

2. CHAPTER 2 - ECONOMIC DEVELOPMENT & REGENERATION

2.1 POLICY: ER - ECONOMIC DEVELOPMENT & REGENERATION

Objections

| FirstDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|-------|----------|---------|--------------------------------------|
| F3028-O | Mr | Carl | Wright | Heanor & Loscoe Town Council (Clerk) |

Issues

Need for regeneration strategy for Heanor

Inspector's Reasoning and Conclusions

2.1.1 The Town Council suggests that large tracts of land are allocated at Heanor and only a small amount has come forward in the last ten years. A regeneration strategy is seen as a means of preventing the land becoming blighted. No evidence has been submitted to support the claim and the Council has not responded to the objection in its statement on publicity and consultation (**CD.AV7**). The Plan shows a total of 26.80 hectares allocated in the Heanor Sub-Area (Appendix 2), with the major allocations being at Heanor Gate and Loscoe Fields, both of which are essentially greenfield allocations on the periphery of the town.

2.1.2 PPG12 (para 6.10) suggests phasing of development over the period of the Plan may be justified, taking the form of a broad indication of the timescale envisaged for release of the main areas. It may be that an indication of priority for release of these sites would meet the objector's concerns and allow an orderly development of employment land in Heanor.

RECOMMENDATIONS

That no modification be made to the Plan in response to these objections, but the Council may wish to give consideration to phasing the release of the larger greenfield allocations included in the Heanor Sub-Area.

2.2 POLICY: ER1 (FDP)

Objections

| FirstDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|-------|----------|---------|---------------------------------|
| F0689-O | | | | Hepworth Properties Ltd |
| F1472-O | | | | Derby Diocesan Board of Finance |
| F2796-O | Mr | B | Holden | Belper Local History Group |

AMBER VALLEY BOROUGH LOCAL PLAN REVIEW - Inspector's Report

| FirstDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|-------|----------|----------|---|
| F3022-O | Miss | A | Plackett | English Heritage- East Midlands Region |
| F3028-O | Mr | Carl | Wright | Hearnor & Loscoe Town Council (Clerk) |
| F3030-O | | David | Abbott | Highways Agency |
| F3038-O | Mrs | M | Smedley | |
| F3040-O | | | | ASDA Stores Ltd |
| F3041-O | Mr | C | Packman | Government Office for the East Midlands |
| F3044-O | | | | Peveril Securities |
| F3051-O | | | | Morris Homes Ltd |
| F3052-O | | | | Coats Plc |
| F3060-O | | | | M. F. Developments |
| F3061-O | | C | Maskery | Belper Historical Society |
| F3270-O | Mr | Andrew | Bock | Clowes Development (UK) Ltd |
| F3274-O | Mr | R | Barber | Westbury Homes (Holdings) Ltd |
| F3408-O | | Sven | Rufus | Nottinghamshire Wildlife Trust |

Issues

Comments On Sites Identified In Policy ER1

Land west of Derby Road, Milford should be identified for housing development

Development briefs should be prepared for all sites identified in this policy before any detailed proposals are permitted

Development proposals for the sites at Milford will need to be subject of a Flood Risk Assessment

Provide cross-reference to policy EN29 in relation to the World Heritage Site

Refer specifically to potential for retail development at Derby Road, Belper

Site at Derby Road, Belper is outside the town centre and is therefore not appropriate for retail uses. It should be identified as a business and industrial area (policy ER4)

Amend policy to give greater recognition to role of housing in securing regeneration of sites

Refer specifically to potential for retail development at Derwent Street, Belper

Refer to need for a Transportation Assessment before any proposals can be permitted on these sites

Refer to need to protect listed buildings and other heritage features within the sites, strategic views into and out of the sites and land to be part of proposed multi-user route

(policy TP3)

Suggested new sites to be identified for mixed-use development under policy ER1

- Nottingham Road, Somercotes
- Somercotes Hill, Somercotes
- Butterley Works, Butterley Hill, Ripley
- Lily Street Farm, Derby Road, Swanwick

- Nottingham Road, Codnor
- Breach Farm, Loscoe

Inspector's Reasoning and Conclusions

2.2.1 Policy ER1 has been deleted in the RDP, and replaced with individual mixed-use proposals ER1a – ER1f. Those in turn have been subject to objections, resulting in Pre-Inquiry Changes to ER1d and ER1e (**CD.AV8**, p5). The concerns of Heanor & Loscoe TC and GO-EM are superseded by the RDP whilst those of English Heritage are met by new text in the reasoned justification, requiring the preparation of detailed development briefs for individual sites. The objection by the Highway Authority, requesting transport assessments for ER1 sites has been answered by an appropriate reference in Policy TP1. Those of Mrs Smedley, the Belper Local History Group, the Belper Historical Society and ASDA Stores concerning ER1d have been overtaken by events. Other objections refer to specific sites, either those included within the Policy, seeking a variation of the appropriate mix of uses, or suggesting alternative sites to be included within the Policy.

Nottingham Road, Somercotes

2.2.2 Coats plc considers the area of land between the A38, Nottingham Road and Wimsey Way, forming part of a wider business and industrial allocation covering the Alfreton Trading estate and Cotes Park industrial Area, should be allocated as a mixed-use area. The objector claims that, whilst the area east of Nottingham Road remains very much an industrial estate, the area to the west features a number of mixed-uses including leisure and retail uses. It states the area is well related to existing residential areas and ideally located to serve those population catchment areas. A mixed-use allocation would encourage sustainable patterns of development.

2.2.3 The only Council response is a general one contained in Appendix I of the Statement on Publicity and Consultation (**CD.AV7**), indicating that many of the suggested sites, and by implication this one, are designated as Business and Industrial Areas under Policy ER4. From my visits to the area it is clear to me that the general character of the area, including that part west of Nottingham Road, is that of a substantial employment allocation. Whilst there are sites which do not fall wholly within the B1, B2 or B8 Use Classes, these tend to be small and relatively isolated. In my view they are not a justification for re-allocating the area as a mixed-use allocation. 'Sustainability' involves more than simply juxtaposition of serving- and served- uses. This is not a reason in itself for changing the allocation.

Somercotes Hill, Somercotes

2.2.4 The Diocesan Board of Finance has suggested that an area of land east of Thurston Avenue, Somercotes should be identified under Policy ER1 as an area for mixed-use development comprising B1, A3, D2 and C3 uses. The purpose of the allocation would be to contribute to urban regeneration. In evidence the objector requested that the proposal be changed to comprise 3ha of land closest to the existing built-up area, with mixed-uses, including B1, A3, and D2 uses, on 2ha and housing on 1ha at the southern end of the site. It was also felt that the northern part of the site would be suitable for C2 and D1 uses. It would be attractive to the type of 'new industry' that RPG8 seeks to attract, so the site would add to the diversity of sites available within the Borough and compatible with the 30 dwelling development proposed for the southern part of the site.

2.2.5 The site is within a substantial tract of agricultural land, described by

Mr Wren as 'scrubby pasture' and not best and most versatile land. It is located to the rear of frontage properties on Somercotes Hill and adjacent to development on Thurston Avenue, forming part of a large area of open land between Lower Birchwood and Lower Somercotes. Although not designated as Green Belt or for any other purpose, the Council considers it to be outside the built framework of Somercotes and forming part of the open countryside. It was not included in the Council's UCS (**CD.AV6**). The Council's case is that the site is not well related to the urban area and, in the case of employment uses, it is not highly accessible or visible from the strategic road network. In support of its case it points to the refusal of an application for mixed-use in the area in 1988.

2.2.6 In my view the location is within an important break between settlements stretching beyond the railway line to the Borough boundary north of Pye Bridge. I cannot see any specific benefits in terms of urban regeneration which would justify its allocation for mixed-use development. As a mixed-use development it would be isolated from other employment sites with relatively poor accessibility. In the absence of a specific need to bring forward greenfield sites for development I see no reason to recommend modification of the Plan.

Butterley Works, Butterley Hill, Ripley

2.2.7 The proposal for a mixed-use development, including about 120 dwellings on this site was subject of a refusal of planning permission that has now been successfully appealed by Butterley Ltd (ref: APP/M1005/A/03/1125699). As a result it now has planning permission for the proposed development and, as such, is no longer a matter for consideration at this Local Plan Inquiry.

Lily Street Farm, Derby Road, Swanwick

2.2.8 An objection to the exclusion of Lily Street Farm has also been made to Policy ER3. From the evidence before me it appears more appropriate to deal with the objection under that Policy [*paras 2.8.6-2.8.18*].

Nottingham Road, Codnor

2.2.9 The Council has indicated that this objection was originally recorded as a proposed mixed-use allocation, but was subsequently considered as a proposed housing site. Accordingly I have dealt with it elsewhere [*see paras 3.26.24-3.26.30*].

Breach Farm, Loscoe

2.2.10 M.F. Developments has proposed a comprehensive mixed-use development for a substantial area of land at Breach Farm, Loscoe. It claims this would contribute to the needs of the Local Plan to allocate land for open market housing, affordable housing and employment. It also suggests the development, in close proximity to existing services and community facilities, would contribute to reducing the need to travel for both new and existing residents. The site is within the Heanor Sub-Area where the objector suggests there is a significant requirement for new housing development with a limited range of urban capacity sites identified. The Council has not made a specific response to the proposal.

2.2.11 In my view there are two overriding reasons for not allocating the site in the Local Plan as suggested. Firstly the site is not within the urban area of Heanor, and I consider it is a relatively isolated area of rural countryside which touches onto Loscoe at its south-eastern extremity, and the equally isolated Cross Hill area in the north-east. To the north and south it borders onto open countryside, whilst to the west there is the small developed area of Denby

Common. Secondly, and perhaps more importantly it is within the designated Green Belt where built development is 'inappropriate' except in very special circumstances. The onus is on the developer to show such circumstances and none have been offered. Development would be contrary to the purposes of including the land within the Green Belt. In these circumstances, no change should be made to the Plan.

RECOMMENDATIONS

That no modification be made to the Plan in response to these objections.

2.3 POLICY: ER1c

Objections

| RevisedDepositRepNo | Title | Forename | Surname | Organisation |
|---------------------|-------|----------|----------|---|
| R1755-O | Miss | A | Plackett | English Heritage - East Midlands Region |
| R1765-O | Mr | Andrew | Bock | Clowes Development (UK) Ltd |
| R1804-O | Mr | D | Marsh | Environment Agency |

Issues

Detailed comments on wording of policy/text

Inspector's Reasoning and Conclusions

2.3.1 The Council's response to these objections (**CD.AV9**, p5) is that they are matters of detail to be addressed when detailed proposals are made. An amendment has been made to the Proposals Map deleting part of the land as not appropriately included. In large measure this is a correct analysis of the situation. I have noted the objection by Messrs Clowes refers to a town centre relief road – as detailed in its objection at FDP stage. This is referred to by English Heritage as the subject of local speculation.

2.3.2 During the Inquiry negotiations have taken place between the Council's officers and Messrs Clowes resulting in revised wording for both the Policy and its reasoned justification, as a result of which the objector has conditionally withdrawn the objection. The revised text is attached to a letter from the Council to the Inquiry, ref: R1765-O, dated 16 March 2004. This proposed amendment is subject to consideration by the Borough Council members, but I have been asked to consider these suggested changes when preparing my report. Both the revised Policy and the justification refer to the proposal for a link road to relieve congestion on Bridge Street and provide access to the site. This is to be the subject of detailed investigation. No indication of a route is shown on the Proposals Map.

2.3.3 Clearly this is a significant change to the Policy that has not been the subject of public consultation and the suggested road link could give rise to further speculation as indicated by the English Heritage's objection. It is also likely to arouse uncertainty and will almost certainly be controversial. Additionally, no doubt the Council will be aware of the implications of blight.

My own view, based on the evidence before me, is that proposals for development for this site must take account of the consequences for traffic on Bridge Street, and

must be capable of achieving satisfactory access arrangements. In this respect the revised policy placed before the Inquiry is a step in the right direction. However, I consider further work is necessary, particularly in establishing the nature, and possible route of a link road. The Council will also have to give consideration to the need to advertise the final proposals for modifying the Plan and the possibility of a modifications inquiry, as advised in PPG12, Annex B, paras 21-22. In principle, those proposed changes have my support, subject to consideration of objections at the modifications stage. The final criterion is subject to the same concern that I have expressed in consideration of objections to policies ER1e and ER1f, below.

RECOMMENDATIONS

That the Council proceeds with the proposed modification shown for Inset Q in the proposed Pre-Inquiry Changes (CD.AV8), and that the Council gives further consideration to its proposal to make significant changes to the Policy and reasoned justification.

2.4 POLICY: ER1d

Objections

| RevisedDepositRepNo | PreInquiryChangeRepNo | Title | Forename | Surname | Organisation |
|---------------------|-----------------------|-------|----------|----------|---|
| R1760-O | | | | | Bimoto Developments Ltd |
| R1767-O | | | | | William Davis Ltd |
| R1779-O | | | | | St Modwen Developments Ltd |
| R1806-O | | | | | Butterley Ltd |
| R1880-O | | Mr | J | Fletcher | Langridge Homes Ltd |
| | P0029-O | | | | George Wimpey Strategic Land & Jennings Homes |

Issues

Objections to level of provision for housing within policy

Detailed comments on wording of policy/text

Inspector's Reasoning and Conclusions

2.4.1 As I understand it the situation is that detailed planning permission has now been granted for development of this site, including completion of a Section 106 Agreement, so these objections are no longer before the Inquiry for consideration. Although the Council has resolved to amend the number of houses to ensure consistency with the permission, the plan should not include as allocations, sites which are committed through the grant of planning permission.

RECOMMENDATIONS

That the Plan be modified by deletion of Policy ER1d, and by removal of the site from the Proposals Map.

2.5 POLICY: ER1e

Objections

| RevisedDepositRepNo | PreInquiryChangeRepNo | Title | Forename | Surname | Organisation |
|---------------------|-----------------------|-------|----------|----------|---|
| R1755-O | | Miss | A | Plackett | English Heritage - East Midlands Region |
| R1767-O | | | | | William Davis Ltd |
| R1779-O | | | | | St Modwen Developments Ltd |
| R1804-O | | Mr | D | Marsh | Environment Agency |
| R1805-O | | Mr | R | Hepwood | Miller Homes East Midlands |
| R1806-O | | | | | Butterley Ltd |
| R1808-O | | Mr | R | Needham | Tapton Estates Ltd |
| R1880-O | | Mr | J | Fletcher | Langridge Homes Ltd |
| | P0011-O | | Dominic | Lawson | David Lock Associates Ltd |

Issues

Objections to level of provision for housing within policy

Detailed comments on wording of policy/text

Inspector's Reasoning and Conclusions

2.5.1 The site comprises some 4.3 ha of previously developed land which has been in industrial use for a considerable period of time, but is now unused. It is accessed from the Derby Road at Milford at a single point, Foundry Lane, and fronts onto the River Derwent to the north, west and south. There are substantial buildings on the land, although these are mainly in an advanced state of dereliction. There is also a substantial car park, a former Co-op building and a dwelling, both vacant, and at the southern tip, former allotments now disused.

2.5.2 The site's owners support the Policy but object to three aspects: criterion (b) seeking a contribution to a multi-user route; to the reduction in the number of dwellings from 150 to 100 in the PICS; and to the exclusion of the former allotment site, also in the PICS. Miller Homes also generally supports the Policy, but considers criterion (c) too vague and potentially onerous, whilst the Policy should allow for "approximately" 150 dwellings rather than "up to".

