



# Kedleston Voice

Response to the Proposed Change AVBC/2013/0010  
contained in Amber Valley Borough Council's Core  
Strategy

S e p t e m b e r 2 0 1 4

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## **1. Introduction**

1.1 This objection is submitted by David Anderson, the chairman of the Kedleston Voice Committee on behalf of that organisation.

1.2 The Committee was formed as a result of the public response to an exhibition in Allestree organised by Catesby Estates, in conjunction with the Kedleston Estate. They are proposing to submit an outline planning application for a development of 400 dwellings on farmland to the west of Kedleston Road in Quarndon Parish. To the east of Kedleston Road is Allestree, in the City of Derby.

1.3 Public reaction to the exhibition was so hostile that a group of local residents decided to form an organisation to protest against the proposed planning application. Concurrently, Amber Valley Borough Council (AVBC) published its proposed changes to its Core Strategy which, totally unexpectedly, included proposed change AVBC/2013/0010. That identified the site in question as a strategic site for 400 dwellings to meet a claimed shortfall in Derby's housing requirement over the next plan period. Kedleston Voice (KV) has, therefore, turned its attention to opposing this change. **This document is submitted as part of the consultation process on the revised Core Strategy.**

1.4 It should be said at the outset that KV considers the process by which AVBC decided to include this site as a proposed change in the core strategy to be fundamentally flawed. Whilst it was recognised in the officer report that the site formed part of the setting of Kedleston Hall, a listed building of national significance, it was suggested that 400 dwellings could be built on this high quality farmland without affecting that setting.

1.5 That is an entirely subjective view which KV disputes. More importantly, when considering the inclusion of this site in the revised strategy, AVBC Councillors were not reminded of their statutory responsibilities under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This states that when making decisions of this type they should give 'considerable importance and weight' to the desirability of preserving the setting of listed buildings.

1.6 It appears to KV that AVBC has become so preoccupied with finding another site close to Derby, to meet an unproven need to accommodate housing that cannot apparently be

found within the City boundaries, that normal planning principles and practice are being ignored. These points are discussed in the remainder of this document and it is suggested this is a wholly unsuitable site for development now and in the future.

## **2. The Questions posed by AVBC.**

<b>Is the Plan Legally Compliant?</b>	No
<b>Is the Plan Sound?</b>	No
<b>Is it positively prepared?</b>	No
<b>Is it justified?</b>	No
<b>Is it effective?</b>	No
<b>Is it consistent with national policy?</b>	No

### **Why is the Plan not legally complaint or unsound?**

2.1 AVBC has adopted poor planning practice in failing to properly assess the harm and adverse impact on the development on the setting of Kedleston Hall before recommending the proposed site AVBC/2013/0010 is included in the revised Core Strategy. **AVBC is therefore, behaving in an unlawful and unsound manner.**

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2.2 **AVBC has also acted unlawfully** by including the change related to AVBC/2013/0010 on Kedleston Road without following the procedures outlined in the Local Development Scheme. This is a last minute change without prior community involvement. It also conflicts with the Council's adopted Statement of Community involvement in that the residents of Quarndon have not been consulted before this proposed change was suggested. Equally, the residents of Allestree, which is a community based in Derby City council area that will be seriously affected by this proposed change, have also not been consulted before inclusion. These two conurbations represent "the local community and others having a stake in the area" and should have been consulted about the proposal before it was included.

2.3 The proposal presented by AVBC fails the requirement to have regard to national planning policy because AVBC/2013/0010 could not be described as a sustainable development. The National Planning Policy Framework (NPPF) defines sustainable as

“ensuring that better lives for ourselves doesn’t mean worse lives for future generations”.  
The proposal AVBC/2013/0010 does not meet this definition.

**2.4 The plan is not positively prepared** as the inclusion of change AVBC/2013/0010 is not consistent with the Strategic Objectives of the December 2013 Submission Plan and would not achieve sustainable development status.

**2.5 The plan is not justified** as AVBC’s own evidence shows that the site listed in AVBC/2013/0010 is not needed. In all, the changes in the plan would result in allocations for 11,255 dwellings, which is 1,195 more than is needed. There would appear little need for the Kedleston Road development based on these numbers, particularly as it is judged as unsustainable. Equally, AVBC could include all the proposed 1,800 dwellings at land north of Derby as catering for the Derby HMA. This further diminishes the need for AVBC/2013/0010.

