



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/M1005/W/17/3198996

Bob Wollard  
Planning and Design Group (UK) Ltd  
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Lake View Drive  
Sherwood Park  
Nottingham  
NG15 0DT

29 July 2020

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY WHEELDON BROTHERS LTD  
WHITEHOUSE FARM, 153 BELPER LANE, HILLTOP, BELPER DE56 2UJ  
APPLICATION REF: AVA/2017/1128**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Geoff Underwood BA(Hons) PGDip (Urb Cons) MRTPI IHBC, who held a public local inquiry on 3 July 2018 into your clients' appeal against a failure by Amber Valley Borough Council ("the Council") to give notice within the prescribed period of a decision on an application for planning permission for a residential development of 65 dwellings including sustainable drainage and infrastructure, demolition of 153 Belper Lane and outbuildings, enhancement of existing public open space including new recreational facilities, landscape and ecological enhancements, in accordance with application ref: AVA/2017/1128, dated 6 October 2017.
2. On 3 July 2018, 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 allowed and planning permission granted. The Inspector also considered a separate application on broadly the same site (APP/M1005/W/18/3188009), and a separate decision letter covering the Secretary of State's decision on that appeal is attached for information.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and to grant planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government  
Jean Nowak, Decision Officer  
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London SW1P 4DF

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

5. On 16 November 2018, the Secretary of State wrote to the main parties giving them the opportunity to make representations on: the publication of revised guidance on how councils should assess their housing need; the publication of new household projections for England; the Secretary of State's decision on a recovered appeal at land at Bullsmoor, off Nottingham Road, Belper (ref: APP/M1005/V/18/3194115); and the government's consultation on updates to national planning policy and guidance including the standard method for assessing local housing need.
6. On 18 December 2018, the Secretary of State wrote further to the main parties giving them the opportunity to make representations on a letter from UNESCO to the Department for Digital, Culture, Media and Sport, together with an accompanying technical review from the International Council on Monuments and Sites.
7. On 20 February 2019, the Secretary of State wrote again to the main parties giving them the opportunity to make representations on the following documents, all published on 19 February 2019: the Written Ministerial Statement on housing and planning; the publication of the 2018 Housing Delivery Test measurement for local planning authorities and the accompanying technical note of the calculation process; the Government's response to the technical consultation on updates to national planning policy and guidance; and the revised National Planning Policy Framework.
8. On 28 May 2019, the Secretary of State wrote further 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.
9. 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, and responses were circulated to main parties on 15 October 2019.
10. The 2019 Housing Delivery Test results were published on 13 February 2020. AVBC's result changed from 145% (2018 measurement) to 160% (2019 measurement). As this would not represent a material change to any calculation of the Council's housing land supply, the Secretary of State is satisfied that it does not affect his decision, and does not warrant further investigation or a referral back to parties.
11. 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.
12. An application for full costs was made by Wheeldon Brothers Ltd against Amber Valley Borough Council (IR2). This application is the subject of a separate decision letter issued at the same time as this letter.

## **Policy and statutory considerations**

13. 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.

14. In this case the development plan consists of the saved policies of the Amber Valley Local Plan (AVLP) to 2011, adopted in 2006. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR19-21.
15. 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').
16. 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*

17. 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.
18. 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. Consequently, the Secretary of State no longer considers the SLP policies listed between IR23-26 as relevant to the determination of this appeal.
19. 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.
20. 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.
21. The Belper Neighbourhood Plan has been submitted to Amber Valley Borough 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**

#### *Most important policies, Housing Land Supply, and the presumption in favour of sustainable development.*

22. It was agreed at the Inquiry that, having regard to the Framework, the AVLP was not up-to-date (IR22), and that the provisions within the Framework should carry significant weight in the determination of this appeal (IR39).
23. For the reasons given at IR129-131, the Secretary of State agrees with the Inspector's assessment at IR128 that the policies which are most important for determining this appeal are saved AVBLP policies H5 and EN29.

24. The Secretary of State agrees with the Inspector's conclusion, for the reasons given at IR129, that saved Policy H5, which restricts housing development outside the built framework of settlements, does not accord with the Framework's policy related to rural housing, is therefore out-of-date, and can only be afforded limited weight.
25. The Secretary of State agrees with the Inspector's view at IR130 that saved Policy EN29 is not set out in terms that encompass the Framework's approach to significance, but that it is broadly consistent with the Framework's approach. He therefore considers that the policy is somewhat out-of-date and agrees with the Inspector that it should carry moderate weight.
26. For the reasons given at IR131 the Secretary of State agrees with the Inspector that saved Policy EN1 is not a policy which is most important for determining the appeal. He further agrees that it does not fully accord with the Framework, is out of date and carries limited weight.
27. When looked at in the round, the Secretary of State considers that the policies which are most important for the determination of this appeal are out-of-date, and the presumption in favour sustainable development as set out at Paragraph 11(d) of the Framework is therefore engaged.
28. At the time of the Inquiry it was agreed between parties that the Council could demonstrate a housing land supply of 3.42 years (IR38). However, the Secretary of State considers that the previous agreed facts on housing supply at IR38 are now out of date given the new information that has been submitted by parties since the end of the Inquiry.
29. 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 9 of this Decision Letter, the Secretary of State requested views on this document from parties in September and October 2019. In response to this correspondence, the appellant disputed the inclusion of eight sites and set out their view that the Council could only demonstrate 3.21 years supply.
30. The Council's updated housing land supply document set out a requirement of 486 dwellings per annum (dpa). Representations from the appellant 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.
31. After carefully considering the representations from both the Council and the appellant, 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 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.

32. The Secretary of State recognises that this is a wide range. However, given his findings on the most important policies as set out above, the Secretary of State considers that, whether he were to consider the case based on the top or bottom end of the housing land supply margin, it would not affect his conclusion on whether the presumption in favour of sustainable development is engaged, or his overall conclusions in the determination of this appeal.

*Impact on the Derwent Valley Mills World Heritage Site (WHS) and other heritage assets*

33. The Secretary of State has carefully considered the Inspector's detailed analysis of the significance of, and the potential effect on, the WHS and other heritage assets at IR135-162. He has taken note of the contribution the site makes to the setting of the WHS (IR135), as well as the history of later development within the buffer zone (IR136), and the significance of the three Strutt Farms listed buildings (IR137) and the Belper and Milford Conservation Area (CA).
34. The proposal would form an extension of the existing built-up area, being enclosed by it on two sides, and would be set well back in relation to the existing adjacent development extending north (IR139). For these reasons, the Secretary of State agrees with the Inspector at IR139 that the existing built context physically and effectively visually separates the site and proposal from the boundary of the WHS. He has gone on to carefully consider the Inspector's analysis of the proposal's effects on the significance of the WHS as set out at IR140-145.
35. He agrees that the proposal would not be intrusive within the existing context at close quarters (IR140), and that the setback from the western site boundary would avoid an intrusive effect from the west (IR145). He also agrees the change in how the setting of the WHS would be experienced from the footpath to the north of the site would mean its setting would not be preserved in this respect, although the scale of change would mean that the level of harm would be extremely slight (IR141). He agrees that from close up the new houses would mean that from certain parts of Belper Lane limited views of the upper parts of the valley opposite would be interrupted, that this would slightly erode part of the countryside setting of the WHS and consequently not preserve that aspect of its setting, but that these effects would be limited and particularly localised (IR143).
36. For the reasons set out IR144, the Secretary of State agrees that in views over a longer distance, including those from the other side of Belper looking over the Derwent Valley, the proposed development would be perceived as a limited extension to the existing extensive development of Mount Pleasant, and that the adjacent fields to the north of the site and the sloping landscape of fields and woods beyond to the west and north west would prevent this enlarged built up area extending to the horizon when viewed from the Chesterfield Road monitoring position and other vantage points or similar elevation.

37. For these reasons, the Secretary of State agrees with the Inspector at IR146 that the overall visual impact of the development would not be of a nature which would markedly erode the rural setting of the heritage asset. However, he also agrees at IR147 that while the effect on landscape itself would be limited, this cannot be divorced from the role the open countryside landscape plays in providing the setting of the WHS as part of the Buffer Zone. He agrees at IR148 that the landscape of which the site forms part is a valued landscape in the terms of the Framework paragraph 170(a). He has gone on to consider the Inspector's assessment of other heritage matters before reaching a conclusion.
38. The Secretary of State has carefully considered the Inspector's assessment at IR149-157 of the significance of Whitehouse Farm as a non-designated asset, and of its setting. He agrees with the Inspector at IR155-6 that Whitehouse Farm has little significance in its own right, but does make a limited contribution to the historic and cultural setting of the WHS, and that its loss would result in some limited harm to the significance the WHS derives from its setting in the Buffer Zone. For these reasons, he agrees that the loss of Whitehouse Farm and land with which it is likely to have been historically associated would result in very limited harm to the significance of the WHS (IR157).
39. The Secretary of State agrees with the Inspector's analysis at IR158 that there is relatively little visibility between the appeal site and the CA, the distance between the CA and the site is such that any effects on the setting of the CA would be minimal, so that the significance that the CA derives from its setting would be preserved.
40. For the reasons given at IR159 the Secretary of State agrees with the Inspector that the significance the three Strutt Farms listed buildings derive from their wider countryside setting would be preserved.
41. The Secretary of State notes that, while Historic England did not formally object to this appeal, their view is that development would be harmful, albeit this would be less than substantial (IR170). This was a view shared by ICOMOS, whose technical review (see paragraph 6) raised a number of concerns over the impact of the scheme on the WHS. The Secretary of State has noted these concerns, but he is content that the Inspector has considered the issues raised in sufficient detail to allow him to make a decision on this appeal.
42. The proposal would affect the setting of the WHS by virtue of its Buffer Zone location, and the Secretary of State notes that it is not a matter of dispute between parties that, should there be any harm, it would be less than substantial harm in the Framework's terms (IR126; IR161). For the reasons set out in this section, he agrees with the Inspector at IR161-162 that the harm would be extremely limited, which in terms of the Framework would be considered less than substantial. Therefore, 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*

43. The proposal would deliver economic and social benefits by providing 65 new homes (IR163), with 30% affordable housing. While the Secretary of State's calculations show that the Council may be able to demonstrate a five-year supply of housing, he has taken into account that boosting the supply of housing is a key Government objective. He has further taken into account the appellant's willingness to commence the development

within a shorter time period than the standard. For these reasons, the Secretary of State gives significant weight to the supply of housing in favour of the proposal.

44. The Secretary of State notes that the obligations delivered via the Planning Agreement (IR165-166) have the purpose of mitigating the effects of the development. However, the nature of some of these projects means they would, to varying extents, provide wider public benefits. The open space within the proposal would be accessible to the public, as would the footpaths linking into the wider network. There would also be contributions to off-site recreation and open-space facilities that would also be enjoyed by existing residents. There are also contributions to education and healthcare which, whilst being in scale with the proposal would also be available to others. The Secretary of State agrees with the Inspector at IR167 that these benefits carry moderate weight in favour of the proposal.
45. For the reasons given at IR168, the Secretary of State agrees with the Inspector that whilst the further investigation of Whitehouse Farm may be desirable, any benefits to understanding which may arise cannot be considered a public benefit of the scheme.

#### *Heritage balance*

46. 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.
47. For the reasons given at IR171-172, the Secretary of State agrees with the Inspector that the total loss of Whitehouse Farm, as a non-designated heritage asset with very limited significance, would be outweighed by the public benefits of the proposal.
48. For the reasons given at IR172-173, the Secretary of State agrees with the Inspector that, even attaching great weight to the WHS' conservation, and noting that this weight is greater given the asset's international importance, that the extent of harm to the WHS is extremely limited and would be outweighed by the considerable public benefits of the scheme.
49. For the reasons given at IR174, the Secretary of State also agrees with the Inspector that the provision in the Framework concerning securing the optimal viable use for the asset does not apply to the appeal site.

#### *Other matters*

50. For the reasons given at IR175-176, the Secretary of State agrees with the Inspector's conclusion at IR184 that there would be limited harm by way of loss of an area of land at least part of which is likely to be best and most versatile (BMV) agricultural land. The Secretary of State considers that this loss carries limited weight against the proposal.
51. For the reasons given at IR177-183, the Secretary of State considers that matters relating to design, highway safety, accessibility, flooding and ecology should not weigh against the proposal.

## **Planning conditions**

52. The Secretary of State has given consideration to the Inspector's analysis at IR187-195, 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 and that the conditions set out at Annex B should form part of his decision.

## **Planning obligations**

53. Having had regard to the Inspector's analysis at IR121-123 and IR165, 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.

## **Planning balance and overall conclusion**

54. For the reasons given above, the Secretary of State considers that there is conflict between the appeal scheme and saved policies of the AVLP (IR186). He therefore considers that the appeal scheme as a whole is not in accordance with the development plan. 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.

55. As the policies which are most important for determining this appeal are out-of-date, 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.

56. The proposal would provide 65 homes, with 30% affordable, and this carries significant weight in favour of the proposal. Together, the open space, footway improvements, and the health and education contributions carry moderate weight in favour of the proposal.

57. The proposal would result in the loss of loss of BMV agricultural land, which carries limited weight against the proposal.

58. 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 WHS is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm, especially in light of the international importance of the asset.

59. The Secretary of State agrees with the Inspector at IR173 that the benefits of the appeal scheme are collectively sufficient to outweigh the identified 'less than substantial' harm to the significance of the Derwent Valley Mills WHS. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

60. In the light of this conclusion the Secretary of State considers that there are no protective policies which provide a clear reason for refusing the development proposed. He further

considers that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.

61. Overall, the Secretary of State considers that the material considerations in this case indicate a decision which is not in line with the development plan. He therefore concludes that the appeal should be allowed, and planning permission should be granted.

### **Formal decision**

62. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission, subject to the conditions set out in Annex B of this decision letter, for the development of 65 dwellings including sustainable drainage and infrastructure, demolition of 153 Belper Lane and outbuildings, enhancement of existing public open space including new recreational facilities, landscape and ecological enhancements, in accordance with application ref: AVA/2017/1128, dated 6 October 2017.

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

63. 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.

