



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/M1005/W/18/3204843

Mike Wood  
ADDC Architects  
The View  
Hazelwood Hill  
Belper  
DE56 4AD

29 July 2020

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY MESSRS C & K BALL  
LAND FRONTING CRICH LANE, BETWEEN HOUSE NO. 202 AND 204, BELPER,  
DERBYSHIRE, DE56 1EP.  
APPLICATION REF: AVA/2016/1020**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Helen B Hockenhull BA (Hons) B.PI MRTPI, who held a public local inquiry on 6 February 2019 into your clients' appeal against the decision of Amber Valley Borough Council ("the Council") to refuse your clients' application for planning permission for the development of 185 houses together with associated works at land between Crich Lane and Far Laund, Crich, Belper, in accordance with application ref: AVA/2017/0322, dated 20 March 2017.
2. On 3 January 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 78 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

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

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

**Matters arising since the close of the inquiry**

5. On 3 June 2019, the Secretary of State wrote to the main parties giving them the opportunity to make representations on correspondence relating to the submitted Amber Valley Borough Local Plan, including a letter from the Council to the Local Plan Inspector, together with the formal notice withdrawing the submitted Local Plan.
6. On 6 September 2019, the Secretary of State wrote to the Council asking for further details of the housing land supply calculation for the district. The council's response was

circulated to main parties on 19 September 2019, alongside a related response from the agent for two separate recovered appeals at Whitehouse Farm, 153 Belper Lane, Belper (refs: APP/M1005/W/17/3198996 and APP/M1005/W/17/3198996 – the “Whitehouse Farm appeals”). No comments or representations were received from the appellant. As no differing viewpoints were offered, the Secretary of State considers that the representations received in the Whitehouse Farm appeals provide the most up-to-date evidence on a matter of most importance and are therefore relevant to the determination of this appeal.

7. The 2019 Housing Delivery Test results were published on 13 February 2020. Amber Valley BC’s score changed from 145% (2018 measurement) to 160% (2019 measurement). As this would not represent a material change to any calculation of Amber Valley’s housing land supply, the Secretary of State is satisfied that this does not affect his decision, and does not warrant further investigation or a referral back to parties.
8. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
9. An application for full costs was made by Amber Valley Borough Council against Messrs C and K Balls (IR2). This application is the subject of a separate decision letter issued at the same time as this letter.

### **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the saved policies of the Amber Valley Borough Local Plan (AVBLP) to 2011, adopted in 2006. The Secretary of State considers that relevant development plan policies include those set out at IR20-25.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (‘the Framework’) and associated planning guidance (‘the Guidance’). The revised National Planning Policy Framework was published on 24 July 2018 and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess (referred to below as “the section 66 duty”).

### *Emerging plans*

14. The Council submitted their draft Submission Local Plan (SLP) for independent examination on 2 March 2018. On 22 May 2019 the Council resolved to withdraw this plan from examination.

15. The Council subsequently resolved on 25 September 2019 to prepare a new local plan, with a further resolution on 29 January 2020 confirming a proposed programme and timescale for preparation, with adoption expected in March 2023.
16. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
17. As the SLP has been withdrawn, and no draft policies are yet available for the new plan, the Secretary of State considers that the potentially emerging local plan carries no weight in the determination of this appeal.
18. The Belper Neighbourhood Plan has been submitted to the Council, who conducted a consultation as required by Regulation 16 (b) of the Neighbourhood Planning (General) Regulations 2012 (as amended) between 20 March 2020 and 7 May 2020. As there has not been an independent examination, the Secretary of State considers it carries only limited weight.

## **Main issues**

### *Green Belt*

19. The Secretary of State has carefully considered the Inspector's findings about the impact of the scheme on the Green Belt at IR135-139. He notes that it was an agreed matter between parties that the proposal represents inappropriate development in the Green Belt (IR135). Paragraph 143 of the Framework states that such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. For the reasons given at IR135 he also agrees with the Inspector that the proposal would harm the openness of the Green Belt.
20. The Secretary of State has gone on to consider the contribution the appeal site makes to the purposes of the Green Belt (IR135-137). He agrees with the Inspector that the appeal site provides a strong boundary to the northern edge of Belper, preventing urban sprawl, and contributing to a clear break in the built development between Belper and Nether Heage. He further agrees that development of the appeal site, while not resulting in coalescence, would undermine this gap between settlements (IR136). The western side of the site falls within the Buffer Zone of the Derwent Valley Mills World Heritage Site (WHS), and he agrees with the Inspector (IR137) that, as the Buffer Zone is to protect the setting of the WHS, the appeal site therefore contributes to preserving the setting and special character of the historic town of Belper. He also agrees that it is self-evident that construction of 185 homes on undeveloped land would harm the openness of the Green Belt (IR135).
21. In line with Paragraph 144 of the Framework, the Secretary of State considers that the harm to the Green Belt carries substantial weight against the proposal. He agrees with the Inspector's conclusion at IR139 that very special circumstances, whereby any potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations, will need to be demonstrated.

### *Housing Land Supply*

22. The Council's evidence to the Inquiry acknowledged that they could not demonstrate a five-year supply of housing land (IR83). However, the Secretary of State considers that

the previous agreed facts on housing supply at IR83 are now out of date given the new information that has been submitted by parties since the end of the Inquiry

23. In July 2019 the Council published an update on their housing land supply, which set out a supply of 5.41 years. As noted at paragraph 6 above, the Secretary of State requested views from parties on that document. No representations were received from the appellant.
24. The same exercise took place for the Whitehouse Farm appeals<sup>1</sup>. The appellant in those appeals wrote to the Secretary of State disputing the inclusion of eight sites and setting out their view that the Council could only demonstrate 3.21 years supply. The Secretary of State considers that the evidence submitted as part of the Whitehouse Farm appeals is relevant to the determination of this appeal, as it provides the most up-to-date evidence on a key matter in determining an application for the provision of housing, and because no alternate viewpoint was offered by the appellant in this appeal.
25. The Council's updated housing land supply document set out a requirement of 486 dwellings per annum (dpa). Representations from the appellant in the Whitehouse Farm appeals disagreed with this and set out an alternative calculation showing a requirement of 656 dpa. After reviewing both calculations, the Secretary of State considers that neither fully accord with the standard method as set out in the Guidance. As set out at Paragraph 73 and Footnote 37 of the Framework, where the strategic policies are more than five years old, unless these strategic policies have been reviewed and found not to require updating, the standard method set out in the Guidance should be used to calculate a housing target. In the case of this appeal, the strategic policies are more than five years old, and have not been subject to review. Using the standard method as set out in the Guidance, the Secretary of State has calculated the housing need for Amber Valley district to be 400dpa. This has been calculated using the projected change in households between 2020 and 2029 (2014 projections) and the 2019 median workplace-based affordability ratios, which produces a local housing need figure of 380.5dpa. This figure, being less than 40% above the projected household growth for the area over the 10 year period, and below the average annual housing requirement figure set out in the most recently adopted strategic policies is not subject to a cap. A 5% buffer is added in line with the Framework and Guidance, and when rounded this results in a figure of 400dpa.
26. After carefully considering the representations from both the Council and the appellant in the Whitehouse Farm appeals, in particular the sites where deliverability is in dispute between the appellant and the Council, the Secretary of State has concluded the eight sites in dispute may not meet the definition of deliverability within the Framework. However, he considers he does not have sufficient information to make a definitive judgement on whether they are deliverable or not. He has therefore included them within a margin. Using the trajectory provided by the Council, this results in a housing supply of 2634 dwellings at the top end of the margin, and 1477 dwellings at the bottom end, for the period of 2020/21 to 2024/25. On the basis of the evidence before him, he therefore considers that the Council can demonstrate a housing land supply of between 3.7 years when the sites are not included, and 6.6 years when they are included.
27. Taking this range at its lowest, a figure of 3.7 years is sufficient to engage the presumption in favour of sustainable development, as set out at paragraph 11(d) and

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<sup>1</sup> APP/M1005/W/17/3188009 & APP/M1005/W/17/3198996

Footnote 7 of the Framework in the determination of this appeal. The Secretary of State has therefore considered the scheme on this basis.

#### *Landscape character and visual amenity*

28. The Secretary of State has carefully considered the Inspector's assessment of landscape character and visual amenity (IR140-153). For the reasons given at IR141 he agrees with the Inspector that the site contributes to the character of the approach to Belper, particularly from the north and north east, and he agrees with the Inspector that the LVIA is robust in assessing the site to be of high/medium landscape value (IR142).
29. The site is across a ridge, so can be experienced from two distinct directions. For the reasons given at IR143, the Secretary of State agrees that, from the western side of the site, development of the appeal site would in the immediate context have a significant effect on the landscape of the area. However, for the reasons given at IR144, the harm to the character of the wider Special Landscape Area when viewed from a longer distance would be limited.
30. Turning to the eastern section of the site, for the reasons given at IR146, the Secretary of State agrees with the Inspector that there would be a significant adverse effect on the character of the immediate area.
31. For the reasons given at IR149-152, the Secretary of State agrees with the Inspector that there would be varying levels of impact on the visual amenity of those living in the local area, despite the existing and proposed planting, due to the rising nature of the site, and that there would be moderate visual harm for user of the public footpath.
32. Overall, the Secretary of State agrees with the Inspector at IR153 that the appeal scheme would result in significant harm to the landscape character and significant/moderate harm to visual amenity. For these reasons he agrees with the Inspector that the proposal therefore conflicts with saved policies EN6 and EN7, and section 15 of the Framework. The Secretary of State considers that this carries significant weight against the proposal.

#### *Impact on the Derwent Valley Mills World Heritage Site (WHS)*

33. The western part of the site lies within the Buffer Zone for the WHS. The Secretary of State has carefully considered the Inspector's analysis of the significance of the WHS at IR154-158, and he agrees with the Inspector that the site contributes to the setting of WHS by enabling an understanding of how the factory system was inserted into a 'hitherto rural landscape' (IR158).
34. The Secretary of State agrees with the Inspector at IR159 that, while he has concluded that the development of the western part of the site would result in limited harm to the landscape, it does not follow that harm to the setting of the WHS would also be limited.
35. He has gone on to consider the Inspector's analysis of the site's role within the Buffer Zone at IR159-164. For the reasons given there, the Secretary of State agrees with the Inspector at IR165 that the proposal would reduce the extent of open landscape providing a setting to the heritage asset, and undermine the contribution of the setting to the Outstanding Universal Value (OUV) and significance of the WHS. He further agrees that appeal scheme would accordingly fail to comply with section 16 of the Framework and policy EN29 of the AVBLP. The Secretary of State considers that this heritage harm carries considerable weight against the proposal, especially in light of the international significance of the asset.

36. It is not a matter of dispute that any harm by the development would be 'less than substantial' in terms of the Framework (IR166). As set out at Paragraph 196 of the Framework, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

#### *Public benefits*

37. The Secretary of State agrees with the Inspector at IR172 that the appeal scheme would make a significant contribution to housing land supply as well as a significant public benefit providing for local housing need. In the light of the government's objective to significantly increase the supply of housing, he considers that this carries significant weight, regardless of whether the housing land supply is taken to be at the top or bottom of the range set out in paragraph 26 above.

