

# Summary Proof Of Evidence.

## Evidence of Gary Lees BA (Hons) DipTP MRTPI.

In Respect of a S.78 Planning Appeal at Land West of Royal Hill Road, Spondon.

On behalf of Miller Homes.

Date: 17 March 2025 | Pegasus Ref: P19-2639

Appeal Ref: APP/C1055/W/24/3356476 | LPA Ref: 23/01631/OUT







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# 1. Introduction

## Qualifications and Experience

- 1.1. My name is Gary Robert Lees. I hold a Bachelor of Arts Degree with Honours in Urban and Regional Planning, together with a Diploma in Town Planning, both from Lanchester Polytechnic. I am a member of the Royal Town Planning Institute and a Director of GRL Planning Ltd. GRL Planning Ltd was formed in July 2024 following my retirement as Chairman of Pegasus Group. I am retained as a consultant for Pegasus Group on various projects I worked on whilst at Pegasus Group, including the appeal site.
- 1.2. I have over 30 years' experience working in a variety of planning roles in Local Government and planning consultancies. I joined Pegasus Group in 2004 and have over those years advised a range of clients in relation to the promotion of land through the development plan process and the submission of planning applications. I have appeared at development plan examination hearings and planning appeal inquiries as a witness, including in relation to housing need and supply matters.
- 1.3. The evidence I have prepared and provide to this Inquiry on behalf of Miller Homes is true and given in accordance with the code of conduct of the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions.

## Scope of Evidence

- 1.4. My Proof of Evidence relates principally to matters of planning policy and the overall planning balance in respect of the appeal proposal. I also seek to address concerns raised by third parties.
- 1.5. A Landscape Buffer Plan (drg ref: P19\_2639\_DE\_022\_C\_01) [CD 8.09] is provided at **Appendix 2** of my proof which is supplemented with an updated Alternative Illustrative Masterplan (drg ref: P19\_2639\_DE\_01\_J\_01) [CD 8.08] at **Appendix 3**. The Landscape Buffer Plan [CD 8.09] identifies a fixed area of the site that is proposed to be landscaped in order to minimize the development's impact on the function of the Green Wedge at Reserved Matters stage. It is proposed that the plan be a condition of planning permission to ensure no built development is to be permitted on the identified landscape buffer areas as part of future Reserved Matters, should the appeal be allowed. The Illustrative Masterplan has subsequently been updated for information to demonstrate the provision of these buffers.



## 2. Context

### Introduction, The Site and Context

- 2.1. This proof of evidence has been prepared on behalf of Miller Homes ("the Appellant"), in respect of an appeal made pursuant to section 78 of the Town and Country Planning Act 1990 (as amended) ("TCPA 1990"). This appeal has been made against Derby City Council's ("the Council") refusal of an application for planning permission.
- 2.2. The site and site context are as agreed in the Statement of Common Ground ("SoCG"), signed 28th February between the Appellant and the Council [CD 8.01].

### The Appeal Application

- 2.3. The application the subject of this appeal was registered as valid on 30<sup>th</sup> of November 2023 and assigned the reference 23/01631/OUT. The description of development reads as follows:  
  
*"Outline application for residential development including access arrangements – up to 90 dwellings"*
- 2.4. The application was submitted in outline with all matters reserved, except access arrangements. The site is to be accessed via Royal Hill Road and would provide, amongst other things, a Local Equipped Area for Play ("LEAP"), on-site open space provision, improved pedestrian and cycle connectivity to Spondon and into the countryside, and in excess of 10% biodiversity net gain on a non-mandatory Biodiversity Net Gain (BNG) site.
- 2.5. The application was refused on 7<sup>th</sup> June 2024 by Planning Committee who overturned an Officer Recommendation for approval.

### 3. Most Important Policies

- 3.1. Section 70(2) of the TCPA 1990 sets out that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- 3.2. For the purposes of this appeal, the development plan comprises of the Derby City Local Plan Part 1 – Core Strategy (CS) (2017) [CD 4.01] and the Saved Policies of the City of Derby Local Plan Review (2006) [CD 4.02]. For the avoidance of doubt, there is no Neighbourhood Plan that applies to the appeal site.
- 3.3. The National Planning Policy Framework (“NPPF”) does not purport to change the statutory framework or displace the primacy of the development plan; rather, it is a material consideration for the purposes of sections 70(2) of the TCPA 1990 and section 38(6) of the PCPA 2004. The NPPF represents up-to-date government policy<sup>1</sup> and is, therefore, an important material consideration that must be taken into account where it is relevant to a planning application/appeal.
- 3.4. At the heart of the NPPF is a presumption in favour of sustainable development, where Paragraph 11 sets out the policy for decision making. Paragraphs 11(c) and 11(d) set out how this should be done, with 11(d) referred to as the ‘tilted balance’.
- 3.5. Insofar as relevant, where a case does not fall within paragraph 11(c) (as is the case here), the next step is to consider whether paragraph 11(d) applies. In this case, this requires examining whether the most important development plan policies for determining the application are out-of-date.
- 3.6. If paragraph 11(d) does apply, then the next question is whether one or more Footnote 7 policies are relevant to the determination of the application or appeal (limb (i)). Footnote 7 policies are those that protect areas or assets of particular importance. In the present case, it is agreed that no Footnote 7 policies apply.

#### Footnote 8 Qualifications

- 3.7. As regards paragraph 11(d), Footnote 8 confirms that the presumption is triggered for applications involving the provision of housing where:
  - a) The local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 78); **or**
  - b) Where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years (emphasis added).
- 3.8. Footnote 8 qualifications are not contingent on one another; to engage the presumption, the satisfaction of one will suffice.

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<sup>1</sup> Planning Practice Guidance, Paragraph 006 Reference ID: 21b-006-20190315.

