



Derby City Local Plan - Part 1: Core Strategy Hearing Position Statement

On behalf of Catesby Estates Ltd

March 2016

Our Ref: A094415



Preamble

Detailed comments were made to the Derby City Local Plan – Part 1: Core Strategy, Pre-Submission process in October 2015.

As Derby City is within a joint Housing Market Area (HMA) comprising Derby City Council, Amber Valley Borough Council and South Derbyshire District Council, relevant representations have also been submitted to consultations on the emerging plans for both of the other authorities as follows:

- Amber Valley Borough Council (AVBC) Draft Core Strategy – August 2013
- AVBC Pre-Submission Core Strategy – November 2013
- AVBC Strategic Housing Land Availability Assessment – December 2013
- Hearing Statements for, and appearance at, the AVBC Local Plan Hearings – April 2014
- AVBC Proposed Changes to the Local Plan Core Strategy – July 2014
- AVBC Further Proposed Changes to the Local Plan Core Strategy – December 2014
- Revisions to the Further Proposed Changes to the AVBC Local Plan Part 1 Core Strategy – September 2015
- Updated Sustainability Appraisal (SA) of the Amber Valley Local Plan Part 1: Core Strategy – October 2015
- Hearing Statements for the resumed AVBC Hearings – December 2015
- South Derbyshire District Council Sustainability Appraisal Addendum – October 2015

It is noted that the AVBC Local Plan was withdrawn in December 2015.

Derby City Council, Amber Valley Borough Council and South Derbyshire District Council form one Housing Market Area with one Objectively Assessed Housing Need and strategy for the distribution of dwellings and it has therefore been appropriate to make representations to the relevant stages of the Local Plans for each authority.

The representations to the Derby City Local Plan have focussed on how Derby City Council should look to amend specific emerging Core Strategy draft policies and undertake further work to ensure the Plan is positively prepared and that its policies can be effective. Specifically, comments focus on the proposed Cross Boundary Working policy and associated housing distribution matters, as well as the Historic Environment policy.



These representations draw upon comments previously made to the Pre-Submission Derby City Local Plan – Part 1: Core Strategy and this Hearing Statement seeks to reiterate and update such comments in order to confirm the objector's position.

Regard has been had to the Inspector's Hearings, Issues and Questions as issued on 12th February 2016 and the Statement refers to the following issues:

- Matter 1 – Overall Development Strategy – Policy CP1(b)
- Matter 2 – Housing
- Matter 6 – Natural and Built Environment

The Inspector's Questions have been used as the basis for the formation of the Statements.



Tuesday 26th April 2016: Day 1

Matter 1: Overall Development Strategy (Policy CP1 (b))

"Main issue – Whether the overall strategy has been positively prepared and is soundly based and justified, presenting a clear spatial vision for the City in accordance with national policy.

- a) Have reasonable alternatives to the overall development strategy in terms of the scale and distribution of development been considered? Has it been demonstrated that the plan is the most appropriate strategy? ...*
- i) Is it appropriate for the Local Plan to include Policy CP1 (b) relating to development outside the plan area?"*

It is considered that reasonable alternatives to the overall development strategy in terms of scale and distribution of development have been considered as part of the Local Plan preparation. In respect of the Sustainability Appraisal (SA) which informs the Derby City Local Plan strategy, the following points are considered relevant to these representations.

Section 7.4 of the SA (ref: CD007) presents the assessment of Derby City's capacity. It confirms that Derby City's capacity to accommodate additional growth is capped and it supports the proposed distribution strategy for the Plan, i.e that the unmet need within Derby will be distributed between AVBC and SDDC.

The second and third paragraph of Page 72 of the DCC SA states that both Amber Valley and South Derbyshire have embarked on a joint evidence base exercise to explore the reasonable alternatives to distributing the unmet need between the respective local authorities, as set out in Section 3.4 of the SA. The last bullet points on Page 70 of Section 7.4 of the SA confirm that the strategy to meet some of this unmet need in Amber Valley will be through "*sustainable locations outside the Derby Urban Area in Amber Valley*".