38. The proposal would deliver economic benefits via the employment and local spend generated by the construction and occupation of the new homes. The Secretary of State agrees with the Inspector at IR173 that this attracts moderate weight in favour, due to the short-term nature of some of these benefits.

39. The Secretary of State agrees that the proposed Heat Network, which is to provide sustainable renewable energy, should be supported in principle, but notes that the delivery mechanism for the scheme has yet to be agreed. For these reasons the Secretary of State agrees with the Inspector at IR174 that this can only attract limited weight in favour.

40. There would also be some wider public benefit from the open space, public footpath and sustainable urban drainage systems, but as these are mainly to ensure a policy-compliant development they can attract only limited weight in favour (IR174).

41. There are also contributions to education and healthcare which are required to mitigate the impacts of the proposal. However, as once provided they would also be available to others, these also attract limited weight in favour (IR175).

#### *Heritage balance*

42. The Framework requires any harm to, or loss of, the significance of a designated heritage asset (including from development within its setting) to require clear and convincing justification. It requires that great weight should be given to the asset's conservation; the more important the asset, the greater the weight should be.

43. For the reasons given at IR177, the Secretary of State agrees with the Inspector that the public benefits of the proposal would not individually or cumulatively outweigh the identified harm. The heritage balance is therefore not favourable to the proposal.

#### *Biodiversity and Ecology*

44. The Secretary of State has carefully considered the Inspector's analysis of biodiversity and ecological matters at IR167-171. He notes that there was a dispute between parties over whether additional survey work should be undertaken before any planning approval is granted, or whether such work could be subject of a planning conditions (IR168).

45. For the reasons given at IR169-170, he agrees with the Inspector at IR171 that the additional survey work should be undertaken prior to any planning approval, and the imposition of planning conditions would not be appropriate. He therefore agrees with the

Inspector that the appeal scheme conflicts with saved local plan policy EN13 and paragraph 170 of the Framework, which seek to conserve and enhance the natural environment, and considers this carries moderate weight against the proposal. However, in the light of the Secretary of State's overall conclusion on this case, he sees no reason to pursue the matter further.

#### *Other matters*

46. For the reasons given at IR178, the Secretary of State agrees with the Inspector's conclusion that the appeal scheme could be appropriately drained. Similarly, he also agrees with the Inspector's analysis of highway matters at IR179 and the conclusion that the scheme is acceptable in terms of highway safety. He considers that these matters are neutral in the overall balance.

#### **Planning conditions**

47. The Secretary of State has given consideration to the Inspector's analysis at IR186-190, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing the appeal and refusing planning permission.

#### **Planning obligations**

48. Having had regard to the Inspector's analysis at IR182-185, the planning obligation dated 2 May 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, he does not consider that this obligation would overcome his reasons for dismissing the appeal and refusing planning permission.

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

49. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with the saved policies EN6, EN13 and EN29 of the AVLP, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

50. As the local authority may not be able to demonstrate a five-year supply of housing land, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

51. The Secretary of State considers that the benefits of this housing carry significant weight in favour of the proposal. There would be economic benefits attached to the construction and occupation of the new homes, which attract moderate weight in favour. The proposed Heat Network carries limited weight in favour, as do the open space and footpath, and contributions towards education and healthcare.

52. The proposal is inappropriate development in the Green Belt. As set out in the Framework, this carries substantial weight against the proposal. Harm to the landscape character and visual amenity attract significant weight against the proposal. The insufficient level of ecological information also attracts moderate weight against the proposal.
53. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the heritage assets, including the Derwent Valley Mills World Heritage Site, is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm.
54. The Secretary of State considers that the benefits of the appeal scheme are not collectively sufficient to outweigh the identified 'less than substantial' harm to the significance of the heritage assets, including the WHS. He considers that the balancing exercise under paragraph 196 of the Framework is therefore not favourable to the proposal.
55. The Secretary of State considers that the proposal is inappropriate development in the Green Belt, which should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt and any other harm from the proposal are clearly outweighed by other considerations. He considers that there is nothing that individually or cumulatively clearly outweighs the harm identified, and therefore the very special circumstances to justify inappropriate development do not therefore exist.
56. Given his conclusions on the heritage test and the Green Belt test, the Secretary of State considers that there are protective policies which provide a clear reason for refusing the development. Hence the tilted balance does not apply.
57. Overall, the Secretary of State considers that there are no material considerations which indicate that the development should be determined other than in line with the development plan. The Secretary of State therefore concludes that the appeal should be dismissed, and planning permission should be refused.

### **Formal decision**

58. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the development of 185 houses together with associated works at land between Crich Lane and Far Laund, Crich, Belper, in accordance with application ref: AVA/2017/0322, dated 20 March 2017.

### **Right to challenge the decision**

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



60. A copy of this letter has been sent to Amber Valley Borough Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by the Secretary of State to sign in that behalf

**List of Annexes**

**Annex A – Schedule of representations**

## ANNEX A – SCHEDULE OF REPRESENTATIONS

### General representations

<b>Party</b>	<b>Date</b>
Pauline Latham MP	01/02/2019

### Representations received in response to the Secretary of State's letter of 3 June 2019

<b>Party</b>	<b>Date</b>
DVMWHS Partnership	10/06/2019
Protect Belper Group	11/06/2019
Mike Wood (Agent for the applicant)	17/06/2019
Amber Valley BC	18/06/2019
Historic England	18/06/2019
Belper Town Council	19/06/2019
Protect Belper Group	19/06/2019
Amber Valley BC	24/07/2019
Mike Wood (Agent for the applicant)	26/07/2019

### Representations received in response to the Secretary of State's letter of 6 September 2019

<b>Party</b>	<b>Date</b>
Amber Valley BC	17/09/2019
DVMWHS Partnership	24/09/2019
Belper Lane Action Group	29/09/2019
Bob Wollard (Agent for the Whitehouse Farm Appeals)	03/10/2019



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

**by Helen B Hockenhull BA (Hons) B.PI MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 4 April 2019**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**AMBER VALLEY BOROUGH COUNCIL**

**LAND FRONTING CRICH LANE, BETWEEN HOUSE NO. 202  
AND 204, BELPER, DERBYSHIRE, DE56 1EP**

**APPEAL BY**

**MESSRS C & K BALL**

Hearing Held on 6 February 2019, Site Visit held on 7 February 2019

Land fronting Crich Lane, between house no.202 and 204, Belper, Derbyshire, DE56 1EP

File Ref: APP/M1005/W/18/3204843

**File Ref: APP/M1005/W/18/3204843**  
**Land fronting Crich Lane, between house No. 202 and 204, Belper, Derbyshire, DE56 1EP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Messrs C and K Balls against the decision of Amber Valley Borough Council.
- The application Ref AVA/2017/0322, dated 20 March 2017, was refused by notice dated 21 December 2017.
- The development proposed is the development of 185 houses together with associated works at land between Crich Lane and Far Laund, Crich, Belper.

**Summary of Recommendation: That the appeal be dismissed**

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### **Procedural Matters**

1. The appeal was recovered for a decision by the Secretary of State for Housing, Communities and Local Government by a direction dated 3 January 2019. The reason given for this direction is that "the appeal involves proposals which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site".
2. An application for costs was made by Amber Valley Borough Council against Messrs C and K Balls. This application is the subject of a separate Report.
3. This report contains a description of the site and its surroundings, an explanation of the proposal, identification of relevant planning policies, details of agreed matters, and the essence of the submissions made at the hearing and in writing, followed by conclusions and a recommendation. Lists of appearances and documents supplied at the hearing are appended to this report.
4. A Screening Direction was issued on 3 January 2019 by the Planning Inspectorate on behalf of the Secretary of State. This stated that the development is not Environmental Impact Assessment development.
5. The Council in their decision notice cite the relevant paragraphs of the 2012 National Planning Policy Framework (the Framework) which was in force at the time of the decision. A revised Framework was published in July 2018 and was considered at the hearing. Since then a further revision to the Framework was published after the hearing in February 2019. However, these amendments have no implications for this case or my approach to decision making.

### **The Site and Surroundings**

6. The site lies to the northern edge of Belper and covers around 9.22 hectares. It consists of several pastoral fields used for grazing bounded by dry stone walls. It is located to the east of Crich Lane, Belper on the rising valley slopes to the River Derwent. It straddles a ridge top occupied by a telecommunications mast and the covered Bessalone Reservoir. The eastern part of the site has a south eastern aspect and rises from a low point of around 140m AOD to the central ridgeline of approximately 170m AOD. Land to the west of the site has a north westerly aspect and falls away to around 155m AOD.

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7. Existing residential properties on Far Laund bound the site to the south east behind which the site can be viewed rising sharply up to the ridge line. On the southern and south western boundaries, properties on Cherry Tree Avenue back onto the site, whilst the north western section of the site bounds Crich Lane. The northern site boundary lies adjacent to the open countryside.
  8. A public footpath runs north-south across the site accessed from Cherry Tree Avenue which extends further north to Bessalone Hill and Nether Heage, as shown on the submitted location plan<sup>1</sup>. There is limited existing vegetation on the site apart from remnants of boundary hedgerows which run alongside stone walls and a small number of trees along the site boundary with Crich Lane.
  9. The site lies within the Green Belt. The western section of the site also lies within the designated Buffer Zone of the Derwent Valley Mills World Heritage Site (DVMWHS) and within a Special Landscape Area as defined in the adopted Amber Valley Borough Local Plan 2006 (AVBLP).

### **Description of Heritage Assets**

#### *Derwent Valley Mills World Heritage Site (DVMWHS)*

10. World Heritage Sites (WHS) are inscribed for their Outstanding Universal Value (OUV) and have defined attributes and components which embody that OUV. The Derwent Valley Mills and surrounding landscape were inscribed as a WHS by UNESCO in 2001. The WHS covers an extensive area of approximately 1229 hectares along the river valley, stretching 15 miles from Matlock Bath to Derby. A Management Plan for the WHS was created in 2002 and updated in 2014. It has as the first of its nine aims to 'protect, conserve and enhance the Outstanding Universal Value of the WHS.
11. The Statement of Outstanding Universal Value<sup>2</sup> (SOUV) points out that the cultural landscape of the Derwent Valley was where the modern factory system was developed and established, to accommodate the new technology for spinning cotton developed by Richard Arkwright and associated processes for efficient production. The insertion of industrial establishments into a rural landscape necessitated the construction of housing for the workers in the mills, and the resulting settlements created an exceptional industrial landscape. The main attributes of these settlements and the wider industrial landscape have changed little since the 19<sup>th</sup> century when the textile industry shifted from water to steam power.
12. The western section of the appeal site lies within the designated Buffer Zone of the WHS. The Buffer Zone covers an extensive area and includes land to the north, south and west of the appeal site. Figure 3 of the Appellant's Landscape and Visual Appraisal<sup>3</sup> illustrates the boundary of the WHS and the Buffer Zone in the vicinity of the site.

