



Kedleston Voice

Consultation Response to the application for outline planning permission by Catesby Estates (AVA/2014/0928); for the erection of up to 400 dwellings and a convenience store on the agricultural land adjacent Kedleston Road, Derby, and within the protected setting of Kedleston Hall

December 2014

1.0 Introduction

- 1.1 This document is prepared by Kedleston Voice (KV), a residents group formed to object to plans by:
 - 1.1.1 Amber Valley Borough Council (AVBC) to include the agricultural land adjacent Kedleston Road Derby, and within the protected setting of Kedleston Hall, in the core strategy of its Local Plan. This strategy remains at consultation stage and will be reviewed by the inspector, Mr Roy Foster, in early 2015
 - 1.1.2 Catesby Estates (CE) who intend to gain planning permission for a housing development on the site before selling it on to the future developers of the site.
- 1.2 KV represents some 1,000 individuals made up primarily from the communities, of Allestree, Darley Abbey and Quarndon.
- 1.3 **KV objects strongly to the recent application for outline planning permission by CE (AVA/2014/0928). The description of development is for "Outline application for the erection of up to 400 dwellings (Use Class C3), convenience store (Use Class A1 – up to 500 sqm. floor space) with associated access, earthworks and other ancillary and enabling works. All other matters (appearance, landscaping, layout and scale) reserved."**
- 1.4 This document and its contents respond to the raft of documentation presented by CE to accompany their application and, in particular, the Planning Statement prepared for them by Alliance Planning (AP). Though described by CE as "robust" evidence, any detailed analysis would find these materials inadequate and the findings unjustified. **The AP statement does not provide a fair and balanced reflection of the current state of case law and guidance on planning matters. It also selectively pulls information for the reports that accompany it whilst failing to recognise key legal and sustainability issues relating to this site.**
- 1.5 To illustrate the point, AP suggests that "The majority of those who responded to the Consultation (60%) acknowledged the need to provide for new houses in the Derby Area" (Section 1.14) is grounds for support for the development. This is taken completely out of context from the consultation report by Remarkable Engagement whose executive summary actually suggested that "378 people from 335 separate households have provided their feedback, either at the exhibition or subsequently by post or email. Of those, 18 (5%) expressed support for the proposal, either outright or with comments, with **338 (89%) objecting to the proposal**". The failure by AP to include this demonstrates the selectivity adopted by the company.
- 1.6 **KV recommends that AVBC treat AP's report, summarising the grounds for support for CE's application, with suspicion and verifies its contents independently.**
- 1.7 Section 4.6 of AP's statement indicates that "at the heart of the NPPF is the presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-making with LPA's approving development proposals that accord with the development. Section 4.7 then goes on to threaten AVBC in an attempt to "bully" them into agreeing to this application by citing case law relating to a recent "Award of Costs".

- 1.8 **KV suggests that AVBC should not be intimidated by these “bully-boy” tactics being employed by CE. The key word in in section 4.6 is “sustainable”. This document will demonstrate that the site is not sustainable as defined by the NPPF and AVBC’s own policies and will provide AVBC with the grounds they need for rejection. Part of this assessment is based on case**

2.0 Relevant Policies

- 2.1 This planning application is contrary to the development plan for the Borough that exists currently. No weight should be given to the current version of the draft Core Strategy that is out for consultation at present; the contents of which are being fiercely contested by KV as well as a range of statutory and other consultees.
- 2.2 The development plan for this type of proposal is the Amber Valley Borough Local Plan adopted in April 2006 for the period up to 2011 but containing policies saved on behalf of the Secretary of State in April 2009.
- 2.3 The following saved Local Plan policies are relevant to the determination of this planning application and are contravened by it: LS1; LS3; H1; H5; H12; TP1; EN1; EN7; EN10; EN15; EN16; EN24; EN27; EN32; and EN33. The relevant summaries of the key points relating to these policies are contained in **Appendix 1**. This also contains a brief summary of why these are contravened. **AVBC are encouraged to read these carefully.**
- 2.4 Paragraph 215 of the National Planning Policy Framework (NPPF) indicates that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF; the closer the policies in the Plan to the policies in the NPPF the greater the weight that may be given. Accordingly each of the policies is cross referenced to the relevant paragraphs in the NPPF in this document, where possible.
- 2.5 The following paragraphs of the NPPF are seen as relevant to the determination of this planning application and should be taken into account in the assessment of this planning application against this policy.: 6; 7; 8; 9; 10; 14; 17; 22; 32; 34; 37; 38; 47; 49; 58; 61; 65; 72; 100; 101; 102; 103; 109; 110; 111; 112; 123; 125; 126; 129; 130; 131; 132; 133; 134; 135; 137; 196; 197; 204; and 215. Again these are summarised in **Appendix 2**. This again contains a brief summary of why these are contravened. **AVBC are also encouraged to read these carefully.**
- 2.6 The primary reasons for permission to be refused are now outlined.

3.0 The Site is Absent from the Local Development Plan

- 3.1 Paragraph 17 of the NPPF suggests that “a set of core land-use planning principles should underpin both plan-making and decision-taking”. It directs that development should “be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area”.
- 3.2 Section 4.2 of AP’s statement confirms this and references Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 3.3 **The site is not in the current local development plan and therefore this application fails the first and most important criteria, that it is not “plan led”. KV believes that there are insufficient material considerations to suggest that the current plan should be ignored. The application should be rejected as a consequence.**
- 3.4 Section 4.34 of AP’s statement tries to get around this by stating “The Amber Valley Local Plan was formally adopted by the Council in 2006. The plan guides development throughout the Borough over the period of 1996 - 2011 covering such issues as housing, employment, transport, conservation and the protection of the environment. As such, its housing requirement and distribution policies are time expired and out of date; they are not Framework compliant.”
- 3.5 This is not the case and not as presented by AP. The NPPF in Paragraph 14 does confirm “a presumption in favour of sustainable development” but then caveats this by saying that Local Planning Authorities should do this “unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”. Paragraph 215 goes on to say that “due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”
- 3.6 **Despite what AP say, it is clear that many of the ABVC policies currently in place are not time expired or out of date. They are consistent with the NPPF and are therefore certainly compliant. The policies in place that support environmental and historic issues are relevant and need to be carefully considered by planning officers when reviewing and rejecting this application.**

4.0 The Application is based on Inaccurate Housing Numbers

- 4.1 The outline planning application suggests that, at present, AVBC do not have a sufficient Five Year Housing Land Supply assessment. This on the surface is a significant claim as Paragraph 49 of the NPPF suggests that “Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”
- 4.2 Paragraph 47 also states that “In order to significantly boost the supply of housing, local planning authorities should be able to demonstrate a deliverable five year housing supply with an additional 5% buffer to ensure choice and competition in the market of land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land”
- 4.3 **KV believes that the current level of 5 year housing needs and the required buffer being currently used by AVBC is overstated due to a flawed housing market assessment carried out by AVBC, Derby City Council (DCC) and South Derbyshire District Council (SDDC). The housing requirement should be reduced and, in doing so, AVBC would be seen to meet its 5 year deliverable housing supply requirement without the need for this site. Therefore, AVBC should not use unmet housing numbers as a criterion for allowing planning permission. This element should be discounted from the judgement, which should be based on legality and sustainability.**
- 4.4 KV believes that the HMA numbers have been overstated and that insufficient housing numbers have been taken by DCC and South Derbyshire District Council (SDDC). AVBC has had to accommodate an unnecessarily high proportion of housing supply as a consequence.
- 4.5 To support this, the Objectively Assessed Housing (OAH) need figures used are no longer the latest figures produced by G L Hearn on behalf of the Councils involved in the Derby Housing Market Area (HMA). Those presented to the South Derbyshire Local Plan examination on the 25 November 2014 for the seventeen years from 2011 to 2028 showed a total for the HMA of 30,226 compared to the 32,992 used by AVBC at present.
- 4.6 So far, in the absence of any independent examination of the emerging Local Plan, DCC’s contribution to meeting the OAN for the HMA has been capped at 11,000 dwellings. SDDC has resolved to allocate sites for 12,341 dwellings. Using G L Hearn’s latest figures, this leaves a balance of 6,885 dwellings to be found by AVBC. Some 5,461 of those are already committed leaving a balance of 1,424 to be found. The Heanor and Denby allocations in the proposed core strategy on their own exceed this figure.
- 4.7 Currently, in addition to the sites close to the southern and south western boundary of Derby in South Derbyshire District, there is a commitment to 530 dwellings at Radbourne Lane Mackworth and a proposal to add 70 dwellings to this. **There is no need to allocate a further 400 dwellings off Kedleston Road either to meet the OAN or to help with the five year land supply.**
- 4.8 To further support this argument, KV believes that DCC have not correctly assessed their ability to meet their housing needs. For example, they have not included impact of the number of empty properties in the City (currently understood to be some 3,500 properties) or the voids that exist (understood to total some 12, 000 properties). There are also a number of prominent

brownfield sites that DCC have not included in their Core Strategy. It is worth noting that this is both a Core Planning Principle and specific requirement for Conserving and Enhancing the Natural Environment in Paragraph 111 of National Planning Policy Framework (NPPF). Upping the DCC allocation should further reduce the amount of housing required to be found by SDDC and AVBC.

- 4.9 Furthermore, by using the principles of choosing sites that: do not result in significant environmental damage; are based on their relationship between the locations and the employment sites; and mitigate the impact of traffic congestion for existing residents, it is clear that the housing allocation to SDDC should be increased. In doing so, the requirement for AVBC falls further.
- 4.10 **It is clear that the proposed application is based on figures that are both flawed in the calculation and put an unnecessary burden on AVBC. They inflate the five year planning supply need which in turn opens the door to speculative applications such as this. KV believe that this site is not required to meet the five year supply requirements and that this argument should not be used as the basis for discounting the sustainability arguments presented below.**
- 4.11 **KV also recognises that a new AVBC core strategy is out for consultation at present and that it misguidedly contains this site within its recommendations, based on the flawed arguments above. KV would ask that the planning application is not processed until Mr Foster has reviewed the recommendations contained within and in doing so either endorses the sites inclusion or, as expected, rejects its inclusion as a strategic site.**