64. 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 – List of representations**

**Annex B – List of conditions**

## ANNEX A – SCHEDULE OF REPRESENTATIONS

### General representations

Party	Date
UNESCO on behalf of ICOMOS	12/12/2018

### Representations received in response to the Secretary of State's letter of 16 November 2018

Party	Date
Belper Lane Action Group	29/11/2018
Belper Town Council	03/12/2018
Bob Wollard (Agent for the applicant)	03/12/2018
DVMWHS Partnership	03/12/2018
Amber Valley BC	05/12/2018
Belper Lane Action Group	11/12/2018
DVMWHS Partnership	11/12/2018
Bob Wollard (Agent for the applicant)	12/12/2018
Historic England	12/12/2018

### Representations received in response to the Secretary of State's letter of 19 December 2018

Party	Date
DVMWHS Partnership	20/12/2018
Belper Lane Action Group	04/01/2019
Bob Wollard (Agent for the applicant)	07/01/2019
DVMWHS Partnership	16/01/2019
Bob Wollard (Agent for the applicant)	17/01/2019

### Representations received in response to the Secretary of State's letter of 20 February 2019

Party	Date
DVMWHS Partnership	04/03/2019
Belper Lane Action Group	05/03/2019
Bob Wollard (Agent for the applicant)	06/03/2019
Belper Town Council	06/03/2019
DVMWHS Partnership	13/03/2019
Belper Lane Action Group	13/03/2019
Bob Wollard (Agent for the applicant)	23/05/2019
Belper Lane Action Group	27/05/2019

### Representations received in response to the Secretary of State's letter of 28 May 2019

Party	Date
Historic England	07/06/2019
Belper Lane Action Group	09/06/2019
DVMWHS Partnership	10/06/2019
Amber Valley BC	11/06/2019
Bob Wollard (Agent for the applicant)	11/06/2019
Belper Town Council	11/06/2019
Amber Valley BC	21/07/2019

Belper Lane Action Group	22/07/2019
Bob Wollard (Agent for the applicant)	23/07/2019

**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 applicant)	03/10/2019

## ANNEX B – LIST OF CONDITIONS

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the details and specifications shown on the following drawings (unless as otherwise provided by conditions in this decision): Proposed Planning Layout (drawing number 7438-L-107 Revision C); Strategic Landscape Plan Site Wide (drawing number 7438-L-101 Revision B); Alderwood House Type (drawing number ALD/LH(OP)PL/01); Alton House Type (drawing number ALT/PL/01); Ashford 2 House Type (drawing number ASH2(AS)/PL/01); Ashton 2 House Type (drawing number ASN2/(AS)PL/01); Attwater House Type (drawing number ATT(AS)PL/01); Belmore House Type (drawing number BLM(AS)/PL/01); Highgate House Type (drawing number HGT(AS)/PL/01); Hucklow House Type (drawing number HUC(AS)PL/01); Kingston House Type (drawing number KGN(AS)PL/01); Middleton House Type (drawing number MID(AS)PL/01); Milton House Type (drawing number MIL/(AS)PL/01); Penrose 2 House Type (drawing number PRO/(AS)PL/01); Richmond 2 House Type (drawing number RIC\_2(AS)PL/01); Romsey House Type (drawing number RMS/PL/01); Single Garages (drawing number WSD/123 Revision D); Double Garages (drawing number WSD/124 Revision D), and; Substation (drawing number EKV0015).
- 3) Prior to any works commencing a detailed phasing scheme shall be submitted to and approved in writing by the local planning authority, and the development shall be implemented fully in accordance with the approved scheme.
- 4) Prior to development 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 points and their relationship to existing neighbouring buildings and land shall be submitted to and approved by the local planning authority, and the development shall be constructed in accordance with the approved levels.
- 5) The development hereby approved shall be constructed in accordance with the submitted strategic soft landscape proposals as detailed on drawing number 7438-L-101 Revision B.

The strategic planting shown on drawing number 7438-L-101 Revision B shall be implemented as 'advance planting' (prior to the construction of each relevant phase of the development to be submitted under condition 3) and these landscape features shall be of the appropriate level of maturity, as detailed on the approved drawing.

Any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

- 6) Prior to occupation of the first dwelling a scheme of hard and soft landscaping throughout the site (other than that hereby approved on drawing number 7438-L-101 Revision B) including a phasing scheme shall be submitted to and approved in writing by the local planning authority.

The hard landscaping scheme shall provide details of all hard landscaped areas, footpaths, dry stone walls, interpretation boards, street furniture and lighting. The approved hard landscaping scheme shall be implemented in full in accordance with the approved phasing scheme.

The soft landscaping scheme shall provide details of plant and tree species, plant and tree size, method of planting and aftercare maintenance. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the buildings indicated in the phasing scheme or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

- 7) Prior to any of the works on the elevations and roof of the buildings or any other structures (including boundary treatment and hard surfacing) hereby permitted are commenced, details and sample panels of all the materials and finishes (including details of the method and colour of pointing) to be used in the construction of the development shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 8) The development shall not be occupied until full details of the proposed treatment of the boundaries of the site including a phasing scheme have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full in accordance with the approved phasing scheme prior to the occupation of the part of the development to which it relates.
- 9) Prior to their installation details of all windows and doors to be used in the development (including recess depths, materials and finishes) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the occupation of the building in which they are to be installed.
- 10) Prior to their installation details of roof eaves and verge finishes to be used in the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the occupation of the building to which they are to be installed.
- 11) Notwithstanding the approved house type drawings, revised details that remove corner quoins, keystones to flat-arch window heads, canopies and porches shall be submitted to and approved in writing by the local planning authority prior to commencement of construction of the approved dwellings. The dwellings shall then be constructed in accordance with the approved details.
- 12) Prior to their installation full details of the proposed rainwater goods for the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the occupation of the building to which they are to be installed.

- 13) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved in writing by the local planning authority, and until any pre-start element of the approved scheme has been completed and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
  1. The programme and methodology of site investigation and recording;
  2. The programme and provision for post investigation assessment;
  3. Provision to be made for analysis of the site investigation and recording;
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  5. Provision to be made for archive deposition of the analysis and records of the site investigation, and;
  6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 14) No development, including demolition, shall take place until a Written Scheme of Investigation for historic building recording of Whitehouse Farm (153 Belper Lane) and associated buildings has been submitted to and approved in writing by the local planning authority, and until all on-site elements of the approved scheme have been completed and approved in writing by the local planning authority. The Written Scheme of Investigation shall include an assessment of significance and research questions, and:
  1. The programme and methodology of site investigation and recording;
  2. The programme and provision for post-investigation analysis and reporting;
  3. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  4. Provision to be made for archive deposition of the analysis and records of the site investigation, and;
  5. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 15) The development shall only take place in accordance with the archaeological and historic building Written Scheme of Investigation approved under Conditions 13 and 14.
- 16) No dwelling shall be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological and historic building Written Scheme of Investigation approved under Conditions 13 and 14 and the provision to be made for i) analysis, publication and dissemination of results, and ii) archive deposition, has been secured.
- 17) The development hereby permitted shall not commence until drainage plans for the disposal of foul sewage have been submitted to and approved by the local planning authority. The approved drainage system shall be implemented in accordance with the approved details prior to the first occupation of the development.
- 18) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site 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 the development.

- 19) No works shall commence on site until a scheme for the disposal of highway surface water with reference to the phasing scheme approved under Condition 3) has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details prior to occupation of the dwellings in each phase and retained accordingly thereafter.
- 20) No development (excluding demolition and archaeological works) shall take place until details of the design, implementation, adoption, maintenance and management of the sustainable drainage system shall have been submitted to and approved in writing by the local planning authority. Those details shall be in accordance with the principles outlined within :
  - a) Whitehouse Farm, Belper Lane, Flood Risk Assessment compiled by Armstrong Stokes and Clayton limited (October 2017), and;
  - d) DEFRA's non-statutory technical standards for sustainable drainage systems (March 2015 or any subsequent version).

Those details shall include: a timetable for its implementation; and, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented prior to the phase of development as approved under condition 3) to which it relates being first occupied and thereafter managed and maintained in accordance with the approved details.

- 21) Notwithstanding the approved plans the rear garden access routes running along the side and rear of garden boundaries shall be gated from the front elevation in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to occupation to the dwelling it relates to.
- 22) No dwelling shall be occupied until a lighting scheme, including phasing in relation to the scheme approved under condition 3), has been submitted to and approved in writing by the local planning authority. The scheme shall include measures to ensure that there is an adequate level of illumination, that the scheme is of a high quality given the site's sensitive location and is a 'bat friendly' scheme. All lighting shall be fully implemented in accordance with the approved scheme before first occupation of the phase of development to which it relates.
- 23) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken, and where remediation is necessary, a remediation scheme shall be submitted to and approved in writing by the local planning authority. Following completion of the measures identified in the approved remediation scheme, a verification report must be submitted to and approved in writing by the local planning authority prior to first occupation of the development or the further occupation of any part of the development if contamination is found on part of the site following occupation of other parts.

- 24) If any part of the site is to be raised or filled using materials brought from outside the application site, the developer shall provide documentary evidence that all such materials are free from levels of contamination that would be in excess of current appropriate standards prior to those materials being brought in. In the event that no such evidence is available, the materials shall be subjected to adequate chemical or other testing to demonstrate that the materials are suitable for their intended final use. In either case, all documentary evidence and/or sampling methodology and testing results shall be submitted to and approved in writing by the local planning authority prior to any material being brought onto site. No such materials shall be imported without prior approval.
- 25) No development shall take place until a demolition and construction environmental method statement (the 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 demolition or 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, and;
  - e) measures for the control of works causing noise or vibration.
- 26) No development shall take place including any works of demolition until a traffic and transport construction method statement (the Statement) has been submitted to and been approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period.
- The statement shall provide for:
- a) Parking of vehicles of site operatives and visitors;
  - b) Storage of plant and materials;
  - c) On-site turning space for delivery vehicles;
  - d) Routes for construction traffic;
  - e) Hours of operation;
  - f) Method of prevention of mud and debris being carried onto highway;
  - g) Pedestrian and cyclist protection;
  - h) Proposed temporary traffic management/restrictions, and;
  - i) Arrangements for turning vehicles.
- 27) The development shall be undertaken in accordance with the recommendations of the submitted Arboricultural Assessment (FPCR-September 2017).
- 28) Prior to the commencement of development all existing trees shown on the approved plans to be retained shall be fenced off to the limit of their branch spread in accordance with paragraph 5.5 of British Standard BS 5837 (or in an equivalent British Standard if replaced) and the submitted Arboricultural

Assessment. No works including: i. removal of earth; ii. Storage of materials; iii. vehicular movements, or; iv. siting of temporary buildings or structures, shall be carried out within these protected areas. These tree protection measures shall remain in place until the development is completed.

- 29) No development shall take place until a method statement for the protection of reptiles, setting out avoidance measures and working practices to ensure that these species are not affected, has been submitted to and approved in writing by the local planning authority. The approved method statement shall then be implemented in full and adhered to during all development activity.
- 30) A landscape and ecological enhancement and management plan (the Plan) shall be submitted to, and be approved in writing by the local planning authority prior to the commencement of the development. The Plan shall set out details of biodiversity enhancement within land associated with the green space, land associated with the SUDS and the 'green corridors' to be established along the western and northern edge of the development as shown on Strategic landscape Plan Site Wide 7438-L-101 Rev B 18 October 2017).

The Plan shall include:

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- g) Details of the body or organization responsible for implementation of the Plan, and;
- h) Ongoing monitoring and remedial measures.

The Plan shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The Plan shall also set out (where the results from monitoring show that conservation aims and objectives of the plan are not being met) how contingencies and/or remedial action will be identified, approved and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme in the Plan.

The approved Plan will be implemented in accordance with the approved details.

- 31) Prior to the commencement of development a detailed badger survey for any recently excavated badger setts on the site shall be undertaken and the results and any appropriate mitigation/licensing requirements shall be submitted to and approved in writing by in the local planning authority. Such approved measures shall be implemented in accordance with the approved details.

No works which includes the creation of trenches or culverts or the presence of pipes shall commence until measures have been implemented to protect badgers from being trapped in open excavations and/or pipe and culverts in

accordance with details which have first been submitted to and approved in writing by the local planning authority.

- 32) Prior to any development or preparatory works commencing (excluding demolition), a new estate street junction shall be formed to Belper Lane in accordance with figure 3.1 of the Transport Assessment (October 2017), laid out, constructed to base level and provided with 2.4m x 59m visibility splay to the north and 2.4m x 73m visibility splay to the south.
- 33) No development shall take place until construction details of the residential estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) have been submitted to and approved in writing by the local planning authority. The residential estate roads and footways shall subsequently be implemented in accordance with the approved details and the phasing set out in Condition 35.
- 34) Notwithstanding the approved drawings, no development shall commence until a revised internal road layout has been submitted to and approved in writing by the local planning authority which addresses the following matters (as raised in the Highway Authority's consultation response letter dated 11 November 2017). The revised internal road layout shall incorporate the following:

a) Ensure that refuse collection areas are sited within 15m of the adopted highway and within 30m of the serviced dwelling, and;

b) The footway link fronting plots 11 to 13 will not be adoptable and shall be finished in a surface that contrasts with the adopted footways.

Thereafter the development shall be implemented in accordance with the approved revised internal road layout and the phasing set out in Condition 35.

- 35) The carriageways and footways of the proposed estate roads shall be constructed in accordance with Conditions 33 and 34 up to and including at least road base level, prior to the commencement of the erection of any dwelling intended to take access from that road. The carriageways and footways shall be constructed up to and including base course surfacing to ensure that each dwelling prior to occupation and have a properly consolidated and surfaced carriageway and footway, between the dwelling and the existing highway. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling.
- 36) All junctions within the development shall be provided with 2.4m x 43m visibility splays the area in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.
- 37) No dwelling shall be occupied until the estate street serving it has been provided with suitable turning arrangements to enable service and delivery vehicles to turn, the details of which shall have been submitted to and approved in writing beforehand by the local planning authority. In the case where interim turning arrangements are constructed these must remain available until any permanent estate street turning is available, in accordance with the approved estate street designs.

- 38) No dwelling shall be occupied until space has been provided within the site curtilage of that dwelling for parking (including cycle parking), located, designed, laid out and constructed in accordance with details which have first been submitted to and approved in writing by the local planning authority. Thereafter they shall be maintained throughout the life of the development available for their designated use.
- 39) No private and shared driveways, and parking spaces within the site shall be brought into use until: a) visibility splays of 2.4m x 25m, or other such dimensions as may be approved by the local planning authority, have been provided; the area within the splays shall be maintained throughout the life of the development free from any obstruction exceeding 1 metre in height, and no shrubs, trees or other vegetation shall be allowed to grow above 0.6m in height, within the splay, relative to the adjacent carriageway channel level, and; b) 2m x 2m x 45 degree pedestrian intervisibility splays on either side of the access at the back of the footway have been provided, the splay area being maintained throughout the life of the development clear of any object, and no shrubs, trees or other vegetation shall be allowed to grow above, greater than 0.6m in height relative to footway level.
- 40) No dwelling shall be occupied until facilities for the storage of bins and collection of waste from that dwelling have been implemented in accordance with details which have first been submitted to and approved in writing by the local planning authority. The facilities shall be retained for the designated purposes at all times thereafter.
- 41) No gates, including any part of their opening arc, shall open out over public highway limits. Any gates should therefore be set back an appropriate distance from the carriageway edge or be physically prevented from opening over the adjoining highway.
- 42) Vehicle accesses shall be no steeper than 1 in 12 for the first 5 metres from the nearside highway boundary.



