principles of the Framework [7.9] and with the Ministerial letter of March 2015 [7.17].
- 11.23 I agree that, as the settlement of Ashover helps to define the landscape of the SLA, which is an agricultural and settled landscape, it follows that all extensions to the village will not necessarily cause harm to the landscape [8.12] [8.15]. However, this is dependent on site specific circumstances and the nature and scale of individual development proposals.
- 11.24 The village of Ashover has a dispersed form, and I heard evidence on behalf of the Appellant at the Inquiry that development of homes within the appeal site would continue the phased and dispersed manner in which the village has historically developed and continue the 'cascading' effect down the hillside of the built form of Rattle.
- 11.25 Set against these points, however, an extension of the village beyond the currently clearly defined boundaries provided by Moor Road and Narrowleys Lane would mark a significant departure from the previous phases of development of the village, as it would for the first time introduce development within the open land west of Narrowleys Lane and south of Moor Road. The open green field of the appeal site reads as one of a group with the other adjacent fields, into which the built up area would, as a result of the appeal proposal, intrude. The fact that the appeal site is quite close to the geographical centre point of the built up area of Ashover and Rattle does not in itself justify extending the boundary of the village across the strongly defined interface with the surrounding countryside provided by Narrowleys Lane and Moor Road. The currently dispersed built pattern of the village also does not provide this justification.

- 11.26 Whilst the precise effects of the appeal proposal on landscape character would depend upon its detailed design, for which approval is not sought at this stage, and would be alleviated by the proposal to retain a large part of the site as green space, increase net tree coverage within the site, strengthen the site boundaries, and retain much of the existing site topography and net length of dry stone walling, these points would not remove the harmful effects of extending the village which are set out above. The scope to build the dwellings themselves in materials and style to match those used traditionally in the village, and to design the scheme to avoid the appearance of a standard modern housing layout, would similarly not remove these effects.
- 11.27 Due to the small scale of the site relative to the SLA as a whole and the scope to minimise effects through the steps set out above, I do not consider that a well designed scheme would cause substantial harm to the character of the SLA as a whole. However, by intruding into the patchwork of fields to the west of the village and blurring the currently well defined edge of the built up area formed by Moor Road and Narrowleys Lane [7.14], it would cause substantial harm to the landscape character of the site and its local surroundings [9.12].
- 11.28 In views from the nearby sections of Moor Road and Narrowleys Lane<sup>111</sup> the appeal site provides an open and green foreground to the sweep of fields, hedges, trees and hillsides in the middle to far distance. From much of Narrowleys Lane<sup>112</sup> the impressive frontages of the Victorian buildings on Moor Road are seen prominently across the site, whilst the school and other buildings on Narrowleys Lane are seen from Moor Road<sup>113</sup>. Whilst some existing buildings in these views are modern these do not substantially detract from their quality. Despite the mitigation measures referred to above, and the scope to retain visibility across the site through the area of proposed open space, the proposal would, by causing loss of openness and affecting the context within which direct views of the countryside and the existing outward facing buildings on the edge of the village are seen, cause harm to these views.
- 11.29 Views towards the site from the public right of way which runs between Marsh Green Lane and Butts Road<sup>114</sup> are more distant, have a backdrop of existing development and are for the most part filtered through existing trees and hedges. This filtering effect would in time be strengthened by the proposed new tree planting and reinforcement of the hedgerows around the site. As a result, and although the development may not have the outward looking focus of the existing village edge, any long term harm caused by the development to these views would be likely to be limited.
- 11.30 In views from high up on the south side of the Amber Valley<sup>115</sup> the development would continue the 'cascading' effect of the existing development at Rattle and Hilltop down the hillside and could read as an extension to the existing dispersed form of the village. However, whilst the built form of Ashover is an important element within these views, it is subordinate to the primarily green pastoral character of the Ashover Valley. By encroaching outside the

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<sup>111</sup> Mr Peachey's viewpoints 1 to 5

<sup>112</sup> See for example Mr Peachey's viewpoints 5 and 6

<sup>113</sup> Mr Peachey's viewpoints 2,3 and 4

<sup>114</sup> Mr Peachey's viewpoints 7 and 8

<sup>115</sup> for example Mr Peachey's viewpoints 13 and 17 and Ms Bolger's viewpoint G and the filtered and/or more distant views in Mr Peachey's viewpoints 14, 15, 18 and 20

current clearly defined edges of Ashover formed by Moor Road and Narrowleys Lane, and forming a less well defined edge to the built area within the patchwork of fields to the west of the village, it would cause some harm to these views [8.16][8.25]. The development would also be seen as encroaching onto the patchwork of fields when seen in views from high up on the valley side to the north and east, from those locations where it would be visible from this side<sup>116</sup>.

11.31 I therefore find that, whilst the proposal could, if suitably designed and laid out, read as an extension to the dispersed character of Ashover, it would cause visual harm mainly from viewpoints in the immediate vicinity of the site [9.11]. As a result, and having regard to the harm to landscape character that I have already found the proposal would conflict with the relevant provisions of Policies NE1, NE2 (a), and GS1 (prefatory text and (d)) of the NEDLP [7.12]. As these provisions accord, insofar as they relate to landscape matters, with the approach set out in paragraphs 17 and 109 of the Framework when applied to sites within a 'valued landscape' such as the Ashover Valley, and as the harm would be of a substantial nature, I give substantial weight to this matter [7.5][7.15].

