



Amber Valley Borough Council
Local Plan Examination

Statement on behalf of Peveril Homes and Catesby Estates plc
on Matter 1: Legal Compliance, including Duty to Co-operate

Rowe House, 10 East Parade, Harrogate HG1 5LT
Tel: +44 (0)1423 857 510
Email: harrogate@wyg.com Website: www.wyg.com

WYG Planning Limited. Registered in England & Wales Number: 5241035
Registered Office: Arndale Court, Otley Road, Headingley, Leeds, LS6 2UJ

c Scope of Plan

iv Paragraph 157 of the National Planning Policy Framework (NPPF) says that, crucially, Local Plans should be drawn up over an appropriate timescale, preferably a 15 year time horizon, take account of longer term requirements, and be kept up to date. Does the Local Plan accord with Government policy in this respect?

1. No.
2. The Plan does not comply with the clear guidance that the Plan period should extend 'preferably for a 15 year time frame'. Moreover, with no adopted plan in place since 2011, the Council have manifestly failed to meet the existing NPPF guidance that plans 'should be kept up to date'.
3. The emerging NPPF2, whilst of limited weight, is worth consideration as it both indicates a 'direction of travel' for Government guidance, and is intended according the Government's Chief Planning Officer, to be published before the end of July 2018 (ie before this Local Plan will be adopted).
4. The emerging NPPF2 has transitional arrangements proposed such that this Plan will not be subject to its provisions, having been submitted for examination before the NPPF2's final publication. However, it is informative to note that it identifies (para 22) that '*Strategic policies should look ahead over a **minimum** 15 year period from adoption...*' (WYG emphasis), and that '*Policies should be reviewed ...at least once every five years... Reviews should be completed no later than five years from the adoption of the plan,*' This new advice sits in stark contrast to AVBC's performance to date, which has seen no adopted plan in place since 2011, that Plan having been adopted in 2006.
5. Whilst the Council sought to bring forward a plan in 2015, it was their own repeated failure to allocate sufficient sites to ensure a 5 year supply of housing land, despite time and opportunity afforded to them by the Planning Inspector, that ultimately led to the plan having to be withdrawn. It is expected that this Council will argue through this examination (and indeed the submission Local Plan reflects at paras 1.13 and 6.4.14) that this plan need not address the housing need beyond 2028, as the Council will work jointly with the other Derbyshire HMA authorities to seek an early review (at a point unspecified). The Inspector is, however, invited to note the Council's signal failings in forward planning in over a decade (the last plan being adopted in 2006), and attach little weight to any suggestion that an early

review is likely to be achieved or deliverable by an authority who have consistently failed in its forward planning function.

6. It is also of note, and of some concern, that with the exception of Flood Risk and Infrastructure delivery, the submission Plan establishes at Appendix 4, that its contingency proposal for failure of every other policy in the plan (that is every strategic policy, every growth policy, housing policy, economic development policy etc, is 'Early review of Local Plan'). It seems to the objectors that the Council is continuing to pursue its failed philosophy of the 2015 Local Plan, of simply not providing a cogent forward plan, which meets the minimum expectations of the Framework, in almost every respect (ie time frame, housing need, green belt review etc).
7. The time to plan for the next 15 year period (ie to 2033) is now, and the Council's steadfast refusal to do so despite repeated encouragement to engage properly in the strategic plan making function, should not be 'rewarded' by allowing a sub-optimal plan to be found sound.
8. In their response to the Inspector's initial questions (AV/01 Q6) the Council state that they were given support from both the PAS and DCLG for their approach of planning to only 2028. However, the correspondence behind that advice and the commitments made to the PAS and DCLG do not appear as Hearing documents. What is noted however, from the final paragraph of AV/01 Q6, is that it would appear that both PAS and DCLG were advising on the basis that AVBC would have an adopted plan in place 'by March 2018'. That date has already passed, and what is not clear is if either PAS or DCLG would have endorsed an approach whereby the Plan has materially less than 10 years of 'life' post adoption. This is particularly so, given the considerations raised by Matter 4, relating to the changes in population data that are now available, and which further undermine the Council's position with regard to the sufficiency of its housing supply (see Hearing Statements for Matter 4).
9. The Plan does not meet the expectation of NPPF that the plan period should extend to a 15 year time horizon. It does not meet the more rigorous expectation of emerging NPPF2 of addressing a 'minimum 15 year period from adoption'. The Council's arguments for not doing so, appear to be predicated on a case that it was more important to have an adopted plan in place by March 2018, with an early review (timescale unspecified) to follow. It has been the objectors' consistent case, that the plan period should be as per NPPF guidance to 15 years, and absent that, that the plan should not be found sound, until the additional work to support that time period extension including updating the SHMA, and undertaking a full review of Green Belt, has been completed.