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<sup>1</sup> Location Plan - Dwg No.02A

<sup>2</sup>, The Derwent Valley – The Valley that changed the World - Derwent Valley Mills World Heritage Site Management Plan, 2014-2019, page 13

<sup>3</sup> Landscape and Visual Appraisal, FPCR, March 2017,

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13. The UNESCO Operational Guidelines<sup>4</sup> recommend that where necessary an adequate Buffer Zone is provided and that this is “an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection.”

*Other designated sites*

14. The site lies approximately 680 metres to the north of the Belper and Milford Conservation Area.
15. Belper Cemetery is a Grade II registered historic park and garden located approximately 180 metres to the west of the appeal site. It was opened in 1859 by the Belper Burial Board following the purchase of two parcels of land from the Strutt family, who were major landowners in the area. The cemetery lies immediately behind the dense belt of trees running north-south alongside Crich Lane and has a westerly aspect looking across the Derwent valley.

**The Proposal**

16. Planning permission is sought for the construction of 185 dwellings on a developable area of 6.9 ha outside the Buffer Zone of the WHS. The site would also be laid out to include 0.68 hectares of public open space and 1.64 hectares of managed amenity woodland.
17. The application was made in outline with details of the proposed means of access and layout, but the matters of scale, appearance and landscaping reserved for future consideration. The application was amended before the Council made its decision so that layout is now also a reserved matter.
18. The revised Site Plan<sup>5</sup> is thus indicative but shows that the existing public footpath running north-south through the site would be retained and incorporated into the proposed landscaping and open space areas. The plan also removes a previously proposed layby, alters an internal turning head and provides further drainage details.

**Planning Policy**

*Adopted Local Plan*

19. The Development Plan is the adopted Amber Valley Borough Local Plan adopted in 2006 (AVBLP).
20. Saved AVBLP Policy H5 states that outside the built framework of settlements, planning permission will not be granted for housing development unless the proposals are in the form of extensions to existing dwellings, replacement of existing dwellings, or new development necessary for the operation of a rural

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<sup>4</sup> Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, 2017.

<sup>5</sup> Site Plan DWG Ref 16-07-14A

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based activity and where a countryside location is essential. This is subject to a number of caveats.

21. Saved AVBLP Policy EN1 only permits development in the countryside where it is essential for agriculture or forestry, necessary within the countryside and cannot reasonably be located within a settlement or improves existing services and facilities in settlements remote from service centres.
22. Saved AVBLP Policy EN2 provides guidance for development in the Green Belt. It states that planning permission will only be granted for appropriate development including buildings associated with agriculture and forestry, essential facilities for outdoor sport and recreation, cemeteries and other land uses which would preserve the openness of the Green Belt and not conflict with the purposes of including land within the Green Belt and the limited extension, alteration or replacement of existing dwellings provided that they would not result in a disproportionate increase over the size of the original dwelling.
23. Saved Policy EN6 states that planning permission for new development will only be permitted in Special Landscape Areas if it does not have an adverse effect on the landscape quality or character.
24. Saved AVBLP Policy EN29 states that within the WHS and the Buffer Zone, all development is required to preserve or enhance character and appearance. Within the Buffer Zone, development is also required to preserve or enhance the setting of the WHS including views into and out of the site. Additionally, the policy states that the Council will have regard to the aims and objectives of the Management Plan in considering development proposals.
25. Other relevant saved AVBLP Policies are set out in the Council's Officer Report<sup>6</sup>.

#### *Emerging Local Plan*

26. The Amber Valley Borough Local Plan - Submission Local Plan (SLP) was submitted to the Secretary of State in March 2018. Hearing sessions as part of an Examination into the Plan took place in June and July 2018. However, the examination process has been paused by the Inspector to allow the Council to undertake further work.
27. The Council proposes to undertake a Borough wide Green Belt Review in order to inform the process of identifying and proposing additional housing sites for allocation in the Local Plan to ensure it can demonstrate a 5-year housing land supply. It is anticipated that further hearing sessions will be held in late spring/summer 2019.<sup>7</sup> The main parties agree in their respective Statements of Case that limited weight should be given to the emerging policies in the new Local Plan.
28. The Green Belt Review<sup>8</sup> was published in November 2018, though at the time of the hearing, the report and its findings had not been presented to the Council's members for consideration. The appeal site is identified as within Parcel 63.

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<sup>6</sup> Planning Application Recommendation to Planning Board, 18 December 2017.

<sup>7</sup> Inspectors Note on the Way forward for the Examination, 10 July 2108.

<sup>8</sup> Amber Valley Green Belt Assessment, Wardell Armstrong, November 2018

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*Draft Belper Neighbourhood Plan*

29. The Pre-Submission Draft Neighbourhood Plan for Belper Civil Parish, 2017-2033 (NPB) was published in June 2018 for consultation. The draft plan prioritises development on brownfield sites and allocates eight brownfield sites in Belper to meet the towns housing needs for the Plan period up to 2033.

*National Planning Policy Framework*

30. The Framework is clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 145 states that the construction of new buildings forms inappropriate development in the Green Belt unless certain exceptions are met. Paragraphs 143 and 144 set out that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
31. Paragraph 184 of the Framework recognises that World Heritage Sites are heritage assets of the highest significance which are internationally recognised to be of OUV. When considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. The most important the asset, the greater the weight should be. Paragraph 196 goes on to say that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

*Planning Practice Guidance*

32. The national Planning Practice Guidance<sup>9</sup> (PPG) points to the difference in terminology in international policies concerning WHSs and the Framework. The PPG advises that the cultural heritage set out in the OUV will be part of a WHSs heritage significance. Framework policies apply to the OUV as they do to any other heritage significance they hold and that significance is also derived from their setting. Protection of the Buffer Zone and attributes within it, as part of the setting of a WHS, is conferred by way of national policy in the Framework and the development plan.

**Planning History**

33. A planning application for 201 dwellings together with associated works was withdrawn on 1 July 2016 (Ref AVA/2016/0535).

**Other Agreed Facts**

34. The appellant submitted an unsigned Schedule of Common Ground before the hearing. The Schedule set out the relevant issues raised by the appeal and sought agreement with the Council on the issues which needed to be discussed at the event. The Council advised orally at the hearing that they agreed with the statements in the Schedule apart from that relating to ecology. They did not

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<sup>9</sup> Paragraph: 031, Reference ID: 18a-031-20140306.



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agree this matter could be resolved through the imposition of planning conditions.

## **The Case for the Appellants**

### *Green Belt*

35. It is accepted that the proposed development would be “inappropriate development” in the South East Derbyshire Green Belt, and that it would not normally be approved except in “very special circumstances” in accordance with the Government’s policy set out in paragraph 87 of the Framework. The Framework, at paragraph 88, states that “very special circumstances” will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Here, there would clearly be harm, by reason of inappropriateness, the loss of openness and incursion into the countryside.
36. Policy EN2 of the AVBLP relates to proposed development within the Green Belt. Reference to this policy is made in reason 1 of the decision notice dated 21 December 2017. The Submission Local Plan was submitted to the Secretary of State for Examination on 2 March 2018. Significant weight cannot be afforded to the emerging Plan because it has not yet been examined. This is made clear in the Framework at paragraph 216. It is noted, furthermore, that the Inspector who will conduct the Examination has raised a list of matters in respect of the Green Belt that she wishes to be considered. Amongst these are the need for a full Green Belt boundary review.
37. The Council has now undertaken a review and this was published in November 2018. Limited weight should be given to this document. The assessment has not yet been approved by the Council, it has not been the subject of consultation and has not been tested in the examination process.
38. Based adjacent to Belper’s northern urban fringe and protected by strong defensible boundaries, the proposed development would not result in a major incursion into the wider surrounding open countryside. There are no near settlements to the north and so no possibility of coalescence arising from this appeal. There are no heritage assets within the site. It is located on land above the Derwent Valley where the main areas of interest in the WHS are located. The site does not form part of the WHS’s obvious landscape setting.
39. The first Green Belt purpose aims to check the unrestricted sprawl of large built up areas. Properly planned and designed place making is unlikely to be considered to be a ‘Sprawl’. The development of the appeal site would not lead to the merging of any settlements. The adoption of a strong boundary to the north of the proposed housing extension, which links the existing properties on Crich Lane to Far Laund by incorporating the existing access road, the reservoir, telephone mast and stone walls with new and existing tree planting, would leave the housing extension very much under the influence of the urban area and the land to the north as open countryside.
40. The scheme provides an opportunity for the already marked visual and physical boundary to be made stronger to form a clear distinction between ‘town’ and ‘country’. This would assist the third Green Belt purpose to safeguard the countryside from encroachment.

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41. Turning to the fourth purpose, to preserve the setting and special character of historic towns, there are already decades of more recent developments between the historic core and the countryside at the northern edge of the town. In terms of urban regeneration, land within the urban area will have already been factored into land use proposals. Preservation of the existing use of the site will have no bearing on this Green Belt purpose.
  42. Therefore, the conclusion can be drawn from consideration of the Green Belt purposes, that the site makes a relatively limited contribution to the overall Green Belt. The Green Belt to the north of Belper in terms of the five purposes is not sensitive.

*Other considerations*

43. Amber Valley Borough Council acknowledges that it only has, at best, 3.3 years supply of housing land, a shortfall which is significant. This justifies the considerable weight that should be attached to the proposed development as per the judgement in *Phides Estates (Overseas) Ltd v the Secretary of State for Communities & Local Government* (2015) EWHC 827 (Admin).
44. The appellant acknowledges that national Planning Practice Guidance states “unmet housing need... is unlikely to outweigh the harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development on a site within the Green Belt” (PPG Reference: ID: 3-034-20141006). However, contrary to the Council’s assertions, the above “other considerations” amount to more than just an argument to provide more homes.
45. Belper is one of the four key urban areas in Amber Valley for new housing development. There is an expectation that these towns will make the most significant contribution to delivering new homes. There should be an acknowledgement that, at Belper, a sustainable location for growth, this will have to include the development of some greenfield land that lies within the Green Belt.
46. The Green Belt boundary passing through the site could be drawn in a meaningful appropriate and alternative way, providing a defensible boundary. A managed access to the rural landscape could be provided with new woodlands adjacent to existing copses promoting an improved ecology along the public footpath to Bessalone Woods and delivering a net biodiversity gain. Interpretation boards could be provided along the footpath to explain the history associated with the features of the landscape and the ecology of the area.
47. The site is available and will ensure immediate future employment for local people. Site investigations have revealed no barriers to development such as contamination or unsuitable ground conditions. The site is not located within a flood zone. It is in an accessible location with good pedestrian access to local facilities and schools. Highway matters have been addressed and a suitable access can be provided.
48. It is intended to build a Heat Network as part of the site’s infrastructure. Discussions have taken place with Severn Trent Water Authority to make use of the Derwent Valley Aqueduct, Bessalone Reservoir and Aquifer. Solar energy would also be utilised. This would create fully sustainable future homes, powered by zero carbon heat sources.