11.32 Due to the landscape and visual harm associated with the proposal it would also conflict with Policy GS6 (b) and (f) of the NEDLP. For reasons already stated this Policy carries reduced weight.

11.33 Whilst part of the site was identified as being developable for 15 dwellings in the Council's Schedule of Potential Housing Sites 2015<sup>117</sup>, this does not mean that the proposal would not be harmful in landscape and visual terms.

### **Highways**

11.34 Paragraph 32 of the Framework establishes that development should only be prevented or refused on transport grounds where its residual cumulative effects would be severe. Whilst the Council has not contested the appeal on transport grounds, I have identified it as a main issue in response to the range of transport related matters raised by ANFA and other parties.

11.35 I undertook my site visits at various times to enable me to understand the highway conditions in the area. I noted for example the bend on the B6036 at Butts Corner, the traffic warning signs at this and other locations, the narrow, winding and in some cases hilly nature of many of the minor roads in the area, and incidences of parking on Moor Road and Narrowleys Lane. I also note the records of existing accidents at various locations provided by the parties.

11.36 The appeal proposal<sup>118</sup> confirms that vehicles would enter and leave the site via a single access off Moor Road. The submitted traffic survey<sup>119</sup> found that during the morning peak hour of 0815 to 0915 and afternoon peak hour of 1530 to 1630 the two way flow of traffic along this section of Moor Road was only 61 and 69 vehicles respectively during the survey period. Whilst the figures for other stretches of road near the site including Narrowleys Lane are higher, and

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<sup>116</sup> for example in Mr Peachey's viewpoint 10

<sup>117</sup> Core Document E5

<sup>118</sup> Statement of Common Ground – paragraph 3.1

<sup>119</sup> Core Document B18, appendix B



ANFA has concerns regarding the accuracy of the traffic count information [9.43] and there appears to be periodic congestion associated for example with the school, the evidence before me indicates that existing traffic flows in the area are generally low.

11.37 The transport evidence submitted by the Appellant<sup>120</sup> estimates that, based on the application of the Trip Information Computer System (TRICS) database, the appeal proposal would generate 13 additional vehicle trips (two-way) in the morning peak period and 11 in the afternoon peak period on the part of Moor Road to the west of Narrowleys Lane. Whilst these represent high percentage increases of 21.3% and 15.9% respectively this is due to the low existing traffic flow on this part of Moor Road. The estimated increases in flows on other stretches of highway would be lower, with those along Narrowleys Lane being just 2.7% and 3.8% in the morning and afternoon peak periods respectively.

11.38 The rural location of the site may result in traffic flows from the development being higher than those estimated in the TRICS analysis, which is based on the criteria for new houses in 'edge of centre, suburban and neighbourhood areas'. However, I am not convinced that the development would generate as much as 1820 additional vehicle movements per week as claimed by ANFA [9.24]<sup>121</sup>, as this figure is based on a high assumption of 10 vehicle movements per day from each dwelling. This is particularly so given that not all households within a development of 40% affordable housing would be likely to have high vehicle ownership and some services (notably the village primary school) are within easy walking distance. Overall, the additional traffic generated by the development is likely to be fairly modest.

11.39 ANFA has raised concerns regarding the width of the existing highways which would serve the development [9.24]. Whilst some of the highways in this rural location are narrow, the lengths of Moor Road and Narrowleys Lane close to the appeal site are sufficiently wide to allow most types of vehicles to pass each other. They also have existing footways alongside them and, although these are fairly narrow, the proposal offers the opportunity to add to these along part of their length by providing additional footpaths through the retained open space within the site. The recommended highway corridor width of 7.5 metres referred to by ANFA appears to be based on that for a 'residential access way'<sup>122</sup>, in which there would not be a separate footway alongside the carriageway, and would not be applicable in this instance.

11.40 I acknowledge that highways surrounding the site are likely to be used by equestrian traffic, walkers and cyclists as well as motorised traffic. However, due to the additional provision of footpaths which is proposed through the retained open space and the fairly low levels of traffic that it is likely to generate, the proposal is unlikely to cause a substantial level of additional conflict between vehicles and these other highway users.

11.41 Evidence submitted by ANFA, and corroborated during my site visits, indicates that on street parking takes place at times in connection with the Ashover primary school and Grove Park care home. However, as stated above the

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<sup>120</sup> Core document B2, table 5.2

<sup>121</sup> Inquiry document 22

<sup>122</sup> The 6Cs Design Guide, table DG1 – Core Document E26

proposal would be likely to result in only a minor percentage increase in traffic levels along Narrowleys Lane, where most parking associated with the school is likely to be concentrated. Whilst the proposed access shown on the indicative plan would be opposite the Grove House care home, where there could be conflict between vehicles using the new access and car parking associated with the care home, the outline scheme allows scope for this to be addressed for example by adjusting the location and/or design of the proposed access arrangements. Consideration could also be given to providing a small parking area within the site if necessary. These matters could be addressed at reserved matters stage.

