
Report to Amber Valley Borough Council

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Inspectors appointed by the Secretary of State

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Planning and Compulsory Purchase Act 2004 (as amended)

Section 20

Report on the Examination of the Amber Valley Borough Local Plan 2022 - 2040

The Plan was submitted for examination on 29 July 2024

The examination hearings were held between 10 and 19 December 2024

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Abbreviations used in this report

BMV	Best and Most Versatile Agricultural Land
BNG	Biodiversity Net Gain
CPO	Compulsory Purchase Order
dpa	dwelling per annum
DtC	Duty to Cooperate
EA	Environment Agency
ELR	Employment Land Review
GTAA	Gypsy and Traveller Accommodation Assessment
Ha	hectare
HMA	Housing Market Area
HRA	Habitat Regulation Assessment
ICOMOS	International Council on Monuments and Sites
IDP	Infrastructure Delivery Plan
LHNA	Local Housing Needs Assessment
LVIA	Landscape and Visual Impact Assessment
LURA	Levelling-up and Regeneration Act 2023
MM	Main Modification
NDSS	Nationally Described Space Standard
NP	Neighbourhood Plan
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
PPTS	Planning Policy for Traveller Sites
ppSPA	Proposed Special Protection Area
SA	Sustainability Appraisal
SAC	Special Area of Conservation
SFRA	Strategic Flood Risk Assessment
SHELAA	Strategic Housing and Economic Land Availability Assessment
SM	Standard Method
SPA	Special Protection Area
UNESCO	United Nations Educational, Scientific and Cultural Organization
VA	Amber Valley Strategic Viability Assessment

Non-Technical Summary

This report concludes that the Amber Valley Borough Local Plan (the Plan) provides an appropriate basis for the planning of the Borough, provided that a number of main modifications [MMs] are made to it. Amber Valley Borough Council has specifically requested that we recommend any MMs necessary to enable the Plan to be adopted.

Following the hearings, the Council prepared schedules of the proposed modifications and, carried out a sustainability appraisal (SA) of them. The MMs were subject to public consultation over a six-week period. In some cases, we have amended their detailed wording where necessary. We have recommended their inclusion in the Plan after considering the SA and all the representations made in response to consultation on them.

The MMs can be summarised as follows:

- Rebasement of the housing requirement to cover the period 2024 – 2040 and altering of the housing requirement to 6944 dwellings or 434 dwellings per annum (dpa) to include 1320 dwellings to address the unmet need within Derby City;
- Removal of the housing allocation at Brun Lane and its replacement with an Area for Future Growth;
- Changes to the Neighbourhood Plan housing requirements;
- Changes to policy H7 Custom and Self Build Housing to set a threshold and proportion required;
- Inclusion of site-specific criteria for a number of housing allocations;
- Removal of the proposed employment sites at Cotes Park Lane West, Somercotes, Wimsey Way Somercotes, Slack Lane Heanor and Denby Hall, Denby.
- Inclusion of Heanor as a Primary Shopping Area;
- Identification of those employment areas to which restrictions to permitted development rights will apply;
- Changes to policy EN10 – pollution to include the “agent of change principle”;
- Inclusion of a review policy requiring preparation of a new plan under the new plan-making system; and
- A number of other modifications to ensure that the Plan is positively prepared, justified, effective and consistent with national policy.

Introduction

1. This report contains our assessment of the Amber Valley Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the Duty to Co-operate [DtC]. It then considers whether the Plan is compliant with the legal requirements and whether it is sound.
2. The revised National Planning Policy Framework (NPPF), published in December 2023, includes a transitional arrangement in paragraph 230 which indicates that, for the purpose of examining this Plan, the policies in the September 2023 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the September 2023 NPPF and the versions of the PPG which were extant prior to the publication of the December 2023 NPPF.
3. The NPPF (paragraph 35) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
4. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The Amber Valley Borough Local Plan 2022 - 2040, submitted in July 2024 is the basis for our examination. It is the same document as was published for consultation in February 2024.

Main Modifications

5. In accordance with section 20(7C) of the 2004 Act the Council requested that we should recommend any MMs necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. Our report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2** etc, and are set out in full in the Appendix.
6. Following the examination hearings, the Council prepared a schedule of proposed MMs and, where necessary, carried out a sustainability appraisal. The MM schedule was subject to public consultation between the 24 July and 14 October 2025. We have taken account of

the consultation responses in coming to our conclusions in this report and in this light, we have made some amendments to the detailed wording of the MMs where these are necessary for consistency or clarity. None of the amendments significantly alter the content of the modifications as published for consultation or undermine the participatory processes and sustainability appraisal that has been undertaken. Where necessary we have highlighted these amendments in the report.

Policies Map

7. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the submission policies map comprises the set of plans identified as Amber Valley Borough Local Plan Policies Maps [CD01a].
8. The policies map is not defined in statute as a development plan document and so we do not have the power to recommend MMs to it. However, a number of the published MMs require further corresponding changes to be made to the policies map. In addition, there are some instances where the geographic illustration of policies on the submission policies map is not justified and changes to the policies map are needed to ensure that the relevant policies are effective.
9. These further changes to the policies map were published for consultation alongside the MMs in the Schedule of Proposed Modifications to the Submitted Local Plan Policies Maps.
10. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed in the Amber Valley Borough Local Plan Policies Maps and the further changes published alongside the MMs.

Context of the Plan

11. The Plan is proposed to replace the Amber Valley Borough Local Plan (April 2006). The new Plan, together with the Derby and Derbyshire

Minerals Local Plan (April 2000), the Derby and Derbyshire Waste Local Plan (March 2005), and made Neighbourhood Plans (NP) will form the development plan for the borough.

12. Amber Valley lies to the north of Derby and borders districts that form part of Nottinghamshire as well as Derbyshire. The borough has good connectivity with Derby, Nottingham and beyond by both road and rail links.
13. The western part of the borough is predominantly rural in nature and contains the market town of Belper. It is sparsely populated with a landscape which is characteristic of the Peak Fringe. The eastern part of the borough comprises former coalfields and has a more urban character. The towns of Alfreton, Heanor and Ripley lie to the east of the borough. The majority of the population live in Belper and these 3 towns.
14. A significant proportion of the south and east of the borough lies within the Green Belt. The Derwent Valley Mills World Heritage Site covers a corridor running north through the borough from Derby towards Cromford and a number of the settlements in the borough lie within it, the largest of which is Belper. The borough also contains a number of other heritage assets including Conservation Areas and Listed Buildings, along with 3 registered Parks and Gardens.

Public Sector Equality Duty

15. We have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included our consideration of several matters during the examination including the provision of sites for Gypsies, Travellers and Travelling Showpeople [Policy H8] and the provision of housing for those who need accessible and adaptable homes [Policy H4]. In this way the disadvantages that they suffer would be minimised, and their needs met, in so far as they are different to those without a relevant protected characteristic. There is also no compelling evidence that the Amber Valley Borough Local Plan, as a whole, would bear disproportionately or negatively on them or those with protected characteristics.

Assessment of Duty to Co-operate

16. Section 20(5)(c) of the 2004 Act requires that we consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
17. The Council has engaged with Derbyshire County Council, the adjoining local planning authorities of Derby City, South Derbyshire, Derbyshire Dales, Erewash, Ashfield and the prescribed bodies on all relevant strategic matters from an early stage of Plan preparation as documented in the Council's Duty to Cooperate Compliance Statement [CD06].
18. The strategic matters identified as being relevant to the preparation of the Plan include the housing requirement, infrastructure delivery including education and flood protection infrastructure, identifying accommodation needs for Gypsies and Travellers and the impact of development upon the historic environment. For each strategic matter the Council's statement sets out how the Council has sought to cooperate, the actions taken, outcomes and any ongoing co-operation.
19. Statements of Common Ground have been provided which set out areas of agreement with key bodies and organisations in relation to the Plan. These provide a good indication of the ongoing contact and areas of agreements or otherwise made with Duty to Co-operate bodies during the Local Plan process on key strategic matters, or where discussions and work may be ongoing.
20. The borough shares a Housing Market Area (HMA) with Derby City and South Derbyshire Councils. The HMA authorities have identified addressing the limited capacity within Derby to meet its housing need as a key strategic issue. The authorities have a long history of joint working, including the joint commissioning of studies exploring options for future growth across the HMA. Although the authorities agree on the combined requirement of 36,584 homes up to 2039, and recognise that Derby City does not have the capacity to meet all of its own need, at the time of the submission of the Plan the authorities had not agreed an apportionment of how this need would be met within plans for Amber Valley and South Derbyshire. Consequently, although the Plan as submitted identified that part of the supply from a site at Brun Lane could go towards meeting unmet need within the

HMA, it does not explicitly recognise unmet need as part of the borough's housing requirement. These matters are set out below.

21. Nevertheless, although the HMA authorities have not reached an agreement on this strategic matter and recognising that the DtC is not a duty to agree, we are satisfied that a consistent level of on-going engagement in relation to housing supply was undertaken as part of Plan preparation and that this has persisted since Plan submission.
22. We also note that each of the adjoining (non HMA) authorities have at some stage, made a request for Amber Valley to meet some of their housing need which, due to the unresolved nature of the requirement within the HMA, Amber Valley has been unable to address. Each authority, with the exception of Ashfield has gone on to submit a Plan which meets the minimum housing needs of its area. The Statement of Common Ground between Amber Valley and Ashfield recognises that the Authorities, which share only 2 miles of common boundary, operate within separate and distinct HMAs. Nevertheless, engagement has continued to take place between these authorities at a level which is proportionate to their shared interests.
23. Consequently, we are satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the DtC has therefore been met.

Assessment of Other Aspects of Legal Compliance

24. The Plan has been prepared in accordance with the Council's Local Development Scheme [CD07] and in accordance with the requirements of the Act and 2012 regulations.
25. Consultation on the Plan and the MMs was carried out in compliance with the Council's Statement of Consultation and Publicity (Regulation 22 (1)(c)) [CD04].
26. The Council carried out a Sustainability Appraisal of the Plan [CD02], prepared a report of the findings of the appraisal, and published the report along with the plan and other submission documents under regulation 19. The appraisal was updated to assess the MMs.

27. The Habitats Regulations Appropriate Assessment Report January 2024 [CD03] sets out that a full assessment has been undertaken in relation to a potential likely significant effect on Peak District Moors (South Pennine Moors Phase 1) SPA, South Pennine Moors SAC, Peak District Dales SAC, and Sherwood Forest ppSPA due to increased recreational pressures. A potential likely significant effect was identified on Peak District Moors (South Pennine Moors Phase 1) SPA, South Pennine Moors SAC, Peak District Dales SAC, Bees Nest and Green Clay Pits SAC, Gang Mine SAC, and Sherwood Forest ppSPA through an increase in traffic and therefore air pollution. A potential likely significant effect was identified relating to the risk of water pollutants entering the Humber Estuary SAC and a further potential likely significant effect on the same SAC relating to hydrological changes.
28. The Appropriate Assessment concluded that as a result of protections provided by the Plan policies, adverse effects on integrity of the SAC can be ruled out, both as a result of the Plan alone and in-combination with other plans and programmes. As such, the report concluded that the development set out in the Plan would not have a negative effect, alone or in combination.
29. The Development Plan, taken as a whole, includes policies to address the strategic priorities for the development and use of land in the local planning authority's area. These policies were not specifically identified as strategic policies within the Plan. **MM10**, contains a comprehensive list of those policies which the Council now consider it is necessary that any subsequent Neighbourhood Plan be in compliance with. These include policies to ensure the presumption in favour of sustainable development, for the provision of housing and employment, for the protection of the Countryside and Green Belt and to respond to climate change and flood risk. These are identified in Chapter 5 of the Plan. We are satisfied that this modification is necessary to ensure the Plan is effective and in the interests of positive planning.
30. The Development Plan, taken as a whole, includes policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change. Policy EN1 is a wide-ranging policy which sets out a range of measures to achieve both climate change mitigation and adaption. Policy EN2 makes provision for renewable energy generation in the borough. These are dealt with below in Issue 7 of the report.

31. On adoption the Plan will form part of the Development Plan for Amber Valley alongside the Derby & Derbyshire Minerals Local Plan, the Derby & Derbyshire Waste Local Plan and where relevant and in place, the Neighbourhood Plan for the relevant area. The Plan will replace the Amber Valley Local Plan (2006). However, it is not explicit in the Plan whether any policies within the 2006 Plan are superseded or carried forward. To meet the legal requirement of Regulation 8(5) the Plan should be altered to make clear that the policies of the Plan supersede the policies of the 2006 Amber Valley Borough Local Plan Saved Policies. **MM6** to Chapter 2 addresses this and sets the context for the Plan and is necessary for clarity, and therefore effectiveness.
32. The Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

Assessment of Soundness

Main Issues

33. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, we have identified 10 main issues upon which the soundness of this plan depends. This report deals with these main issues. It does not respond to every point or issue raised by representors. Nor does it refer to every policy, policy criterion or allocation in the Plan.

Issue 1 – Is the spatial strategy and location of new development set out in the Plan based on robust evidence and is it justified and effective?

Spatial Strategy

34. Chapter 4 of the Plan sets a Spatial Vision for Amber Valley and Chapter 5 contains the strategic objectives of the Plan which set out, amongst other things, how the Plan will foster economic growth and provide homes to meet future needs. The objectives also identify the need to protect and enhance the natural environment, improve health and wellbeing and provide for the social and transport infrastructure required to serve existing and future development.
35. However, the objectives of the Plan do not specifically address the challenges of climate change. To be effective and to be consistent with national policy **MM8** includes an additional objective which sets

out that the Plan also seeks to minimise the impacts of climate change. The Plan contains a policy objectives matrix which links each objective to specific policies in the Plan. In some cases, policies have been omitted in error, and the table includes some typographical errors. For clarity, and therefore effectiveness, **MM9** updates the table.