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### *Green Belt Balance*

49. Whilst it is accepted that there would be harm to the Green Belt by inappropriateness, loss of openness and some incursion into the countryside to the north of the town, such harm would be minimal in terms of the five purposes of the Green Belt set out in the Framework.
50. There is no other overriding harm that would result from the proposed development, given that the proposal would not result in severe residual cumulative impacts on either the countryside to the north of Belper or on the local highway network.
51. Therefore, the harm to the Green Belt by reason of inappropriateness, loss of openness and incursion into the countryside would be clearly outweighed by these other considerations and very special circumstances can be successfully demonstrated. The appellant believes that, in order to meet the requirement for new homes in the Belper area, this can only be achieved by building within the Green Belt. For these reasons, the proposed development would comply with Chapter 13 of the Framework, specifically paragraphs 134, 143 and 144.

### *Landscape and Visual Impact*

52. The appeal site is within the Peak Fringe and Lower Derwent National Character Area and the Gritstone Heaths and Commons Landscape Character Type<sup>10</sup>. The key characteristics of this area are predominantly pastoral farming with some arable, some plantation woodland and amenity trees, sparsely scattered trees along boundaries and a geometric and regular pattern of fields bounded by dry stone walls. The site has been assessed in terms of a range of local factors and judged to be of high/medium landscape value.
53. The addition of new built development along with new areas of green infrastructure would result in a high degree of landscape change across the site itself and a medium degree of change across the immediate context. With development, pastoral fields would be replaced by built form and associated infrastructure. The existing landscape features would largely be retained and incorporated in the proposals.
54. New structural landscaping would help to reinforce landscape pattern and character and the alignment of the public footpath would be retained through the site and new pedestrian routes would make the wider site accessible. Overall landscape effects at completion would be major/moderate adverse in terms of the site and immediate context. This level of effect is anticipated to reduce to moderate adverse by year 10 as the new landscape areas, woodland and tree planting become established.
55. The site is located adjacent to the settlement edge and therefore has urbanising influences. Whilst inevitably development would lead to some landscape effects, these would be localised and primarily limited to the site and its immediate context to the north.

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<sup>10</sup> Landscape and Visual Appraisal (LVIA), FPCR, March 2017

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56. From the roadside frontage at Crich Lane, the housing would be very much an extension of the existing urban area and appear as an infill in the break in the built-up frontage. From Cherry Tree Avenue and Far Laund housing would integrate with and visually develop in depth from the existing housing development. From middle distance views the new housing would extend the existing fringe but still very much appear to be part of the urban area. From distant views the new development would be hard to distinguish and still appear, as the existing urban area does, against a backcloth of treed ridgelines.
  57. The topography of the area is one of its defining characteristics. The site straddles a ridgeline and it falls either side of a local high point. As such, it experiences intervisibility with the surrounding landscape. The existing landform pattern would remain, albeit carrying new built form which would obscure current features such as the dry-stone walls. Built form would still allow the landform of the site to be read and would appear as a continuation of existing settlement to the south of the site.
  58. The landform is locally prominent with a small copse of trees and a mobile phone mast at its highest point. These would remain visible and new housing would be located below these features. Tree and woodland planting within the site would reinforce the copse in time and soften the appearance of built form. Existing topography across the site would be altered on a house plot by house plot basis to achieve level footings as required but this change would be negligible overall.
  59. Several viewpoints from within the WHS and other views from the surrounding areas have been assessed in the LVIA. From the positions investigated within the WHS, it is unlikely that the houses would be visible because of the intervening ridge line. Adjustments to the indicative layout could be made if necessary to be sure of achieving this. Views of houses on the appeal site, when travelling from Nether Heage via Crich Lane towards the site would be very limited by topography, intervening trees and frontage properties.
  60. The most notable visual effects would be experienced by residents living adjacent to the site on Cherry Tree Avenue, Crich Lane and Appleton Drive. Effects would vary depending on the intervening planting and/or built form. Effects on completion for residents would be major/moderate adverse reducing to moderate adverse by year 10.
  61. Users of public footpath FP3 which runs through the site would experience visual effects. Effects on completion would be major adverse reducing to moderate adverse by year 10. However, effects of this magnitude relate to a short section of the route only. For users and visitors to the WHS, overall effects on visual amenity would be well constrained and very limited.
  62. The topography of the site makes higher elevations more visually prominent from certain locations, particularly the east. When travelling from Heage via Far Laund, views of the houses within the site would be apparent behind existing houses. When travelling from Matlock, Ashbourne, Derby and Kilburn on the main roads, it would not be possible to see the proposed new houses until the traveller is well inside the urban area of Belper. The landscape design approach to be adopted, would assist in minimising effects on landscape character and visual amenity overall.

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### *Historic environment*

63. The site is physically and visually separate and at some considerable distance from the WHS. There are many examples of new buildings which have been permitted in the WHS Buffer Zone. There is an identified need for new housing in sustainable locations in the town and this forms a convincing justification for weighing the harm against the benefit of the proposal. In some instances, new development has been introduced directly into the historic industrial environment where presumably it has been considered appropriate on the grounds that sometimes benefits make a degree of change justified.
64. In terms of visual impact, the proposed development is on land which is well screened by the ridge of the intervening valley top when viewed from within the WHS. Various views have been assessed and the conclusion reached that the visual impact of the development on the WHS is negligible and on its Buffer Zone there will be limited effects.
65. The Buffer Zone, it is said in the designation, should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. In the case of the development proposal, it is not on land adjacent to or in the immediate setting of the WHS. The site is not in view either from or into the Derwent Valley.
66. In respect to the boundary of the Buffer Zone that runs through the site, the line is drawn along a field boundary of little significance. The enclosed land is on rising ground but does not protect significant views from within the WHS. There are 47 monitoring views within the WHS which have been identified as sensitive and needing to be closely monitored to ensure the Outstanding Universal Value of the WHS is maintained, and its setting is preserved and enhanced. The land at Crich Lane does not appear in any of these views.
67. It is accepted that there will be an impact on the DVMWHS Buffer Zone. This would be limited, resulting in less than substantial harm to the OUV of the DVMWHS.

### *Public benefits*

68. The appellant argues that the scheme would deliver several public benefits. The development would provide 185 new dwellings to meet local housing needs, together with 30% affordable houses contributing towards the significant need in the borough. The development would also have the potential to secure sustainable forms of renewable energy.
69. There is more than sufficient Public Open Space to be provided within the site as well as wetland creation and tree planting. A management company would be established to ensure the proper ongoing management and maintenance of these areas.
70. The development would incorporate sustainable urban drainage systems ensuring surface water drainage is appropriately managed. The existing public footpath would be maintained and incorporated within an area of open space. The development would create new jobs during the construction phase and new residents would spend locally benefitting local businesses and supporting the

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economy. Financial contributions would be made towards local primary education facilities and health facilities in Belper.

71. It is considered that the less than substantial harm to the heritage asset is outweighed by the environmental and ecological benefits and the benefits to come from a sustainable housing development meeting a known need.

### *Ecology*

72. The Preliminary Ecological Walkover Appraisal <sup>11</sup>concluded that only areas of low ecological value that are species poor would be lost to development. All existing trees on the site boundaries would be retained and protected during development. Areas of the site would be set aside to create a wide range of habitats, such as woodlands, low maintenance wild flower grassland, hedgerows and scrub. This would increase the biodiversity value of the site.
73. Further surveys would be necessary prior to construction work commencing. It is acknowledged that the above report recommends that full presence/absence surveys should be conducted for reptiles prior to any development. Mitigation and or compensation measures would then be considered and provided as appropriate. This work could be conditioned on any approval.
74. The CIEEM Guidance<sup>12</sup> states that there are a limited number of circumstances where further surveys may not be necessary prior to the determination of a planning application. These limited circumstances are set out in BS 42020:2013 and include where original survey work will need to be repeated because the survey data is out of date, where there is a need to inform detailed ecological requirements for later phases and where adequate information is already available and further surveys would not make a material difference to the information provided to the decision maker.
75. The appellant shares the Council's policy objective of seeking to conserve and enhance the natural environment. Appropriate planning conditions could be imposed to address this matter.

### *Summary*

76. The harm to the Green Belt by reason of inappropriateness, loss of openness and incursion into the countryside would be clearly outweighed by these other considerations and very special circumstances can be successfully demonstrated. Furthermore, the less than substantial harm to the significance of the WHS is outweighed by the public benefits.

## **The Case for the Council**

### *Green Belt*

77. The appeal site is wholly located within the Green Belt. The proposed new housing development is not an appropriate use in this location, recognised by the Framework and Saved Local Plan Policy EN2. Therefore, by definition it would be harmful to the Green Belt. Paragraph 87 of the Framework emphasises that

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<sup>11</sup> Preliminary Ecological Walkover Appraisal, EBS, May 2106

<sup>12</sup> CIEEM Guidance, December 2017

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inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

78. The Green Belt in this area of Belper serves three main purposes as set out in the Framework. It serves to prevent the expansion of urban development to the north of Belper and prevent the coalescence of Belper with the nearby settlements of Heage and Nether Heage to the north. The Green Belt assists in safeguarding the countryside from encroachment and helps preserve the setting and special character of the historic town of Belper. It is considered that the scale and extent of the application proposals to provide for up to 185 dwellings, would fundamentally undermine these three main Green Belt purposes.
79. The Council has commissioned a Green Belt Review as part of the evidence base to the emerging local plan. The Final report has now been published and will inform the assessment of potential sites for housing and other development which are currently in the Green Belt. The appeal site is located within parcel 63.
80. The Site Assessment Matrix<sup>13</sup> concludes that this parcel is critical to checking the unrestricted sprawl of large built up areas, preventing towns merging and preserving the setting and special character of historic towns. It is also assessed as having a considerable importance to the purpose of assisting in safeguarding the countryside from encroachment. It is accepted that as this document has not been consulted on or been tested through the local plan examination process, it should be attributed limited weight. However, it forms a material consideration, lending support to the Council's view that the site has an important role in achieving the Green Belt purposes in this location.
81. The site is completely washed over by Green Belt. One of the purposes of the area to the north of Belper being designated Green Belt is to stop the coalescence of Belper with Heage and Nether Heage. The application site is one of the highest points in Belper and is visually prominent particularly when viewed from the south (travelling north along Kilburn Road, Bullsmoor) and north east (Chesterfield Road when traveling from Heage). It is considered that the proposed scale of housing would be likely to have a profound and fundamental impact on the open character of the Green Belt in this sensitive and prominent location and be a clear encroachment of the countryside.
82. The appellant in the submitted 'Very Special Circumstances' report and the Heat Network Proposals Statement, provides details of the potential incorporation of a Heat Exchange network at the site. These highlight the unique situation of the appeal site, with there being three potential heat sources in close proximity (Derwent Valley Aquaduct, Bessalone Reservoir, and an Aquifer) to provide renewable low carbon energy to the future occupants of the development. Whilst these energy proposals are supported in principle and the unique geographical situation is acknowledged; the appellant has not submitted any firm evidence that Severn Trent Water will give permission to and enter into an agreement to secure these sustainable energy measures. Therefore, these proposals are more aspirational rather than definitely deliverable and only limited weight can be given to them.

