



## **STATEMENT OF CASE**

**In respect of an Appeal by Catesby Estates against the decision of Amber Valley Borough Council to refuse outline planning permission for the erection of up to 400 dwellings (Use Class C3), convenience store (Use Class A1 up to 500 sqm floorspace) with associated access, earthworks and other ancillary and enabling works on land off Kedleston Road/Memorial Road, Allestree, Derby. All other matters (appearance, landscaping, layout and scale) reserved (this is a Departure from the Development Plan).**

**RULE 6 STATEMENT UNDER RULE 6(6) THE TOWN AND COUNTRY PLANNING  
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

**LOCAL PLANNING AUTHORITY REFERENCE: AVA/2014/098  
PLANNING INSPECTORATE REFERENCE: APP/M1005/W/15/3132791**

**December 2015**

## 1. Introduction

- 1.1. Kedleston Voice (“KV”) is a non-political local residents group formed in 2014. It aims to safeguard Grade 1 Listed Kedleston Hall Registered Park and Garden, Grade 1 Listed Kedleston Hall, the local historic landscape and adjacent conservation areas, and local communities from harm caused by unsustainable development.
- 1.2. KV represents some 2,000 local individuals, made up primarily from the communities of Allestree, Darley Abbey and Quarndon. KV is supported by the Quarndon Parish Council, within which the site in this appeal is located. The KV membership includes volunteers who have a range of relevant expertise and experience. These have been used to respond directly to relevant planning consultations and to provide information and assistance to the wider KV membership and local residents in making their views known in the planning application process and a relevant local plan examination. KV is financially supported through donations.
- 1.3. At the time of writing, KV has an email database of 857 subscribers. It has 720 followers on Facebook and 233 followers on Twitter. There have been 336 views of the KV YouTube video and 13,379 visits to the KV web site. A KV petition organised through 38 degrees has 4,855 signatures.
- 1.4. This Statement of Case is prepared by KV as a Respondent Rule 6(6) party concerning appeal reference APP/M1005/W/15/3132791. The appeal is made by Catesby Estates (“the Appellant”) against the refusal by Amber Valley Borough Council, the Local Planning Authority (“the LPA”) of planning permission for planning application AVA/2014/098 (“the Application”).
- 1.5. The Application sought outline planning permission for the erection of up to 400 dwellings (Use Class C3), convenience store (Use Class A1 up to 500 sqm floorspace) with associated access, earthworks and other ancillary and enabling works, with all other matters (appearance, landscaping, layout and scale) reserved, on land off Kedleston Road/Memorial Road, Allestree, Derby. The Application was a Departure from the Development Plan.
- 1.6. The LPA refused outline planning permission on 6 July 2015 for the following 7 reasons:
  1. *Section 38(6) read in conjunction with Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 creates a presumption against planning permission being granted if harm can be caused to the setting of Kedleston Hall Registered Park and Garden, Kedleston Hall and Kedleston Conservation Area. It is considered that the development does cause less than substantial harm but to heritage assets with the highest level of protection in relation to the setting of Kedleston Hall and its Registered Park and Garden, which are Grade I, and also to the setting of Kedleston Conservation Area.*
  2. *Although some policies within the local plan support the development proposal (LS2, LS3, LS5, H10, H12, TP1, TP3, TP6, LC1, LC2, EN8, EN9 (in part), EN12,*

*EN13, EN14, EN15, EN16, EN18 and EN31) policies LS1, H5, EN1, EN7, EN9 (in part), EN10, EN24, EN27, EN32 and EN33 are against the development, with policy EN33 being directly against the application. The proposal on balance is therefore contrary to the Development Plan.*