- 11.42 Whilst I have noted the information about accidents occurring in the wider area [9.24], for example at Butts Corner, I am not convinced that the appeal proposal would materially increase this risk particularly as the fairly limited levels of traffic generated by the development would be dispersed around the highway network away from the immediate environs of the site.
- 11.43 For the reasons set out above, I am not persuaded that the proposal would lead to severe residual cumulative impacts on the highway network that could not be adequately addressed by conditions. This view concurs with that of Derbyshire County Council in its role as highway authority. The proposal complies with the provisions of Policy T2 and HT2 (f) of the NEDLP and the Framework related to this matter [9.7].
- 11.44 To support its case, ANFA referred to a decision of an Inspector to dismiss an appeal (ref: APP/R1038/A/2209950) concerning a site at Long Duckmanton, contrary to the views of the highway authority. However, the evidence before me does not demonstrate that the proposal subject to that appeal was comparable to the current appeal proposal for example in relation to the scale of development proposed, the access arrangements or the levels of traffic generation that would result. The reference to the case at Vernon's Lane determined by the Council also does not demonstrate that the appeal proposal would cause unacceptable highway effects. I have in any event considered the current appeal, as I must, on its own merits having regard to the development plan and relevant considerations [9.25].

### ***Assessment of any other harm***

- 11.45 As identified by interested parties, other sites are available for housing development within Ashover. However, although paragraph 17 of the Framework encourages effective use of previously developed land it does not prevent green field sites from being developed before previously developed sites or other sites within the current built up area [9.3][9.16][9.20].
- 11.46 In relation to the concerns which have been expressed regarding the ecological information submitted with the application [9.27][9.33], the nearby pond at Ashover Primary School provides suitable habitat for newts<sup>123</sup> for which the appeal site could provide a foraging area, and the site also provides suitable habitat for other species [9.33]. However, I note that Derbyshire Wildlife Trust<sup>124</sup> raised no objections to the proposals subject to conditions being

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<sup>123</sup> See Core Document 6 – page 4

<sup>124</sup> See Planning Committee Report (Core Document C1) page 12

imposed which would implement measures set out in the submitted ecological reports. Such conditions would ensure that appropriate ecological mitigation and enhancement measures are implemented, for example within the proposed area of retained open space. The Appellant's proposal to enhance net tree coverage within the site is also likely to bring ecological benefits. The evidence before me does not persuade me that substantial ecological harm would arise from the proposal.

11.47 I agree with ANFA [9.28] that, according to the available evidence concerning local bus services it would be difficult to make a two way commute to a full time job in larger centres in the surrounding area by public transport. Some services in the wider area may also be difficult to access other than by private car. However, the site is close to bus routes serving the village and it is also easily accessible by walking to the village primary school and the public houses, village shops, post office and community facilities in the village [8.36]. It would not be substantially less accessible to jobs and services by a choice of transport modes than other potential housing sites in the village including those being promoted in the draft APNP.

11.48 Although concerns have been expressed about the capacity of the Ashover medical centre to meet the needs of the proposed development, it is likely that demand for medical services will be influenced by a range of factors including trends in the age profile of the local population and the new development proposed in the APNP [9.29]. Whilst the extra 26 dwellings proposed would add some demand for medical services I am not convinced that this would cause substantive harm that could not be addressed as part of service planning in the area. Derbyshire County Council has confirmed that, on the basis of current projections, there will be surplus capacity in Ashover Primary School, at least until 2021<sup>125</sup>. I am aware of no other service or infrastructure constraint which would justify withholding permission for the appeal proposal or which would indicate that Ashover is not a sustainable location for an appropriate level of future housing development [8.34].

11.49 Although the site is in active agricultural use, the Appellant has stated that the site is not Best and Most Versatile Land and I have no evidence before me to refute this [9.13][8.41]. The site is not therefore subject to the protection which should be given to such land under paragraph 112 of the Framework.

11.50 The proposal would not harm the setting of the Grade I Listed Building of All Saint's Church, any of the Grade II Listed Buildings in Ashover, or the Ashover Conservation Area, all of which are located a considerable distance from the site<sup>126</sup>. The non-designated heritage assets at Grove House Residential Home, Ashover Primary School and three dwellings beside Moor Road and Narrowleys Lane near to the site<sup>127</sup> form part of the 'outward looking face' of the built form on this side of Ashover. Whilst the proposal would, by interfering with the open outlook of these buildings, cause a degree of harm to their setting, this would not add substantively to the landscape and visual harm relating to this settlement edge which I have identified earlier.

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<sup>125</sup> Inquiry document 9

<sup>126</sup> See Heritage Assets Plan attached to Appendix 1 to Mr Bedwell's proof of evidence

<sup>127</sup> See Mr Bedwell's proof of evidence paragraphs 9.6 to 9.22

### ***Benefits of the Proposal***

11.51 The Appellant states that the appeal proposal would benefit the area by boosting the supply of housing, providing affordable housing, contributing to the local economy and social sustainability of Ashover, providing an area of public open space, contributing to biodiversity and contributing to New Homes Bonus and Council tax. I assess below the weight which can be attributed to these claimed benefits.

#### *Housing*

11.52 Paragraph 47 of the Framework requires local planning authorities to boost significantly the supply of housing by, amongst other measures, maintaining and updating annually a supply of specific, deliverable sites sufficient to provide 5 years worth of housing against their housing requirement. The supply which has been agreed by the Council and the Appellant, amounting to just 1.79 years worth of delivery across the District, represents a very serious under provision of housing sites in the District [8.26].

11.53 As stated by the Council a contribution of just 26 dwellings would in itself make little impression on the existing under supply. Indeed, the proposal would only account for a small proportion of one year's supply at the current required rate of delivery of 498 units per annum<sup>128</sup>.

11.54 Set against these points, however, a contribution of 26 units can be regarded as an important benefit when viewed in the context of the extremely low rates at which housing has been delivered across the District in recent years [8.27] and of projected future completions until at least 2018/19 [8.28].