In addition, as discussed at the joint EIP for South Derbyshire District Council and Amber Valley Borough Council on 23rd October 2015, the proposed strategy for Derby City has been assessed through a joint Sustainability Appraisal for the Derby Housing Market Area (HMA). This was developed with the underlying assumption that, for meeting Derby City's unmet need, sites "*located adjoining the city*" will be the most appropriate locations and the strategy for development is one which all HMA authorities have agreed to.

No issue is taken with the Sustainability Appraisal methodology, and it is clear that a number of alternative options have been considered for the distribution of the City's 'unmet need'



Proposed Policy CP1(b): Cross Boundary Working, sets out a number of specific aspirations and ways in which Derby City Council will seek to plan for a sufficient amount of land coming forwards to meet their objectively assessed need in locations outside of their administrative boundary to meet their proportion of the HMA agreed OAN.

Neither Policy CP1(b) nor draft Policy CP6 on Housing Delivery, as drafted, identify any specific sites, nor point toward policies in the AVBC or SDDC emerging Local Plans that identify specific sites for housing. This will result in housing to meet Derby City's needs coming forward in an ad hoc and unsustainable manner and in locations over which Derby City has no strategic influence. This is in direct conflict with the joined up approach to development advocated in draft Policy CP1 (b) which seeks *"to create sustainable, safe and high quality" developments "which are well integrated with and accessible from existing areas of the city."*

In order to be an effective policy that is positively prepared, Policy CP1 (b) should seek to identify specific sites or, at the very least, broad locations for future growth which follow the SA findings, in which development should come forward within AVBC and SDDC to meet the unfulfilled Derby City need. This will allow the 'cross boundary' aspirations of Policy CP1 (b) to be met and ensure development comes forward in a sustainable manner to meet identified need. Such a policy will need to reflect Green Belt constraints in the County.



Tuesday 26th April 2016: Day 1

Matter 2: Housing

"Main issue 2 (i) – Whether the housing strategy has been positively prepared and whether the overall level of housing provision and its distribution are justified and appropriate. (Policy CP6):

- b) What are the full, objectively assessed needs for market and affordable housing in the housing market area and the City? Is the Council's methodology appropriate and justified? ...*
- h) Does the withdrawal of the Amber Valley Local Plan Part 1 have any implications for meeting objectively assessed needs for the housing market area?"*

Derby City Council forms part of the Derby Housing Market Area, which has been subject to an Objectively Assessed Need that has been considered as follows:

- The Derby HMA SHMA Update Final Report dated July 2013 by consultants G L Hearn calculated an OAHN of 35,354 dwellings for the HMA over the period 2008 – 2028. This was based on the latest official population / household projections adjusted downwards for HFR and migration plus shortfall of housing from previous years;
- The 2014 Sensitivity Testing Paper and 2014 SNPP (2012) Housing Requirement Update tested HFR, internal and international migration and UPC assumptions of the demographic projections and calculated a revised OAHN of 33,388 dwellings for the period 2011 – 2028 of which OAHN for Derby is 16,388 dwellings;
- A joint letter from Ms. Kingaby (Inspector examining South Derbyshire Local Plan) and Mr Foster (Inspector examining Amber Valley Local Plan) on 10th December 2014 determined the housing requirement of 33,388 dwellings for the Derby HMA; and
- A letter from the Derby HMA authorities to both Inspectors in respect of the Amber Valley and South Derbyshire Local Plans confirmed that whilst the updated 2012 Household Projections set out a figure of 32,142 dwellings up to 2028, the proposed housing requirement of 33,388 dwellings should not change.

The Local Plan identifies that Derby City Council can provide for 11,000 dwellings of the total 16,388 OAN within its administrative area. It has therefore been agreed between the HMA authorities, and tests through SA work, that the 5,388 dwelling unmet need will be provided within the Amber Valley Borough Council

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administrative area (44% - 2,370 dwellings) and the South Derbyshire District Council area (56% - 3,018 dwellings).

This is a position which all three authorities have signed up to and the withdrawal of the AVBC Local Plan need not affect the HMA OAN, nor require a redistribution of dwellings with reference to the Derby City unmet need.

The Derby HMA OAN and the split of Derby City unmet need between the neighbouring authorities has been fixed and agreed through independent examination of the AVBC and SDDC Local Plans. The withdrawal of the AVBC Local Plan has not prevented the SDDC Local Plan from progressing on the basis of the examined OAN and distribution, and the Derby City Local Plan may also progress, subject to being found compliant with the basic legal and policy tests.