- 3. Notwithstanding whether policies EN1 and H5 are policies for the supply of housing they would not outweigh the direct application of policy EN33 and so the proposal remains contrary to the Development Plan.*
  - 4. The development would cause less than substantial irreversible and irreplaceable harm to the significance which the Grade I Kedleston Hall Registered Park and Garden, Grade I Kedleston Hall and to the Kedleston Conservation Area derive from their setting, commensurate with less than substantial harm, contrary to saved local plan policies EN24, EN27, EN32 and EN33.*
  - 5. The application site is very sensitive to change in landscape and historic environment terms due to it being located within an area of primary and secondary multiple environmental sensitivity and part of the site scoring a higher than average score in relation to relative tranquillity and within the setting of heritage assets. The development would result in a significant detrimental change to the landscape character and the setting, visitor and visual experience across the largely unaltered historical estates farmland landscape and the proposed mitigation is inappropriate for the landscape characteristics of the area and would not adequately mitigate against the harm caused, contrary to saved local plan policies EN7, EN9 (in part), EN32 and EN33.*
  - 6. The development is contrary to paragraphs 132 and 134 of the National Planning Policy Framework, and therefore the requirements of paragraph 14 and its footnote 9 are also not satisfied, as the irreversible and irreplaceable less than substantial harm caused to the setting of highly important Grade I listed Kedleston Hall, its Grade I listed Registered Park and Garden, and the Kedleston Conservation Area is not outweighed by the public benefits derived from the development proposals.*
  - 7. Having weighed up social, economic and environmental factors it is considered that the development in overall terms is unsustainable with greatest weight being given to the clear harm that is less than substantial to the setting of Grade I Kedleston Hall Registered Park and Garden, Grade I Kedleston Hall and to Kedleston Conservation Area. These adverse impacts significantly and demonstrably outweigh the benefits associated with the development. As the application does not overall constitute a sustainable form of development, despite the Borough Council not having 5 year supply of housing land, there is not a presumption in favour of approving the development. The development is therefore contrary to local plan policy LS1 and paragraphs 7, 8, 14 and its footnote 9, 109 (in part), 112, 123 (in part), 131, 132, 134 and 135 of the National Planning Policy Framework.*
- 1.7. KV submitted an objection to the Application and consequently fully supports the LPA decision to refuse the Application and the reasons the LPA gave for that decision. Accordingly, KV will make submissions supporting the First Respondent LPA's position in this appeal, including but not limited to the 7 reasons for refusal given by the LPA. A summary of the reasons to be submitted by KV is included in section 3 of this Statement of Case.

## 2. Background of the site

- 2.1. The Application site comprises three fields divided by field hedge boundaries and trees. The site includes 15 individual trees designated for protection under TPO383. These trees are mostly within the field hedge boundaries. The site covers an area of around 17 hectares, largely put to agricultural use growing crops. Around 3.5 hectares of this land is high grade agricultural land recognised at Grade 2, which comprises a significant proportion of Grade 2 agricultural land available within the LPA area. The remaining hectares are Grade 3a and 3b agricultural land.
- 2.2. The site is located within the setting of Grade 1 Listed Kedleston Hall Registered Park and Garden, (“RPG”) Grade 1 Listed Kedleston Hall, the Kedleston Conservation area and a Site of Special Scientific Interest (“SSSI”), which are located from approximately 550 metres to the northwest of the Application site. The Hall is of exceptional historic architectural interest and character, being described by Pevsner as ‘one of the most magnificent apartments of the C18 in England’ and ‘the most splendid Georgian House in Derbyshire, in extensive grounds’. The RPG is around 800 metres and Grade I Kedleston Hall is around 1.7 kilometres to the northwest of the Application site. The Allestree and Quarndon Conservation Areas are approximately 1 kilometre from the proposed development. The site and adjacent lands have been part of a historic landscape since the mid-late 18<sup>th</sup> century as part of Robert Adam’s transformation of the park to create an open farmland aspect on the approaches to the RPG, Grade 1 Listed Kedleston Hall and the Grade 2 Listed ‘Kedleston Country House Hotel’ site. There are 25 heritage assets located with a 2 kilometre setting of the application site.
- 2.3. A recent immature plantation of mostly deciduous trees has been located along the north/northwest boundary of the site, which now forms a unique barrier within the otherwise, open landscape that Adam’s planned. The Application proposes that this plantation provides sufficient screening and can be thickened further to mitigate the visual impact of the proposed development on the setting of Kedleston Hall, the RPG and other heritage assets.
- 2.4. An existing residential development, forming the edge of the built environment and in the main the community of Allestree, is located to the south, southwest and east of the Application site. Kedleston Road, the original turnpike road broadly created at the same time as Adam’s transformation of the park to form the open landscape setting for Kedleston Hall, runs adjacent to the east of the Application site. Although essentially a country road, Kedleston Road is also a major commuter route from and to the areas north/northeast of Derby and leads into Derby City Centre, which is around 2.7 kilometres to the south.
- 2.5. The Application site slopes away from the eastern boundary and from east to west towards Markeaton Brook and a significant area of low lying land identified as flood risk zones 2 and 3. The Application site is flood risk zone 1; however, repeated localised flooding has occurred downstream of the Application site.