11.55 Furthermore, whilst the proposed new Local Plan can be expected to bring new housing sites forward in due course, this new Plan is at a very early stage and I agree that there is scope for slippage before it is adopted [8.7]. Whilst there was some discussion of current progress on sites elsewhere in the District at the Inquiry, no convincing evidence was submitted to demonstrate that the currently very low delivery rates of new housing across the District would substantially improve before the Local Plan is examined and adopted. Even following adoption of the Local Plan the rate of delivery of any new allocated sites may be affected by factors such as any need for supporting infrastructure. I agree that if the substantial shortfall in supply is to be addressed in the meantime, a range of sites including those of a broadly similar size to the appeal site is likely to be required [8.31][8.32].

11.56 A further point in favour of the appeal proposal is the heavily constrained nature of housing land supply elsewhere in the Borough, in terms of the identification of a range of suitable and deliverable sites. This is confirmed by the decision of the Council's Cabinet in August 2015<sup>129</sup> to undertake a comprehensive review of Green Belts to meet future development needs. Whilst this strategic context does not necessarily justify development which is harmful, it acts as a further indicator of the pressing need to bring forward new housing sites.

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<sup>128</sup> See inquiry document 8. This figure incorporates allowances for under provision between 2011/12 and 2013/14 and a 20% buffer which the Council has accepted is required in line with paragraph 47 of the Framework

<sup>129</sup> Core Document E16

- 11.57 There is also a shortfall in the availability of housing sites in Ashover to meet the target of 115 dwellings in the period 2011 to 2031 set by the Council's draft new Local Plan<sup>130</sup>, although it should be noted that this Plan has now been abandoned and it is unclear at what level any equivalent target will be set in the version of the Plan which is eventually taken forward.
- 11.58 I acknowledge that permissions have been granted for housing development in Ashover parish in recent years [9.19] and the emerging APNP proposes that 98 dwellings be completed between 2011 and 2031. It is therefore clear that the parish is making a contribution towards housing requirements in the District. However, the 98 dwelling target applies to Ashover parish rather than the village itself which is smaller [8.8]. Due to the early stage of the new Local Plan it is not clear how the figure of 98 dwellings will compare with the required contribution of the parish to the District's strategic needs over this period.
- 11.59 Whilst no assessment of Objectively Assessed Need for the rural west of the District [9.14][9.25] has been submitted, it is not clear whether this area constitutes a 'housing market area' as referred to in paragraph 47 of the Framework, with boundaries based on housing market rather than other factors such as landscape. The lack of such an assessment specifically for the west of the district does not undermine the importance of the contribution that the appeal proposal would make to housing delivery.
- 11.60 The proposed delivery of 10 affordable housing units within the site is fairly modest in absolute terms and as a proportion of the very high need for affordable dwellings in the District, identified by the Council as constituting 482 affordable homes per year<sup>131</sup>. However, this contribution needs to be viewed in the context of the extremely low rates of delivery in recent years amounting to just 109 units (or less than 5% of identified need) between 2009/10 and 2013/14 and the constrained supply of sites elsewhere [8.29]. Although the Council granted permission for 241 affordable units in 2013/14<sup>132</sup>, the identification of further sites with potential to deliver affordable units is clearly urgent. A wide range of sites will need to be brought forward if any substantial inroads into otherwise unmet needs are to be made.
- 11.61 Whilst ANFA considers that there is a limited need for affordable housing in Ashover [9.17] their evidence in this respect needs to be weighed against the very large need for the District as a whole identified in the SHMA. Furthermore, paragraph 47 of the Framework requires that affordable housing needs, in common with those for market housing, should be assessed over a housing market area as a whole, and there is no evidence before me which suggests that the housing market in this instance is confined to the parish or village of Ashover.
- 11.62 The Council's Committee report on the application<sup>133</sup> also indicates that, insofar as the market for affordable housing does operate on a localised basis, there is an unfulfilled need for between 13 and 18 affordable homes in Ashover ward. Whilst some other sites have come forward or are proposed to come forward for housing in the village, these are generally small sites for open

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<sup>130</sup> Mr Bedwell's proof of evidence – paragraph 10.53

<sup>131</sup> North East Derbyshire Authority Monitoring Report 2014 (Core Document E15) – paragraph 8.1

<sup>132</sup> North East Derbyshire Authority Monitoring Report 2014 (Core Document E15) – paragraph 8.2

<sup>133</sup> Planning Committee report – Core Document C1

market housing which are unlikely to make a substantial contribution to delivering affordable housing. Whilst a substantial number of new lets of affordable homes in Ashover may have been to people who do not have connections with the community [9.27], this does not demonstrate a lack of need across the housing market area or within the village.

11.63 Furthermore, existing vacancies of affordable housing may be caused by a range of factors and do not necessarily indicate a lack of need. Affordable housing needs do not exclude persons who are already housed, whether in owner occupied, private rented or social housing, but need to move to homes of a different size, tenure or facilities [9.25].

11.64 Having regard to the above factors, the contribution that the proposal would make to boosting the supply of market and affordable homes, whilst being fairly modest in scale, would constitute a notable benefit from the proposal.

*Other benefits*

11.65 Whilst the proposal would result in the creation of construction jobs and associated spending, these would be limited to the duration of the period whilst the dwellings are being built [8.38]. I therefore attribute only limited weight to this benefit.

11.66 Although a large proportion of the site would be made available for recreational public open space use, and this constitutes a benefit of the scheme, as there is no evidence to suggest that existing outdoor recreational provision in Ashover is deficient in quantitative or qualitative terms this benefit carries limited weight. Although the landscape strategy for the site could deliver some ecological benefits, for example associated with the proposed strengthening of tree coverage and creation of a pond, it is not clear that a substantial net increase in biodiversity interest within the site would be achieved.