2.5.3 English Heritage is concerned at the apparent change of character of the proposal because of the specified number of dwellings producing what it considers to be a predominantly residential proposal. William Davis considers residential development inappropriate as part of the mixed-use concept, and is also concerned that part of the site is within the flood plain.

2.5.4 In respect of the concerns with flood risk, the Environment Agency

has indicated (R1804) that the site is within areas of indicative flood risk, but will withdraw its objections subject to confirmation that the need for a flood risk assessment will be included in the development brief.

2.5.5 Langridge Homes has objected to the significant over-provision of housing in the Belper/Ripley Sub-Area and the related shortfall in provision in the Derby Sub-Area, in connection with its objection to the non-allocation of land at Markeaton Stones, Mackworth. I have dealt with the issue of transferring the housing requirement between Sub-Areas both in connection with the Cinderhill development, and more generally in respect of Housing Policy 1 [*paras 3.2.1-3.2.24*]. In short, I have not accepted that it would be legitimate to transfer the housing requirement in this manner, but I have accepted the County Council's view that over-provision in the Belper/Ripley Sub-Area, albeit in connection with the Cinderhill proposal, would not be out of conformity with the DDJSP. Accordingly I have treated the land east of Derby Road, and the Milford Mills site as mixed-use proposals, on their individual merits [*paras 2.6.1-2.6.14*].

2.5.6 I have noted the suggestion by Langridge Homes in respect of both the ER1e and ER1f proposals, that in view of the World Heritage status of the area, development briefs, business plans and viability analyses should be drawn up in collaboration with English Heritage and a formal submission be made for Heritage Lottery funding. However, the Council's response in LPA23 (*paras 4.9-4.16*) indicates a detailed and, in my view, robust approach to the detailed planning of the sites and I see no necessity for the approach offered by Langridge Homes which appears to go beyond the remit of the Local Plan.

2.5.7 The objection by Butterleys is essentially that the sites cannot be expected to deliver residential development within the Plan period, and that its site should be included in the Plan's Appendix 1 as an alternative. That site now has planning permission, reducing the force of Butterley's argument but, in any case no evidence has been submitted to support the suggestion.

2.5.8 The reason given by the Council for reducing the number of dwellings (**CD.AV9**, p6) is that the total area suitable for residential development is likely to be restricted to about 2 ha, the total number being derived from an assumed density of around 50 dph. This was determined having regard to advice in PPG3 about the need to reflect existing scale and character (LPA24, para 4.20). Tapton Estates disagrees, arguing that development within Milford surrounding the site is at a typical density of between 70 and 100 dph. Given the context and site characteristics, and the advice in PPG3 (para 57) the objector says it is not appropriate to impose an arbitrary limit on new development. The appropriate density should depend on the quality and layout of the detailed scheme.

2.5.9 In my view the limitation of the residential component to 100 houses is not unduly restrictive, given the nature of the site. I consider the Council is right to include such a restriction where it considers this is an important factor to take into account in considering a planning application. Since only the Plan Policy has special status under Section 54A, the authority would be failing in its statutory duty if it excludes from the policy matters on which it will rely in determining applications. It appears to me reasonable in the case of a mixed-use allocation for the Council to indicate what mix of uses will be sought, if it can give reasons for doing this. In this case there is no strategic need for additional houses in the Belper/Ripley Sub-Area, and good reasons for seeking an emphasis on employment uses. I also agree with the Council that, although local densities may be higher in places, this is not an overriding reason to accept a higher density as part of the mixed-use scheme. I understand that a full planning application in general

accordance with the Policy as it stands, has since been submitted to the Council (letter from David Lock Associates, 20 February 2004).

2.5.10 St Modwen Developments has also objected to the Policy, requesting a reduction from 100 to 50 dwellings, on the basis that the site could be difficult to develop, requiring highway improvements, and much remediation is required. On the basis of these, and other matters, it is suggested that the potential of the site is very limited indeed (W/R, R1779-O/6). The Council's response is that it accepts the need to restrict development to take account of the constraints (WR8, para 4.1) but that this should be of a scale and character to reflect existing development in the vicinity. In addressing the various concerns raised by the objector, the Council is satisfied that 100 houses is deliverable from the 2 hectares site. I concur with that assessment.

2.5.11 Turning to the other matters, I share Tapton Estates' concern with criterion (b) in that planning obligations should be directly related to the proposed development (Circular 1/97, para B2). As shown on the Proposals Map, the multi-user route proposed by Policy TP3 does not impinge on allocation ER1e. Rather, it follows an existing route, Chevin Road, on the west side of the River Derwent. I understand the Council considers there is potential for a footpath link across the weir, effectively linking this site with allocation ER1f. Clearly if that proposal were to go ahead, a contribution from the developer would be reasonably related to the development. However, that, as the objector indicates (PoE, para 3.10) would require the co-operation of the owners of the Milford Mills site, and of the river bed. I have also noted that the proposal does not form part of the Plan, and is not shown on the Proposals Map. I have noted that no agreement was reached between the parties on a possible amended wording to criterion (b) and, in its present form, I consider it unacceptable, and should be deleted.

2.5.12 My concern with the wording of criteria extends to criterion (c), subject of objection by Miller Homes. In my view it is not acceptable to require developers to "*satisfy any criteria*" without specifying what commitment those criteria may entail. It is not sufficient, in my opinion, to simply point to other policies without an indication of what these are, or what their requirements are. In any event, proposals must satisfy all relevant policies since the plan must be read as a whole, so the criterion is unnecessary. I consider it should be deleted.

2.5.13 The Council's reason for excluding the area deleted on Inset Map D by the PICS is that it has not previously been in industrial use and is not considered to be appropriate for built development (LPA24, para 4.21). It is acknowledged that part of the land might be required for any improvements to the access. The objectors say it provides the opportunity for an attractive and safe '*gateway*' to the redevelopment and should remain allocated as part of the mixed-use development. The actual part objected to is not the whole area deleted, but that part in Tapton Estate's ownership: the vacant dwelling and adjacent car park, as shown on Plan HEP006/DB/04 attached to the PoE as Appendix 1. I have noted that it is defined as part of the site in the development brief. In my view logic is with the objector and that small part should be reinstated as part of the site.

RECOMMENDATIONS

That the Council proceeds with the proposed modification at p5 of the proposed Pre-Inquiry Changes (CD.AV8), but that the dwelling and adjacent car park to the north-west of the junction between Foundry Lane and Derby Road should not be deleted from Inset Map D, and in addition, the Plan be modified by deleting criteria (b) and (c) from Policy ER1e.

2.6 POLICY: ER1f

Objections

| RevisedDepositRepNo | Title | Forename | Surname | Organisation |
|---------------------|-------|----------|----------|---|
| R1755-O | Miss | A | Plackett | English Heritage - East Midlands Region |
| R1765-O | Mr | Andrew | Bock | Clowes Development (UK) Ltd |
| R1767-O | | | | William Davis Ltd |
| R1779-O | | | | St Modwen Developments Ltd |
| R1804-O | Mr | D | Marsh | Environment Agency |
| R1806-O | | | | Butterley Ltd |
| R1880-O | Mr | J | Fletcher | Langridge Homes Ltd |

Issues

Objections to provision for housing within the policy

Detailed comments on wording of policy/text

Inspector's Reasoning and Conclusions

2.6.1 Objections to the Milford Mills site are, in many respects the same as those concerning the site west of Derby Road (ER1e) and my response, given below, is similar.

2.6.2 The English Heritage objection reflects its concerns outlined above in connection with ER1e. William Davis considers residential development inappropriate as part of the mixed-use concept, and is also concerned that part of the site is within the flood plain. St Modwen argues that the site will not produce new dwellings within the Plan period due to planning constraints, including the need for highway improvements at the access with the A6 Derby Road.

2.6.3 In respect of the concerns with flood risk, the Environment Agency has indicated (R1804) that the site is within areas of indicative flood risk, but will withdraw its objections subject to confirmation that the need for a flood risk assessment will be included in the development brief.

2.6.4 Langridge Homes has objected to the significant over-provision of housing in the Belper/Ripley Sub-Area and the related shortfall in provision in the derby Sub-Area, in connection with its objection to the non-allocation of land at Markeaton Stones, Mackworth. I have dealt with the issue of transferring the housing requirement between Sub-Areas both in connection with the Cinderhill development, and more generally in respect of Housing Policy 1 [paras 3.2.1-3.2.24]. In short, I have not accepted that it would be legitimate to transfer the housing requirement in this manner, but I have accepted the County Council's view that over-provision in the Belper/Ripley Sub-Area, albeit in connection with the Cinderhill proposal, would not be out of conformity with the DDJSP. Accordingly I have treated the land east of Derby Road, and the Milford Mills site as mixed-use proposals, on their individual merits.

2.6.5 I have noted the suggestion by Langridge Homes in respect of both the ER1e and ER1f proposals, that in view of the World Heritage status of the area,

development briefs, business plans and viability analyses should be drawn up in collaboration with English Heritage and a formal submission be made for Heritage Lottery funding. However, the Council's response in LPA23 (paras 4.9-4.16) indicates a detailed and, in my view, robust approach to the detailed planning of the sites and I see no necessity for the approach offered by Langridge Homes which appears to go beyond the remit of the Local Plan.

2.6.6 The objection by Butterleys is essentially that the sites cannot be expected to deliver residential development within the Plan period, and that its site should be included in the plan's Appendix 1 as an alternative. That site now has planning permission, reducing the force of Butterley's argument but, in any case no evidence has been submitted to support the suggestion.

2.6.7 The Council has made no amendment to the Policy through pre-inquiry changes, defending its ceiling of 50 dwellings as part of the mixed-use scheme as resulting from the likely area suitable for residential development being restricted to about 1 ha.

2.6.8 Clowes Developments original objection indicated a preference for a housing, rather than employment generating uses, basis for development of the site and specified 3 main reasons: firstly there is little or no demand for employment based development; secondly vehicular access is constrained; and thirdly residential development is more appropriate for this location. Those reasons were expanded through evidence presented to the Inquiry. Objection was also made specifically to the limit of 50 dwellings, and to the deletion of A1 retail as an acceptable element of the mixed-use. These remain the essential differences between the parties.

2.6.9 At the Inquiry there was discussion concerning what became known as the '*magic wall*' to the former mill building, towards the northern end of the site. It is the Council's contention that the site should remain open to the north of the wall in order to secure a form of development which reflects the mill buildings (PoE, para 5.6). Whilst this may well provide a logical basis for development, it is a detailed site consideration and not a matter for the Local Plan, or this Inquiry to determine. However, I acknowledge that it has formed a basis for the Council's objection to more than 50 dwellings. Having said that there is an open aspect to the northern part of the site, shown on Mr Sadler's photos 7, 14 and 15 which suggests a benefit in limiting building here. This suggests to me that some limitation on total numbers could be beneficial, a view confirmed by the master plan submitted by the objectors.

2.6.10 On the subject of employment development, the Council has drawn attention to the steady decline of employment opportunities in the Derwent Valley and to the fact that employment sites here are no longer as attractive to modern industries. It acknowledges that the site is unlikely to be attractive to B2 and B8 uses, and accepts that there is limited demand for B1 uses. Mr Milner suggested in cross examination that a substantial element of residential development would preclude B2 and B8 uses as historically this produces conflict. This in my judgement would be particularly so where the only access must be used by both, and a more comfortable relationship might result from B1 and residential uses. From the evidence I can see no benefit in retaining the theoretical flexibility offered by specifying B2 and B8 uses in the Policy. My view is reinforced by the constraint offered by the single access onto a section of the A6 with relatively poor visibility and limited turning space for large vehicles.

2.6.11 The Council recognises the potential to attract other uses, such as

tourism, to the site. Clearly the existence of the listed mill buildings which form a substantial element in the landscape of the Derwent Valley suggest that tourist related development would be a potentially attractive use. The Council is also concerned that adding A1 retail uses to the list of acceptable potential uses might lead to the development of major retail outlets on what is seen as an out-of-town location. However, the two possible retail opportunities advanced by the objectors were, a local shopping facility – such as a local post office and general store, for which Mr Milner indicated planning permission exists – and ancillary retail facilities related to any tourist based use. It seems to me that neither of these possibilities suggests that the Policy in its present form would exclude them from consideration. On this basis I see no overriding reason to introduce a change which might encourage speculation in larger developments.

2.6.12 In summary I support the objectors' view that there is no reason to include B2 and B8 uses, but I accept the Council's argument that A1 retail uses should not be added to the list. It seems to me from the evidence that a limitation of 50 dwellings has little basis in terms of site constraints, and that a figure of 70 dwellings might be more realistic whilst retaining flexibility of the spatial disposition of the built form in relation to the site characteristics. – and in particular would not preclude the Council's wish to retain at least some portion of the site as open space. Whether development should, or should not go beyond the '*magic wall*' is in my view a matter for detailed consideration.

2.6.13 In arriving at these conclusions I am aware that the allocations ER1e and ER1f have superficial similarities in that both are former mill works on the Derwent Valley WHS, and similar arguments, particularly to increase the number of dwellings permitted, have been advanced. However, there are in my view differences, most particularly in the form of access available and the substantial listed mill building on the ER1f site, both of which are significant constraints.

2.6.14 I have noted the Council's proposed change to inset D, showing additional land which forms part of the mill site. In line with my conclusions on Policy ER1e at *para 2.5.12*, criterion (c) should not be included in the Plan.

RECOMMENDATIONS

That the Council proceeds with the proposed modification to Inset D shown in the proposed Pre-Inquiry Changes (CD.AV8) and that, in addition, Policy ER1f be modified by deleting "General Industrial (B2), Storage and Distribution (B8)" from the list of acceptable uses, and by amending the final sentence to read:

"Up to 70 dwellings will also be permitted as part of any comprehensive scheme".

And that the Plan should also be modified by the deletion of criterion (c).

2.7 POLICY: ER2

Objections

See Appendix ER2

Issues

Concerns over scale of housing in relation to size and character of existing adjoining settlements

Concerns over amendment to Green Belt boundary, impact of development on the transport network and concern that dereliction and contamination problems can be properly resolved

Detailed comments on wording of policy/text

Detailed comments on proposed pre-inquiry changes to wording of policy

Inspector's Reasoning and Conclusions

2.7.1 I have concluded that it is only within the context of the requirement to meet the DDJSP housing requirement that the Local Plan should consider the Cinderhill proposal [*para 3.2.11*]. The implication of this is that further large housing developments in Belper and the coalescence of settlements in the Ripley area should be avoided (**CD.DC6**, para 14.27) and that it does not involve the transfer of the Structure Plan housing requirement from the Derby Sub-Area which the DDJSP indicates should be well-related with the built-up area of Derby.

2.7.2 It is clear from the DDJSP Report of the EiP Panel that the Cinderhill scheme was intended to form part of the additional housing proposed for the Belper/Ripley Sub-Area (para 14.27). Less than 600 houses beyond current commitments was proposed, with some assumed to be absorbed as urban consolidation and modest additions to settlements (para 14.26) with consideration being given to making additional provision as part of the Cinderhill proposal. The basis for acceptability of the proposal was, in strategic terms, twofold and made explicit - both in the DDJSP (para 14.27) and the Report of the EiP Panel (para 10.3.10). The first was that house building taking place in an essentially unsustainable location well away from a main settlement should be part of a mixed-use development to discourage further increases in commuting and secondly, the development should underwrite the restoration and beneficial use of an otherwise intractably despoiled area. This was seen by the EiP Panel as "*..a risk worth taking..*".