- 2.6. Prior to this Application the site had no relevant planning history. This is unsurprising due to the site's history. Particularly, as the site lies within an area designated as unsuitable for development in order to protect the 'Setting of Historic Park and Garden' under LPA saved Policy EN33, which was underpinned by substantial research culminating in the Derek Lovejoy Partnership Report (2001).

### 3. Outline of the KV Case

#### 3.1. General outline

Evidence for KV will explain why the Appellant's proposal does not comprise a sustainable development and does not therefore benefit from the presumption in favour of approval arising from paragraph 14 National Planning Policy Framework ("NPPF"). Specifically, KV will argue that the Appellant has not satisfied the three strands of sustainability identified in paragraphs 7 and 8 of the NPPF. Evidence from witnesses and submissions made in the Application will be used to demonstrate that the Appellant's proposal does not protect or enhance the natural, built and historic environment; conversely it harms them. Furthermore, it will be submitted the Appellant has not adequately addressed significant problems affecting transport, biodiversity and education that arise from their proposal.

#### 3.2. Harm to the historical estate farmland landscape

- 3.2.1. KV will rely on expert witness evidence and submissions made in the Application process to show that the largely unaltered historical estate farmland landscape will be significantly and irreversibly adversely affected by the Appellant's proposal. It will be shown that this landscape is especially sensitive to change due to it being located within an area of primary and secondary multiple environmental sensitivity, which has a higher than average score in relation to tranquillity, even though close to existing residential development. KV will rely on expert evidence to argue that the Appellant has failed to properly determine the highly sensitive nature of this landscape and their conclusions minimise the impact their proposal would have.
- 3.2.2. The benefits of this landscape to the public will be examined and contrasted with the particularly detrimental harm that the proposal would bring to the landscape, being within the setting of heritage assets of the highest significance. In particular, the adverse effect on visitors and the visual experience of this landscape setting will be explained, including those from the higher section of the road/bridleway/footpath leading to the two Vicarwood Farms west of the site. Moreover, evidence will show that the proposed mitigation, ostensibly 'screening' is inadequate and conversely inappropriate for the characteristics of this landscape, and thereby also contrary to saved local plan policies.
- 3.2.3. Regarding the matter of screening, KV will use evidence to show that on or around the 20<sup>th</sup> to 22<sup>nd</sup> November 2015 additional planting of trees was carried

out in the southeast corner of the proposed development site, even though the site is the subject of this ongoing planning appeal. Consequently, KV will submit that this 'tree planting' constitutes an obvious attempt to screen the site and influence the decision of the planning inquiry during the site visit. KV will use evidence to explain that this tree planting is part of other recent changes made to the site that are clearly intended to provide screening that is inappropriate for the characteristics of this historical estate open farmland. For example, a significant increase in the cutting height of the historic boundary hedgerow along Kedleston Road but only for the extent of the site.

- 3.2.4. KV will contrast expert evidence from their Landscape Visual Impact Assessment ("LVIA") of the proposed site with the Appellant's LVIA. KV will argue that the essential character of the area is one of open space rather than settlement. KV will refer to the 2012 Derby City Council review of its Green Wedge ("GW") policy that found the GW provides a vital break in the urban landscape helping to reduce the feeling of urban sprawl and it, 'forms part of the setting of the Markeaton conservation area and abuts the protected setting of Kedleston Hall and historic gardens'. Accordingly, KV will argue that the open landscape of the proposed development site performs an important GW function and link between the green belt and therefore a limit on the urban sprawl towards the Grade 1 Listed Kedleston Hall and its RPG.
- 3.2.5. KV accept that the proposed site is not currently designated as part of the nearby green belt; however, it will be argued that this is not necessarily a reflection of the true value of the landscape character of the site. KV will use evidence to explain that the green belt to the north and east of Derby starts very near the site and takes in Quarndon village and the fields to the west. KV will refer to the 2012 'Derby Principal Urban Area Green Belt Purposes' assessment and argue the proposed site contributes to a broad sweep of countryside running around the northern edge of the City of Derby boundary, found to have a "very important role in constraining the northward sprawl of the City and the merging of the urban areas of Derby with Quarndon", and "an important role in preventing urban sprawl between the City and the National Trust's Kedleston Hall estate". Consequently, KV will argue the site's landscape has a unique and important role related to the setting of Kedleston Hall, which has properly been granted specific protection through saved policy EN33.
- 3.2.6. KV will present evidence to contrast the Appellant's analysis and apparent discrediting of policy EN33 and the Lovejoy Report (2001) ("Lovejoy Report") that underpinned its development. KV will argue that the methodology used by Lovejoy was wholly suitable and led to a robust and impartial report that properly reflects the importance of the sensitivity of the landscape and setting relating to Grade 1 Listed Kedleston Hall, its RPG and other nearby heritage assets. KV will rebut the Appellant's assertion that the findings from the Lovejoy Report are in any material way out of date, as the setting of these assets is unchanged for generations and no policy or other changes subsequent to 2001 alter this. KV will refer to research commissioned from the ECUS