AVBC, in agreeing to the joint HMA strategy on the distribution of development through the signing of a Statement of Common Ground, will be required to identify land for dwellings which will meet the OAN of the LPA, plus the unmet need from Derby City, which it has agreed to provide for in the Duty to Co-Operate Compliance Statement (Ref: CD003, see Appendix 7) associated with the Derby City Local Plan, dated December 2015.

However, neither draft Policy CP1(b) nor draft Policy CP6 on Housing Delivery identify any specific sites nor point toward any adopted or emerging policies which specify sites for housing. This could result in housing to meet Derby City's needs coming forward in an ad hoc and unsustainable manner and in locations over which Derby City has no strategic influence. On this basis, and in order to be an effective and positively prepared policy, Policy CP6 should, (in conjunction with Policy CP1(b)) identify specific sites or broad locations which follow the SA findings (i.e. adjacent to Derby City's boundary, capable of utilising existing infrastructure), in which development should come forward within AVBC and SDDC to meet the unfulfilled Derby City need. This will ensure development comes forward in a sustainable manner to meet identified need and that the Derby City OAN can be met over the course of the Plan period.



Wednesday 4th May 2016: Day 5
Matter 6: Natural and Built Environment (Policy CP20)

"Main issue – Whether the Local Plan makes appropriate provision for the protection, conservation and enhancement of the natural and built environment and the achievement of good design. (Policies ... CP20) ...

- e) Does the Local Plan include a positive strategy for the conservation and enjoyment of the historic environment?*
- f) Does the approach to heritage assets in Policy CP20 accord with national policy? ..."*

Catesby Estates Limited are being represented on this point by edp, who have prepared a standalone Hearing Statement on this issue, which is attached as **Appendix 1**. It states that the Policy CP20 should be modified in order to more accurately address the approach to heritage assets set out in current national planning policy and supporting guidance. Proposed wording for amendments to the policy are set out in the EDP letter and are not repeated here.

Policy CP20, as drafted, is unsound and not consistent with national policy. It is suggested that the wording should be amended as set out in Appendix 1 to this letter, to reflect the Framework and relevant good practice guidance.



Appendix 1 – EDP Statement on Policy CP20

30 March 2016

Our Ref: L/EDP2130/AC/fg

Mr Mike Moore BA (Hons) MRTPI CMILT MCIHT
c/o Carmel Edwards, Programme Officer
Planning Services
Derby City Council
The Council House
Corporation Street
Derby DE1 2FS

Dear Mr. Moore

Derby City Local Plan – Part 1: Core Strategy, Pre-Submission, August 2015

Further to the Representations made to the *Derby City Local Plan - Part 1: Core Strategy* (August 2015) Pre-Submission consultation, this email provides further commentary on the proposed wording for draft Policy CP20, which refers to the historic environment.

It is noted that, following the submission of representations to the Pre-Submission consultation in October 2015, email correspondence has been received from Mr R Carruthers at Derby City Council (dated 7th March 2016 and attached to this Statement) suggesting amendments to the policy wording. This Statement seeks to provide further comment in respect of those proposed amendments.

This Statement focuses specifically on two aspects of Policy CP20, as set out on Page 2 of Mr. Carruthers' 7 March 2016 email, which states that "...following consultation with Historic England we are minded to suggest the following modifications to Policy CP20 to the Inspector".

In both cases (set out below), EDP believes that the proposed modifications are unsound and should be further modified to more accurately address the approach set out in national planning policy and supporting guidance.

Policy CP20: Historic Environment

First of all, the proposed amendment to criterion (d): (policy) is phrased as follows:

"ensure that development within the city does not adversely affect the significance of heritage assets located outside of the city boundary, within adjoining local authority areas, particularly through impacts upon the setting of assets"



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CIRENCESTER (Head Office)
Tithe Barn
Barnsley Park Estate
Barnsley, Cirencester
Gloucestershire GL7 5EG
t 01285 740427

CARDIFF
First Floor
The Bonded Warehouse
Atlantic Wharf
Cardiff CF10 4HF
t 029 21671900

SHREWSBURY
The Stables
Sansaw Business Park
Hadnall, Shrewsbury
Shropshire SY4 4AS
t 01939 211190

e info@edp-uk.co.uk

www.edp-uk.co.uk

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However, this proposed amendment is considered to be **unsound** because Historic England (2015) *Historic Environment Good Advice in Planning 3: The Setting of Heritage Assets* clearly identifies that setting is not a 'heritage asset' and cannot be 'harmed'; its value lies only in what it contributes to the significance of a heritage asset.