2.7.3 The Panel's assessment of the risk was based on the then available information, and the DDJSP suggested that the precise scale of additional housing provision should be determined in the review of the Local Plan in conjunction with drawing up a redevelopment/reclamation scheme for Cinderhill. That work has now been undertaken and, in the light of the more detailed evidence that has been provided to this Inquiry, I believe serious doubts have arisen concerning the original principles mentioned above.

2.7.4 Firstly, there is insufficient housing remaining beyond present commitments in the Belper/Ripley Sub-Area to provide for a 600 dwelling mixed-use proposal. As a result the Plan has transferred the housing requirement from the Derby Sub-Area – contrary to the Structure Plan requirement for provision on

the fringes of Derby, and also contrary to the specific rejection by the Panel of Amber Valley's request for a reduced contribution in the Sub-Area.

2.7.5 My second doubt concerns the purpose of the development – to underwrite the restoration and beneficial use of an otherwise intractably despoiled area. Through the detailed evidence provided it has become clear that the area of intractably despoiled land is very limited and, even following extensive and costly reparation, beneficial use in terms of built development would be impossible. Some of the other previously-worked land within the area has been restored to agricultural use and cannot, in my view, be considered as despoiled, or having brownfield status. This undermines the very reason for the proposal.

2.7.6 The third doubt relates to the mixed-use aspect of the proposal. As the EiP Panel reported (**CD.DC7**, para 10.3.10), the risk is that building houses well away from a main settlement requires the support of the local jobs crucial to the sustainability of the mixed-use proposal. Again, the detailed evidence given to the Inquiry suggests that there can be no guarantee that employment development at Cinderhill will take place in step with the housing development – and the developers' programme (**CD.TP4A**, para 6.9) indicates housing development preceding industry. In this event, the past trend of increased commuting from the Sub-Area mainly to employment in Derby - noted in the DDJSP (**CD.DC6**, para 14.14) - would most likely continue.

2.7.7 My fourth reason for concern is a serious question mark over the ability of the Cinderhill scheme to deliver housing within the Plan period. This is a consequence of complex land ownership, with over 40 different land ownerships, and the fact that – at the time of the Inquiry – the developers owned only around half of the area. This has consequences for the ability of the developers to enter into Section 106 agreements, necessary to the development, and for potentially protracted compulsory purchase procedures in the event of agreement with landowners proving impossible to achieve.

2.7.8 A further concern is that, whilst the EiP Panel foresaw a need for consequential changes to the Green Belt in the Cinderhill area, these were expected to be minor in extent (**CD.DC7**, para 10.3.14 (3)). In my opinion, the Local Plan shows a more than minor deletion from the existing Green Belt, whilst the more detailed studies submitted in evidence to this Inquiry suggest the proposed deletion would provide a more than generous site for the development proposed. I will look at each of the site-specific concerns in more detail, below.

General principles of the proposal

2.7.9 The Council considers there are three principles on which the proposals are based (LPA10E, para 3.1). These are:

- providing a strategic employment site which can contribute to meeting both demand and need arising at the regional, sub-regional and local level;
- achieving the successful remediation of derelict and contaminated land within the site;
- securing a comprehensive mixed-use scheme which can make a significant contribution to achieving a more sustainable pattern of development and land-use.

2.7.10 In cross-examination Mr Stafford indicated his opinion that it is a combination of these three principles that justifies release of Green Belt land; that neither achieving remediation, nor creating a mixed-use scheme would alone

provide justification.

2.7.11 The Council's closing statement gives 10 headings under which its submissions have been made. For convenience I have grouped my findings under similar sub-heads.

i) Employment

2.7.12 The commitment to an employment development in the vicinity of Cinderhill is longstanding. It was included in the Belper Kilburn District Plan from the early 1980s and defined in the adopted Local Plan (**CD.AV1**) as the Cinderhill Growth Point totalling some 52 hectares, although there is an indication that parts would be required for extensive mounding and screen landscaping. The allocation was also seen as a means of securing the restoration and reuse of derelict land, whilst strategic location along the A38 corridor was seen as offering major benefits in terms of commercial attractiveness and improvements to road infrastructure.

2.7.13 The DDJSP, however, cast doubt on the site's potential to contribute to the future land supply unless it could be incorporated into a package of measures designed to stimulate investment – because of the constraint resulting from the tar pits, and requirement for access improvement. Although only 5% of the total supply of 73.52 hectares of employment land in the Sub-Area was considered immediately available, whilst a further 18% would become available within five years, the Structure Plan indicated “*..no immediate need to search for alternative sites*” since at then current take-up rates (0.38 hectares per annum: EM, **CD.DC6**, para 14.12) there would be in excess of 20 years supply. It cautioned that any solution to the problems of Cinderhill would require large-scale and long-term commitment. The Structure Plan identifies a need for 75ha of employment land in the Sub-Area, concentrating on current commitments – and in particular “*...securing the development of despoiled land at Cinderhill*”. However, an overriding principle was to achieve an improved balance between homes and jobs in the Sub-Area, through providing for an increased employment growth and reducing the rate of housing development (EM, para 14.24).

2.7.14 Mr King's evidence was that the main factors that make a site attractive to employers are immediate availability, good on-site environment and good access, all of which the Council believes would result from Cinderhill's allocation as a mixed-use development. The Council dismissed the QUELS conclusion that Cinderhill was only a category 2B site because at the date of the study there were significant obstacles preventing the site coming forward. It seems to me, from the evidence that significant question marks remain over the removal of those obstacles within the Plan period. Although I have been invited to conclude that a powerful case has been made for the allocation, it is also suggested that it has not been implemented to date because industry alone would “*..not generate the funds required both to create the A38 junction and to remediate contamination*” (LPA10L, para 27).

ii) Remediation of contamination

2.7.15 Dealing first with the Denby Disposal Point, Mr Gill (PoE, para 4.4) indicated that the near surface soils here, and on former railway land to the north, are likely to be contaminated to such a degree that some form of remediation would be required to enable residential development to take place. The area involved was identified as probably in the region of 2-3 hectares. Apart from this, the major concern – and a significant factor in identifying Cinderhill as a development site – is with the 'Tar Pits'. The area of concern is relatively small at about 2 hectares, although it lies within a larger area identified by Banks as

affected by engineering and ecological constraints on Plan 1 attached to Topic Paper TP4A. Mr Gill provided evidence of the contaminants involved (para 3.2.1-3.2.2), based on work carried out on behalf of DCC, and of the risks posed to human health (para 3.2.4). He referred to local anecdotal evidence of risk to human health but stressed this could not be supported by any form of evidence, although it remained a 'theoretical' risk.

2.7.16 Mr Gill also provided information of previous restoration works carried out in the 1980s, suggesting this was only partially successful. He advised that unauthorised excavations had resulted in a breach to the side wall of one of the tar pits, allowing contaminants to flow into the adjacent middle lagoon. However, the results of testing shows the northern and southern lagoons remain uncontaminated, as does the stream flowing to the east of the site (upstream and downstream). He quotes recent quality testing by AIG Consultants as indicating the tar pits do not at present pose a significant risk to the stream, whilst borehole tests showed the impact on groundwater quality is at present localised to the immediate vicinity. These findings reflect the EA view that the main concerns would be surface water and human health issues (para 3.2.21).

2.7.17 In cross-examination, Mr Gill estimated the cost of remediation at some £5m, compared to £4.8m in Appendix 2 to Mr Garrett's PoE. Included in the costs would be temporary removal of the known population of Great Crested Newts, provision of a geosynthetic cap, followed by a re-vegetation and re-population scheme to return the area to its current ecological status. In cross-examination he advised that the system would have a design life of 25 years, but there would have to be an ongoing management system in place with a suitable organisation to provide long-term aftercare, management and maintenance. He stated nothing of this nature was proposed at present.

2.7.18 As an alternative, it was suggested that remediation could be achieved by leaving it to the local authority to exercise its enforcement powers under Part IIA of the Environment Protection Act 1990. The Council accepts that the provisions of the Act apply to Cinderhill but its arguments concerning the difficulties of achieving a long term solution through their application are set out in the Council's closing submission (LPA10L, paras 32-33).

2.7.19 Essentially, I accept Mr Gill's view that there is doubt over whether anyone could successfully be forced to undertake the necessary works outlined in his PoE. However, I am equally concerned with two aspects of the solution proposed. The first is that an original reason for proposing the scheme – to secure the development of despoiled land at Cinderhill (**CD.DC6**, para 14.25) – appears to have been watered down in that the works proposed would render the tar pits safe and secure, to be used as amenity space and for nature conservation, but building on them would not be possible. In other words the link between remediation and the mixed-use proposal is indirect.

2.7.20 The secondly, and perhaps more important concern, is that the cost of remediation is a significant sum – about 15% of the total construction costs set out in Appendix 2 of Mr Garrett's PoE. This is the basis for the Council's assertion that this justifies the housing allocation "*..in order to act in the nature of 'enabling' development for the remediation of the tar pits*" (LPA10L, para 36d), a point elaborated by Mr Keogh (PoE, para 4.8). However, it is Mr Stafford's evidence (PoE, para 3.57) that development at Cinderhill will have to be phased to ensure that "*...the existing problems of dereliction and contamination can be satisfactorily addressed in advance of development*" (my emphasis). Mr Stafford points to further evidence by Barton Wilmore on phasing, but this does not suggest that

remediation will occur in advance of development, although Mr Gosling (LPA10G, para 2.26) suggests that any planning permission for housing would include conditions to limit the progression of housing until remediation of the tar pits has occurred. His Appendix 4 includes a spreadsheet showing phasing of development with remediation occurring during 2007, whilst residential sales commence in the last quarter of 2006. The diagram also shows the A38 junction (a further commitment of £7.4m) completed by the end of 2007, suggesting substantial 'up-front' costs before any significant sales. A related point arising from cross-examination of Mr Garrett was that there is, to all intent and purpose, a funding gap of some £8.25m for which EMDA grant aid would be sought [*this is also referred to in para 2.7.59, below*] although this has so far only been the subject of discussions with EMDA on the basis of a reclamation scheme. Indeed, for Miller Homes it was concluded that the case for Cinderhill should only be considered on the basis that it cannot and will not proceed without an EMDA grant (closing, para 6.7). It was also clear from the cross-examination that Banks neither owns nor controls the area of the tar pits, and whilst there was an offer to sell, this depended on the allocation of land to the south for residential development – a course opposed by local residents and the Council.

2.7.21 I agree that the Council is right to take very seriously the risks posed by the tar pits and that it would be possible, on the basis of Mr Gill's evidence, to remediate them satisfactorily and provide adequate arrangements for long term management. However, from my analysis, I believe there are sufficient doubts over the ability of the proposed scheme to deliver the necessary remediation in addition to the proposed A38 junction (a total commitment of some £12m) within the Plan period. I am not convinced that remediation is sufficiently important to justify the allocation of 600 dwellings above the Structure Plan Sub-Area requirement in order to act in the nature of enabling development.

iii) Housing and the allocations between Sub-Areas

2.7.22 The Council's position is that the housing element of the mixed-use proposal is necessary to the extent that it would assist in funding the A38 junction and remediation of the tar pits: in other words it is an enabling development. As Mr Roots has pointed out (closing submission, para 38) this is a principle under which permission may be granted for development if it is required to fund a desirable objective **{RvWestminster City Council ex p Monahan [1989] 1 PLR 36}**.

2.7.23 The case referred to was an application for judicial review of a resolution to grant planning permission and listed building consent, so that caution must be observed when translating the Court's findings to a development plan situation. Nevertheless, it is clear that the case did establish that financial constraints on the economic viability of a desirable planning development were unavoidable facts of life in an imperfect world; that they are therefore a material consideration. However, it appears to me that the case also established, firstly that the planning authority must give reasons for accepting that particular circumstances apply in a specific case, and secondly that an authority must be particularly careful not to give way too readily to assertions of financial constraints as a ground for relaxing policies formulated in the public interest. The question of alternatives is also one for consideration in this respect.

2.7.24 In the case of the Cinderhill development, it appears that the Structure Plan requirement for specific housing requirements in particular Sub-Areas was a policy formulated in the public interest. It follows that AVBC's assertion that the policy should not apply to the Borough in some respects requires

reasoned justification. If the case is based on economic necessity – that the employment development will not happen without the support of the housing allocation – then that must be justified. So must the decision not to make allocations in the Derby Sub-Area, as required by the Structure Plan, particularly as both the Cinderhill proposal and any equivalent housing allocation in the Derby Sub-Area would involve greenfield land.

2.7.25 Since the allocation stems from the Structure Plan, the Council suggests the proper approach to considering the issue should be to consider whether the proposal should be supported and endorsed. If the answer is yes, then it needs to be considered whether it is sensible to make – in addition – the full provision in the Derby Sub-Area required by the Structure Plan. AVBC contends that it would be better not to do so because it would involve using greenfield sites. In support, it points to the fact that GO-EM is concerned only with overprovision in the Borough as a whole.

2.7.26 I have not been persuaded that this is the correct approach, for two reasons. Firstly, the DDJSP requirement for the Derby Sub-Area was intended to specifically address the needs of Derby with provision for Amber Valley to be on the fringes of Derby, whilst the Belper/Ripley Sub-Area housing would be held below migration trends to achieve an improved balance between housing and jobs. As Mr Roots indicates, the “...proposals do not *strictly* comply...” (his emphasis) with DDJSP Policy 9. Secondly, whilst I accept that the DDJSP did endorse the Cinderhill proposal, this has to be seen against the EiP Panel assessment that the proposal involved a degree of risk that it would produce housing in an unsustainable area – a risk it saw as worth taking on the basis of evidence available to it. It seems to me clear that the first priority of the Local Plan should be to first address those two key matters, and then give consideration to whether it would be appropriate to proceed with the Cinderhill allocation.

2.7.27 From the summary tables that I have used to illustrate the situation regarding the ‘residual’ requirement [*para 3.2.12*] the Belper/Ripley Sub-Area is over-provided by some 800 dwellings, whilst the Derby Sub-Area is around 900 dwellings short as a result of the Local Plan policies – in fact only 92 dwellings are shown in Appendix 1 as allocated in the latter Sub-Area against a requirement of 901. Mr Stafford has admitted this to be the case, at least in part, in his PoE, para 3.55: suggesting the new development will help to meet housing need, including “..more widely in the Belper-Ripley and Derby Sub-Areas”. This must be interpreted as the Local Plan being prepared without regard for the strategic steer of the DDJSP. In arriving at this conclusion I have borne in mind the Council’s concern that the only land available on the fringes of Derby is greenfield, but I am also aware that the EiP Panel must have known this fact when it rejected the Borough’s request for a reduced requirement in the Sub-Area. In my opinion this cannot be a reason for transferring the requirement to another Sub-Area.