Environmental Consultants by the LPA in 2014, (“the ECUS report”) to highlight the ECUS report confirms the core findings of the Lovejoy Report and those of the Statutory consultees in the Application. KV will contrast these consistent findings with the uniquely different interpretation proposed by the Appellant.

- 3.2.7. KV will refer to evidence, such as the Derbyshire County Council (“DCC”) ‘Landscape Character of Derbyshire’ and the mapping of ‘Areas of Multiple Environmental Sensitivity’ (“AMES”) and ‘Tranquillity’, to explain the unique importance of the landscape at the proposed site, particularly in close juxtaposition to nearby residential areas. KV will contrast these findings with those of the Appellant, especially their apparent failure to identify the proposed site is located within an AMES designated by DCC in 2013. KV will compare the suitability of the CPRE map of tranquillity used by the Appellant with DCC’s map of tranquillity and argue that the Appellant’s position on landscape is inaccurate and their appeal should be refused.
- 3.2.8. KV will argue that any early post-war development mistakes affecting the landscape near the site do not justify new mistakes, particularly in that specific Statutory and case law protection now applies. Evidence will be used to explain that Kedleston Hall remains within an Estate Farmlands landscape and its relationship with Allestree has evolved to a position still consistent with Adam’s vision for this setting, as Kedleston Road forms an easily recognisable and defensible boundary between the Hall’s parkland, estate farmland and Allestree. KV will submit that the Appellant’s proposals would be irresponsible development breaching this established boundary and leading to significant urbanisation of this setting. In particular, KV will argue that the roundabout proposed for the bottom of Askerfield Avenue would be simply disastrous in landscape terms in what is attractive countryside protected by the Local Plan. KV will argue this should remain the case and respectfully submits therefore, that this appeal should be refused.

### **3.3. Harm to the Grade 1 Listed Heritage Asset, Kedleston Hall, RPG and other heritage assets**

- 3.3.1. KV will refer to expert witness evidence and evidence from submissions in the Application to show that the Appellant’s proposal is fundamentally flawed regarding the correct assessment of setting and assessment of harm to the Grade 1 Listed Kedleston Hall, its RPG and other heritage assets.
- 3.3.2. KV will refer to the findings of the Statutory Consultees that consistently determined the Appellant’s proposed site is part of the setting of Kedleston Hall under the definition of setting of a heritage asset provided in the Glossary of the NPPF. This specifically clarifies ‘setting’ as ‘...the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage’. KV will contrast this definition with the inconceivably inconsistent interpretation proposed by the Appellant, i.e. that the setting of Kedleston Hall is limited to the extent of its curtilage and ‘line of sight’.