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<sup>13</sup> Amber Valley Green Belt Assessment, Wardell Armstrong, November 2018, Table 8 and 9

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83. The Council acknowledges that currently it cannot demonstrate a five-year housing land supply. However, this fact alone, when there are alternative sites within the borough that are not subject to Green Belt designation; is not considered sufficient justification to allow harmful inappropriate development within the Green Belt. Any benefits derived from the development are not considered to outweigh the harm to the Green Belt. Therefore, very special circumstances are not considered to exist and the development proposals are contrary to paragraphs 143 and 144 of the Framework.

*Landscape and Visual Impact*

84. The appellant's Landscape and Visual Impact Assessment (LVIA) correctly identified the site as being located within the Peak Fringe and Lower Derwent National Character Area and the Gritstone Heaths and Commons Landscape Character Type. Such areas are characterised by relatively open landscape with regular and geometric fields enclosed predominantly by dry stone walls. The application site has these rural characteristics and forms a very sharp and distinct interface with the built edge of Belper.
85. The Council's recent Landscape Sensitivity Study, undertaken to support the emerging Local Plan, identifies the site as having 'high sensitivity' to development of this type. It should also be noted that the western half of the appeal site is located within the defined Special Landscape Area, which is protected, under the provisions of the adopted development plan, from development that would have an adverse effect on the landscape quality or character (Saved Local Plan Policy EN6).
86. The appellant's landscape strategy proposes to mitigate the effects of the development through extensive screen planting around the periphery of the site (particularly adjacent to Crich Lane and along the eastern boundary). This is not considered an appropriate response given the key characteristics of the landscape character comprises open regular shaped fields bounded by dry stone walls with occasional scattered trees. Existing dry-stone walls are predominantly proposed to be removed and instead the introduction of new hedgerows and hedgerow trees, is again not considered to be appropriate.
87. Many of the impacts, both landscape and visual, have been under-assessed as part of the submission and the effects on landscape character and visual amenity would be far greater than predicted especially given the relative sensitivity of the site and its immediate location. Mitigation proposals identified by the landscape consultant in the LVIA have not followed through in the overall layout of the site and this further contributes to the potential impact of the proposal through inappropriate landscape treatments.
88. There are residual impacts associated with the location of the Multi Use Games Area (MUGA) beyond the main development boundary and the requisite access improvements that have not been adequately incorporated in the assessment. These are likely to contribute to the overall adverse effects of the proposal both in character and visual terms.
89. Given the site has a prominent countryside location on the hillside to the north of Belper within a sensitive area of landscape, the development proposals would result in significant detrimental visual and landscape change from rural



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agricultural land to a housing estate, which would also clearly adversely affect the openness of the Green Belt in this location.

90. The development would also introduce other landscape features that are inappropriate for this landscape character area (e.g. linear tree belts, fragmented hedgerows with hedgerow trees). It also fails to respect existing characteristics that might be retained as part of the development such as the regular/geometric field patterns and walled boundaries. The development is therefore contrary to paragraph 109 of the Framework and saved Local Plan Policies EN6 and EN7.

#### *Designated Heritage Asset*

91. World Heritage Sites are of global significance. To assist in the understanding of a World Heritage Site's OUV, UNESCO has asked all World Heritage Sites to produce a Statement of OUV, and where these did not exist at time of inscription to produce them retrospectively. The Statement of OUV for the DVMWHS has been endorsed by the UNESCO World Heritage Committee. The Statement is included in its current Management Plan, together with a list of 'attributes' which convey or manifest the OUV.
92. The DVMWHS was inscribed due to it "exemplifying, the historical theme of the innovation of the textile mill and the economic and social infrastructure of the site as the 'cradle of the factory system'" and "The insertion of industrial establishments into a rural landscape necessitated the construction of housing for the workers in the mills, and the resulting settlements created an exceptional industrial landscape." The Crich Lane site contributes to the setting of the WHS, as it enables an understanding of how the factory system was inserted into a 'hitherto rural landscape', therefore being an attribute itself.
93. While it is acknowledged that setting is more than inter-visibility, the proximity of the application site to the WHS is immediate. The site has a clear historic association with the WHS and its OUV, as part of the rural landscape into which the industrial mills and settlement were inserted. It is thus a crucial part of the setting of the WHS, for the way it contributes to an awareness and understanding of the rural relict landscape that 'cradles' the birthplace of the factory system, and therefore supports the authenticity of the WHS.
94. Bessalone Reservoir was funded by George Henry Strutt to pipe water across the Belper Township in 1895. The WHS Buffer Zone boundary bisects the application site with the land to the west of the ridge falling within the Buffer Zone. The Bessalone Reservoir lies immediately adjacent to the Buffer Zone boundary. It is the intention of the DVMWHS Partnership to undertake a minor boundary review as part of the next Management Plan in 2020, to incorporate the Reservoir within the Buffer Zone. Bessalone Reservoir and the area of land within the Buffer Zone are readily identifiable from within the WHS and from views across the valley. Any development within the application site will erode the setting of the WHS and Bessalone Reservoir.
95. Despite the site been partly located within the Buffer Zone, no Heritage Impact Statement has been submitted to consider the impact of the development on the WHS. The appellant's attempts to undermine this protection, if accepted, would set a precedent which opens the WHS up to minor, but cumulative damage through incremental development in the highly sensitive relict landscape which contributes to our understanding of the WHS OUV. This could also weaken a

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degree of protection for all of the WHSs of England and Wales, and erode the protection offered by their buffer zones.

96. Both the appeal decisions for Darley Abbey<sup>14</sup> and Chacewater<sup>15</sup> highlight the threat of relatively minor changes which, on a cumulative basis, would have a significant effect on a WHS and its OUV. Planning Practice Guidance endorses the principle of protecting WHSs from minor changes which have a significant impact when seen as a whole. This cumulative effect, whether within the WHS at Chacewater, or within the buffer zone, as highlighted in the Darley Abbey decision, is currently, the DVMWHS Partnership believes, the greatest identified threat to the WHS and its OUV.

#### *Public benefits*

97. In this case whilst the proposed development would not adversely affect any listed buildings or their setting or any Conservation Areas and their setting; the development would result in less than substantial harm to the OUV of the WHS. A WHS is stated in the Framework as an asset of the highest significance. The appeal site itself lies outside of the WHS, but within the buffer zone. Therefore, the requirements of paragraph 196 of the Framework, for the harm to be outweighed by the public benefits of the proposal needs to be applied.
98. The public benefits are outlined in detail in the report to the Planning Board<sup>16</sup>. In summary these include the contribution to housing supply, the provision of affordable housing, the potential to secure renewable energy, the incorporation of sustainable urban drainage and the provision of public open space. In terms of economic benefits new jobs would be created during the construction process and new residents would spend locally. Financial contributions would be required towards health facilities and education.
99. In terms of the spectrum of 'less than substantial' harm, the development proposals are considered to fall within the middle of this spectrum given the prominence of the site. Whilst there are a number of public benefits that would contribute positively socially, economically and environmentally; given the application is in outline form with all matters reserved except for access, it is not guaranteed that many of these benefits would be secured and delivered. Coupled with the significant environmental harm caused by the development, the public benefits do not outweigh the harm caused to the OUV of the WHS in this instance.

#### *Ecology*

100. The preliminary ecological appraisal was based upon field surveys conducted in April and May 2016. Surveys carried out during April and May would be within the optimal survey period for breeding birds, particularly ground nesting priority species such as skylark and lapwing. It is noted that no breeding bird survey was carried out. Information about breeding birds is therefore lacking.
101. The submitted ecology report constitutes a Preliminary Ecological Appraisal Report (PEAR). It also identifies the need for further surveys to be undertaken in

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<sup>14</sup> APP/C1055/W/15/3137935

<sup>15</sup> APP/D0840/W/16/3153632

<sup>16</sup> Council's Report to Planning Board 18 December 2017

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respect of reptiles. In accordance with CIEEM's Guidelines for Ecological Report Writing, February 2015, a PEAR should not be submitted as part of a planning application unless it can be demonstrated that the proposal would have no significant ecological effects, no mitigation would be required and that no further surveys are necessary. This is clearly not the case with this current submission.

102. It would be expected that the Ecological Appraisal be superseded by an Ecological Impact Assessment report (EcIA) to include the results of further surveys for reptiles and ground nesting priority bird species. It is therefore not possible to fully determine the ecological impacts associated with the proposal and in the absence of adequate information there would be sufficient grounds for refusal on ecology grounds. The application is contrary to saved local plan policy EN13 and paragraph 170 of the Framework.
103. At the hearing the Council referred to Circular 06/2005 to support their view that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, should be established before planning permission is granted. It is the Council's view that it is therefore not appropriate for this matter to be the subject of planning conditions.

#### *Planning balance*

104. The appeal proposal is contrary to policy H5 of the Local Plan, which seeks to resist inappropriate development in the open countryside. The Council confirms that a 5-year housing land supply cannot be demonstrated. As of the 1 January 2018, pending the Local Plan Examination, the supply is around 3.39 years. Paragraph 11 of the Framework instructs the application of the presumption in favour of sustainable development in circumstances where a 5-year housing land supply cannot be demonstrated. However, Footnote 6 of the Framework advises that policies relating to designated heritage assets are restrictive policies for the purposes of paragraph 11.
105. Paragraph 196 of the Framework requires consideration of whether the level of harm outweighs the level of public benefit to be accrued from the scheme. With regards the public benefits of the scheme, the provision of up to 185 new homes (including affordable housing) at a time when the Council cannot demonstrate a 5-year housing supply, is a significant benefit of the scheme. The Framework clearly emphasises the importance of planning authorities maintaining a 5-year housing supply. The benefits of housing delivery should weigh in favour of the proposal. It should also be noted however that the emerging Local Plan has identified other sites which are not within the WHS Buffer Zone, capable of meeting the Council's housing needs. The Plan has been submitted to the Examiner, and as such is at an advanced stage of preparation.
106. The benefits of local expenditure, construction contracts and new homes bonus are acknowledged. These benefits would of course arise were development to take place elsewhere in the borough, as is proposed in the emerging Local Plan. The section 106 contributions will provide infrastructure which will ultimately be used by the wider community. However, the purpose and justification for the contributions is to mitigate the impacts of the development. The benefit of the contributions should not therefore be afforded significant weight.
107. The benefits of the scheme are acknowledged and given appropriate weight, in particular the provision of 185 homes at a time of housing shortage. The Council

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agrees with the appellant that these benefits should be afforded weight in the planning balance. However, the Council has attributed greater weight and importance to the harm identified to the WHS, given the international status and therefore high degree of protection afforded to it. This harm clearly and decisively outweighs the benefits.

### *Summary*

108. The proposal is harmful to the OUV of the DVMWHS as the development of the appeal site would result in the erosion of the rural landscape of the arrested industrial development. The identified public benefits do not outweigh the less than substantial harm to the WHS.