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

**by G Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC**

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

**Date 12 September 2018**

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**AMBER VALLEY BOROUGH COUNCIL**  
**WHITEHOUSE FARM, 153 BELPER LANE, BELPER**  
**APPEAL BY**  
**WHEELDON BROTHERS LTD**

Hearing Held on 3 July 2018, Site Visit held on 4 July 2018

Whitehouse Farm, 153 Belper Lane, Hilltop, Belper DE56 2UJ

File Ref: APP/M1005/W/18/3198996

**File Ref: APP/M1005/W/18/3198996**

**Whitehouse Farm, 153 Belper Lane, Hilltop, Belper DE56 2UJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Wheeldon Brothers Ltd against Amber Valley Borough Council.
- The application Ref AVA/2017/1128 is dated 6 October 2017.
- The development proposed is a residential development of 65 dwellings including sustainable drainage and infrastructure, demolition of 153 Belper Lane and outbuildings, enhancement of existing public open space including new recreational facilities, landscape and ecological enhancements.

**Summary of Recommendation: That the appeal be allowed and planning permission be granted.**

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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 July 2018. The reason given for this direction is that “the appeals involve 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 Wheeldon Brothers Ltd against Amber Valley Borough Council. 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. The written case summaries<sup>1,2</sup> of the main parties were provided after the hearing and are also listed.
4. The Secretary of State issued a direction on 26 June 2018 that the development is not Environmental Impact Assessment development.
5. Since the Hearing closed the National Planning Policy Framework (the Framework) has been revised and this Report has been prepared in light of the revised Framework with all references relating to paragraph numbering in that document unless otherwise stated. The Council, the appellants and those interested parties who appeared at the Hearing have had the opportunity to make comments on the implications of the revised Framework in respect of their cases and these have been taken into account in the Report. As part of their response, the Council also provided an update on the current position of the examination into their emerging plan. Given the factual nature of this update no parties’ interests will have been prejudiced by taking this into account.

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<sup>1</sup> Appeal Summary & Addition Comment on Third Party Representations, Amber Valley Borough Council, 11 July 2018.

<sup>2</sup> Appeal Summary Statement, Planning & Design Group, July 2018.

6. At the Hearing another appeal (Ref: APP/M1005/W/17/3188009) relating to a larger site which includes the appeal site was also considered. That appeal is the subject of a separate Report.

### **The Site and Surroundings**

7. The site extends to 4.85Ha and consists of two fields bounded by a mixture of fences, hedges and stone walls. The site includes Whitehouse Farm, also known as 153 Belper Lane, and its outbuildings. The site also encompasses an existing recreation area situated behind Oakhurst Close. At the time of the site visit the fields were given over to hay and pasture although in the corner of one field towards the centre of the north boundary of the site is a surfaced horse riding arena with flood lights.
8. The site slopes downwards slightly from the north-west to south-east. The site is bounded by open countryside on two sides with residential development running along Belper Lane to the east. Houses on Whitehouse Rise bound the site to the south with houses at Oakhurst Close adjoining the recreation ground on its south-eastern boundary. Buildings along Belper Lane extend to the north of the site on both sides of the road. Immediately to the south of the site is the Mount Pleasant area of Belper, which largely comprises residential estates of detached and semi-detached inter-war and post-war housing. Residential development continues to the south as part of Belper. Photographs in, and Figures 2 Rev A and 4 Rev A of, the appellants' Landscape and Visual Appraisal<sup>3</sup> (LVA) provide a useful illustration of the site's wider surroundings. A public footpath runs east to west across fields which lie to the north of the site and is shown on the Location Plan<sup>4</sup>.

### **Description of Heritage Assets**

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

9. The site lies within the designated Buffer Zone of the Derwent Valley Mills World Heritage Site (DVMWHS). This Buffer Zone covers an extensive area surrounding the entire length of the DVMWHS; the plan on page 10 of the DVMWHS Management Plan<sup>5</sup> (MP) illustrates its extent. The Buffer Zone contains land to the north and east of the site including the existing development at Mount Pleasant which is also largely within the Buffer Zone. The boundary of the DVMWHS itself runs to the rear of buildings lining Belper Lane on the other side of the road from the site. Figure 1 of the appellants' Historic Environment Assessment<sup>6</sup> (HEA) shows the respective boundaries in the vicinity of the site and Belper.

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<sup>3</sup> Whitehouse Farm, Belper Lane, Belper – Landscape and Visual Appraisal, FPCR, 4 October 2017.

<sup>4</sup> Drawing BEL/PL/10, 2 October 2017.

<sup>5</sup> The Derwent Valley – The Valley that changed the World - Derwent Valley Mills World Heritage Site Management Plan, 2014-2019.

<sup>6</sup> Whitehouse Farm, Belper Lane, Belper – Historic Environment Assessment, Ref: 114250.02, Wessex Archaeology, October 2017.

10. The UNESCO Operational Guidelines<sup>7</sup> (the Operational Guidelines) 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.”
11. The DVMWHS covers an expansive area along the river valley, stretching 15 miles from Matlock Bath to Derby with Belper as one of the four principal industrial settlements of the C18 and early C19<sup>8</sup>. The Statement of Outstanding Universal Value<sup>9</sup> (SOUV) points out that the cultural landscape of the Derwent Valley was where the modern factory system was developed and established and that those factories were the first of what was to subsequently become a model throughout the world. It goes on to highlight the exceptional industrial landscape which resulted from industrial establishments and settlements being inserted into a rural landscape, the main attributes of which were arrested in time when a change from water to steam power in the C19 moved the focus of the textile industry elsewhere.
12. The MP identifies other physical attributes which embody the values for which the property is inscribed as a World Heritage Site (WHS). The SOUV states that all the key attributes of the cultural landscape are within the boundaries of the DVMWHS. The MP states that these attributes include “a ‘relict’ industrial landscape, where late C18 and early C19 industrial development may still be seen in an C18/19 agricultural landscape containing evidence of other early industrial activity such as hosiery, iron founding, nail making, quarrying, lead mining and smelting”.
13. In 1770’s Belper, Jedediah Strutt and family pioneered water powered cotton mills and built housing and facilities for workers. This innovation extended to farming to provide for the new industrial communities and the Strutt family owned and developed a number of innovative model farms including those at Dalley, Wyver and Crossroads Farms which are situated within the DVMWHS<sup>10</sup>. A member of the Strutt family subsequently acquired Whitehouse Farm, a matter which the report will return to later.

#### *Other designated heritage assets*

14. The site lies approximately 250m farther up the incline of Belper Lane from the nearest extent of the Belper and Milford Conservation Area (CA) where stone cottages adjoin the east side of Belper Lane. The CA is extensive and includes the historic core of Belper along with key attributes of the DVMWHS including industrial, commercial and residential buildings focused on the factory system located adjacent to the river and the subsequent expansion of the town up the sides of the valley.

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<sup>7</sup> Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, 2017.

<sup>8</sup> Plan on page 10, MP.

<sup>9</sup> Derwent Valley Mills World Heritage Site Statement of Outstanding Universal Value, 2010.

<sup>10</sup> MP.

15. Of note in the wider vicinity of the site, within the boundary of the DVMWHS, are the aforementioned 'Strutt farms'. Each comprise ranges of grade II, and in some cases grade II\*, listed buildings<sup>11</sup>. They are situated in the valleys on either side of Mount Pleasant area. Dalley Farm is located approximately 800m to the south west of the site and Crossroads Farm to the south of that, Wyver Farm is located approximately 800m north of the appeal site. Their technical innovations and building design influenced by the Strutt's factory design, including ventilation and fire proofing as well as internal arrangements for handling produce, and their planned, model farm characteristics, are notable features.

#### *Non-designated heritage asset*

16. Whitehouse Farm is considered a non-designated heritage asset due to its historic associations by the main and interested parties<sup>12</sup>, although the appellants subsequently consider that it only has the potential for such a classification<sup>13</sup>. It presents a gable to Belper Lane and runs along a perpendicular orientation into the site linking into elongated stables/outbuildings. It is predominately rendered with applied 'half timbering' to the first floor with stone corners and a concrete tiled roof. It has an irregular fenestration pattern. Photographs in the HEA illustrate the buildings.

17. The HEA notes that an unknown member of the Strutt family acquired land likely to have been part of the farm in 1865 with no evidence for an earlier association. It appears likely that at least parts of the appeal site formed part of the land. It passed through the Strutt family until it was sold in 1923. An 1844 tithe map shows a rectangular structure on the site which corresponds to part of that of the present building although the HEA suggests that those buildings might have been demolished with late C20 buildings utilising part of its lowest courses as a convenient foundation for a re-built building. An outbuilding may have late C19 origins.

### **Planning Policy**

#### *Adopted Local Plan*

18. The Development Plan is the adopted Amber Valley Borough Local Plan, 2006 (AVBLP).

19. Saved AVBLP Policy H5 states that outside the built framework of settlements, planning permission will not be granted for housing development with the exception of extensions to existing dwellings, replacement of existing dwellings, or new development necessary for the operation of a rural based activity and where a countryside location is essential, subject to a number of caveats. Saved AVBLP Policy EN1 only permits development in the countryside where it is essential for agriculture, necessary for the countryside or improves services and facilities in remote settlements.

20. Saved AVBLP Policy EN29 states that within the DVMWHS all development is required to preserve or enhance its character and appearance, all development

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<sup>11</sup> HEA.

<sup>12</sup> Council's Appeal Statement, 27 April 2018.

<sup>13</sup> Appellants' further Framework comments, 22 August 2018.

within the DVMWHS Buffer Zone is required to preserve or enhance the setting of the World Heritage Site, including views into and out of the site, and that the Council will have regard to the aims and objectives of the MP in considering proposals.

21. Other saved AVBLP Policies are set out in the Council's Officer Report<sup>14</sup> and Statement of Common Ground.
22. The main parties consider that, having regard to the Framework, the AVBLP is not up to date<sup>15</sup>.

#### *Emerging Local Plan*

23. The Submission Local Plan<sup>16</sup> (SLP) has been submitted to the Secretary of State and hearing sessions as part of an Examination in Public into the Plan took place during June and July 2018. However this has been paused by the examining Inspector to enable the Council to undertake further work<sup>17</sup>. This includes a comprehensive Green Belt review and a revised housing trajectory with an updated five year housing supply calculation to include any additional housing sites allocated as a result of the Green Belt review and an assessment of anticipated affordable housing likely on each site. The examination is anticipated to resume in 2019. The main parties agree<sup>18</sup> that the SLP is at a fairly advanced stage of preparation and that the identification of the site as a proposed housing growth site is a material consideration. They agree that limited weight should be given to emerging policies in the new Local Plan.
24. SLP Policy HGS5 identifies much of the appeal site, comprising the two fields but not the recreation area, as a Housing Growth Site with an estimated potential for 65 dwellings. It requires proposals to have an appropriate design and masterplan, informed by a visual sensitivity study that protects the OUV of the DVMWHS and significance of other heritage assets as well as taking landscape character into account.
25. The supporting text to SLP Policy HGS5 acknowledges that the development of the allocated site would have an adverse impact on the significance of DVMWHS, that it is partly within an area of high landscape sensitivity and may include best and most versatile agricultural land. However, it goes on to state that the allocated site is readily accessible to local services, facilities and employment opportunities and is well-related to the existing pattern of built development within Belper. It continues that environmental impacts of development can be mitigated through an appropriate design and masterplan which establishes areas to be retained and safeguarded as open land to reduce the impact on the OUV of the DVMWHS, the setting of other heritage assets and landscape.
26. The Draft Local Plan which preceded the SLP identified a larger site, also encompassing four fields to the north of the appeal site, as a housing growth site for 120 dwellings. That allocation was carried through to the subsequent

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<sup>14</sup> Planning Application Recommendation to Planning Board, 18 December 2017.

<sup>15</sup> Updated Statement of Common Ground, June 2018.

<sup>16</sup> Amber Valley Borough Local Plan - Submission Local Plan, March 2018.

<sup>17</sup> Comments on Revised National Planning Policy Framework, Amber Valley Borough Council, 24 July 2018.

<sup>18</sup> Updated Statement of Common Ground, June 2018.

Pre-Submission Local Plan. However following the refusal of planning permission for a scheme on that larger site, the Pre-Submission Local Plan was changed and included a reduced size site allocation and revised allocation of up to 65 dwellings<sup>19,20</sup> corresponding to the appeal site. As well as the refusal of planning permission for the larger scheme the supporting text to SLP Policy HGS5 notes the receipt of the planning application which is the subject of this appeal.<sup>21</sup>

#### *Draft Belper Neighbourhood Plan*

27. The Pre-Submission Draft Neighbourhood Plan for Belper Civil Parish, 2017-2033 (NPB) was published in June 2018 for consultation. It is anticipated that there will be a referendum at the end of 2018<sup>22</sup>. Its approach prioritises development on brownfield sites before greenfield ones. It identifies a number of previously developed sites which it seeks to be redeveloped for housing, or mixed-use development including housing purposes, and does not allocate any part of the appeal site for any development, or indeed any greenfield sites.

#### *Planning Practice Guidance*

28. The Planning Practice Guidance<sup>23</sup> (PPG) points to the difference in terminology in international policies concerning WHSs and the Framework. WHSs are inscribed for their Outstanding Universal Value (OUV) and have defined attributes and components which embody that OUV. The PPG advises that the cultural heritage set out in the OUV will be part of the WHS's 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**

29. A prior notification application was made for the demolition of Whitehouse Farm in September 2017. The Council subsequently made an Article 4 Direction which removed the permitted development rights for demolition so that planning permission is required to demolish the building.

### **The Proposal**

30. The proposed scheme would be served by a single vehicular access joining Belper Lane at the point presently occupied by Whitehouse Farm and its outbuildings which would be demolished. Houses would be largely arranged in four main blocks, predominantly running east - west across the site fronting a loose grid of streets with parking courts to the rear. Areas of open space would be created to the west side of the site forming a 'landscape buffer' including meadow grassland with footpaths running through it linking into the recreation area.

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<sup>19</sup> Updated Statement of Common Ground, June 2018.

<sup>20</sup> Amber Valley Borough Local Plan - Submission Local Plan, March 2018.

<sup>21</sup> Paragraphs 7.1.8 to 7.1.11, Amber Valley Borough Local Plan - Submission Local Plan, March 2018.

<sup>22</sup> Belper Town Council's response to appeal notification, April 2018.

<sup>23</sup> Paragraph: 031, Reference ID: 18a-031-20140306.