2.7.28 The risk of unsustainable development is underlined by the DDJSP assessment that an excess of housing development over employment growth in the Belper/Ripley Sub-Area has “..resulted in increased commuting mainly to employment in Derby” (**CD.DC6**, para 14.14). Topic Paper TP4B adds to this concern when considering the effect of the mixed-use development on the potential additional labour pool of around 706 residents, by acknowledging “..that only a small proportion of these economically active residents would find employment at Cinderhill” (para 3.22). Although Mr King suggested this was a misquotation (PoE, para 3.14) and suggested a level of 60% based on past trends, the doubt remains in my mind. This is particularly so when there appears every likelihood of

residential development proceeding in line with a planned programme, the situation regarding the development of employment uses seems more nebulous. For example, Mr Gosling (PoE, para 2.23) indicates that the rate of occupation of the employment area is dependent upon economic market forces, and that its development can proceed only "*..as quickly as market forces will allow*".

iv) Green Belt

2.7.29 The amount of land to be deleted from the Green Belt is some 52 hectares (note submitted by Mr Keogh 04/02/2004). Although he also advises that some 46.3 ha will be added to the Green Belt, this includes an area of 5.9 ha included in the allocation at FDP stage, but now shown as Green Belt. It appears from the documentation that this was excluded from the Green Belt in the adopted Local Plan to allow for the Cinderhill proposals so I am not convinced this should be seen as a net gain. Having said that, the Green Belt Local Plan (**CD.DC3**) suggested that the boundary would have to be revisited in the vicinity of Cinderhill (para 5.41). Additionally, the Structure Plan flagged up the possibility of detailed alterations "*..in the Cinderhill area east of Belper..*" (**CD.DC6**, para 2.68).

2.7.30 There was some discussion at the Inquiry concerning the relevant test for changing Green Belt boundaries and Mr Stafford accepted in cross examination that it required strong justification. Nevertheless, this is not the same as a test of very special circumstances and, as I have indicated above, some detailed amendment in connection with the Cinderhill proposal was presaged by the Structure Plan. That justification is given by Mr Roots in closing (para 49) as twofold, firstly the assumption that it would be possible to develop the tar pits for employment purposes and secondly that the employment allocation would fund both the remediation and the A38 junction. Both of these are now accepted by the Council to be incorrect. Housing development is now accepted as necessary to ensure infrastructure and remediation is provided whilst, as a result of more detailed study, the tar pits are recognised to be best left *in situ* and not developed. These changed circumstances were not considered as reasons for abandoning the proposal, but rather as reasons for requiring more land. In this respect the Council has also admitted that previous assumptions concerning the extent of land required had proved incorrect (closing statement, para 50).

2.7.31 The argument now put forward goes as follows: the employment development and remediation of the tar pits must be achieved; these cannot be achieved without a housing element; it is impractical and undesirable to construct built development on the tar pits area; therefore additional land is required and this cannot be achieved without amending the Green Belt boundary. So far as it goes it is difficult to refute the logic of this argument without suggesting the whole project is abandoned. Mr Roots suggested the amount of employment land is driven "*..by a desire to create a strategic employment site*" (closing, para 52) whilst the amount of housing is driven by the need to underpin the financial costs of development and partly by an aim "*..to create a balanced mixed-use community which supports local facilities*". Neither of these provides an imperative, the first is a desired outcome (which it is admitted has not come forward to date because of the substantial costs involved – Mr Keogh PoE, para 27), the second is identified as an aim.

2.7.32 The detailed evidence provided does not, in my view, justify either of the above as overriding reasons for excluding greenfield land from the Green Belt for development purposes. There is nothing to suggest that 37 hectares of employment land is necessary to create a strategic site, nor that 600 dwellings would create a balanced community. Appendix 2 attached to Mr Garrett's PoE

gives little comfort to the purpose of underpinning the financial costs of development since it offers virtually no profit to those taking on board the financial burden – that is assumed to come from EMDA grants. On this basis, a greater number of houses would be required to underpin those costs.

2.7.33 Whilst I will accept the Council's argument that if the Green Belt boundary is to be moved, the area should be sufficient to enable the development to proceed, I have not been persuaded by the arguments for deletion of over 52 ha. If the development scheme put forward is accepted as a reasonable representation, nearly 40%, including the listed Park Hall Farm and its setting, would remain undeveloped, whilst over half of the area already excluded and within the adopted Local Plan would not be built upon. Admittedly much of this latter area is not developable in any case but one is left with the feeling that the resulting development will be spacious. This, in my view, does not provide the strong justification suggested as necessary by Mr Stafford.

2.7.34 I have noted the argument that additional land has been included within the Green Belt boundary to the east of Cinderhill, resulting in a relatively small net loss of some 6 ha to the overall Green Belt. This may be true but, to my mind, the quantum is only part of the story – the purpose and disposition of the Green Belt is equally important. The Green Belt Local Plan advises that the smaller Amber Valley villages were wholly included in the Green Belt with development in them very strictly limited (**CD.DC3**, para 5.42). They were seen as small, often loose knit, and the essential openness of the Green Belt was seen as its important characteristic. The proposed deletion from the Green Belt, and the consequent development of the employment allocation would effectively reduce the gap south of Street Lane to some 500m on the west side of Station Road. In my opinion, the addition of open land to the east would not provided like-for-like compensation for this loss.

2.7.35 I have noted that, following discussion with GO-EM the policies relating to Cinderhill were amended to make it clear that new housing development would not be provided on that part of the site to be deleted from the Green Belt. This may be pertinent in respect of PPG3 advice on development involving previously-developed land, but appears to me little more than manipulation of the facts. Development is development, whether it is for housing or employment – neither would preserve the openness of the Green Belt.

v) Conformity with Structure Plan

2.7.36 In closing the Council has drawn attention to the provisions of the Town and Country Planning Act 1990, Section 43, and the substituted section 46 of the Planning and Compensation Act 1991, the latter requiring the structure plan authority to make a statement of conformity or non-conformity. The County Council has made a clear distinction between the element of over-provision of housing located in what it described as "*..despoiled brownfield land at Cinderhill*", which it saw as in conformity with the general strategy and environmental policies of the DDJSP, and the under-provision in the part of the Borough falling within the Derby Sub-Area, which it described as acknowledged but not justified. However, it stated that offsetting under-provision in one Sub-Area by over-provision in another cannot be considered as in general conformity with the adopted Structure Plan. The County justifies this by stating that "*failing to acknowledge this basis undermines the Structure plan's sustainability principles by resulting in longer commuting trips and increased migration*".

2.7.37 On the basis of evidence before me I accept the County Council's

view that the inclusion of Cinderhill for 600 dwellings is in conformity with the General Development Strategy and Environmental policies of the DDJSP, and the interpretation that the element of consequent over-provision in the Belper/Ripley Sub-Area would be in conformity. It follows that the question of under-provision in the Derby Sub-Area is a separate matter, as I have concluded elsewhere [*para 3.2.23*]. In this I am in disagreement with the Council's view (closing, *para 65*) that it should be considered in the light of Cinderhill: irrespective of my findings on Cinderhill, the question of provision to meet the DDJSP requirement for the Derby Sub-Area must be addressed.

vi) Previously Developed Land

2.7.38 As I indicated in *para 2.7.5*, above, the extent of previously developed land within the allocation is more limited than at first suggested. I do not accept the contention that none of the land falls within the definition of "previously developed" land in PPG3 Annex A. In this I agree with the Council that land in respect of which the restoration was to a standard intended for development purposes should be classed as previously developed. I shall refer to Mr Keogh's Plan 4, Land Status, appended to his PoE.

2.7.39 There is no disagreement between parties that undisturbed areas shown on the plan are greenfield. Nor is it disputed that Morrell's Wood authorisation/opencast has been restored to agricultural use and so is properly regarded as greenfield. However, I cannot accept Mr Keogh's assertion that it is better to develop on greenfield land that has been disturbed than undisturbed greenfield: that must depend on a number of factors, with each case being considered on its individual merits.

2.7.40 The tar pits area was subject to a planning condition requiring restoration to agricultural use, but I accept Mr Root's summary of the situation (closing, *para 68(b)*): that, whilst some remedial work has been done, the condition has not been fully complied with – that much can be seen on the ground. So far as I am able to see, this area cannot be reasonably classified as greenfield. As Mr Roots states, there is no proposal for building on this so the matter is somewhat academic.

2.7.41 As I understand it, the Park Hall Opencast planning permission was subject to a condition requiring restoration of part of the land to a standard suitable for industrial use with the remainder to be restored for agriculture. I refer to Mr Prince's PoE (*para 2.19*) indicating 29 ha and 2 ha respectively. On the best evidence before me, it would appear this is what has happened, with a small area east of Park Hall restored to agricultural use, and therefore falling within the definition of greenfield land, the remainder being regarded as previously developed within the PPG3 definition. Although Mr Prince quotes from a County Council letter (dated 07/08/2002) suggesting that the site could not be described as brownfield (PoE, *para 2.20*) I am inclined to accept the Council's view on the matter. This is reinforced by Mr Prince's note that restoration for industrial after-use involved a scheme of compaction to be seeded with low maintenance grass mix.

2.7.42 The Former Denby Disposal Site permission was subject to a condition requiring restoration to agricultural or "other approved" purposes. In this case, the best evidence is that the site was covered with soil and seeded. A cursory inspection shows a surface that would not encourage agricultural activity of any intensity which is somewhat at odds with Miss Donnelly's assessment that restoration "*..has been completed recently to a high standard as greenfield*" (PoE, *para 3.3*). I have also noted at *para 2.7.15* that parts of the site are likely to be

contaminated to such a degree that some form of remediation would be required.

2.7.43 In broad terms I would characterise the Cinderhill site as consisting substantially of previously developed land as far north as Park Hall Farm, but that it is mainly greenfield, including the Morrell's Wood site, to the north.

vii) Visual impact

2.7.44 Mr Keogh advised that a detailed visual impact assessment has not yet been undertaken (supplementary PoE, para s 4.8-9) but I agree with Mr Roots, that for the purposes of a Local Plan allocation, sufficient appreciation of the effect of the proposals can be gained without a sophisticated exercise.

2.7.45 The principle of development on the part of the site allocated in the adopted Local Plan has been accepted for some time. The northern extremity of this site coincides with the current Green Belt boundary in the vicinity of Park Hall Farm. It is the additional land, to the north of this that is most contentious.

2.7.46 Of course a substantial development will be visible wherever it is placed and the question is one of balance between the benefits and the inevitable visual impact. Having said that, consideration of visual impact is an important factor in determining whether the proposal is acceptable. As Mr Roots reported (closing, para 72) it can be assumed that the DDJSP authorities must have known there would inevitably be visual impact when the proposal was endorsed at strategic level. However, this does not absolve the local plan authority from giving the matter due consideration when making a specific allocation.

2.7.47 Miss Donnelly describes the context as having strong rural characteristics (PoE, para 4.2). I concur with this. Miss Donnelly also gives a clear and succinct general description of the topography at para 2.4 of her PoE and I have noted that Mr Keogh's critique of her evidence (his PoE, section 5) does not criticise this. Whilst I have accepted that large parts of the site can properly be described as previously developed the overall impression is, for the most part, of open countryside. This is demonstrated clearly in Miss Donnelly's figures A1 and A2. I also agree with her description of the site being highly visible from the eastern edge of Openwoodgate, and that parts of the site appear visible from Marehay and Kilburn in particular. I also saw from site visits that the northern part of the Morrell's Wood area is visible from properties on the western side of Street Lane. It is inescapable that development in any form will have an urbanising effect on the scene I have described.

2.7.48 My main concern is with development on the northern part of the site for two reasons; firstly this is the most prominent part of the whole area and is visible over considerable distances, and secondly because this is the area proposed for employment development including B1, B2 and particularly B8 uses. The latter will often involve substantial warehouse buildings which can have a ridge height of 14 – 20m: a point put to Mr Keogh in cross-examination. Although he considered it difficult to say if this would result in visually prominent development because the disposition of the buildings and landscape remediation could help, he agreed that some employers – for example knowledge based industries – would seek a high profile site for image purposes. Development on parts of the site would be clearly visible from the A38 where it emerges from cutting. This aspect of the proposal does concern me. A simple drive along the A38 gives an indication of the visual prominence of existing business areas, and I consider that substantial buildings on the northern part of the proposed allocation would be visually dominant in the landscape panorama depicted on Miss Donnelly's figure A1.

viii) Sustainability

2.7.49 The Council states that there is no single test of sustainability. In general this must be correct. However, I consider the most important test for Cinderhill has to be that of the DDJSP. My reason for saying this is simple: the Structure Plan offered legitimacy for the Cinderhill proposal – in the words of the EiP Report as “*..a risk worth taking..*”, but that consideration should be given to the additional housing provision “*in the light of the sustainability principles underlying the Joint Structure Plan*” (CD.DC6, para 14.27). Those principles are set down in paras 2.38-39 of the EM) and encapsulated in General Development Strategy Policy 1. The key criteria in this instance are:

- (2) minimising the overall need to travel by ensuring convenient access between homes, jobs and services;
- (3) encouraging the increased use of public transport by developing in locations well served by, or with the potential to be well served by the public transport network; and
- (4) re-using land in preference to developing greenfield sites

2.7.50 I shall look at each of these in turn, although I will also have regard to policies 1 and 2 in RPG8, and the Government’s advice on sustainability. The Council considers that Cinderhill “*..fares well under the relevant policies notwithstanding its location*” (closing, para 78). Those relevant policies are contained in Mr Stafford’s evidence and include national and regional policies in addition to those in the DDJSP. Mr Stafford considers the proposals meet all of the criteria in GDS Policy 1 by virtue of the proposed mix of land uses, the proposed remediation of derelict and contaminated land, the potential for improvements to public transport provision and safeguarding important environmental features. In cross examination he indicated that 600 dwellings was considered an appropriate number to achieve a sustainable development, although he admitted that the Council had not looked at how much housing was needed to overcome the funding deficit.

2.7.51 On the first criterion (2), as I have indicated, I have not been convinced by the evidence that employment and residential development will progress in step, so that jobs are made available as people move into the houses. From what I have heard the former development will clearly be market-driven, whilst the latter will be developed to a structured programme. I accept that creating juxtaposed uses has the potential to reduce the dependency on travel by car, but it is not as simple as that. As PPG13 (para 30) states “*..it should not be assumed that the juxtaposition of different uses will automatically lead to less car dependency*”. As I have concluded [para 2.7.28] Mr King’s evidence suggested only a small proportion of new residents would be likely to find employment at Cinderhill. Based on past trends identified in the DDJSP many of the remainder are likely to commute to Derby.

2.7.52 Criterion (3) is a locational matter relating sustainability to the availability, or at least the potential availability of public transport. RPG8 Policy 1 also concerns locational priorities for development, and gives last place in its sequential approach to suitable sites outside of urban areas, where they are or will be well served by public transport, particularly where this involves the use of previously developed land. The evidence of Mr Appleton pointed to substantial numbers of people either living, or potentially living within walking and cycling distances of the employment site (8,500 and 115,000 respectively), but accepted in cross examination that neither would form a large percentage of journeys to

work. Much was said about the potential of the disused railway line to provide a means for commuting journeys into Derby but again in evidence in chief, Mr Appleton accepted that this could not be brought back into use in the shorter term, but would be "*..somewhere down the line*". The question of park and ride was raised, but the best that could be said for this was in Mr Roots' closing statement (para 79), that it may be provided on the edge of Derby, in which case it could encourage people to leave their cars outside the city centre. In my view, this is not a basis for a sustainable development.

2.7.53 Realistically, the only form of public transport that would be available would be buses. Mr Appleton (PoE, para 4.21) suggested that, following talks with operators, it will be possible to introduce an hourly service to Derby, whilst additional diverted services would give increased services to places such as Belper and Ripley, "*..particularly during peak traffic hours*". None of this, to my mind, relates well to the exhortation in PPG13 (para 20) that the pattern of urban growth and the location of major travel generating development should be actively managed to make the fullest use of public transport, and to ensure it is well related to the existing pattern of development.