11.67 Paragraph 55 of the Framework states that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities. Whilst the Appellant's estimate that each dwelling would contribute on average about £70 per week to be spent on local shops and other services in the village may be an over-estimate, such benefits would be material [9.21][9.34], irrespective of whether they are needed to ensure that local services remain viable. I also accept that the proposal would result in additional spending being available to support services in the surrounding area. However, as there is limited evidence to suggest that the development would result in the retention of services which would otherwise be threatened or provision of new services (other than the proposed open space), I give these benefits limited weight.

11.68 The Appellant has identified that Ashover has an ageing population and that by 2011 it had an imbalanced demographic mix with 26.4% of the population being aged over 65, compared to 21.1% across the District and 16.3% for England<sup>134</sup> [8.38]. The appeal proposal could help address this and increase economic activity levels by providing new homes which would be suitable for young adults or families with children. However, as the household composition within the

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<sup>134</sup> M Hindle's proof of evidence – paragraph 4.105

development is not confirmed and having regard to its fairly limited scale in relation to the village as a whole, the impact of the proposal on the age profile and household composition split of Ashover could be limited and this benefit carries limited weight.

11.69 With regard to the points made by the Appellant<sup>135</sup> about New Homes Bonus and Council tax receipts, the national Planning Practice Guidance (PPG)<sup>136</sup> states that whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. The PPG states further that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority. As there is no evidence which demonstrates that the awards of NHB and Council tax would help to make the proposal acceptable in planning terms I give these claimed benefits no weight [7.16].

### ***The Overall Planning Balance***

11.70 I have found that the appeal site is in a visually sensitive location which, whilst not subject to any national landscape designation, is part of a valued landscape. I have found that even a well designed scheme would cause harm to the landscape character and appearance of the area. Whilst such harm would be primarily concentrated in the local area it would nevertheless be substantial. Due to the resultant conflict with Policies NE1, NE2(a), and GS1 (prefatory text and (d)) of the NEDLP and with paragraph 109 of the Framework this harm carries substantial weight.

11.71 Whilst I note the points made by interested parties about other matters, the evidence before me does not lead me to conclude that the proposal would cause substantive harm in relation to these.

11.72 In support of the proposal, it would help to achieve the Government's aim of boosting the supply of housing in a District where the supply of suitable housing sites is heavily constrained and there is a clear need for more market and affordable housing to be delivered, and in a village where more affordable housing has been identified as being needed. The contributions that the proposal would make to meeting market and affordable housing needs in the area therefore constitute notable benefits, albeit ones which need to be seen in the context of the fairly modest scale of the proposal compared to housing needs in the District.

11.73 Whilst I have also found that the proposal would deliver other benefits which are noted earlier in my report, these only carry limited weight in support of the proposal.

11.74 Notwithstanding the benefits of the proposal referred to above, I consider that the degree of harm that it would cause to a valued landscape, and the resultant conflict with paragraph 109 of the Framework, are sufficient to significantly and demonstrably outweigh these benefits, when considered cumulatively and assessed against the policies in the Framework as a whole. Application of the approach in paragraph 14 of the Framework therefore indicates that planning permission should not be granted.

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<sup>135</sup> See Mr Bedwell's proof of evidence – for example paragraph 10.135

<sup>136</sup> Paragraph: 011 Reference ID: 21b-011-20140612

11.75 Furthermore, whilst the proposal would bring notable economic and social benefits, primarily due to its contribution to meeting housing needs, due to the harm that it would cause to a valued landscape it would not promote the environmental dimension of sustainable development referred to in paragraph 7 of the Framework. As a result of this, and having regard to the requirement in paragraph 8 of the Framework that economic, social and environmental gains should be sought jointly and simultaneously, I do not consider the proposal as a whole to constitute sustainable development.

**Other Matters**

11.76 ANFA has queried why no financial contribution is being sought towards capacity provision in Ashover Primary School [9.31]. Any planning obligation to deliver such a contribution would need to satisfy tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) including that it must be necessary to the granting of planning permission. As Derbyshire County Council has, based on recent projections, confirmed that there will be surplus school capacity and this would be sufficient to meet the needs of the proposed development, such an obligation in the case of the current appeal proposal would fail this test.

**12. RECOMMENDATION**

12.1 I recommend that the appeal be dismissed.

*Jonathan Clarke*

INSPECTOR

Richborough Estates



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## **APPENDIX 1 – APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Peter Goatley of Counsel	Instructed by Naomi Smith, Principal Solicitor
He called:	
Michelle Bolger, CMLI,	Director, Expert Landscape Consultancy
DipLA, BA, PGCE, BA	
Susan Wraith, DipURP,	4 Planning Delivery Limited
MRTPI	

### FOR THE APPELLANT:

Vincent Fraser of Queens Counsel	
He called:	
Jeremy Peachey,	Landscape Design Director, The Pegasus Group
BSc(Hons), MLD, CMLI	
Robert Hindle,	Director, Rural Solutions Ltd
BSc(Hons), MRICS	
Paul Bedwell, MRTPI	Director, Spawforths