- 3.9. As regards criterion (a), the Council cannot demonstrate a five-year supply of deliverable housing land, at 3.85 years<sup>2</sup>.
- 3.10. Footnote 8a) qualification is therefore satisfied, engaging the tilted balance. This means:
- The most important policies are deemed out of date. The weight to be given to them is a matter of judgment for the decision taker, albeit noting the Supreme Court judgment in *Suffolk Coastal DC v Hopkins Homes Ltd*<sup>3</sup> [CD 7.06] that if a planning authority that was in default of the requirement of a five-years' supply were to continue to apply its environmental and amenity policies with full rigor, the objective of the Framework could be frustrated<sup>4</sup>; and
  - That the decision taker should be disposed to grant planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits
- 3.11. The Council confirm that the tilted balance is engaged in relation to this proposal.

## Out of Date Development Plan Policies

- 3.12. Notwithstanding the above, the lack of housing land supply is not the only reason the policies can be found to be out-of-date. Policies which bear on the decision can be out-of-date irrespective of housing land supply or the Housing Delivery Test result, with the consequence that the tilted balance is triggered on a different basis<sup>5</sup> as per *Oxton Farm v Harrogate BC* [CD 7.04].
- 3.13. For the purposes of this Appeal, it is considered that the most important policies are CS policies CP6 Housing Delivery and CP18 Green Wedges.
- 3.14. It is agreed in the SoCG [CD 8.01] that Policy CP6 is considered to be out of date in respect to the housing supply requirement for the City (paragraph 8.5).
- 3.15. It is the first requirement of Policy CP6 that is most relevant in respect of this proposal, which sets the amount of housing to be delivered across the City between 2011 and 2028 at 11,000 dwellings. At just 647 dwellings per annum, this is 259 dwellings per annum below the standard method housing requirement figure of 906 dwellings per annum, a 28.6% shortfall.
- 3.16. As a consequence, the housing supply component of Policy CP6 is out of date as it has been overtaken by a change in national policy – this is regardless of the 5 year housing land supply position. The CS and policies therein have been formulated to deliver an inadequate supply of housing relative to the quantified need; it is not possible to deliver the housing that is needed by having strict regard to the policies in the CS and applying those with full force.

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<sup>2</sup> SoCG Housing [CD 8.05] paragraph 1.2 and Appendix A, see also paragraph 5.19 below

<sup>3</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd & Anor and Richborough Estates Partnership LLP & Anor v Cheshire East BC* [2017] UKSC 37.

<sup>4</sup> *Ibid* [83].

<sup>5</sup> *Oxton Farm v Harrogate BC* [2020] EWCA Civ 805 at [33]

- 3.17. The Housing supply component of Policy CP6 is also inconsistent with the NPPF in seeking to boost significantly the supply of housing and is therefore out of date. This is also the case in respect of other policies in the CS that unduly restrict the supply of housing.
- 3.18. In respect of Policy CP18 Green Wedges, the boundaries of these within the Part 1 Core Strategy 2017 [CD 4.01] were defined to only allow for sufficient growth to meet the capped housing requirement of 647 dwellings per annum back in 2011.
- 3.19. The Green Wedge designation does not seek to protect a landscape of any particular quality or amenity contribution, and does not consider other matters such as landscape character, its intrinsic value, or features and components. The Green Wedge designation contained within Policy CP18 does not offer protection from the tilted balance as per footnote 7 to paragraph 11(d).
- 3.20. It is agreed that the proposed development is in conflict with Policy CP18 Green Wedges. I accept that the principle of green wedges is a useful policy tool in helping to define the urban structure of the city. I also accept that that the general principles underpinning the rationale for green wedges are consistent with the NPPF, but the construct and application of Policy CP18 is not. The supporting text to the policy acknowledges that *'Green Wedges do not have the permanence of the Green Belt but it is intended to retain the principle of Green Wedges, maintain their identity, reduce the impression of urban sprawl and resist harmful development'* (paragraph 5.18.2, with my emphasis).
- 3.21. The proposal for new build residential development within a Green Wedge is in no way permitted by the Policy CP18, with criterion a) limiting development within Green Wedges to specific uses that excludes new build homes. The exclusion of new build residential development is regardless of the impact and ability to weigh harmful and beneficial impacts. This policy approach lacks the balancing exercise of harms and benefits that runs through the NPPF and is as a consequence inconsistent with it.
- 3.22. It is considered that Policy CP18 is not only out of date as a consequence of poor housing land supply, it is also out of date as it conflicts with the NPPF in only permitting development in specifically identified circumstances. Although the policy does not permit new build residential development, it is accepted that green wedges are not permanent.
- 3.23. The justification for Policy CP18 is based upon the Core Strategy Green Wedge Review undertaken in 2012 [CD 9.01].
- 3.24. Paragraph 4.9 identifies the constraints the City is under *"Ultimately, Derby is unlikely to be able to accommodate all of its housing needs on brownfield, regeneration sites alone as there is limited capacity within the built area of the city"*.
- 3.25. Paragraph 4.10 sets the context for the potential need for Green Wedge development in the future, *"Dependent upon the final calculation of housing needs, there is likely to be a need to release some greenfield land, potentially around the edge of the city and potentially within GWs. This means that some of the GWs will be subject to change in the future"*(my emphasis).
- 3.26. Paragraph 5.1 clearly sets out that: *"GWs do not have the degree of permanence of Green Belt and need to be re-considered as part of each new plan."* In the context of the need for the City to meet its increasing housing requirements, the Council in their own evidence base acknowledge the need for Green Wedges to potentially support new housing.