2.7.54 In respect of criterion (4) the re-use of previously developed land could be said to meet GDS Policy 1, as Mr Stafford has indicated, but this is achieved at the expense of a substantial amount of greenfield land incorporated in the development. Since this is Green Belt land restored to agricultural use, I do not accept Mr Keogh's view that it is necessarily better to develop on this restored land than on a virgin site. In cross examination, Mr Stafford agreed that if the majority of the site were determined to be not previously developed it would take away one of the three principles and that would undermine the basis of the development.

ix) Deliverability

2.7.55 There are several matters which impact on the deliverability of the scheme within the Plan period. These include land ownership, viability of the scheme, timescale for procedural matters, and marketability. All of these were the subject of evidence to the Inquiry with additional material provided by way of supplementary proofs of evidence given to a second Inquiry session. The Council accepted (closing, para 81) that it would not normally be sensible to allocate land for development unless there is a reasonable prospect that constraints to implementation can be overcome. Nevertheless, its case was, at least in part, based on the premise that "*..allocation in a local plan is very often the key to unlocking the constraints*". It cited confirmation of a compulsory purchase order and determination by EMDA of a grant application as two such illustrations.

2.7.56 At the time of the Inquiry the Banks Group owned a little over 17ha of the site, with control established over further areas under option. The total under its control was calculated at 50.8% (Peter Garrett PoE: paras 3.2-3.3). The evidence also noted that other developers becoming involved in negotiations with landowners were not helpful to land assembly. Mr Garrett appeared unsure if this would result in an element of 'ransom' arising. In this respect, Mr & Mrs Langton, landowners of the tar pits and adjacent areas, have advised that they would fight such an approach "*tooth and nail*" (letter dated 12 November 2003). There was a great deal of discussion about the need, or otherwise, for compulsory purchase powers to be used for land assembly, and the effect this would have on the timing of development.

2.7.57 I have no doubt that the arguments put forward by Mr Roots

concerning the use of a CPO are sound and the case law cited lends support to this. I have also noted (**CD.AV27**, para 2.1) the confirmation that the Council "*..remains willing in principle to the use of compulsory purchase powers, if necessary..*". The basis on which those powers would be instigated is set out at para 4.6 as in order to acquire outstanding interests, if requested to do so by the developer, and subsequent to the grant of planning permission for the development (although Mr Roots stated – closing, para 89 – that planning permission is not necessary before an order can be made). However, what remains a matter of concern is the extension of the processes, through the need for compulsory purchase, prior to development taking place. Mr Goatley, cross examining Mr Gosling, suggested his experience showed 18 months required to get a CPO Inquiry date, moving the assumed timetable out by up to 2 years. Mr Gosling agreed that, in such a case, there would be no prospect of building the development inside the timetable. He also agreed with Mr Wren, that to deliver a S106 agreement would require all the landowners to be involved and this would not be possible in the event of a CPO being necessary. A similar timescale was alluded to in respect of the necessary orders to achieve the proposed intersection with the A38.

2.7.58 The 'conundrum' that was subject of debate at the Inquiry was argued to be a fiction by Mr Roots and a substantial part of his closing statement addressed the matter. I have no doubt that in most respects he is correct in his assertions, but at the end of the day it appears to me there is substantial opportunity for delays to occur through these various processes, and I have no doubt in my mind that the timetable offered by the developers is extremely optimistic. Where I am at variance with Mr Roots is in his assertion that it would not matter if the required number of houses were not to be completed in the Plan period (closing, para 103) because, if Cinderhill is approved, "*..there is likely to be an overprovision in the Sub-Area which makes it less important than otherwise..*". This, in itself, flies in the face of the requirement that local planning authorities should seek only to identify sufficient land to meet the housing requirement (PPG3, para 30).

2.7.59 A summary appraisal for the project was prepared for the Inquiry which demonstrated a profit of about 0.92% of the total development value (para 4.9). Mr Garrett indicated this would not provide a sufficient return to justify commencement in the absence of further funds. These, he indicated would be in the form of grant assistance from EMDA, for which application had been made. In answer to Mr Goatley he agreed that viability is a matter at issue, and that the 'profit gap' would be in the order of £8.25. In further cross-examination Mr Garrett denied that if EMDA does not 'cough up', the project would not proceed, but he did concede that an alternative form of income would be necessary – in other words, if the grant assistance was not forthcoming, there would be other ways in which some form of scheme would go forward. However, the Council indicated that no further viability analysis would be produced in evidence to show viability in the absence of an EMDA grant. In the absence of that further evidence I have not been convinced that a viable scheme exists at present.

x) Mr & Mrs Langton

2.7.60 The Council has made specific comments on the objections by Mr & Mrs Langton since they are land owners within the Cinderhill site (closing, paras 117-129). The land ownership is in two parcels, either side of the A38. These are referred to as parcel A, west of the A38, and parcel B to the east. The owners support the development in principle, but object on the basis that they do not support the indicative plan. Having listened to the evidence, I can see no basis on

which parcel A should be brought into the development site, even if my recommendation were to support the Cinderhill proposal. I accept the Council's indication that it was originally included to make provision for the A38 junction and link road to Belper, and that justification is no longer there. I can understand the landowners' counter-argument that they wish to see maximum beneficial development but parcel A would, as Mr Roots so eloquently observed, result in *".. an anomalous blip in the otherwise plainly discernable and defensible boundary of the Green Belt abutting the A38.."* (closing, para 121).

2.7.61 There are two parts to parcel B: the area of the tar pits, and what was referred to at the Inquiry as the southern part in proximity to Pingle Cottage. On the former part, I have to agree with the Council (closing, para 126) that on the evidence provided to the Inquiry there is no logic or planning merit in arguing that the tar pits area is suitable for development. There was no dissent from the evidence of Mr Gill concerning the current state of the tar pits or the risks they present, nor was Mr Mellor's evidence on the nature conservation interest challenged. I was offered no evidence that development of the tar pits area itself would be feasible or viable, given the problems that exist.

2.7.62 The southern part has more credentials as a development site. It is agreed that this is a greenfield site adjacent to existing development to the south, and with a degree of relationship, as Mr Hogan phrased it, with the local settlement. It is bounded to the west by the A38, to the east by Brickyard Lane which has seen a recent development of houses on the opposite side to parcel B (an area shown as a protected open area under Policy ABP4 in the adopted Local Plan). For Mr & Mrs Langton it is argued this could be developed for some 130 houses, irrespective of the Cinderhill proposal.

2.7.63 The commentary to Policy ABP4 (para 9.2.3) in the adopted Plan advises that the land including parcel B should be maintained as an open area *"..in view of the proximity of existing housing development"* to the proposed growth point for employment uses. That requirement has, of course, changed with the current proposals for a mixed-use scheme and the now intended retention of the tar pits area as open land. Mr Wren conceded in cross examination that without the Cinderhill proposal site B would not get off the ground. However, in the context of Cinderhill it is argued the site would 'kickstart' the development.

2.7.64 Even with Cinderhill I have two concerns with parcel B. The first concerns access, the second is the relationship between any development proposals and the tar pits area. Presently, the access via Brickyard Lane is poor by any standards and serves a considerable amount of development. The Cinderhill proposals, as evidenced by the notional plan offered by Banks, would not alter that situation, and there have been no suggestions as to how improvements might be achieved.

2.7.65 The second concern is that, if Cinderhill were to go ahead and the tar pits were the subject of satisfactory remediation, there will be a need to protect it from disturbance in the long term (Mr Mellor PoE, para 5.6.3). This evidence was not challenged and (para 5.6.7) goes on to argue that *"the land to the south of the Tar Pits area is the most suitable area to be used in mitigation and compensation for effects on the Tar Pits arising from remediation of the contaminated areas"*. Whilst, in other circumstances the land in parcel B might, arguably, be suitable for residential development, in the present context it makes little sense to create an area of housing isolated from the main development area proposed for Cinderhill whilst creating additional traffic on Rawson Green which is, in my opinion, ill-suited to providing access to some 130 additional houses.

Flood risk

2.7.66 Another matter - raised by residents at Riverside - is that of flood risk arising from the development. There are three houses at this location built, I am given to understand, within the flood plain at the confluence of two streams which drain the Cinderhills area. Nevertheless, I am told that the houses themselves have never been subject to flooding, but that the streams do run high at times, and the garden to Mrs Turner's house has been flooded as a result. Clearly the development proposals are a matter of concern to these residents since any additional run-off produced would potentially have a serious effect on their properties. Mrs Turner did indicate that she is not objecting to the principle of development but said that residents need to be kept in the picture and be certain that their concerns will be addressed. Others, including Kilburn Parish Council, have expressed wider concerns that the flood risk affects the whole area of Lower Kilburn and it was drawn to my attention, by way of illustration, that the disused public house cellar was permanently flooded. It was suggested to me that the drainage system is in need of improvement whether or not further development occurs.

2.7.67 A report was produced for the Inquiry (LPA10J) showing evidence that discussions had taken place between representatives of the developers and the residents. A report carried out by specialist consultants for the developers was attached as Appendix 5, showing estimated flow levels for the two streams and calculations for the impact of the Cinderhill scheme. It concludes that flow attenuation can be achieved by retaining water in surface features on site, with outflow controls to allow the gradual release of water into the watercourses once peak levels have passed. The report shows the feasibility of creating storm water storage capacity but there is a note of warning that balancing ponds would have ecological implications. As a result further work will be necessary to arrive at the best solution and specific proposals would be included in any planning application.

2.7.68 I am satisfied by the evidence that the developers are fully aware of the residents' concerns, and I am confident from what I have seen that a solution can be devised which will protect their property interests. It remains for the specific proposals to be drawn up in the event of the proposals going ahead in whatever form, at which time those residents will have a further opportunity to voice their concerns.

Summary

2.7.69 The Cinderhill mixed-use development proposal has consumed a substantial amount of Inquiry time with an abundance of detailed evidence both for and against the project. Its importance to the Local Plan strategy is such that I have dealt with the main issues at some length, although much of the detailed evidence has had to go unreported. At the end of the day the questions to be answered are as follows:

It is claimed that the mixed-use proposal will

- ensure the remediation of the tar pits,
- assist in financing the proposed A38 junction,
- support the development of the employment allocation,
- create a sustainable community

Against this the proposal will

- lead to the loss of a substantial area of Green Belt land,
- increase the amount of commuting to Derby for work
- involve the transfer of housing between Sub-Areas contrary to the requirements of the DDJSP

Doubts remain that the scheme will

- not result in the delivery of sufficient houses to meet the Structure Plan requirement within the Plan period,
- that it will not be a truly sustainable community,
- that it will turn out to be non-viable in financial terms.

2.7.70 My judgement on the allocation is based on my analysis set out above. Clearly an employment allocation at Cinderhill has been a long term commitment and, in principle, I see no reason to depart from the allocation. The strategic location in relation to the A38 has obvious benefits, although I do understand the access problems which have resulted, at least in part, in the mixed-use concept being advanced as a solution. I also understand the thinking which has led to the idea of a housing allocation, as part of a mixed-use scheme, to improve the chances of funding both the junction, and supporting the remediation of the tar pits.

2.7.71 The balance sought for the community was not properly justified for the Inquiry although alluded to, for example in the need to secure improvements to existing social infrastructure (Mr Stafford PoE, para 3.41). However, the only justification for the figure of 600 dwellings, other than that it would fit with the Structure Plan residual housing requirement, is provided in terms of the contribution it would make to the A38 junction and the remediation works. Even there, Mr Garrett's financial appraisal (his appendix 2) does not identify 600 dwellings as a necessity. It refers instead to an acreage of residential development, and in any event, does not suggest a financially viable scheme without a substantial contribution from EMDA. In these circumstances the required figure could be anything.

2.7.72 I have not been convinced that it is right to transfer the Structure Plan housing requirement in total from the Derby Sub-Area to create the circumstances for a mixed-use scheme. That this is the case was accepted by Mr Stafford at the Inquiry. He acknowledged that the Structure Plan authorities had stated that an over-provision in the Belper/Ripley Sub-Area would not be in conformity (PoE, para 3.18), whilst they also insisted that proper provision should be made in the Derby Sub-Area to meet the particular requirements of Derby, as accepted by the EiP. My scepticism was deepened by the knowledge that the Borough Council considered over-provision in the Belper/Ripley Sub-Area would be acceptable since, in the event the programme may well fail to develop the full commitment within the Plan period.

2.7.73 The possibility that the proposal would fail to deliver emerged during the Inquiry, and in my judgement appeared a highly likely scenario in spite of the assurances given by both the Council and developers that there would be no delays in the process through land ownership problems, section 106 requirements, the potential need for compulsory purchase orders and EMDA grant and so on. A smooth journey through all of these seems to me improbable. The information provided to support the developers' contention that the scheme would be

financially viable was also, in my estimation, unconvincing. Whilst I accept what was said about the normal processing of grant applications by EMDA, I believe there remained a significant question mark as a result of the limited nature of the discussions, which emerged during cross examination.

2.7.74 I do not consider the question of the relationship between the development of the employment uses and the housing development was satisfactorily resolved by the evidence provided. The admission, firstly that only a relatively small number of residents would be likely to work in the employment development, and secondly that there would be, in all likelihood, a degree of commuting by car to Derby, did not provide a convincing picture of a sustainable mixed-use community.

2.7.75 The relationship between the components of the scheme and the substantial amount of greenfield, Green Belt land was a matter of concern to me. Simply switching around the area of employment land and housing development on the non-Green Belt, previously developed land may well satisfy the narrow concerns of the PPG3 advice, but at the end of the day the result is the same: Green Belt, greenfield land is lost to built development. All of this may have had a purpose in reclaiming despoiled and derelict land but even there, the comparative gains and losses do not add up – at least to my mind. The loss of greenfield, Green Belt land amounts to some 52 hectares to set against the reclamation of around 2 hectares of despoiled land at a cost of some £4.5-5m, but without achieving the aim of creating a beneficial use in terms of built development.

2.7.76 In all I do not believe the element of housing has been justified by the evidence, either in terms of the need for 600 houses as opposed to any other number, or at all in terms of achieving a balanced sustainable community. I accept the conclusion of the EiP Panel; that the risk may have been considered worth taking on the basis of information available to them at that time, but the more detailed evidence now provided has not, in my view, provided sufficient justification for taking that risk.

2.7.77 In arriving at these conclusions I have not accepted the argument that the proposed development should be considered as an urban extension to the existing settlement of Denby Bottles. Even though that settlement is identified as one of the larger villages in the Borough under Policy H3, to be persuaded that this is the case would involve stretching the definition of urban extension beyond reason.

Other objections and considerations

2.7.78 Mr Bailey (F3053-O) owns about 11 ha of land located behind Park Hall, Denby, affected by the proposals, and shown on the map at Appendix 1 of his written reps statement. He considers the proposal should be reconsidered and the area for development expanded to encompass land to the north and north-west, including more housing (para 2.1.1). In view of the massive infrastructure costs, the scheme should be increased by at least 50%. To achieve this, the Green Belt should be rolled back even further including the whole of the land to the north-west between the A38 and Street Lane. He also suggests that the Heanor Sub-Area housing totals should be revised downwards and balanced by more land at Cinderhill. A new rail link to Derby City should be positively proposed.

2.7.79 Part of the detail of the objection is concerned with what is seen as a crucial element: the high prices paid for residential land. To achieve such prices, the housing areas should be placed away from the contaminated land and create a buffer between industrial land and the new housing developments on the slightly

higher land.

2.7.80 The Council has rejected the suggestions on the basis that including additional land would have an unacceptable impact on the environment (WR32, para 4.3), and suggests the objector has provided no specific evidence to support his proposal for a 50% increase in the scheme. It does accept the notion that the range of facilities could be provided to include a hotel or other leisure facilities, but indicates there would need to be evidence of demand for such a scheme before a specific commitment could be made in the Local Plan. I agree with the Council's assessment and, in view of my own conclusions, clearly I could not support an expansion of the scheme, or a further deletion from the Green Belt.