36. The plan does not identify which policies are strategic ones and this is inconsistent with the Framework. Consequently, **MM7** and **MM10** are necessary, which identify strategic policies and therefore ensure that the plan accords with national policy. The Plan includes text relating to Regulation 19 processes, which, if retained after adoption, would result in ambiguity. Consequently, **MM1**, **MM2**, **MM3**, **MM4** and **MM5** are necessary which would delete this text and replace it with a short introduction. In doing so, these MMs would ensure that the plan is consistent with the Framework insofar as it expects Plans to be clearly written and unambiguous.
37. Policy SS1 sets out the presumption in favour of sustainable development and reflects that set out in the NPPF. Policy SS2 relates to the distribution of development across the Borough. The Spatial Strategy Topic Paper [AV07] sets out how the Spatial Strategy in the Plan was informed by public consultation. The "Alternative Spatial Strategy Options for Housing and Economic Growth" was consulted upon in 2021. Responses to this work and a SA informed the preferred spatial strategy which was consulted on in June 2022.
38. The SA sets out the identification of the spatial strategy, the alternatives considered through the plan-making process, and the reasons for discounting alternatives. The SA considered options for the location and distribution of development as well as different options for the amount of housing and employment land the Plan should provide. These are considered below in the relevant sections.
39. The 2024 SA [CD02] sets out that initially 4 spatial options in relation to the distribution of development were appraised. These options were:
- Option 1 – Concentrate growth on the edge of, and around Derby Urban Area, outside Green Belt;
 - Option 2 - Greater dispersal of growth in, and around villages and other settlements, outside Green Belt;

- Option 3 - New settlement(s) and/or significant extensions to existing urban areas, villages and other settlements outside Green Belt; and
- Option 4 – Concentrate most growth in and around four main urban areas (Alfreton, Belper, Heanor & Ripley) and on the edge of and around Derby. This would likely require changes to Green Belt boundaries.

40. In addition, three options were considered for the scale of growth:

- Growth Option A – meeting the minimum standard method (SM) requirement for housing and the minimum requirement for employment land set out in the Amber Valley Employment Land Review (ELR) 2021 [ED02] of 2.49ha per annum;
- Growth Option B – provide an additional 25% housing above the SM and provide a 5-year buffer to the ELR; and
- Growth Option C – provide 25% less housing and only provide employment land based on existing supply.

41. The combination of options resulted in 12 sub options. We consider these options together provide a sufficient range of alternatives to provide a meaningful comparison on which to assess likely effects. Only one spatial option would result in the release of land from the Green Belt. Having regard to the strong protection of Green Belt in national policy the range of option choices is consistent with this. Whilst it is true that growth options could have been set higher or lower, the options are nonetheless sufficiently different to constitute reasonable alternatives.

42. Due to the high-level nature of the SA it does not definitively identify a “best” option, focussing instead on identifying the potential for significant or uncertain effects for each option under consideration. In general terms higher growth options appeared to have the potential for greater economic and social benefits. All spatial options at a ‘higher growth’ level (1b, 2b, 3b and 4b) had more potential negative effects particularly in relation to environmental, heritage and landscape constraints.

43. In spatial terms Option 4 scored negatively in relation to environmental objectives due to the potential for land to be released from the Green Belt. It also had uncertain effects in relation to the

provision of supporting infrastructure and to heritage and townscape due to no sites being identified at the spatial strategy stage. Overall, the assessment found that although some outcomes were finely balanced, Options 1a – c, which located development in and around Derby Urban Area, performed better than the other options, primarily because growth would be distributed in or near existing urban areas, with fewer negative effects.

44. Based on these findings, a spatial strategy was developed which took account of how the Spatial Options above performed in sustainability terms, informed by the availability of applicable Strategic Housing and Economic Land Availability Assessment (SHELAA) sites. The Council decided to follow a “hybrid” option which most closely aligned with locating development around existing urban areas (reflecting Spatial Option 4). The hybrid option also included elements from other spatial options with lesser amounts of development around lower order settlements and significant development directed towards the urban edge of Derby outside the Green Belt. Having regard to the thrust of the 2023 NPPF under which the Plan is being examined, we see nothing controversial or fundamentally unsound in this approach. The NPPF directs that the Green Belt should only be released for development in exceptional circumstances. Having carefully reviewed the sites available in the SHELAA, the Council concluded that there were sufficient suitable sites for development outside the Green Belt in and around urban areas to support the high-level Growth Option B going forward.
45. The strategy is underpinned by a settlement hierarchy based on scale, role, service provision, land availability and opportunities for investment and growth of settlements. In this regard, and taking into account reasonable alternatives, the hybrid approach provides an appropriate spatial strategy for the borough and is thus consistent with national policy.
46. As a result of Green Belt constraints, some higher order settlements such as Belper and Duffield, have been allocated a lower proportion of growth than would appear proportionate to the level of services they provide. However, within the constraints of land availability, in focusing where possible on brownfield land, such as Cinderhill and Alderwasley Mills, and in locating substantial amounts of future housing outside Green Belt and close to the urban edge of Derby at Brun Lane, the spatial strategy is based on sustainable development principles. We are satisfied that achieving closer alignment between settlement size and the proportion of the Borough's overall growth is

not practicable at this point. This is due to the planning constraints that have been justifiably taken into account in site selection processes relating to those settlements. In any event the distribution of sites set out in the Plan provides an imperfect but nonetheless pragmatic and appropriate approach to locating development which we consider to be a sound one.

47. Policy SS3 sets out a settlement hierarchy which identifies the main Urban Areas as the main focus for development. Key Villages are considered appropriate for limited development at a level compatible with the services, facilities and accessibility of those locations. Within Other Villages and Settlements development is to be more limited reflecting the more limited facilities available. This hierarchy is reflected in the approach to development set out in policies H1, H2 and H3.
48. We note the views of some, who dispute the placement of some settlements in the hierarchy. The hierarchy has been arrived at using a degree of professional judgement based on a range of considerations, and so neither the hierarchy nor the proportion of homes assigned within it can ever be entirely internally consistent. Whilst different conclusions may be reached by others exercising their own professional judgements, we nonetheless consider the approach taken to be an appropriate one.
49. In light of the removal of Brun Lane as an allocation, the Plan will not exactly replicate the proportions or amount of development envisaged in the SA. Nevertheless, most growth is proposed in higher order settlements. Furthermore, the growth in rural settlements comes largely from extant permissions. We are therefore satisfied that the strategy for how development is distributed across the Borough is reasonable and justified.
50. Of the 3 Growth options selected the Plan seeks to address the higher-level growth option. The Plan addresses this by providing employment land in excess of that set out in Option B. Insofar as the Plan seeks to address unmet housing need from Derby City the Plan also achieves this aim. Although the removal of Brun Lane as an allocation has resulted in a lower number of houses being allocated than originally proposed, we are nonetheless content that in delivering housing growth significantly above the level identified in LHN figures, the provisions in the Plan are broadly consistent with the

higher growth option and are consistent with the Plan's core objectives.

51. We also note that further SA has been undertaken as part of the site selection methodology for all housing and employment sites and for each Local Plan policy throughout the development of the Plan. We are therefore satisfied that the site selection process was informed by the SA throughout the Plan-making process.
52. The Council have indicated that the sites selected were all those that were outside the Green Belt and which were found to be suitable, available and deliverable rather than seeking to achieve a proportionate distribution based on the settlement hierarchy. In this regard sites outside the Green Belt which were suitable for development were not excluded and comparative judgements between suitable sites did not have to be made. We set out our reasoning in relation to site selection under Issue 4.
53. Accordingly, we are satisfied that the site selection process has been competently undertaken and the conclusions the Council reached in relation to it are soundly based. Furthermore, we do not consider that the spatial strategy is undermined by the mix of sites selected. Taking all the above into account, we are satisfied that the Council has undertaken a soundly based approach to identifying land for new development which will provide a realistic and deliverable distribution of new housing development. The distribution of development proposed in the Plan is consistent with the settlement hierarchy and is justified and the spatial strategy is soundly based.
54. Subject to these changes the social, environmental and economic priorities for delivering sustainable development in the Borough set out in the policy SS2 reflect those in the NPPF.

Policy SS2 – Spatial Strategy for Housing and Economic Growth
Policy SS3 – Settlement Hierarchy

55. SS2 is a wide-ranging policy which sets out the distribution of development across the Borough. Policy SS3 relates to the settlement hierarchy. In addition to referring to the main settlements of Alfreton, Belper, Heanor and Ripley the policy refers to Derby which is outside the Plan area. For clarity and therefore effectiveness, **MM26** to SS3 and **MM24** to SS2 replaces this reference to make clear that the focus for new development will be land within Amber Valley which

forms part of the built framework of Derby. To ensure consistency between the policies and with modifications to Policy H1 we have altered **MM24** and **MM26** to provide clarity and to ensure the policies are effective.

56. **MM25** and **MM26** also provide consequential amendments as a result of changes to Policies H1 and H2 to make clear that the countryside comprises land beyond, but not adjacent to, settlements in the Borough. These changes are necessary for the Plan to be justified and therefore sound.

Policy SS8 - Green Belt

57. Policy SS8 sets out the considerations which will be taken into account in relation to proposals in the Green Belt. The supporting text to the policy refers to the Council's commitment to protecting the Green Belt and sets out two alterations proposed to the Green Belt in the Plan. The first relates to a permitted employment site at Denby Hall which is proposed as an allocated employment site under Policy EGS1. For the reasons set out below in Issue 8, the Denby Hall site does not demonstrate the exceptional circumstances needed to justify an alteration to the Green Belt, and so to be effective and consistent with national policy, **MM22** and **MM30** delete references to the removal of the Denby Hall site from the Green Belt.
58. The second comprises an alteration at Codnor to facilitate a Gypsy and Traveller site under policy H8. However, the text does not set out the exceptional circumstances that support the removal of the site from Green Belt. Nor does it make clear that the removal is to enable the allocation of the site specifically for Gypsies and Travellers. The Plan is thus inconsistent with national policy expressed in the Planning Policy for Traveller Sites. Consequently, in order for the plan to be effective and consistent with national policy **MM30** includes these matters in the supporting text to the policy.

Policy SS9 - Countryside

59. Policy SS9 seeks to balance the need to accommodate development to sustain the rural economy with ensuring the natural environment and openness of the countryside is protected. To do so it sets out the circumstances against which proposals for development in the countryside will be considered. However, the policy refers only to housing development and so would not address the range of development likely to be proposed in rural locations and is ineffective

as a result. To ensure effectiveness **MM31** removes reference to the word "housing" and thus ensures wider application of the policy.

Conclusion

60. Subject to the MMs identified above the Plan's overall spatial strategy is based on robust evidence, is justified and likely to be effective. In this regard it provides a pragmatic and soundly based development strategy for Amber Valley over the Plan period.

Issue 2 – Is the identified housing requirement in Policy SS2 justified and consistent with national policy?

Local Housing Need

61. The submitted Plan requirement of 6564 dwellings is derived from a figure of 367dpa for 2022 and 364dpa for the remaining 17 years. The SM figure for 2024 has subsequently been updated to 351dpa. The PPG does not require a plan-making authority to be bound by the SM figure from the start of the plan-making period and advises that the figure should be kept under review. We are therefore satisfied that a housing requirement based on the more up to date calculation of local housing need is appropriate.
62. It has been put to us that to do so should also require the base date of the Plan to be altered to align with the date of the new SM figure as to do otherwise would "double count" dwellings in the Plan's housing supply which will also have been counted as existing housing stock for the purposes of the SM. Although the PPG is silent on this matter, having regard to the responses made to the MM consultation we consider that the Plan should use the most up to date SM figure. In doing so, to avoid "double counting" a recalibration of the base date for the purposes of housing supply is necessary. The Plan period for other aspects on the Plan is unaffected. Accordingly, we have altered **MM11** to reflect the updated figures and made further consequential amendments to the Plan in **MM13, MM22, MM23, MM24, MM99, MM100, MM101** and **MM104** to reflect this change. We have considered whether these changes should be subject to further public consultation. However, the changes raise no new issues. The altered housing figures merely reflect that completions prior to 2024 cannot be accounted for within a housing supply period that aligns with housing need from 2024 onwards. Accordingly, as no party would be prejudiced by this change, further consultation on it would be unnecessary.

63. We have also considered whether the Plan period should be extended. The Plan period runs from 2022 to 2040. The NPPF 2023 under which the Plan is being examined requires that the strategic policies should look ahead over a minimum 15-year period from adoption. The Plan's assessments of employment and housing need align with this. Adoption of the Plan is anticipated early in 2026 and further delays to the Plan would be contrary to the achievements of the Framework's expectation for a genuinely plan-led system. Therefore, whilst the Plan will come into force part way through the 15-year period, we do not consider it to be proportionate, or within the spirit of pragmatism in the Minister's most recent statement to require the Plan period to be extended to 2041 in this case.

Addressing Unmet Need

64. Amber Valley shares a HMA with Derby City and South Derbyshire. The three authorities recognise that unmet need from the city will need to be met within the adjoining districts but have failed to agree an appropriate apportionment during the preparation of the Plan. In 2023, following a capacity study within the city, the likely unmet need was estimated to be in the region of 9,000 dwellings, although this will change as LHN figures are updated. All three Plans are at different stages in their preparation with Amber Valley preceding South Derbyshire and Derby City to examination.
65. A Statement of Common Ground [AV09] between the HMA Authorities sets out that, based on evidence with the HMA Sustainability Appraisal [AV12], the Councils agree that there is capacity to address this unmet need within sustainable locations on the edge of the city. This work, amongst other things, takes account of transport accessibility, the location of the Green Belt and environmental constraints to identify potential locations for future development. These include an area to the west of the city within which the proposed site at Brun Lane is located. This has been estimated as being likely to provide 1,320 homes over the Plan period. For this reason, and without committing to a three way apportionment, or recognising that unmet need is to be addressed within the housing requirement, the Plan states that the 1,320 homes to be provided on the Brun Lane allocation will go towards addressing unmet needs from Derby City.
66. The three authorities have continued to discuss an appropriate apportionment and are confident that unmet need can be effectively

addressed by sites identified within this Plan and the emerging South Derbyshire Plan. This understanding is based on the assumption that all proposed sites will remain in both Plans after Examination. For the reasons set out below we do not consider a specific allocation at Brun Lane to be sound at this time.