5.0 The Proposed Development will cause Harm to a Heritage Asset

- 5.1 The outline planning application is fundamentally flawed as insufficient regard has been given to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the National Planning Policy Framework (NPPF) and the section on conserving and enhancing the historic environment in the Planning Practice Guidance. This is despite AP confirming their importance in paragraph 4.95 of their statement.
- 5.2 The application has given little consideration to the desirability of preserving the setting of the approaches to the Kedleston Hall (grade 1) and the Kedleston Hotel (grade 2) listed buildings. Kedleston Hall, its parkland and their setting are considered to be of national importance for their 'exceptional historic and architectural interest and character'. Kedleston Hall is described as 'the most splendid Georgian House in Derbyshire' and is an important example of landscape embodied by the work of Capability Brown. The historical aspect of the open countryside that surrounds the Hall was a specific design feature of their designer, the renowned Robert Adam. Indeed, Kedleston Road was moved to its present location specifically to achieve an open agricultural landscape towards Kedleston Hall. The existing demarcation that exists between the urban and rural setting is well defined and has maintained this setting for many years.
- 5.3 The application and its supporting evidence endeavour to disguise the requirements of these guidance frameworks by focusing on the proposed development's proximity to and impact on the Hall (paragraph 4.97 and others focusing solely on the Listed Buildings Act) as well as defining the term 'setting' in a manner that is not recognised by English Heritage (EH) or consistent with the glossary definition provided in the NPPF. The NPPF specifically clarifies "setting" as the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. This is notably different to the interpretation proposed by CE that the setting of Kedleston Hall is limited to the extent of its curtilage.
- 5.4 **KV considers this land to the west of Kedleston Road is also a Heritage Asset in its own right because it conforms to the definition in the glossary of the NPPF. "A ...place, area or landscape identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest..."**
- 5.5 AP do however recognise in the same and subsequent paragraphs that "Section 72(1) of the Listed Buildings Act provides that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the appearance of that area" and that "planning policy recognises the relevance of designated conservation areas even to schemes which are outside of the defined conservation area boundary."
- 5.6 CE's Heritage Setting Assessment (HSA) concludes, "...having followed a thorough and detailed methodological assessment in accordance with the published English Heritage Guidelines, that there will be no material impact upon the Grade I Kedleston Hall. As such the duty to preserve the building is met, as is the statutory test. The presumption against development is not therefore engaged in respect of the Grade I Listed Kedleston Hall."
- 5.7 **This assessment is wholly irrelevant and inadequate as it fails to focus on the heritage setting rather than the house itself. The assessment should be discounted as a consequence. Their reference to case law (AP paragraph 5.7 - on the matter contained in Historic Buildings and Monuments Commission for England (English Heritage) v Secretary of State for Communities and Local Government [2009] EWHC 2287) is equally not relevant as a consequence.**

- 5.8 EH indicates that the harm to the proposed site adjacent to Kedleston Road will be “less than substantial”; this is the second highest level available to them. **It must be noted that throughout CE’s application the finding of ‘less than substantial harm’ is presented as meaning ‘slight harm’. This is clearly at odds with the normal definition of less than substantial harm and that of EH, such that EH responded by making clear the definition in this case is ‘significant harm’, noting that the CE heritage report failed to comply with EH guidance.** This is significant regarding the legal precedents that have been set regarding harm to heritage assets.
- 5.9 The NPPF emphasises the need to put great store in protecting heritage assets, including historical settings. This is only partially acknowledged by in AP’s statement. Paragraph 17 of the NPPF states that “Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking ... planning should... conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations”. **It is clear that, from the 4,000 petitioners who have joined our campaign, this setting is much loved and should not be damaged irreversibly for generations to come.**
- 5.10 Paragraph 65 of the NPPF says that “Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal’s economic, social and environmental benefits).” **Again, EH’s assessment is that less than substantial harm will be caused. This is significant harm and means that the application fails to meet this requirement.**
- 5.11 Paragraph 129 of the NPPF states that “Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal. **AVBC must undertake this as part of the appraisal of this application.**
- 5.12 Paragraph 130 of the NPPF states that “Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.” **Therefore, AVBC must not take into account the current poor state of the Kedleston Hotel as mitigation against harm to the heritage setting of the Hall or the planting of trees in an otherwise agricultural landscape.**
- 5.13 Paragraph 131 of the NPPF states “In determining planning applications, local planning authorities should take account of... the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality”. **The hall and its setting is a major tourism asset to Amber Valley, Derby and the wider Derbyshire. The proposed application will only harm this; potentially reducing visitor numbers and having an adverse impact on the local economy.**
- 5.14 Paragraph 131 of the NPPF states “In determining planning applications, local planning authorities should take account of... the positive contribution that conservation of heritage

assets can make to sustainable communities including their economic vitality". **The hall and its setting is a major tourism asset to Amber Valley, Derby and the wider Derbyshire. The proposed application will only harm this; reducing visitor numbers and having an adverse impact on the local economy.**

- 5.15 Paragraphs 134, 135 and 136 of the NPPF confirm the requirements on local authorities in these situations. They state that: "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use"; "In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset"; and "Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred". **There is a clear requirement on AVBC to consider this harm to the heritage setting fully when considering this application. Preserving the setting and significance of Kedleston Hall for future generations constitutes a public benefit that requires the CE application be rejected. In this regard it should be noted that there were 120,000 visitors to the Hall last year and countless other local people who benefited from the Hall and its setting.**
- 5.16 Paragraph 126 of the NPPF states that "Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment... In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance". Actually, AVBC have already done this and this is acknowledged by AP in their statement. Section 2.9 of AP's statement says that "The site lies within a policy designation relating to the 'Setting of Historic Park and Garden' by Policy EN33 of the adopted Amber Valley Local Plan which was underpinned by a Derek Lovejoy Partnership Report (2001)".
- 5.17 AVBC's own POLICY EN32 says that "Planning permission will not be granted for development proposals that would have an adverse impact on the landscape character of a registered Historic Park and Garden"
- 5.18 Their POLICY EN33 says that "Within the defined setting of the Historic Park and Garden at Kedleston Hall, as shown on the Proposals Map, planning permission will not be granted for any development proposals that would have an adverse impact on the landscape setting, including views into and out of, the Historic Park and Garden."
- 5.19 **It is clear that by following its own policies, which link directly to the NPPF, that AVBC must reject this application.**
- 5.20 AP recognises the weakness of their argument with this regard. In Section 2.9 of their statement they claim that "Amber Valley Borough Council officers have acknowledged in pre-application discussions, that Policy EN33 is not intended to preclude development; it acts as a guiding policy to ensure that development demonstrates that it would not have an adverse impact on the landscape setting of the Hall or the RPG, including views into and out of the RPG."
- 5.21 KV queried this with Claire Thornton, Development Manager for AVBC who commented "At the pre application stage discussion did take place in relation to the potential impact on the setting of the historic park and garden. My planning policy colleagues did accept that saved policy EN33 is not intended to preclude all development within the setting of Kedleston Historic Park and

Garden but that it was an important material planning consideration.” **This is clearly a very different position to that provided by AP.**

- 5.22 **There is no doubt that Kedleston Hall and its setting enjoys specific protection against the harm threatened by this development, without any suggestion of exemption. AVBC’s own policy makes this completely clear.**
- 5.23 It is noted that the CE HSA suggests Policy EN33 is no longer relevant as they criticise the report on which it is based, the Derek Lovejoy Partnership Report (2001) (“Lovejoy Report”) as being ‘substantially out of date’. KV notes that no adequate explanation or justification is provided for this conclusion, which appears to simply be an attempt to discredit the report and policy in order to avoid its proper application in this case. KV notes the contrary interpretation of the Lovejoy Report made by independent experts including the work done for the group (see section 5.35.2 and 9.0 below). **KV believes the importance of protecting the setting of Kedleston Hall has not diminished since it was designed in 1749 and certainly not since 2001, its importance and the issues involved in their protection remain the same. Consequently, the Lovejoy findings and need for Policy EN33 remain highly relevant and KV regards these as an objective analysis. The AVBC should carefully consider the motivation for the CE HSA arriving at a different conclusion.**
- 5.24 KV would like to politely remind AVBC of the current position in respect of the correct interpretation of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. For example, the relatively recent countrywide rash of planning applications for wind farms has given rise to the need for the courts to provide guidance on how Section 66 is to be used by decision takers. The March 2013 judgement in the case of Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council by Justice Lang in the High Court is often quoted.
- 5.25 In two key paragraphs of that judgement Justice Lang observed the addition of the word **‘desirability’ in Section 66 signals that ‘preservation’ of setting is to be treated as a desire or sought after objective, to which the Inspector ought to accord ‘special regard’ which goes beyond mere assessment of harm.** He went on to say that it was incorrect of the Inspector in that case to treat the harm to the setting of the heritage asset and the wider benefits of the wind farm proposal as being of equal importance.
- 5.26 Following the case of Bedford Borough Council v SSCLG and Another (Podington) it was left to the Court of Appeal to determine that Justice Lang’s approach was the correct one. Lord Justice Sullivan in the Court of Appeal confirmed that “a finding of harm to the setting of a listed building is a consideration to which the decision maker must give considerable importance and weight.” **He went on to conclude that if the harm to heritage assets is found to be less than substantial it does not follow that the balancing exercise inherent in all planning decisions should ignore the overarching statutory duty imposed by section 66(1).**
- 5.27 “That general duty applies with particular force if harm would be caused to the setting of a Grade 1 listed building, a designated heritage asset of the highest significance. If the harm to the setting of a Grade 1 listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of permission would no longer have to be ‘wholly exceptional’) but it does not follow that the ‘strong presumption’ against the grant of planning permission has been entirely removed.”
- 5.28 For these reasons Lord Justice Sullivan agreed “with Lang J’s conclusion that Parliament’s intention in enacting section 66(1) was that decision makers should give ‘considerable

importance and weight' to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise."

- 5.29 AVBC is politely reminded that under the final judgment made in *'Barnwell'* [2014] EWCA Civ 137 the Court quashed planning permission for a development near a Grade 1 house in Northampton as the inspector failed to have "special regard" to preserving the setting of this designated heritage asset, which was "a desired or sought-after objective" under "the overarching statutory duty imposed by section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990."
- 5.30 Much has been made in the CE application about the need for housing and AVBC's inadequate 5 year housing supply plan. However, the precedent from APP/L2630/A/13/2196884 Land at Chapel Lane, Wymondham, Norfolk, ("Wymondham") **confirms that although the need for housing, especially where the 5 year supply plan is inadequate, is given substantial weight in the planning decision making process the legislative and NPPF provisions make it clear this does not outweigh the presumption against causing 'less than substantial' harm to heritage assets.**
- 5.31 Furthermore, under a recent case, *R (aoa) Forge Field Society v. Sevenoaks DC* [2014] EWHC 1895 (Admin), ("Forge Field") it was confirmed that planning decision makers must address the relative harm to Listed Buildings and first give proper consideration to all alternative sites for the housing proposed. The "Forge Field" judgment said **'somewhere as highly protected as Forge Field [a Conservation Area, with Grade II listed buildings] can only be developed if no alternative exists that would cause less harm.'** The Kedleston Hall proposals adversely affect nationally important Grade I and Grade II assets and two adjacent Conservation Areas. AVBC and DCC information identifies there are alternative brownfield and other sites available that could accommodate the proposed housing without harming such valuable heritage assets. **Consequently, the finding of 'less than substantial harm' by the statutory consultees regarding the Kedleston proposals is not outweighed by any need for housing.**
- 5.32 **Accordingly, current case law would suggest that AVBC should reject this application and would be fully in their rights to do so under the grounds presented in 5.22 to 5.30.**
- 5.33 Paragraph 14 of the NPPF (also referenced in Section 4.14 of AP's statement) indicates that "local planning authorities should grant permission unless any adverse impact in doing so would demonstrably outweigh the benefits or specific policies of the Framework indicate development should be restricted." **KV believes that this development will have demonstrable adverse impacts on the setting, as confirmed by EH.**
- 5.34 The NPPF is quite specific regarding impact: paragraph 9 states that "in pursuing sustainability, any development should make positive improvements to the quality of the historical environment"; and paragraphs 126 and 131 require that local planning authorities to take into account "the desirability of any new development" such that it "should make a positive contribution to the local character and distinctiveness". **Housing on this site does not enhance the area's historical character and local distinctiveness that has existed for hundreds of years and will only have a detrimental impact on the local character of the heritage asset.**
- 5.35 KV has specific concerns with this regard:
- 5.35.1 Building 400 dwellings on this farmland is going to be harmful to the setting of Kedleston Hall, the wider countryside and this Area of Multiple Environmental

Sensitivity. It is impossible to consider that the landscape character of this land will not be adversely affected by building 400 houses here. This is farmland which is part of the recognised landscape character hereabouts. A residential suburb is totally incompatible with this (see also Section 9.0 below).