- 3.27. The Green Wedge Review provides a review of the City's Green Wedges at a snapshot in time whilst trying to balance the City's development needs. The material changes resulting from the NPPF and standard method housing requirements constitute a material change of circumstance that requires the extent of Green Wedges to be reconsidered in the context of these updated and increased development requirements. The lack of movement on the preparation of a Part 2 Local Plan or a new Local Plan has prevented a plan-led approach to meeting housing needs.
- 3.28. I examine the shortfall in housing (851 dwellings to be identified in the Part 2 Plan<sup>6</sup>) by the City Council in not preparing a Part 2 Local Plan later in my proof of evidence. Interestingly, criterion k) of Policy CP18 states "(k) seek to ensure that, where urban extensions occur, the principle of the Green Wedge itself will be continued". The Policy wording is, in my view, intended to guide future residential development in or around green wedges to ensure that the principle of them should continue. The insertion of this criterion was required by the examining Inspector as a Main Modification (MM40) to Policy CP18 in his Report of December 2016 [CD 9.02]. MM40 is to add a new paragraph 5.18.6 that requires the Part 2 plan to *"consider further amendments to Green Wedge boundaries as part of the process of identifying non-strategic housing and employment sites, address the implications of existing or planned development on current boundaries and to take full account of all other issues and opportunities raised in the Green Wedge Review (2012). Any review of boundaries will be taken within the context of maintaining the principles of Green Wedge as set out in this policy and the objectives of the plan"*.
- 3.29. Criterion k) to Policy CP18 was thus to provide policy guidance to the consideration of further housing proposals on green wedge land as part of the Part 2 Local Plan. At the time of the Part 1 examination, the 2015 Local Development Scheme [CD 9.03] identified this Part 2 Plan was to be adopted by December 2017. That Part 2 Plan was thus required to consider further allocations on Green Wedge land to contribute to the 11,000 CS local plan dwelling requirement within a matter of months. Eight years later we still have no Part 2 Plan and insufficient land allocated to even meet the reduced 11,000 dwelling CS housing requirement.
- 3.30. In the context of Policy CP18 it is clear that the Policy as written is binary in resisting new build housing and is thus inconsistent with the NPPF. The passage of time since the Part 1 Plan was adopted (eight years) alongside the lack of a Part 2 Plan that was intended to review green wedges for further housing allocations in accordance with Policy CP18 criterion k) within 12 months, further renders the strict application of Policy CP18 out of date.
- 3.31. The lack of an up-to-date development plan to deliver sufficient new housing to meet the identified needs creates considerable conflict with the NPPF and its presumption in favour of sustainable development. Furthermore, the harm arising by fully adhering to policy CP18 Green Wedges runs contrary to the NPPF's objective of boosting significantly the supply of housing.
- 3.32. I therefore conclude that the most important development plan policies for determining the appeal are out of date on two counts:
- 1) The two most important policies have been overtaken by national policy, being based on an historic and capped assessment of housing need. Policy CP18 is binary and lacks

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<sup>6</sup> Paragraph 5.9

the ability to balance benefits and harm, it is therefore also inconsistent with the nuanced approach of the Framework.

2) Derby City Council is unable to demonstrate a five-year supply of deliverable housing sites against their identified local housing needs. In accordance with Footnote 8 of the Framework, this renders the most important policies automatically out-of-date.

3.33. For these reasons, conflict with the Development Plan must be attributed limited weight. Indeed, the weight to be given to a Development Plan will depend on the extent to which it is up to date. A plan which is based on outdated information, is likely to command little weight<sup>7</sup>.

3.34. Returning to the principles expounded in *Monkhill* (above) it has been demonstrated that paragraph 11(d) applies; the most important development plan policies that the Appeal proposal is in conflict with are out-of-date. In light of this, and in the absence of any applicable Footnote 7 policies, the decision-taker must proceed to limb (ii) and determine the application accordingly. Planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

## Conclusions on the Development Plan and the NPPF Paragraph 11

3.35. Apart from Policy CP18 Green Wedges, the appeal proposals are considered to accord with all other relevant and up-to-date policies of the Derby Core Strategy Local Plan Part 1 (2017) [CD 4.01] and the City of Derby Local Plan Review Saved Policies (2006) [CD 4.02]. I attribute limited weight to the conflict with the most important policies as these are out of date on two counts.

3.36. As demonstrated above and with Council's agreement, in the present case, paragraph 11(d) of the NPPF applies. In light of this, and in the absence of any applicable Footnote 7 policies, the decision-taker must proceed to limb (ii) and determine the application accordingly. Planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. I undertake that assessment in the 'Planning Balance' section below.

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<sup>7</sup> *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin).

## 4. Housing Delivery Failure

### Past Failure

#### The Derby Housing Market Area (HMA)

- 4.1. An initially commendable approach was adopted by the three local authorities that make up the Derby Housing Market Area (HMA) in seeking to plan for strategic issues across the HMA under the Duty to Cooperate (DtC). Alongside South Derbyshire District Council (SDDC) to the south and Amber Valley Borough Council (AVBC) to the west and north, Derby City Council (DCC) initially agreed to meet the total housing needs of the HMA in their three separate but aligned emerging local plans, rather than the specific housing requirements of the respective authority areas.
- 4.2. This is explained in part in the Introduction section of the Derby City Local Plan Part 1 – Core Strategy from paragraph 1.23, with paragraph 1.24 confirming the driving force behind the joint working: *“It has been apparent from an early stage in the Plan making process that Derby will not be able to accommodate all of its future growth needs within the administrative area of the City”*. Under Policy CP6, paragraph 5.6.2 of the Part 1 Plan states: *“The Derby HMA authorities’ shared evidence concludes that between 2011 and 2028 the Derby HMA needs to provide 33,388 new homes and that the City’s objectively assessed need over the same period is for 16,388 new dwellings”*.
- 4.3. The minimum of 11,000 new dwellings to be delivered in Derby City over the 2011–2028 plan period in policy CP6 is therefore actually a significantly lower number than the objectively assessed needs for the City. The Part 1 Plan was only found to be sound through examination due to the examining Inspector having confidence in the neighbouring authorities planning for and delivering significant amounts of the City’s housing needs in addition to their own. The housing requirement in the adopted Part 1 City Local Plan is thus just 2/3 of the City’s objectively assessed needs.
- 4.4. The SDDC Local Plan Part 1 [CD 9.05] was the first core strategy to be adopted in June 2016. The examining Inspector there found the Plan sound on the basis that the City’s capacity be capped at 11,000 dwellings, with SDDC delivering an additional 3,017 dwellings and AVBC a further 2,371 dwellings, to make up for the City’s shortfall of 5,388 dwellings and ensure the HMA’s needs would be met through these three aligned plans.
- 4.5. Whilst SDDC has been successfully delivering a proportion of the City’s housing needs since 2016, AVBC has unfortunately not. Despite repeated attempts, it has yet to adopt a new Local Plan. Accordingly, the City’s objectively assessed housing needs have not been planned for or delivered ever since the Part 1 Plan was adopted in 2017.
- 4.6. The Derby City Local Plan Part 1 – Core Strategy was adopted on 25<sup>th</sup> January 2017, just over 8 years ago now. Being more than 5 years old the Council utilised the PAS Local Plan Route Mapper Toolkit Part 1: Local Plan Review Assessment [CD 9.06] and concluded in December 2021 at A.17 that the local plan’s housing policies no longer reflected the significant uplift in the Council’s housing requirement, meaning it was appropriate to fully update their Local Plan. It is now over 3 years since it was determined that the Derby Local Plan needed to be updated and still there has been no meaningful progress made by the Council on preparing one.