67. We therefore recognise that an approach which ties apportionment of unmet need to the development of specific sites is impractical and risks unmet need not being addressed in the long-term. Although the figure of 1,320 has originated from the Brun Lane allocation, the dynamics of regional geography and where we might choose to live mean that sites cannot in reality be “ring-fenced” to address another district’s needs. Nevertheless, in seeking to distribute the unmet need from Derby City within the wider HMA the Councils have adopted a capacity led approach which recognises the relative capacity of the wider HMA to facilitate development and identifies sustainable locations for growth. The amount of development in Amber Valley takes into account broad estimates of potential delivery in the only location identified within the Borough. As such, the approach taken by the HMA Authorities which seeks to broadly identify capacity for sustainable growth is a sound one.
68. Consequently, in the absence of any prospect of a firm agreement between the authorities based on an alternative approach, or any persuasive evidence from any party as to a justified alternative figure for meeting that need within Amber Valley, we consider that the stated figure of 1,320 represents a pragmatic first step in the longer term process of addressing housing need across the HMA. To require the authorities to agree on an alternative approach would, in our view, unnecessarily prolong the plan-making process with no firm prospect of success. In coming to this view, we note that South Derbyshire and Derby City have not raised objection to the figure of 1,320 of unmet need in the Plan. We are also conscious that the Authority will be required to begin work on a new Plan under the new Plan-making system within a short period after adoption. At this point, provision within the other Plans within the HMA area will have been established and, in light of any changes to the LHN, any unmet need will be reassessed.
69. To ensure the Plan is effective **MM11** therefore alters the housing requirement in the Plan to 434 dwellings per annum or 6944 dwellings to the end of the Plan period which includes unmet need of 1,320 dwellings from Derby City. The figure is rounded on an annual basis which results in a figure which increases the total over 16 years

by 8 dwellings. **MM12** and **MM13** make consequential amendments to the supporting text to take account of updated figures of housing delivery.

Delivering the identified need for affordable homes

70. Affordable housing need is assessed in the Local Housing Needs Assessment (LHNA) (2022) [ED25] which was updated in 2023 [ED24]. This identifies a requirement of 401 Social and Affordable Rental Dwellings Per Annum and in addition, a net need for 141 Low-Cost Home Ownership Homes per annum across the Plan period. The approach in the LHNA is in line with that set out in the PPG using data sets from reputable sources. We consider the LHNA to provide robust and up to date evidence.
71. The Amber Valley Strategic Viability Assessment (VA) [ED38] tested a range of affordable housing delivery options between 10 and 40%, alongside a range of infrastructure contributions on both brownfield and greenfield sites. The work determined that a differential rate was most appropriate with 3 zones setting the level at 20% in the lower value zone, 30% in the medium value zone and 40% in the higher value zone. Smaller brownfield sites in the lower value zone will be subject to a lower rate of 10%. We are satisfied that the assessment is robust and that the conclusion that an affordable housing requirement set at this level will be viable is soundly based. This requirement is set out in Policy H5.
72. Even if all the allocations in the Plan come to fruition, and deliver the required element of affordable housing, the Borough will not meet all of its affordable housing need over the Plan period. However, there is no requirement in planning guidance for the Plan to fully meet the identified affordable housing need. We are of the view that H5 has appropriately identified a proportionate contribution to addressing affordable housing needs whilst not undermining deliverability of market housing.
73. It has been put to us that the allocation of more market housing would help to address affordable housing needs. We have already concluded that the housing requirement figure is based on a robust assessment of the need for new housing in Amber Valley. The SM includes within it an uplift to address affordability. Furthermore, given that housing sites will at most deliver 40% affordable housing, and in most cases significantly less, every affordable home would require at

least twice as many market homes to be built. There is no convincing evidence that there is a requirement for this level of market housing in excess of the LHN, or that such a strategy would deliver the necessary number of affordable homes. We are therefore not persuaded that a further uplift in the housing requirement is justified on this basis

Neighbourhood Plan Requirement

74. The Plan sets out within policy SS2 a requirement for NPs to make a contribution towards the windfall allowance. The table seeks to respond to the requirement within the NPPF for strategic plans to set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development in the Plan area. The requirement is based on a calculation which takes account of consented but unbuilt schemes in each Parish area, plus local plan allocations and a proportion of the estimated total windfall within the Plan. The proportion of windfalls for each NP area was calculated based on the settlement hierarchy and population size of each parish.
75. This approach is flawed because it fails to take account of the constraints or opportunities in each area or the capacity of each area to accommodate further development. In the absence of any coherent assessment of capacity it would not, to our minds be appropriate to set a target for designated NP areas which exceeds that already permitted or allocated. As the Plan already meets its full housing needs, without any contribution from future NPs, we see no reason why the NP requirement for the relevant NP areas should be any more than that already provided through completions, permissions and allocations within the relevant areas. The requirement in the Framework is to set a "minimum" requirement for NP areas. This does not preclude NP areas from allocating sites if they consider it an appropriate strategy for their area and therefore the supporting text to policy SS2 makes this clear.
76. Accordingly, **MM20**, **MM21**, **MM22** and **MM23** to the supporting text and **MM24** to policy SS2 set out the approach set out above and reflect our conclusions in relation to housing and employment land delivery set out below. These MMs are necessary in the interests of positive planning and to ensure that the Plan is effective. **MMs22-24** have been updated to reflect our conclusions above in relation to aligning the housing requirement with the revised LHN, meaning that

the neighbourhood plan figures are also re-based to 2024. As set out above, the altered housing requirements for these neighbourhoods merely reflect that completions prior to 2024 cannot be accounted for within a housing supply period that aligns with housing need from 2024 onwards. They change neither the supply nor requirement expectations of these neighbourhoods over the entirety of the Plan period but rather set an effective basis for planning and monitoring. Accordingly, as no party would be prejudiced by these changes, further consultation on it would be unnecessary.

Conclusion

77. Subject to the required MMs detailed above the housing requirement in Policy SS2 justified and consistent with national policy.

Issue 3 – Are the proposed Strategic Growth Sites positively prepared, justified, effective, developable, deliverable and consistent with national policy?

78. The Plan identifies 2 strategic growth sites at Brun Lane, Mackworth (SGS1) and Land North of Derby Road, Denby, also known as Cinderhill (SGS2).

Policy SGS1 -Brun Lane, Mackworth

79. Land at Brun Lane Mackworth is proposed for the development of 2,000 houses, 1,320 of which are anticipated to be delivered during the Plan period. The development would include related infrastructure, including education and community provision, and would be planned to integrate with existing and proposed development at Langley Park. To the south and southwest the boundary of the allocation forms the Borough boundary with South Derbyshire which comprises open fields up to the B5020.
80. The area is identified in the HMA Sustainability Appraisal in comparison with other sites in the Borough as being relatively unconstrained and well-related to the adjoining Derby urban area. We are satisfied that this work comprises a comprehensive and well evidenced assessment of comparative options, taking into account the relevant constraints in the HMA and that its conclusions are soundly based. We are therefore satisfied that the general location would comprise a suitable area for future development.

81. The main landowner for the site has advised that they no longer wish to develop the number of houses proposed but would be content to release land to provide in the region of 500 homes. This would, in our view, risk a piecemeal approach to development which would not ensure the appropriate provision of necessary infrastructure.
82. The Council have advised that the delivery of the site could be secured through the use of Compulsory Purchase Order (CPO) powers. Such powers can only normally be used where it is in the public interest to do so and when other routes to development have been explored. We have no evidence that such circumstances exist in this case, but nevertheless, even if they did, we cannot be assured that such a process would result in securing the site as proposed. It has not been established, then, that the site would be available at the point of development proposed by the Council. We cannot therefore conclude that the allocation as proposed will be available for development at the point envisaged.
83. Nonetheless, we are assured that the area in and around the site is a sustainable location for development, due to its proximity to the wider conurbation which provides sustainable options for travel, both in terms of the ability to implement sustainable modes of transport and the length of trips likely to access work and services. We also note that the location is relatively unconstrained in comparison to other locations in the Borough. Although we are not assured that the allocation as proposed can be relied upon to contribute the amount of housing at the point envisaged, we recognise the longer-term potential of the site to provide a sustainable location for future development within the HMA.
84. It has been put to us that such a designation predetermines the future direction of development in the Borough beyond the Plan period and is therefore unsound. It is entirely appropriate and indeed commonplace for allocations or other designations to look beyond the plan period. The NPPF also recognises that beyond the first five years of the plan broad locations for growth can make up part of the housing supply. The identification of an Area for Future Growth in this Plan is entirely consistent with this approach.
85. The location of the Brun Lane allocation was determined through the work undertaken by the HMA Sustainability Assessment which carried out a comparative assessment of the most appropriate areas for future growth and so is evidence based. The location was also subject

to SA as an allocation. Nevertheless, we consider it necessary to remove the allocation and replace it with a Area for Future Growth to recognise that not all of the land in the allocation will necessarily be available for development and that there will be scope within the wider area, which may include sites beyond the Borough boundary, to bring forward a sustainable pattern of development.

86. In this regard, the effective planning of future development will require the Council to work cooperatively with South Derbyshire if development is to be brought forward appropriately and sustainable travel options are to be fully realised. For this reason, any masterplan for future development should be brought forward in cooperation with adjoining authorities.
87. The Plan as proposed sets out a range of provisions for the allocation which we consider would be similarly appropriate to apply to future planning of the Area of Future Development. However, the text needs to be reordered in the interests of legibility. The policy and supporting text do not take adequate account of potential impacts on heritage assets of all types, including the historic landscape. Furthermore, the wider transport implications of future development, and how it would ensure pedestrian and vehicular connectivity, facilitate active travel and provide potential links to the south and west of Derby also need to be reflected in the policy.
88. We are advised that South Derbyshire intends to recognise the potential for development at Brun Lane within their own Plan and this should be set out within the supporting text. The requirement for a masterplan, prepared in conjunction with relevant stakeholders including South Derbyshire, should be explicitly set out within the policy. The policy should also set out the considerations the masterplan should address. Preliminary work in relation to how development could occur on site is contained within the concept plan and should form the basis for the masterplan.
89. The above considerations point to a policy position in relation to this site that is not justified and is also unclear and ineffective. In this regard **MM34**, **MM35** and **MM36**, which address these matters, together with **MM103** which updates the Key Diagram in Appendix 4 to reflect the changes, are necessary to secure a justified approach to this site and in the interests of clarity and therefore effectiveness.

90. **MM35** refers within the supporting text to the Council giving consideration to CPO powers to enable development. We have no evidence that CPO powers will, in the end, be required to secure development in this location and so do not consider it necessary to refer to this in the Plan. We have therefore altered **MM35** to reflect this. This is a minor change, and no one should be prejudiced as a result.

Policy SGS2 - Land North of Derby Road, Denby (Cinderhill)

91. Land at Derby Road, Denby is proposed as a mixed-use site for 300 dwellings and 30 ha of business and industrial development. The proposed allocation site, along with a portion of Green Belt land to the north, is currently subject to an outline planning application for the same mix of uses proposed in the Plan. The Council have resolved to approve this application subject to a legal agreement which at the time of writing has yet to be signed.
92. A larger area of land has been a longstanding allocation for mixed use development in previous development plans and was released from Green Belt in 2006. The land has formerly been used for deep and open cast coal mining, brick manufacture and clay extraction. Large parts of the site have subsequently been remediated and have regenerated. The land is now largely open grassland with areas of woodland. An area of land to the east, known as Cinderhill Tarpits, was designated as a Local Wildlife Site in 2007.
93. The proposed allocation in this Plan varies from the 2006 allocation in that it "de-allocates" Cinderhill Tarpits and parts of Morrell's Brook Local Wildlife Sites from mixed use development. The Tar Pits comprise an area of sludge lagoons and tar pits of around 10 ha and are a result of the historic excavation of clay and part infilling with water materials including tars. The necessary restoration in the early 1980s, was not carried out to a sufficient standard, resulting in tars seeping out at the surface and the site remains in this condition. The area was determined by the Council to be a "Special Site" under Part IIA of the Environmental Protection Act 1990 and the Environment Agency (EA) is the lead regulator for the site.
94. Removing this land from the allocation effectively removes the area suffering from the worst contamination. Concerns have been raised as to how this portion of land will be effectively remediated if the land is not linked to an employment site. The EA have not objected to the

allocation as proposed. Nor have they objected to the current planning application but have provided comments with regards to the proposed remediation of the adjoining land which is subject to the current planning application. Clearly, the off-site effects of contamination at the Tar Pits is a relevant consideration for the allocation. However, there is nothing in the evidence before us to suggest that the allocation site as proposed cannot be effectively remediated and developed and we note that the UK Health Agency has also not objected to the current planning application.

95. The EA response to the planning application indicates that whilst they are disappointed the current scheme does not include the Tar Pits land, they are satisfied that safe development on adjoining land can nonetheless take place. In this regard, if the relevant public health and environmental regulators are satisfied that development on adjoining land can be appropriately and safely brought forward, the Council would have no powers to require remediation works to the Tar Pits even if it were to be allocated as part of the same site.
96. In coming to a view as to whether the Tar Pits should be included within the allocation, we are mindful that notwithstanding the present application, the inclusion of the Tar Pits within the allocation would not, in itself, lead to the remediation of the land. We are advised that the site is not in one ownership and even if it was, it appears to us to be very unlikely that any developer would seek to bring forward development on land that included the Tar Pits in any case.
97. The allocation is on a brownfield site outside the Green Belt in a relatively sustainable location. Redevelopment of the site would require consideration of landscape, heritage and ecological matters but no evidence has been provided that any of these issues would preclude development. Parts of the site adjacent to Bottle Brook lie within Flood Zones 2 and 3. We are satisfied that the allocation of the site provides wider sustainability benefits that outweigh flood risk in this case. We are also satisfied that subject to details to be provided in a planning application for the site, the site offers the potential for development to take place safely without increasing flood risk elsewhere. We have no evidence to indicate that off-site transport impacts could not be effectively mitigated. There are a number of Public Rights of Way and disused transport routes on site, and we are satisfied that these can be integrated into future development. Together, these considerations lead us to the view that the allocation is an acceptable location for development.