- 5.35.2 The development on this site is not going to be in scale and character with the surroundings nor have a distinctive sense of character. Irrespective of the heritage aspects of this land, it is open land which has amenity value because it is attractive countryside on the border of the City. Its established use as farmland contributes to the visual character of Kedleston Road and Allestree and is simply an area where built development would be visually inappropriate. In this regard KV particularly notes the appraisal of the site for this planning application by an independent Chartered Landscape Architect (See section 9.0 below). He concluded in his report (**Appendix 3**), “this is not an urban fringe site dominated by existing housing. It is countryside which acts as a visual and physical buffer between Allestree and the Kedleston Hall parkland to the west. Building houses on the site would introduce a high or major magnitude of change with significant negative landscape effects which will be seen by the public from multiple viewpoints.”
- 5.35.3 The proposed new roundabout at the junction with Askerfield Avenue would constitute a significant urbanisation of what is essentially, and as Robert Adam intended, a country road. It is noted that many articulated agricultural vehicles use Kedleston Road. As a consequence the dimensions of this junction will need to be significant with the associated signage and lighting.
- 5.35.4 The light pollution from 400 dwellings and the associated street lighting is not going to be mitigated in any meaningful way. This is in direct contravention to POLICY EN16 that says “Planning permission will not be granted for development that would be likely to lead to a material increase in levels of air, water, noise, light or other forms of pollution.”
- 5.35.5 The mitigation proposed by CE is wholly inadequate and in the case of the suggested improvements to floodlights at Woodlands school not even mitigation, as this ‘offer’ appears to be compensatory. Moreover the light, noise, etc. from 400 houses and the proposed roundabout at the junction of Askerfield Avenue and Kedleston Road would directly harm the setting adjacent to the Hall. **The proposed extra planting to the previously planted screening of the development site contradicts the CE HSA finding that ‘setting’ is limited to the curtilage of the parkland.** Additionally, such planting is in itself harmful to the open agricultural countryside setting designed by Robert Adam.
- 5.36 This historic environment is part of the richness and diversity of England’s cultural heritage that has been shaped over the past millennia by human activity. The value that this environment makes to the area’s cultural, social and economic life is significant. The Government’s Statement on the Historic Environment for England 2010, states “That the value of the historic environment is recognised by all who have the power to shape it; that Government gives it proper recognition and that it is managed intelligently and in a way that fully realises its contribution to the economic, social and cultural life of the nation”.
- 5.37 The Kedleston Estate area provides a tangible link to the past and contributes to the national, local and community identity. It also provides the character and distinctiveness that provides a positive sense of place. This is felt by many people as the Kedleston Estate is a key part of

England's tourism. The people of Allestree, Quarndon and the surrounding villages want to conserve this important element of the historic environment that holds heritage value. Development of this site is the "thin edge of the wedge"; once lost it cannot be replaced, as Mark Twain said "they don't make it anymore". Local residents and people who come to Derby to visit the Hall want the heritage and historic site of the Kedleston Estate to continue to be a living and integral part of the local scene.

- 5.38 **In conclusion, the CE proposals have been identified as causing less than substantial harm to the Heritage Assets involved; though EH have clarified this means significant harm. Paragraph 132 NPPF states that a 'clear and convincing justification' must be provided for any level of harm, weighing up public benefits associated with the proposal against the level of harm. As demonstrated above, the evidence base presented by CE's HSA does not justify conflict with AVBC's Policy EN33 and fails to establish 'clear and convincing justification' for harming nationally important assets. It also fails under section 66(1) and 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990 to have 'special regard' to preserving the setting of Kedleston Hall. Case law shows that planning decision makers must start from the presumption that a development causing any harm to a heritage asset will be refused and their objective must be to protect the asset and its setting. This applies even where the 5 year housing supply is not in place. All alternative brownfield sites and less sensitive greenfield sites in the HMA should be considered before any thought is given to the development of sites such as this. KV reminds AVBC that their compliance with all these requirements regarding the CE application will be subjected to detailed scrutiny.**

6.0 There are Unsustainable Transport Issues with the Proposed Development

- 6.1 Kedleston Road suffers badly from congestion at peak times, most noticeably on most “normal” mornings when there are not holiday periods, the schools are open and the University of Derby is “sitting”. The reasons for this are shown in the KV Report presented in **Appendix 4**.
- 6.2 **It is KV’s view that the traffic congestion on these days can be classed as significant already. Tuesday 18 and Wednesday 19 November 2014 were typical days, when the traffic was backed up to Askerfield Avenue, the site of the proposed main exit from the proposed housing site. Local residents and regular commuters to Derby are well aware of these traffic problems and how they affect their journeys consistently week by week. These same people and KV were incredulous to see CE obtaining transport data during quiet periods, when it should be obvious that normal traffic volumes would not be experienced.**
- 6.3 This congestion is recognised by the planning authorities although not acknowledged by AP in their Planning Statement. It is noticeable that Derbyshire County Council (DCoC) in their consultation response of 3rd December 2014 recognise this concern. AP also do recognise that their proposed development will have to be mitigated, as referenced in sections 2.9, 5.31, and 6.15 of their statement.
- 6.4 Further AP base their work on a very flawed piece of work in the form of a supposed Transport Assessment prepared by PBA. Through this work they claim that the impact of the development proposals on the local highway network will not be ‘severe’ (the test of the NPPF). Just to make sure AVBC have not missed the point, their insistence of the impact this development not being severe is referenced in Sections 5.31, 6.15 and 7.15. It is clear that they know their argument here, like that relating to Heritage Assets, is weak.
- 6.5 The reference to ‘severe’ links to Paragraph 32 of the NPPF that suggests that “generate significant amounts of movement” should “only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”
- 6.6 The assessment by PBA is flawed as they have chosen to do their assessment on days where the traffic is lighter than “normal”. On days when the University is not present, schools are on holiday and weather conditions are good, there can be less congestion at peak times. Less congestion allows PBS to then model the impact of the development favourably. In doing so, they avoid the impact of the development being judged as severe.
- 6.7 **This selective use of times should lead to the transport assessment being discounted by AVBC. They should either ask for it to be repeated at peak times in periods of congestion or undertake an independent survey of their own.**
- 6.8 To aid AVBC, KV has undertaken an assessment (**Appendix 4**). This shows that as many as 330 vehicles can be affected along the length of the congestion and that drivers can expect to take between 20 and 30 minutes to reach the Five Lamps gyratory system from the bottom of Askerfield Avenue (opposite the main exit of the proposed site) in these circumstances. This is a drive of some 1.8 miles which in normal circumstances should take between 4 and 5 minutes to achieve.
- 6.9 Further, the report highlights that the proposed development could result in an extra 170 vehicles heading southbound towards Derby. Undoubtedly, this will increase the amount of

traffic using Kedleston Road and will have a major negative impact on the length of the queue into Derby, the associated travel to work time and the safety of residents.

- 6.10 KV's estimate of extra traffic does not take into account the cumulative effect of the additional houses proposed for Memorial Road. Unsurprisingly, this is also ignored in the CE application, demonstrating again the weakness of their Transport Assessment.
- 6.11 **To any fair-minded individual, it is clear that the impact of the new development on the existing overloaded transport system will be severe and by the test applied against Paragraph 32 of the NPPF, the development should be prevented.**
- 6.12 AVBC are also politely reminded that there is precedent for the refusal of planning permission in these cases. For example, in August 2012, planning permission was refused in Lancashire (detailed in **Appendix 4**) when the inspector concluded that the congestion at a crossroads was of sufficient weight to justify dismissal. **KV believes that this case has comparisons with the development proposals at Kedleston Road.**
- 6.13 The negative impact of the development will be far reaching. Traffic attempting to avoid Kedleston Road will lead to U turns as drivers seek other routes through Quarndon, Allestree and Kedleston Village to reach the main arterial roads or the town centre. This will put further pressure on the A6 and its feeder roads as a consequence.
- 6.14 Section 2.9 of AP's statement is one of the most misleading. It says that Kedleston Road "will be enhanced as part of the development proposals in order to provide a safe and convenient access to the development proposals whilst improving the current highways environment experienced in this location and the surrounding residential area." In Section 2.14, they go on to say that "the site has excellent transport links to the wider highway network with direct access from Kedleston Road on to the A38, linking with the wider road network". They and the Transport Assessment on which they base their statements reference the need for mitigation as part of this.
- 6.15 **KV, in its own assessment, has reviewed these points. Its report shows clearly the statements made in CE's application are nonsense and demonstrate that their advisors have little or no understanding of the nature of Kedleston Road or the congestion it faces at peak times at present.**
- 6.16 The congestion on Kedleston Road is caused by a number of major pinch points. These are at: the Allestree Lane/Kedleston Road junction, the Birchover Way/Kedleston Road junction; the Markeaton Lane/Kedleston road junction; the entrance to the University of Derby, the bridge over the A38 junction, the subsequent shops and main junctions on Kedleston Road; and the Five Lamps junction.
- 6.17 **Despite what PBA say in their report, there are limited cost effective methods available to mitigate these pinch points on Kedleston Road as well as there being other infrastructure and ownership constraints in place. The modification suggested by CE to Kedleston Road and the A38 junction will not make much, if any, impact on the congestion as the vehicles still have to go somewhere. If anything, they will only elongate the queues. The mitigation presented does not include the main pinch point, that of the Five Lamps junction, which is a major flaw (not that it can be mitigated easily). The mitigation cannot work as it is ultimately based on incorrect peak time vehicle numbers.**