- 4.7. It was the intention at the time of adoption that there would be a Part 2 Local Plan to follow. Indeed, the Introduction to the Part 1 Plan confirms that the Core Strategy is the first part of the new Local Plan and that a Part 2: Site Allocations and Development Management Policies Local Plan “*will include any additional allocations which are required and further ‘Development Management’ policies that are not addressed by the Core Strategy. The Part 2 document will allocate smaller sites and provide more detailed policies and guidance on key topic areas and locations*” (paragraph 1.4). The 2015 Local Development Scheme (LDS) that supported the Part 1 Plan examination identified that the Part 2 plan would be adopted by December 2017 [CD 9.03].
- 4.8. Even against the significantly reduced capped Local Plan requirement of 647 dwellings per annum, housing delivery in the City since 2011 stood at just 6,779 dwellings in 2023 against a capped requirement of 7,764 dwellings, a shortfall of some 985 dwellings (data taken for Derby Authorities Monitoring Report 2022– 2023 [CD 9.08]). Even against the capped housing requirement, Derby City Council are not delivering the requisite number of dwellings.
- 4.9. The results of the Housing Delivery Test published in December 2024 [CD 9.09] for 2023 show Derby's current HDT at 83%, requiring Derby City to apply a 20% buffer to the 5 year supply calculation as per Paragraph 78(b) of the NPPF. Paragraph 78b) of the NPPF confirms that where housing delivery is below 85% of the HDT housing requirement (footnote 40), this constitutes “*significant under delivery*”.

Table 1 2023 Housing Delivery Test – Derby

LPA	Number of homes required			Total number of homes required	Number of homes delivered			Total number of homes delivered	Housing Delivery Test: 2023 measurement	Housing Delivery Test: 2023 consequence
	20/21	21/22	22/23		20/21	21/22	22/23			
Derby	376	617	1255	2247	558	694	614	1865	83%	Buffer

### Affordable Housing Need and Delivery

- 4.10. Affordable Housing delivery in Derby is a significant issue, the Council acknowledge that they have a significant shortfall. The Derby and South Derbyshire Local Housing Needs Assessment (December 2023) [CD 9.10] at Paragraph 1.33 states that “*analysis suggests a need for 672 affordable rental homes per annum in Derby City*”. Paragraph 1.38 identifies that “*the analysis identifies a gross need for 404.....dwellings in Derby*” – it should be noted that the same paragraph states “*The analysis is less conclusive about the scale of the net need*”.
- 4.11. The Derby City Council Authority Monitoring Report (2023) [CD 9.08] details the delivery of affordable housing and demonstrates that the City Council has been unable to deliver sufficient affordable housing to meet their needs. This position is further compounded by the fact that in data recorded by MHCLG<sup>8</sup> it confirms that on 31 March 2024 there were 8,492

<sup>8</sup> MHCLG Live Table 600

households on the Housing Register. This represents an 8% increase in a single year from 7,898 households on 31 March 2023 (which itself was a 20% increase from 6,557 households on 31 March 2022).]

## Future Failure

- 4.12. Derby City Council has confirmed that its local plan's policies in relation housing requirements no longer reflect the national policy for housing delivery<sup>9</sup>. As such the standard method is applicable. Table 2 below demonstrates the uplift in the housing requirements across the Housing Market Area following publication of the updated Standard Method (December 2024) [CD 9.11]. Across the Housing Market Area there is a total increase of 289 dwellings per annum from the housing requirements contained in the HMA Local Plan Part 1 documents when compared to on the 2024 Standard Method calculation.

*Table 2 Annual Housing Requirements across the Derby HMA (Local Plan Housing Requirement vs Standard Method)*

LPA	Local Plan Requirement	Standard Method Requirement	Difference
Derby (adopted January 2017)	647	906	+259
South Derbyshire (adopted June 2016)	742* (565)	581	-161 (+16)
Amber Valley*	424	615	+191
<b>Derby HMA</b>	<b>1,813</b>	<b>2,102</b>	<b>+289</b>

\*742 included an element of Derby's unmet need. (565) accounts for South Derbyshire's District Requirement

\* Amber Valley's Local Plan Requirement is based on current Local Plan going through Public Examination

- 4.13. Irrespective of the Council's past failures, housing delivery issues will persist into the future, in the absence of up-to-date development plans across the HMA. The Council's ability to meet its annual housing requirement of 906 dwellings per annum over the next five years is unlikely given its latest Housing Land Supply Position published in January 2025 [CD 9.12]. Table 3 below demonstrates that the Council's supply position equates to a shortfall of 1,251 dwellings across the next five years, with a base date of 1<sup>st</sup> April 2024, the most recently published and available data.

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<sup>9</sup>Paragraph 5.7



*Table 3 The Calculation of the Council's Five Year Housing Supply (January 2025)*

Supply at April 2024

Deliverable Major Site Planning Permissions	3,169
Deliverable Major Brownfield Sites without PP	368
Deliverable Major Greenfield Sites without PP	218
Deliverable Small Site Permissions	430
TOTAL	4,185

Requirement

Annual Requirement (Standard Method)	906
Five Year Requirement (906x5)	4,530
Buffer (20% of 4,530)	906
Total Requirement (5 year + Buffer)	5,436
Annual Requirement for 5 year supply	1,087
FIVE YEAR SUPPLY (4,185/1,087)	3.85

- 4.14. The Council is now also failing the Housing Delivery Test at 83%, meaning there has been significant, recent under delivery.
- 4.15. In these circumstances one would anticipate a new Local Plan being imminent, but this does not look likely at the present time. Therefore, little confidence can be placed on the Council preparing a new Local Plan in the near future to help remedy significant housing failure concerns.
- 4.16. Future housing supply looks bleak for the City as it appears they will continue to look to their neighbours to help meet its future housing needs. The Council recently published a Derby Housing Land Capacity: Position Paper October 2024 [CD 9.04] that sets out what the Council consider their future capacity is to deliver new housing. The report details that the Council has considered all sites within the City on the basis of the previous draft standard method target of 1,244 dwellings per annum rather than the current 906 dwellings per annum requirement. However, it concludes that the City has a potential supply of only 12,500 dwellings for the period 2022–2041, equating to just 658 dwellings per annum.