### **The Cases for Interested Parties who attended the hearing**

#### *Derwent Valley Mills World Heritage Site Partnership*

109. The Partnership provided written comments to both the application and the appeal and also spoke at the hearing.
110. The Partnership emphasises the global significance of a World Heritage Site and points to the duty of State Parties to 'not take any deliberate measures that directly or indirectly damage their heritage or that of another State Party to the World Heritage Convention'.
111. The Buffer Zone does not have OUV but supports OUV. Changes to a Buffer Zone or even beyond it in the wider setting can impact adversely on the OUV of a WHS. The site contributes to the setting of the WHS as it enables an understanding of how the factory system was inserted into a 'hitherto rural landscape' which is both an essential context to understand the OUV of the WHS and a linked attribute. The proposed development also abuts Bessalone Reservoir which is also an attribute of the WHS, highlighted in the fourth set of values that append the SOUV in the DVMWHS Management Plan.
112. Despite the site been partly located within the Buffer Zone, no Heritage Impact Statement is included within the application to consider the impact of the development on the WHS.
113. The Buffer Zone boundary bisects the appeal site with the land to the west of the ridge falling within the Buffer Zone. The Bessalone Reservoir lies immediately adjacent to the Buffer Zone boundary. It is the intention of the DVMWHS Partnership to undertake a minor review of the Buffer Zone boundary in 2020 to incorporate the reservoir into the Buffer Zone. Bessalone Reservoir and the land within the Buffer Zone are identifiable from within the WHS and views across the valley.
114. Any development on the land within the Buffer Zone will erode the setting of the WHS and the reservoir. It is also considered that any development on the eastern section of the site that is sufficiently high to appear over the ridge would also erode the setting of the WHS. It would also be undesirable for any development to encroach too closely to Bessalone Reservoir.
115. Any development, on the upper part of the field, rising up from Crich Lane to the skyline ridge of Bessalone Hill, will be visible from the west side of the valley, depending on the height of the dwellings proposed, and therefore harmful to the

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rural setting of the WHS and its OUV. This approximately equates to development above the footpath that crosses the application site. Furthermore, development of the upper slopes on the east side of the Bessalone ridge, facing Far Laund, will also be visible from the west, again depending on the height of the proposed dwellings. Despite being outside the Buffer Zone, the visibility of any development would, therefore, be harmful to the rural setting of the WHS and its OUV.

116. Both the appeal decisions at Darley Abbey and Chacewater highlight the minor changes which on a cumulative basis would have a significant effect on the WHS and its OUV. This position was reinforced in October 2018 by the decision for land at Bullsmoor, off Nottingham Road, Belper. The findings of the ICOMOS Technical Review<sup>17</sup> in relation to the Whitehouse Farm, Belper appeal has considerable similarities to the case here and should be given significant weight.
117. PPG endorses the principle of protecting WHS from minor changes which have a significant impact when seen as a whole. This cumulative effect is currently, the greatest identified threat to the WHS and its OUV. The appellant's attempts to undermine this protection, would if accepted, set a precedent which opens up the WHS to minor, but cumulative damage through incremental development in the highly sensitive relict landscape which contributes to our understanding of the WHS OUV.
118. The development would damage the setting of the WHS weakening the ability to understand the DVMWHS OUV. This is in direct conflict with the current Management Plan, UNESCO's Operational Guidance 2017 and the World Heritage Convention.

#### *Belper Neighbourhood Plan Forum*

119. The Neighbourhood Plan is at an advanced stage with the Referendum anticipated in Autumn 2019. As part of the preparation of the Plan, consultants have assessed housing need in Belper. They have concluded that there is capacity on existing brownfield land to meet the needs until 2030. There are existing surface water flooding problems which need to be addressed. The Council's Green Belt Review reflects the Neighbourhood Plan view that the appeal site is critical to the Green Belt. Brownfield sites should be developed first. The proposed Heating Network is supported. There is limited local infrastructure capacity in local schools and health facilities.

#### *Belper Town Council*

120. The financial contribution to additional places at St Johns C of E Primary School is acknowledged. However, the access to the school is substandard and unsuitable for additional traffic. There is no scope to expand Riverside Health Centre even if the money was available. The site has ecological value particularly for ground nesting birds. It is acknowledged that there is a lack of a 5-year housing land supply however this is an Amber Valley problem not a Belper

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<sup>17</sup> International Council on Monuments and Sites (ICOMOS) - Technical review concerning the Derwent Valley Mills World Heritage Property, December 2018.

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problem. House prices are higher in Belper therefore developers will promote sites here rather than elsewhere in the borough.

*Mr Hutchinson*

121. The setting to the WHS and the rural landscape is important and should be protected. Bessalone Hill is particularly prominent and can be seen for miles in distant views. It would be difficult to adequately screen the proposed development due to its location and height. There is strong community support for the work of the DVMWHS Partnership to preserve the unique landscape and to maintain and preserve it. The site has significant ecological value being a feeding ground for birds such as swallows and skylarks. Brownfield sites should be developed first. The existing housing stock should be redefined with downsizing and higher density urban development encouraged.

*Mr Hopkins*

122. Bessalone is a place of natural beauty. The area is well used by walkers including those walking the National footpath. Views of three counties can be appreciated from the top of Bessalone Hill. Currently the trees on top of the hill can be viewed. If the development proceeds all that will be seen is houses. The site has ecological value for birds. Additionally, the appeal proposal could have a negative impact on tourism.

*Cllr Booth*

123. The proposed development is on designated Green Belt land. The visual impact this would have from numerous locations throughout the town is totally unacceptable. There is no need for more housing in Belper as there are 400 houses with planning permission.

*Mr Milestone*

124. Belpers economy has changed over time. Large manufacturing employers are leaving. Belper needs tourism to thrive and support the economy. The WHS has an important role in this regard. The appeal proposal would undermine the WHS and the tourism potential of the area.

*Mr Barnsley*

125. The Local Plan was adopted in 2006. There is a need for more housing in the borough. The Council's Green Belt Review will propose potential sites for development. The appeal site will therefore not be required.

### **Written representations**

126. The application was the subject of two rounds of consultation, firstly the original submission and secondly to the amended scheme. At each stage a significant number of representations were received from statutory bodies, other consultees as well as letters of objection from a large number of local residents. These are all summarised in the Council's report to the Planning Board. Whilst raising the issues upon which the application was refused by the Council, other matters raised included the principle that brownfield sites should be developed

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first, highway impact, drainage, lack of capacity in local schools and health facilities, overdevelopment, housing mix and poor design.

*Historic England*

127. Historic England provide comments to the Council on the original planning application and the amended scheme as well as to the notification of the appeal.
128. They advised that the application site contributes to the OUV of the DVMWHS through the survival of this rural landscape character in sharp contrast to both the historic and modern urban settlement of Belper. It is accepted that 20<sup>th</sup> Century development exists on three sides and in this part of Belper, where expansion has taken place. It is not accepted that this in itself provides justification for further extension into the rural setting of the WHS. Historic England believe the site both within and outside of the buffer zone contributes to the OUV and authenticity and integrity of the WHS. This is through the survival of this rural landscape character in sharp contrast to both the historic and modern urban settlements.
129. Part of the site lies within the buffer zone. This is the area surrounding the WHS to give an added layer of protection. It can therefore be seen as part of the setting (though setting can be more extensive than the buffer zone, which we believed is demonstrated in this case). The presence of the buffer zone recognises the need to acknowledge and protect the significance of the WHS as a cultural landscape. Within the WHS the relationship between the industrial mill buildings within the historic settlement, the River Derwent and its tributaries and the topography of the surrounding rural landscape, with historic roads connecting the settlements, is a key element of the character and significance of the Buffer Zone. This relationship today is spatial, visual and historic.
130. The site is sensitive to change and in principle development for housing would result in the loss off this rural character and further encroachment. From this, the change to the overall character and experience of views, both static and cumulative, will be compromised and result in harm to the OUV of the WHS.
131. This proposed housing development both within and experienced from the Buffer Zone will harm the OUV of the WHS. Within Planning Practice Guidance (Paragraph 032) WHSs are designated heritage assets of the highest significance, accordingly great weight should be given to its conservation. As paragraph 32 of the Framework states, the more important the asset, the greater the weight should be.
132. Where the harm is judged to be less than substantial, harm should be weighed against the public benefit of the proposal. The public benefits delivered by the proposal would have to be substantial to outweigh the level of harm to the OUV of the DVMWHS. The proposal does not seek to sustain and conserve the OUV of the WHS. Historic England maintains an objection to the proposal given the harm that it would cause to the OUV of the WHS with the application failing to meet the requirements of the NPPF, in particular paragraph numbers 128, 129, 131, 132 and 134.

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## Inspector's Conclusions

### Main considerations

133. The following conclusions are based on the written evidence submitted, on my report of the oral and written representations to the Inquiry and on my inspection of the site and the wider area. The numbers in square brackets thus [ ] refer, as necessary, to paragraphs in other sections of the report.
134. The main considerations in this appeal are:
- whether the proposal is inappropriate development in the Green Belt and whether it would harm the openness of the Green Belt and conflict with the purposes of its designation;
  - the effect on landscape character and the visual amenity of the area;
  - the effect on the OUV of the DVMWHS;
  - the effect of the development on biodiversity and ecology;
  - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations which might amount to the very special circumstances necessary to justify the development.

### Green Belt

135. It is accepted by all parties that the proposal is inappropriate development in the Green Belt [35,77]. The Framework in paragraph 143 states that such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It is also self-evident that the proposed construction of 185 new homes on undeveloped land, would harm the openness of the Green Belt. This would be contrary to Framework policy which is that openness is one of the essential characteristics of Green Belts.
136. The appellant has suggested that the site makes a relatively limited contribution to the purposes of the Green Belt and that the Green Belt to the north of Belper is not sensitive [42].
137. The appeal site provides as strong boundary to the northern edge of Belper preventing the sprawl of the settlement to the north. It also contributes to the clear break in built development between Belper and Nether Heage. If the appeal site were to be developed, whilst it would not result in coalescence, it would serve to undermine the gap between the settlements. The proposal would therefore be an encroachment into the countryside in an area which separates Belper and its satellite towns and villages. Furthermore, the western part of the site is located within the Buffer Zone to the WHS. The purpose of the Buffer Zone is to protect the setting of the WHS, a matter I shall discuss in more detail later in this report. The appeal site therefore contributes to preserving the setting and special character of the historic town of Belper.
138. The Councils Green Belt Review assesses the appeal site, which is contained within the larger Parcel 63, as having considerable importance to the Green Belt. [79]. This document has only recently been published by the Council and the



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methodology has not been tested through the local plan examination process. Whilst the document remains a material consideration, I give it limited weight.

139. Overall the proposal is inappropriate development in the Green Belt and would harm the openness of the designated area, as well as being in conflict with four of the purposes of designation. Very special circumstances, whereby any potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations, will therefore need to be demonstrated.