**2.6** On top of this, the inclusion of change AVBC/2013/0010 cannot be judged as the most appropriate strategy for dealing with a claimed unmet housing need from Derby City. AVBC has not considered sufficient alternatives or carried out a sustainability appraisal on those alternatives. The only sustainability appraisals carried out show how unsuitable AVBC/2013/0010 is.

**2.7** At present AVBC/2013/0010 is not consistent with an emerging strategy which proposes all employment growth to the south of Derby City Centre. Studying all documents together will be the first opportunity the public has had to look at the wider picture, the HMA process not being particularly transparent.

**2.8** The judgement about compatibility with the strategies of neighbouring authorities should not be made until Amber Valley have published the remainder of its local plan indicating how it will deal with redundant land previously earmarked for employment use. It should also not be made until Derby City Council publishes its Core Strategy submission.

2.9 The Localism Act has been introduced amongst other things to make the planning system more democratic and more effective and to ensure that decisions about housing are taken locally. At the very least, residents affected by both emerging Plans should have the opportunity to consider and comment on all the plans at the same time.

2.10 **The plan is not effective** as the proposed change AVBC/2013/0010 relies on social infrastructure in Allestree which is already at capacity. This is not a sustainable approach to development or reasonable for either Allestree residents or anyone living on the proposed site. This is simply not a suitable location for house building now or in the future.

2.11 **The plan is not consistent with the requirement of the National Planning Policy Framework (NPPF).** This states that Plans need to take local circumstances into account so that they respond to the different opportunities for achieving sustainable development in different areas. There appears to have been no consideration by AVBC of the impact 400 new dwellings could have on the Parish of Quarndon, the residents of Allestree or the wider area. Indeed all the previous evidence would suggest that the local circumstances in this case strongly suggest that no development should take place where AVBC/2013/0010 suggests.

2.12 The National Planning Policy Framework (NPPF) says that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 14 confirms there is a presumption in favour of sustainable development. The proposed development AVBC/2013/0010 is not sustainable and therefore should not be favoured.

2.13 AVBC/2013/0010 is supported by positive claims on the economic front. These claims could apply to any new house building site and are not justification for housing in this particular location. They equally apply to the already included site for the proposed 1,800 dwellings at land north of Denby. The Denby site is also a brownfield development which should take priority over the proposed Kedleston Road site.

2.14 The plan is not consistent with national policy as AVBC/2013/0010 would also involve the unjustified loss of part of an attractive identified heritage asset which should be

preserved in its entirety both to protect the setting of Kedleston Hall and to compliment Derby City Council's green wedge policy. It would also involve the development of a greenfield site, which is potentially higher quality agricultural land, at a time when the government is promoting the use of previously developed land and have serious implications for existing infrastructure in the surrounding area.

2.15 In addition, the proposed site for AVBC/2013/0010 directly adjacent to Markeaton Brook which is prone to flooding especially after periods of prolonged, heavy rainfall. This problem has grown worse following recent developments alongside the Brook. The proposed development AVBC/2013/0010 will increase the flood risk and ground water seepage to existing housing and gardens through increased ground saturation and hydraulic ground water pressures. Despite being fully aware of these issues, AVBC have included this change without undertaking an independent flood risk assessment or the sequential tested required within the NPPF.

2.16 **To conclude this introduction** the suggestion to change the Amber Valley Core Strategy to include an allocation of 400 houses west of Kedleston Road is not sustainable. It is simply bad planning. Bad for:

- residents of Quarndon and the surrounding Parishes
- residents of Allestree and north Derby
- future residents of the proposed development
- supporters of the countryside and open spaces everywhere
- our country's built heritage

### **What changes are necessary to make the Plan legally compliant and sound?**

2.17 AVBC must delete the suggested allocation AVBC/2013/0010 from its Core Strategy.

2.18 Further, AVBC should delay its planned consultation on housing needs until the remainder of its local plan proposals are presented and the emerging Derby City Core Strategy is published. This will allow a complete picture of the housing needs of the wider

area may be seen and commented upon by the public before examining AVBC's strategy to deal with any unmet needs in Derby.

2.19 AVBC must involve the public who will be affected by the Strategy at the start of the process rather than presenting last minute changes such as AVBC/2013/0010. The work they have undertaken to include this proposal in the planning is unnecessarily rushed, incomplete in its analysis, unlawful in its approach and unsound its conclusions. The plan as presented represents poor planning from a council that has consistently shown bad judgement in its decision making related to land located adjacent to this proposed development area.