- 3.3.3. KV will introduce evidence to contrast the Appellant's interpretation of 'less than substantial harm', which to KV appears to be representing the harm found as 'slight', with the actual findings of the Statutory Consultees, expressed by them consistently as 'significant harm'. KV will also compare the Appellant's assertion that Historic England does not object to their proposal with the substantive points of objection that Historic England clearly made out in their responses to the Application.
- 3.3.4. KV will argue that Section 38(6) in conjunction with Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 creates a presumption against the approval of planning permission if harm would be caused to the setting of a heritage asset. KV will rely on this Statute and relevant case law to show this presumption requires that the planning decision maker, and in this case the Secretary of State, shall have special regard to the desirability of preserving the building or its setting. Moreover, KV will refer to case law and planning appeals that confirm the presumption applies regardless of whether the harm is substantial or less than substantial and is not diminished by any provision of the NPPF. Additionally, it will be shown that the presumption prevails even in cases where no adequate 5-year housing supply is yet in place, and that planning decision makers must give proper consideration to all alternative sites before any harm to a heritage asset can be contemplated. KV will refer to the consistent findings of 'less than substantial harm' to Grade 1 Listed Kedleston Hall, its RPG and other assets found to be present in the Appellant's proposal by the Statutory Consultees. Evidence will be used to show that alternative sites for development have been identified elsewhere within the LPA area. As a consequence, KV will respectfully submit that a properly weighed planning decision should conclude with the refusal of this appeal and confirmed protection for Kedleston Hall and its RPG.
- 3.3.5. KV will introduce expert witness evidence and evidence from previous submissions relating to paragraphs 134, 135 and 136 of the NPPF to contrast the less than substantial harm to the significance of these designated heritage assets against the suggested public benefits of the Appellant's proposal. KV will submit that preserving the setting and significance of Grade 1 Listed Kedleston Hall and its RPG for future generations constitutes a very significant public benefit that should properly be afforded very great weight in the planning balance. This is illustrated by the 120,000 visitors to the Hall last year and over 250 local people who volunteer at the Hall. KV will argue heritage assets of such significance must be afforded unequivocal protection, as they are irreplaceable and once lost are lost forever. KV will submit that applying the Statutory protection in this present case is particularly important, as any alternative outcome will likely suggest a precedent enabling harm to the setting of the most significant of Grade 1 heritage assets.

- 3.3.6. KV will rely on evidence to explain that the Appellant's proposal does not comply with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, relating to 'the desirability of preserving or enhancing the character or appearance' of the multiple conservation areas near the proposed site. KV will therefore, submit that the Appellant's proposal is contrary to section 72(1) and saved policy EN27 and should be refused.
- 3.3.7. KV will introduce evidence to explain that whilst it is acknowledged some economic, housing, affordable housing and open space benefits might be associated with the Appellant's proposed development these could be supplied elsewhere in clearly more suitable and likely much more affordable locations within the LPA area. Indeed, it will be shown that such locations have been identified by the LPA. Moreover, KV will argue that such benefits do not outweigh the less than substantial harm the proposal would cause to Grade 1 Listed Kedleston Hall, its RPG and related Conservation areas.
- 3.3.8. KV will use expert witness evidence and evidence from other submissions to argue that the mitigation proposed by the Appellant would be wholly inadequate; conversely, it will be argued it is harmful. Indeed, KV will submit that no mitigation can overcome the harm to Grade 1 Kedleston Hall, its RPG and the Conservation areas that would result from proposed development and the associated roundabout on Kedleston Road and Askerfield Avenue. Additionally, KV will argue that some mitigation suggested by the Appellant is compensation rather than any form of mitigation.

#### **3.4. Non-compliance with the LPA saved policies**

- 3.4.1. The Appellant's proposal will be considered against relevant policies of the LPA Development Plan, particularly EN32 and EN33 that specifically exclude the land on which the Application site is located from all development in order to ensure protection of the setting of Grade 1 Listed Kedleston Hall and its RPG. Moreover, it will be argued that the appeal site should also be excluded under EN27 for the harm any development on that site would cause to the adjacent conservation areas, SSSI and Area of Multiple Environmental Sensitivity and Tranquillity. Additionally, it will be argued that any relevant policies for the supply of housing do not outweigh the direct application of policy EN33; therefore, the Appellant's proposal is contrary to the LPA Development Plan. Accordingly, KV will respectfully submit this appeal should be refused.
- 3.4.2. KV will rely on evidence to illustrate that the Appellant's proposal does not comply with the LPA's saved policy H5, which states, 'outside the built framework of settlements, planning permission will not be granted for housing development unless the proposals are in the form of:
- 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'.

KV will argue that the Appellant's proposal fails to comply with these criteria and is not on land allocated for housing within the local plan and should therefore be refused.

3.4.3. KV will refer to evidence and saved policy EN1 that states 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.

KV will argue the Appellant's proposal does not comply with these criteria and is not an allocated housing site and should therefore be refused.