2.7.81 Objections have been raised concerning the transport issues relating to the Cinderhill proposal. These include objections by Mr & Mrs Carnelly, heard at the inquiry. The are dealt with in consideration of the Transport Chapter [paras 5.16.1-5.16.9].

RECOMMENDATIONS

That the Policy be reviewed in the light of the findings summarised in paragraphs 2.7.70 – 2.7.77, above, and specifically by giving further consideration to reducing the scale of the proposal, particularly the number of dwellings proposed, and minimising the need for greenfield, Green Belt land take, and that the Plan be modified accordingly.

2.8 POLICY: ER3

Objections

| FirstDeposit RepNo | RevisedDeposit RepNo | Title | Forename | Surname | Organisation |
|--------------------|----------------------|-------|----------|----------------|-----------------------------------|
| F0315-O | | Mr | J. V. | Parkes | |
| F0385-O | | | J. S. | Heathcote | Somercotes Parish Council (Clerk) |
| F1243-O | | Mr | P | Mason | |
| F2515-O | | Mrs | | Anderson | |
| F2619-O | | Mr | S | King | |
| F2629-O | | Mr | J R | Truman | |
| F2796-O | | Mr | B | Holden | Belper Local History Group |
| F2812-O | | Mr | P | Hodgson | |
| F2871-O | | Mr | P R | Moorhouse-Cope | |
| F3003-O | | Mr | R | Hepwood | Miller Homes East Midlands |
| F3006-O | | | | | Patrick McGinnis & Sons |

AMBER VALLEY BOROUGH LOCAL PLAN REVIEW - Inspector's Report

| FirstDeposit RepNo | RevisedDeposit RepNo | Title | Forename | Surname | Organisation |
|--------------------|----------------------|-------|-----------|----------|------------------------------------|
| F3009-O | | | | | William Davis Ltd |
| F3014-O | | Cllr | Paul | Buckley | Derbyshire County Council (Member) |
| F3018-O | | | Michael R | Hall | University of Derby |
| F3023-O | | | Jo | Taylor | Derbyshire Wildlife Trust |
| F3027-O | | Mr | B | Wood | Ripley Town Council (Clerk) |
| F3030-O | | | David | Abbott | Highways Agency |
| F3036-O | | Mr | R | Shelley | Amber Valley Liberal Democrats |
| F3042-O | | Mrs | A | Haslam | |
| F3052-O | | | | | Coats Plc |
| F3053-O | | Mr | J | Bailey | |
| F3061-O | | | C | Maskery | Belper Historical Society |
| F3064-O | | | | | Cofton Land & Property Ltd |
| F3071-O | | Mr | J | Fletcher | Langridge Homes Ltd |
| F3270-O | | Mr | Andrew | Bock | Clowes Development (UK) Ltd |
| F3408-O | | | Sven | Rufus | Nottinghamshire Wildlife Trust |
| F3418-O | | | E A | Turville | Crich Parish Council (Clerk) |
| | R1797-O | | | | I & A Burgoyne Trading |

Issues

Comments On Sites Identified In Policy ER3

Alfreton Sub-Area

Delete:

- Warwick Road and Birchwood Lane, Somercotes
- Sleetmoor Lane, Alfreton

- Meadow Lane, Alfreton

(unless improved vehicular access can be secured from the north of the industrial estate)

- Cotes Park, Somercotes

(where this could have an adverse impact on nature conservation at Pennytown Ponds)

(unless it can be demonstrated that the impact of development on the A38(T) would be acceptable)

- Wimsey Way, Somercotes

Belper-Ripley Sub-Area

Delete:

- Bullsmoor, Belper
- Denby Hall, Denby,
- Nottingham Road, Ripley

Support:

- Bullsmoor, Belper
- Denby Hall, Denby

Heanor Sub-Area

Delete:

- Hall Road, Langley Mill
- Proposed extension to Heanor Gate

Support:

- Proposed extension to Heanor Gate
- Loscoe Fields, Heanor

Delete all sites which are located adjacent to residential properties or leisure routes

Suggested new sites to be identified for business and industrial development under policy ER3

Alfreton Sub-Area

- Lily Street Farm, Derby Road, Swanwick

Belper-Ripley Sub-Area

- Extension of land identified at Nottingham Road, Ripley
- Land adjacent to A610, Ripley
(as part of wider package of development proposals linked to improvements to A610)

Derby Sub-Area

- North of A52, Markeaton

Heanor Sub-Area

- High Holborn Wood, Codnor

Inspector's Reasoning and Conclusions

Alfreton Sub-Area

2.8.1 Warwick Road and Birchwood Lane, Somercotes: The Parish Council suggested these small pieces of land should not be developed but retained as buffers between residential and industrial development. The Birchwood Lane site has a public footpath adjacent to it. However, no evidence has been provided to the Inquiry, either by the objectors or the Council, although the latter has indicated that the sites remain suitable and are likely to come forward within the Plan period (**CD.AV7**, Appendix I, para 4.27). I have no information to counter that suggestion. Both sites were included in the adopted Local Plan for employment use.

2.8.2 Sleetmoor Lane, Alfreton: The site is adjacent to Sleetmoor Wood and the Parish Council considers it unsuitable for industrial development. However, as for the previous sites, there is no substantive evidence before me to counter the Borough's view that the site is suitable and likely to come forward within the Plan period.

2.8.3 Meadow Lane, Alfreton: The objection to an extension to the Meadow lane site is based on a need to alleviate access problems. However the overall land allocation has not changed from the adopted Plan and I see no reason to suggest that minor amendments to the allocation in this Plan would result in significant change to the situation.

2.8.4 Coates Park, Somercotes: The serious concern expressed by the DWT about the Pennytown Ponds site being highly vulnerable to pollution episodes has resulted in the area of the ponds being deleted from the industrial allocation and provided with protection by Policy EN3 in the RDP. No further action is necessary.

2.8.5 Wimsey Way, Somercotes: The owners of land allocated as ER3 and ER4 on the Cotes Park Industrial Estate, between Wimsey Way and Nottingham Road, south of the A38 have requested that uses other than B class uses should be included as acceptable. This matter is dealt with under Policy ER4 [para 2.9.4].

2.8.6 Lily Street Farm, Derby Road, Swanwick: The site proposed for allocation for a mix of industrial and employment uses would provide up to about 35 ha of developable area, located to the north of Swanwick. It is enclosed by the A38, B6179 and B6016 roads and is currently farmed, forming open countryside. Objections dealing with requests that the site should be included in the Green Belt are dealt with at [paras 6.5.16-6.5.18].

2.8.7 The site has a recent planning history, outlined in the Council's PoE, LPA47, paras 4.1-4.8, and documentation was provided to the Inquiry concerning the location of Toyota at Burnaston, to the south of Derby, and a proposed amendment to the adopted Local Plan in 1996 (**CD.AV14**) to provide a site for exclusive use by a large firm. The Inspector recommended the land west of Derby Road, including Lily Street Farm, should not be identified for development to meet the needs of large firms requiring an exclusive site (**CD.AV15**). His reasons (paras 3.9-3.10) are pertinent to consideration of the site for more general industrial purposes. They relate to sustainability issues, site specific matters, impact on the local residential properties and intrusion into open countryside.

2.8.8 Both parties made it clear that the objectors' position is that Lily Street Farm should be allocated in addition to those already allocated – there is no objection to any other allocations which might have suggested that the proposal would be one of substitution. In closing Mr Williamson identified the objectors' case (F3044-O/3H, para 1.4) as firstly, that there is a need to allocate an additional employment site, and secondly that this site is suitable for allocation.

2.8.9 Dealing with the issue of need first, it is the Council's contention that there is no need to allocate the objection site because the Cinderhill site is allocated for strategic employment purposes, and the allocation of Lily Street Farm would lead to an over-provision in the Alfreton Sub-Area, to which the County Council would object. In fact Mr Chadwick accepted, in cross examination, that Lily Street Farm would be in conflict with the DDJSP because of overprovision in the Alfreton Sub-Area.

2.8.10 Clearly, in both Sub-Area and overall terms, the Local Plan provides

sites to more or less meet the DDJSP requirement. Appendix 2 in the RDP shows a remaining requirement of a little under 28 ha for Amber Valley as a whole, and for Alfreton Sub-Area, nearly 26 ha. Against this the table shows an overall provision of just over 127 ha, and for the Sub-Area, over 21 ha. Mr Chadwick countered this with his assessment that about 83 ha of the sites had been allocated for over a decade without coming forward for development, suggesting either significant infrastructure or other constraints, or that the sites themselves are not attractive to businesses in locational terms (PoE, F3044-O/3A, para 5.24). In a nutshell, he says they are not of high quality (para 5.30), and so in Structure Plan terms there is not a good track record in delivery of sites. It is also argued for the objectors, that an over-allocation to provide flexibility would not be unreasonable, since PPG12 (para 4.12) advises that allocations must be realistic, whilst the Structure Plan suggests that land should be "*readily available*" (para 4.87).

2.8.11 By continuing with the present allocations, he suggests there is a significant risk that the Plan will fail to deliver sufficient land. The analysis in the DDJSP (**CD.DC6**) supports this view so far as the Belper/Ripley Sub-Area is concerned, with reference to a present low rate of take of development (para 14.14). However, in relation to Alfreton, it refers to the Sub-Area having the highest rate of development in Derbyshire between 1991 and 1998, and suggested two-thirds of the land allocated was, at that time, immediately available for development (paras 12.14-12.15). It specifically concluded that continuing the scale of development would be likely to have adverse impact on the environment and countryside, generate traffic congestion and not assist in regeneration of more depressed areas (para 12.17).

2.8.12 My own conclusion, based on all the evidence provided to the Inquiry, is that irrespective of question marks over the deliverability of some allocations, the overriding question related to need is that of the Alfreton Sub-Area. The County Council view is set out clearly in its letter dated 29 January 2004, appended to the Council's PoE. It would only support the Lily Street Farm proposal in terms of provision for a large firm, something considered and rejected following the Public Inquiry in 1996. The overriding strategic view is that the Alfreton Sub-Area does not require additional land to meet the DDJSP requirement. I concur with that view.

2.8.13 Turning to the second matter there is no doubt in my mind that the case resting on commercial suitability of the site was proven at the Inquiry. This is supported by the Council's own case, which nowhere suggests that the Lily Street Farm site is not commercially attractive as a strategic site suitable for inward investment, and in cross examination Mr Stafford confirmed that he had given evidence to that effect in support at the 1996 Inquiry.

2.8.14 The site is clearly a greenfield one but, as Mr Stafford accepted, any additional strategic site would be likely to be greenfield. It is also the case that the site is not within the Green Belt, or covered by any countryside or other special designation, involving more restrictive policy constraints.

2.8.15 It also appears to me that the site does not have any significant physical or engineering problems associated with the past opencast mining. Although that was a matter of some concern at the 1996 Inquiry (**CD.AV15**, para 2.16), the Engineering Appraisal Desk Study submitted by the objectors does not suggest insurmountable problems to be overcome. It is also apparent that, although the Council argued (closing, para 12) that in comparison with Cinderhill, the route to the A38 is not dedicated and quite convoluted, access is in reality fairly straightforward. Indeed, at the 1996 Inquiry the Council argued that the

location next to the A38 intersection, and only 5km from Junction 28 of the M1 "...gave the potential to attract inward investment" (**CD.AV15**, para 1.7). A letter dated 21 January 2004 from the Highway Authority (PoE LPA47, Appendix B) indicated the previous Inspector's conclusion - that an objection on highway grounds was not likely to be sustainable, provided the developer was prepared to pay for any necessary improvements - remained valid.

2.8.16 However, on the question of sustainability, the Council has submitted that the previous Inspector's conclusions also continue to apply (**CD.AV15**, para 2.61). These, in essence, were that the location was not capable of being made accessible by means other than the private car, except for a small number of Alfreton and Swanwick residents, prepared to walk or cycle, or happen to live near a bus route. He considered the development then proposed could not be described as sustainable. The objectors have shown that the numbers and frequencies of bus journeys in the vicinity have increased since the 1996 Inquiry, and Mr Chadwick gave evidence on the accessibility by walking and cycling - although the accuracy of some data has been questioned by Mr Stafford (PoE, LPA47, para 6.19-6.22). In all, I am inclined to the view put forward for the Council that the proposed form and scale of the development does not reflect the principles of sustainable development contained in LPA47, para 6.24: it is not, in my opinion, well related to existing patterns of development and would not minimise travel between home and work, nor does it re-use previously developed land.

2.8.17 The evidence to the Inquiry on landscape and visual matters was comprehensively provided by Mr Denny. From my site visit, I agree with his assessment in so far as the site is locally contained in visual terms by the A38 corridor which does form a dominant physical barrier. However, as I have stated elsewhere [*paras 6.5.16-6.5.18*] in terms of the wider landscape the character of the land is quite different from that located to the east of Derby Road and it does read as part of the open countryside to the west. This was a view supported by the 1996 Inspector in his report (**CD.AV15**, para 2.50) in referring to it as part of a large area of open countryside which has wider importance. In this, I disagree with Mr Denny's comment in cross examination, that it is seen as separated from the wider countryside. I have noted the intention to confine development to the northern part of the site, which is less prominent in the landscape. However, although the concept master plan (PoE, F3044-O3D, Appendix 4) was intended to take account of criticisms of the previous proposal, it suggests a form of development involving substantial buildings, some of which could be up to 3 storeys high. In the wider context, I am not convinced that these would be subordinate to the landscape setting shown in the photographs from viewpoints 11-14 (Appendix 6).

2.8.18 In summary, I have concluded that the need for a further site to be allocated under Policy ER3, to serve strategic needs and local needs in the Alfreton Sub-Area has not been proven. In the absence of an overriding need, the arguments against the allocation, specifically that it is a greenfield site, relatively isolated from the developed urban areas, with questionable sustainability credentials, and forming part of the open countryside, indicate that no allocation should be made.

Belper/Ripley Sub-Area

2.8.19 Bullsmoor, Belper: The concern with the Bullsmoor allocation at Belper is with access which is considered to be inadequate with potential adverse impact on traffic on the A609 road, and with impact on the landscape. The Council has not sought to defend the allocation which extends into a substantial area of

open countryside between Cowhill and Openwoodgate. It is outside the Green Belt, but within the WHS buffer zone (RDP:Policy EN33) where proposals will be required to preserve or enhance the setting of the WHS, including views into and out of the site. The Belper Historical Society considers the area to be a dominating feature and a beautiful vista seen from a number of places. It acknowledges the existing Glowworm works but suggests it is less significant as it is deeply cut into the hillside but is strongly opposed to its use for any development which it considers would have a significant impact on the WHS buffer zone. That buffer zone did not exist when the site was allocated in the previous Plan.

2.8.20 The Highways Agency objected at FDP stage as part of its concern with the overall impact of the level of development proposed at Cinderhill on the A38/B600 junction, and other junctions. The same objection was made in respect of the Denby Hall site, below. However, the proposals made for the Cinderhill development have included one for a new junction to be made to the A38, north of Coxbench as a means of accommodating the Cinderhill proposals. Whilst I have not endorsed the Cinderhill scheme in full, I have indicated that the Council should give the matter further consideration: this would include the need to look at access requirements in the event of the proposal being scaled back as I have suggested.