2.20 The consultation period should not have been undertaken over a holiday period when many residents are away and cannot review the material presented properly. There is no need for the plan to be consulted on ahead of complementary proposals being presented to the public in an adjacent local authority involved in the HMA.

**If you consider the Plan to be legally compliant or sound please say why**

2.21 The plan is not legally compliant or sound regarding proposal AVBC/2013/0010

2.22 There is a requirement for the Core Strategy and these proposed changes to it to be consistent with national planning policy. Proposed change AVBC/2013/0010 is not for reasons which will now be explained in more detail.

### **3. THE NPPF - Section 12 - CONSERVING AND ENHANCING THE HISTORIC ENVIRONMENT.**

3.1 KV considers that, if AVBC had interpreted the relevant legislation and case law correctly, this site would never have been put forward for any form of development.

3.2 There is no doubt that Kedleston Hall and its gardens are designated heritage assets as defined in the glossary to the National Planning Policy Framework (NPPF). Because it is a Listed Building (Grade 1), the setting of that building is also covered by Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. That contains a “general duty as respects listed buildings in exercise of planning functions” and at sub section (1) says “in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

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3.3 That general duty must also extend to the allocation of sites in a local plan because that establishes the principle of development.

3.4 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...” In this case the land is identified in the current Local Plan as being subject to saved policy EN 33. That says “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 that would have a detrimental effect on the landscape setting of the Historic Park and Garden.” It is a policy that AVBC has consistently adhered to and appears to be supported in paragraph 6.4 on page 16 of the suggested Core Strategy.

3.5 Given that AVBC agrees that this land west of Kedleston Road is part of the setting of Kedleston Hall, the approach it has taken to including the site within the proposed changes is surprising.

3.6 In the officer report to the AVBC Council meeting which agreed to include this site in the proposed changes it is said, at paragraph 6.21, "...as set out in paragraph 6.18 above , although the scale and nature of these constraints will continue to restrict the scope for housing development in this part of the Borough, having regard to the need to achieve sustainable patterns of development, officers consider that there is potential for housing development at Kedleston Road and it is recommended that this site should be proposed as an additional strategic site with capacity for 400 dwellings..."

3.7 The report continues "the development of this site would not affect the setting of Mackworth Conservation Area or Markeaton Conservation Area. Although the site is within the setting of Kedleston Hall Historic Park and Garden, officers consider that, in principle, the site could be developed in a way which would not have an adverse impact on this setting..."

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3.8 It would appear that such weighing exercise as was carried out before this conclusion was reached gave the need to cater for Derby's unmet housing need equal or perhaps greater weight than the statutory requirement to protect the setting of Kedleston Hall. One could be forgiven for concluding that AVBC was so exercised by finding an appropriate site to cater for Derby's unmet housing need that it considered it would be "all right" to hive off part of the setting of Kedleston Hall and build a suburb of 400 houses on perfectly good farmland.

3.9 But it is not "all right" and never should be whatever the judgement reached about Derby's unmet housing need.

3.10 Currently this site forms part of a much wider band of attractive farmland which has historical as well as visual linkage to Kedleston Hall. Details are contained in the October 2001 Derek Lovejoy report which is within the list of "evidence documents" for the Examination without a number, although the report itself is numbered OD19. It is not

proposed to repeat what that document says other than to point out three particular paragraphs.

3.11 Paragraph 4.16 says “despite being relatively close to the fringes of Derby, the parkland and estate influenced landscape manages to retain an undeveloped rural quality intended of the original Country Park Estate at Kedleston Park.” That remains the case notwithstanding the recent development along Somme Road which was allocated in the current Local Plan.

3.12 At paragraph 4.20 it is said “the divide between the urban fringe of Derby and the rural farmlands around Kedleston has remained intact, thereby retaining the essential character and visual setting of Kedleston Park on the scale intended.” The following paragraph says “tree growth on the edges of Markeaton help to disguise the proximity of the urban fringe from Kedleston Park but any further developments to this side of the City could potentially impinge on the fragility of the setting.”

3.13 Given that the site of proposed change AVBC/2013/0010 is farmland without any buildings upon it there could hardly be a more dramatic change to the appearance and status of the land than building houses upon it. Not only would there be the visual change during the day, there would also be light pollution during the hours of darkness which would conflict with paragraph 125 of the NPPF and a loss of an area of tranquillity which paragraph 123 of the NPPF says should be protected.