- 6.18 **In addition, the proposed roundabout adjacent to Askerfield Avenue and the exit adjacent to Quarn Drive will make further pinch points as traffic is queuing past these points at peak times currently. Drivers will find it difficult to exit the proposed development and it will add to the duration of the congested period.**
- 6.19 The DCoC consultation response on transportation demonstrates that they have concerns about this roundabout as well; citing "it is unclear that this proposed layout will work correctly without some amendments". They raise specific issues regarding large vehicle usage, access from existing properties and the general scale of this feature. **Again, given outline planning permission is specially linked to access points, this application should be rejected.**
- 6.20 **The proposed road layout exiting the site and linking to Kedleston Road is also flawed in its design is potentially very unsafe.** Kedleston Road is in effect a narrow carriageway with a single narrow path to the east side of it. Large vehicles have trouble passing on it and, if a car is parked on it, this can cause severe disruption.
- 6.21 Whilst AP make great play of the sustainability of their application, it is clear that the road is not a particularly safe place to walk or ride because of its lay out. **Given the extra traffic on this busy road, it is unlikely that parents will allow their children to walk or bicycle to school.**
- 6.22 Linked to this, Section 4 of the NPPF promotes sustainable transport; making the point that this contributes to wider sustainability and health objectives. It states that encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. The extra 170 vehicles exiting this site at peak times can only increase greenhouse gas emissions and ultimate damage the health of resident living adjacent to the road. **The fumes from the cars will further discourage families from walking and cycling.**
- 6.23 The proposed access points provided by CE in their outline application are situated within a section of Kedleston Road that is poorly aligned. **Consequently they are both dangerous and impractical, particularly the one adjacent to the existing Quarn Drive junction.**
- 6.24 The Quarn Drive site entrance is impossible to construct without major remodelling of the ground levels due to the steep fall away from Kedleston Road and the need for a flat "dwelling space" at the junction with Kedleston Road. The gradient of a footway alongside the road would be too steep for pedestrians (1 in 15 max. whereas it would be 1 in 10 to 12 for the road).
- 6.25 **Given the difficulty of pulling out of this T junction as it stands, due to the steepness of the slope and the poor view, it is inevitable that further accidents will occur.** It is noted that Kedleston Road and surrounding areas already shows a material incidence of road traffic incidents. It is inevitable that the number of traffic incidents will increase further due to the increase traffic flow, drivers choosing to drive through residential areas to avoid congestion and the layout of the access points from the proposed site.
- 6.26 In summary, the application should be rejected on the grounds of transport infrastructure as it fails to satisfy:
- 6.26.1 AVBC POLICY H12 which requires the proposed development to "provide satisfactory access to the transport network". **The access adjacent to Quarn Drive fails this test.**

- 6.26.2 POLICY TP1 which requires an application to ensure that “satisfactory access can be obtained to the transport network” and that “any additional traffic movements likely to be generated by the development can be satisfactorily accommodated on the transport network”. **The access adjacent to Quarn Drive fails this test as does the general increase in congestion caused by the development.**
- 6.26.3 Paragraph 32 of the NPPF which requires to decisions to take “account of whether... safe and suitable access to the site can be achieved for all people; and improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.” **The impact of the development on congestion is severe and this cannot be mitigated by the proposals contained in the application**
- 6.26.4 Paragraph 34 of the NPPF which indicates that “decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.” **This is clearly not the case as trips from the site will inevitably primarily be made in private motor vehicles.**

7.0 There are Unsustainable Flooding and Sewerage Issues with the Proposed Development

- 7.1 Paragraph 100 of the NPPF is very specific in that “inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk” and “Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by:
- applying the Sequential Test
 - if necessary, applying the Exception Test”
- 7.2 The proposed development lies adjacent to Markeaton Brook. The Brook is prone to flooding especially after periods of prolonged, heavy rainfall. This problem has grown worse following recent residential developments alongside the Brook (Lambley Drive, Netherfield Park and Somme Road) and global warming leading to more ‘peak intensity rainfall’ (severe storms).
- 7.3 June 2012 saw a significant flood event with water reaching the houses in Ypres and Lens Road for the first time and breaking out from the proposed development site through Somme Road. Flooding/waterlogging has now been observed adjacent to Church Road and Markeaton lane. This is compounded by the land adjacent to the brook having a high water table and the land being prone to saturation after heavy rainfall. Photographs and a more detailed report related to Somme Road are to be found in **Appendix 5 and 6**.
- 7.4 The problems are well known to residents, AVBC and the Environment Agency. Despite this and AVBC including the site in its revised core strategy, the council has not undertaken its own sequential test. In doing so, it has failed to follow the requirements of the NPPF and its own POLICY EN15 that says that “Planning permission will only be granted for development proposals which would have no adverse effect on the management of flood risk and which demonstrate that they can satisfactorily address the following criteria:... c) the need to prevent development from exacerbating existing or potential flood risk through the discharge of additional surface water... e) for development in higher-risk flood zones, the need to demonstrate that there is no reasonable option available in a lower-risk zone, compatible with other sustainable development objectives”
- 7.5 CE also conveniently skips this issue. AP indicates in section 7.21 of their report that “A Flood Risk Assessment has been undertaken by RPS, to assess the level of flood risk at the Site. This confirms that the site falls within Flood Zone 1 and the proposed development will not be affected by current or future flooding from any source.” **This misses the point completely. Of course properties raised, if necessary, and located on sloping ground will not be prone to flooding. It is the properties adjacent to the site and downstream of it that are at risk.**
- 7.6 AP also claim in section 7.22, based on the RPS report, that “ The development will not increase flood risk elsewhere and the proposed drainage strategy will effectively reduce downstream flood risk through reducing the rate at which surface water is discharged from the site during storm events.” **They put all their faith in flood mitigation measures that are neither fully defined nor modelled.**
- 7.7 CE argues that a sequential test is not necessary due to the fact that their mitigation will prevent extra water entering the brook. **They do not provide any evidence to back this up, just that it will not happen because they say it will not happen.** This failure by CE and AVBC to undertake an independent sequential test, despite the request by the Environment Agency for AVBC to undertake this in its consultation of their amended core strategy, is seen as

negligent. KV politely reminds the AVBC and CE that consequences may arise from any such breach and particularly from a breach of statutory duty.

- 7.8 KV has undertaken a review the run off modelling shown in the RPS report. This is presented in **Appendix 7**. The review shows substantial deficiencies in the work done by RPS and questions the accuracy and impartiality of this report.
- 7.9 **KV's main concerns centre on: the poor methodology used, the under-estimation of the surface run off from the proposed site; the limited margins of error being used; issues with the design of the southern attenuation pond; and the impact this may have regarding run off levels into the Brook and, worse, Somme Road developments.**
- 7.10 Specifically, KV are concerned that RPS has taken the Environment Agency Markeaton Brook flows prepared for the Memorial Road development and fed them into their computer model without attempting substantiation as suggested by the Agency. The Environment Agency in their letter to CE dated 18 August 2014 report flooding in the Lens / Ypres Roads area and since July they have received more information on flooding from the Brook.
- 7.11 The EA flows in the Brook are based on a climate change factor of 1.2 whereas the factor when RPS were analysing should have been 1.3. There are other issues such as the plan profile of the path of the Brook (the bends at the end of Memorial and Lens Road in particular) that cause back up of flow have not been allowed for and the ditch along the Somme Road boundary with the site has not been included in the computer analysis
- 7.12 Also, the outfall from the south attenuation pond is "drowned" even with the assumptions RPS have made, which defeats their inflow/outflow balance for the pond. The runoff from the site will be higher than CE assume because of the cross falls on the site and other cumulative issues.
- 7.13 **These concerns are backed up by recent experience. Local residents question the proposed mitigation by Councils and developers as, to date, it has been ineffective at holding or managing the 'peak intensity rainfall' storm flow of water into the Brook. The issues at Netherwood Park and the increased flooding observed elsewhere in recent years confirms this.**
- 7.14 Further, the nature of these engineered reservoirs and the standing water that they will hold are also a source of concern for local residents. Inevitably they would be a magnet for insects and decaying vegetation, leading to a worsening on the local environment.
- 7.15 The drainage and water flow problems related to this proposed site are complicated by the combined sewer that takes surface water and foul drainage from Quarndon and Allestree. The current 300mm sewer has been proven to have insufficient capacity to handle peak flow during periods of prolonged rainfall. Residents have reported that under the present layout, effluent has been observed overflowing from manholes in their garden (at the bottom of Lens Road) during periods of peak rainfall
- 7.16 CE appears to have overlooked this factual evidence in favour of hypothetical analysis. The CE application (Section 7.22) has also concluded "there will be no increase in the risk of flooding from... sewers as a result of the proposed development."

- 7.17 KV has undertaken a review of the drainage and sewerage systems (Appendix 8). This disagrees with the CE conclusions.
- 7.18 The main conclusions from the report are:
- 7.18.1 **“Conservative calculation of the probable surface water and foul drainage in CS1 (the main drainage feed) shows that it is currently likely to be overloaded by a factor of 2 crossing the proposed sites and by 3 in Somme Road downstream of this site.”**
 - 7.18.2 **“The foul drainage from the 400 dwellings proposed on the site will add to the problems of flooding downstream of the site, in particular on Somme Road and further south. This is contrary to the requirement of the National Planning Policy Framework”.**
 - 7.18.3 **“The public combined sewer, CS1, needs to be relayed through the proposed site, along Somme Road and to the south to increase its capacity before any consideration can be given to a housing development on this site”**
- 7.19 The information presented by Severn Trent (ST) regarding this site is confusing, as pointed out in the report. CE obtained an opinion from them in June 2014 in which ST said that the sewer was suitable for 400 dwellings but that 500/600+ could be a problem.
- 7.20 However ST, in September 2014 and in their Technical Appraisal A of the Amber Valley Local Plan Part 1 (The Core Strategy) Submission Version (including Proposed Changes) produced for AVBC, responded to the question "Would development on site have potential impacts on the sewerage infrastructure?" by suggesting "Large scale capacity improvements are anticipated to accommodate foul only flows". **This suggests there is not sufficient capacity to accommodate the new development without further infrastructure.**
- 7.21 ST's response to this outline consultation passes the "buck", suggesting they will not object to the application as long as "development ... shall not commence until the drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local planning Authority". **It appears that they want AVBC to determine the capability and integrity of their system.**
- 7.22 **KV believes that the frequency of sewage discharge from the system will only further increase when the sewer is taking the extra outflow for the proposed development.**
- 7.23 **Therefore, KV has concluded that there will be a need to carry out off site works to the south of the site such that the system is improved before any dwellings are built. The very high cost implication of relaying the sewer from Somme Road south needs to be considered by AVBC.**
- 7.24 **The application for this proposed site should be refused as the site is not proven regarding potential flood risk to residents and the combined sewer does not have sufficient capacity to deal with peak rain fall. It should be rejected in the following grounds:**
- 7.24.1 POLICY EN15 as stated in Section 7.4
 - 7.24.2 Paragraph 100 of the NPPF as stated in section 7.1 above