31. The Council's Planning Board resolved to grant planning permission for the scheme in December 2017 subject to an appropriate Planning Obligation. A Planning Agreement was subsequently provided and signed by all parties apart from the Council. However, before the Council issued planning permission they received a privileged legal opinion which they advise suggested that the public benefits considered in the balance with the less than substantial harm to the DVMWHS may be in part be questionable.<sup>24</sup> They consequently did not complete the planning agreement and did not issue planning permission. This appeal was made before the Planning Board considered the matter again.<sup>25</sup>
32. The Council advise that that since the appeal was made and the Council elections held on 3 May 2018, there had been no Planning Board Meetings<sup>26</sup> and the Council state that they are not in a position to advise how they would have determined the application.<sup>27</sup>

### **Other Agreed Facts**

33. Notwithstanding the Council's lack of a position on the appeal an agreed Statement of Common Ground was provided which sets out further areas of agreement as set out below.
34. The site comprises part of the countryside outside the settlement boundary of Belper and is immediately adjacent to the existing built up area.
35. The site adjoins the urban boundary of Belper which the main parties consider is identified as a sustainable settlement suitable for growth although development in the area is also considered to be significantly constrained by Green Belt and flood risk.
36. The site is the only proposed housing allocation for Belper within the emerging Local Plan. The site is the only proposed Housing Growth Site in Belper from which affordable housing is to be delivered.
37. There are no other statutory designations or local plan protections on the site.
38. The Council is currently unable to demonstrate a five year supply of housing sites which is currently published as a 3.42 years supply as of the 1 April 2018.
39. The main parties consider that the AVBLP is not up to date and that the provisions of the Framework carry significant weight in this case.
40. The site lies outside of the Green Belt and is not at risk of flooding.
41. The Council's supplementary planning guidance for residential developments, design for community safety and development and recreational open space do not have any specific relevance to the case.

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<sup>24</sup> Council's Appeal Statement, 22 May 2018.

<sup>25</sup> Council's Appeal Statement, 22 May 2018.

<sup>26</sup> Council's Appeal Statement, 22 May 2018.

<sup>27</sup> Comments on Revised National Planning Policy Framework, Amber Valley Borough Council, 24 July 2018.

## The Case for the appellants

42. The proposal was assessed against national and local planning policy and guidance and was found by the Council to be consistent with the objectives of those documents. Belper is acknowledged to be a sustainable settlement and a key growth settlement. The proposed development will significantly assist in the delivery of housing to meet the Borough's housing needs including affordable housing. Council officers recommended the application for approval, and the application has been resolved to be approved. A Planning Obligation has been agreed with all parties and a completed Obligation, signed by the Council, provided at the Hearing. The appellants endorse the recommendation and resolution to grant planning permission and concur with the conclusions on the overall planning balance<sup>28</sup>.

### *Historic environment*

43. The Buffer Zone to the DVMWHS and Whitehouse Farm are not in themselves designated heritage assets. The Buffer Zone is not of equal value to the DVMWHS itself. If attributes, features and structures within the Buffer Zone were so critical to the OUV, they would have been included in the OUV or DVMWHS as the SOUV states that "all the key elements of the cultural landscape are within the boundaries [of the DVMWHS]". Historic England guidance on setting<sup>29</sup> states that "Setting is not itself a heritage asset, nor a heritage designation ... its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance."
44. A Buffer Zone's purpose is to ensure that there is appropriate consideration of potential effects on the significance of a World Heritage Site (WHS) from a reduction in the contribution that setting makes to that significance arising from the development – an approach consistent in a Secretary of State's decision<sup>30</sup> in respect of an appeal at Ripon which established that a Buffer Zone was not a heritage asset in itself and was not intended to stifle development within it.
45. The Development would have no physical impact on the DVMWHS, and its presence within the Buffer Zone will constitute a tiny change to the character of the Buffer Zone overall. Other than being within the Buffer Zone, the appeal site itself makes little or no contribution to the significance of the DVMWHS as a whole, or even that part around Belper, which does not rely on the contribution that fields on the site make. There is limited intervisibility with the core area of the DVMWHS and where this exists the interests for which the DVMWHS is designated will not be adversely affected.<sup>31</sup>
46. Perceptible increases in the amount of settlement visible at any one spot within the DVMWHS or Buffer Zone would be confined to the immediate vicinity of Mount Pleasant in particular and the northern side of Belper in general. The ability to appreciate the industrial core of the DVMWHS in relation to the more open rural valley sides (the western side) will not be significantly affected, and all

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<sup>28</sup> Planning Application Recommendation to Planning Board, 18 December 2017.

<sup>29</sup> The Setting of Heritage Assets - Historic Environment Good Practice Advice in Planning Note 3 (Second Edition), Historic England, 2017.

<sup>30</sup> APP/E2734/W/17/3181320.

<sup>31</sup> HEA.

of the key elements of the cultural landscape on the north side of Belper will still be appreciable. To this extent, the integrity of the DVMWHS would not be affected or harmed.

47. In views from the west of the site across towards the DVMWHS from the western extremity of the Buffer Zone the development would be seen as a minor addition to the settlement already visible in such views, and the core of the DVMWHS would remain largely invisible in any case. The development may be visible from the eastern side of the Buffer Zone in views across the DVMWHS from the higher land to the north and east of Belper and Matlock Road, as a minor extension in visible settlement along Belper Road<sup>32</sup>. There would be no significant change in the character of the DVMWHS or Buffer Zone (even in the section around Belper).
48. Whilst the development site may be visible in some longer views across the DVMWHS, it will be a minor addition to the existing scene and in which the key attributes of the DVMWHS will still be apparent<sup>33</sup>. It will be more prominent in close views or for users of the footpath running to the north of the site. However, even where they are across the DVMWHS, such views do not include all the key elements of the DVMWHS e.g. the Mills or the works associated with the river. This is unlike many other places within the DVMWHS and Buffer Zone where these attributes can all be seen in combination.
49. The visibility or otherwise of the development does not so reduce the contribution that setting makes to the significance of the DVMWHS as set out in the OUV. The DVMWHS does not depend on the contribution that this very small part of the Buffer Zone occupied by the Development Site to sustain its OUV, either in terms of integrity or authenticity.
50. Whitehouse Farm may date back to the C18 century, but the existing structure is not believed to retain any evidence within its visible fabric from this earlier period. As the Building Appraisal in the HEA indicates, the existing structure of the main house is mostly rebuilt, possibly in the mid-late C20 Century. It has little intrinsic historic or architectural interest. Its association with the Strutts is incidental; they did not build it nor did they occupy it, and it was in their ownership only for a relatively short period. It is simply that it was another property (amongst many throughout the Belper district) that was owned by them. This association is not appreciable on the ground. The level of detail provided in the HEA is more than proportionate to the asset's importance. It was assessed by a qualified buildings archaeologist. Any assertion that significance has not been 'fully assessed' is wrong. No qualified evidence contradicting the conclusions has been presented.
51. The building is currently surrounded by modern housing along the western side of Belper Road, and has no visual linkage with the core of the DVMWHS. It is no longer appreciable as one of the C18 century and earlier farmsteads that made up the rural hinterland of the DVMWHS nor is it one of the "industrial" Strutt farms. The building makes little to no contribution to the setting of the DVMWHS, and its loss will not appreciably change the contribution of the setting to the significance of the DVMWHS, nor affect its integrity or authenticity. Its loss can be offset by building recording during demolition and subsequent

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<sup>32</sup> LVA.

<sup>33</sup> LVA.

- archaeological investigation which may have a benefit in allowing the phasing and function of this structure and any antecedents to be understood.
52. Historic England considered the building for statutory listing in June 2017 and whilst they found that it makes a contribution to the DVMWHS they did not recommend it be listed. They concluded that the building is typical for its date, demonstrating little further architectural interest or innovation and that successive alterations and extensions have diminished the integrity of the farm buildings. Whitehouse Farm has not been identified as a non-designated heritage asset in the SLP process or within the in the AVBLP and has not be part of any local heritage asset ratification as recommended by Historic England advice. It is considered, at best, to be a potential non-designated heritage asset.
53. Any evidence that former boundaries and other features may be an indication of earlier (but most likely post-medieval) agricultural activity would only be of local importance and of types of features well-understood and well represented in the archaeological record in and around Belper and within Derbyshire as a whole. Their loss will not affect the integrity or authenticity of the DVMWHS, and they could be preserved by record.
54. The Framework states that not all elements of a World Heritage Site will necessarily contribute to its significance and this logically applies to the Buffer Zone. There has been a systematic conflation by objectors of simply intervisibility with an asset or simple visual change in its setting with "harm" in and of itself. The landscape will still continue to "reflect the technological, social and economic development" of the DVMWHS, and "the way the modern factory system developed within this rural area on the basis of water power" will still be readily appreciable. In this respect the authenticity of the DVMWHS would be unchanged. The recognition at paragraph 184 of the revised Framework that World Heritage Sites are assets of the highest significance does not alter the Framework's balancing exercise that needs to be applied.
55. Planning is policy led, and the site is the only proposed residential development in the area, including the DVMWHS or Buffer Zone, in the emerging SLP. The protection of the DVMWHS elsewhere in the area, from further development is inherent in its allocation.
56. An appeal decision<sup>34</sup> at Darley Abbey also included land within the DVMWHS itself and raised conflict with a Green Wedge Policy. The issues are not directly comparable and that no precedent can be drawn where detailed site issues are so relevant. The dismissal of that appeal shows how due process protects the DVMWHS from cumulative impacts based on site specific circumstances. A further appeal decision<sup>35</sup> at Farnah Green, Belper, is not comparable as it is for an agricultural building, with no public benefit case being advanced.
57. The impacts of the development on those aspects of the designated heritage asset's significance, including the contribution to setting, are so minimal, that its conservation would in no way be compromised or undermined. The ability to understand, interpret and appreciate the overall OUV of the DVMWHS, as a whole

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<sup>34</sup> APP/C1055/W/15/3137935.

<sup>35</sup> APP/M1005/W/17/3187598.

or in part, would in no way be diminished and no credible evidence had been presented to identify any demonstrable specific harm.

58. Even if it were concluded that there is harm, any such harm would be negligible, "less than substantial" and at the very lowest end of the scale in any case. This insignificant level of harm would be outweighed by the benefits of the scheme.
59. The weight to be attributed to any harm to be considered in a balancing exercise can be informed by the approach of the Secretary of State in their decision in the aforementioned Ripon case where the weight to be given to the preservation of designated heritage assets is such that more precision between limited and no weight is needed; in that case "the potential impact on these assets should be assessed as extremely limited at most such that the overall weight to be given to the harm should still be limited." Even by attaching very considerable weight to any harm it would not be significant.

### *Benefits*

60. There is a critical and chronic housing shortage which is not being addressed by the delivery of new housing in the Borough. The spatial strategy has focused on urban areas such as Belper which remains one of the most sustainable growth locations as identified in the SLP and from a market perspective. Housing land supply in Belper amounts to around 2.5 years supply and the majority of housing sites identified in the NPB are not immediately deliverable for a number of reasons including their flood risk status<sup>36,37</sup>. Belper is an area of high housing demand but is constrained by Green Belt, heritage allocations and flood risk. The DVMWHS and Buffer Zone does not obviate the need to meet Belper's housing requirements including severe affordable housing issues with an estimated 38.2% proportion of households in the Belper/Ripley sub-market unable to afford market housing without subsidy<sup>38</sup>. The appellants are willing to commence the scheme within two years of permission rather than the customary three to assist in delivering homes quickly.
61. Case law<sup>39</sup> provides that harm should be weighed against the benefits of a proposal and an appeal decision<sup>40</sup> in Knaresborough shows that housing is a material benefit explicit in the Framework.

### *Balance*

62. There is a significant and severe shortfall in a five year housing land supply. Along with the absence an up to date Local Plan, pressing affordable housing need, 'negligible' deliverable housing sites, limited affordable housing options and the only identifiable option to resolve the matter being the allocation of the site in

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<sup>36</sup> Proposed Residential Development Whitehouse Farm, Belper - Supporting Planning Statement, Planning and Design Group, October 2017.

<sup>37</sup> Belper Neighbourhood Plan - Site Assessment Final Report, Aecom for Belper Neighbourhood Plan Steering Group, 17th November 2017.

<sup>38</sup> Housing Needs Assessment - Plan for Belper Steering Group, Final Report, Aecom, September 2016.

<sup>39</sup> Forest of Dean District Council v Secretary of State for Communities & Local Government & Anor [2016] EWHC 421 (Admin).

<sup>40</sup> APP/E2734/A/13/2207338.

- the SLP. The housing delivery and particularly 30% affordable element of the scheme are very significant public benefits that carry very great weight.
63. Other benefits include on site open space and improvement to on and off-site recreation facilities which will be available to the wider community and are not just mitigation for the scheme.
64. Saved AVBLP Policy EN29 allows development within the Buffer Zone providing that the setting of the DVMWHS is preserved, saved AVBLP Policy H5 is a policy for the supply of housing and is out of date. Conflict with outdated policies would be outweighed by social and economic benefits of the scheme and applying the balance at paragraph 11 of the Framework indicates planning permission should be granted.
65. Footnote 7 of the Framework provides that where the local planning authority cannot demonstrate a five year supply of deliverable housing sites that the policies which are most important for determining the application are out-of-date. It is therefore a matter of fact that Policies H5 (and EN1) are out-of-date. Paragraph 11 of the Framework is clear that planning permission should be granted as the proposals would have a negligible effect on the designated heritage asset (DVMWHS), thereby not engaging footnote 6, and any notional harm is considerably and significantly outweighed by identified public benefits. The NPB was only very recently published, not subject to any formal consultation and can only be given negligible weight.
66. The site is not a valued landscape in the Framework's terms, and overall the LVA considers the site to be of medium value. The Framework considers natural and historic environment separately and should not be conflated. The development would result in the loss of some open countryside but this was a not a reason for refusal and any harm in this respect would be outweighed by the benefits of the development. The SLP acknowledges that developing beyond defined settlement boundaries will be necessary to meet housing needs.
67. The set back of the developed area from the western ridge would avoid intervisibility with Dalley Lane and heritage assets within the DVMWHS. The landscape approach was to avoid trying screen the development but to make the development sit comfortably within the landscape and landform.

#### *Other matters*

68. The Transport Assessment<sup>41</sup> and Travel Plan<sup>42</sup> indicate that the site can be accessed safely and the highway network has capacity to accommodate the development without the need for offsite works with no objections for the County Council in those respects. Contributions to upgrade bus stops and monitoring the Travel Plan are made in the Planning Agreement.
69. The scheme has been designed to reflect local urban morphology and work with the landscape and landform. It would be a bespoke and locally distinct development. House types aim to reflect local style and any uncharacteristic

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<sup>41</sup> Planning Application for Residential Development – Whitehouse Farm, Belper Lane, Belper, Derbyshire – Transport assessment, ASC, October 2017.

<sup>42</sup> Planning Application for Residential Development – Whitehouse Farm, Belper Lane, Belper, Derbyshire – Outline Travel Plan, ASC, October 2017.

features would be excluded by a condition. The housing mix responds directly to local requirements and the developer is a local housebuilder. Design changes with which the Police are concerned were in response to Council conservation advice and any residual crime concerns could be addressed by securing boundaries which could be required by a condition.