98. The wider site has been subject to various proposals for development over a prolonged period, none of which have come to fruition. The current proposals, without the Tar Pits have been subject to significant investment from a national site promotor with an established track record in bringing sites forward to development. Although we are not necessarily assured that it will come forward exactly as indicated in the current proposals, we consider that the site is likely to come forward within the Plan period and that the assumptions in the Plan that housing can be delivered around 2030 and employment thereafter are credible.
99. Policy SGS2 states that the site should be subject to a masterplan. The Council have chosen not to set out any detailed criteria within the policy which the masterplan should address - in contrast to other sites within the Plan. We do not consider this to be a soundness issue. Whilst the provision of criteria which a masterplan should address would undoubtedly improve the policy, the Council and current site owner and promotor are very much aware of the range of issues impacting the site as demonstrated by the consideration of the most recent application [OTH10] and we are satisfied that the Plan taken as a whole contains all the necessary policies to guide the consideration of any future scheme. We therefore do not consider a modification to expand the policy to include site specific criteria is necessary for soundness. However, the policy does not define the type of employment uses that would be accommodated on the site and is thus ineffective. In order to reflect the fact that the employment allocation is intended for office, B2 and B8 use only, and not wider uses within Class E, and to provide choice within the employment land supply and an adequate supply of employment land, **MM37** is necessary for clarity and therefore effectiveness, and for the Plan to be justified.

Conclusion

100. Subject to the required MMs detailed above, the policies for the proposed Strategic Growth Sites are positively prepared, justified, effective, developable, deliverable and consistent with national policy.

Issue 4 – Are the Housing Growth Sites positively prepared, justified, effective, developable, deliverable and consistent with national policy?

Site Selection Process

101. The "Site Selection of Non-Green Belt SHELAA Sites" Paper [AV15] provides details of how the Council made evidence-based assessments and judgements in relation to the suitability, availability and achievability of sites allocated in the Plan for residential and employment development. The Council determined at the outset as part of their chosen spatial strategy to seek development sites outside of the Green Belt. For the reasons set out above we consider this to be consistent with national policy.
102. As a starting point all sites identified within the SHELAA as being 'suitable', 'available' and 'achievable' following an appraisal of planning constraints and technical consultee comments and capable of accommodating new economic growth or more than 10 residential dwellings were selected as Local Plan allocations. The Council was dependent upon statutory consultees for technical advice, and some value judgements based on the range of advice received will have been necessary. However, we are satisfied that the evidence used in the SHELAA is proportionate and adequate for the purpose intended.
103. The assessment discounted sites where technical advice indicated that a specific constraint could not be addressed or adequately mitigated. In other cases, having regard to the general accessibility of the site and other cumulative constraints, a balanced judgement was taken as to the suitability of the site for development. Such decisions will have been based on planning judgements which we are satisfied are objective and consistent with established planning principles.
104. The SHELAA was updated throughout the preparation of the Plan and so some sites not initially selected were added later as they became available. We are satisfied that this iterative process does not undermine the site selection methodology. All identified sites have been subject to SA and HRA. This evidence demonstrates that the sites were selected against possible alternatives using a robust and objective process.

105. The Council used the Strategic Flood Risk Assessment 2021 (SFRA) [ED05] to inform the assessment. This document does not contain the most up to date flood maps and has not been updated to take into account subsequent climate change allowances. As a consequence, the site selection process could have been informed by more up to date flood information.
106. We considered whether it would be proportionate to halt the examination and require the Council to produce a new SFRA and revisit the site selection process. However, we took into account that the site selection process had already selected all the sites in the Borough considered to be otherwise suitable for development. The PPG directs that the Sequential Test (ST) should be applied to the selection of sites in plan preparation. It does not provide a different definition of the ST for plan-making as opposed to development management and does not distinguish between sites within Zone 1, including those identified as being at risk from surface water flooding. It directs that the ST should consider whether there are "reasonably available" sites which are sequentially preferable in flood risk terms. "Reasonably available" is considered to be if the location is suitable for the type of development proposed, the site is able to meet the same development needs and has a reasonable prospect of being developed within the relevant timeframe.
107. In this regard, although it is possible that climate change allowances may indicate that some of the sites selected were now at greater risk of flooding, as there were no otherwise suitable sites to bring forward, even if an alternative site was sequentially preferable in flood risk terms, it would not alter the fact that such a site was not suitable for other reasons. A new site selection process informed by more up to date flood data is therefore not likely to be productive, and so to require it would not be a proportionate approach.
108. Nonetheless, 3 of the sites selected were in Flood Zone 2 or 3. We asked the Council to provide us with a reasoned justification for the inclusion of these sites, and the Council produced a Topic Paper [ED06] "Sequential and Exception Test for Growth Sites". Part of the Aldreds Lane site lies within Flood Zone 2 but as development could occur outside the area identified at flood risk, we are satisfied that its selection as an allocation is reasonable and justified. Alderwasley Mills and Cinderhill (SGS2) have parts of their area in Flood Zone 3 but as brownfield sites their development would have clear regeneration benefits that would outweigh flood risk. We are satisfied

that, subject to appropriate design measures which would be secured at application stage, these allocations would pass the exception test.

109. We have considered whether, without accounting for more up to date climate change allowances, this is a sound approach. Based on the evidence provided, only a very small proportion of the sites selected for allocation are within Flood Zone 2 or 3 and these sites are only impacted to a very limited extent. In light of this, whilst it is, of course, possible that more up to date evidence would provide a different picture, in the circumstances set out above we are satisfied that the information provided was adequate to guide the selection of sites in the Plan. The sites in question would require a Flood Risk Assessment as part of any application which would inform development, which would, in any case, be directed towards the parts of the site at lower flood risk. We are therefore satisfied that the selection of all three sites is reasonable and justified.

110. Accordingly, we are satisfied that the sites selected are all, in principle, justified, although a number of MMs are needed to address detailed soundness issues, as set out below.

Housing Allocations

111. Alongside the strategic sites at Brun Lane (SGS1) and Cinderhill (SGS2), Policy HSG1 allocated 13 other sites for housing. These are set out in a table in the policy with the expected yield for each site. These figures take account of site-specific constraints, the views of the site promoters and the Council's assessment of appropriate densities, having regard to the context of the site. We are therefore satisfied that they are soundly based. Nonetheless, as they are estimates they can only be approximate figures. For the policy to be justified **MM33** amends the text to reflect this.

112. The 13 allocations, range in size from 10 dwellings to 180 and utilise a mix of brownfield and greenfield sites. Two thirds of the sites are in the urban area, and a further 28% are in Key Villages. Whilst there are no allocations in Belper, one of the 4 urban areas, there are a number of committed sites that are delivering new housing in this area as well as allocations within the made NP. In the light of this, we consider that the allocations provide an appropriate range of sites both in terms of their geographic spread and the types of houses they will provide. In this respect we consider the Plan to be positively prepared and justified.

113. Specific infrastructure requirements for each site are set out in Appendix 1 to the Infrastructure Delivery Plan (IDP) [ED30]. However, the information in the IDP appendix largely focuses on the financial contributions likely to be required by each allocation and does not provide sufficient information on the other site-specific issues that will need to be addressed as well, nor is it part of the development plan. To ensure the Plan is positively prepared, and to provide an effective framework for decision making, **MM32** addresses this matter by confirming in the supporting text that site-specific requirements are found both in Policy HSG1 and in the appendix to the IDP. Where needed, for the same reasons, **MM33** then provides the necessary site-specific guidance for allocations within the policy and gives each allocation a specific reference in the table at the start of the policy.
114. In the light of these changes made to ensure the Plan is positively prepared and effective, **MM33** deletes the current final paragraph of Policy HSG1 which relates to a specific requirement for Aldreds Lane as this is now incorporated in the site-specific guidance for this allocation. For clarity, and thus the Plan's effectiveness, it also signposts that site specific requirements for the Strategic Growth Site and Alderwasley Mills are contained within their relevant policies.
115. To reflect the removal of the Brun Lane allocation and the current scheme proposed for Whysall Street, for the Plan to be justified, it is necessary for **MM33** to reduce the expected yield for the Whysall Street allocation and the total yield figure shown in the table within the policy. In addition, for the same reason, **MM32** sets out this revised housing figure in the supporting text.
116. As submitted, the policy indicates that on the allocated sites, permission for housing developments will be permitted subject to a financial contribution towards various physical, social, community and environmental infrastructure. For the Plan to be justified it is necessary to amend the wording so that it only requires the development to provide such facilities to mitigate its own impacts. **MM33** makes this change. We consider this wording to be adequate to address the need for mitigation where necessary, and along with the information set out in the IDP and the provisions in policy IN5 we do not consider it necessary for repetition of these to be included in the wording of the individual site-specific requirements. Indeed, to do so may, in some cases, pre-judge the requirement without taking into account the individual circumstances of the site and proposed

development. We have therefore amended **MM33** accordingly. This is a minor change and no one should be prejudiced as a result.

117. As Biodiversity Net Gain is now a statutory requirement and housing developments will need to accord with Policy EN9, the second paragraph of the policy is not justified or consistent with national policy. As a result, **MM33** deletes it.

Aldreds Lane, Heanor

118. Aldreds Lane is designated as an area of informal open space in the current Local Plan, although there is no current management of it. The site has also been identified as having significant wildlife and ecological value. The yield on the site has been reduced significantly to ensure development of the site can still retain important existing natural features and to provide on-site open space. To achieve this, the site boundary needs to change to include the existing woodland. In the light of this we consider the development of the site would not have unacceptable impacts on ecology and wildlife.
119. Evidence from the Council [AV17] shows that there is sufficient open space within the vicinity to ensure residents in the area would still have adequate access to open space and so the use of some of the land for housing is justified and compensation beyond that to be provided on site is not required.
120. Some of the northern part of the site through which the access would pass lies within Flood Zone 2. However, evidence provided by the Council in a technical paper [AV17] shows suitable mitigation measures and emergency planning could ensure a safe access for the site. This should be demonstrated in a site-specific Flood Risk Assessment to accompany any application. There is also the potential to provide additional accesses to the site. Furthermore, the evidence from the initial site investigations show that the former mining history should not form an impediment to the development of housing on the site.
121. The VA shows the site to be viable and deliverable. Whilst some of the specific site issues may increase development costs, as the Council is the landowner the assumptions regarding profit could be lower. Therefore, we are satisfied that the site will remain viable.

122. Given the various issues that need to be addressed before development can commence, we consider that the trajectory is correct in indicating the delivery on the site will not commence until later in the Plan period.

Alderwasley Mills, Ambergate

123. This is an existing employment area within the World Heritage Site, that has a number of underused and vacant buildings. The allocation provides for around 140 dwellings to be created as part of a mixed-use scheme regenerating the site. A site-specific policy (ED3) giving guidance for this is provided within the Economic Development chapter of the Plan.
124. The site promoter has produced a masterplan, heritage assessment and viability assessment to show how the site could be developed taking into account the heritage, flooding and other constraints. From the evidence before us, we are satisfied that a viable scheme can be achieved on the site in the later part of the Plan period as shown in the trajectory.

The Common, Crich

125. This site is located adjacent to an existing housing development that is nearing completion. The VA shows the site to be viable and deliverable. Although the site is outside the settlement boundary as defined in the NP, its location still provides good access to the services and facilities within the village and so would accord with national policy which encourages the provision of sites to enable villages to grow and thrive. Sufficient open space would remain between Crich and Fritchley to avoid the coalescence of these two settlements.
126. The nature of the site, on a hillside on the edge of the village and close to heritage assets and ecological designations, increases the importance of ensuring the development takes account of these constraints. Whilst these factors have been reflected in the anticipated yield, as set out above, a site-specific policy is also necessary to provide detailed guidance for the site's development. With this in mind, we are satisfied that all necessary mitigation measures can be provided, and a sensitively designed scheme can be achieved on the site.

Other Housing Allocations

127. The Outseats Farm, Alfreton allocation is adjacent to another housing site where construction is nearing completion, and through which it has been confirmed access to the allocation could be achieved. There is no substantive evidence to show that agreement regarding the use of this access cannot be achieved. We are also satisfied that the anticipated yield has taken account of the need to provide a sufficient buffer to the nearby ecological designations.
128. The development of Whysall Street, Heanor has secured funding from the Brownfield Land Release Fund and the Future High Street Fund. The Council have confirmed that the site, which is currently used for parking is surplus to requirements and that there is confirmed developer interest for the site. Its development would accord with paragraph 90 of the NPPF which encourages residential development on appropriate sites to support the vitality of town centres.
129. From our observations on site, we consider a satisfactory access can be provided for the site at Leafy Lane and that the site-specific requirements in HGS1 highlight the need to retain the boundary trees.
130. Construction has now commenced on a scheme for 42 houses at Long Close, Ripley with a further scheme for 28 houses being prepared. As a result, delivery is earlier than anticipated in the trajectory. However, as Outseats Farm, Alfreton, Sleetmore Lane, Somercotes, Crich Road, Fritchley and Cinder Road, Somercotes do not yet have full permission, we consider the Council's assumption for delivery on these sites within 5 years to be overly optimistic. As highlighted above, Whysall Street will now deliver 42 not 59 dwellings. Consequently, it is necessary for the trajectory to be amended to show delivery beyond the 5-year period. All these changes are shown in **MM101** and are necessary in the interests of clarity and effectiveness and to ensure the plan is justified.
131. We are satisfied that the other allocations are viable and deliverable.

Other Sites

132. A number of alternative or "omission" sites have been put to us as suitable for development. It may well be the case that there are other suitable sites in the Borough that are also capable of being developed, and some of those may also be reasonably related to the

settlement hierarchy. However, for the reasons set out elsewhere in the Plan, the approach set out in SS2 and SS3 is sound, and we consider the Plan to be effective in meeting the development needs of the borough. We therefore do not consider it necessary to allocate any of these alternative sites in order for the Plan to be sound.