### INTERESTED PERSONS:

Cllr Barry Lewis	County Councillor
Mr Richard Fidler	Speaking on behalf of Ashover Parish Council
Mrs Jane Hardwick	Speaking on behalf of Act Now For Ashover (ANFA) <sup>137</sup>
Mr James Sutherland	Speaking on behalf of ANFA
Dr John Bradley	Speaking on behalf of ANFA
Mr Alastair Petrie	Speaking on behalf of ANFA
Mr Douglas Laird	Speaking on behalf of ANFA
Mr Christopher Proctor Smith	Speaking on behalf of ANFA
Mr Edward Willmot	Speaking on behalf of ANFA
Mrs Helen Boffy	Speaking on behalf of ANFA
Cllr William Armitage	District Councillor
Dr Nigel Early	Local resident
Mr John Wardle	Local resident
Mrs Rhodes	Local resident
Mr Christopher Proctor	Local resident
Mr Stephen Haslam	Local resident
Ms Trisha Scott	Local resident

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<sup>137</sup> The representatives of ANFA spoke on different allocated topic areas at the Inquiry

**APPENDIX 2 – DOCUMENTS****CORE DOCUMENTS**

<b>Folder A</b>	<b>Submitted planning application</b>
A1	Planning Application Form
A2	Location Plan
A3	Location Plan (including topographical survey)
A4	Planning Statement
A5	Sustainability Statement
A6	Landscape Character Assessment
A7	Landscape Specification
A8	Design and Access Statement
A9	Indicative Site Plan
A10	Indicative Street Scenes
A11	Transport Statement
A12	Junction Geometry Plan
A13	Ecological Survey
A14	Geophysical Survey
A15	Flood Risk Assessment
A16	Coal Mining Risk Assessment
A17	Highways Improvements
<b>Folder B</b>	<b>Further Submissions – post validation</b>
B1	Review of Submitted Supporting Landscape and Visual Impact Documents (May 2015) on behalf of the Council
B2	Transport Statement prepared by SCP Transport to accompany application 15/00848/OL
B3	Additional highways information to accompany application 15/00848/OL
B4	Further ecological information prepared in support of application 15/00848/OL
B5	Additional ecology information – detailed ecological mitigation proposals in support of application 15/00848/OL
B6	Additional ecology information – in support of application 15/00848/OL
B7	Arboricultural Statement in support of application 15/00848/OL
B8	Ashover contextual analysis in support of application 15/00848/OL
B9	Landscape and Visual Impact Assessment submitted in support of application reference 15/00848/OL
B10	Landscape letter dated 24 November 2015 in support of application reference 15/00848/OL
B11	Michelle Bolger review of Landscape Visual Impact Assessment
B12	Landscape letter in response to Michelle Bolger review
B13	Coal Mining Risk Assessment in support of application reference 15/00848/OL
B14	Detention Basin information
B15	Housing Futures information
B16	Review of Inspire Transport Statement by JT Highways &

	Transportation
B17	Review of Inspire Transport Statement by JHB Consulting Ltd
B18	Inspire Transport Statement P3
B19	Surface Water Outfalls
<b>Folder C</b>	<b>Other Application Documents</b>
C1	Planning Committee Report (16 June 2015)
C2	Decision Notice
C3	Planning Committee Report (3 December 2015)
C4	Decision Notice
C5	Highway Authority Consultation Response
C6	Natural England GCN Licence - Carl Bro Group UK. Method Statement
C7	Natural England GCN Licence - Carl Bro Group UK. Licence
C8	Natural England GCN Licence - Carl Bro Group UK. Licence return
<b>Folder D</b>	<b>Inquiry documents</b>
D1	Draft Statement of Common Ground
D2	Full Statement of Case
D3	Full Statement of Case Appendices
D4	NEDDC Statement of Case
D5	Planning Committee Report (12 January 2016)
D6	Planning Committee Minutes (12 January 2016)
D7	Email from NEDDC withdrawing Reasons for Refusal 2 and 3
D8	Statement of Common Ground
<b>Folder E</b>	<b>Local Planning Documents</b>
E1	Saved policies of the North East Derbyshire Local Plan, 2005
E2	Saving direction, 2008
E3	NEDDLP Inspector's Report extracts,
E4	North East Derbyshire Local Plan 2011-2031 Initial Draft, 2015
E5	North East Derbyshire Schedule of Sites including extract of Ashover, 2015
E6	Sustainable Buildings Supplementary Planning Document, 2011
E7	Successful Places Supplementary Planning Document, 2013
E8	Affordable Housing Supplementary Planning Document, 2008
E9	Interim Planning Policy for New Housing Development, 2010
E10	The North East Derbyshire District Council Settlement Role and Function Study, 2013
E11	The North East Derbyshire District Council Settlement Hierarchy Background Paper, 2014
E12	2013 SHLAA Site Appraisals
E13	28 October 2015 Cabinet Report – Local Development Scheme
E14	15 April 2015 Cabinet Report – AMR 2014
E15	Annual Monitoring Report 2013/2014
E16	5 August 2015 Cabinet Report on the Local Plan
E17	2012 SHLAA Ashover SHLAA map
E18	Ashover Parish Neighbourhood Plan – Submission
E19	North East Derbyshire District Council Housing Topic Paper
E20	Landscape Character of Derbyshire extracts
E21	Housing Capacity Study of the Rural West
E22	North Derbyshire and Bassetlaw Strategic Housing Market Assessment