70. In response to a Phase 1 habitat survey and relevant assessment of protected species<sup>43</sup> the Derbyshire Wildlife Trust confirmed that the site does not contain any habitats of high nature conservation value. They considered that the loss of grassland could be mitigated by establishment of grassland habitats and had no objections subject to conditions agreed between appellants and Council.
71. Derbyshire County Council as the Lead Local Flood Authority confirmed that they support the preliminary drainage strategy<sup>44</sup> of private soakaways for individual dwellings and collection of highway surface water into an attenuation pond. The County Council do not object in this respect subject to detailed drainage design and associated management and maintenance plan for surface water, which is also established in the Planning Agreement.
72. Most of the land immediately to the north of the Mount Pleasant estate is categorised as Poor, with the potential for some of the land comprising the west and north of the application site to fall within the Moderate or Good category. It is not clear that any of the land falls within category 3a and consequently 'best and most versatile agricultural land'. The site is used for horse grazing and hay cropping (in association with the horse use), and fields are not actively cultivated or used for agricultural purposes. There is no identified impact on 'best and most versatile agricultural land'.

### *Summary*

73. Any harm to the significance DVMWHS would be negligible and clearly outweighed by the considerable public benefits of the scheme.

### **The Case for the Council**

74. The Council did not put forward a case in respect of the appeal and were not able to advise how it would have determined the application had it maintained jurisdiction over the application. The Council's Statement is limited to factual matters although the agreed Statement of Common Ground does covers a range of matters. Despite direct questioning at the Hearing they could not advise whether they supported or objected to the application or wished to defend the appeal.
75. In response to particular matters the Council advised that the information they hold shows the appeal site to be classed as 'Good to Moderate' agricultural land which is Grade 3, but does not distinguish between 3a (best and most versatile along with 1 and 2) or 3b (which is not best and most versatile). However, in the assessment of the site through the Local Plan process the Council has classed the development of the site as affecting the best and most versatile agricultural land.

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<sup>43</sup> Whitehouse Farm, Belper - Ecological Appraisal, FPCR, October 2017.

<sup>44</sup> Planning Application for Residential development - Whitehouse Farm, Belper Lane, Belper, Derbyshire - Flood Risk Assessment, ASC, October 2017.

76. Whilst not forming part of their case the Council's committee report found that the financial contribution towards education would mitigate the effects of additional pupils generated by the scheme. It also found that planning conditions would address drainage issues and statutory consultees had no objections on that basis. The appellants' revised Transport Assessment and Travel Plan are robust and adequately consider the highway impacts of the development. Visibility is appropriate and there are no outstanding highways implications which could not be addressed by planning conditions<sup>45, 46</sup>.

### **The case for others who attended the Hearing**

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

77. The Partnership's comments were set out in written responses to the application and appeal<sup>47</sup> as well as being provided orally at the Hearing.

78. WHSs are places of global significance and parties to the World Heritage Convention<sup>48</sup> have a duty to protect them. The Operational Guidelines clearly state that State Parties have responsibility to not take any deliberate measures that directly or indirectly damage their heritage. Although the main attributes necessary for OUV are within the DVMWHS itself they 'spill out' into the Buffer Zone and beyond. The Buffer Zone provides an extra layer of protection to the DVMWHS as set out in the Operational Guidelines.

79. The Buffer Zone does not have OUV but supports that Value, sometimes including a scattering of attributes that are functionally linked to the property and sometimes as an essential context that allows an understanding of the OUV. Changes to a Buffer Zone, or even beyond it in the wider setting, can impact adversely on the OUV. The site contributes to the setting of the DVMWHS as it enables an understanding of how the factory system was inserted into a 'hitherto rural landscape', therefore being an attribute itself, and it also contains other attributes, in particular Whitehouse Farm, which was owned by the Strutt family, contributing to an understanding of the impact of the factory system being inserted into the Derwent Valley and the rural 'relict' landscape. Although much altered, it remains a white farmhouse in the landscape, contributing to the OUV of the DVMWHS. The loss of the farmhouse and associated fields would impact on, and in places eradicate attributes associated with the DVMWHS.

80. The Partnership emphasises the importance that UNESCO and the MP, as well as the Framework and PPG, put on protecting the setting of WHSs. The revised Framework clearly sets out at paragraphs 184 and 194 that WHSs are assets of the highest significance. Paragraph 193 of the revised Framework clearly states that "great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be)".

81. The site is immediately adjacent to the DVMWHS, is visible from it and when entering it from the north on Belper Lane. The MP emphasises the protection of

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<sup>45</sup> Planning Application Recommendation to Planning Board, 18 December 2017.

<sup>46</sup> Appeal Summary & Addition Comment on Third Party Representations, Amber Valley Borough Council, 11 July 2018.

<sup>47</sup> Derwent Valley Mills World Heritage Site Partnership Statement.

<sup>48</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, UNESCO, 1972.

the setting of the DVMWHS because of the critical significance to the property's OUV of the location of the mills and their associated settlements, within a rural landscape, arrested in time and that it is of vital importance to the maintenance of the Property's OUV for the setting to remain rural. Council's have adopted policies to ensure the protection of this setting and to assist clarity as to what constitutes the immediate setting a Buffer Zone and these have been endorsed by UNESCO.

82. Appeal decisions at Darley Abbey<sup>49</sup> and Chacewater Hill<sup>50</sup> [in that case affecting a different WHS] highlight the threat of relatively minor changes which, on a cumulative basis, would have a significant effect on a WHS and its OUV. Such an impact is the greatest identified threat to the DVMWHS and its OUV. Even small scale development such as that in a recent appeal decision at Farnah Green<sup>51</sup> can be harmful. Incremental development in the highly sensitive 'relict' landscape such as the development would set a precedent which would open up the DVMWHS to minor but cumulative damage and could also weaken the protection for all WHSs in England and Wales.
83. Historic England's views should be given great or considerable weight, they consider that the impact of the development would harm the OUV of the DVMWHS, and if a decision-maker wishes to depart from those views they should have 'cogent and compelling reasons' for doing so.
84. The site is itself an attribute of the DVMWHS and its development will damage the setting of the DVMWHS weakening the ability to understand its OUV on the west side of Belper. It will also impact on, and eradicate in places, attributes associated with the DVMWHS in direct conflict with the MP, the Operational Guidance and the World Heritage Convention.

*Belper Lane Community Action Group*

85. The Group's comments were set out in written responses to the application and to the appeal<sup>52</sup> as well as being provided orally at the Hearing.
86. The appellant's main argument is that the Council has no justification for withholding the formal grant of planning permission. But as the Council took legal advice and then deemed it necessary to re-determine the application it did have justification for withholding the grant of planning permission; the legality of the contents of the Planning Board report and the decision could be called into question. On a site with such international significance it was the Council's duty to ensure the decision would stand up to scrutiny.
87. The Group support new housing development in Belper, but on previously used land in the town.

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<sup>49</sup> APP/C1055/W/15/3137935.

<sup>50</sup> APP/D0840/W/16/3153632.

<sup>51</sup> APP/M1005/W/17/3187598.

<sup>52</sup> Community Response to the Appeal against the decision by AVBC to withhold the formal grant of planning permission for 65 dwellings on Whitehouse Farm and its attached green fields: the rural setting of the Derwent Valley Mills World Heritage Site, Belper Lane Community Action Group, 20 May 2018.

88. The Operational Guidelines define Buffer Zones as adding a layer of protection to a WHS, contrary to the appellant's dismissal of the Buffer Zone as a lesser designation with little significance. It has complementary legal and/or customary restrictions placed on its use and development as set out in the Operational Guidelines. Development would be contrary to saved AVBLP Policy EN29's requirement that development within the Buffer Zone preserves or enhances its character and appearance.
89. The site is immediately adjacent to the WHS. The Buffer Zone designation has not been properly understood by the Council or the appellants. It is critical to upholding the integrity of the DVMWHS and the MP states that "the landscape is vulnerable in some parts to threats from large scale developments that would impact adversely on the scale of settlements." This is critical as the MP is due to be reviewed soon and rejection of the appeal will emphasise crucial role green fields have in the Buffer Zone.
90. Saved AVBLP Policy H5 is not out of date as, having regard to the Framework and planning case law, it is not a 'relevant policy' for the supply of housing<sup>53</sup>. Even if it were, saved AVBLP Policy EN1 is not and reflects paragraph 170 b) of the Framework.
91. The site's inclusion in emerging Local Plan has very little weight but even so SLP Policy HGS5 is in conflict with other SLP Policies which protect the DVMWHS and non-designated heritage assets. The SLP recognises the importance of the DVMWHS to the future of Belper as a thriving town but to achieve this there must be no harm to the DVMWHS.
92. Historic England's concerns and the Council's Heritage Consultant's view is that the proposed design has failed to respond to this context with an equally special solution and are reflected by the County Council being concerned that the layout is poor with no sense of local distinctiveness. The overall design is not of a quality that would be appropriate for a site with world significance. Its false character and lack of local distinctiveness is acutely contrasted with the genuine historic assets to which it would be associated. It would not add value by a quality or honest response but would devalue the DVMWHS by its presence.
93. Derbyshire Constabulary are concerned over the layout of the development, it would not 'design out crime', contrary to development plan and Framework policies, and has not overcome previous concerns.
94. The number of houses proposed could be provided anywhere in the Borough and there is no justification for developing this site to address the Council's lack of a five year housing land supply; the appellants simply want to build on the site. There are sufficient brownfield sites in Belper which have the capacity to exceed the emerging Local Plan's 'quota' for Belper. There was no objection from heritage bodies and limited objection from residents for a development of 136 houses on a brownfield site known locally as Abru. The appellants' identification of a housing shortage in Belper is not as significant as implied.
95. The appellant's HEA identifies impact on visitors moving in and out of the valley.

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<sup>53</sup> Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37.

96. Given that the whole of the DVMWHS in Belper relies on the inheritance of the Strutt family, Whitehouse Farm, a non-designated heritage asset, is of great significance due to its Strutt ownership and its loss would be harmful to the OUV of the DVMWHS. The appellants have not fully considered the building's historical significance, just its architectural significance and their evidence is therefore incomplete. As set out in the Framework, the proposed recording of the building should not be a factor in deciding whether its loss should be permitted.
97. The Darley Abbey and Chacewater Hill appeal decisions<sup>54</sup> emphasise that the whole WHS needs to be considered. The Inspector in the Darley Abbey case pointed out that although other parts of the Buffer Zone are urbanised it is important to protect the remaining open landscape and the designation provides protection against further damage. Also that local harm should not be under-rated when considering the effect on the WHS as a whole, otherwise such reasoning could lead to proliferation of similar harm throughout the WHS.
98. There would be landscape harm contrary to the Framework and saved ABVLP Policies which protect the best and most versatile agricultural land and evidence of ridge and furrow shows the fields have been 'arrested in time', the site's optimal viable use is as agricultural land.
99. Local residents have in the past had unrestricted access to the site and it has been used for community activities. The site has previously been recognised as having amenity value in terms of visual openness by the Inspector considering the AVBLP.
100. A number of elements to be secured by way of a Planning Obligation would be mitigation rather than public benefits as suggested by the appellant. Overall public benefits of the proposal would be far less than stated. Public benefits would not outweigh the harm.
101. The Framework gives a strong presumption against the granting of planning permission where harm is likely.
102. In support of their case the Group have referred to a number of government and local documents, and other planning and appeal decisions which are set out in their Community Response<sup>55</sup>.
103. Whitehouse Farm is also a bed and breakfast and a livery business, an amenity which would be lost.
104. There would be a risk of flooding existing properties farther down the hill.
105. The primary school is a considerable distance away and access is down the very steep hill.
106. Appeal cases raised by the appellant are materially different to the circumstances of this appeal and its effects on the DVMWHS.

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<sup>54</sup> APP/C1055/W/15/3137935 and APP/D0840/W/16/3153632.

<sup>55</sup> Community Response to the Appeal against the decision by AVBC to withhold the formal grant of planning permission for 65 dwellings on Whitehouse Farm and its attached green fields: the rural setting of the Derwent Valley Mills World Heritage Site, Belper Lane Community Action Group, 20 May 2018.

107. Many residents volunteer on heritage projects and groups and when they see a development they believe jeopardises what they hold dear, it generates a lot of emotion and is why the development has prompted such a large reaction and level of objections.
108. The Group consider the development would conflict with other development plan policies<sup>56</sup>. In their response to the revised Framework<sup>57</sup> the Group have pointed to a range of policies in the Framework with which they consider the development would conflict. The revised Framework reinforces the special protection afforded to WHSs which are newly and separately identified as having the highest significance (Paragraph 184). It does not matter how large or small a part of the Buffer Zone is affected in causing harm by the loss of the rural setting, the OUV, of the DVMWHS. The decision maker is required to consider even more robustly than before under the previous Framework, the discrepancy between the recognised harm to the OUV of the DVMWHS as identified by the appellants' heritage consultees and their view that the proposals do not compromise or undermine the designated heritage asset.

*Belper Town Council*

109. The Town Council's comments were set out in written responses to the application and to the appeal<sup>58</sup> as well as being provided orally at the Hearing.
110. The development would be out of character with the surrounding area.
111. The site is a greenfield site that is used by many local residents and walkers, plus it is home to a very varied wildlife population and used by a large variety of migrating birds that use the Wyver Lane Nature Reserve.
112. The site is on a very steep hill with two dangerous bends which, with the increase in daily vehicle movements, would greatly increase the risk of a serious accident. This would be compounded by the heavily parked Belper Lane and by the junction at the bottom of the hill.
113. The area's infrastructure would need considerable expenditure for it to cope with the increased traffic, electricity, gas, water and sewer requirements as the current infrastructure is already over stretched with residents suffering from lower water pressure. An additional 65 residencies would add to the infrastructure problems that already exist in the area.
114. The local secondary school is approximately 3 miles from the site, the steep access will make travelling difficult and the nearest primary school is already well oversubscribed.
115. The Draft NPB, prepared by the Town Council, will seek to allocate a total of 170 new houses, all on brownfield sites and in addition to windfall sites and existing planning applications/permissions. The Draft NPB prescribes the development of brownfield sites over greenfield sites, has been out for consultation and is expected to be at Referendum by the end of 2018.

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<sup>56</sup> Including AVBLP Policies EN1, LS1 and LS2.

<sup>57</sup> E-mail responses on behalf of the Belper Lane Community Group, 4 and 23 August 2018.

<sup>58</sup> Belper Town Council's response to appeal notification, April 2018.

## Written Representations

116. At the application stage a range of letters were received from statutory and other consultees, as well as letters of objection from a considerable number of local people raising a range of concerns which were comprehensively reported within the Planning Board report<sup>59</sup> and are on the case file. Those objecting to the planning application and responding to the appeal did so on the basis of the matters which are reflected in interested parties' comments which have been set out above. Amongst other issues, they raised concerns about the principle of developing a greenfield rather than a brownfield site, highway safety and congestion, lack of capacity within, and the accessibility of, local infrastructure, effects on wildlife and ecology and drainage.