3.14 There would also be the loss of the countryside view that is apparent on this major route in and out of the City. Planning practice has long established that the protection of private views is not one of the purposes of the planning system. These, however, are public views which may be enjoyed by everyone using Kedleston Road in all forms of transport. One of the Core Planning Principles listed in paragraph 17 of the NPPF establishes that “planning should...take account of the different roles and character of different areas...recognising the intrinsic character and beauty of the countryside...”

3.15 Had there been proper consultation over this change before it was proposed officially then there would have been the opportunity to remind AVBC officers of the correct approach to dealing with the setting of designated heritage assets as well as all the paragraphs in the NPPF which point to this being a wholly inappropriate site for

development. As it is, KV considers it necessary to use this opportunity to 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.

3.16 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 by Justice Lang in the High Court is often quoted.

3.17 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.

3.18 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.

3.19 In the High Court, Justice Lang had concluded that, in order to give effect to the statutory duty under section 66(1), a decision maker should accord considerable importance and weight to the desirability of preserving the setting of listed buildings when weighing this factor in the balance with other material considerations which have not been given this special statutory status. Where the section 66 duty is involved in a decision, it is necessary to qualify Lord Hoffmann's statement in the 1955 Tesco Stores case that the weight to be given to a material consideration was a question of planning judgement for the planning authority.

3.20 Justice Lang in the Barnwell case concluded that "the Inspector did not at any stage in the balancing exercise accord 'special weight' or considerable importance to the desirability of preserving the setting. He treated the harm to the setting and the wider benefit of the wind farm proposed as if those two factors were of equal importance..." He did not give effect to the section 66(1) duty "which applies to all listed buildings whether the harm has been assessed as substantial as or less than substantial."

3.21 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).

3.22 “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.”

3.23 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.”

3.24 AVBC is also reminded that as recently as February 2014, the High 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.”

3.25 Paragraph 3.7 above sets out AVBC’s approach in this case which is wholly at odds with the case law and statutory responsibilities outlined above.

3.26 It is also contrary to the guidance in section 12 of the NPPF.

3.27 The NPPF requires local planning authorities, when determining planning applications, to “take account of the desirability of sustaining and enhancing the significance of heritage assets”. Significance can be harmed through development within the asset’s setting. Any harm or loss “should require clear and convincing justification”. Substantial harm to assets

of the highest significance, notably grade I and II listed buildings, registered parks and gardens, such as Kedleston Hall “should be wholly exceptional.” Less than substantial harm should be weighed against the public benefits of the proposed development. That guidance is equally as applicable in the preparation of Local Plans.

3.28 Despite the requirements of the NPPF and their planning policy EN33, AVBC apparently did not seek a comprehensive, independent report or provide the Lovejoy Partnership with the opportunity to respond to the implied criticism of their 2001 report before making this decision to include the site as a proposed change. They seem to have been led by the positioning provided by a proposed developer of this site. AVBC, therefore, failed to have proper regard to their obligations under the NPPF to establish ‘clear and convincing justification’ before deciding to include the site as a proposed change.

3.29 The National Trust and English Heritage are statutory consultees to the Local Plan. Both have expressed serious concerns about the adverse impact of the proposed development on the setting of Kedleston Hall. For example, English Heritage commented that the proposal harms the “significance Kedleston Hall and the conservation area derive from their setting”; “the Catesby study does not demonstrate that the degree of harm is justified in terms of potential benefits”; and “housing in this location is not justified in terms of sustainable development.”

3.30 It should also not be forgotten that in this part of Derby/Quarndon there are three Conservation Areas where views in and out are important. The band of countryside of which AVBC/2013/0010 is a part forms an important element in the setting of these Areas as well as complimenting the Green Wedge policy in the current City of Derby Plan.

3.31 Contrary to the approach taken by AVBC, KV considers that AVBC/2013/0010 should be maintained as an attractive undeveloped heritage asset which should be preserved in its entirety both to protect the setting of Kedleston Hall and to compliment Derby City Council’s green wedge policy.

## **4. NPPF- SECTION 6 - DELIVERING A WIDE CHOICE OF HIGH QUALITY HOMES.**

4.1 This appears to be the driving force behind proposed change AVBC/2013/0010.

4.2 Having failed to ensure that the housing allocations in the Core Strategy were robust enough to withstand scrutiny through the Examination, AVBC has responded to Mr Foster's suspension of the process by claiming that the unmet housing needs of Derby City would best be met by allocating this site.