Conclusion

133. Subject to the required MMs detailed above the housing growth sites are positively prepared, justified and effective, developable, deliverable and consistent with national policy.

Issue 5 – Has the Plan been positively prepared and is it justified, effective and consistent with national policy in relation to its provision for the supply of housing?

Housing Supply

134. The Plan sets out a housing trajectory in Appendix 2 detailing for each of the allocated sites the number of dwellings expected to be completed over the Plan period. It also sets out the number of dwellings expected from large sites with planning permissions and from windfalls over the Plan period. Detailed information of the large sites with planning permission was provided in the housing land supply information contained in Appendix 1 of the Plan. The trajectory and the detailed information on the large sites with planning permission was updated in response to our initial questions, to reflect actual completions and changes in the deliverable supply for the first two years of the Plan period (01/04/22 – 31/03/24) [AV01e and f]. Within these first two years of the plan period 1,069 new dwellings were completed.

135. A further update to the trajectory was included in appendix 1 of the Council's hearing statement [HS6.1]. This removed the estimated windfall allowance over the next three years and replaced it with figures for small sites with extant permissions. It also included Neighbourhood Plan allocations without planning permission and a number of other large sites which the Council proposed should be included as additional allocations. The inclusion of new allocations only takes place if it is necessary for soundness and after a comparative assessment against all other sites, and public consultation on the resulting selection. As outlined above in section 4, we do not consider this to be necessary for the soundness of the Plan and so have not considered these sites further. The trajectory

has been further updated to reflect our conclusions regarding aligning the housing requirement with the updated LHN and so “rebasin” the period over which it is calculated and over which completions are included in supply.

136. As detailed in Issue 2, the Plan's housing requirement figure should be based on an Objectively Assessed Need of 351dpa and allowance for Derby's unmet need of 1,320 over the housing requirement period which equates to a requirement of 2024 – 2040 of 6944 dwellings or 434dpa.
137. The tables in Appendix 1 and their updates identified the large sites with extant planning permissions, the majority of which are already under construction. Further information is provided on all of these sites that form part of the 5 year housing land supply in the site proformas [AV01b and c]. These provide a thorough review of the large sites and convincing evidence to support their inclusion within the housing trajectory. However, the information in the tables in Appendix 1 is continually changing and so rapidly goes out of date, and so for the effectiveness of the Plan it is necessary for **MM100** to remove them. Following review, the contribution of large sites with planning permission is 4,083 dwellings over the Plan period. A further 529 dwellings have extant permission on small sites.
138. The updated version of the trajectory includes within the housing supply two sites that are “made” allocations in Neighbourhood Plans in the Borough. The updated trajectory shows these would contribute 284 dwellings to the housing supply. From the evidence before us we are satisfied that these allocations are a reliable source of supply.
139. A further proportion of the supply is derived from site allocations in this Plan. We have set out under Issues 3 and 4 above our reasoning for why this needs to be reduced. In reaching a view as to when these dwellings might come forward, we have taken into account average lead in times within the Borough along with historic build out rates. Assumptions in relation to these matters will never yield an entirely accurate prediction of future trends. However, based on the evidence put to us during the examination, including that within the Housing Topic Paper and the further work done by the Council after the hearing sessions, we find that the contribution over the Plan period from Local Plan allocations should be 1,026 dwellings (921 of which do not currently have planning permission).

140. The Council has included an allowance within their housing land supply for windfalls. The Windfall Allowance Table [AV01d] sets out the completions on both small and large windfall sites over the last 13 years. This shows that windfall rates can fluctuate significantly. Whilst over this 13-year period windfall sites have made a considerable contribution to the housing supply, this represents a timeframe when the current Local Plan for the Borough has been "out-of-date". As a consequence of this the windfall allowance used in the Plan is based on the average rate of completions for windfalls on small sites only.
141. Following the hearing sessions, the Council undertook further work to assess the potential capacity within the Borough for windfalls in the future. This included updated figures for windfall permissions and completions in 2024/25 [AV18]. Over this 14-year period, an average of 98dpa have been completed on small windfall sites. Of these just over 70% have been in parishes considered to be urban in the settlement hierarchy. This further assessment analysed the type and location of these completions and the likelihood of such windfalls continuing to come forward.
142. In the light of this, and the fact that Policies H1 and H2 are generally supportive of new housing both within, and adjacent to, existing settlements, we are satisfied that there is the potential for small scale windfalls to continue to come forward over the Plan period. However, windfalls are difficult to predict, and in the most recent years completions on small sites have been lower than the average. Therefore, we consider the Council's assumptions in relation to the contribution windfalls may make to the housing supply are overly optimistic and that a lower and more cautious figure of 85dpa would be more accurate. Using this figure, we are satisfied that there is compelling evidence that windfalls will provide a reliable source of supply over the plan period. This figure should be applied to all years beyond the 3 years of extant permissions – a period of 12 years – which would provide 1,020 dwellings over the Plan period.
143. In relation to the contribution to the supply from small sites, to avoid double counting, this should be based on extant permissions for small sites, excluding any completions. When averaged over a three-year period this amounts to approximately 176dpa or 529 dwellings over the three-year period. Whilst this calculation does not account for lapses in permission or variations year on year, the NPPF does not require this and taking into consideration the rather limited effects

these matters would have on overall supply, in our view it would be an appropriate and proportionate approach.

144. The NPPF indicates that at least 10% of the housing requirement should be on sites no larger than one hectare. The trajectory shows that development on small sites through completions and permissions would provide around 660 dwellings. Further sites of less than 1 ha are evidenced in the Overall Housing Land Supply Proforma [AV01a]. Those without permission, which include 4 of the allocations, would provide a further 102 dwellings. In total this equates to 10% of the housing requirement. Given the positive approach within the Plan policies to windfall developments within, and adjacent to, existing settlements many of which are likely to be small sites, we consider this figure could increase further over the Plan period.
145. As the yield figures given for the allocated sites are only approximate, the actual number of houses they deliver may be slightly different. Nonetheless, we are of the view that the updated trajectory provides a balanced and suitably precautionary approach to assessing likely supply.
146. The updated trajectory indicates that the Development Plan provides for at least 7656 developable dwellings (819 past completions + 4,083 dwellings on large sites + 529 dwellings on small sites + 284 dwellings in NPs + 921 dwellings in LP allocations (without permission) + 1,020 dwellings from windfalls), against a requirement of 6944 dwellings. This would provide headroom of around 10% giving us assurance that the dwelling requirement is likely to be met by the Plan.
147. Allowing for a 5% buffer the trajectory demonstrates that there is currently well over 7 years supply of deliverable housing land in Amber Valley.
148. To update the Plan to reflect the revised figures and for effectiveness **MM100** and **MM101** are necessary.

Conclusion

149. The evidence indicates that the housing requirement figure across the Plan period is likely to be met and that the Plan identifies at

least a five-year supply of specific deliverable sites at the time of adoption.

150. In conclusion, subject to the above-mentioned modifications, the Plan is positively prepared and is justified, effective and consistent with national policy in relation to its provision for the supply of housing.

Issue 6 – Does the Plan set out positively prepared housing policies which are justified, effective and consistent with national policy?

Policy H1 – Housing Development Within Urban Areas and Key Villages and Policy H2 – Housing Development Within Other Villages and Settlements

151. Policies H1 and H2 relate to windfall developments in Urban Areas and Key Villages, and in Other Villages and Settlements respectively. However, whilst the policies are clear that the policies relate to windfall developments within and adjacent to such settlements this is not reflected in the titles of the policies and supporting text. So, for the clarity and the effectiveness of both policies and to provide consistency with policy SS3, **MM41, MM44, MM45, MM46 and MM47** are required to correct this. **MM44** and **MM45** also amend the wording within the supporting text and policy H1 to clarify that the policy relates to land within Amber Valley that is adjacent to Derby. To correct factual errors **MM45** needs to remove the references to Derby City within policy H1. These changes are necessary for clarity and for the Plan to be effective and therefore sound.
152. The NPPF states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and that policies should identify opportunities for villages to grow and thrive. As such, we consider the approach to allowing development adjacent to these settlements as well as within them is justified.
153. The Plan contains no settlement boundaries but instead relies on the relationship of sites with the undefined "built framework". It is thus unclear and it would not be evident how a decision maker would react to development proposals as a result, which is contrary to the NPPF. Accordingly, **MM105**, which inserts a definition of 'built framework' into the Plan's glossary, is necessary in the interests of

clarity and to provide an effective basis for decision-making". With this we consider the wording of the policy, which requires the cumulative impact of other proposals to be taken into account, together with the definition, would provide an appropriate balance between providing clarity on where such development could take place and what will need to be a matter of planning judgement, to be determined on a case-by-case basis.

154. Some NPs have defined settlement boundaries for their area. Such boundaries would help to show what may be considered to be the built-up area of the settlements. Where NP policies indicate that development would not be appropriate beyond such boundaries, any conflict would be resolved in favour of the most recently adopted part of the development plan.
155. The first part of each policy sets out the types of development that would be acceptable within these settlements. We consider that these would enable a range of windfall developments to come forward in sustainable locations. For clarity and thus the effectiveness of the policy, it is necessary for **MM45 and MM47** to clarify in each policy that such development, needs to accord with other policies in the Plan. The wording of the second bullet point should also be altered to indicate that it is proportionate extensions that are acceptable. For the same reason it is also necessary for **MM45** to amend the third bullet point of policy H1 to clarify that it is referring to land specifically allocated in the Plan for other purposes unless it can be demonstrated that the allocation is no longer required for that purpose. **MM43** makes corresponding changes to the supporting text. In addition, for the effectiveness of Policy H2, **MM107** is required to add a necessary definition of infilling to the glossary.
156. The second part of each policy sets out various additional criteria, for development that is adjacent to, rather than within, settlements. For the effectiveness of both policies **MM45 and MM47** delete the reference to community value but add criteria relating to landscaping setting. In addition, given the changes to the third bullet point, these modifications also delete the seventh bullet point which is no longer necessary. In light of the provisions set out in the fifth bullet point the supporting text related to this point, which in any case is somewhat ambiguous, is not necessary, so for the clarity and effectiveness of the Plan it is necessary for **MM42** to remove it. In addition, so that the Plan is positively prepared, **MM42** also amends the wording at the start of the paragraph.

157. As parking standards are covered by policy IN1, it is not necessary to repeat them elsewhere in the plan, including in the housing policies.

Policy H3 – Housing Development in Countryside

158. Policy H3 provides guidance on housing development that may be considered acceptable in the countryside. However, for consistency, and thus the effectiveness of the Plan, **MM48** needs to change the title of the policy in the supporting text so it is the same as the policy itself. As a significant proportion of land in the borough that is in the countryside is also in the Green Belt **MM49** amends the supporting text so it clearly indicates that in such areas policy SS8 would be the primary policy for determining applications. The second bullet point in the criteria for replacement dwellings lacks clarity as to what is meant by "the same site" so **MM50** modifies this. Both these changes are necessary for clarity and thus to ensure the effectiveness of this policy.

Policy H4 – Housing Types, Mix and Choice

159. The LHNA [ED25] and the addendum report [ED24] provides evidence on the types and mix of housing required in the Borough and identifies that over the Plan period there will be an increasing need for specialist forms of housing that will meet the needs of older and disabled persons. To ensure the Plan is positively prepared and to ensure the effectiveness of the policy in helping to meet this need, it is necessary for **MM51** to strengthen the wording at the start of the policy and to modify the wording of criterion b).

160. Whilst the construction of all new housing to M4(2) standards is due to become part of the Building Regulations, at present no date has been set for when this will happen. As such, given the need highlighted in the LHNA, it is justified for the policy to require new housing to meet this standard.

161. The LHNA indicates that the need for dwellings suitable for wheelchair users is approximately 9% of the housing requirement. As a result, the requirement for 20% of new housing to be built to M4(3) standards is not justified. Moreover, the PPG indicates that M4(3) accessible housing can only be required where the Council has nomination rights. Therefore, in order for the policy to be justified, it is necessary for **MM51** to amend the final paragraph of the policy to reduce the requirement and to only require a proportion of open

market housing to be built to M4(3) adaptable rather than accessible standards.

162. The PPG recognises that the M4(3) requirements for affordable and open market housing must be applied flexibly as, due to site constraints and viability, it will not always be possible for it to be provided. However, these matters are not reflected in the Plan which means it is inconsistent with national policy on this subject. Accordingly, to ensure consistency with national policy it is necessary for **MM51** to refer to the flexibilities that would apply to this requirement.

Policy H5 – Affordable Housing

163. The LHNA shows that there is a significant need for affordable housing over the Plan period but recognises that delivery will be affected by viability. The ability to deliver affordable housing is considered in the VA. In line with the recommendations within the LHNA the policy identifies 3 Housing Value Zones within the Borough with different affordable housing requirements in each. The evidence concludes that such an approach would maximise the delivery of affordable housing in the Borough. We consider the VA provides compelling evidence for the differing requirements sought in the different zones of the Borough. Given this evidence we consider this approach to be positively prepared and justified.
164. Although the VA indicates that the provision of affordable housing in specialist older person housing would be unviable, the sensitivity table shows that some schemes may be able to deliver affordable housing. It therefore recommends that the same affordable housing percentages are applied to such specialist housing. In order to maximise the delivery of affordable housing we consider it is justified not to have a lower requirement on this type of housing and to consider viability on a case-by-case basis. Policy H6 provides guidance on how viability will be addressed and so we consider it is not necessary for this policy to specify this.
165. The policy seeks to secure the delivery of on-site affordable housing, although the supporting text identifies the circumstances when off-site provision or a financial contribution in lieu may be acceptable. These are consistent with paragraph 64 of the NPPF.