### *Historic England*

117. Historic England made representations to the Council in respect of the application, having concerns regarding it on heritage grounds and did not support the application.<sup>60</sup> The site forms part of the rural and agricultural setting to the mill complex of Belper and the historic settlement. It is within the setting of the CA and within the setting of listed buildings including Wyver Farm and Dalley Farm. It is visible and topographically prominent in certain views. The site's contribution to the OUV and authenticity and integrity of the DVMWHS is through the survival of this rural landscape character reinforcing the juxtaposition of the landscape against the historic urban settlement, despite the sub-urban character of the Mount Pleasant estate. Although recognising the reduction in size of the development compared to the previous scheme, the extent of proposed housing which stretches beyond a ribbon development, will change and impact upon the appreciation of the rural setting of the DVMWHS, resulting in further erosion of this rural character in this part of the Buffer Zone. This impact will be understood and will harm the OUV of the DVMWHS. The harm would be less than substantial.

118. Appeal decisions at Darley Abbey and at Hill Top Farm, Mill Lane, Belper<sup>61</sup> were mentioned.

119. Whilst it is evident that Whitehouse Farm has been altered during the C20 and is of limited architectural value, there appears to be a pre-1844 core; the extent of this survival requires further investigation. Strutt farms are attributes of the DVMWHS. The loss of Whitehouse Farm, Strutt owned since 1865 and an attribute of the DVMWHS, will harm the OUV of the DVMWHS and will need clear and convincing justification for this loss. The proposals do not seek to sustain and conserve, and are harmful to, the OUV of the DVMWHS and are not supported on heritage grounds. Further advice was recommended from the Council's conservation specialist and archaeological adviser.

## Conditions and Obligations

120. A list of conditions was suggested (without prejudice) by the Council in the event that planning permission is granted. These were agreed by the appellants

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<sup>59</sup> Planning Application Recommendation to Planning Board, 18 December 2017.

<sup>60</sup> Historic England letter of 30 October 2017.

<sup>61</sup> APP/C1055/W/15/3137935 and APP/M1005/A/10/2142571.

at the Hearing, subject to some adjustments. These will be considered later in the report.

121. A signed Planning Agreement was provided at the Hearing which would secure the following planning obligations:

- An education contribution of £136,788.12 towards the provision of 12 primary places at St. John's C.E. Voluntary Controlled Primary School.
- A healthcare contribution of £24,802.08 for the provision of additional consultation rooms at Riverdale Surgery, Belper.
- The creation of a management company to manage and maintain the proposed public open space and Sustainable Urban Drainage Scheme (SUDS) infrastructure including ensuring sufficient funding is in place for long term future maintenance and a requirement to keep free access to the public open space.
- The SUDS is maintained in accordance with a management plan until it is transferred to the management company.
- The provision of the on-site public open space and its transfer to the management company.
- An off-site open space contribution of £29,634.15 towards improvements to Belper Skate Park.
- Improvements to the Oakhurst Close play area and financial contribution of £153.92 per m<sup>2</sup> towards maintenance.
- The provision of 30% on-site affordable housing of which no less than 25% would be shared ownership and no more than 75% would be social rent, and an off-site affordable housing contribution of £32,917.
- A travel plan contribution of £5,000.
- A contribution of £30,000 towards the provision and replacement of bus shelters on Belper Lane and Whitehouse Rise.

122. At the Hearing the Council confirmed that there is no Community Infrastructure Levy (CIL) in force in the Borough and that no more than 5 obligations would be in place to fund any one of the projects identified. Detailed evidence was provided in various consultee responses to the planning application provided justification for the obligations.<sup>62</sup>

123. The elements of the Planning Obligation are all necessary to make the scheme acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the proposal. In the light of the evidence, all the elements of the Obligation meet the policy in paragraph 56 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. They can therefore be taken into account.

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<sup>62</sup> Set out in Planning Application Recommendation to Planning Board, 18 December 2017.

## **Inspector's Conclusions**

### *Main considerations*

124. The Council did not advance a position on the appeal either in representations or at the Hearing. However, considering the Secretary of State's reason for recovering the Appeal and taking the views of interested parties, including those attending the Hearing, into account as well as the discussion at the Hearing, it is evident that the main considerations relate to the heritage effects of the proposal and how these should be balanced.

125. The main considerations in this case are therefore:

The effect the development would have on the significance of the Derwent Valley Mills World Heritage Site (DVMWHS) having regard to its Outstanding Universal Value (OUV).

Whether any less than substantial harm to the significance of the designated heritage asset would be outweighed by the public benefits of the proposal.

126. The development would affect the setting of the DVMWHS by virtue of its Buffer Zone location and it is not a matter of dispute between parties that should there be any harm that it would be less than substantial harm in the Framework's terms. [58][117] The appeal therefore turns on whether there is harm and if so whether the public benefits of the proposal would outweigh any less than substantial harm, and consequently how this may affect the considerations affecting the presumption in favour of sustainable development. [64-65]

### *Development plan and emerging policy*

127. The Development Plan is the adopted Amber Valley Borough Local Plan, 2006 (AVBLP).

128. The policies which are most important for determining the appeal are saved AVBLP Policies H5 and EN29.

129. Saved AVBLP Policy H5 restricts housing development outside the built framework of settlements. It does not accord with the Framework's policy related to rural housing including its more limited set of exceptions to new homes in the countryside. Saved AVBLP Policy H5 can only be afforded limited weight and is out-of-date in this respect. Although not cited in the Council's refusal reason the spatial implications of this Policy in relation to the siting of new housing development are such that, nevertheless, it is one of the most important for determining the application. [19][22][64-65][90]

130. Saved AVLP Policy EN29 is not set out in terms that encompass the Framework's approach to significance. However it requires development affecting the DVMWHS to be evaluated against its character and appearance and sets out that development within the Buffer Zone is required to preserve or enhance the setting of the DVMWHS. Whilst it does not fully accord with the Framework it can be afforded moderate weight as is broadly consistent with its approach. [20][22][64][88]

131. Although saved AVBLP Policy EN1 restricts development in the countryside outside settlements' built frameworks, it is less pertinent to housing schemes given the more explicit approach of saved AVBLP Policy H5 in respect of housing

in such circumstances. It is therefore not a policy which is most important for determining an application in the Framework's terms. In any event, it does not fully accord with the Framework. It is out of date and carries limited weight. [19][65][90]

132. Furthermore the revised Framework states that the policies which are most important for determining the application are out-of-date where, for applications involving the provision of housing, the local planning authority cannot demonstrate a five year supply of deliverable housing sites with an appropriate buffer. It is not a matter of dispute between the main parties that the Council cannot demonstrate such a supply nor the broad extent of the shortfall. [38]
133. Taking into account the relatively advanced stage of preparation of the emerging Submission Local Plan (SLP) which is at examination stage, but also the need for additional work which the Council is undertaking, it carries limited weight as does its allocation of the appeal site for housing purposes. [23]
134. The Neighbourhood Plan for Belper<sup>63</sup> (NPB) is at a very early stage of preparation as it has only recently been published and followed by initial consultation. Consequently it carries very limited weight. [27][65][115]

#### *Significance of heritage assets*

135. The site contributes to the setting of the DVMWHS as part of an extensive undeveloped rural landscape into which the exceptional industrial establishments and settlements were inserted and helps to understand how the main attributes of the industrial development were 'arrested in time' when the textile industry moved elsewhere. This rural setting is an intrinsic part of the DVMWHS's significance and this is experienced in a visual as well as spatial manner along with historic associations including the functional relationship of surrounding farms and agricultural land to support the new industrial settlements and their occupants. [9-13][43][78-81]
136. That is not to say that the Buffer Zone has not seen development since the mid C19 and indeed much of the development adjacent to the site post-dates that era and displays buildings from the later C19 and in particular large parts of the Mount Pleasant area are made up of C20 housing along with relatively recent dwellings alongside Belper Lane in the vicinity of the site. [9-13][43][78-81]
137. The listed buildings comprising the three Strutt Farms situated within the DVMWHS itself in the wider vicinity of the site (as distinct from the non-designated Whitehouse Farm), derive their significance in part from historic associations with the Strutt enterprises, associations with the employment patterns arising from the factories as well as their technical innovations. Their rural settings also contribute to their significance. [14-15][51][96][119]
138. The site is not within the Belper and Milford Conservation Area (CA), the nearest part of which is situated about 250m farther down Belper Lane from the site. The CA derives considerable significance from the architectural and historic character and appearance of the townscape that has arisen from the industrial development of Belper and Milford. Some significance also arises from the CA's wider rural setting which demonstrates the relationship of the historic parts of

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<sup>63</sup> Pre-Submission Draft Neighbourhood Plan for Belper Civil Parish, 2017-2033, 2018.

the town to its landscape setting within the valley and its interrelationship with agricultural land beyond. [14-15][51][96][119]

*Effect on significance of DVMWHS*

139. The development would form an extension of this existing built up area and be enclosed by it on two sides including the single row of buildings running alongside Belper Lane. The development would be set well back in relation to the existing adjacent 'ribbon development extending north. This existing built context, in particular that running along Belper Lane physically, and effectively visually, separates the site and the proposed development from the boundary of the DVMWHS itself. [48-49]
140. The rise of the land across the site would make the two storey dwellings which would comprise the development noticeable. At close quarters this would include limited glimpses between existing buildings to the south and east and, given the presence of those existing buildings, the addition of new buildings behind them would not be intrusive within that existing context. [45-49]
141. For those approaching Belper along Belper Lane and traversing the public footpath to the north of the site the effects would be more marked. The development would be prominent from the footpath with buildings appearing much closer than the existing roofline of existing houses on Whitehouse Rise. However the experience of using the footpath would be largely unchanged. What views there are to the south across the site towards the DVMWHS would be interrupted. However, the change in how the setting of the DVMWHS would be experienced from the footpath would mean its setting would not be preserved in this respect but the scale of change would mean that the level of harm would be extremely slight. [48][81][95]
142. At present when approaching from the north along Belper Lane the rows of buildings on either side are evident but the houses on the Mount Pleasant estate are largely obscured by vegetation on and adjacent to the appeal site and the steeper slope down into the valley beyond it. The new development would be noticeable from the north but appear set back from the row of buildings along Belper Lane. [45-46][81][117]
143. The development would have a limited effect on wider views across that part of the DVMWHS which lies to the south as the topography already limits views along Belper Lane into the lower parts of the valley. However, close up the new houses would mean that from certain parts of Belper Lane limited views of the upper parts of the valley opposite would be interrupted. As well as the visual effects, the extension of the built up area across open fields would slightly erode part of the countryside setting of the DVMWHS and consequently not preserve that particular aspect of its setting albeit that the level of harm would be very slight. Furthermore, these effects would be limited and particularly localised. [46-49]
144. From farther afield the degree to which the new development would be visible would depend on the elevation relative to the site of the viewing point on the other side of the valley or elsewhere, whether within the DVMWHS or Buffer Zone. In views over a longer distance, including those from the other side of Belper looking over the Derwent Valley, the proposed development would be perceived as a limited extension to the existing extensive development of Mount

- Pleasant which rises up the from the valley floor. However, adjacent fields to the north of the site, sloping landscape of fields and woods beyond to the west and north west would prevent this enlarged built up area extending to the horizon when viewed from the Chesterfield Road monitoring position and other vantage points or similar elevation. [46-49]
145. The considerable set back of the proposed developed area from the west boundary of the site which includes a ridge in the landscape would avoid an intrusive effect from the west including from the Dalley Lane area. [67]
146. As a result of the built up area adjacent to the site and the particular topography of the site, its surroundings and that of that part of the DVMWHS in and around Belper, the overall the visual impact of the development would not be of a nature which would markedly erode the rural setting of the heritage asset. [11][79][81][117]
147. Whilst effect on landscape itself would be limited this cannot be divorced from the role the open countryside landscape plays in providing the setting of the DVMWHS as part of the Buffer Zone. [11-12][79][89]
148. In light of its inclusion as part of the Buffer Zone and the particular importance of the countryside setting of the DVMWHS has in contributing to its significance, the landscape which the site forms part of could reasonably be considered a valued one in the terms of Framework paragraph 170 a). However, that policy is not one listed in footnote 6 to paragraph 11 of the Framework as one which protects areas or assets of particular importance. [66][98]

#### *Effect on significance of Whitehouse Farm*

149. There is no evidence of any formal process recognising Whitehouse Farm as a non-designated heritage asset such as inclusion on a 'local list'. However, the Framework definition<sup>64</sup> of such an asset, although including local listing (an approach supported by Historic England guidance), does not make it a requirement. In light of the evidence it is reasonable to consider the farm as a non-designated heritage asset, due largely to its historic associations and the endurance of a building on the site through time. [16][52]
150. The development would result in the loss of Whitehouse Farm, its outbuildings and fields associated with it. The historic associations of Whitehouse Farm with the Strutt family are not within the initial formative era of the foundation of factories, housing and dependent agricultural infrastructure. However, there is nevertheless some limited historic interest through the continuing acquisition and ownership of the Strutt family in farming interests around Belper. It is clear that it has neither the historic associations with, nor demonstrate the architectural and technical qualities of key 'Strutt Farms' in the vicinity whose significance is recognised by multiple listed buildings and inclusion within the DVMWHS boundary. [16-17][50-51][79][96][119]
151. The building has virtually no architectural interest due to its extensively altered state and appearance. On the basis of the evidence available the historic fabric of the building which remains is limited and locked into the existing building fabric. Although there is the potential for additional research to uncover

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<sup>64</sup> Annexe 2: Glossary.

more of the building's historic, remaining fabric which could be of interest, it is not certain that additional archival research would illuminate matters to any great degree and in all likelihood further investigation of the building whilst it remains as an occupied house could only be very limited. No substantive evidence has been submitted as to the extent of farms other than Whitehouse Farm and the listed Strutt Farms in and around Belper which were later acquired by the wider Strutt family. Nor what contribution they may make to the significance of the DVMWHS. [43][50-53][96]

152. Given the likely extensive ownership of land and buildings by various members of the family, attaching an importance largely on the basis of a family interest does not clearly differentiate it from other land or buildings of the area or era. Adding the general lack of extant fabric and early architecture or features, there is insufficient evidence to suggest that the building has such significance that it should be retained as a built record even as a precautionary approach to avoid potential loss of significance. Nevertheless, in these circumstances the loss could not be considered to preserve the significance of the DVMWHS or the character and appearance of the Buffer Zone. However the level of harm that would result would be very limited. [50-52]
153. Although it is painted white which reflects its name and this sets it apart from its immediate neighbours, its colour does little to distinguish it from its suburban surroundings from longer views. This aspect of the building can presently only be readily appreciated at close quarters with other white coloured building elements such as gables on C20 houses in the wider Mount Pleasant estate being more obvious in longer distance views. [79]
154. In terms of the pattern of the two fields, the layout of the blocks of development and open space along with new stone walls along the line of the existing field boundary within the built up area of the site would provide some physical and visual indication of those former field boundaries. Together these features would provide remaining suggestions of the former field pattern albeit that the openness would be lost in the proposed built up areas of the site. The proposed landscaping on the open part of the site has the potential to enhance this aspect of the landscape and its historic pattern but overall it would not preserve the present field pattern. [53][98]
155. Whitehouse Farm and the associated land has relatively little significance in its own right but does make a limited contribution to the historic and cultural setting of the DVMWHS as part of an extensive and wide ranging legacy of the Strutt family.
156. This would result in some limited harm to the significance the DVMWHS derives from its setting in the Buffer Zone. This would be experienced particularly by those traveling south along Belper Lane and walking to the north of the site on the aforementioned footpath.
157. Overall the loss of Whitehouse Farm and land with which it is likely to have been historically associated with would result in very limited harm to the significance of the DVMWHS.