4.3 KV fundamentally disagrees with this and has serious concerns about the process that has led up to this position.

4.4 Mr Foster in his letter of 12<sup>th</sup> May 2014 estimates that AVBC has some 3,000 dwelling units to set against a five year requirement for deliverable sites, which it has subsequently assessed as 4,634. Unfortunately, it would appear that AVBC has no agreement with those promoting even the original Core Strategy sites as to the contribution each will make to the five years supply. Presumably the same can be said for the proposed change sites. The number of houses on the Kedleston Road site, for example, is now significantly larger than the Council's original estimates of the number of houses that could reasonably be provided by the site.

4.5 Overall the revised requirement for the Borough in the period to 2028 is 10,060 dwellings. AVBC is now proposing sites for 11,255 dwellings claiming that this over allocation of 1,195 dwellings is necessary because of potential slippage in the performance on allocated sites. Unfortunately, like so much of the work undertaken on assessing housing land supply, estimates made during the process can have a significant effect on the end result.

4.6 If a lesser figure had been adopted to account for slippage, for example, there would have been no need numerically to find a site for 400 houses close to Derby's boundaries. This is discussed later in this objection in more detail as are the assumptions made about

the amount of housing at Denby which can be assumed to meet the need for Derby's unmet requirement.

4.7 For now, however, KV wishes to make two general points. The first relates to the wording of paragraph 47 of the NPPF which is the driver for the search for housing sites. The paragraph, and the remainder of section 6, requires local planning authorities to boost significantly the supply of housing.

4.8 The first bullet point in the paragraph says 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...*"

4.9 Amongst those policies are the promotion of sustainable transport in section 4, the promotion of healthy communities in section 8, meeting the challenge of climate change and flooding in section 10, conserving and enhancing the natural environment in section 11, conserving and enhancing the historic environment in section 12, and delivering sustainable development as required by paragraph 14 as qualified by footnote 9.

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4.10 All of these policies should be weighed against those in section 6 in addition to the statutory requirement outlined in the previous section. The local residents who have formed Kedleston Voice have done that with the conclusion that development of this site should not proceed any further.

4.11 Secondly, KV has been made aware of the Examination of the Staffordshire Moorlands Core Strategy where the Inspector, Mr Patrick T Whitehead, had to grapple with similar issues to those facing Mr Foster. In particular, there was a small shortfall in the five year supply. Mr Whitehead noted that the second part of the Local Plan, the small sites allocation, was to start shortly and that a review of the green belt boundary around Biddulph would be part of that exercise.

4.12 His conclusion was that the Core Strategy (CS) was sound. Dealing with the matter of a 20% buffer he said in paragraph 30 of his final report "whilst I have referred to the 'requirement' for the additional buffer of 20% against a record of under-performance, the NPPF is only guidance (para 13 NPPF) and para 10 (of the NPPF) makes it clear that plans

‘need to take local circumstances into account’. Equally importantly the guidance states that local plans should meet objectively assessed needs but to take account of any adverse impacts of doing so which would significantly and demonstrably outweigh the benefits.”

4.13 He went on to say in paragraph 32 “all of these circumstances lead me to the conclusion that a phased approach to the provision of development would be a pragmatic and realistic approach to the issue of housing land supply coupled to an early review of the CS in turn linked to the Site Allocations DPD.

4.14 It is understood that the Kedleston Road site was originally to be considered as part of AVBC’s second phase of the Local Plan but that the promoters wanted it considered as a strategic site. KV agrees that the principle of developing it should be considered now but disagrees that it should be allocated as proposed in the changes for the reasons given in this objection.

4.15 The problem of Derby’s unmet housing requirement is a contentious issue, notwithstanding the apparent agreement of the three Councils involved in The Housing Market Area (HMA). Unfortunately the whole HMA process and the conclusions reached about need are not readily transparent. Things may become clearer when the City Council publishes its emerging Local Plan later this year showing which sites are being allocated within the City boundaries and which brownfield sites have potential for re-use for housing.

4.16 Recently, for example, it has been announced that a planning application for 380 dwellings is to be submitted in November on the site of a former Rolls Royce factory. Further brownfield sites should become available for more housing now that both Morrison’s and Tesco have abandoned plans for large supermarkets in the City.