d Sustainability Appraisal

- vi. Does it test reasonable alternatives? Has the Sustainability Appraisal been robustly prepared with a comparative and equal assessment undertaken of each reasonable alternative?**
 - vii. Is the Sustainability Appraisal decision making and scoring robust, justified and transparent?**
10. The Sustainability Appraisal sets out 5 housing options in the Table on page 84. Options 1-4 were identified in the 2011 'Options for growth'; Options 5 which is identified as a hybrid of the other options has been introduced more recently. Whilst not explicit this seems to concentrate development around the 4 towns, around the edge of Derby, within and adjacent other settlements and create a new settlement at North of Denby. In effect generally following the previous patterns of growth save for a significant expansion of housing at North of Denby from 300 to 1,000 and then to 3,000. However, it would appear that expanding the 4 main towns combined with an associated Green Belt review has not been assessed as an Option? If tested we consider that it would represent the most sustainable and deliverable option, albeit involving some Green Belt release around Belper where there is a dearth of countryside land.
11. Paragraph 5.5.7 refers to past growth patterns, the heritage constraints around Belper and that in principle, the concentration of growth on the 4 main towns could continue.
12. At paragraph 5.5.8 the Council considers that the provision of a new settlement would '*help avoid other locations within the Borough subject to significant Environmental constraints*'. Reference to heritage matters around the World Heritage Site in Belper is made here. Furthermore Table 7.6 provides more detail of Land North of Denby (the New Settlement), in referring to the AMES study (ED42) which is a very high-level study and subject of objection in Catesby's written submissions, the Landscape Sensitivity Study (ED30) which only covers part of the allocation, Listed building and SSSI. Clearly, and contrary to paragraph 5.5.8, the New Settlement also has "environmental constraints". The SA appears to characterise the development of Land North of Denby as a way of protecting other more sensitive "locations" in the Borough though. It is unclear how this comparable assessment has been undertaken.
13. The Table at 5.5.15 then scores the 5 housing options against the Sustainability Objectives. Option 4 when referring to New Settlements effectively refers to Land North of Denby; it is a site-specific Option.

14. The Inspector has raised questions regarding the scoring of options. Whilst not wishing to forensically consider each line in the Table on page 84 we are at a loss to understand how Option 4 can score so high on accessibility, for example, when so much uncertainty remains on deliverability. The table contains several '?' scores (often combined with 2 ticks) which indicate that impact is 'uncertain'. There is a wide range of effects between 'uncertain' and 'potential major beneficial effect'. Is this robust scoring? We suggest not and are concerned as this has informed site selection.
15. We question the robustness of the SA scoring and whether this is equitable and reflects the evidence base. Site PHS085 – Land at Far Laund, Belper for example, is scored with a number of negatives with no adequate explanation. We fail to understand why it will adversely impact on bio diversity when opportunities for enhancement are significant. Or how the impact on landscape can be scored "xx" whilst Land North of Denby (PHS038) scores "?". The latter has, in part, not even been assessed in the Amber Valley Landscape Sensitivity Study (ED30) so is ill informed and not supported by the evidence base. We fail to understand how under Resources PHS085 scored "x" whilst PHS038 scored "?" There is no transparency or evidence to support the scoring. How has this comparable assessment been conducted?
16. Green Belt options are considered at 5.8. Three options for the Green Belt are identified. Option 2 again is site specific to release Green Belt at Land North of Denby and this was selected. The reasoning for its release are the 'exceptional circumstances' set out in 5.8.6. The list is extensive and, if indeed selection is predicated on such, then it is essential that all matters are delivered. We can see no evidence of delivery elsewhere in the Plan. This is considered in more detail in later sessions.
17. Option 1, retention of existing Green Belt boundaries states that it would see 'current Green Belt boundaries retained to 2028'.
18. Option 2 is selected on the basis that limited Green Belt release will aid the regeneration of brownfield land North of Denby.
19. At 5.8.15 the Council refers to Option 3 and to a potential Option 4 suggested by our client involving at least a partial review of Green Belt boundaries around Belper. The Council has identified heritage constraints around Belper which will limit development yet at the same time accepting a strategy of development around the 4 towns and particularly those in close proximity to Derby. We disagree that 'Option 4' is covered within Option 3. There is a paucity of housing sites on the edge of Belper due to the WHS buffer zone, Flood Zones and Green Belt. Option 4 would ensure that growth opportunities are identified to serve one of the 4 main towns in the Borough. Without this there will be very limited growth. Just one site is