Hence, the setting of a heritage asset can only be subject to 'change'; not an 'impact'. The recipient of any impact would be the heritage asset under consideration, with the driver being a change within its setting.

In light of the above, this proposed amendment should be amended as follows:

"ensure that development within the city does not adversely affect the significance of heritage assets located outside of the city boundary, within adjoining local authority areas, particularly through changes within their setting."

Secondly, the new sentence, which is proposed to be added to end of Paragraph 5.20.12 of the draft *Derby City Local Plan - Part 1: Core Strategy* (supporting text), states the following:

"Where there is likely to be harm to a heritage asset, the tests in national policy will be followed. In such circumstances, clear justification should be provided, including details of any public benefits."

However, this proposed wording is considered to be **unsound** because Paragraphs 133 to 135 of the *National Planning Policy Framework* (NPPF, 2012); which sets out current national policy covering the conservation and management of the historic environment; together outline procedures that are to be followed by decision makers in weighing the benefits and disbenefits of development proposals and reaching an informed decision based around the significance of the asset and the scale of any harm predicted.

In that regard, they do not represent a 'test' as such, whereby they identify thresholds for the acceptability of development proposals or specify outcomes for those proposals where those thresholds are not met or exceeded. In themselves they do not enable the decision maker to reach a decision in respect of a planning proposal, but instead set out the approach that should be taken with regard to its assessment and subsequent determination.

In light of the above, this proposed new sentence should be amended as follows:

"Where there is likely to be harm to a heritage asset, clear and convincing justification should be provided, as well as details of any public benefits"

On this basis, it is proposed that the wording of Policy CP20 (and supporting text) should be amended as follows, in order to reflect the NPPF and relevant good practice guidance:

CP20 – Historic Environment

The Council recognises the historic environment as one of Derby's greatest resources and will protect it through the preservation, enhancement, restoration and repair of heritage assets. Designated and non-designated heritage assets of importance within Derby include:

- *The Derwent Valley Mills World Heritage Site*
- *Statutory and Locally Listed Buildings*
- *Conservation Areas*
- *Scheduled Monuments, Archaeological Alert Areas and Other Archaeological Remains*
- *Historic Parks and Gardens*

Development proposals that would detrimentally impact upon the significance of a heritage asset will be resisted.

The Council will:

- a. *require that where proposals have the potential to impact upon heritage assets, a statement of significance and an impact assessment are submitted to ensure that the importance of the asset and the extent of any impact are fully understood. Heritage assets will be conserved in a manner appropriate to their significance*
- b. *require proposals for new development, located within Archaeological Alert Areas, or other areas of archaeological potential to be accompanied by an assessment of available evidence and where appropriate an archaeological evaluation. This should be submitted before the planning application is determined in order to enable an informed and reasonable planning decision*
- c. *require proposals for new development that have the potential to impact upon the significance of heritage assets (including through development affecting setting) to be of the highest design quality to preserve and enhance their special character and significance through appropriate siting, alignment, use of materials, mass and scale and take account of best practice guidance*
- d. *require appropriate recording of heritage assets where necessary, but particularly where development will lead to a loss of significance*
- e. *support the sensitive re-use of under-utilised assets consistent with their conservation, whilst also recognising that managed change may sometimes be necessary if heritage assets are to be maintained in the long term*
- f. *ensure that development within the city does not adversely affect the significance of heritage assets located outside of the city boundary, within adjoining local authority areas, particularly through changes within their setting*
- g. *encourage opportunities to enhance the tourism potential of heritage assets, particularly within the City Centre and the Derwent Valley Mills World Heritage Site (DVMWHS) as part of the Our City Our River programme. Opportunities to adapt heritage assets to make*

them more resilient to climate change will also be supported in principle, provided they do not impact upon the significance of the asset