166. None of the borough is within a “designated rural area”. Outside such areas, national policy is clear that affordable housing contributions should not be sought from non-major development proposals. We have been supplied with no compelling reasons to suggest that it would be justified to depart from this clear national policy expectation in this instance. Accordingly, we consider the threshold set out in the plan to be soundly based.
167. Some housing development within the plan will be meeting the housing needs of Derby City and so the affordable housing provided on such developments should address the identified affordable housing need of that authority. The policy does not do this, so to ensure that the Plan is positively prepared and effective, it is necessary for **MM52** to clarify this within the supporting text.

Policy H6 – Viability

168. Whilst policy H6 addresses how the issue of viability in development proposals will be dealt with, it is unclear whether the policy is addressing only housing developments or development proposals more widely. Nor is it clear whether the policy is addressing situations where viability requires the renegotiation of planning obligations or just when it is known that viability will be an issue at the application stage. As a result, for the effectiveness of the policy, it is necessary for **MM54** to amend the supporting text to clarify these points and for **MM53** and **MM55** to amend the title of the policy in both the supporting text and the policy itself.
169. Criterion b) is a procedural rather than a policy matter and so is more appropriately located in the supporting text and so for the policy to be justified **MM54** modifies the Plan accordingly. As that would leave a single criterion the wording of a) has now been incorporated into the previous paragraph.
170. The final section of the policy addresses the use of review mechanisms for Section 106 agreements. To provide certainty, and thus the effectiveness of the policy, it is necessary for **MM55** to amend the wording so that it clarifies that this relates to larger sites that will come forward over a longer period of time, and not all proposals.

Policy H7 – Self-Build and Custom Build Dwellings

171. Policy H7 aims to provide self and custom build housing. Government support for this is reflected in the NPPF and the PPG. The Council's register of people interested in custom and self-build housing shows significant demand for this type of housing within the Borough. However, the wording of the policy as submitted is aspirational, so to ensure the Plan is positively prepared and to ensure the effectiveness of the policy in helping to meet this need, it is necessary for **MM57** to strengthen the wording at the start of the policy.

172. As submitted the Plan does not specify the proportion of plots that should be provided on sites, and what size of sites this requirement applies to. To ensure the Plan is effective and justified it is necessary for **MM57** and **MM56** to rectify this in the policy and supporting text respectively. Viability evidence indicates that it would be viable to provide 2% of plots for this purpose on sites of over 50 dwellings. Taking into account the potential difficulty of accommodating this on smaller sites we consider that applying this to sites of 100 or more dwellings is more reasonable. We consider that the requirement to set them aside for this purpose for 6 months would respond in a proportionate manner to the evidenced need. Although such sites may not appeal to some who wish to build their own home, for others they may, and evidence on small windfall sites shows a significant number of sites for one or two dwellings also come forward. Such sites may also contribute to meeting the demand for this type of dwelling.

Policy H8 – Gypsies, Travellers and Travelling Showpeople

173. Policy H8 relates to sites for Gypsies, Travellers and Travelling Showpeople. The Gypsy and Traveller Accommodation Assessment (GTAA) [ED29] provides an assessment of the accommodation supply and need of the Gypsy, Traveller and Travelling Showpeople communities in the Borough and identifies that a total of 4 additional pitches will be required to meet the needs in the Borough of those meeting the ethnic definition of Gypsies and Travellers over the period 2020 to 2040. There is no requirement for any plots for Travelling Showpeople. We are satisfied that the GTAA provides a robust evidence base and accords with national policy.

174. The GTAA showed that half of this identified need resulted from 2 existing pitches that were on an unauthorised but tolerated site in the Borough which the policy sought to allocate. During the

Examination a Certificate of Lawful Development for the existing use of the site as a Gypsy caravan site was granted by the Council. As a consequence, it is now an authorised Gypsy and Traveller site, which meets half of the identified need in the Borough.

175. Notwithstanding the established lawful use of the site, there is the potential for this to change should the current occupiers move elsewhere. Consequently, due to the identified unmet need for further pitches in the Borough, the protection of the site for Gypsy and Traveller use through an allocation is a sound approach.
176. The site is also proposed for removal from the Green Belt. We have considered whether there are exceptional circumstances to support this. The Planning Policy for Traveller Sites (PPTS), allows for the exceptional, limited alteration to the defined Green Belt boundary to meet specific, identified needs for traveller sites. It further advises that the provision of traveller sites in the Green Belt should only be done through the plan-making process. We are satisfied that in the light of the need identified in the GTAA exceptional circumstances exist to support the removal of the site from the Green Belt in this case.
177. Due to these considerations and to ensure the Plan is justified and effective it is necessary for **MM58** to amend the supporting text to refer to the removal of the site from the Green Belt which is not explicit within the policy and for **MM58** and **MM59** to change the supporting text and the policy respectively, to highlight that the site is being allocated solely to provide Gypsy and Traveller accommodation. These modifications are also necessary to ensure that the Plan is consistent with national policy expressed in the PPTS.
178. The Identification of Suitable Sites for Gypsy and Traveller Accommodation Topic Paper [BD01] sets out the process undertaken to identify other sites to meet the need identified in the GTAA. Despite this process no suitable sites in the Borough were found. We consider the site identification process to have been robust. However, as the level of need is so low we consider that the use of a criteria based policy is appropriate and proportionate. Criterion 4 of the policy requires that the Gypsy sites should not impact upon the amenity of adjoining residential sites. However, as that is covered by requirements in other policies in the plan it is unnecessary duplication in this instance which is contrary to national policy. Furthermore, Criterion 5, in relation to Green Belt, should refer to

“inappropriate” development to be consistent with national policy.

MM59 addresses these points and also amends the wording of the first bullet point to include waste facilities which has been omitted from the policy, contrary to national policy. These modifications are necessary for the policy to be effective and consistent with national policy.

Conclusion

179. Subject to the MMs detailed above, the housing policies set out in the Plan are positively prepared, justified, effective and consistent with national policy.

Issue 7 – Does the Plan set out positively prepared policies in relation to climate change and the environment which are justified, effective and consistent with national policy

180. Chapter 10 of the Plan sets out 15 diverse policies which cover a range of issues which all seek to protect the environment. This includes policies to address the effects of climate change and to ensure that new development is carried out in a way which does not contribute to its causes. The chapter also contains specific policies relating to renewable energy generation, flood risk and drainage, protecting heritage assets, landscape character, biodiversity, pollution control and measures to ensure high quality design.

Policy EN1 – Climate Change

181. Policy EN1 sets out measures aimed at maximizing opportunities to reduce emissions and to ensure that new development incorporates measures to mitigate and adapt to climate change. The measures set out in the policy are wide-ranging and not all of them will be relevant to all development. In the interests of clarity and therefore effectiveness **MM66** and **MM67** alter the policy to recognise that in some cases the nature of the development will mean that it is not possible to apply all of the criteria within the policy but that this will need to be demonstrated by the applicant.

Policy EN2 – Renewable Energy

182. Policy EN2 is a permissive policy which sets out the circumstances in which schemes for renewable energy development will be supported. However, the policy as worded is inconsistent with national policy

which recognises the benefits of renewable energy production and states that such applications should be approved if impacts can be made acceptable. The policy also fails to refer to low carbon energy, although the intent is expressed in the supporting text.

183. In order for the policy to be justified and effective, and for it to be consistent with national policy, **MM68** and **MM69** include low carbon energy within the terms of the policy and make changes to the policy to ensure it is positively worded and sets out that identified harm will be weighed against the public benefits of such schemes. The changes also recognise that mitigation will be taken into account in considering such schemes.

184. The Plan does not identify suitable areas for renewable or low-carbon energy. However, in light of the revocation of the Written Ministerial Statement 2014 in relation to wind energy, we are satisfied that the absence of identified areas will not preclude such schemes being considered on their merits, and that subject to the above amendments the policy will be effective.

Policy EN3 – Flood Risk

185. Policy EN3 seeks to reduce risk from flooding by taking a sequential approach to the location of new development by directing development to areas at lowest flood risk. The policy also seeks measures, including Sustainable Drainage Systems, that reduce the risk of flooding elsewhere. However, the supporting text to the policy doesn't identify that the approach outlined relates to flooding from all sources. Furthermore, the policy as drafted contains superfluous detail that undermines its effectiveness. **MM70** and **MM71** make necessary drafting changes to the policy to aid legibility, by removing unnecessary commentary within the policy. These changes are necessary to provide a clear basis for decision making and so to ensure the policy is effective.

Policy EN4 – Heritage Assets

186. Policy EN4 sets out how decisions will be made in relation to heritage assets. To ensure consistency with national guidance and to aid legibility **MM72** makes a number of changes to the policy wording. These clarify how development within the setting of heritage assets will be considered including the impacts of cumulative development. These changes are necessary in the interests of clarity and therefore effectiveness.

Policy EN5 - Derwent Valley Mills World Heritage Site

187. Policy EN5 sets out how proposals which impact upon the Derwent Valley Mills World Heritage Site will be considered. In order to assess the impacts of development on the heritage significance of the area the policy required that major development and "significant minor development" is accompanied by a heritage impact assessment. However, "significant minor development" is not defined. Taking into account the Outstanding Universal Value of the asset, and to recognise that relatively small-scale development can impact upon heritage significance and will depend upon both the location and scale of development, **MM74** alters the policy to allow the Council to request a heritage impact assessment where necessary.

188. The policy and supporting text refer to ICOMOS guidance. This was updated in 2022 when UNESCO issued new guidance for assessing impacts from projects that could potentially affect World Heritage Sites. The new guidance incorporates and replaces the ICOMOS guidance and so references to ICOMOS should be replaced by the updated UNESCO guidance. **MM73** updates the supporting text and **MM74** updates policy EN74.

189. These changes are necessary in order for the policy to be effective and consistent with National Policy.

Policy EN7 – Landscape Character & Features

190. Policy EN7 seeks to ensure that development takes appropriate account of landscape character and recognises the contribution the landscape makes to the Borough's intrinsic character. The policy appropriately defines when a Landscape and Visual Impact Assessment (LVIA) will be required to support a proposal and contains a number of criteria which development proposals should address. However, the policy does not make explicit that the LVIA should inform the design, which should also take account of the Council's relevant landscape guidance. The policy also omits to recognise the importance of landscapes of historic importance and is unclear in its approach to mitigation and compensatory measures. **MM75** makes these requirements explicit in the policy as well as making changes to aid legibility. These changes are necessary to ensure that the Plan is positively prepared and that the policy is effective.

Policy EN8 – Biodiversity and EN9 – Biodiversity Gains

191. Policies EN8 and EN9 relate to Biodiversity and Biodiversity Gains.

Policy EN8 sets out a hierarchy for considering proposals which may impact on sites of ecological importance and is consistent with national guidance. However, the wording in relation to where and how mitigation may be appropriate also refers to net gains and this confuses the provisions set out within the policy. **MM76** removes reference to "net gains" from policy EN8 thus making clear the different provisions relating to Biodiversity Net Gains (BNG) within policy EN8. **MM108** in the glossary defines the mitigation hierarchy which is not otherwise explained in the Plan. These changes are necessary for clarity and effectiveness.

192. Furthermore, the policy is negatively worded and overly restrictive in relation to the approach that should be taken to the protection of trees, hedgerows and opportunities for wildlife corridors within new development and in the approach to be taken to sites of geological importance. **MM76** also addresses these matters to ensure the requirements of the policy are consistent with national policy and is necessary in the interests of clarity and effectiveness.

193. Policy EN9 is entitled Biodiversity Gains and addresses matters which include BNG. The wording of the policy in relation to mitigation and compensation does not reflect national guidance in relation to irreplaceable habitats. These are defined in BNG legislation and should be subject to bespoke arrangements. In addition to drafting changes to aid legibility **MM77** makes the necessary changes for clarity and therefore effectiveness. The policy also contains measures that development should incorporate to facilitate gains in biodiversity. These measures include avoiding the use of Best and Most Versatile (BMV) agricultural land. This would require a comparative assessment, and it is unclear how a decision maker could assess this on a site by site basis. The modification therefore addresses this matter by recognising the harm that can arise from significant loss of BMV land and requiring that this harm be taken into account in the decision making process. This change is necessary to ensure the Plan is positively prepared and effective.

Policy EN10 - Pollution

194. Policy EN10 seeks to address the effects of pollution arising from development. The policy fails to address the potential impacts that could arise from locating vulnerable development adjacent to existing

“bad neighbour” uses, known as the “agent of change” principle. It also does not define pollution or how this should be addressed.

MM78 addresses these matters by defining the range of matters to which the policy will apply and the measures by which these will be assessed. These changes are necessary for the policy to be justified and effective.

Policy EN12 - Hazardous Substances

195. Policy EN12 addresses how applications for development within consultation or safety zones will be dealt with. The consultation zone as shown on the policies map differs from that shown on the adopted Plan. The Council has confirmed that the apparent discrepancy comes from the previous Plan showing the Explosives Safeguarding Zone but incorrectly giving it the title Hazardous Substances Consultation Zone and the current Plan showing only the Hazardous Substances Consultation Zone. These Zones are defined by their distance from identified installations and an obligation to consult would be unaffected by how they are represented on the policies map, so the inaccuracy would not impact upon the statutory duty to consult or the applicability of the policy. Nevertheless, we note that the Council have undertaken to rectify the inaccuracy as part of their proposed Additional Modifications to the Plan on adoption.

Policy EN15 – Quality & Design in Development

196. Policy EN15 is a wide-ranging policy which seeks to achieve high quality design in new development. The policy contains a number of criteria but suffers from some omissions which may undermine its effectiveness. These include criterion h) which relates to matters which impact upon residential amenity. The policy fails to identify external noise as a factor which may impact on living conditions and to recognise that noise impacts from delivery and plant facilities within new development can impact upon existing occupiers. The policy as drafted also does not refer to internal space standards. The Council have identified this as a deficiency and have provided convincing evidence that a requirement for new development to comply with these standards is necessary to ensure adequate living conditions in new development. We therefore consider that a modification to the policy to refer to the nationally described space standards (NDSS) is justified. The policy also suffers from some minor drafting errors including a reference to Public Health England rather than Sport England.