- 4.17. It is important to note that the capacity the City Council has identified (12,500 dwellings) incorporates a quantum of Green Wedge release (615 dwellings) within the assumptions detailed in Table 4 below (also see Appendix 3 of the Derby Housing Land Capacity: Position Paper October 2024).

*Table 4 Components of Housing Land Supply July 2024 (Appendix 3 [CD 9.04])*

Net Completions 2022-2024	1,994
Major Site Permissions	3,583
Small Site Permissions	430
Windfalls	1,440 (120 x 12: 2027 – 2039)
Losses	-300 (15 x 20: 2024 -2039)
Potential New Capacity (excluding sites with planning permission)	5,100
<b>Total</b>	<b>12,247 (rounded to 12,500)</b>

<b>Sources of Potential New Capacity (July 2024)</b>	
Existing Allocations Rolled Forwards	960
Green Wedge Releases	615
Employment Land Releases (existing and proposed)	404
City Centre	2,821
Non-strategic allocations	300
<b>Total</b>	<b>5,100</b>

- 4.18. It is therefore clear the Council acknowledges that it should release Green Wedge land to help contribute to meeting its presently identified development needs. No information has been disclosed on how the capacity figure of 615 dwellings for Green Wedge release has been calculated; if a further Green Wedge Review has been undertaken to inform this figure, then this is not yet in the public domain.
- 4.19. In summary, there has been and will continue to be a failure to meet genuine, real and identified housing needs in the City of Derby. This failure is due in part to the tight administrative boundary and limited options to be able to build the houses that are very much in need. The Council acknowledges that even with the release of a further 615 dwellings on presently designated green wedge land, it will still be well short of being able to meet its own identified housing needs within the City.
- 4.20. The bottom line is that the Council is significantly adrift of having an adequate supply of deliverable housing land, with the appeal site being able to make a material, positive contribution to housing delivery in the short term (market and affordable). This would contribute to and help alleviate the chronic and acute housing shortage that has existed in Derby City for some time and likely to continue into the future.

- 4.21. The Appeal Site is under contract, subject to planning, to a national house builder, Miller Homes. Should outline planning permission be granted for the Appeal proposals in June 2025 (in line with PINs decision timetable), then it is expected that development would commence on site in 2026, with a forecast of 30 dwellings completed in 2027 and 30 per annum for the subsequent 2 years. Applications for the approval of reserved matters are being finalised ready for submission as soon as this decision is released, should the appeal be allowed. Miller Homes is content for an approval to be conditional on reserved matters applications being submitted within 6 months of the grant of outline permission, and for commencement of development to be required within 18 months of the final reserved matter approval.
- 4.22. With the delivery including on-site 30% affordable housing provision, the site would thus make a positive, material contribution to the housing and affordable housing land supply shortfall over the next 5 years.

## 5. Main Issues

5.1. This section addresses the Main Issues identified by the Inspector alongside the reason for refusal, including my views on the issue and the extent to which impact concerns can be addressed, compliance with relevant development plan and NPPF policies and the weight to be attached in the planning balance.

5.2. The Main Issues identified are:

- The effect of the proposal upon the function of the Spondon / Chaddesden Green Wedge; and
- The extent of the Council's acknowledged housing and affordable housing supply shortfalls.

### ***The effect of the proposal upon the function of the Spondon / Chaddesden Green Wedge***

5.3. A separate proof of evidence is submitted by Mrs Ellinsfield that addresses the impact of the proposed development on the function of the green wedge and the reason for refusal.

5.4. The only detailed assessments of the impact undertaken to date are by the Case Officer (in their Committee Report) and that of Mrs Ellinsfield, both of which confirm that the function and character of the Green Wedge will be retained if the development of the site as proposed was to occur.

5.5. Having regard to Mrs Ellinsfield's evidence, I am also of the view that the function of the Spondon / Chaddesden Green Wedge would be retained post development, a view that is supported by Officer's Committee Report [CD 3.01].

5.6. The planning officer who wrote the planning application committee report stated that *"The function and character of the Green Wedge in this part of the city, which is to provide separation between the distinct areas of the city, Chaddesden and Spondon and allow the countryside to extend into the urban area, would be safeguarded by this proposal. A sufficient width of the Green Wedge to the west of the development site would also be maintained in its current agricultural use"* (page 14). This goes on to identify that *"the proposed development of housing along a small section on the eastern side of the Green Wedge, would result in a limited urbanising impact on the Wedge"*.

5.7. In concluding on page 20, the planning officer states:

*"Crucially, the function and character of the Green Wedge in this part of the city has been considered and the development would maintain a sufficient, functional width of the Wedge to the west of the site to allow adequate separation between the residential areas of Spondon and Chaddesden. The proposed housing would also adjoin the existing residential settlement around Royal Hill Road and form a limited extension to it, such that the main purpose and function of the wedge in this location would be preserved."*

5.8. I am supportive of the contents of the Committee Report [that was presented at Planning Committee and agree with the Officer's judgement.

5.9. As stated above at Paragraph 4.40 criterion k) of Policy CP18 "*seek[s] to ensure that, where urban extensions occur, the principle of the Green Wedge itself will be continued*". The Policy wording is clear that where development does occur in or around Green Wedges, the principle of them should be continued. Criterion k) thus confirms that if the principle of Green Wedges were continued, housing development is capable of being considered acceptable. The appeal site is a modest extension of Spondon where, following development as proposed, the principle and function of the Chaddesden – Spondon Green Wedge would continue.