7.24.3 The failure to undertake a sequential test as required by Paragraph 101 of the NPPF.

7.24.4 Paragraph 103 of the NPPF which states that “when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere”

8.0 There are Unsustainable Education Issues with the Proposed Development

- 8.1 The NPPF supports the importance of adequate schooling provision accompanying any large development, such as this proposed site. Paragraph 37 indicates that “planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for ... education and other activities.” Paragraph 38 suggests that “Where practical, particularly within large-scale developments, key facilities such as primary schools and local shops should be located within walking distance of most properties.” Paragraph 72 indicates that “The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities.” **This application fails on each of the above criteria.**
- 8.2 Primary and Secondary Schools are operating at full capacity. CE in their application suggests the need for an extra 80 primary and 60 secondary places coming from this site. The proposed development will mean that existing residents with school age children are likely to be faced with increased competition to get them into local schools, unless new capacity is provided. **They and/or the new residents face the reality of their children having to attend schools that are located some distance from their homes thereby increasing the numbers of journeys by car and, hence, the traffic congestion.**
- 8.3 When reviewing secondary school provision, these homes could sit within the Ecclesbourne School catchment area. AVBC in its draft Core Strategy admits that there are restrictions in the scope for any further expansion of educational facilities at Ecclesbourne School. As a consequence, CE makes little mention of this in their application. Unless boundaries change, however, new residents in this proposed development will be able to apply to this school, causing existing residents in areas such as Darley Abbey now not to qualify. They, in turn, will put their own pressure on schools such as Woodlands. Either way, Woodlands School is likely to take the brunt of the extra secondary school pupils.
- 8.4 AP’s statement confirms this. Section 7.46 indicates that “The site falls within the catchment of the Curzon VA primary School and the Ecclesbourne School, both under the Derbyshire County Council Local Education Authority. Given the site’s position on the boundary of Amber Valley Borough Council and Derby City however, consideration has also been given to a number of Derby City schools”. Section 6.17 suggests that “The scheme will contribute towards improving existing education and health facilities within the Derby City area. In terms of education the applicant has entered into detailed discussions with the Derbyshire County Council in order to address the educational needs arising from the scheme. Improvements will therefore be made to the Woodlands Secondary School and a primary school falling within the catchment area of the site. Improvements will be secured by the payment of a financial contribution to the County Council by the Applicant. The principle of this arrangement has been agreed by the Education Authority.”
- 8.5 AP goes on to say in Section 7.47 that “Feasibility studies are underway to accommodate pupils from the proposed development at both the Lawn Primary School and the Woodlands School, both of which are within 1 mile of the proposed development. Both schools are operating at capacity and as a consequence, mitigation of the proposed development will be through a developer contribution via the County Council to fund the required additional school places. Section 7.50 indicates that “The County Council is also looking at how a contribution to Derbyshire County Council can be spent on creating additional places at a County primary school, although the Council has not yet identified which school they would look to expand.”

- 8.6 Previously, it has been suggested that that Woodlands School could be expanded to accommodate the new pupils, if S106 payments were forthcoming from the “downstream” developer. **AVBC must ensure that they understand the position of CE in this. Is CE offering to provide S106 payments to Derby City Council to expand Woodlands School or will it be left to the downstream developer? If the latter is the case, then the application should be rejected as it is not providing a solution that can be currently matched to the requirements of the NPPF.**
- 8.7 The same assessment clearly indicates that Derbyshire County Council cannot provide a solution to the Primary School issue locally, and certainly within walking distance. **The CE application admits that there are insufficient primary school places locally to accommodate new pupils and no new land to build on. Conversely, other sites proposed within the AVBC and SDCC areas could accommodate the suggested housing need more easily into their existing educational infrastructure.**
- 8.8 **It is clear that the proposed development does not meet the requirements of the NPPF, particularly its wish to accommodate key facilities such as primary schools within walking distance of most properties. The application is therefore not sustainable on the basis presented and should be rejected.**

9.0 There is a Loss of Grade 2 Agricultural Land, its Rural Landscape and the Biodiversity that is supported by it

- 9.1 The proposed site is an important part of Derby City Council's green wedge policy. It involves the development of an important historical greenfield site which is currently put to agricultural use.
- 9.2 AP, in their statement, acknowledges the loss of this land repeatedly. Section 6.34 says specifically that "It is recognised by the Applicant that there will be a loss of about 10.2ha of best and most versatile agricultural land in this location". Section 6.38 states that **"There are some elements which represent a "negative" of the development proposals, including some limited loss of Best and Most Versatile agricultural land"**.
- 9.3 AVBC's supporting text to their POLICY H1 says that "The Borough Council has previously expressed concern at the potential environmental impact of any significant new housing development in this part of Amber Valley, including through representations at the Examination in Public into the now approved Joint Structure Plan. Large scale development would inevitably result in the loss of high quality agricultural land and could have a significant adverse impact on the character of existing Conservation Areas, as well as the Historic Park and Garden at Kedleston Hall, and its setting. Development would also be on greenfield land, with the effect that the Borough Council would find it difficult to reflect both the national and regional targets which seek to secure 60% of housing development on previously-developed land."
- 9.4 Their POLICY EN10 also says that "Planning permission will not be granted for development that would involve the irreversible loss of the best and most versatile land (defined as grades 1, 2 and 3a of the Agricultural Land Classification) except where the development: results from an allocation made in the Local Plan; or cannot be accommodated on a previously developed site, land of lower agricultural quality, derelict or non-agricultural land, unless other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land"
- 9.5 Paragraph 112 of the NPPF suggests "Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality."
- 9.6 This site contains grade 2 agricultural land, as confirmed by the CE assessment. Despite AP's claims, AVBC have already acknowledged that there is very little of this grade of land in the Borough. They have already looked to preserve this through their POLICY H1.
- 9.7 **It is clear from the policies in place and the NPPF that there are grounds to reject this application due to the loss of high grade agricultural land alone. As a very minimum, this application should be rejected pending a review of other more suitable, less valuable sites within the Borough and the Derby HMA.**
- 9.8 KV has undertaken an independent review of the landscape and visual impact assessment written by The Environmental Dimension Partnership (EDP) for the CE application. As stated earlier in the report, this is contained in **Appendix 3**. It concentrated on the landscape

implications a residential development would have in this location. The key points it brings forward include:

- 9.8.1 In the October 2012 review of its Green Wedge (GW) policy, DCC considered Allestree along with Mackworth and Markeaton Brook and noted that the green wedge which includes Markeaton Park provides a vital break in the urban landscape helping to reduce the feeling of urban sprawl. The review specifically says that “The GW allows the open countryside to penetrate into the urban area of the city, providing residents with access to the countryside and space for recreational activities. It also provides a haven for wildlife within the urban area. This GW contains Markeaton Park which serves a citywide catchment and is one of the city’s most important recreational spaces...it forms part of the setting of the Markeaton conservation area and abuts the protected setting of Kedleston Hall and historic gardens.”
- 9.8.2 DCoC’s 2013 mapping of ‘Areas of Multiple Environmental Sensitivity’ (AMES) and ‘Tranquillity’ suggested that the eastern section of this proposed allocation is an area of Primary Sensitivity. That part of the site by the brook is of Secondary Sensitivity but... there are also important biodiversity issues to be addressed by any development.
- 9.8.3 The roundabout proposed for the bottom of Askerfield Avenue is going to appear an alien feature in this landscape. This application would be disastrous in landscape terms. This is not an urban fringe site. It is countryside and attractive countryside at that.
- 9.8.4 It is a landscape that is currently protected by the Local Plan and that should remain the case.
- 9.8.5 There is a specific concern with the EDP Report in that there is no reference to the fact that the site lies within an area of Multiple Environmental Sensitivity designated by Derbyshire County Council in 2013. Why is this missing? Assets like this are not protected by building houses on the land or on land next to them.
- 9.8.6 Derbyshire County Council’s map is an accurate indicator of tranquillity because it takes account of landscapes with common characteristics. This site to be significant in respect of tranquillity. EDP’s report again fails to mention this.
- 9.9 **The report concludes this is not an urban fringe site dominated by existing housing. It is countryside which acts as a visual and physical buffer between Allestree and the Kedleston Hall parkland to the west. Building houses on the site would introduce a high or major magnitude of change with significant negative landscape effects which will be seen by the public from multiple viewpoints. AVA/2014/0928 should, therefore, be refused.**
- 9.10 As an area of primary sensitivity in the DCoC’s assessment of Areas of Multiple Environmental Sensitivity, the site is known for its plethora of wildlife including active bat and badger colonies. Markeaton Brook is also home to numerous fish species and white clawed crayfish. Again, the full extent of the importance of this site is not covered by CE’s application.
- 9.11 AP’s statement references the Ecological Appraisal undertaken by EDP in section 7.17. This “survey work identified a number of ecological features that are present within or in proximity of the site”. The application site is confirmed by them to have “A fairly typical farmland

breeding bird assemblage”, “badgers” and “White clawed crayfish and a diverse range of fish species were recorded in the section of Markeaton Brook adjacent to the site”.

- 9.12 **KV considers that the report presented by CE regarding the natural environment and biodiversity is based on inadequate research.** It is noted that the survey findings were based primarily on anecdotal evidence with only a very limited field survey being undertaken, such that it was simply a "snapshot" in time.
- 9.13 KV submits that such a survey which does not look at migration patterns and a whole ecosystem but only takes a "snapshot" in one limited place at one moment in time is simply of 'limited value' and not a good basis for considering harm. KV submits that the report misrepresents the site as being of “low value” and relies on ambiguous conclusions, notably overusing the finding "unlikely".
- 9.14 In particular, the White Clawed Crayfish survey was extremely limited and the importance of this creature was minimised to that of "County value". This misrepresents the importance of 'Ark sites' for White Clawed Crayfish, such as this particular brook, which are of critical importance for the survival of this species nationally. Similarly, the survey in relation to the presence of Great Crested Newts was inadequate and made assumptions about populations based on the presence of flowing water.
- 9.15 KV notes that no full specific fish survey of Markeaton Brook was carried out, although a large fish population was acknowledged and the brook was seen to be "suitable" for Trout, which KV confirms are present and have been fished for generations. However, the lack of a fish survey failed to properly identify the true biodiversity and importance of fish species that are present.
- 9.16 **As a consequence KV politely reminds AVBC that there is risk of significant harm to an important species in this case, which they would be accountable for should this application not be refused.** For example, KV believes that Spined Loach are present, which are rare and of great importance in other similar waterways. Eel and Lamprey species were noted as being present by the report and “being of principle importance”. Observations made by KV also suggest that a land locked population of River Lamprey might be present. It is believed there is only one other land locked River Lamprey population known in the British Isles. Therefore, to find such a population in Markeaton Brook would be of huge national importance. Lastly, a large Bullhead has been observed in the brook. Bullheads are one of those marker species for water quality and have a protected status.
- 9.17 On top of this, KV has major reservations about the damage that this development will do to the brook. Despite CE’s claims that it will control water flow into the brook and that they will not build directly adjacent to it, it is inevitable that the Brook will be badly affected by the building of these 400 homes over a period of years. The land disruption and materials involved in building these homes will impact on the Brook and its fragile inhabitants significantly during this phase of activity.
- 9.18 **KV submits that the sections of Markeaton Brook, adjacent to and downstream of the proposed site, are precious; as precious as the upstream areas that benefit from SSSI status. Markeaton Brook cannot withstand more and more encroachment by human habitation and activity if it is to survive in pristine condition; certainly not the level of activity arising from building and then the use of 400 adjacent houses. It is particularly noted that the measures recommended to protect the brook and its inhabitants during any building work and then to**

provide a wildlife corridor thereafter are wholly inadequate. Accordingly, the application should be refused.