allocated in Belper, and a planning application on that has been refused by the Council. 65 dwellings on land at Belper Lane represents just 1.8% of the total allocations set out in the Plan. The distribution of housing sites via allocations does not reflect the preferred strategy.

20. At 5.8.10 the SA referring to the three Green Belt Options states 'it is clear that none would likely have significant effects against the Sustainability Objectives and that broadly all options could have a number similar effects'.
21. The Sustainability Appraisal goes on to refer to the availability of non-Green Belt sites; but these do not exist in Belper.
22. We therefore conclude that the SA has not tested reasonable alternatives. It has concentrated its focus solely on what we believe to be an undeliverable site where previous Green Belt release has not realised any of the Borough's much needed housing and employment. The deliverability of land North of Denby will be considered in further detail in Matter 13.
23. In summary our concerns are:
 1. The conclusions and preferred options set out in the SA are not supported in the Strategy. Belper is one of the 4 Main Towns, the town closest to Derby with a rail station in the town centre yet it will be afforded just 1.8% of the residential allocations over the next 10 years.
 2. It is unclear whether development within and adjacent the 4 main towns, where services are concentrated and established, is included in any of the housing options. Either it hasn't or the Option descriptions are confusing.
 3. The scoring mechanism is not robust. It is confused and confusing in its use of "√/ /?"; this represents a wide range of impacts It is unhelpful on influencing decision making and site selection.
 4. It appears that the scoring, particularly with regard to the New Settlement Option is overly dependent on successful mitigation and the delivery of essential infrastructure. The evidence base provides no comfort that such will be delivered in a timely manner. Matter 13 deals with this important issue.
 5. With regard to the Green Belt Options the SA fails to look at all alternatives. We firmly believe that an Option 4 with a full Green belt review around Belper should have been assessed.
 6. These failings substantially undermine the SA process.

24. These failings are most clearly highlighted through comparison of Catesby Estates plc's land at Kedleston Road, Derby (a non-preferred site), when compared to the assessment of preferred sites such as that at Radbourne Lane, and North Denby. The Inspector will be aware from submissions made, and the SA itself, that a S78 appeal allowed development of 400 dwellings at the Kedleston Road site (August 2016), albeit the decision was subsequently quashed by the High Court (June 2017), and is now the subject of an imminent Court of Appeal judgement.

25. The findings of the SA regarding Catesby Estates plc's site and inserted at Table at 7.6.1 are strongly objected to and are considered unsound. The text states;

"As at 1 March 2017, this site had the benefit of outline planning permission for up to 400 dwellings, which was granted on appeal in August 2016. The site was therefore not included within the assessment of potential sites. However, following a challenge to the decision to grant planning permission under section 288 of the Town and Country Planning Act 1990, the decision was quashed by the High Court in June 2017. The site therefore no longer has the benefit of outline planning permission and has been assessed as a potential site. This site is not reasonably accessible to local services and facilities and employment opportunities and there are a number of environmental constraints to development. Development would lead to the loss of best and most versatile agricultural land and could potentially have a minor impact on air quality within Derby City. Part of the site is within an area of high landscape sensitivity as identified in the AMES study. Development of the site would have a negative impact on the significance of Kedleston Hall (grade I Listed Building), Kedleston Hall Registered Park and Garden (grade 1) and Kedleston Conservation Area." (WYG emphasis)