5.10. Accordingly, whilst housing development would have a negative impact on the openness of the green wedge, the carefully formulated development and mitigating landscape proposals serve to ensure that the extent of actual harm is localised and limited. The principle and function of the Chaddesden – Spondon Green Wedge will be maintained post development.

***The extent of the Council's acknowledged housing and affordable housing supply shortfalls***

5.11. It is agreed in the SoCG at paragraph 7.4 that "*a housing land supply of 3.85 years is a significant shortfall and therefore very significant weight should be applied in favour of applications that can contribute to increasing this supply*". That is an unequivocal agreed statement and does not require the appellant to contest the housing supply position any further.

5.12. It is also agreed that 2023 Housing Delivery Test is at 83%, meaning this constitutes 'significant under delivery' requiring a 20% buffer being added to the housing requirement.

5.13. It has been detailed above in Section 4 of this Summary Proof of Evidence the extent of Council's dire housing and affordable housing supply shortfalls; this is further supported by the Proof of Evidence prepared by James Stacey of Tetlow King Planning specifically on Affordable Housing.

5.14. The evidence demonstrates<sup>10</sup>:

- The delivery of affordable housing has fallen persistently short of meeting identified needs.
- In the twelve-year period since the start of the Core Strategy period in 2011, net of Right to Buy affordable housing delivery represented just 6% of overall housing delivery, equating to just 35 affordable dwellings per annum. It is clear that the Right to Buy is having a serious effect on the housing stock in Derby, with four dwellings being lost for every five new ones completed.
- Since the start of the 2013 SHMA period in 2012/13, against a need of 632 net affordable dwellings per annum, a shortfall of -6,583 affordable dwellings has arisen over the eleven-year period, equivalent to an average annual shortfall of -598 affordable dwellings.

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<sup>10</sup> Paragraphs 8.22–8.27



- In the first year of the 2023 LHNA period in 2022/23, against a need of 672 net affordable dwellings per annum, a shortfall of –749 dwellings has occurred, arising from the net loss of –77 affordable dwellings that year exacerbated by the Right to Buy.
- It is clear that a ‘step change’ in affordable housing delivery is needed now in Derby to address these shortfalls and ensure that the future authority-wide needs for affordable housing can be met.
- In light of the identified level of need there can be no doubt that the delivery of up to 27 affordable dwellings on the proposed site will make an important contribution to the affordable housing needs of Derby.

5.15. In summary, the extent of the shortfalls constitutes an urgent need for both market and affordable housing, where very significant weight should be applied in favour of applications that can contribute to increasing the supply, particularly if this can be achieved within 5 years.

## 6. Matters Raised by Third Parties

6.1. Over the consultation of the planning application, representations were received from local residents. These totalled 117. The Case Officer confirmed within the Committee Report that the main issues resulting from them consisted of the following matters:

- Vehicular access to the site is narrow and not adequate to serve the proposed housing
- Proposal would increase traffic congestion in the local area
- No through road on Royal Hill Road, so traffic would cause congestion and danger for pedestrians
- The site is close to primary school and development will increase traffic using the school
- Insufficient car parking and poor access to bus routes
- Impact on wildlife, including bats in the area
- Increase pressure on local amenities, shops and schools.
- Noise impacts from construction works
- Drainage infrastructure is insufficient and would result in increased flooding
- Loss of green space in Green Wedge
- Poor access to Spondon village
- Houses already on the market
- Loss of historical hedge

6.2. As part of appeal process, 21 Interested Parties and a petition signed by 68 people have submitted additional representations.

6.3. The additional representations received continue to reflect the responses received as part of the planning application. Multiple parties continue to question the highways impact of the development. Derby City Council as Highway Authority is comfortable with the proposed development, in relation to the impact of the development on the highways network including close to the school. It is considered that the development would have little impact on the current issues caused by parents on Royal Hill Road. Future residents utilising the school would have access to pedestrian and cycle links to easily access the school without the need to park on Royal Hill Road.

6.4. The parents signing the petition are mostly from areas outside of the immediate vicinity of the school and the appeal site. It is considered that the issues highlighted in relation to double parking and congestion at drop-off and collection at the beginning and end of the school day is to do with the operation of the primary school (an existing problem) and not with the proposed development.

- 6.5. Notwithstanding the above, the appellant's highways consultant BWB Consulting has prepared a response to each of third party comments on the matters raised to provide assurance that the conclusions of both the appellant's highways consultant and the highway authority have reached regarding capacity and safety.
- 6.6. Concerns regarding local infrastructure are to a large extent addressed in the S106 agreement [CD 8.04]. The appellant has agreed to improve and enhance local infrastructure in Spondon including Healthcare, Sports Facilities, the Village Hall, Pedestrian and Cycle Infrastructure, Public Transport and Open Space in order to mitigate the development's impact.
- 6.7. Cllr Smale raised issue that allowing this development will see the floodgates open in terms of new development in this Green Wedge with the identification of further development occurring from this development westward to Acorn Way. This is a single phase of development, Miller Homes only has the current appeal site under control and no other land in the vicinity. The Landscape Buffer Plan (CD 8.09) identifies a fixed area of the site that is proposed to be landscaped to assist in retaining the function of the Green Wedge; this plan is proposed to be conditioned to provide certainty that future development will deliver a fixed area of landscaping that will be incorporated into any further Reserved Matters Submission if the appeal is allowed.
- 6.8. The final point raised is the potential loss of horses from the field. It is acknowledged that the community enjoy the horses, however these fields are leased from the landowner, and it is their prerogative as to whether the horses can continue to graze on the fields in question. It is not a planning matter.
- 6.9. In conclusion I have read and considered the submissions made by local residents and understand the concerns that they hold. I am though confident that all valid issues raised have been appropriately addressed through the robust and comprehensive planning application submission, the careful consideration of various technical issues by statutory consultees and in the evidence presented to this inquiry on behalf of the appellant. There are no residual issues raised in my view that constitute a planning reason for refusal.