### **Landscape Character and Visual Amenity**

140. The site lies in the open countryside on the edge of the town of Belper. The main parties are in agreement that the site is located within the Peak Fringe and Lower Derwent National Character Area and the Gritstone Heaths and Commons Landscape Character Type [52,84] and that it exhibits the characteristics of these areas.
141. The Council's Landscape Sensitivity appraisal considers the site to have a high sensitivity to change [85]. Following my site visit I observed the site to be open, elevated and visually prominent in the landscape. It contributes to the character of the approach to the town particularly from the north and north east from Heage. I therefore concur with this view.
142. The appellant's LVIA assesses the site to be of high/medium landscape value having considered several criteria based on the guidance in GLVIA3. I consider this assessment to be robust [52].
143. A unique feature of the appeal site is that it straddles a ridge and is therefore experienced from two directions. New development on an open pastoral site in the countryside would inevitably result in landscape change. The western side of the site rises above Crich Lane. The regular field pattern and dry-stone walls are evident, a characteristic feature of this landscape character type. The telephone mast and the reservoir can be clearly viewed on the top of the ridge, so too can Bessalone Hill. The area exhibits a rural open character. The proposed development would be seen as an extension to the settlement. Due to the topography of the site development would in the immediate context have a significant effect on the landscape of the area.
144. When viewed from across the valley, the lower part of the site would be screened by the mature woodland of Swinney Wood which lies to the west of Crich Lane. Whilst the upper part of the site would be visible above the trees, it would be seen as an extension of built development on the valley side. I therefore consider that the harm to the character of this Special Landscape Area when viewed from a longer distance would be limited.
145. Discussion took place at the hearing with regard to the landscape impact of development breaching the skyline. However, this is an outline scheme with only access being applied for. The details of layout and floor levels could be considered at reserved matters stage.
146. Turning to the eastern section of the site, when viewed from Far Laund, the site rises sharply behind the existing residential properties and is seen clearly through the gaps in the houses. Residential development on this part of the site,

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would rise above the existing houses and would be visually prominent having a significant adverse effect on the character of the immediate area.

147. On my site visit I spent some time viewing the site from various locations suggested to me by the main parties. On Over Lane and various points along this road to the east of the site, the existing built edge of Belper can be seen with the undeveloped valley rising above the town. The trees around the reservoir and Bessalone Hill form distinctive landscape features on the ridge. The appeal scheme would extend development rising to the top of the valley side. This would result in a significant adverse effect on landscape character when viewed from middle and long-distance viewpoints. A similar view of the site can be obtained from the south from several points on Sandbed Lane with similar harm to the character of the area.
148. The Council have commented on the landscape strategy proposed to mitigate the visual effects of the development [86]. This includes extensive screen planting around the periphery of the site, new tree plantations to screen the open space and proposed MUGA as well as new hedgerows replacing the existing dry-stone wall field boundaries. Whilst these proposals would not be in keeping with the landscape character type of the locality, the appeal scheme is in outline and these details could be refined through a reserved matters scheme.
149. With regard to visual amenity, the most sensitive receptors close to the appeal site are the existing residents that live near to the boundaries of the site. Properties on Far Laund lie at approximately 135 m AOD while the site rises at the rear of these properties from around 140m to 170m AOD. New dwellings would replace views of a pastoral landscape having a significant adverse effect on visual amenity.
150. Occupants of houses on Crich Lane, Cherry Tree Avenue and Appleton Drive would similarly view the proposed development from the rear of their properties. Whilst existing planting and proposed new planting would assist to filter views of the development particularly at ground floor, bearing in mind the rising nature of the site, this would be inadequate to mitigate the harm to visual amenity.
151. Residents living slightly further afield for example on Over Lane and the southern edge of Heage would view the higher parts of the site. The development would be seen as an extension to the built up area of Belper, thus the visual impact would be more limited.
152. Users of the public footpath crossing the site would experience more restricted views of the wider landscape than can currently be achieved. The footpath would be retained and is proposed to run through the open space area. This would help to mitigate the visual impact to a degree however would still result in moderate visual harm.
153. In summary, I have found that the appeal scheme would result in significant harm to the landscape character and significant/moderate harm to visual amenity. The proposal would therefore conflict with Saved Policies EN6 and EN7 and section 15 of the Framework which seek to ensure that new development does not have an adverse effect on landscape character and quality.

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## Effect on the significance of the DVMWHS

154. Within Planning Practice Guidance (Paragraph 032) World Heritage Sites are designated heritage assets of the highest significance, accordingly great weight should be given to their conservation. As paragraph 193 of the Framework states, the more important the asset, the greater the weight should be given to the asset's conservation.
155. The Derwent Valley Mills World Heritage Site is a heritage asset of the highest national and international importance.
156. The WHS defines a cultural and historic landscape of exceptional significance. Its designation as a WHS recognises its international role in the development of the modern factory system and workers communities in the late 18<sup>th</sup> Century. Of equal significance is the survival, almost intact, of the contemporary rural landscape into which it was set. The ability to appreciate the mills and settlements in their original landscape setting contributes greatly to the significance of the WHS as a heritage asset.
157. The OUV of the WHS lies primarily in the survival of an industrial landscape of great historical and technological significance. The WHS is protected by a Buffer Zone which contributes to the OUV of the WHS by enabling the settlements to remain in a largely rural landscape, just as they were when they were built. Changes to a Buffer Zone or even beyond it in the wider setting, can impact adversely on the OUV of a WHS.
158. The site contributes to the setting of the WHS as it enables an understanding of how the factory system was inserted into a 'hitherto rural landscape'. Intervisibility between the part of the appeal site located within the Buffer Zone is limited. The lower part of the site is screened by the mature woodland of Swinney Wood. Distant views of the upper parts of the site can be achieved from across the valley within the WHS.
159. Whilst I have concluded that in landscape terms, the development on the western section of the site would result in limited harm, it does not follow that the harm to the setting of the WHS would also be limited. The encroachment of built development and the loss of the pastoral fields on the upper valley slopes would reduce the extent of the open landscape setting of the WHS. This would undermine the contribution of the setting to the OUV and the unique character of the WHS and cause harm to the significance of the heritage asset.
160. I note the intention of the DVMWHS Partnership to extend the Buffer Zone boundary to include Bessalone Reservoir [113]. Currently the reservoir can be viewed sitting on top of the ridge in an open setting. The proposed development, extending up the valley slope, would undermine this position.
161. I acknowledge that the appeal site does not feature in one of the Monitoring Views of the WHS. This does not mean that the site is of any less significance to its setting. [66].
162. My attention has been brought to the findings of the ICOMOS Technical Review in relation to the Whitehouse Farm development proposals in Belper. Whilst in general terms there are similar issues between this case and the appeal scheme, both sites being located within the DVMWHS Buffer Zone, there are site specific differences. Each development must be considered on its individual merits.

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163. The site forms a small part of the setting to the WHS. The appellants have argued that the contribution of the site to the setting is minimal and its development would not undermine the significance of the heritage asset [64 and 67]. Planning Practice Guidance endorses the principle of protecting WHS from minor changes which have a significant impact when seen as a whole. The DVMWHS Partnership highlights that this cumulative effect is currently, the greatest identified threat to the WHS and its OUV [117]. The appeal decisions at Darley Dale and Chasewater confirm that minor changes could on a cumulative basis have a significant effect on the WHS and its OUV [96,116].
164. A small-scale development in the Buffer Zone, such as proposed in this appeal, would cumulatively with other similar developments, result in significant harm to the relict landscape setting of the WHS.
165. In conclusion on this issue, the proposed development would reduce the extent of open landscape providing a setting to the heritage asset and undermine the contribution of the setting to the OUV and significance of the WHS. Accordingly, the appeal scheme would fail to comply with section 16 of the Framework and Saved Policy EN29 of the Local Plan. These policies seek to conserve and enhance the historic environment.
166. There is no dispute between the main parties that the harm to the designated heritage asset would be less than substantial. Historic England in objecting to the proposal also agree with that assessment [132]. Based on the evidence before me and bearing in mind the scale of the development proposed and its impact on the WHS as a whole, I also conclude that the harm would be less than substantial. Accordingly, in line with paragraph 196 of the Framework, this harm should be weighed against the public benefits of the proposal. I consider this 'heritage balance' in the Other Considerations section of this report.

### **Biodiversity and Ecology**

167. The Appellant submitted a Preliminary Ecological Walkover Appraisal of the biodiversity of the appeal site [61]. Following desk studies and walkover surveys, it concluded that overall the site was of low ecological value. However, in respect to reptiles, the report recommended that a full presence/absence surveys to Natural England recommendation should be undertaken prior to any development progressing. Furthermore, in relation to ground nesting birds the report clearly states that whilst potential habitats were assessed, and visible and audible birds were recorded, no specific breeding or wintering bird survey work was undertaken.
168. There is dispute between the main parties about whether this additional survey work should be undertaken before any planning permission is granted or whether it could be the subject of an appropriate condition on any planning approval [63,89].
169. At the hearing the Council referred to Circular 06/2005 [89]. This states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it '...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning

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permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision' (paragraph 99).

170. I have been provided with an extract of the CIEEM Guidance 2017 by the appellant [62]. It appears to me that on the basis of the evidence before me, this provides guidance on the need for further survey work and the limited circumstances when these may not be required. It does not address the need for survey work at the outset to assess whether species are present and what mitigation measures may be required. In any event this document provides guidance only and does not have the same status as a Government Circular.
171. Accordingly, I conclude that additional survey work should be undertaken before any planning approval in order to assess the likely ecological effects and to formulate appropriate mitigation. The imposition of planning conditions would therefore not be appropriate. The appeal scheme would in this regard conflict with Saved Local Plan Policy EN13 and paragraph 170 of the Framework which seek to conserve and enhance the natural environment.

### **Other considerations**

172. A number of other considerations have been put forward by the appellant in support of the scheme. The Council cannot demonstrate a 5-year supply of housing land. The appeal scheme would therefore make a significant contribution to housing land supply. The provision of 30% affordable housing in the scheme, would also provide a significant public benefit providing for local housing need.
173. The delivery of 185 new dwellings would bring employment and other economic benefits during the construction phase. New occupants would spend in local shops and use services supporting the local economy. Due to the short-term nature of some of these economic benefits however, I afford them moderate weight.
174. The appellant has put forward proposals for a Heat Network to provide sustainable renewable energy. Whilst this is to be supported in principle, the delivery mechanism for such a scheme has yet to be agreed. I therefore give this benefit limited weight [35,49,79]. The scheme would provide public open space and retain the public footpath running through the site. It would also make use of sustainable urban drainage systems. Whilst these measures are mainly required to ensure a policy compliant development, there would be some public benefit for the wider community. I therefore attribute them limited weight.
175. Contributions to education and health facilities would be required to mitigate the impacts of the development. However once provided they would be available for other pupils and patients. I therefore give these benefits limited weight [48,72].
176. The approach in the Framework is that where the harm to the significance of a designated heritage asset is less than substantial, as in this case, it should be weighed against the public benefits of the proposal.
177. Against the public benefits I have outlined above, is the harm to the historic relict landscape forming part of the Buffer Zone to the WHS. Development on the appeal site, would reduce the extent of open landscape providing a setting to the heritage site and undermine the contribution of the setting to the OUV and

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significance of the WHS. It is clear from paragraph 193 of the Framework that great weight should be given to an asset's conservation, the more important the asset the greater the weight should be. Given that this appeal relates to a heritage asset of national and international importance, the public benefits set out above do not individually or cumulatively outweigh the identified harm.