3.4.4. KV will refer to evidence from the Application to show that the Appellant's proposal is inconsistent with saved policy EN10, which states that planning permission will not be granted for development that would involve the irreversible loss of the Best and Most Versatile ("BMV") land. KV will show that the proposed site includes 10.2 hectares of Grade 2 agricultural land, constituting a significant proportion of this grade of land in the LPA area, and Grade 3a agricultural land that should not be developed unless:

- 1) the land has been allocated in the Local Plan, or
- 2) the development 'cannot' be located on other previously developed or lower grade agricultural land.

KV will argue that the Appellant has not adequately demonstrated these conditions are met and as a consequence their appeal should be refused.

### **3.5. Unsustainable Transport**

3.5.1. KV will present evidence from witnesses and submissions from the Application to argue that the Appellant has failed to properly determine and provide adequate mitigation for the residual traffic problems that their proposal would bring to users of Kedleston Road. KV will argue that the residual cumulative impacts of their proposed development are 'severe' within the meaning set out in paragraph 32 NPPF and relevant case law.

- 3.5.2. KV will explain that Kedleston Road already suffers badly from congestion at peak times, most noticeably on most 'normal' mornings when there are not holiday periods. The reasons for this will be provided in reports submitted previously by KV as part of the Application process. KV will argue that the traffic congestion on these days can already be classed as severe, as the traffic is effectively gridlocked, reducing visibility at key points and making safety an increased issue, particularly for pedestrians and cyclists. KV will include evidence from Local residents and regular commuters to Derby, who are all too well aware of these severe traffic problems and how they consistently adversely affect their journeys week on week. KV will argue that the negative impact of the development will be far reaching with traffic attempting to avoid congestion on Kedleston Road by making dangerous U turns to seek other routes through Quarndon, Allestree and Kedleston Village in order to reach the main arterial roads or City centre. KV will argue this will put further pressure on the A6 and its feeder roads and increase the risks associated with such transport problems.
- 3.5.3. KV will contrast the Appellant's transport data, which it is understood was obtained during the main holiday period, with data collected by KV to highlight the incredulous nature of the Appellant's transport case. KV will highlight that the issues related to inadequate provision of primary schooling remain unresolved, which inevitably results in the need for children to be driven to and from school. KV will argue that the Appellant's admission, "the proposed development could generate around 350 two-way person trips during the AM peak hour (8-9)" and "the development could generate 100 two-way primary school person trips during the AM peak hour" are confirmation by the Appellant of the additional traffic burden likely to be generated by their proposal. KV will argue this congestion is recognised by the planning authorities but not properly acknowledged by the Appellant. Accordingly, KV will argue that the Appellant's Transport Assessment is a wholly inadequate basis on which to base such significant planning and transport decisions.
- 3.5.4. KV will compare the congestion on Kedleston Road, caused by seven major pinch points, with the circumstances in relevant case law. KV will argue that despite what the Appellant says 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. KV will present evidence from previous submissions to illustrate that the modification to Kedleston Road and the A38 junction suggested by the Appellant will not make much, if any, impact on this congestion, as these vehicles still have to go somewhere. KV will highlight that the mitigation presented does not include the main pinch point, that of the Five Lamps junction, which is a major flaw but a matter that cannot be mitigated easily. Accordingly, KV will argue that the Appellant's mitigation cannot work, as it is ultimately based on incorrect peak time vehicle numbers, therefore their appeal should be refused.

- 3.5.5. KV will argue that the proposed roundabout adjacent to Askerfield Avenue and the exit adjacent to Quarn Drive will introduce further pinch points, as traffic is currently often queuing past these points at peak times. It will be submitted that drivers will find it difficult to exit the proposed development site and will therefore seek alternative routes, effectively creating dangerous 'rat runs' through the adjacent residential areas and adding to the extent and duration of the congested period. Furthermore, KV will argue that such a proposal is inconsistent with saved policies, for example, 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". KV will argue that the access adjacent to Quarn Drive fails this test, as does the general increase in congestion caused by the development. Accordingly, KV respectfully submits this appeal should be refused.
- 3.5.6. Evidence will be used to explain that Kedleston Road is in effect a narrow carriageway with a narrow path to the east side. Large vehicles have trouble passing and, if a car is parked on this road it is likely to cause severe disruption. KV will argue that the Appellant's proposal relating to sustainability is therefore flawed, as 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 due on this busy road, it is unlikely that parents will allow their children to walk or cycle to school, thereby increasing the likelihood of higher than usual peak time vehicle use from the proposed development.
- 3.5.7. KV will raise concerns about the superficial way in which the Appellant is treating access to and from the proposed development. Particularly, in that the proposed roundabout at the junction of Kedleston Road and Askerfield Avenue will cause disruption to traffic flow along Kedleston Road. Compounded by a pelican crossing, it will be argued this will cause further disruption and delays at peak times to existing hard-pressed commuters.
- 3.5.8. KV will raise unresolved concerns regarding the use of Kedleston Road by the many large and articulated vehicles that frequently use this road. Similarly, KV will argue that the proposed T junction remains an unsafe design for the numbers of vehicles likely to use it and the junction will also interfere with the flow of traffic from Quarn Drive. Additionally, KV will highlight concerns about the proposed linkways and walkways around the proposed development, which it will be suggested are likely to lead to their own future problems.