2.8.21 In any event, the Highways Agency has advised that any proposal for Bullsmoor or Denby Hall should be accompanied by a transport assessment, if developed in advance of Cinderhill and identify mitigation measures as appropriate. This appears an appropriate course of action. Since both sites are required to be the subject of development briefs, this is something the Council should bear in mind. I do not consider it necessary to include a new policy phasing these three sites, as suggested by the HA.

2.8.22 Nevertheless I am not satisfied that the allocation would not have an adverse impact on the WHS buffer zone, as anticipated by the Historical Society. In my opinion the Council would be wise to give further consideration to the allocation in view of the buffer zone created to protect the environs of the WHS. The fact that the allocation has not come forward for development in the past, together with the availability of mixed-use allocations at Milford supports this view. In arriving at my conclusion I am aware that Peveril Securities support the continued allocation of the land as an appropriate location for employment use and have pointed to "*an extant planning application for such uses*" that it wishes to progress in due course.

2.8.23 The former abbatoir, Crich: The Council's response (WR11, para 4.3) indicates its view that, whilst B1 uses would be compatible with adjoining residential development, the site does not offer as sustainable a location as any other sites identified under Policy ER3. It also suggests there is no evidence to indicate any likely demand for uses in the location. The site is poorly related to the strategic road network. I concur with those views. The site is also subject of objections regarding a potential residential allocation [*para 3.26.46-3.26.47*].

2.8.24 Denby Hall, Denby: See the comments regarding the Highways Agency objection for Bullsmoor, above.

2.8.25 Nottingham Road, Ripley: Ripley Town Council has objected to the Policy ER3 proposals, indicating that a complete review of possible development opportunities alongside the proposed by-pass should have been undertaken. It offers no supporting evidence and the proposals for an allocation at Home Farm, referred to below provide an opportunity to look in more detail at this objection.

2.8.26 Land adjacent to A610, Ripley (Home Farm): This is part of a mixed-

use scheme proposed by Patrick McGinnis & Sons in conjunction with the provision of a length of re-aligned A610 improvement. It is dealt with in detail at [paras 3.26.24-3.26.30].

2.8.27 Land east of Derby Road, Belper: As noted above [para 2.4.1] this allocation has been the subject of detailed planning permission and so the objection by Messrs Clowes - that it should be reallocated under Policy ER3 - is no longer relevant.

Heanor Sub-Area

2.8.28 Hall Road, Langley Mill: This has been deleted in the RDP, along with the housing allocation (**CD.AV7**, Appendix I, para 4.27). An objection at RDP stage by the owners of the Hall Road site seeks reinstatement of the proposal, along with adjacent housing development, as a mixed-use allocation. The whole issue of development, including the ER3 allocation is dealt with in the context of the original Policy H3p allocation at [paras 3.24.1-3.24.11].

2.8.29 Proposed extension to Heanor Gate: The objection is based on pollution and noise concerns, and the potential encroachment on to Shipley Country Park making it less appealing for people to visit. However, the proposed extension is largely to the west of the existing industrial estate whilst Shipley Country Park is to the south-east so I do not find the latter argument convincing. Concern has also been expressed about the impact of traffic movements, particularly lorry movements, into and out from the site. However, the objection is in the form of a question and I have no survey information on which to base a response. Certainly from my visits it does not appear to me that the traffic movements presently generated are particularly intensive for an industrial estate. I note that, in large measure, the area for expansion was shown in the adopted Local Plan as within the then existing industrial estate or as an extension to it. I have no evidence to suggest that the situation has changed in the intervening period to indicate that the allocation should not be included in this Plan.

2.8.30 Loscoe Fields, Heanor: The DWT has expressed concern regarding further development adjacent to the Bailey Brook Marsh Wildlife Site indicating that any further business and industrial development will result in additional disturbance to habitats and species, and increased surface water run-off can have adverse impacts. A more general objection to the extent of the allocation was submitted by Mr Bailey. In fact the allocation under Policy ER3 is scaled back in extent from that shown in the adopted Plan, with additional land included in the Green Belt designation. It does not appear to me that further action is necessary.

2.8.31 Milnhay Road, Langley Mill: Miller Homes has objected to Policy ER3 in so far as it relates to Milnhay Road on the grounds that residential development should be allowed as an alternative to B1, B2 and B8 developments. This is based on the proximity to existing residential development on Brookvale Road and Milnhay Road. It is suggested by the objectors that the site is highly sustainable, forming part of the built-up area of Langley Mill and well located in terms of local services and facilities (PoE, F3003-O/A, para 2.5). It is currently in a derelict state, and it is argued that its redevelopment for housing would bring the site back into economic use. All of this may be so, but I consider the area better related to the existing industrial site. It also extends towards the sewage works to the south-east which suggests this is not necessarily a good location for an extension to existing residential development. It is identified in the adopted Local Plan for industrial uses and I see no reason to extend the acceptable uses to include residential development.

2.8.32 The owners of land to the south, between this site and the Bailey Brook and sewage works, have suggested that it should be included in the Plan for employment purposes, on the basis that it is a sustainable location and is well related to existing and proposed employment development, and could be accommodated without prejudicing the existing character or amenity of nearby residential properties. It would simply read as an integral part of the built-up area. The evidence provided to the Inquiry suggests that further allocations of employment land are not required to meet the Structure Plan requirement. In the absence of need, it is my view that the site provides a more appropriate buffer between the existing built-up area and the sewage works than if it were developed. I consider there is no reason to create a further allocation here.

Derby Sub-Area

2.8.33 North of the A52, Markeaton: The objection by the University of Derby is intended to provide support for the proposed allocation at Markeaton Stones, which I consider at [para 3.26.72-3.26.].

RECOMMENDATIONS

That no modification be made to the Plan in response to these objections, but that the Council gives consideration to the deletion of the allocation at Bullsmoor under Policy ER3.

2.9 POLICY: ER4

Objections

| FirstDepositRepNo | RevisedDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|---------------------|-------|----------|----------|------------------------------|
| F0063-O | | Mr | C. | Skelton | |
| F0331-O | | | | | Derbyshire County Council |
| F0641-O | | Mr | P H | Bird | |
| F2515-O | | Mrs | | Anderson | |
| F3044-O | | | | | Peveril Securities |
| F3051-O | | | | | Morris Homes Ltd |
| F3052-O | | | | | Coats Plc |
| | R1789-O | | | | Messrs Minkley AVA Group Ltd |

Issues

Delete land at Pye Bridge Industrial Estate where it is part of residential curtilages or is otherwise not suitable for business or industrial development

Delete land at Nottingham Road, Somercotes which is predominantly in retail use

Delete Butterley Works, Butterley Hill, Ripley and identify for mixed-use development

Delete land at North Street, Langley Mill and identify for housing

Inspector's Reasoning and Conclusions

2.9.1 Mr Skelton's objection relates to the land west of Thornton's factory, earmarked for potential expansion purposes. I have dealt with those objections in the appropriate place [paras 6.6.1-6.6.12]. Butterley Works' objection has been overtaken by events, as reported elsewhere [para 2.2.7]. DCC suggested that it might be more in harmony with PPG6 and the sequential test to substitute 'if' for 'provided' in the final sentence, dealing with ancillary retail uses. The wording has been changed in the RDP and no further action is necessary. Both Mr Bird and Mrs Anderson are concerned with the Pye Bridge Industrial Estate. The former objection relates to residential use of the curtilage of Coke Hearth House. The Council has deleted an area of land from the ER4 designation in the RDP and no further action is necessary.

2.9.2 Mrs Anderson's original objection requested that specified areas of land be taken out of the ER4 designation, these being firstly land surrounding Pye Bridge House, and secondly immediately adjacent to the Erewash Trail and pond which is designated as a SINC. The Council has acknowledged that the designation did include garden land within residential curtilages and resolved to amend Inset A accordingly. It has also acknowledged that the amendment has not been made (PoE LPA31, para 3.1) and has undertaken to rectify the error in publishing Proposed Modifications to the Local Plan Review. Provided this action is taken, there is no need for further action. The designation of the Pye Bridge Industrial Estate was included in the adopted 1994 Local Plan and the area remained substantially the same in the draft Review Plan

2.9.3 The second area appears to be the route of a public footpath skirting the eastern edge of the industrial allocation and for my site visit I walked this path from the B600 Somercotes to Selston road southwards towards Oake's Row. Although the path was not designated as a proposed multi-user route under TP3, that designation was added to the Erewash Trail in the Proposed Pre-Inquiry Changes (**CD.AV8**, Insets A & B) as a result of objections from the neighbouring Bolsover Council. The trail follows an undulating route with mature vegetation, and in reality, the route I followed seems of little practical benefit so far as industrial use is concerned. There appears no reason to include it in the designation. Having said that, it is difficult to determine precise boundaries on the ground and I do not have sufficient evidence to suggest an appropriate boundary. Nevertheless, it is my view that further consideration should be given to the precise boundary on the eastern side of the designation, without prejudicing the total amount of designated employment land, in order to provide a reasonable walking route and better protection for the long term future of the SINC.

2.9.4 Peveril Securities has requested that part of the Nottingham Road, Somercotes industrial area is already in use for retail purposes and would wish to see it excluded from the Policy ER4 designation. The Council's report on objections (**CD.AV7**, paras 4.28-4.29) indicates its desire to protect established industrial estates from other uses which could prejudice opportunities for business or industrial development, or which could lead to a shortfall in provision. Coats plc has made a similar point, requesting a mixed-use allocation. I support the Council's approach and, without convincing evidence to the contrary, the ER4 designation should remain.

2.9.5 The remaining objection, made at RDP stage by Messrs Minkley AVA Group, concerns land at Cromford Road and Hall Road, Langley Mill. This was

identified in the Housing Technical Paper (**CD.AV6**, HUC 25) as suitable in principle for residential purposes. However, the Council did state that there was no firm indication of owner/developer interest. It was not included in the RDP as an allocation. The previous designation as suitable for employment uses under Policy ER4 was carried forward from the adopted Local Plan Policy E4. At RDP stage, the Council considered there was no longer a case for safeguarding the land for business and industrial development, for reasons which include its proximity to residential development (WR18, para 4.6). The Council acknowledges (WR18, para 5.1) that the site is suitable in principle for housing and also that the objection indicates owner interest in bringing the site forward. However, it considers there is a need to ensure that potential constraints can be overcome, and advises that the evidence on behalf of the objectors does not indicate that any potential highway constraint could be overcome, nor that measures to avoid potential flood risk could be undertaken.

2.9.6 In my view, none of the evidence provided by the Council gives a good reason for not including the land as an allocation in the Plan, and the Report to the Council of July 2002 simply indicates (**CD.AV5**, para 4.29), that incompatibility with adjoining residential areas was the reason for its removal from ER4 designation: there is no mention of other constraints. Those identified in the Council's evidence (WR18) are referred to as '*potential*' rather than actual constraints, whilst the Urban Capacity Study reported in CD.AV6 suggests that it was carried out in the knowledge of PPG3 advice that sites should be considered against "*any physical or environmental constraints on development*" (fourth page, 'Assessment of Suitability and Viability of Potential Sites'). I believe further consideration should be given to the site as a potential housing allocation, including a detailed investigation of the potential constraints.

RECOMMENDATIONS

That the Plan be modified by amending the eastern boundary of the Policy ER4 allocation to exclude the multi-user route identified under Policy TP3, and that the Council gives further detailed consideration to the land identified in the Urban Capacity Study (CD.AV6) as HUC 25 for allocation for housing development.

2.10 POLICY: ER5

Objections

| FirstDepositRepNo | RevisedDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|---------------------|-------|----------|-----------|---|
| F1471-O | | | | | Samphire Properties |
| F3041-O | | Mr | C | Packman | Government Office for the East Midlands |
| F3272-O | | | Karen | Devonport | Countryside Agency East Midlands Region |
| | R1752-O | | Karen | Devonport | Countryside Agency - East Midlands Region |

Issues

Introduce new policy on rural diversification to give clearer guidance on type and level of economic development appropriate in rural areas

Amend policy to reflect Government guidance on economic development in the countryside (PPG7)

Amend policy to give greater support for proposals to extend existing business and industrial uses outside principal areas identified in policy ER4

Detailed comments on wording of policies/text

Inspector's Reasoning and Conclusions

2.10.1 The council has accepted the criticisms of its Policy in the FDP stage and has amended it for the RDP. In particular it has amended the wording of criterion (b) to reflect the GO-EM concern that the Policy could give rise to unnecessary development in the open countryside, if it is not small-scale. However, I agree with the Countryside Agency that there is still insufficient clarity and guidance for rural diversification and development. As it stands, the Policy addresses both redevelopment in existing business and industrial areas, and the needs of the rural economy and this, I believe, results in the lack of clarity. I also agree with the Agency that Policy EN1, whilst addressing development in the countryside, does not consider rural diversification in specific terms.

2.10.2 The solution, in my opinion, is to retain Policy ER5 to address the needs of firms within existing business and industrial areas, not covered by Policy ER4, but delete criterion (b) and create a new policy concerned specifically with the needs of rural diversification. I also believe it would be necessary to amend the Policy wording to take account of the removal of criterion (b). Criterion (c) does no more than make cross reference to the requirements of Policy ER7 in the case of large firms requiring an exclusive site. This is unnecessary and should be deleted. In my view there should, however, be criteria to protect existing residential amenity and visual character, and take account of potential increases in traffic generation. I have included a suggestion for wording in my recommendations.

RECOMMENDATIONS

That the Plan be modified by amending Policy ER5 by deleting criterion (b) and amending the Policy as follows:

"Planning permission will be granted for the redevelopment or extension of existing business, industrial or storage and distribution uses (B1, B2 and B8) premises or their expansion onto immediately adjacent land, outside of existing business and industrial areas or mixed-use development areas, provided that;

- **There is no significant increase in traffic movements within residential areas;**
- **There is no significant adverse impact on the residential amenity or visual character of the surrounding area.**

and by introducing a new policy concerning rural diversification along the following lines:

"Planning permission will be granted for development, involving the conversion or extension of existing buildings or new built development,

which assists in the diversification of the rural economy provided that the proposal:

- **Creates or maintains employment;**
- **Is located within a settlement or, in the case of the diversification of a farm business, is within or adjacent to an existing farm complex;**
- **Is of a scale and form that reflects the location;**
- **Does not detract from the visual or rural character of the surroundings."**

2.11 POLICY: ER6

Objections

| FirstDepositRepNo | RevisedDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|---------------------|-------|----------|----------|---|
| F3000-O | | Mr | D | Marsh | Environment Agency |
| F3041-O | | Mr | C | Packman | Government Office for the East Midlands |
| F3069-O | | | W | Scholter | Aldergate Properties Ltd |
| | R1757-O | Ms | D | Skrytek | Derby Friends of the Earth |

Issues

Refer to use of sustainable techniques to minimise impact of surface water drainage

Consider deleting policy and amending policies ER1-5 to avoid duplication

Amend wording in criterion c) to give greater clarity

Detailed comments on wording of policy/text

Inspector's Reasoning and Conclusions

2.11.1 The Council has amended criterion (c) in response to objection, but this, in turn, has been objected to by Derby FoE. It has also amended Policy EN11 (RDP, EN15) in response to the objection by the Environment Agency rather than include a new criterion in this Policy.