197. Furthermore, the supporting text refers to the provision of green infrastructure. The Council recommend that developers use Natural England's Green Infrastructure Planning and Design Guide in planning new development and so it is appropriate that this is referred to in the supporting text. **MM79, MM80, MM81, MM82, MM83** and **MM84** address these matters and include noise and the NDSS within the requirements of the policy. These changes are necessary in the interests of clarity and for the policy to be effective.

Conclusion

198. Subject to the required MMs detailed above the policies in Chapter 10 – Environment Policies, provide a positively prepared strategy and are justified, effective and consistent with national policy.

Issue 8 – Are the provisions of the plan in relation to the provision of employment land justified and consistent with national policy? Would the allocations be developable, deliverable and otherwise soundly based?

The Employment Land Requirement

199. The spatial strategy in Chapter 6 sets out the employment requirement for the Plan period. The ELR provides the background evidence on which the Council have based their assumptions in relation to the need for employment land. Although the report was 3 years old by the start of the Examination, we are nonetheless satisfied that its contents are sufficiently up to date to inform the Examination and that an update of the report was therefore not necessary. The Plan does not make clear which version of the ELR is the basis for the requirement and the Plan is unclear as a result. Consequently, **MM14, MM15, MM16** and **MM17** which make clear that it is the 2021 ELR that was used are necessary for clarity and therefore effectiveness.

200. The ELR identified a historic take-up rate of employment land of around 2.49 hectares per year. Although historic patterns show considerable variations year on year the yearly average is nonetheless relatively low. An employment-based forecast, using Oxford Economics forecast data, suggests a negative annual growth rate over the Local Plan period, where the Borough would experience a net loss of employment land. This is largely due to a projected

decline in manufacturing jobs which make up a significant component of existing employment in the Borough.

201. We do not consider the employment-based forecast to be wholly reliable in this case. An employment-based forecast will adapt regional figures to reflect local circumstances but will not always accurately reflect how job densities of businesses vary at a local level. The timing of the data, just after the Covid epidemic may also have added to uncertainty. To sense-check the employment-based forecast the ELR compared land need for 1992-2021 using the same methodology with actual historic take-up. It found that the forecasts indicated that Amber Valley would have a reduction in land need of 63.31 ha for the period when in reality historic take up was around 72 ha.
202. For this reason, we consider a model based on historic take up to be more reliable in this case and the approach taken by the Council to be a sound one.
203. No "unmet" employment need from elsewhere in the Functional Economic Market Area or otherwise has been identified and similarly, the review does not identify any wider need for employment sites to meet the locational needs of particular employment sectors.
204. Employment needs are therefore based on a projection of 2.49 ha for the 18-year Plan period. The ELR calculation runs from 2021-2038 and whilst this does not align with the Plan period, taking into account the relatively low level of employment need identified, we are satisfied that the annual requirement can be extrapolated to 2040. This results in a projected need of 44.82 ha. The Council have included an additional five-year buffer to provide a choice of sites and supply beyond the forecasting period which equates to 57.27 ha.
205. The supporting text in the Plan does not accurately capture the supply position and so **MM18**, which explains this, and **MM24** which sets out the employment land requirement in policy SS2 are necessary for clarity and so for the Plan to be effective.

Employment Allocations

206. The ELR contains a qualitative and quantitative review of the existing employment land supply, comprising allocated sites in the 2006 Adopted Plan, and sites which have been granted permission for

development for employment uses. A further review was carried out in March 2025 [AV20] in response to our request for an assessment of the quality of employment sites. **MM19** updates the supporting text to set this out and is necessary for the Plan to be justified and effective.

207. The total amount of sites allocated within policy EGS1, which includes allocations at Cinderhill and Denby Hall, amounts to around 82 ha of prospective employment land. These are considered in turn below.

Charity Road, Riddings

208. The site lies within the Greenhill Lane Industrial Estate, an established local business estate, which the Council's most recent assessment identifies as an employment area which should be protected for business and development use. The site has been an allocation since the 2006 Local Plan and is currently partly occupied by surface parking which is subject to a temporary permission. The site is in an accessible location, within an established employment area and apart from the temporary use, would appear to have no significant impediments to development for employment uses. We are therefore satisfied that it should form part of the employment land supply.

Cotes Park Lane (East) Somercotes

209. Cotes Park Lane (East) is a large site located to the south-east of the established Cotes Park Industrial Estate. The wider business park contains a range of employment uses and overall has been identified as making an "above-average" quality as an employment location in the Borough. The site was allocated in the 2006 Local Plan and has been subject to subsequent applications for employment uses which have either lapsed or not progressed to permission.

210. The site is adjoined by woodland and in parts is well vegetated although this would not impede sensitive redevelopment. Although we note the site is a long-term allocation there are no significant constraints to development that have been identified. We are therefore satisfied that it should form part of the employment land supply.

Cotes Park Lane (West) Somercotes

211. Land at Cotes Park West is an undeveloped plot of land within the established Cotes Park Industrial Estate. Without an appropriate access we cannot rely on the site coming forward for development. Although its location within an Existing Employment Area may enable it to come forward for employment development in the future, we cannot rely on it making a meaningful contribution to the employment land supply. Consequently, the site should be removed as an allocation in the Plan.

Hockley Way, Somercotes

212. Land at Hockley Way Somercotes is another plot within the established Cotes Park Industrial Estate. As with other sites within Cotes Park the site was allocated in the 2006 Local Plan and so is a long-standing allocation which has failed to come forward for development. Nevertheless, the site has no significant impediments to development for employment use and so should remain within the employment land supply.

Wimsey Way, Somercotes

213. The Council have indicated that the site owner no longer wishes to release land at Wimsey Way, Somercotes and as a result the site is not available for development. The allocation is not therefore justified, and as a result **MM40** deletes it from the Plan. As a consequence, we have removed this site from the employment land supply.

Lily Street Farm, Derby Road, Swanwick

214. The site forms part of a wider mixed-use site of which the residential element of the scheme has been partly implemented. A reserved matters application was approved in 2023 for the site and for clarity, and therefore to reflect this and for effectiveness, **MM16** to the supporting text of the Plan sets out that the area considered to be available for employment use is 10.5ha. The site therefore has permission for E(g), B2 and B8 use so the principle of employment use on the site has been established, either in the form approved or as part of an alternative scheme within the Plan period. We therefore consider it appropriate that the site is included within the employment land supply.

Slack Lane, Heanor

215. Slack Lane Heanor is a small site adjacent to the established Slack Lane Industrial Estate. It forms a small plot of well vegetated space adjacent to a play area within Shipley Country Park. Taking into account the size of the plot, its open and well vegetated appearance and its proximity to the play area we consider the site to be highly constrained and though it is possible that an appropriate form of employment development could be brought forward, we cannot rely on it making a meaningful contribution to the employment land supply. Consequently, the inclusion of the site is not justified, and it should be removed as an allocation in the Plan.

Shipley Lakeside, Pit Lane, Shipley

216. The Plan allocates 1.27 ha of land at Shipley Lakeside for employment use. The site comprises part of the former American Adventure Theme Park and the wider site is approximately 46 ha in size. It was allocated as a "Major Developed Site in the Green Belt" by Policy EN3 of the Council's Local Plan (2006). Outline planning permission for up to 307 dwellings and a range of other uses was granted in January 2016 which divided the site into several development plots. A subsequent permission in 2021 included the 1.27 ha allocation as Plot E for employment use. We understand that this permission has since expired. The wider Shipley Lakeside site now includes substantial completed infrastructure works, including access roads and strategic site-wide landscaping, as well as ongoing works in relation to the delivery of housing and a care home. The allocation of the 1.27 ha site for employment would therefore be consistent with the wider mixed use development proposals which are ongoing at the site.

217. The Plan as submitted does not remove the site from the Green Belt. During the Examination it has been put to us by the Council and the site promoter that the entire Shipley Lakeside site should be removed from the Green Belt to help facilitate its ongoing redevelopment. However, a substantial proportion of the site has already been developed, or has permission for redevelopment, and from the evidence put to us it is not clear how the site remaining in the Green Belt will impede the implementation of the established development framework. We are therefore not assured that there are exceptional circumstances to support the release of the wider Shipley Lakeside site from the Green Belt. Furthermore, as the employment allocation here is relatively modest, we see no justification for the

removal of a much wider site from the Green Belt to support it and do not consider such a modification is necessary for soundness.

218. Nonetheless, in the absence of an extant permission we have considered whether the allocation would be deliverable should it remain "washed over" by Green Belt. Policy EN3 of the 2006 Plan identified the site as a major developed site in the Green Belt but this designation has been superseded by the Plan. In light of this, the allocation for employment is necessary to recognise the site's identified use within the wider development framework for Shipley Lakeside. We also take into account here that although the Plan is necessarily being examined under the provisions of the 2023 NPPF, development control decisions relating to the policies within it will be taken in the light of the 2024 NPPF (or any subsequent update) whereby the Council may consider the provisions in relation to grey belt may apply. We are therefore assured that the allocation is deliverable, and so sound, and no modifications are necessary in relation to this allocation.

Denby Hall, Derby Road, Denby

219. The Plan allocates 22 ha of land at Derby Road, Denby for employment use. The site has planning permission which we were advised during the course of the hearings has been commenced on site. We therefore consider that it should be removed from the Plan as an allocation and instead denoted as an existing employment site.

220. Furthermore, it has been put to us that the site should be removed from the Green Belt, due to its developed status and to facilitate the future use of the site for employment use. We note that the very special circumstances cited for granting permission in the Green Belt were the particular needs of the adjoining business uses. Although the permission was not a personal one, we understand a condition of the development requires first occupation of the premises to be by three named companies located on Denby Hall Business Park. The implementation of the permission suggests that the needs of these occupiers is in the process of being addressed through the permission granted. In the absence of any persuasive evidence that an alternative scheme is needed, or the longer-term operation of the business would be impeded by its location in the Green Belt, we have no firm basis for concluding that the exceptional circumstances needed to justify Green Belt release are present in this case.

Land North of Derby Road, Denby

221. The Plan (policy SGS2) allocates 30 ha of development within the Cinderhill site for business and industrial development and the reasons for its allocation are set out above.
222. As the Cinderhill Strategic Growth Site is shown on the Policies Map being subject to a separate policy (Submission Policy SGS2), the site should be removed from the economic growth sites listed in the policy EGS1. However, for clarity, the 30 ha of employment land which contributes towards the employment requirement target should be referenced in the supporting text.
223. Therefore, to reflect the above changes and for the plan to be effective **MM38**, **MM39**, and **MM40** remove allocations at Cotes Park Lane (West), Somercotes, Wimsey Way, Somercotes and Slack Lane, Heanor from the Employment Land Supply. The modifications also remove Denby Hall, Derby Road, Denby as an allocated site and include it as an existing employment site. Land North of Derby Road, Denby (Cinderhill) is dealt with separately under Policy SGS2.
224. To be consistent with modifications to existing employment areas set out below which restrict changes of use outside E(g) (Commercial, Business and Service), B2 (General Industrial) and B8 (Storage & Distribution) uses, the modification **MM39** to the supporting text and **MM40** to the policy also apply this restriction to relevant sites at Cotes Park Lane (East), Somercotes and Hockley Way, Somercotes. This means that some of the allocations would be unrestricted within Class E. This makes up a relatively small proportion of the overall employment land supply in the Plan. We are satisfied that the approach in the Plan strikes an appropriate balance between seeking to protect employment uses in light of local circumstances and the more permissive approach to uses within Class E set out in national policy. This modification is therefore necessary for the policy to be justified, and effective, and as a result, sound.

Employment Land Supply

225. Allocations at Cotes Park Lane (West), Wimsey Way and Slack Lane are not justified and should be removed from the supply. The remaining sites allocated within EGS1 amount to 25.93 ha of employment land. Development at SGS2 Land north of Derby Road, Denby (Cinderhill) will provide a further 30ha. Development at Denby

Hall provides a further 22ha to supply providing a total of 77.93ha of employment land for the Plan period.

226. The Plan identifies an employment land requirement of 57.27 ha which the Plan effectively addresses. For clarity and therefore effectiveness **MM39** sets out these figures within the Plan.

Conclusion

227. Subject to the required MMs detailed above, the policies for employment set out in the Plan would meet anticipated needs over the Plan period and provide a positively prepared strategy which is justified and consistent with national policy.

Issue 9 – Does the Plan set out a positively prepared strategy and policies for business and industrial development, rural employment, retailing and town centres and the visitor economy which is justified, effective and consistent with national policy?

228. Chapter 9 of the Plan sets out 8 policies which seek to support employment development in the Borough. This includes policies to address the needs of existing business and proposals in industrial areas, including the approach to rural development and non-conforming uses, retail uses, pubs or drinking establishments and tourism along with future proposals at Alderwasley Mills.

Policy ED1 – Development within Existing Business & Industrial Areas

229. Policy ED1 sets out how development within designated business and industrial areas will be considered and how proposals outside these areas which result in a loss of land from Class E, B2 and B8 will be dealt with. The policy as drafted includes all uses within Class E and so is permissive of a change of use from an existing employment use within Class B to a retail use or for use for indoor sport and recreation. The Council have subsequently identified that such uses can cause parking problems and can change the character of existing employment areas leading to the on-going loss of facilities for established employment uses. Consequently, they consider it necessary to modify policies ED1 and ED2 to refer instead to Class E(g).