## 7. Planning Balance and Conclusions

- 7.1. Decision makers have a statutory duty to determine applications or appeals in accordance with the development plan unless material considerations indicate otherwise. The NPPF is an important material consideration, and in paragraph 11 the Government has set out its policy to guide decision makers in the performance of their statutory duty. As policy, paragraph 11 cannot displace the primacy of the development plan and functions within the statutory arrangements for decision taking but can act as a weighty material consideration to justify not following the development plan, as is the case here.
- 7.2. The development plans relevant to this appeal are the Derby City Local Plan Part 1 – Core Strategy (CS) (2017) [CD 4.01] and the Saved Policies of the City of Derby Local Plan Review (2006) [CD 4.02]. The most important policies are Part 1 CS Policy CP6 Housing Delivery and Policy CP18 Green Wedges,. These policies are out of date on two counts.
- 7.3. It is common ground that the presumption in favour of sustainable development in paragraph 11 (d) from the NPPF, the tilted balance, is engaged in this appeal by virtue of the Council's inability to demonstrate a five-year housing land supply. Footnote 8 thus deems the policies most important for determining the appeal out-of-date. In addition, the two most important policies have been overtaken by national policy and are inconsistent with the NPPF.
- 7.4. In the absence of any applicable Footnote 7 policies, the decision-taker must proceed to limb (ii) of NPPF paragraph 11(d) and determine the application accordingly. This states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. Footnote 9 notes that this further detail in paragraph 11(d) relates to those in paragraphs 66 and 84 of chapter 5; 91 of chapter 7; 110 and 115 of chapter 9; 129 of chapter 11 ; and 135 and 139 of chapter 12. I seek to have regard to these policies in undertaking the planning balance below.
- 7.5. In order to assess the benefits of the development, and any harm that would arise, it is useful to conduct this exercise in the context of the Government's approach to achieving sustainable development and the three overarching objectives of the planning system, set out in paragraph 8 of the NPPF.

### Benefits of Development

#### Social Benefits

- 7.6. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed and that the needs of groups with specific housing requirements are addressed.<sup>11</sup>

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<sup>11</sup> Paragraph 61 of the National Planning Policy Framework (2024).

- 7.7. The Council cannot demonstrate a five-year supply of deliverable housing land. Indeed, the Council's position is stated as 3.85 years, which represents a significant shortfall (emphasis added).
- 7.8. As a result of this significant shortfall and, in the context of the Council's chronic failure to deliver housing, **very significant positive weight** should be attached to the delivery of up to 90 new dwellings within 5 years. This degree of weight is agreed with the LPA<sup>12</sup>.
- 7.9. The provision of 30% affordable housing is, in its own right, a significant benefit of the scheme. The provision accords with NPPF Paragraph 66 that when considering major development it is expected "*that the mix of affordable housing required meets identified local needs, across Social Rent, other affordable housing for rent and affordable home ownership tenures*". The mix as prescribed in the S106 agreement is 80% social rented and 20% shared ownership in line with the Council's identified needs. In accordance with NPPF Paragraph 11 d(ii), this affordable housing provision is a key benefit. Particular regard should be given to it in the balance of the adverse impacts and benefits of the development. Given the significant shortfall in the delivery of affordable housing over the past decade as detailed in Para 5.12–5.16 above, on-site affordable housing provision should attract **very significant positive weight**, a view supported by the affordable housing evidence prepared by James Stacey.
- 7.10. In terms of on-site open space provision, an above policy compliant position is proposed. 1.12 ha of Amenity Green Space and 1.1 ha of Major Open Space is proposed to be provided, which is 0.81 ha and 0.58 ha respectively in excess of the requirements prescribed in CS Policy CP17 Public Green Space and the Planning Obligation Supplementary Planning Document. The scheme also provides a Local Equipped Area for Play (LEAP) that will be accessible to existing nearby children.
- 7.11. These substantial new areas of open space are to be delivered with new and enhanced pedestrian and cycling linkages into and out of the site as shown on the Illustrative Masterplan (drg ref: P19\_2639\_DE\_O1\_J\_O1) [CD 8.08]. These benefits will serve the wider community by providing accessibility into the wider Green Wedge and Countryside and should attract **moderate positive weight**.

#### **Economic Benefits**

- 7.12. Paragraph 85 of the Framework sets out that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 7.13. The appellant has quantified a number of economic benefits that will flow from the proposals, as set out in the Infographic at [CD 1.10] These are summarised as follows:

#### Construction Benefits

- **£17.3 million** Estimated construction investment over 24-month build programme –

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<sup>12</sup> SoCG paragraph 7.4



- **137** Direct construction roles and indirect/induced jobs supported per annum during build phase
- **£16.3 million GVA** Economic output contribution from jobs supported by activities at the site over 24-months

#### Operational Benefits

- **103** Economically active and employed residents estimated to live in the new housing
- **£576,000** Estimated first occupation expenditure. Research suggests that the average homeowner spends approximately **£5,000** within the first 18-months to make their house 'feel like home'
- **49%** Of employed residents estimated to be working in higher value/higher income occupations
- **£180,820** Estimated annual increase in Council Tax revenue
- **£2.5million** Annual household expenditure

7.14. These are considerable economic benefits arising from the development proposals and to which I give **moderate positive weight**.

#### **Environmental Benefits**

- 7.15. The proposal would generate a host of environmental benefits, notably through delivering housing in a sustainable location. In the context of national planning policy, the appellant has maximised opportunities for sustainable transport in accordance with NPPF Paragraph 110 which states that "*significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes*"
- 7.16. The proposed development through the provision of a detailed access design, provision of enhanced walking and cycling infrastructure (into the existing network and providing further linkages to existing infrastructure and the countryside) as detailed in the Design and Access Statement<sup>13</sup> [**CD 1.12**] and as shown on drawing ref: RHR-BWB-GEN-XX-DR-TR-101-P3-FOOTWAY LINK DETAILS [**CD 1.21**], shows how the development accords with the requirements of NPPF Paragraph 115. This element of the development demonstrates how sustainable transport modes are prioritised within the development and shows how safe and suitable access to the site can be achieved for all users.
- 7.17. All streets and lanes should follow the landscape-led design ethos to embed trees and landscape within the infrastructure to integrate the new development with the retained green infrastructure network. It has been demonstrated that any significant impacts from the development can be appropriately mitigated through the enhancement of or provision of new cycle and pedestrian routes or via financial contribution to enhance service provision to public transport or provide improvement to the local highway network.