2.11.2 However, it is the objection by GO-EM that raises the most important issue: is the Policy necessary? The objection considers that its inclusion suggests a need to be more selective in the wording of policies ER1-ER5. The alternative, it suggests, is an open-ended opportunity to exceed the Structure Plan provision. The Council's response (**CD.AV7**) is to include amendment to the text to clarify the Policy. This states that storage and distribution uses can reduce the potential to maximise new job opportunities. The DDJSP (para 4.) distinguishes between small scale local distribution requirements and major distribution facilities, with the latter requiring a separate policy. This is supported by advice in PPG4 and RPG8 and is the subject of Economic Policy 3 in the Structure Plan. Such major distribution facilities are also covered, in terms of those requiring exclusive sites, by Policy ER7 in the Local Plan.

2.11.3 Apart from ensuring B8 uses would not lead to a shortfall in land availability, the Policy introduces only one specific criterion, related to impact of traffic movements on residential areas. Policies ER4 and ER7 make reference to the requirements of Policy ER6, but ER3 does not, although it allows for B8 uses in the Plan's allocations for business and industrial uses. This suggests to me that the GO-EM objection requires serious consideration. The purpose of the Policy is to ensure that proposals for storage and distribution uses do not prejudice sufficient opportunities for other employment uses. It does not offer criteria against which that impact would be measured - in other words at what point prejudice is established.

2.11.4 In my view the Policy lacks clarity and precision as required by PPG12 (para Annex A, para 23) and should be deleted. The Council also may wish to give consideration to whether there is a case for the exclusion of storage and distribution uses (B8) on any of the ER3 and ER4 allocations and sites.

RECOMMENDATIONS

That the Plan be modified by deleting Policy ER6, and that the Council gives further consideration to whether any of the Policy ER3 and ER4 sites should exclude storage and distribution (Class B8) uses.

2.12 POLICY: ER7

Objections

| FirstDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|-------|----------|---------|---|
| F3041-O | Mr | C | Packman | Government Office for the East Midlands |

Issues

Amend policy and supporting text to give greater clarity

Inspector's Reasoning and Conclusions

2.12.1 GO-EM has raised concern that criterion (b) is imprecise and vague, and that the sequential approach is not satisfied by the Policy. It is also concerned that the term '*large firms*' is not defined. The Council has not made a positive response to the objection, and says the Policy is consistent with the equivalent policy in the DDJSP (**CD.AV7**, Appendix H, p 12). That Policy is identified in the Local Plan as Economy Policy 6.

2.12.2 Taking the last point first, it is not entirely true to say the policies are consistent, since the Structure Plan Economy Policy 6 provides criteria against which provision may be made for large developments to be accommodated on exclusive sites, and there is explicit advice in para 4.122, that "*local plans may identify suitable locations for this type of development*". Policy ER7 does not do this, but simply provides additional, and overlapping, criteria: indeed, in this respect it is questionable whether the Policy adds anything of substance to the Structure Plan. The DDJSP Policy is targeted specifically at "*..accommodating unusually large proposals which are likely to have specific end users in mind*" (para 4.121) and seeking a site for their sole use, or with a limited number of similar firms. The size of such sites is seen as "*..certainly not less than those available*"

within the general provision". The Local Plan targets "the specific needs of large firms requiring exclusive sites". There is little difference in the intent.

2.12.3 In respect of Lily Street Farm, the Inspector in the 1996 Inquiry recommended that it should not be identified for development to meet the needs of large firms requiring an exclusive site on the grounds of sustainability issues, site specific matters, impact on the local residential properties and intrusion into open countryside (CD.AV15). In the light of that conclusion, it is difficult to foresee an individual site in Amber Valley meeting the requirements of DDJSP Economic Policy 6. My own opinion is that the Policy is unnecessary since no specific allocation is being made, and that in the event of an approach by a particular firm or organisation, the Structure Plan provides the policy framework for its determination.

RECOMMENDATIONS

That the Plan be modified by deleting Policy ER7 and its reasoned justification.

2.13 POLICY: ER8

Objections

| FirstDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|-------|----------|---------|---------------------|
| F1471-O | | | | Samphire Properties |

Issues

Amend policy ER8 to give greater weight to provision for small firms

Maintain policies to protect and support small firms

2.14 POLICY: ER9

Objections

| FirstDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|-------|----------|------------|---|
| F1458-O | Mr | E | Lancashire | |
| F3041-O | Mr | C | Packman | Government Office for the East Midlands |
| F3069-O | | W | Scholter | Aldergate Properties Ltd |

Issues

Amend policy ER9 and supporting text to clarify intention of policy

Delete policy ER9 on the basis that small firms should not have any specific protection compared to larger businesses

Maintain policies to protect and support small firms

Inspector's Reasoning and Conclusions

2.14.1 Policies ER8 and ER9 are closely related and I shall deal with the objections together. The intention of the policies is to secure the provision of suitable accommodation and sites within existing or new employment areas, and to protect existing premises from proposals which would lead to their loss. No amendments have been made to either in response to the objections.

2.14.2 Dealing first with ER8, the objector argues that the Policy is not sufficiently positive towards the provision of smaller units, and does not suggest that every opportunity should be taken to support smaller units. I consider the objector has a point in that the Policy is vague and provides little positive guidance to developers. There is no indication of where the Policy might be applied, only "*where appropriate*". As GO-EM has suggested in respect of Policy ER9, there is no justification in terms of premises suitable for small firms being in short supply. Nor does the Policy go as far as indicating that the Council will, in all cases, seek a Section 106 Agreement for the provision of small units. The DDJSP offers no guidance on provision for small firms, and the analysis does not indicate any concern over site availability, nor does the Council's own Topic paper (TP2). The latter advises (para 4.6) that the sites in the RDP "*..provide a sufficient range of size and location for the establishment of new businesses, {and} the expansion of existing businesses*", suggesting that there is not a particular problem.

2.14.3 The EMDA report on Regional Employment Land Priorities (**CD.OD3**) of 2003, indicates that small workspace incubators – "*easy in easy out*" units available at competitive rents on flexible leases have typically been provided by Local Authorities (para 3.38), whilst for the "*move on*" and "*mainstream*" provision, the second level in the hierarchy, most requirements can be met in traditional industrial estates. It suggests the enhancement of the supply of incubator space as a key activity in the Derby and Derbyshire Partnership area, which includes Amber Valley. However, at the District level, there is little evidence before this Inquiry to suggest that this key activity is being pursued with vigour. For example, the Planning Briefs for Milford Mill (**CD.AV38**) and Milford Foundry (**CD.AV39**) contain no reference to provision for small units even though the location and nature of the sites suggest these would provide an ideal opportunity for such units. Nor does either brief refer to negotiations with developers, or the use of Section 106 Agreements, as potential means of achieving an element of provision. Whilst, therefore, I have sympathy with the objector's point, in these circumstances I see little benefit in retaining Policy ER8 in the Plan.

2.14.4 Turning to Policy ER9, Aldergate Properties considers the phrase "*premises suitable for small firms*" requires definition, and the Policy requires amendment or deletion. GO-EM believes the Policy should be re-worded to provide justification in terms of supply, and the need to accord with PPG3 advice on conversions. Cllr Lancashire offers an example of actions by the Council which he considers to be contrary to the Policy aim and seeks clarification to the text. The Council has indicated that it believes the wording is appropriate, and that there is a need to ensure that small units are provided to meet the demand from small firms (**CD.AV7**, Appendix H, p12), for which the market does not always cater (LPA3, para 3.1).

2.14.5 As it stands, I am not clear how the Policy would be implemented. The wording is imprecise about the circumstances in which it would be applied. The justification advises that there will be a positive approach to the conversion of redundant or other buildings to employment uses, and existing small units will be protected from loss to other uses. Taking the former case first, there is no

indication of what sort of buildings would fall within the Policy's scope. Since it refers to conversion to employment uses, the implication is that the buildings concerned are in other uses, but it does not suggest any particular uses as appropriate for consideration. The only clue is the Policy statement that they should be suitable for small firms. In the latter case, the conversion and re-use of redundant buildings in urban areas for residential use is a priority in PPG3 (paras 2 and 21). In my view the Policy requires amendment to provide clear and precise guidance to developers. It should also be aimed at the protection from loss of existing buildings in employment use rather than the conversion of other uses.

RECOMMENDATIONS

That the Plan be modified by deleting Policy ER8, and by amending Policy ER9 to read as follows:

"Development that would result in the loss to other uses of existing and redundant buildings or premises in employment use, and which are suitable for conversion or adaptation to the needs of small firms for starter units, will not be permitted unless:

- **It can be demonstrated that there is insufficient demand locally for such units; or**
- **Suitable alternative provision can be made to meet demand elsewhere in the locality; or**
- **The proposed use can be shown to have overriding local benefits."**

And that the third sentence of the justification be amended to read: "...a positive approach to the conversion of existing, redundant or other buildings in employment use, including agricultural buildings..."

2.15 POLICY: ER11

Objections

| FirstDepositRepNo | RevisedDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|---------------------|-------|----------|----------|---|
| F3000-O | | Mr | D | Marsh | Environment Agency |
| F3041-O | | Mr | C | Packman | Government Office for the East Midlands |
| F3053-O | | Mr | J | Bailey | |
| F3069-O | | | W | Scholter | Aldergate Properties Ltd |
| | R1757-O | Ms | D | Skrytek | Derby Friends of the Earth |

Issues

Refer to use of water minimisation techniques to conserve water

Amend policy to delete reference to business efficiency as this is not a land use matter

Include matters covered by this policy within a development brief for land at Cinderhill, Denby

Amend policy to allow more flexible approach, e.g. financial contributions towards measures to enhance quality of development

Detailed comments on wording of policy/text

Inspector's Reasoning and Conclusions

2.15.1 The objection by GO-EM has drawn a response from the Council, deleting part of the Policy wording in the RDP, and this is in turn objected to by Derby FoE. However, the wording, as included in the FDP, went beyond what is reasonably subject to planning control, and the Council was right to delete it. Mr Bailey's objection is not on the basis of principle (Written Reps F3053-O, para 2.1.5) but in relation to objections regarding the Cinderhill proposal. The Environment Agency asks for text referring to water minimising techniques and, again, the Council has responded with new text in the RDP. Aldergate Properties considers the Policy to be far more rigid than hitherto applied, and requests a more flexible approach, reflecting past practice.

2.15.2 The matters covered by Policy ER11 are stated as aiming to create a high quality environment in employment developments. To achieve this, the Council proposes to use planning conditions and, in some circumstances, Section 106 Agreements. The particular matters referred to include layout, design, density of development, materials, and landscaping. In many ways this simply states the purpose of planning control: it would be odd indeed if the system strove to create a low quality environment. The matters referred to in the Policy as the subject of particular attention are essentially those identified in PPG1 (para 51) as fundamental factors involved in land-use planning and clarified by judicial authority over the years.

2.15.3 The use of conditions and planning obligations to achieve a high quality of development through attention to the matters referred to is detailed in circulars 1/97 and 11/95. I see little point in a Local Plan policy that simply restates the purpose of the planning system. The actions it proposes are essentially administrative in nature, explaining how the process will be operated, rather than indicating what will be required of development schemes. In arriving at my conclusion I have noted that the adopted Local Plan includes Policy E4, which gives specific guidance through the inclusion of criteria to guide developers, and in this respect I have noted the comment by Aldergate about the successful use of policy by the Council in the past. The Council may wish to give consideration to the inclusion of such a policy to replace ER11.

RECOMMENDATIONS

That the Plan be modified by deleting Policy ER11. The Council may wish to consider the inclusion of a Policy modelled on Policy E4 in the adopted Local Plan, to give developers guidance on the matters to be addressed in submitting proposals for development.

2.16 POLICY: ER12

Objections

| FirstDeposit RepNo | RevisedDeposit RepNo | Title | Forename | Surname | Organisation |
|--------------------|----------------------|-------|----------|---------|-------------------------------------|
| F3053-O | | Mr | J | Bailey | |
| F3270-O | | Mr | Andrew | Bock | Clowes Development (UK) Ltd |
| | R1794-O | Mr | Andrew | Shirley | Country Land & Business Association |

Issues

The potential for tourism development should be reflected in the mixed-use development proposals at Cinderhill, Denby and included within a development brief for the site

Specific provision should be made under this policy for the intensification of existing development at Bowbridge, Mackworth

Detailed comments on wording of policy/text

Inspector's Reasoning and Conclusions

2.16.1 Although the Council's responses to objections (**CD.AV7**, p14) indicate no change, the Policy has been amended in the RDP to include proposals for the expansion of existing facilities. The two objections received are site-specific, relating to the Cinderhill proposal, and to the Little Chef facility fronting the A52 at Bowbridge. I agree with the Council that in both of these cases, there are no proposals before the Council for consideration and so no need for a specific designation. In the event of proposals coming forward, the Policy provides criteria against which they may be assessed.

2.16.2 The objection by the Country Land and Business Association at RDP stage appears to be based on a misunderstanding in that the Policy, criterion (b) covers the conversion of all buildings, not just those of character. However, the Council has included a Proposed Pre-Inquiry Change (**CD.AV8**, p6) which removes the requirement to preserve and enhance, replacing it with a more general requirement. This is a substantial improvement, in that the words '*preserve or enhance*' are normally associated with conservation areas and Listed Buildings. The new wording provides a more rigorous test of '*permanent and substantial*' construction that I consider appropriate, given that many such proposals will be in rural locations.

2.16.3 Although not the subject of objection, I remain unhappy about the wording of criterion (a) since there is no indication of what would be acceptable in terms of impact. I consider it would be better to indicate '*significant impact*' as unacceptable. I also consider that impact on residential amenity may be an issue to be addressed with some tourism developments.

RECOMMENDATIONS

That the Council proceeds with the proposed modification at p6 of the proposed Pre-Inquiry Changes (CD.AV8), and that the Council gives consideration to amended wording for criterion (a). A suggested form of words is given below:

“(a) there is no significant impact on the character of the surrounding environment, the existing road network, and the residential amenity of nearby properties.”

2.17 POLICY: ER13 (ER13 AND ER14 FDP)

Objections

| FirstDepositRepNo | Title | Forename | Surname | Organisation |
|-------------------|-------|----------|---------|---|
| F3041-O | Mr | C | Packman | Government Office for the East Midlands |
| F3053-O | Mr | J | Bailey | |

Issues

As representations on policy ER12 in relation to Cinderhill, Denby
Conflicts with policy LS5

Inspector's Reasoning and Conclusions

2.17.1 Mr Bailey’s objection is part of an objection to the Cinderhill proposals, with an indication of a proposal for tourist development in the form of a hotel and leisure facilities in connection with the proposed Cinderhill scheme. Policy ER13 is concerned only with touring camping and caravanning sites so it is difficult to see why it should be relevant to the proposals. However, if those proposals did come forward with a camping or caravan site as part of the leisure proposals, it would be considered against the criteria in the Policy. No further amendment is necessary. The objection by GO-EM relates to an objection to Policy LS5 on the principles of sustainable development. Again, I see no need for further amendment in this respect.

2.17.2 The final sentence of the Policy describes an administrative action which the Council might be expected to carry out in any event, since a requirement for landscaping is a material consideration. In view of this the Council may wish to consider replacing the sentence with a more precise requirement. I have suggested a form of wording with my recommendation. Experience also suggests that camping and caravanning sites can have an impact on the local road network and the Council may wish to consider an appropriate criterion in addition to that included.

RECOMMENDATIONS

That no modification be made to the Plan in response to these objections but the Council may wish to consider an additional criterion, and replacing the final sentence with an amended form of wording along the lines of the following:

“(b) would not have a significant impact on the existing local road network;

In the case of proposals which are likely to have a visual impact on the surroundings, applications for planning permission should include a comprehensive scheme of landscaping.”