E23	North East Derbyshire Site Assessment (Stage 1) Local Plan Consultation Background Paper extracts
E24	Sustainability Appraisal of the North East Derbyshire Local Plan extracts
E25	Derbyshire Special Landscape Area Local Plan
E26	The 6C's Design Guide
E27	Bus Timetable: Route 63 63A
E28	North East Derbyshire Growth Strategy
E29	Sustainable Community Strategy for Chesterfield and North East Derbyshire
E30	NEDDC Housing and Economic Development Strategy
E31	Derbyshire County Council Technical Support Document: 1 Areas of Multiple Environmental Sensitivity.
E32	Derbyshire County Council Technical Support Document: 2 Tranquillity.
E33	Derbyshire County Council Technical Support Document: 3 Monitoring Landscape Change.
<b>Folder F</b>	<b>National planning documents</b>
F1	The National Planning Policy Framework
F2	Planning Practice Guidance extracts
F3	Localism Act
F4	Ministerial Statement - New Homes Bonus
F5	Ministerial Statement - Housing and Growth
F6	Ministerial Statement – Making the Planning System work more efficiently and effectively
F7	Laying the Foundations: A Housing Strategy for England
F8	Ministerial Statement – Landscape Character
F9	Great Crested Newt Conservation Handbook. Froglife
F10	Great Crested Newt Mitigation Guidelines. English Nature
F11	ACRE Children and Young People Policy Position Paper
F12	DEFRA Rural Economic Activity
F13	George Osborne and Elizabeth Truss article
F14	DEFRA Towards a one nation economy: A 10 point plan for boosting productivity in rural areas
F15	Guidance for Landscape and Visual Impact Assessment (GLVIA) (3rd Edition) Published by the Landscape Institute and Institute of Environmental Management and Assessment
F16	Natural England National Character Area Profile 50 Derbyshire Peak Fringe and Lower Derwent
F17	Office for National Statistics, Labour Force Survey extract: Home Working
F18	HBF Economic Footprint of Housebuilding
F19	HBF Regional Report: East Midlands
<b>Folder G</b>	<b>Appeal decisions/legal cases</b>
G1	Cotswold District Council vs Secretary of State for Communities and Local Government and Fay and Son Limited [2016] EWCA Civ 168
G2	Hopkin Homes and Richborough Estates judgement [2014] EWHC 573 (admin)
G3	Barwood Land APP/G2713/A/14/2218137

G4	Land off Station Road, Great Ayton APP/G2713/A/14/2223624
G5	Land off Tanton Road, Stokesley 2013 EWHC 286 ADMIN
G6	Tewkesbury Borough Council v Secretary of State for Communities and Local Government 2013 EWHC 2074 ADMIN
G7	Stratford on Avon District Council v Secretary of State for communities and Local Government APP/J3720/A/13/2202961
G8	Land at Gaydon Road, Bishops Ithington APP/R0660/A/13/219219
G9	Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath APP/P0119/A/14/2220291
G10	Land south of Wotton Road, Charfield [2016] EWCA Civ 168
G11	Land off Worcester Road, Drakes Broughton APP/H1840/W/15/3008340
G12	Land off Sadberge Road, Middleton St George APP/N1350/A/14/2217552
G13	Land off Banady Lane, Stoke Orchard APP/G1630/A/14/2223858
G14	Land off Nantwich Road, Tarporley APP/A0665/A/11/2167430
G15	Land off Walden Road, Thaxted APP/C1570/A/14/2222958
G16	Nethermoor Road/Deerlands Road, Wingerworth APP/R1038/A/13/2192646
G17	Mansfield Road, Hasland APP/R1038/A/13/2202979
<b>Folder H</b>	<b>Third Party Correspondence and representations</b>
H1	Third Party Representations
H2	Derbyshire Wildlife Trust comments letter (23 October 2014)
H3	Derbyshire Wildlife Trust comments letter (23 Mach 2015)
H4	Derbyshire Wildlife Trust comments (9 November 2015)
H5	Objection Mr Bradley (24 September 2015)

## DOCUMENTS SUBMITTED DURING THE INQUIRY

### Council Documents

- 1 List of appearances
- 2 Opening submissions
- 3 Appeal decision APP/B1605/W/14/3001717 - Leckhampton
- 4 Letter from Council to Ashover Parish Council dated 13 April 16 – Ashover Parish Neighbourhood Plan: Submission Draft
- 5 Consultation Statement – Ashover Parish Neighbourhood Plan
- 6 Closing submissions

### Appellant's Documents

- 7 List of appearances
- 8 Housing Land Supply Position based on the 2014 AMR\*
- 9 E-mail from Derbyshire County Council re education provision\*
- 10 List of Planning Conditions (initial and revised drafts)\*
- 11 Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute and Institute of Environmental Management and Assessment

12 Closing submissions

(Documents marked with an '\*' were agreed with the Council)

**Interested Parties' Documents**

- 13 ANFA – Extract from Ashover PPG (Patients Participation Group) News, May 2016
- 14 ANFA – letter dated 8 March 16 from Chairman of Ashover PPG and reply dated 25 March from NEDDC
- 15 ANFA – statement on Sustainability
- 16 ANFA – statement on Ecology Issues
- 17 ANFA – Extract from ANFA statement of case - highways
- 18 ANFA – Presentation from Helen Boffy
- 19 ANFA – H3 Presentation
- 20 ANFA – statement on Impact on Quality of Life
- 21 Dr Early – Extracts from British Geological Survey and Neighbourhood Statistics, ONS
- 22 ANFA – Source of ANFA's use of vehicle movement data
- 23 Closing statement on behalf of ANFA

Richborough Estates

### **APPENDIX 3 – CONDITIONS**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No part of the development hereby permitted shall take place until a scheme for the provision of affordable housing as part of it has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing contained in the National Planning Policy Framework or any future policy or guidance in force at that time that replaces or supplements the Framework. The scheme shall include:
  - (i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of the housing units hereby approved;
  - (ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing if no Registered Social Landlord is involved);
  - (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - (v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 5) No later than the date of submission of the first reserved matters application an assessment of the risks posed by any contamination shall be submitted to and approved in writing by the local planning authority. The assessment shall comprise a Desk Top Study (Phase I) to identify any likely contamination on the application site and any necessary Intrusive Site Investigation (Phase II) together with the timing for its implementation. If any contamination is found during Intrusive Site Investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the approved development (phase III), including the timescale for its implementation, shall be submitted to and approved in writing by the local planning authority.