*Effect on significance of other designated heritage assets*

158. That part of the CA's significance which relies on its wider rural setting would be affected however there is relatively little intervisibility between the appeal site and the CA and the distance between the CA and the site is such that any effects on the setting of the CA would be minimal. The significance that the CA derives from its setting would be preserved as a result. [14-15]
159. There is no evidence of any specific historic or functional relationship between the site and clusters of listed buildings at the three 'Strutt Farms' and they are all situated some distance away. Only the undeveloped part of the site along the ridge would be likely to be visible from Daley and Crossroads Farms with intervening landforms and landscape features separating the site from Wyver Farm. The significance these listed buildings derive from their wider countryside setting would therefore be preserved. [14-15]

*Conclusion on heritage effects*

160. The Darley Abbey appeal decision is helpful in emphasising that the whole World Heritage Site (WHS) needs to be considered and that the relative size of a site in relation to such an extensive area should not be seen as a factor limiting any harm or that any harm is necessary less than that which may occur in the setting of a smaller WHS. However, in this case it is not the relative size of the site which limits harm but its actual effects on the significance that the DVMWHS derives from its setting. The Inspector in the Farnah Green appeal found that scheme to result in less than substantial harm with no public benefits which would outweigh it, materially different circumstances to this appeal. [56][82][97][118]
161. It is not a matter of dispute that any harm would be less than substantial. However, it is necessary to examine the nature, extent and effects of such harm, and the weight which should be attached to it, in order to be able to balance such harm against public benefits whose nature, magnitude and effects also need to be evaluated in order to effectively carry out such a balance. [58]
162. Considered together the harmful effects of the development would be extremely limited.

*Public benefits*

163. There would be economic and social benefits associated with delivering 65 new homes and the social benefits would be enhanced as a result of 30% of them being affordable homes. Additional weight can be attached to the benefits of housing delivery in light of the Council's lack of a five year supply of deliverable housing sites and the scale of the shortfall in this regard, as well as the appellant's willingness to commence the development within a shorter time period than the standard.
164. Furthermore, given the early stage at which the NPB is at and the particular characteristics of the brownfield sites it allocates along with the appeal site being the only site in the vicinity being proposed for allocation within the emerging plan comprising part of the appeal site there would not appear to be any alternative sites allocated through the plan making process which would reasonably be considered to be deliverable in such a short timescale and deliver those levels of

affordable housing other than the appeal site. These public benefits carry considerable weight in support of the proposal. [60-64][100]

165. The obligations in the Planning Agreement have the purpose of mitigating the effects of the development or providing management mechanisms for open space and drainage. However, the nature of some of the projects is such that some would not purely benefit occupiers of the proposed dwellings and to varying extents would also provide wider subsidiary public benefits beyond those which would mitigate the development's effects. The open space to be created within the site would be accessible to and capable of being enjoyed by the public. So would the associated footpaths linking into the play area and this would be a public benefit in light of the size of the space to be provided and its situation. Similarly, contributions to off-site recreation facilities would be enjoyed by others and also be a public benefit. [60-64][100]
166. Contributions to education and healthcare facilities would be in scale with the development although once provided such facilities would also be available to other pupils and patients and there would consequently be a limited public benefit. [60-64][100]
167. Together these additional benefits beyond housing delivery carry moderate weight in support of the proposal.
168. The Framework makes it clear that the ability to record evidence of our past should not be a factor in deciding whether the loss of any heritage asset should be permitted. So whilst the further investigation of Whitehouse Farm may be desirable any benefits to understanding which may arise cannot be considered as a public benefit in support of the appeal. [51][96]

#### *Heritage balance*

169. 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.
170. Historic England did not object to the planning application and made no comment in relation to the appeal, but their views that the development would be harmful are clear and carry considerable weight. [83] However their comments acknowledge that the less than substantial harm would need to be balanced against benefits in line with the Framework's approach.
171. It is necessary to take into account the effect the proposal would have on the non-designated heritage asset and carry out a balanced judgement having regard to the scale of any harm or loss and the significance of that heritage asset. Whilst the scale of loss would be total (bar any archaeological evidence and recording during and after demolition), the significance of Whitehouse Farm is in itself very limited.
172. The Framework does not go beyond requiring a balanced judgement and does not set out what factors may contribute to that balance. Whilst it does not require the weighing against public benefits it is reasonable in taking a balanced judgement to balance the total loss of the asset and its significance against the scheme including any benefits it would deliver. In doing so, its loss in this regard

would be outweighed by the considerable benefits of the scheme. However it is also necessary to consider its contribution to the significance of the DVMWHS as part of its setting which requires the application of the more explicit Framework provision of weighing harm against the public benefits of the proposal.

173. The extent of harm would be extremely limited and even attaching great weight to the designated heritage asset's conservation and noting that this weight is greater given the international importance of the asset, as the actual level of harm would be very limited it would clearly be outweighed by the considerable public benefits, considered together, of the scheme.
174. As the designated heritage asset is so large and complex it would not be appropriate to attempt consider securing its optimal viable use. This provision in the Framework relates to the designated heritage asset itself, the DVMWHS, and would therefore not apply to the appeal site, which is not itself a designated heritage asset. [97]

### **Other Considerations**

#### *Agricultural land*

175. Interested parties raised concerns about the loss of agricultural land. The Framework defines 'best and most versatile agricultural land' as land in Grades 1, 2 and 3a of the Agricultural Land Classification. Part of the site contains Grade 3 land but there is no evidence as to whether this is Grade 3a or not, nor how much of the site it extends to. The supporting text to SLP Policy HGS5 only goes as far as stating that it may include such land. On this basis it is not possible to conclude whether any part of the site would be classed as Grade 3a. In such circumstances it is appropriate to assume a 'worst case scenario' that part of the site includes best and most versatile agricultural land. [25][72][75][98]
176. The Framework requires planning decisions to contribute to and enhance the natural environment by, amongst other factors, recognising the intrinsic character and beauty of the countryside including the economic and other benefits of the best and most versatile agricultural land. Notwithstanding that the site is presently used for equestrian grazing and hay for fodder, the Council has recognised the site to potentially include best and most versatile agricultural land in terms of its allocation in the emerging plan. However, its presence was balanced by the Council against the benefits of allocation. On this basis it is probable that the development would result in the loss of such land and therefore this loss needs to be recognised and considered in the planning balance. [25][72][75][98]

#### *Design*

177. Concerns about the design of the estate and dwellings on it have been raised by objectors. The architecture and design of individual houses are of suburban design and not significantly different in some ways to more recent infill development close by. The landscaped area has been designed in light of the locally distinctive countryside it adjoins by being made up of meadow type planting and informal individual trees rather than blocks of tree planting. [69][92]
178. Although the 'ribbon development' lining Belper Lane has more variety, it shows little cohesive distinctiveness which would indicate that the proposed

design and layout of the appeal development would appear at odds in such a setting. Conditions would ensure that particular architectural features considered overly out of place could be avoided on particular house types. The particular context of the site means that the design and layout of the scheme would not have a harmful effect on the significance the DVMWHS derives from its setting within the Buffer Zone. [92]

179. The scheme would provide a reasonable level of passive surveillance of front and rear parking areas and circulation spaces, particularly from first floor windows and it would not create an inherently unsafe environment. On balance the proposed layout would provide an acceptable environment for all and conditions would also ensure that any residual security concerns raised about the layout are addressed. [71][93]

#### *Flood risk*

180. Interested parties have raised concerns about potential flooding occurring as a result of the development. The proposed sustainable drainage approach including soakaways and balance ponds would be an appropriate response to avoid off-site drainage concerns. The design, implementation and management of such a scheme could be controlled by way of the provisions of the Planning Obligation and planning conditions. [71][76][104][116]

#### *Ecology*

181. Interested parties raised concerns about the loss of habitat on the site. However, part of the proposals would include the creation of open space which would be designed and managed in part for habitat for a range of species. This would mitigate the loss of any areas of habitat on developed parts of the site and could be required and controlled by way of the Planning Obligation and planning conditions which would also minimise any harm arising during construction. [70][111][116]

#### *Highways*

182. Interested parties raised considerable concerns about the effects of traffic generated by the scheme including its effects on highway safety. The existing parking conditions and steepness on Belper Lane to the south of the appeal site means that vehicles largely have to pass one at time over considerable stretches. Whilst the development would add additional vehicle movements onto Belper Lane there is no substantive evidence that this would give rise to unacceptable effects on highway safety. Accessibility for future residents would be improved to a degree by proposed investment in bus infrastructure. An appropriate junction and sightlines could be required by condition. Bearing in mind that the Highways Authority did not object to the proposal, considered overall the highways and access implications of the development would be acceptable. [68][76][112][116]
183. Overall, concerns with regards to design, highway safety, accessibility, flooding risk and ecology would be successfully mitigated against by way of the Planning Obligation and planning conditions. The other considerations are not determinative.

## **Planning Balance**

184. As well as extremely limited heritage harm there would be limited harm by way of loss of an area of land at least part of which is likely to be best and most versatile agricultural land.
185. The development would be contrary to saved development plan policies. However, the Framework considers that the policies which are most important for determining the application are considered out-of-date where, for applications involving the provision of housing, the local planning authority cannot demonstrate a five year supply of deliverable housing sites with an appropriate buffer. It is not a matter of dispute between the main parties that the Council cannot demonstrate such a supply.
186. The public benefits of the development would outweigh the less than substantial heritage harm. These benefits would also outweigh the economic and environmental detriment of losing some land which is best and most versatile agricultural land. Therefore the Framework policies that protect assets of particular importance do not provide a clear reason for refusing the development proposed and any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development at paragraph 11 of the Framework applies and therefore permission should be granted.

## **Conditions**

187. Notwithstanding the Council's lack of a position on the merits of the appeal, conditions suggested without prejudice by the Council were agreed by the main parties and were discussed at the Hearing subject to some modification to ensure precision. They would be necessary in the event that planning permission is granted and they otherwise accord with the tests set out in the Framework and PPG.
188. A two year implementation period would assist with early delivery of the proposed housing (condition 1). It would be necessary to specify the approved plans as this provides certainty (condition 2). Given the scale of development approving a phasing scheme would enable some conditions to be discharged on a phased basis (condition 3). It would be necessary to require levels to be approved to exercise control over their relative elevation and ensure neighbours' living conditions are not harmed (condition 4).
189. In order to preserve the character and appearance of the area and provide attractive, useable open spaces and areas of landscaping which can provide habitat where appropriate it would be necessary to require comprehensive strategic and overall landscaping schemes (conditions 5 and 6).
190. Requiring sample panels of external materials and details of enclosures, windows, doors, eaves, roof verge and rainwater goods would ensure buildings are of a high quality design that preserves the character and appearance of the area (conditions 7, 8, 9, 10 and 12). For the same reason it would be necessary to specify that certain architectural elements which would otherwise be at odds with the area's character be omitted (condition 11).
191. Archaeological investigation of the site and recording of Whitehouse Farm would be necessary to preserve by record any heritage significance which may

- remain in the building and on the site, and that this is adhered to and results published and deposited (conditions 13, 14, 15, and 16).
192. In order to ensure that the site is effectively drained and that a sustainable drainage approach is adopted it would be necessary to require details of schemes to be approved and implemented (conditions 17, 18, 19 and 20).
193. Requiring certain routes to be gated would address concerns about the security of the layout (condition 21). Approving a lighting scheme would ensure that lighting preserves the character of the area, is safe at night and does not unacceptably harm bats (condition 22). It would be necessary to ensure that should contamination be found on site or in any imported materials that it is dealt with appropriately to ensure there are no adverse effects on health (conditions 23 and 24).
194. Adverse effects of construction activity on highway conditions and safety and on neighbouring and future residents' living conditions would be mitigated by requiring appropriate management plans to be approved and adhered to (conditions 25 and 26). It would be necessary to protect existing trees on the site and to adhere to recommendations in the Arboricultural Assessment in order to preserve the character and appearance of the area (conditions 27 and 28). It is necessary to avoid harmful effects on wildlife during construction and to create appropriate habitats to mitigate the effects of the development (conditions 29, 30 and 31).
195. In order to ensure that access into and throughout the site would be safe, convenient and useable by vehicles, pedestrians and refuse operators it is necessary to specify sightlines, levels, gradients, surfacing, interim surfacing, turning arrangements, car and cycle parking, bin storage and gate opening arrangements as well as require minor changes to the layout (conditions 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42).

### **Overall Conclusion**

196. The development would result in extremely limited harm to the significance the DVMWHS derives from its setting in the Buffer Zone and this would be outweighed by the considerable public benefits of the scheme. The emerging plan allocation of the site carries limited weight in support of the scheme. The development would conflict with adopted development plan policies however material considerations indicate that a decision should be taken otherwise than in accordance with the development plan. Those development plan policies which are most important for determining the application are out of date. The application of Framework policies that protect particular assets does not provide a clear reason for refusing the development nor would the adverse impacts of granting permission significantly and demonstrably outweigh the benefits of doing so. Therefore, planning permission should be granted in accordance with the presumption in favour of sustainable development.

**Recommendation**

197. It is therefore recommend that the appeal be allowed and that planning permission be granted subject to the conditions in the schedule attached to this Report.

*Geoff Underwood*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Bob Woolard	Director	Planning and Design Group
Mark Turner	Principal Heritage Consultant	Wessex Archaeology
Keith Nye	Landscape Architect	FPCR

### FOR THE LOCAL PLANNING AUTHORITY:

Alan Redmond	Principal planning Officer	Amber Valley Borough Council
Sarah Johnson	Planning Manager	Amber Valley Borough Council
Paul Warren	Acting Heritage Consultant	Derbyshire County Council for Amber Valley Borough Council

### INTERESTED PERSONS:

Adam Lathbury	Head of Conservation	Derbyshire County Council for Derwent Valley Mills World Heritage Site Partnership
Adrian Farmer	Heritage Co-ordinator	Derbyshire County Council for Derwent Valley Mills World Heritage Site Partnership
Councillor Ben Bellamy	Ward Councillor	Amber Valley Borough Council
Councillor Tim Sutton	Town Councillor	Belper Town Council
Ann Smith	Local Resident	Belper Lane Community Action Group
Wendy Mitchell	Local Resident	Belper Lane Community Action Group

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Appeal Decision Letter APP/E2734/W/17/3181320.
2. Breakdown of number of dwellings with planning permission and completions 2011 – 2018.
3. Extracts from Housing Needs Assessment – Plan for Belper Steering Group, September 2016.
4. Appeal Decision Letter APP/M1005/W/17/3187598.
5. Extract from Landscape and Visual Impact Assessment (Appeal 3198996) – existing viewpoints.
6. Extract from Landscape and Visual Impact Assessment (Appeal 3198996) – photomontages.
7. Planning Obligation LPA Ref: AVA/2016/1020 (Appeal 3188009).
8. Planning Obligation LPA Ref:AVA2017/1128 (Appeal 3198996)
9. Plan indicating three viewpoints for Inspector to visit unaccompanied.
10. Drawing 7438-L-01 Rev E (Appeal 3188009).