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<sup>13</sup> Section 5.2

- 7.18. The appeal site is considered to be in a sustainable location. The Design and Access Statement<sup>14</sup> [CD 1.12] identifies the site is located on the north-western edge of Spondon within walking distance of a large number of existing facilities, schools and recreation areas.
- 7.19. Spondon provides a range of local shops and services for residents in the local area. The site is within a 10-minute walking distance of the primary and secondary schools, doctors surgeries, food stores, employment centres and a range of retail and leisure facilities.
- 7.20. The site's proximity to Derby and its location within walking distance of these amenities demonstrates that it is a sustainable location for new residential development.
- 7.21. These factors weigh in favour of the scheme and should attract **moderate positive weight**.
- 7.22. The Appellant's Biodiversity Net Gain Assessment [CD 1.04] demonstrates that a net gain is possible. The Environment Act 2021(Commencement No 8 and Transitional Provisions) Regulations 2024 (SI 2024/44) commence provisions of the Environment Act 2021 on the 12th of February 2024 (emphasis added).
- 7.23. Regulation 3 sets out that the biodiversity gains planning condition does not apply in relation to a planning permission, where the application for planning permission was made before the 12th of February 2024. Paragraph 3 of the National Planning Practice Guidance ("NPPG") confirms this position (emphasis added).
- 7.24. In the present case, as a matter of fact, the statutory requirement does not apply. As such, and having regard to paragraph 187 of the Framework, the requirement for a 'net gain' is not quantified – the requirement is only that there is a 'positive' gain. Accordingly, any measure of BNG should be attributed positive weight. The application the subject of this appeal was supported by a Biodiversity Net Gain Feasibility Appraisal [CD 1.04], prepared by Tetra Tech. The appraisal concludes that it is feasible that the site will achieve a net gain in biodiversity value, equalling 11.31% for habitats, 32.25% net gain for hedgerows and a 78.09% net gain for Watercourses. Given the significant extent of a 'net gain', this benefit should attract **moderate positive weight**.
- 7.25. The design of the development has been carefully considered and seeks to make effective use of the land as per the requirements of NPPF Paragraph 129. Miller Homes will deliver family housing with gardens that is reflective of the character of Spondon. Millers Homes seek to deliver a high quality perimeter block layout (as identified on the Illustrative Masterplan). The Design and Access Statement<sup>15</sup> [CD 1.12] details that the development seeks to achieve an average density of 40 dpa across the site, with the average being made up of higher and lower density areas depending on housing typologies at detailed design. It is envisaged that there will be a lower density on the northern development edge overlooking the newly formed public open space and a higher density in the centre of the development parcel.
- 7.26. The development is also considered to accord with the requirements of NPPF Paragraph 135, the principles of the design established in the DAS seeking to ensure that the development will be functional, visually attractive, sympathetic to local character and will be a welcoming,

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<sup>14</sup> Section 3.4

safe and distinctive place to live. The proposed development provides an appropriate split between built development and open space that will support and enhance local facilities and the transport network. The Design and Access Statement<sup>16</sup> identifies an approach that allows the design to reflect varying site characteristics. The Illustrative Masterplan [CD 8.08] provides opportunities to create character through:

- The overarching layout of the proposed Illustrative Masterplan and function of the different areas;
- The combination of different dwelling types and density;
- The potential for different building heights and roofscapes;
- Changes in street typologies and public spaces.

7.27. In accordance with NPPF Paragraph 11 d(ii), it is considered that this proposal is capable of securing a development that makes effective use of land and secures a well-designed place. This factor weighs in favour of the scheme and should attract **moderate positive weight**.

## Disbenefits

7.28. The development proposals conflict with Policy CP18 by proposing residential development within a green wedge. The weight to be attributed to this policy conflict is however limited due to the policy being out of date on two counts. The actual harm to the function of the green wedge has been assessed by Mrs Ellinsfield and in the officer report, both of whom confirm the harm caused is limited and that the proposal *“would maintain a sufficient, functional width of the Wedge to the west of the site to allow adequate separation between the residential areas of Spondon and Chaddesden”*. Accordingly, by maintaining a functional green wedge – as anticipated by Policy CP18 in considering future housing proposals – the harm is further reduced. Through the mitigation proposed by way of the layout, provision of a landscape buffer, new green infrastructure, biodiversity enhancements and recreational opportunities there are opportunities for positive enhancements to a number of Green Wedge functions. Impact to the green wedge should therefore attract **limited negative weight**.

7.29. In terms of Landscape & Visual Impacts, as confirmed at Paragraph 8.44 of the SoCG [CD 9.01]. The Council is in agreement:

*“that the new housing is proposed to be sited alongside the existing residential settlement to the east of the site and therefore should not be unduly prominent in views from the Green Wedge and the wider townscape. The retention and enhancement of tree cover and hedgerow features would also assist in softening the visual impact of the development on to integrate it into the existing street scene. It is agreed that the visual impact of development can be reduced through a condition restricting built form to the north and along the western edge of the site”.*

7.30. Therefore, the scope of impacts on local visual amenity as a result proposed development would be limited, with the most notable effects focused upon receptors and locations

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<sup>16</sup> Section 5.5

immediately adjacent to the Site and approaching at short distance where change associated with new residential development would be experienced against the backdrop of the existing settlement and should therefore attract **limited negative weight**.

## Overall Conclusion

- 7.31. The appeal proposal adjoins the edge of the urban area of Spondon, a suburb of Derby benefiting from variety of services and facilities; it is a sustainable location for new housing growth.
- 7.32. We are in an acknowledged housing crisis where needs are far outstripping supply, nationally and in Derby. In addition to helping to meet those acute and urgent needs, the appeal proposals deliver additional significant economic, social and environmental benefits with limited, localised adverse impacts.
- 7.33. In the circumstances of this appeal, paragraph 11 (d) of the NPPF is engaged where I conclude that it is the benefits of this scheme that significantly and demonstrably outweigh the adverse impacts. I believe that the appeal proposal represents sustainable development in accordance with the NPPF as a whole and should therefore be allowed.

Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004

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