4.17 It also appears that new electoral registration has highlighted that on average there are some 12,000 voids in the City. The “need” to find a site or sites for 400 dwellings close to Derby must now be questionable. It is certainly worthy of further scrutiny.

4.18 In the meantime, close to the city boundary there is the site at Mackworth which has just had a brand new access built. That was granted outline planning permission for 530 dwellings under Code number AVA/2009/0359 in May 2010 and reserved matter applications have subsequently been approved. In addition there is the 30 dwellings

recently granted planning permission off Memorial Road in Quarndon Parish. A further 70 dwellings are included in the proposed Core Strategy changes just south of the Mackworth site. Other land is also included in the SHLAA around the Mackworth site.

4.19 That is a total contribution of 630 new dwellings close to the City boundary which could reasonably be described as deliverable. Several housebuilders will inevitably become involved with these sites thereby bringing in the necessary element of choice required by the NPPF.

4.20 There is also the contribution to be made by the strategic site at Denby which the Core Strategy supports in Policy SG3. Unlike the Kedleston Road site there is an opportunity to build a real community here. Yet again, however, assumptions have been made about the extent to which this strategic allocation of 1,800 dwellings may be considered to meet Derby's needs.

4.21 AVBC has pointed out that the increase in the number of housing sites it has to find is entirely due to Derby's inability to find enough sites within the City. The assumption is then made "that in order to demonstrate that the Council can make an effective contribution within AVBC to meeting housing need arising within Derby it needs to identify suitable strategic sites either close to or readily accessible to/from Derby."

4.22 This is not a logical extension to the assumption, given the normal community distances tolerated by people today. AVBC the go on to say that some of the 1,800 dwellings already allocated at the strategic site at Denby can be regarded as responding to Derby's needs because of the good communications between the two along the A38. There is no justification as to why only "some" are applicable. Given Denby's close proximity to Derby, all of this housing should be allocated to the HMA, particularly as it represents a brown field site development. This negates the need for AVBC/2013/0010 development.

4.23 There are good transport links along the A61 and the contributions through 106 Obligations will help establish the social and physical infrastructure that new residents are entitled to. Despite this AVBC is not prepared to say that this site will cater for all of Derby's unmet need because of the proximity of the site to Belper and Ripley. It should.

4.24 KV also has concerns about the approach AVBC has taken to the preparation of its Core Strategy. Whilst not alone in splitting the allocation of housing sites into two parts initially AVBC has now reached a point where KV considers the second stage should be amalgamated with the first. To date no allowance has made for housing sites coming through the second phase of the Local Plan which will deal with smaller sites. Similarly, no allowance been made for potential housing development on land currently allocated for employment uses where that use has not taken place and is unlikely to do so in the future. Nor has the Green Belt been examined to see if sensible boundary changes could be made without affecting the purpose of designating this area in the first place.

4.25 To conclude, the local circumstances presented in this case suggest that it is not necessary to suggest this proposed change and that it should be withdrawn immediately.

## **5. NPPF - SECTION 4 - PROMOTING SUSTAINABLE TRANSPORT**

5.1 This section promotes sustainable transport, making the point that this contributes to wider sustainability and health objectives.

5.2 AVBC's consideration of the transport issues raised by the Kedleston Road site have not varied from previous reports when the site was not considered suitable for development to now when it is. Common to these reports is the absence of any consideration of the impact traffic from the site would have on the two roads into and out of north Derby. In comparison with the A61, which has just undergone a major improvement to aid traffic flows on the outskirts of the City, both the A6 Duffield Road and Kedleston Road have limited opportunities for improvement.

5.3 It is surprising that AVBC has felt able to promote change AVBC/2013/0010 without any apparent reference to the impact the traffic from a development of 400 houses will have on Kedleston Road and Duffield Road. These meet in the Five Lamps signal controlled gyratory system. Kedleston Voice has commissioned a study of the potential impact which concludes that the proposed allocation has the potential to result in a severe impact on the highway network increasing congestion and potentially worsening the existing road safety record. This is provided in **Annex 1**.

5.4 The report highlights that development of AVBC/2013/0010 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.

5.5 There are two roads to choose from when travelling from north Allestree to Derby (the A6 Duffield Road and Kedleston Road). Both are heavily congested at peak times, with Kedleston Road often experiencing queuing in the morning beyond the proposed development site adjacent to Memorial Road. As many as 330 vehicles can be affected along its length with queue times to the Five Lamps junction being as long as 25 minutes. It has been estimated that the development could result in an extra 170 vehicles heading southbound towards Derby.