### **Other matters**

178. Interested parties raised a number of other matters including drainage and highways. The site is located in an area of low flood risk. The submitted surface water drainage strategy proposes the utilisation of underground storage and attenuation as well as optimising infiltration and sustainable urban drainage where appropriate on the site. I am satisfied that the appeal scheme can be appropriately drained.
179. Regarding highway matters, the submitted Transport Assessment concludes that there are no capacity issues at nearby junctions on Chesterfield Road. Furthermore, the proposed site access can be created providing appropriate visibility splays. The development includes a link to the existing footway on Crich Lane to encourage pedestrian use. There are no objections from the Highway Authority. Accordingly, I am satisfied that the scheme is acceptable in terms of highway safety.
180. The Council accepts that it cannot demonstrate a five-year supply of housing land. Therefore, in applying Footnote No.7 of the Framework, policies in the development plan concerning the provision of housing should be treated as 'out-of-date', subject to Footnote No.6 concerning the application of policies in the Framework relating to areas of particular importance including land designated as Green Belt and Heritage Assets. As the policies in the Framework that protect the areas or assets of particular importance provide clear reasons for refusing the development, the tilted balance is disapplied.
181. In terms of the approach to decision making, the appeal case should be determined having regard to the development plan and on the basis of the heritage balance and the Green Belt balance.

### **Planning Obligation**

182. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) requires that if planning obligations contained in s.106 Agreements are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
183. A draft unsigned Unilateral Undertaking was provided before the hearing. A signed agreed version was provided after the event. This included the following:
- the provision, management and maintenance of on-site open space;
  - a contribution of £70,459 to towards the provision of additional consulting rooms at Riverside Surgery, Belper;
  - 30% affordable housing provision;
  - a travel monitoring contribution of £5000;

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- a contribution of £398,965.35 towards the cost of providing 35 additional primary school places at St Johns C of E Primary School, Belper;
  - a contribution of £632,859.42 towards the cost of providing 26 additional secondary school places and 10 post 16 spaces at Belper School and Sixth Form Centre.

184. Evidence of the necessity, relevance and proportionality of the obligations was provided by the relevant consultees and this is summarised in the CIL Compliance Schedule submitted by the Council at the hearing.

185. In conclusion, overall, I consider that the submissions and oral evidence demonstrate the basis for the obligations and how they relate to the development proposed, set out (or reference) how any financial contributions have been calculated and indicate whether the CIL regulation pooling limits have breached. It is evident how the funds would be spent. They provide evidence that the above obligations meet the tests set out in the Regulations.

### **Conditions**

186. The Council has put forward a schedule of planning conditions in the event that planning permission is granted. These were discussed at the hearing and some amendments were suggested. A revised list was provided after the event. I have considered the conditions in light of the Framework and national Planning Practice Guidance. I have amended the wording of the conditions where necessary in the interests of clarity and to better reflect the guidance.

187. Conditions 1 to 3 are the standard reserved matters conditions. I have imposed condition 4 to define the approved plans for the avoidance of doubt. Condition 5 would be necessary to require levels to be approved bearing in mind the topography of the site and to safeguard the character and appearance of the area.

188. In order to ensure that the site is properly drained conditions 6 and 12 are necessary. In the interest of safeguarding the living conditions of nearby residents and highway safety, condition 7 is necessary to require the submission of a construction environmental method statement in respect of the management of waste and noise pollution from the site. Condition 13 is required to ensure the submission of a construction method statement for matters such as the parking of site operatives' vehicles, the routing of construction traffic, and the removal of debris from the highway. I have removed the requirement regarding hours of operation from condition 13 as hours of construction are stated in condition 7.

189. It would be necessary for the protection of trees on the site during construction for an arboricultural impact assessment to be submitted for approval. Condition 8 is therefore required. In the interest of ensuring the investigation and recording of any archaeological interest on the site, conditions 9, 10 and 11 are required.

190. In order to ensure a satisfactory access to the site for all users, conditions 14 and 15 are required to ensure the submission of a scheme for the provision of footpath improvements on Crich Lane and the provision of appropriate sight lines at the proposed access to the site.

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## **Overall Planning balance**

191. The proposal forms inappropriate development in the Green Belt and would cause harm to openness. It would also conflict with one of the purposes of designating Green Belt, preventing encroachment into the countryside. The effect on openness and the effect of encroachment are further Green Belt harms in addition to the definitional harm of inappropriateness. National policy is clear. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
192. The harm to landscape character and visual amenity must also be added to this substantial Green Belt harm. In this case heritage harm is another harm for Green Belt purposes because the less than substantial harm is not outweighed by the public benefits of the scheme. Additionally the inadequate demonstration that the appeal scheme would not result in any significant ecological effects weighs against the scheme.
193. Against this cumulative harm, there are a number of other considerations which weigh in favour of the scheme put forward by the appellant as outlined above [172-175]. However overall, these other considerations do not clearly outweigh the totality of the harm to the Green Belt and other harm. Very special circumstances to justify inappropriate development do not therefore exist. Accordingly the development should not be approved.

## **Recommendation**

194. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal be dismissed.
195. Should the Secretary of State disagree with my conclusions and decide to allow the appeal I recommend that planning permission should be granted subject to the conditions set out in Annex A.

*Helen Hockenhull*

INSPECTOR



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## APPEARANCES

### FOR THE APPELLANT:

Michael Wood	ADDC Development Consultants
John Church	JC Planning Consultancy
Gary Holliday BA (Hons) MPhil CMLI	FPCR Environmental and Design Ltd
Geoffrey Gilbert	Hardwick Legal Solicitors

### FOR THE LOCAL PLANNING AUTHORITY:

Thomas Graham	Locum Planning Solicitor, Amber Valley Borough Council
Sarah Brooks BA(Hons) B.PI MRTPI	Planning Manager, Amber Valley BC
Alan Redmond BA(Hons) M.PI MRTPI	Planning Officer, Amber Valley BC
Paul Warren BSc Arch MA (Arch Building Conservation)	Heritage Consultant, Derbyshire County Council
Adam Lathbury BA (Hons) Landscape Architecture, Post Dip Landscape Architecture, MA Urban Design.	Head of Conservation, Heritage and Design, Derbyshire County Council
Adrian Farmer	Heritage Coordinator for the Derwent Valley Mills Partnership

### INTERESTED PERSONS:

John Porter	Neighbourhood Plan for Belper
Cllr Joseph Booth	Ward member
Colin Hopkins	Resident
Nick Milestone	Resident
Alan Hutchinson	Resident
Kenneth Barnsley	Resident
Tim Sutton	Belper Town Council

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## DOCUMENTS SUBMITTED AT THE HEARING

1. Unilateral Undertaking on behalf of the appellant.
2. Extract from the Amber Valley Green Belt Assessment November 2018 in regard to land Parcel 63 including extract from the Landscape Sensitivity Study October 2016 for the north Belper area.
3. List of appearances for the Council.
4. CIL Compliance Schedule prepared by the Council.
5. Costs application on behalf of the Council.
6. Appellant's response to costs application.
7. Site Visit Itinerary Plan.

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## **ANNEX A**

Schedule of conditions to be attached to a planning permission:

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. 02A - Location Plan, Drawing No. 501 Rev A – Site Access design.
- 5) Prior to works commencing, a scheme detailing the existing and proposed levels of the site including site sections and the finished floor levels of all buildings with reference to on and off-site datum point and their relationship to existing neighbouring buildings and land shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the agreed levels.
- 6) The development hereby permitted shall not commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 7) No development shall take place until a construction environmental method statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period and shall provide for:
  - a) no construction works, or deliveries to and from the site, outside the hours of 08:00-18:00 on weekdays, 08:00-13:00 on Saturdays and not at all on Sundays or public holidays;
  - b) measures to control the emission of dust and dirt during construction and from vehicles entering or leaving the site;
  - c) a scheme for recycling/disposing of waste resulting from construction works;
  - d) no burning of materials on-site;
  - e) measures for the control of works causing noise or vibration.
- 8) Any reserved matters application shall be accompanied by a comprehensive arboricultural impact assessment which is specific to the proposed layout. This should follow the format of BS5837:2012 'Trees in relation to design, demolition and construction - Recommendations' and include an Arboricultural Impact Assessment, tree protection plans and appropriate method statements (as per section 5 & 6 of BS5837:2012) if any works are

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- proposed within tree root protection areas. These should include clear details of:
- a) A survey of all trees which are likely to be impacted upon by the proposed development, with details and categorisation results provided in an appropriate schedule (as per BS5837:2012 sections 4.4 - 4.6);
  - b) Trees clearly identified as either retained or removed (including trees on land adjacent to the site with canopies or root protection areas which encroach onto the site);
  - c) Clear specifications for all proposed management work to retained trees;
  - d) A realistic assessment of the probable impacts between the trees and development (as per BS5837:2012 section 5.3.4);
  - e) Root protection areas and construction exclusion zones;
  - f) Exclusion zone protective barriers (giving precise locations and specification);
  - g) The position of all new underground services in relation to RPAs;
  - h) Detailed specification and installation method statement for any proposed new structure, hardstanding, underground service or works access into RPAs;
  - i) Method statements for all other construction operations which impact on trees;
  - j) Positions and specification (following BS8545:2014 'Trees: from nursery to independence in the landscape- Recommendations' as appropriate) for all new tree planting;
  - k) Reinstatement and ground preparation for new tree planting and areas of soft landscaping.
- 9) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
- a) the programme and methodology of site investigation and recording;
  - b) the programme for post investigation assessment;
  - c) provision to be made for analysis of the site investigation and recording;
  - d) provision to be made for publication and dissemination of the analysis and records of site investigation;
  - e) provision to be made for archive deposition of the analysis and records of the site investigation.
  - f) nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

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- 10). No development shall take place other than in accordance with the archaeological Written Scheme of Investigation.
  - 11) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 9 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
  - 12). No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems (March 2015), has been submitted to and approved in writing by the local planning authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the first occupation of any of the dwellings.
  - 13) No development shall take place including any works of demolition until a construction management plan or construction method statement has been submitted to and been approved in writing by the local planning authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for:
    - a) the parking of vehicles of site operatives and visitors;
    - b) routes for construction traffic, including abnormal loads/cranes etc;
    - c) hours of operation;
    - d) method of prevention of debris being carried onto the highway;
    - e) pedestrian and cyclist protection;
    - f) proposed temporary traffic restrictions;
    - g) arrangements for turning vehicles.
  - 14) No development shall take place until a detailed scheme of highway improvement works for the provision of a continuous linking footway to the site from the existing footpath on Crich Lane to the south of the site, together with a programme for the implementation and completion of the works has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the required highway improvement works have been constructed in accordance with the approved details.
  - 15) Before any other operations are commenced, a new vehicular and pedestrian junction shall be formed to Crich Lane and provided with visibility sightlines extending from a point 2.4m from the carriageway edge, measured along the centreline of the access, for a distance of 203m in each direction measured along the nearside carriageway in accordance with a scheme first submitted to and approved in writing by the local planning authority.



# Ministry of Housing, Communities & Local Government

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

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

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

### SECTION 2: ENFORCEMENT APPEALS

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

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

### SECTION 3: AWARDS OF COSTS

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

### SECTION 4: INSPECTION OF DOCUMENTS

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