### **3.6. Loss of habitat and inadequate protection for protected species**

- 3.6.1. KV will refer to witnesses and evidence submitted as part of the planning process to argue that the Appellant has failed to adequately recognise and provide mitigation to protect the bio-diversity of the land affected by their proposal. Specifically, KV will argue that the variety and importance of the

protected and endangered species found on the site and land adjacent to the site has not been properly considered.

- 3.6.2. KV will argue that the Appellant's approach to protecting these species has at best been unenthusiastic. For example, the glib way in which protection of certain species, such as the White Clawed Crayfish found around the site have been described in the Appellant's report. KV will contrast this with evidence that White Clawed Crayfish are classified as endangered and are on the International Union for Conservation of Nature ("IUCN") Red List of Endangered species and EU "member states are required to designate Special Areas of Conservation to protect important populations of this species".
- 3.6.3. KV will highlight the importance of the Markeaton Brook and the SSSI that it travels through immediately adjacent to the proposed site. Evidence will be used to explain that the isolated nature of the brook and its high water quality mean that the brook may hold fossil populations and act as an ARK site for White Clawed Crayfish and other species, even if it has not yet been so formally designated.
- 3.6.4. KV will use evidence to explain that the Appellant's proposal will cause loss and fragmentation of landscape and habitat used by a range of protected and in some cases endangered species, for example Newts, Hedgehogs, Water Voles, Badgers, Bats and many different Birds. Accordingly, KV will argue that the proposal will have significant adverse impacts on the habitats and species of the site through the loss and fragmentation of historical estate open farmland. KV will refer to witnesses and evidence submitted to dispute the Appellant's claim that their proposals will improve the ecology of the site.
- 3.6.5. KV will argue that it is not possible to effectively mitigate for the loss of historical estate farmland. It will be submitted that such land is irreplaceable and any loss cannot be compensated for, as 'once lost it cannot be recreated'. It will be argued that the proposal is contrary to planning policies and other obligations for protecting bio-diversity, in that the Appellant has not in any way demonstrated the need for development in the proposed location that would justify the loss of this habitat, especially as alternative locations without such sensitivities are identified by the LPA.

### **3.7. Unsustainable educational provision**

- 3.7.1. KV will refer to witnesses and evidence from the Application and other relevant planning matters to highlight the inadequate and unsustainable provision of educational facilities for children from the proposed development.
- 3.7.2. KV will refer to the DCC's position on education, particularly on the primary school infrastructure and their finding, "local primary schools, having been

assessed cannot between them be enlarged by a form of entry and a new (additional) primary school is considered by the County Council to be necessary". KV will argue this issue is left unresolved by the Appellant, in effect passing it to the DCC. KV will compare this to a similar situation affecting existing planning permission at the nearby Radbourne Lane site and will argue that without adequate primary school provision, the Appellant's proposal is unsustainable, therefore their appeal should be refused.

## 4. Conclusion

- 4.1. For the reasons set out above KV respectfully invites the Secretary of State to dismiss this appeal. KV reserves the right however, to refer to other reasons that may become apparent during the determination of this appeal.