5.6 Traffic frequently extends as far as Church Road in Quarndon causing vehicles to make U turns and seek other routes through Quarndon to Allestree and Kedleston Village to the A52, in turn having wider impact on small country lanes. Outside peak times, Kedleston Road provides access to the Park Farm shopping precinct and the Markeaton Park which maintains flow levels. The road and surrounding areas shows a material incidence of road traffic incidents.

5.7 In addition Kedleston Road has a number of major pinch points that cause this congestion. These are:

- 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 Five lamps junction

5.8 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, even if S106 funding was available from a developer.

5.9 AVBC has made no reference to these pinch points or safety concerns, only referencing the capacity of the A38 which, despite being an issue on its own, has relatively little impact on the Kedleston Road congestion. Again this represents unsound planning.

5.10 The NPPF says that a development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. In August 2012, planning permission was refused in Lancashire when the inspector concluded that the congestion at a crossroads was of sufficient weight to justify dismissal. We believe that this case has comparisons with the development proposals at Kedleston Road.

5.11 It is also inevitable that the number of traffic incidents will increase further due to the increase traffic flow and congestion. Pollution may also be increased by the additional traffic generated for Derby's roads particularly at times of congestion.

5.12 Paragraph 32 of the NPPF says that "development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe." The report concludes that this will be the case if the proposed change is accepted.

## **6. NPPF - SECTION 8 - PROMOTING HEALTHY COMMUNITIES**

6.1 This section 8 illustrates how the planning system can play an important role in facilitating social interaction and creating healthy inclusive communities, just as AVBC is trying to do at Denby.

6.2 Amongst the aims for planning policies set out in paragraph 70 are ensuring an integrated approach to considering the location of housing, economic uses and community facilities and services. Nothing suggested by the promoters of this change or AVBC could reasonably be thought to comply with this. The offer of building a small shop within the development comes nowhere close.

6.3 Instead it is clear that, to be a reasonable place to live, this proposed development would be reliant on the facilities to be found in Allestree which are at or about at capacity and, to a lesser extent, the limited facilities in Quarndon. The site may be close to the boundary with Derby City but it is not particularly well located in relation to the existing facilities in Allestree. Shops and services at Park Farm are approximately one mile away with an uphill gradient along Birchover Way. The Blenheim Parade shops are over half a mile away with a steep uphill gradient along Askerfield Avenue. The reality is that most journeys to these centres are likely to be made by car putting further pressure on the existing parking facilities.

6.4 As far as employment is concerned, most job opportunities in Derby are to be found in the City centre or to the south of the centre. It will not be possible to have an integrated approach to new housing and existing employment in the City if the Kedleston Road site is allocated.

6.5 Moreover AVBC appears to have adopted poor practice when assessing schooling needs and is behaving in an unsound manner by the impact this will have on existing local residents. The proposed development AVBC/2013/0010 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 face the reality of their children having to attend schools that are located some distance from their homes thereby increasing journey times and distances.

6.6 The schools to the north of Derby are popular and therefore demand for places is high with over subscription being present. Contact with local schools suggests that the both primary school and secondary schooling within the locality – covering both the Derby City and Derbyshire County areas - is close to and in some case is exceeding capacity

6.7 AVBC admits that there are restrictions in the scope for any further expansion of educational facilities at Ecclesbourne School. However, they completely ignore this when considering the Kedleston Road development and also make no reference to wider schooling issues in Derby City.

6.8 A new development, with 400 hundred mixed type houses targeted at families, will generate a substantial increase in school age children that will need to be accommodated within the schooling system. This could result in as many as 50 children per year requiring places at primary and secondary schools which the existing infrastructure could not cope with.

6.9 The NPPF clearly indicates that where practical, particularly within large-scale developments, key facilities such as primary schools should be located within walking distance of most properties. This proposed development does not meet the principles of the National Planning Policy Framework. There is insufficient capacity to meet the existing demand and the new demand cannot be accommodated in a “walk to school” manner.

6.10 Discussions with the local authorities have shown that that capacity does exist elsewhere in the City and County, some of which is likely to be taken up by new developments proposed there. We have heard that discussions are taking place regarding using buses to move children from the development areas to these schools with capacity. This will not be favoured by new and existing residents and would be rejected if it had been included in the consultation. It is also likely that parents would want to move their children to the schooling provision themselves. This will further increase traffic congestion.