230. We note that the relatively recent changes to the Use Classes Order effectively combines Class B1 with the retail and service use classes. It is therefore clear that the intention of national policy is to facilitate the wider use of existing industrial areas to include retail and other service uses and so any departure from this general approach should be supported by a demonstration of local circumstances which require a different approach. Following the hearings the Council carried out further work (BE Group - Employment Areas Assessment Appendix to AV20) which provided a qualitative assessment of employment site provision within the Borough in which they identified employment locations where loss of existing stock would undermine the quality of employment provision in the locality. We consider this work to be comprehensive and soundly evidenced.
231. We therefore conclude that within the employment locations identified, which should be set out in the policy and which are shown on the Policies Map, permitting changes within Class E should be restricted to part (g) only. This is in order to protect the quality of the employment offer of these areas which form an important part of employment provision in the Borough. We find no convincing justification that any such restriction should be extended to policy ED2.
232. For consistency the restriction should also be logically applied to the allocations within the Plan which lie within employment areas identified above as being locations where a change within Class E could significantly undermine employment provision in the Borough. These sites are Cotes Park Lane (East) and Hockley Way, Somercotes which is addressed within **MM40** above.
233. Policy ED1 requires that where proposals would result in a loss of land in employment use to another use the proposal should demonstrate that the use is compatible with surrounding uses and that the premises are no longer required for the existing use. This is to be demonstrated by providing 3 years of marketing information. We consider that this marketing period is overly restrictive and that a period of 12 months is more appropriate.
234. **MM60** makes these changes to the supporting text and **MM61** changes Policy ED1. Consequential changes are reflected on the policies map. These modifications are necessary for the Plan to be effective and therefore sound.

Policy ED2 – Other Business and Industrial Development

235. Policy ED2 is a permissive policy which seeks to support business and industrial development in appropriate locations outside economic growth sites and existing business and industrial areas. The policy refers to a range of impacts which it seeks to avoid. However, in relation to increased traffic movements the policy needs to be explicit that it is harm arising from such an increase that the policy seeks to avoid. Furthermore, the policy does not acknowledge the potential for mitigation. Lastly, in relation to heritage assets, the policy does not set out that in such cases a decision maker will need to consider that identified harm should be considered against the public benefits of the scheme. **MM62**, which addresses these issues, is therefore necessary for the policy to be effective and consistent with national policy.

Policy ED3 - Alderwasley Mills

236. This policy seeks to promote the regeneration of Alderwasley Mills for mixed use. Based on the evidence put to us at the hearings we are satisfied that the sensitive redevelopment of the site will in future form an important part of the World Heritage Site and we are also satisfied that the policy as drafted is adequate to guide its redevelopment. However, the site is subject to numerous constraints and any redevelopment is unlikely to take place quickly, being more likely to come forward towards the end of the Plan period and beyond.

Policy ED4 - Rural Development

237. Policy ED4 relates specifically to rural employment. Whilst the criteria listed within it cover an appropriate range of impacts the wording in relation to heritage assets fails to reflect national policy. The policy also does not take into account the potential for mitigation to address adverse impacts. **MM63** which addresses these points is necessary for the policy to be effective and consistent with national policy and therefore sound.

Policy ED6 - District & Local Centres, Local Shopping Facilities & Loss of Retail Uses

238. Policy ED6 seeks to protect the vitality of shopping facilities in the Borough, including that provided by smaller settlements. The criteria set out within it are appropriate, but the policy does not specify a

period for marketing in relation to proposals which would lead to a loss of retail premises. We consider that a period of 12 months is sufficient to demonstrate vacancy and would be appropriate in this case. **MM64** which amends the policy to define a period of 12 months is therefore necessary for the policy to be effective.

Policy ED8 - Tourism

239. Policy ED8 relates to tourism. Whilst the criteria it includes cover an appropriate range of impacts, the wording in relation to heritage assets fails to reflect national policy. The policy also does not take into account the potential for mitigation to address adverse impacts. **MM65** which addresses these points is necessary for the policy to be effective and consistent with national policy and therefore sound.

Policies SS4 - Other Locations to Support Economic Growth and SS6 Primary Shopping Areas

240. Together with policies SS5, SS6 and SS7 Policy SS4 seeks to support the provision of retail and other town centre uses in appropriate locations. The policies rely on identification of Town Centres and Primary Shopping Areas on the Policies Map. Heanor, although identified as being one of the four main settlements in the Borough does not have a defined Primary Shopping Area. Although its retail offer falls behind that of Ripley or Belper, Heanor nonetheless fulfils a local function, and we are advised has experienced some relatively recent investment in its town centre. We therefore consider it necessary for a core shopping area to be identified as a Primary Shopping Area, consistent with Ripley, Belper and Alfreton.

241. Policy SS6 seeks to protect the retail function of Primary Shopping Areas by seeking to ensure that changes of use within Class E are only permitted where they do not undermine this function. For clarity, and therefore effectiveness, this requirement should also be set out within the criteria in policy SS4. Finally, the title of Policy SS4 fails to reflect the purpose of the policy and is misleading, as it refers to the main locations for service provision in the Borough.

242. **MM27, MM28 and MM29**, which address these issues, and retitles policy SS4 "Supporting Centres for Economic Growth" are therefore necessary for the policies to be effective.

Conclusion

243. Subject to the required MMs detailed above, the policies for business and industrial development, rural employment, town centres and the visitor economy set out in the Plan provide a positively prepared strategy and are justified, effective and consistent with national policy.

Issue 10 – Does the Plan set out a positively prepared strategy and policies for infrastructure, delivery and monitoring which is justified, effective and consistent with national policy?

244. Chapter 11 of the Plan sets out 12 policies which seek to ensure that appropriate infrastructure is provided to support new development in the Borough. The chapter also contains policy MR1 which sets out arrangements for monitoring the performance of the Plan.

Policy IN1- Transport

245. Policy IN1 relates to transport matters and sets out, amongst other things, that new development should comply with the relevant car parking standards. However, what the relevant parking standards are is not clear, as the County Council's guidance document refers back to the Local Plan. **MM85** rectifies this matter by setting out within the supporting text where the current parking standards are contained and making clear that the policy relates to these or successor documents. These modifications are necessary in the interests of clarity and therefore effectiveness.

Policy IN2- Disused Transport Routes

246. Policy IN2 recognises the potential for disused transport routes to provide future transport links. We consider this concept to be consistent with the aims of the NPPF in terms of achieving sustainable transport but note that some routes have been omitted from the Policies Map. Subject to revisions to the Policies Map to include all disused routes identified in the Derbyshire County Council's cycle network route we are satisfied that the Policy is sound.

Policy IN3 - Cromford Canal

247. Policy IN3 supports the restoration of the Cromford Canal and contains a number of criteria against which development affecting the Canal will be assessed. These include ensuring proposals would enhance the historic value of the canal. To reflect national policy this should instead refer to "heritage significance". Furthermore, the policy refers to the potential impacts of odour. As this would not be relevant to the functioning of the canal it should be removed from the policy. **MM86** makes these modifications and is necessary to ensure consistency with national policy and for the policy to be effective.

Policy IN4 –Green Infrastructure, Parks and Open Space

248. Policy IN4 sets out the importance of protecting green infrastructure in the Borough and seeks to ensure that appropriate green infrastructure is provided as an integral part of new development. However, the Policy seeks to protect potential green infrastructure corridors, which are not identified in the Plan, and so it is not clear how this element of the policy could be implemented. To be effective the Policies Map should be updated to identify key areas of green infrastructure which the Plan seeks to protect. In addition, in order to recognise the importance of green spaces that are not identified but valued by the local community the supporting text should set out that the contribution these spaces make will be taken into account in assessing development proposals.

249. In addition, the supporting text to the policy seeks to encourage local food production through agriculture, but it is unclear how the policy could implement this. To address this reference to agriculture should be removed and the policy should refer instead solely to local food production in allotments and gardens. The policy states that contributions will be sought to enhance the green infrastructure network but does not address where and when financial contributions will be appropriate.

250. **MM87, MM88** and **MM89**, amend the policy to address these matters along with some drafting changes to improve legibility and are necessary for the policy to be effective and justified and so sound.

251. Furthermore, the policy appropriately defines the circumstances where the development of open space or sports and recreation land

will be permitted. This includes when the development is for alternative sports and recreational provision and the needs for the facility outweigh the loss. The NPPF policy refers to the "benefits" of the proposal. Therefore, in order for the policy to be consistent with national policy, and to recognise that provision of such facilities can be appropriate in cases where they are in addition to identified need, the reference to "needs" should be altered to refer to "benefits".

252. **MM90**, amends the policy to make these changes along with some drafting changes to improve legibility and is necessary for the policy to be effective and justified and so sound.

Policy IN5 - Sport & Recreational Open Space

253. Policy IN5 sets out the requirements for sport and recreational open space within new development. Although the threshold of 10 units does not recognise the cumulative impact a large number of small developments could have if located in one rural area, I am satisfied that such impacts are unlikely to be widespread and that the threshold, that has been used for some time in the Borough, represents a workable model for requiring contributions for play and other provision. However, the supporting text does not reflect this and needs to be altered to be consistent with the policy.
254. Furthermore, the policy suffers from some drafting errors. Accordingly, **MM91** and **MM92** which alter the policy for legibility are necessary in the interests of clarity and effectiveness.
255. The Schedule of Modifications as consulted upon included changes to the policy removing reference to viability. These were considered on the basis that viability considerations are effectively dealt with by policy H6 and so reference to viability is unnecessary. However, **MM54** and **MM55** make clear that the policy relates only to housing. Accordingly, as policy IN5 could be relevant to other types of development reference to viability is still necessary for effectiveness. We have amended **MM92** to reflect this.

Policy IN8 – Community, Leisure, Health & Cultural Facilities

256. Policy IN8 recognises the contribution community facilities can make to the well-being of the community and seeks to ensure such facilities are retained where possible. However, the marketing requirement within the policy does not recognise that in the case of the wider public estate, where the site is surplus to requirements,

there may be public benefits in sites being reused for other uses. The definition of Community Facilities is also unclear and does not include some facilities, such as public houses, which are recognised by local residents as adding value to the community. **MM106** sets out a wider definition of community facilities within Appendix 7. **MM93** and **MM94** make clear that in the case of public estate reorganisation or where it is clear that the use is surplus to requirements, the requirement to retain a community facility will not apply. These changes are necessary for the policy to be justified and effective.

Policy IN11 - Communications Infrastructure

257. Policy IN11 relates to the provision of communications infrastructure and seeks to ensure that the needs of the Borough are met in an appropriate manner. The Policy refers to Prior Notification applications. However, Section 38(6) of the Planning and Compulsory Purchase Act 2004 identifies that such applications should be dealt with taking into matters of siting and appearance only and does not require regard to be had to the development plan. Any plan policy is therefore relevant only insofar as these matters apply. Therefore, to avoid confusion, reference to prior notifications in the supporting text should be removed. Furthermore, the policy restricts consideration of visual amenities to that of neighbouring occupiers. We consider this to be overly restrictive. **MM95** removes reference to prior notifications and **MM96** extends considerations of amenity to the wider locality and is necessary for the policy to be justified and positively prepared.

Policy IN12 – Infrastructure Delivery & Developer Contributions

258. Policy IN12 seeks to achieve an integrated approach to the delivery of development and infrastructure. As drafted the policy refers only to housing and employment and implies that infrastructure requirements will only be identified by statutory consultees. The policy also omits Section 278 of the Highways Act 1980 and planning conditions as a mechanism for securing necessary infrastructure. **MM97** amends the policy to make these changes along with some drafting changes to improve legibility and is necessary for the policy to be effective and justified and so sound.

Policy MR1 - Monitoring and Review

259. Policy MR1 deals with monitoring and review alongside Appendix 5 which comprises the implementation and monitoring table. The policy

sets out a range of indicators which will be used to monitor the effectiveness of the Plan and may trigger the need for a Local Plan review. However, the arrangements set out will be rendered redundant by the upcoming changes set out in the Levelling-up and Regeneration Act 2023 (LURA) and the requirements set out in the NPPF 2024. As the Plan will meet less than 80% of local housing need as calculated using the standard method, the authority will be required to prepare a new plan under the revised plan-making system provided for under the LURA as soon as the relevant provisions are brought into force, in order to address the shortfall in housing need. In these circumstances much of the text of policy MR1 is no longer relevant and should be removed from the text of the policy to avoid confusion.

260. In particular, we have considered whether the policy needs to address the matter of unmet need within the HMA. We are conscious that the emerging plan for South Derbyshire seeks to provide levels of housing which would meet both the needs of that Authority and those arising from Derby City over the Plan period. We are also conscious that the South Derbyshire Plan has not yet been through examination and so it is not known whether any unmet need will remain that may be a matter for a subsequent Amber Valley Plan. We are, however, mindful that any new plan will be required to address the matter of any such unmet need should it remain. Any new plan will also be required to consider afresh employment land needs for the Borough.

261. Taking into account that the NPPF will require the Council to commence preparation as soon as the provisions of the LURA are brought into force in 2026 we are satisfied that the requirements of the NPPF will ensure that plan-making takes place in a timely manner and that such requirements do not need to be set out in a policy within this Plan. Nonetheless, the information gained from monitoring may assist in forthcoming plan preparation and requires updating to reflect other changes to the Plan. **MM98** and **MM99** remove the now unnecessary parts of policy MR1 and refer instead to the forthcoming legislation. **MM21** updates the Plan to refer to it in the supporting text of Chapter 6. **MM104** updates the Implementation and Monitoring Table. All these modifications are necessary to ensure consistency with national policy and for the policy to be effective.

262. The glossary within the Plan provides a comprehensive list of terms used within the document. However, this has not been updated during Plan preparation to reflect changes to the Plan and also

requires updating because of the modifications set out in this report.
MM102 updates the list of background documents to include supporting documents added during the examination. These changes are necessary to ensure that the Plan is justified and effective.

Conclusion

263. Subject to the required MMs detailed above the policies in Chapter 11 - Infrastructure Policies provide a positively prepared strategy for infrastructure, delivery and monitoring and are justified, effective and consistent with national policy.

Overall Conclusion and Recommendation

264. The Plan has a number of deficiencies in respect of soundness for the reasons set out above, which mean that we recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explained in the main issues set out above.

265. The Council has requested that we recommend MMs to make the Plan sound and capable of adoption. We conclude that the duty to cooperate has been met and that with the recommended main modifications set out in the Appendix the Amber Valley Local Plan satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.

Anne Jordan and Alison Partington

INSPECTORS

This report is accompanied by an Appendix containing the MMs.