- 9.19 Reviewing the AVBC policies, POLICY LS1 says that “Proposals for development should be located taking account of the following sustainability criteria by:... c) protecting and enhancing the quality of the built and natural environment”
- 9.20 POLICY LS3 stay that “The Borough Council will require development proposals to reflect the principles of good design, by: a) conserving or enhancing the quality and local distinctiveness of the natural and built environment”
- 9.21 POLICY EN7 says that : “In considering development proposals, the Borough Council will require that the design of development is appropriate to the landscape character type within which it is proposed, having regard to: a) landform and natural drainage patterns; b) the pattern and composition of trees, woodlands and field boundaries; c) the type and distribution of wildlife habitats”
- 9.22 Paragraph 9 of the NPPF suggests that developers should be “seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to):... moving from a net loss of bio-diversity to achieving net gains for nature
- 9.23 Paragraph 17 of the NPPF again suggests that planning should “take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it” and “contribute to conserving and enhancing the natural environment and reducing pollution.”
- 9.24 Government Policy backs the development of Brownfield sites as opposed to Greenfield. This is confirmed in NPPF Paragraph 17 which states that planners should “encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value”.
- 9.25 This policy has been backed up by recent announcements from DCLG requiring planners to protect Greenfield sites, particularly those adjacent to urban conurbations; looking in preference for less sensitive and ideally brownfield sites.
- 9.26 **This application should be refused on environmental and landscape related grounds as shown above.**

10.0 There are Other Sustainability Issues

- 10.1 KV have reviewed the local GP's, Dentists and Community Nursing Services and found that they are operating at close to full capacity; none have the space to easily increase their facilities.
- 10.2 This is confirmed in the NHS England response to this consultation which states that "A development of this nature would result in increased service demand which would not be easily accommodated within existing primary care resources".
- 10.3 **CE pays cursory notice to these restrictions despite the need for them to satisfy AVBC Policy H1 and NPPF Section 17. Again this gives further weight to refusal.**
- 10.4 CE suggest in Section 2.16 of AP's statement says that AVBC's granting of outline planning permission for 30 dwellings on land to the south west of this application site means that "the sustainable nature of development in this general location was acknowledged". This application was hotly contested by residents and only approved by AVBC using no transparent processes. There is a considerable difference between the location of this site in relation to existing housing and the proposal to build 400 houses on open countryside.
- 10.5 KV does not believe that the granting of outline planning permission for 30 dwellings means that the sustainable nature of development in this location has been proved. **The scale of the proposed development dwarfs this approved site. Its non-sustainable impacts, as seen in the above sections, are much greater. It should be rejected on these grounds.**

11.0 Conclusions

11.1 Paragraphs 7 and 8 of the NPPF suggest that:

11.1.1 “There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles”

11.1.2 “These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions”.

11.2 This outline planning application with details of a roundabout and a second vehicular access to Kedleston Road should be refused because it cannot perform the roles required simultaneously and therefore cannot be judged accordingly. This judgement is based on a detailed review of the NPPF and the policies adopted in AVBC that map directly on to it.

11.3 The grounds for refusal are summarised as follows:

11.3.1 The application is contrary to the development plan for the Borough which, for this type of proposal, is the Amber Valley Borough Local Plan adopted in April 2006 for the period up to 2011 but containing policies saved on behalf of the Secretary of State in April 2009. Paragraph 215 of the NPPF indicates that “due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

11.3.2 The applicant is trying to use a current temporary situation to push forward an unsustainable application due the pressure of AVBC not having a sufficient 5-year housing supply. KV argues that the current level of 5 year housing needs and the required buffer being currently used by AVBC is overstated due to a flawed housing market assessment carried out by AVBC, DCC and SDDC. AVBC should not use unmet housing numbers within the Housing Market Area as a criterion for allowing planning permission in the Borough.

11.3.3 The proposed development will cause harm to the setting of Grade 1 Kedleston Hall and its Park by destroying the historic relationship between the Hall, its immediate environs and the agricultural land surrounding them, which have existed since the Hall was completed in 1765. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 together with case law provides protection for the setting of listed buildings which this planning application contravenes.

11.3.4 The proposed development does not provide satisfactory access to the transport network. The additional traffic movements likely to be generated by the development cannot be satisfactorily accommodated on the transport network and the residual cumulative impacts of development are judged as severe. The nature of the proposed site is such that it cannot encourage sustainable transport use.

- 11.3.5 The proposed mitigation for managing run off rain water from the site appears insufficient to safeguard the properties adjacent to and downstream of the proposed site from future flooding. Separately, the combined sewer does not have sufficient capacity to deal with peak rain fall and will increase the times when foul water and sewage is deposited in adjacent gardens. This will require significant and costly remediation.
- 11.3.6 There are insufficient school places to accommodate the new pupils from this proposed development. The application is unclear on who would fund the S106 payments to Derby City Council to ensure the necessary expansion of Woodlands School. The application admits that there are insufficient primary school places locally to accommodate new pupils and no new land to build on. Key facilities such as primary schools will not be within walking distance of most properties as a consequence.
- 11.3.7 The proposed site is an important part of Derby City Council's green wedge policy. It involves the development of an important historical greenfield site which is currently put to Grade 2 agricultural use. The applicant acknowledges the loss of this land.
- 11.3.8 The applicant has failed to judge the biodiversity sensitivity of this site accurately. Their survey findings were based primarily on anecdotal evidence and it was simply a "snapshot" in time. There is risk of significant harm to important species if this proposed development goes ahead, particularly during the building phase.
- 11.3.9 The local GP's, Dentists and Community Nursing Services are operating at close to full capacity; none have the space to easily increase their facilities.
- 11.4 This proposed development cannot be judged a sustainable development as the three strands of sustainability identified in paragraphs 7 and 8 of the NPPF are not all present. The proposal does not protect or enhance the natural, built and historic environment. As such the application should not attract the presumption in favour of sustainable development given by paragraph 14 of the NPPF. It should be rejected.**

Appendix 1 – Relevant Local Plan Policies

- 1.1 The following saved Local Plan policies are relevant to the determination of this planning application and are contravened by it:
- 1.2 **POLICY LS1** says that “Proposals for development should be located taking account of the following sustainability criteria by:
- a) being well-related to existing patterns of development
 - b) re-using previously developed land and buildings in preference to greenfield sites, except where circumstances such as location or accessibility preclude their use
 - c) protecting and enhancing the quality of the built and natural environment
 - d) minimising the need to travel between home, work and other activities and providing opportunities for journeys other than by car
 - e) ensuring the capacity of existing infrastructure to absorb further development
 - f) managing waste generated from the construction and occupation of, and operations resulting from new development (all applicants for major new developments will be required to supply full information regarding the waste production implications of the proposals)”

1.3 **Policy LS1 is contravened as follows:**

- 1.3.1 **Criterion a) is contravened because the application site is not well related to the existing built up area of Allestree, which is visually separated from the countryside to the west by Kedleston Road. Housing does not abut three sides of the site as claimed by the applicants. Only part of the western side of the site adjoins houses fronting Somme Road. To the north are fields running up to the Quarndon Green Belt. To the east the long established houses are set back from Kedleston Road leaving that road free of immediate urban influences. That helps the road maintain its rural character notwithstanding the volume of traffic it carries particularly at peak times. To the south Memorial Road, which is a private road for much of its length, has a distinctly rural character. The proposed development would be a significant visual intrusion into unspoilt countryside creating urban sprawl of the worst possible kind.**
- 1.3.2 **The next criterion b) is contravened because this is a greenfield site. Within the Derby Housing Market Area (HMA) there are opportunities to provide dwellings on previously developed land which have not been independently examined through the Local Plans of the three Councils in the HMA and opportunities to provide dwellings on sites better related to the employment opportunities in the City and on less environmentally and historically sensitive sites.**
- 1.3.3 **Criterion c) is contravened because the natural environment on the site and along Kedleston Road is neither being protected or enhanced. Any buildings on this site coupled with the proposed roundabout on Kedleston Road will destroy the**

character and appearance of this attractive countryside and once that is gone it is gone forever for future generations.

1.3.4 Much has been made by the applicant of the position of this site on the boundary with Allestree which is a mature residential area with the facilities needed to serve the existing population. Those facilities, however, as well as being at capacity in many cases do not include the range of employment opportunities available in the centre and to the south of Derby. Criterion d) should not be assessed in terms of geographical proximity alone and if it is not then this criterion is not complied with.

1.3.5 It is also clear that any future occupiers of these proposed 400 dwellings will need to rely on the existing facilities in Allestree which are in many cases oversubscribed already. Building one convenience store is not going to change that situation. Criterion e) is not complied with.

1.4 POLICY LS3 stay that “The Borough Council will require development proposals to reflect the principles of good design, by:-

- a) conserving or enhancing the quality and local distinctiveness of the natural and built environment
- b) respecting the character of the locality in terms of the scale and nature of development, its layout, density, height, massing, architectural style, materials and landscaping
- c) taking account of the relationship between the development proposals and neighbouring buildings, and the spaces between and around those buildings”

1.5 All three criteria of Policy LS3 are contravened because the application even in outline form seeks to introduce 400 houses onto farmland and to introduce a roundabout on Kedleston Road which conflicts with the three design criteria.

1.6 POLICY H1 says that “Land is identified for new housing development, as set out in Appendix 1 and as shown on the Proposals Map. In addition to those sites with planning permission at 1 April 2005, planning permission will be granted for development, providing that the proposals satisfy all of the criteria in policy H12 and where relevant, the specific criteria in policies H1a-d. Those sites subject to phasing will also have to satisfy policy H2...”

1.7 The relevant section of the supporting text says that “Derby Sub-Area

3.23 There was a remaining requirement at 1 April 2005 for 860 additional dwellings within this Sub-Area to meet the Joint Structure Plan requirement to 2011.

3.24 The urban capacity study has identified a very limited number of potential housing sites within this Sub-Area. This reflects its characteristics as a predominantly rural area, with only Duffield being of sufficient size, and having the range of services and facilities, to have the potential to accommodate significant further housing development in line with sustainable development principles. None of the identified urban capacity sites are likely to be suitable for development of 10 or more dwellings and any additional

dwellings which may come forward on these sites would be part of the allowance made for small-scale development (see policy H3).

- 3.25 In accordance with the sequential approach to site selection in PPG3, consideration has been given to the potential for development on 'urban extension' sites.
- 3.26 The Borough Council has previously expressed concern at the potential environmental impact of any significant new housing development in this part of Amber Valley, including through representations at the Examination in Public into the now approved Joint Structure Plan. Large scale development would inevitably result in the loss of high quality agricultural land and could have a significant adverse impact on the character of existing Conservation Areas, as well as the Historic Park and Garden at Kedleston Hall, and its setting. Development would also be on greenfield land, with the effect that the Borough Council would find it difficult to reflect both the national and regional targets which seek to secure 60% of housing development on previously-developed land.
- 3.27 However, in order to address the remaining housing requirement for the Sub-Area, land is identified for up to 600 dwellings at Radbourne Lane, Mackworth. A site in this location was originally identified in the First Deposit Plan for 300 dwellings, but following representations received as a result of consultation, this site was subsequently deleted in the Revised Deposit Plan. A further assessment of the potential for additional housing in this location has been carried out and has concluded that development should be restricted to land immediately to the south of Skitteridge's Wood, to avoid any serious adverse impact on the landscape. This would allow a maximum of 600 dwellings. However, in order to ensure that the impact of this scale of development can be properly addressed, a comprehensive development brief will need to be approved by the Council before any planning application for development can be determined. The development brief will need to set out in detail the landscaping and other measures necessary to mitigate environmental impact, as well as the range of infrastructure and community benefits necessary to address the impact of development, including in relation to highways and other transport matters, land drainage, shopping, education, health and other community facilities.
- 3.28 An allocation of this scale would still leave a shortfall of 260 dwellings against the remaining Sub-Area requirement. However, the latest housing land availability information for Derby City as at 1 April 2005 suggests that this shortfall would be more than offset by the number of dwellings now expected to come forward up to 2011, within Derby. The importance of looking at housing need and supply across housing market areas has been highlighted by the Government in recent consultation documents and accompanying press releases."