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

11. Housing Needs Assessment – Plan for Belper Steering Group, September 2016.
12. Belper Neighbourhood Plan - Site Assessment Final Report, Belper Neighbourhood Plan Steering Group, November 2017.
13. Summary of Case – Amber Valley Borough Council, July 2018.
14. Summary of Case – Planning and Design Group (appellant), July 2018.
15. Derwent Valley Mills World Heritage Site Partnership’s comments on implications of revised Framework, 2 August 2018.
16. Belper Lane Community Action Group’s comments on implications of revised Framework, 4 August 2018.
17. Appellant’s comments on implications of revised Framework, 8 August 2018.
18. Council’s comments on implications of revised Framework, 8 August 2018.
19. Appellant’s comments on parties’ responses to the revised Framework, 22 August 2018.
20. Belper Lane Community Action Group’s comments on parties’ responses to the revised Framework, 23 August 2018.

## **Annex – Recommended conditions**

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the details and specifications shown on the following drawings (unless as otherwise provided by conditions in this decision): Proposed Planning Layout (drawing number 7438-L-107 Revision C); Strategic Landscape Plan Site Wide (drawing number 7438-L-101 Revision B); Alderwood House Type (drawing number ALD/LH(OP)PL/01); Alton House Type (drawing number ALT/PL/01); Ashford 2 House Type (drawing number ASH2(AS)/PL/01); Ashton 2 House Type (drawing number ASN2/(AS)PL/01); Attwater House Type (drawing number ATT(AS)PL/01); Belmore House Type (drawing number BLM(AS)/PL/01); Highgate House Type (drawing number HGT(AS)/PL/01); Hucklow House Type (drawing number HUC(AS)PL/01); Kingston House Type (drawing number KGN(AS)PL/01); Middleton House Type (drawing number MID(AS)PL/01); Milton House Type (drawing number MIL/(AS)PL/01); Penrose 2 House Type (drawing number PRO/(AS)PL/01); Richmond 2 House Type (drawing number RIC\_2(AS)PL/01); Romsey House Type (drawing number RMS/PL/01); Single Garages (drawing number WSD/123 Revision D); Double Garages (drawing number WSD/124 Revision D), and; Substation (drawing number EKV0015).
- 3) Prior to any works commencing a detailed phasing scheme shall be submitted to and approved in writing by the local planning authority, and the development shall be implemented fully in accordance with the approved scheme.
- 4) Prior to development 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 points and their relationship to existing neighbouring buildings and land shall be submitted to and approved by the local planning authority, and the development shall be constructed in accordance with the approved levels.
- 5) The development hereby approved shall be constructed in accordance with the submitted strategic soft landscape proposals as detailed on drawing number 7438-L-101 Revision B.

The strategic planting shown on drawing number 7438-L-101 Revision B shall be implemented as 'advance planting' (prior to the construction of each relevant phase of the development to be submitted under condition 3) and these landscape features shall be of the appropriate level of maturity, as detailed on the approved drawing.

Any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

- 6) Prior to occupation of the first dwelling a scheme of hard and soft landscaping throughout the site (other than that hereby approved on drawing number 7438-L-101 Revision B) including a phasing scheme shall be submitted to and approved in writing by the local planning authority.
- The hard landscaping scheme shall provide details of all hard landscaped areas, footpaths, dry stone walls, interpretation boards, street furniture and lighting. The approved hard landscaping scheme shall be implemented in full in accordance with the approved phasing scheme.
- The soft landscaping scheme shall provide details of plant and tree species, plant and tree size, method of planting and aftercare maintenance. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the buildings indicated in the phasing scheme or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
- 7) Prior to any of the works on the elevations and roof of the buildings or any other structures (including boundary treatment and hard surfacing) hereby permitted are commenced, details and sample panels of all the materials and finishes (including details of the method and colour of pointing) to be used in the construction of the development shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 8) The development shall not be occupied until full details of the proposed treatment of the boundaries of the site including a phasing scheme have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full in accordance with the approved phasing scheme prior to the occupation of the part of the development to which it relates.
- 9) Prior to their installation details of all windows and doors to be used in the development (including recess depths, materials and finishes) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the occupation of the building in which they are to be installed.
- 10) Prior to their installation details of roof eaves and verge finishes to be used in the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the occupation of the building to which they are to be installed.
- 11) Notwithstanding the approved house type drawings, revised details that remove corner quoins, keystones to flat-arch window heads, canopies and porches shall be submitted to and approved in writing by the local planning authority prior to commencement of construction of the approved dwellings. The dwellings shall then be constructed in accordance with the approved details.

- 12) Prior to their installation full details of the proposed rainwater goods for the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the occupation of the building to which they are to be installed.
- 13) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved in writing by the local planning authority, and until any pre-start element of the approved scheme has been completed and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
  1. The programme and methodology of site investigation and recording;
  2. The programme and provision for post investigation assessment;
  3. Provision to be made for analysis of the site investigation and recording;
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  5. Provision to be made for archive deposition of the analysis and records of the site investigation, and;
  6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 14) No development, including demolition, shall take place until a Written Scheme of Investigation for historic building recording of Whitehouse Farm (153 Belper Lane) and associated buildings has been submitted to and approved in writing by the local planning authority, and until all on-site elements of the approved scheme have been completed and approved in writing by the local planning authority. The Written Scheme of Investigation shall include an assessment of significance and research questions, and:
  1. The programme and methodology of site investigation and recording;
  2. The programme and provision for post-investigation analysis and reporting;
  3. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  4. Provision to be made for archive deposition of the analysis and records of the site investigation, and;
  5. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 15) The development shall only take place in accordance with the archaeological and historic building Written Scheme of Investigation approved under Conditions 13 and 14.
- 16) No dwelling shall be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological and historic building Written Scheme of Investigation approved under Conditions 13 and 14 and the provision to be made for i) analysis, publication and dissemination of results, and ii) archive deposition, has been secured.

- 17) The development hereby permitted shall not commence until drainage plans for the disposal of foul sewage have been submitted to and approved by the local planning authority. The approved drainage system shall be implemented in accordance with the approved details prior to the first occupation of the development.
- 18) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site 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 the development.
- 19) No works shall commence on site until a scheme for the disposal of highway surface water with reference to the phasing scheme approved under Condition 3) has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details prior to occupation of the dwellings in each phase and retained accordingly thereafter.
- 20) No development (excluding demolition and archaeological works) shall take place until details of the design, implementation, adoption, maintenance and management of the sustainable drainage system shall have been submitted to and approved in writing by the local planning authority. Those details shall be in accordance with the principles outlined within :
  - a) Whitehouse Farm, Belper Lane, Flood Risk Assessment compiled by Armstrong Stokes and Clayton limited (October 2017), and;
  - d) DEFRA's non-statutory technical standards for sustainable drainage systems (March 2015 or any subsequent version).Those details shall include: a timetable for its implementation; and, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented prior to the phase of development as approved under condition 3) to which it relates being first occupied and thereafter managed and maintained in accordance with the approved details.
- 21) Notwithstanding the approved plans the rear garden access routes running along the side and rear of garden boundaries shall be gated from the front elevation in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to occupation to the dwelling it relates to.
- 22) No dwelling shall be occupied until a lighting scheme, including phasing in relation to the scheme approved under condition 3), has been submitted to and approved in writing by the local planning authority. The scheme shall include measures to ensure that there is an adequate level of illumination, that the scheme is of a high quality given the site's sensitive location and is a 'bat friendly' scheme. All lighting shall be fully implemented in accordance with the approved scheme before first occupation of the phase of development to which it relates.

- 23) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken, and where remediation is necessary, a remediation scheme shall be submitted to and approved in writing by the local planning authority. Following completion of the measures identified in the approved remediation scheme, a verification report must be submitted to and approved in writing by the local planning authority prior to first occupation of the development or the further occupation of any part of the development if contamination is found on part of the site following occupation of other parts.
- 24) If any part of the site is to be raised or filled using materials brought from outside the application site, the developer shall provide documentary evidence that all such materials are free from levels of contamination that would be in excess of current appropriate standards prior to those materials being brought in. In the event that no such evidence is available, the materials shall be subjected to adequate chemical or other testing to demonstrate that the materials are suitable for their intended final use. In either case, all documentary evidence and/or sampling methodology and testing results shall be submitted to and approved in writing by the local planning authority prior to any material being brought onto site. No such materials shall be imported without prior approval.
- 25) No development shall take place until a demolition and construction environmental method statement (the 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 demolition or 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, and;
  - e) measures for the control of works causing noise or vibration.
- 26) No development shall take place including any works of demolition until a traffic and transport construction method statement (the Statement) has been submitted to and been approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period.
- The statement shall provide for:
- a) Parking of vehicles of site operatives and visitors;
  - b) Storage of plant and materials;
  - c) On-site turning space for delivery vehicles;
  - d) Routes for construction traffic;

- e) Hours of operation;
  - f) Method of prevention of mud and debris being carried onto highway;
  - g) Pedestrian and cyclist protection;
  - h) Proposed temporary traffic management/restrictions, and;
  - i) Arrangements for turning vehicles.
- 27) The development shall be undertaken in accordance with the recommendations of the submitted Arboricultural Assessment (FPCR-September 2017).
- 28) Prior to the commencement of development all existing trees shown on the approved plans to be retained shall be fenced off to the limit of their branch spread in accordance with paragraph 5.5 of British Standard BS 5837 (or in an equivalent British Standard if replaced) and the submitted Arboricultural Assessment. No works including: i. removal of earth; ii. Storage of materials; iii. vehicular movements, or; iv. siting of temporary buildings or structures, shall be carried out within these protected areas. These tree protection measures shall remain in place until the development is completed.
- 29) No development shall take place until a method statement for the protection of reptiles, setting out avoidance measures and working practices to ensure that these species are not affected, has been submitted to and approved in writing by the local planning authority. The approved method statement shall then be implemented in full and adhered to during all development activity.
- 30) A landscape and ecological enhancement and management plan (the Plan) shall be submitted to, and be approved in writing by the local planning authority prior to the commencement of the development. The Plan shall set out details of biodiversity enhancement within land associated with the green space, land associated with the SUDS and the 'green corridors' to be established along the western and northern edge of the development as shown on Strategic landscape Plan Site Wide 7438-L-101 Rev B 18 October 2017).

The Plan shall include:

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- g) Details of the body or organization responsible for implementation of the Plan, and;
- h) Ongoing monitoring and remedial measures.

The Plan shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The Plan shall also set out (where the results from monitoring show that conservation aims and objectives of the plan are not being met) how contingencies and/or remedial action will be identified, approved and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme in the Plan.

The approved Plan will be implemented in accordance with the approved details.

- 31) Prior to the commencement of development a detailed badger survey for any recently excavated badger setts on the site shall be undertaken and the results and any appropriate mitigation/licensing requirements shall be submitted to and approved in writing by in the local planning authority. Such approved measures shall be implemented in accordance with the approved details.

No works which includes the creation of trenches or culverts or the presence of pipes shall commence until measures have been implemented to protect badgers from being trapped in open excavations and/or pipe and culverts in accordance with details which have first been submitted to and approved in writing by the local planning authority.

- 32) Prior to any development or preparatory works commencing (excluding demolition), a new estate street junction shall be formed to Belper Lane in accordance with figure 3.1 of the Transport Assessment (October 2017), laid out, constructed to base level and provided with 2.4m x 59m visibility splay to the north and 2.4m x 73m visibility splay to the south.
- 33) No development shall take place until construction details of the residential estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) have been submitted to and approved in writing by the local planning authority. The residential estate roads and footways shall subsequently be implemented in accordance with the approved details and the phasing set out in Condition 35.
- 34) Notwithstanding the approved drawings, no development shall commence until a revised internal road layout has been submitted to and approved in writing by the local planning authority which addresses the following matters (as raised in the Highway Authority's consultation response letter dated 11 November 2017). The revised internal road layout shall incorporate the following:
- a) Ensure that refuse collection areas are sited within 15m of the adopted highway and within 30m of the serviced dwelling, and;
  - b) The footway link fronting plots 11 to 13 will not be adoptable and shall be finished in a surface that contrasts with the adopted footways.
- Thereafter the development shall be implemented in accordance with the approved revised internal road layout and the phasing set out in Condition 35.

- 35) The carriageways and footways of the proposed estate roads shall be constructed in accordance with Conditions 33 and 34 up to and including at least road base level, prior to the commencement of the erection of any dwelling intended to take access from that road. The carriageways and footways shall be constructed up to and including base course surfacing to ensure that each dwelling prior to occupation and have a properly consolidated and surfaced carriageway and footway, between the dwelling and the existing highway. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling.
- 36) All junctions within the development shall be provided with 2.4m x 43m visibility splays the area in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.
- 37) No dwelling shall be occupied until the estate street serving it has been provided with suitable turning arrangements to enable service and delivery vehicles to turn, the details of which shall have been submitted to and approved in writing beforehand by the local planning authority. In the case where interim turning arrangements are constructed these must remain available until any permanent estate street turning is available, in accordance with the approved estate street designs.
- 38) No dwelling shall be occupied until space has been provided within the site curtilage of that dwelling for parking (including cycle parking), located, designed, laid out and constructed in accordance with details which have first been submitted to and approved in writing by the local planning authority. Thereafter they shall be maintained throughout the life of the development available for their designated use.
- 39) No private and shared driveways, and parking spaces within the site shall be brought into use until: a) visibility splays of 2.4m x 25m, or other such dimensions as may be approved by the local planning authority, have been provided; the area within the splays shall be maintained throughout the life of the development free from any obstruction exceeding 1 metre in height, and no shrubs, trees or other vegetation shall be allowed to grow above 0.6m in height, within the splay, relative to the adjacent carriageway channel level, and; b) 2m x 2m x 45 degree pedestrian intervisibility splays on either side of the access at the back of the footway have been provided, the splay area being maintained throughout the life of the development clear of any object, and no shrubs, trees or other vegetation shall be allowed to grow above, greater than 0.6m in height relative to footway level.
- 40) No dwelling shall be occupied until facilities for the storage of bins and collection of waste from that dwelling have been implemented in accordance with details which have first been submitted to and approved in writing by the local planning authority. The facilities shall be retained for the designated purposes at all times thereafter.

- 41) No gates, including any part of their opening arc, shall open out over public highway limits. Any gates should therefore be set back an appropriate distance from the carriageway edge or be physically prevented from opening over the adjoining highway.
- 42) Vehicle accesses shall be no steeper than 1 in 12 for the first 5 metres from the nearside highway boundary.

\*\*\* end of conditions schedule \*\*\*



# Ministry of Housing, Communities & Local Government

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## 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.