26. These findings (specifically on accessibility, environmental constraint, BMV, Air Quality and landscape sensitivity) are wholly without merit or supporting evidence and ignore those appeal findings which were unchallenged by AVBC or others through the with regard to the August 2016 appeal decision. Moreover, heritage matters aside, they directly contradict evidence provided by the Council at the S78 Inquiry. Specifically;

1) The site is wholly accessible to a range of local services and was accepted as such by AVBC at the S78 appeal through the SoCG. The Council's conclusions in the SA contradict evidence provided by them at the S78 Public Inquiry. Specifically, the evidence of Derek Stafford the Council's Assistant Director (Planning & Regeneration) to the S78 Inspector, was that the Catesby site;

- a. was well-related to existing patterns of development,
 - b. would minimise the need to travel between home, work and other activities, and
 - c. would be able to be 'absorbed' by the capacity of existing infra-structure provision.
- 2) The site is adjoining the urban edge of Derby, where the SA directs that growth should be, so that it is located close to employment and higher order facilities and is close to where the need for addressing Derby's unmet need arises (ie as Mr Stafford's S78 acknowledged, it is well-related to existing patterns of development)
 - 3) The loss of BMV Agricultural Land, was not a matter supported at appeal, or pursued by the Council who simply acknowledged it was a matter to which only very limited weight can be attached. This is a further example of the Council's position in the SA being in conflict with its evidence to the S78 appeal Inquiry.
 - 4) No evidence was produced (or has been produced) to support the contention that the site would give rise to problems of Air Quality.
 - 5) The Ames study was discredited as a piece of the evidence base at the public Inquiry. The reasons for this are set out in our original submissions, and are not repeated here. It was a matter agreed at the S78 Inquiry that "*AMES are non-statutory designations and are not linked to any specific policy in the adopted Amber Valley Borough Local Plan 2006.*"
 - 6) Issues of impact on the Kedleston Hall Heritage Assets is not a determinative issue. The matter in any event is one which goes to 'significance' of the asset not simply whether there is an impact. The High Court challenge was predicated on a single issue of whether the Inspector had fully had regard to whether the historic use of the site as 'estate land', brought it within the setting of Kedleston Hall, absent a visual connection. The Court of Appeal will pass judgement on this soon, but irrespective of the outcome of that process, in all other respects the appeal Inspector's conclusions about the environmental, and social and infra-structure carrying capacity of the site have been unchallenged.
27. By failing to fairly or properly assess Catesby's site through the SA process, and by ignoring their own evidence to and unchallenged findings of, the S78 appeal Inquiry, the SA is unsound. It should not be relied upon in reaching conclusions as to the suitability of our client's land for development. By discounting the site as a 'reasonable alternative' for such spurious reasons, the SA process is substantially undermined.

28. The findings of the SA assessment regarding the preferred sites in contrast, sit in stark comparison. Land at Radbourne Lane, Mackworth for example is said to be (SA Table at 7.6.1 pg 139) "*readily accessible to local services and facilities and employment opportunities*". The site lies only some 1,500m to the south of Catesby's site, with a wholly similar relationship to the Urban Area. There is no transparency in understanding how such diametrically opposed conclusions can be reached for sites in such similar settings, especially in light of the Council's evidence to the contrary at the S78 Inquiry. Moreover, the Radbourne Lane site is also noted to be in an area of 'high landscape sensitivity' (as was the Catesby site), but here unlike Catesby's site this does not act as any constraint to designation, moreover the Radbourne Lane site is noted in addition to have a potential impact on Green Wedge.
29. Catesby's concern is the absence of any transparency as to how these judgements or conclusions have been reached, and the perception of procedural bias against a fair and neutral consideration through the SA process of their own land. How have the judgements been reached by whom, using what metric? Absent these matters, the SA conclusions cannot be considered properly and evidentially supported.