## 5. Proposed conditions

- 5.1. KV respectfully submits that no mitigation is capable of overcoming the less than substantial significant harm to the setting of Grade 1 Listed Kedleston Hall and its RPG that the Statutory Consultees have consistently found would arise from this Application, or indeed any development of the land within the area defined in EN33. Moreover, it is submitted that the existing and proposed mitigation, particularly 'screening' is in itself harmful to the open estate farmland landscape planned by Robert Adam for the approach to Kedleston Hall. However, should the Secretary of State be minded to allow the appeal, KV would respectfully suggest that a number of conditions should be attached to the approval of planning permission.
- 5.2. KV supports the conditions required by the LPA in this appeal and those suggested by the Statutory consultees during consultation on the Application. Additionally, KV highlights the following conditions. KV reserves the right to amend, delete or add to these suggested conditions.
  - 5.2.1. The approval of the LPA shall be obtained prior to the commencement of any development in respect of the appearance, landscaping, layout and scale of the buildings and shall comply with such approval at all material times during the construction and landscaping phases of the development.
  - 5.2.2. The appearance of any storage site for construction purposes shall be maintained to minimise its visual impact on the landscape, wildlife and residential areas at all material times during the construction and landscaping phases of the development.
  - 5.2.3. The surfaces of all approach roads, pavements and driveways to and from and around the site shall be maintained free from any visible signs of construction work at all material times throughout the construction and landscaping phases of the development.
  - 5.2.4. All premises and environments, specifically including those capable of affecting wildlife, on and around the site shall be adequately protected from

noise arising from the construction and landscaping phases of the development. An assessment of noise emissions in-situ shall be submitted to and approved in writing by the LPA to confirm that suitable levels are not exceeded.

5.2.5. All street lighting, residential and retail lighting on the development site shall maintain a neutral impact on the visual impression of the immediate and surrounding landscape and shall maintain an effective 'dark night sky' around the site and surrounding areas.

5.2.6. All buildings associated with the site shall at all material times be limited to a height of two storeys. No feature of any building, garden or any other item on the site shall extend beyond the height of two storeys. There shall be no raising of ground levels that would increase this overall height compared to adjacent land. All buildings, fences and any other structure shall be constructed to minimise their impact on and visual appearance within the landscape at all material times.

5.2.7. All buildings, fences and any other structure on the site, whether permanent or temporary, regardless of material used shall at all material times comply with a restricted pallet of colours and effects designed to minimise the visual impact of the development within the historic estate farmland landscape and on the setting of Grade 1 Listed Kedleston Hall, its RPG and the other nearby heritage assets.

5.2.8. The development site and everything on it shall at all material times maintain a neutral or positive effect on the surrounding land, trees, hedgerows, and the Markeaton Brook, specifically including flooding risks, effects on water quality and bio-diversity. The developer(s) of the site shall accept liability for any breach of this condition and shall take all necessary steps to correct any adverse consequences arising from such a breach and shall make all necessary improvements to ensure no further breach occurs.

## 6. Sources of evidence

### 6.1 List of documents

This is a list of the relevant documents that KV will make reference to during the appeal process and is in addition to any documents listed by other parties. This is not intended to be a complete list of documents. KV reserve the right to introduce additional documents, as necessary to the appeal:

- All relevant details and submissions related to planning application AVA/2014/0928;
- The relevant policies of the Adopted Amber Valley Borough Local Plan 2006;
- The relevant paragraphs of the National Planning Policy Framework ("NPPF");
- The relevant Adopted Supplementary Planning Documents;
- The relevant policies of the emerging Local Plan Part 1 Core Strategy;
- Relevant Legislation and case law;

- Relevant planning appeal decisions;
- UK Biodiversity Action Plan (UBAP);
- English Heritage: “Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment” 2008;
- English Heritage: “The Setting of Heritage Assets – English Heritage Guidance” October 2011;
- Statutory listing descriptions of relevant buildings;
- Understanding Place; a series of 3 Conservation Area guidance notes; Introduction; Designation, Appraisal and Management; Historic Area Assessments - English Heritage;
- ‘Guidelines for Planning for Public Transport in Developments’ - The Institution of Highways and Transportation (IHT) (1999);
- ‘Guidelines for Providing for Journeys on Foot’ - The Institution of Highways and Transportation (IHT);
- ‘Guidance on Transport Assessment’ - Department for Transport;
- Relevant National planning policy guidance, statements and practice guides;
- Any other documents that may become relevant to the determination of the appeal.

## 6.2 Witness evidence

KV will rely on evidence from a number of lay and expert witnesses covering the following areas of response:

- Heritage
- Landscape
- Transport
- Bio-diversity
- Education

The identity of expert witnesses and details of their qualifications and competence will be provided with the proofs of evidence.