- 1.8 It can be judged that this policy is now to be regarded as out of date because of the provisions of paragraph 49 of the NPPF. However, as of now the process of finding more housing sites within the Derby Housing Market Area (HMA) has not gone through the process of independent evaluation. There are more suitable sites for new housing both within the City and to the south of it to meet the objectively assessed need for new housing in the HMA. Paragraph 3.26 is as relevant now as it was in 2006.**

1.9 **POLICY H5** says that “Outside the built framework of settlements, planning permission will not be granted for housing development unless the proposals are in the form of one or more of the following:-

1. extensions to existing dwellings, provided this would not result in a significant change to the scale or character of the dwelling and its surroundings
2. replacement of existing dwellings, providing that the number of dwelling units is not increased
3. new development which can be shown to be necessary for the operation of a rural based activity and where a countryside location is essential”

1.10 This is a standard countryside protection policy which is contravened by the current planning application which does not comply with any of the listed criteria.

1.11 **POLICY H12** says that “In considering applications for housing development, the Borough Council will require that the proposals:-

- a) are in scale and character with their surroundings
- b) have regard to distinctive landscape features and provide supplementary landscaping where appropriate, particularly where the development is visually prominent or situated on the established urban fringe
- c) provide adequate amenity space for each dwelling unit
- d) do not unduly affect the amenities or privacy of adjoining or adjacent properties, including through loss of light, overshadowing or overlooking
- e) provide satisfactory access to the transport network

1.12 In assessing the above criteria, the Borough Council will:

- a) resist tandem development (consisting of one house immediately behind another and sharing the same access), where the amenities of proposed and existing development will be adversely affected
- b) resist the development of existing open land having amenity value, the established use of which contributes to the visual character of the surrounding urban area, and where the provision of housing would be visually inappropriate...”

1.13 Criterion a) is contravened because building 400 houses on this farmland is not going to be in scale or character with this part of the Borough.

1.14 The following criterion b) is contravened because the application would destroy the existing landscape features of the site and that of the surrounding countryside. The undertaking that the Borough Council will “resist the development of existing open land having amenity value, the established use of which contributes to the visual character of the surrounding

urban area, and where the provision of housing would be visually inappropriate..." is particularly relevant to this case.

1.15 Criterion e) is contravened because neither the roundabout nor the proposed T-junction is going to provide a satisfactory access to the transport network.

1.16 POLICY TP1 says that "In considering all development proposals, the Borough Council will require that:-

a) satisfactory access can be obtained to the transport network

b) any additional traffic movements likely to be generated by the development can be satisfactorily accommodated on the transport network

1.17 Development proposals that would generate significant demand for additional journeys by car will need to be accompanied by a transport assessment and where appropriate, a travel plan. The assessment will need to identify the transport implications of the proposals and give details of the measures proposed to mitigate their impact, including traffic management and improvements to public transport..."

1.18 Both criteria in this policy are contravened. The access arrangements are unsatisfactory for the reasons already given and the development is going to put more traffic onto a road where congestion is a regular feature particularly in the morning peak and through the Five Lamps gyratory system.

1.19 POLICY EN1 says that "In the countryside, outside the built framework of settlements, new development will only be permitted where it:

a) is essential in conjunction with the requirements of agriculture or forestry,

b) is necessary within the countryside and cannot reasonably be located within an existing settlement, or

c) will improve the viability, accessibility or community value of existing services and facilities in settlements remote from service centres provided by the towns and larger villages"

1.20 All three criteria are contravened by this application.

1.21 POLICY EN7 says that : "In considering development proposals, the Borough Council will require that the design of development is appropriate to the landscape character type within which it is proposed, having regard to:-

a) landform and natural drainage patterns

b) the pattern and composition of trees, woodlands and field boundaries

c) the type and distribution of wildlife habitats

- d) the pattern and distribution of settlements and roads
- e) the presence and pattern of historic landscape features
- f) the scale, layout, design and detailing of local buildings and other traditional man made features”

1.22 Building dwellings on this site would be totally at odds with the landscape character of the site and surrounding area and contrary to the designation of part of the site as an Area of Multiple Environmental Sensitivity.

1.23 POLICY EN10 says that “Planning permission will not be granted for development that would involve the irreversible loss of the best and most versatile land (defined as grades 1, 2 and 3a of the Agricultural Land Classification) except where the development:

- 1 results from an allocation made in the Local Plan; or
- 2 cannot be accommodated on a previously developed site, land of lower agricultural quality, derelict or non-agricultural land, unless other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land”

1.24 This proposal would result in the loss of best and most versatile agricultural land.

1.25 POLICY EN15 says that “Planning permission will only be granted for development proposals which would have no adverse effect on the management of flood risk and which demonstrate that they can satisfactorily address the following criteria:

- a) the impact of development on the capacity of any watercourse to discharge and/or store flood flows
- b) the need to ensure that development can be adequately protected against flood risk
- c) the need to prevent development from exacerbating existing or potential flood risk through the discharge of additional surface water
- d) the potential for Sustainable Urban Drainage Systems (SUDS) to minimise the environmental impact of measures to address surface water discharge, especially in relation to areas of nature conservation interest
- e) for development in higher-risk flood zones, the need to demonstrate that there is no reasonable option available in a lower-risk zone, compatible with other sustainable development objectives
- f) the need to avoid culverting open watercourses unless it is essential for access or public safety reasons

- 1.26 Where it is considered that development would be likely to increase flood risk, the developer will need to carry out a Flood Risk Assessment and identify satisfactory compensating measures to be submitted and implemented in conjunction with development.”
- 1.27 For the reasons already given it is not considered that the suggested arrangements for dealing with surface water will work and that properties to the south of the site will be put at increased risk of flooding.**
- 1.28 **POLICY EN16** says that “Planning permission will not be granted for development that would be likely to lead to a material increase in levels of air, water, noise, light or other forms of pollution. Where potentially polluting development is permitted in response to economic and wider social needs, conditions will be imposed on planning permissions to ensure that pollution levels created by development can be minimised. Potentially polluting development will not be permitted in proximity to existing residential or other sites sensitive to pollution, where such uses cannot reasonably co-exist.”
- 1.29 Approval of this application would result in light pollution from the site and air pollution arising because of the increased standing traffic on Kedleston Road.**
- 1.30 **POLICY EN24** says that “Development proposals for: a) the external alteration of Listed Buildings; b) the external alteration of any other buildings within the curtilage of Listed Buildings built before 1 July 1948; and c) new buildings and other structures, or alterations and extensions to existing buildings or other structures, within the setting of a Listed Building, will only be permitted where the proposals contribute to the preservation of the Listed Building and its setting, having regard to the elements which make up its special interest, including the character, appearance, scale and its original function.”
- 1.31 This policy is contravened for all the reasons set out in this document.**
- 1.32 **POLICY EN27** says that “Planning permission will only be granted for development proposals within and adjacent to Conservation Areas, as shown on the Proposals Map, if they would contribute to the preservation or enhancement of the Conservation Area. Special consideration will also be given to proposals for development adjacent to and affecting the setting of a Conservation Area...”
- 1.33 The broad sweep of countryside between the Quarndon and Markeaton Conservation Areas is important to the setting of both and will be damaged if this application is approved.**
- 1.34 **POLICY EN32** says that “Planning permission will not be granted for development proposals that would have an adverse impact on the landscape character of a registered Historic Park and Garden as shown on the Proposals Map or its setting. Where appropriate the Borough Council will require planning applications for development proposals affecting a registered Historic Park and Garden to be accompanied by an historic landscape appraisal.”
- 1.35 The same considerations apply with this policy as policy EN 24. The policy is contravened by this proposal.**

1.36 **POLICY EN33** says that “Within the defined setting of the Historic Park and Garden at Kedleston Hall, as shown on the Proposals Map, planning permission will not be granted for any development proposals that would have an adverse impact on the landscape setting, including views into and out of, the Historic Park and Garden.” This policy is supported by text which says:

11.5 The importance of Historic Parks and Gardens is recognised by English Heritage who keep a register of nationally important gardens. The list is not finite and additional entries are likely in the future. The Borough Council is committed to preserving, and whenever possible, enhancing the landscape character of these nationally important sites.

11.6 In Amber Valley, Kedleston Park, Belper River Gardens and Belper Cemetery are currently included on the register. Where appropriate, English Heritage will be requested to add other sites to the national register.

11.7 In recognition of the national and international significance of Kedleston Hall and Park, it is proposed to include a new designation to protect its setting from any development that would have an adverse impact on its special character, including views into and out of the Historic Park and Garden. This approach is consistent with Policy 27 of the Regional Spatial Strategy for the East Midlands (RSS8), which states that local authorities should follow the principle of ...'the promotion of the highest level of protection for the region's nationally and internationally designated natural and cultural assets'... and that ...'damage to natural or cultural assets (and their settings) should be avoided wherever and as far as possible, recognising that such assets are irreplaceable'...”

1.37 This policy is contravened for all the reasons set out in this document.

Appendix 2 – Relevant NPPF Paragraphs

- 1.1 The following NPPF paragraphs are relevant to the determination of this planning application:
- 1.2 Para 6. The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.
- 1.3 Para 7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:
- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
 - a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
 - an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
- 1.4 Para 8. These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.
- 1.5 Para 9. Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):
- making it easier for jobs to be created in cities, towns and villages;
 - moving from a net loss of bio-diversity to achieving net gains for nature;⁶
 - replacing poor design with better design;
 - improving the conditions in which people live, work, travel and take leisure; and widening the choice of high quality homes.
- 1.6 Para 10. Plans and decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas.
- 1.7 Para 14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For plan-making this means that:
- local planning authorities should positively seek opportunities to meet the development needs of their area;

- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted

For decision-taking this means

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrable outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies

1.8 Para17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
- not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
- take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
- support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy);
- contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;
- encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
- promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production);

- conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and
- take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient

- 1.9 Para 22. Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.
- 1.10 Para 32. All developments that generate significant amounts of movement should supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:
- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
 - safe and suitable access to the site can be achieved for all people; and
 - improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 1.11 Para 34. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.
- 1.12 Para 37. Planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities.
- 1.13 Para 38. For larger scale residential developments in particular, planning policies should promote a mix of uses in order to provide opportunities to undertake day-to-day activities including work on site. Where practical, particularly within large-scale developments, key facilities such as primary schools and local shops should be located within walking distance of most properties.
- 1.14 Para 47. To boost significantly the supply of housing, local planning authorities should:
- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
 - identify and update annually a supply of specific deliverable¹¹ sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in

the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land

- identify a supply of specific, developable¹² sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and set out their own approach to housing density to reflect local circumstances.