- h. support the reinstatement of historic and well-designed new shop fronts within the City Centre and Local Centres*
- i. continue to prepare, monitor and review conservation area appraisals and management plans for existing and potential conservation areas*
- j. continue to review, update and introduce Article 4 Directions, where appropriate*
- k. continue to record and monitor heritage assets that are at risk and take action where necessary. The Council will support re-use and change where necessary to preserve the assets for the future*

Within regeneration priority areas and areas of significant change, particular efforts will be made to ensure that heritage assets are positively integrated into regeneration proposals, through constructive conservation.

Additional guidance relating to development and the historic environment will be set out in a design guidance document to be prepared by the Council.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Andrew Crutchley'.

Andrew Crutchley BA (Hons), PG Dip (Oxon), MCIFA
Director
Email: andrewc@edp-uk.co.uk
Mobile: 07795 511 092

From: Carruthers, Richard [mailto:Richard.Carruthers@derby.gov.uk]
Sent: 07 March 2016 11:22
To: keith.fenwick
Subject: Derby City Local Plan Part 1, Core Strategy - Catesby Estates Objections

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Dear Mr Fenwick,

As you will be aware, the Derby City Local Plan Part 1 (Core Strategy) has been submitted to the Secretary of State for examination and formal hearing sessions are due to commence at the end of April. Before the sessions start, we're contacting a number of stakeholders / objectors to see if we can resolve any of the objections prior to the hearing sessions, potentially through modifications which we can suggest to the Inspector through a Statement of Common Ground (SCG).

Having considered your comments made at the pre-submission stage, a number of your client's (Catesby Estates Ltd) concerns related to the wording of Policy CP20 (Historic Environment), notably in relation to the consideration of the 'setting' of heritage assets. See link to Pre Submission plan:

http://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/policiesandguidance/planning/Core%20Strategy_PROOF_11.08.2015.pdf

It is acknowledged that as worded in the Pre-Submission plan, the references to setting could be clarified. Following consultation with Heritage England we are minded to suggest the following modifications to Policy CP20 to the Inspector:

CP20 – Amendment to 3rd paragraph: (policy)

“Development proposals that would detrimentally impact upon the ~~character~~, significance ~~and/or setting~~ of a heritage asset will be resisted”

CP20 - Amendment to criterion (c): (policy)

*“require proposals for new development that have the potential to impact upon the **significance** of heritage assets **(including through development affecting setting)** ~~and/or their setting~~ to be of the highest design quality to preserve and enhance the special character and significance through appropriate siting, alignment, use of materials, mass and scale and take account of best practice guidance”*

CP20 – Amendment to criterion (d): (policy)

*“ensure that development within the city does not adversely affect the ~~setting~~ **significance** of heritage assets located outside of the city boundary, within adjoining local authority areas, **particularly through impacts upon the setting of assets.**”*

CP20 – New sentence to be added to end of Paragraph 5.20.12 (supporting text):

“Where there is likely to be harm to a heritage asset, the tests in national policy will be followed. In such circumstances, clear justification should be provided, including details of any public benefits.”

On the basis of the suggested modifications set out above, can you confirm whether or not your client's objections to Policy CP20 would be alleviated? If you consider that the proposed modifications would enable your client's concerns to be alleviated, can you let me know whether you would be willing to sign a SCG to confirm that your client is satisfied with the proposed amended wording?

If this is something you wish to pursue, I will endeavour to circulate a draft SCG for review as soon as possible.

Many thanks

Richard Carruthers
Planning Officer
Derby City Council

Richard Carruthers | Planning Officer | Planning Services | Communities and Place Directorate | Derby City Council, The Council House, Corporation Street, Derby, DE1 2FS | Telephone 01332 642121 | Minicom 01332 640666 | www.derby.gov.uk

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Andrew Crutchley BA (Hons), PG Dip (Oxon), MIFA
Director



The Environmental Dimension Partnership
Tithe Barn, Barnsley Park Estate, Barnsley, Cirencester, Gloucestershire, GL7 5EG
t 01285 740427 f 01285 740348 w www.edp-uk.co.uk

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