The site shall be remediated in accordance with the approved measures and none of the dwellings hereby approved shall be occupied until a verification report has been submitted to and approved in writing by the local planning authority in respect of that dwelling. If, during the course of the approved

development, any contamination is found otherwise than as part of the approved Intrusive Site Investigation, the development shall be suspended and additional measures of remediation shall be submitted to the local planning authority for approval. The remediation of the application site shall incorporate the approved additional measures, which shall also be covered by the verification report to be submitted to and approved in writing by the local planning authority before each dwelling is occupied.

- 6) Details to be submitted to and approved in writing by the local planning authority for approval as part of the reserved matters shall:
  - (i) Include areas of built form and open space which are in the general locations shown in the Design and Access Statement (January 2015 revised May 2015), the Indicative Site Plan (Drawing No. 14-456-10 and Pegasus Design's Landscape Masterplan (Drawing No. D0373\_09 Rev A);
  - (ii) provide for the retention of the mature oak tree within an area of open space within the application site; and
  - (iii) provide for the retention of the existing boundary hedgerows to the perimeter of the site.
- 7) Details to be submitted for approval as part of the reserved matters shall include a detailed design for a proposed single vehicular access onto Moor Road, the new road(s), any shared surface(s) and / or accesses to them within the application site and a timetable for their implementation.
- 8) There shall be no vehicular access off Narrowleys Lane and not more than one vehicular access onto Moor Road.
- 9) No dwelling hereby permitted shall be occupied until any road(s) or private driveway to serve that dwelling have been laid out, constructed and surfaced in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The road(s) and driveways shall be retained as such thereafter.
- 10) No part of the development hereby permitted shall take place until a scheme for the laying out and provision of a children's play area and amenity area for use by members of the public has been submitted to and approved in writing by the local planning authority. The scheme shall include details of public use, future management and maintenance arrangements for the play area and amenity area and a timetable for implementation. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. The play area and amenity area shall thereafter remain available for public use for its designated purpose in accordance with the approved details.
- 11) No part of the development hereby permitted shall take place until details of a sustainable drainage system to serve the development have been submitted to and approved in writing by the local planning authority. Those details shall include:



- (i) information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- (ii) a timetable for its implementation; and
- (iii) a management and maintenance plan which shall secure the effective operation of the sustainable drainage system throughout the lifetime of the development.

The sustainable drainage scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 12) No part of the development hereby permitted shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed dwellings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 13) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and hedgerows and the working methods for the protection of the trees and hedgerows has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and hedgerows shall be carried out as approved.
- 14) No part of the development hereby permitted shall take place until a mitigation and monitoring strategy in respect of Great Crested Newts and a timetable for its implementation, allowing for the need to obtain any statutory licences or approvals, has been submitted to and approved in writing by the local planning authority. The approved scheme shall then be implemented as approved.
- 15) No part of the development hereby permitted shall take place until a scheme for the provision of ecological habitats in accordance with the Detailed Ecological Mitigation Proposals (November 2015) document and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. The scheme shall provide details of how the positive nature conservation management of all retained and created habitats will be funded, maintained, implemented and managed and made available for use by members of the public. The approved proposals shall be implemented in full accordance with the approved details and timetable and shall be retained as such thereafter.
- 16) No part of the development hereby permitted shall take place until a scheme(s) for the recruitment of employees for the construction period of the development, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The scheme(s) shall be operated as part of the development in accordance with the approved details.
- 17) No part of the development hereby permitted shall take place until a scheme(s) for the storage of refuse and recycling bins and access for refuse

collection vehicles has been submitted to and approved in writing by the local planning authority. None of the proposed dwellings shall be occupied until the refuse collection and recycling storage facility for that property has been provided in accordance with the approved scheme.

- 18) No part of the development hereby permitted shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- (i) the parking of vehicles of site operatives and visitors;
  - (ii) loading and unloading of plant and materials;
  - (iii) storage of plant and materials used in constructing the development;
  - (iv) wheel washing facilities;
  - (v) measures to control the emission of dust and dirt during construction;
  - (vi) construction working hours; and
  - (vii) the arrangements, to include hours of operation, and routing for delivery and construction vehicles to and from the application site.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 19) No street lighting or lighting of public areas associated with the development hereby permitted shall be carried out except in accordance with details which have previously been submitted to and approved in writing by the local planning authority.
- 20) No part of the development hereby permitted shall take place until a scheme to provide for pedestrian movement to, from and within the application site has been submitted to and approved in writing by the local planning authority. The scheme shall take account of any pedestrian desire lines and provide details of the design and construction of new footpaths, the arrangements for their future management and maintenance and a timescale(s) for implementation. The scheme shall be implemented in accordance with the approved details and timescale(s) and shall thereafter be retained in accordance with the approved details.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.