1.15 Para 49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

1.16 Para 58. Local and neighbourhood plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area. Such policies should be based on stated objectives for the future of the area and an understanding and evaluation of its defining characteristics. Planning policies and decisions should aim to ensure that developments:

- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;
- optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks;
- respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;
- create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
- are visually attractive as a result of good architecture and appropriate landscaping.

1.17 Para 61. Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

1.18 Para 65. Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits).

1.19 Para 72. The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

- give great weight to the need to create, expand or alter schools; and

- work with schools promoters to identify and resolve key planning issues before applications are submitted.
- 1.20 Para 100. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Local Plans should be supported by Strategic Flood Risk Assessment and develop policies to manage flood risk from all sources, taking account of advice from the Environment Agency and other relevant flood risk management bodies, such as lead local flood authorities and internal drainage boards. Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by:
- applying the Sequential Test;
 - if necessary, applying the Exception Test;
 - safeguarding land from development that is required for current and future flood management;
 - using opportunities offered by new development to reduce the causes and impacts of flooding; and
 - where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to facilitate the relocation of development, including housing, to more sustainable locations.
- 1.21 Para 101. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.
- 1.22 Para 102. If, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. For the Exception Test to be passed:
- it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
 - a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
- Both elements of the test will have to be passed for development to be allocated or permitted.
- 1.23 Para 103. When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:
- within the site, the most vulnerable development is located in areas of
 - lowest flood risk unless there are overriding reasons to prefer a different location; and
 - development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems.

- 1.24 Para 110. In preparing plans to meet development needs, the aim should be to minimise pollution and other adverse effects on the local and natural environment. Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this Framework.
- 1.25 Para 111. Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land.
- 1.26 Para 112. Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.
- 1.27 Para 123. Planning policies and decisions should aim to:
- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
 - mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
 - recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and
 - identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.
- 1.28 Para 125. By encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 1.29 Para 126. Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment,²⁹ including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. In developing this strategy, local planning authorities should take into account:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
 - the desirability of new development making a positive contribution to local character and distinctiveness; and
 - opportunities to draw on the contribution made by the historic environment to the character of a place.
- 1.30 Para 129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a

proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

- 1.31 Para 130. Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.
- 1.32 Para 131. In determining planning applications, local planning authorities should take account of:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - the desirability of new development making a positive contribution to local character and distinctiveness.
- 1.33 Para 132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.
- 1.34 Para 133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
- the nature of the heritage asset prevents all reasonable uses of the site; and
 - no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
 - conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
 - the harm or loss is outweighed by the benefit of bringing the site back into use.
- 1.35 Para 134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 1.36 Para 135. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 1.37 Para 136. Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

- 1.38 Para 137. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.
- 1.39 Para 196. The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions.
- 1.40 Para 197. In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.
- 1.41 Para 204. Planning obligations should only be sought where they meet all of the following tests:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 1.42 Para 214. For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004³⁹ even if there is a limited degree of conflict with this Framework.
- 1.43 Para 215. In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 1.44 These paragraphs point to refusal being the appropriate decision for the following reasons:**
- 1.44.1 Paragraphs 6, 7 and 8 confirm that the purpose of the planning system is to contribute to the achievement of sustainable development which has three dimensions- economic, social and environmental. To achieve sustainable development economic social and environmental gains should be sought jointly and simultaneously through the planning system. It is not possible to achieve this on this site, not least because of the environmental damage 400 dwellings would cause.**
- 1.44.2 The following paragraph 9 says that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment as well as in people's quality of life. The scale of opposition to this application from those that would be affected by building 400 dwellings on this farmland indicates that the quality of life for existing residents of Quarndon, Allestree and north Derby will be worsened. Notwithstanding the views put forward on behalf of the applicant it is undeniable that the natural and historic environment will not be improved if this application succeeds.**
- 1.44.3 Paragraph 10 says that decisions need to take local circumstances into account so that they respond to the different opportunities for achieving sustainable development in different areas. In this case the local circumstance that needs to be taken into account in the determination of this application is that this farmland has**

been part of the Kedleston Estate for centuries, creating an appropriate setting for a nationally important listed building. That is too important an economic and visual relationship to lose.

- 1.44.4 The presumption in favour of sustainable development is to be found in paragraph 14. That paragraph also outlines the process to be followed where relevant policies in the development plan are out of date which paragraph 49 confirms is the case for housing policies where there is not a five year supply of deliverable housing sites. Local Plan Policy H1 is relevant. Paragraph 14 makes it clear that sustainable development should then be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole or specific policies indicate that development should be restricted. This application fails on all three counts.
- 1.44.5 Twelve core planning principles are listed in paragraph 17. Amongst them is recognising the intrinsic character and beauty of the countryside, conserving and enhancing the natural environment and reducing pollution, allocating land of lesser environmental value for development, using previously developed land, conserving heritage assets in a manner appropriate to their significance and delivering sufficient community and cultural facilities and services to meet local needs. This planning application fails all of these core principles.
- 1.44.6 Paragraph 22 says that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. The Borough Council has not yet undertaken the necessary survey which may well show that alternative sites can come forward in the period to 2028 to meet the objectively assessed need for the Housing Market Area and the five year land supply.
- 1.44.7 Transportation is discussed in paragraph 32 where it is said that decisions should take account of whether or not safe and suitable access can be obtained to a site. The T-junction is neither and the roundabout is visually detrimental to the area as well as having the potential to create further traffic jams along Kedleston Road. The paragraph also says that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. That is the case here given that traffic going into Derby has to pass through the Five Lamps gyratory system which is already an identified constraint on the free and safe flow of traffic into the City centre.
- 1.44.8 Paragraph 34 says that decisions should ensure that developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. This site is not well placed for the journey to work for the reasons already given and therefore conflicts with this paragraph and 37 which seeks a balance of land uses so that people can be encouraged to minimise journey lengths. It is impossible to achieve that balance in this location or to achieve the aim of the following paragraph that key facilities should be located within walking distance of most properties.
- 1.44.9 Significantly boosting the supply of housing is the subject of paragraph 47 but that is not an unqualified aim as the supply has to be created in a manner that is consistent with the policies elsewhere in the NPPF. Paragraph 3-044-20141006 of Planning

Practice Guidance has recently been added to make it clear that the need to provide more housing should not override the protection of designated heritage assets. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 together with case law confirms that this also involves protecting the setting of listed buildings which this planning application contravenes.

1.44.10 Paragraph 58 says that planning decisions should ensure that developments will function well and add to the overall quality of the area. This planning application will detract from the quality of the area and not integrate as required by paragraph 61.

1.44.11 The approach that should be taken when determining this application is specifically mentioned in paragraph 65. This says that local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape if those concerns have been mitigated by good design. The specific exception quoted in the paragraph, however, is where the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits. That is exactly the situation with this site.

1.44.12 Educational facilities are discussed in paragraph 72 which confirms that the government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. That situation does not exist in Quarndon or Allestree and will certainly not be improved if this proposed development proceeds without the provision of a new primary school within the development.

1.44.13 Flooding is discussed in paragraphs 100, 101, 102 and 103. The importance of Local Plans being supported by a Strategic Flood Risk Assessment is emphasised as new development should be steered towards areas with the lowest probability of flooding. Paragraph 102 sets out two elements to the Exception Test and both have to be passed before development is permitted. Both are failed in this case.

1.44.14 Paragraphs 109, 110, 111 and 112 emphasise that the planning system should contribute to and enhance the natural and local environment. Local Plans should allocate land with the least environmental or amenity value which is not the case with this site. Moreover where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be used in preference to sites like this which are of a higher quality.

1.44.15 To comply with paragraph 123 planning decisions should aim to protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason. This site has been identified as just such an area. Paragraph 125 requires planning decisions to limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation. The light from 400 houses and associated infrastructure such as street lighting is going to adversely impact on the countryside to the west of Kedleston Road.

- 1.44.16** Section 12 of the NPPF is concerned with conserving and enhancing the historic environment. Paragraphs 126, 129, 130, 131, 132, 133, 134, 135 and 137 are particularly relevant. As well as being part of the setting of a designated heritage asset this site is also a heritage asset in its own right because it complies with the definition in Annex 2 of the NPPF. That says a heritage asset is “a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest.” Local Plan policy EN33 confers this status on this site.
- 1.44.17** That being the case local planning authorities are reminded that heritage assets are an irreplaceable resource which should be conserved in a manner appropriate to their significance taking account of available evidence and any necessary expertise. In this case that means the views of English Heritage rather than the submission made on behalf of the applicant.
- 1.44.18** Paragraph 130 says that where there is evidence of deliberate damage to a heritage asset the deteriorated state of that asset should not be taken into account in any decision. In this case the planting of a belt of trees at the northern end of the site has disturbed the traditional farming activities that are a feature of the remainder of the site and have damaged the character and traditional appearance of this heritage asset.
- 1.44.19** The following paragraph sets out three matters which local planning authorities should take into account when determining planning applications. The first two are concerned with the conservation of heritage assets. The third says that consideration should be given to the desirability of new development making a positive contribution to local character and distinctiveness. Changing from farmland to suburban sprawl is not going to make a positive contribution to either.
- 1.44.20** Paragraph 132 makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset’s conservation. The more important the asset the greater the weight should be. Kedleston Hall is of national importance. It is recognised that significance can be harmed or lost through development within its setting and stated that as heritage assets are irreplaceable any harm or loss should require clear and convincing justification. Nothing said on behalf of the applicant has provided this justification despite the fact that harm will clearly be caused to the setting of Kedleston Hall.
- 1.44.21** The following paragraph 133 indicates that local planning authorities should refuse consent where a proposed development will lead to substantial harm or to total loss of significance of a designated heritage asset unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss and four criteria can be complied with.
- 1.44.22** English Heritage has accepted that the harm caused to the setting of Kedleston Hall is less than substantial, which is the second highest category of harm that can be caused to a listed building and its setting. In view of this paragraph 134 says that the harm has to be weighed against the public benefits of the proposal. English Heritage has done that and concluded that this application should be refused.

- 1.44.23** That being the case, paragraph 135 which deals with the effect of a planning application on a non-designated heritage asset is less important for the determination of this application although a balanced judgement will still be required bearing in mind that heritage assets are an irreplaceable resource.
- 1.44.24** Paragraph 137 says that favourable treatment should be given to proposals which make a positive contribution to a heritage asset but that is not the case with this planning application.
- 1.44.25** Paragraph 196 confirms the statutory position that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. For all the reasons given in this document this application conflicts with the development plan and should be refused there being no material considerations which point to approval being appropriate. The fact that this is not sustainable development means that paragraph 197 is not relevant in the determination of the application.
- 1.44.26** Finally, as the application documents include reference to 106 Obligations being agreed, it is important to remember that the three tests set out in paragraph 204 all have to be complied with before they are sought. This proposal fails the first test because no amount of offers of financial contributions or other work can make this application acceptable in planning terms.

Appendices 3 to 8 are provided in separate files.