6.11 The existing doctors' practices in Allestree are also understood to be at or nearly at capacity. KV does not accept that existing residents should suffer because of a significant influx of people on AVBC/2013/0010. Again this is a matter which AVBC does not seem to have considered.

## **7. NPPF - SECTION 10 - MEETING THE CHALLENGE OF CLIMATE CHANGE, FLOODING AND COASTAL CHANGE.**

7.1 Paragraph 99 of the NPPF says “local plans should take account of climate change over the longer term, including factors such as flood risk...water supply and changes to biodiversity and landscape. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change...”

7.2 Currently this site is grade two agricultural land, of which there is very little in the Borough. Notwithstanding the planting of trees in apparently strategic locations it still has the potential for agricultural production. The predominant use of the rest of the land west of Kedleston Road is arable farming producing wheat, oil seed rape and barley. Rain falling on the site and the rest of the farm can be absorbed slowly into the earth. That will change if housing and the associated infrastructure is introduced on the proposed housing site.

7.3 Protecting good quality agricultural land because of its potential to provide food no longer appears to be a priority for the planning system. One of the Core principles listed in paragraph 17 of the NPPF is that “allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework” so that environmental value has taken over from the previous protection afforded to the best quality agricultural land.

7.4 That may well prove to be short sighted. A study by the Cambridge Institute for Sustainability Leadership as recently as June 2014 found that there will be increased demand for land for food production. By 2030 it is claimed that up to a further 7 million hectares of land will be needed to sustain food production. It does not make sense now to be using the best quality land as a housing site when land of lesser quality is readily available elsewhere in the Borough.

7.5 Nor does it make sense to allocate land where there are known flooding problems.

7.6 Paragraph 100 of the NPPF says “Local Plans should be supported by Strategic Flood Risk Assessment... (and)... should apply a sequential risk-based approach to the location of

development to avoid where possible flood risk to people and property...” Currently it would appear that AVBC has undertaken only a desk top level 1 appraisal of the Borough to provide an appraisal of the extent and nature of the risk of flooding in the Borough. It is not apparent that any more detailed work has been carried out on the sites now listed in the proposed changes document.

7.7 That does not sit well with the requirement that that “plan-making and decision-taking” must take “full account of flood risk”. The NPPF says that “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”. It also says that “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;
- 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.”

7.8 Markeaton 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).

7.9 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 is 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.

7.10 Photographs and a more detailed report related to Somme Road are to be found in **Annex 2**.

7.11 Some residents downstream also report insurance issues due to the risk of flooding and associated poor drainage caused by more frequent severe rainfall events. This is likely to be the case for houses in the proposed development AVBC/2013/0010.

7.12 AVBC is aware of all of these issues, following long and protracted challenges regarding the earlier Somme Road and recent Memorial Road (AVA/2013/0785) planning applications. Despite this, AVBC fails to even mention the likelihood of increased flood risk in their analysis of the proposed site. The planning process would appear unsound as a consequence.

7.13 Furthermore, and despite NPPF guidance, AVBC has failed to provide an independent flood risk assessment of the proposed site AVBC/2013/0010. It has also not included “a sequential, risk-based approach to the location of development” as required. Given the history of flooding in the Brook and the adjacency of the site to it, the proposed change to the Plan regarding this proposed site should not have been suggested until these independent analyses had been undertaken.

7.14 When developing these assessments, AVBC should not use Flood Risk Assessment (FRA) data provided by a developer. Previous recent experience has shown that it is unlikely that these will be objective and that they will be based on data that is out of date and will not take into consideration increased global warming and the wider ‘peak intensity rainfall’ storm water catchment area. Any assessment commissioned by AVBC aligned to the sustainability of this proposed development should be modelled on ‘peak intensity rainfall’ conditions.

7.15 Some preliminary analysis has been undertaken on the proposed development AVBC/2013/0010. This suggests that it will increase the flood risk and ground water seepage

to existing housing and gardens through increased ground saturation and hydraulic ground water pressures.

7.16 This will lead to increased flooding events for local residents which in turn will have a negative impact on the proposed new houses themselves.

7.17 The difficulties of managing this flow and 'peak intensity' storage capacity will be compounded by the high water table level (making some techniques unviable) and the position of the Somme Road housing alongside the proposed attenuation (storage areas). The large 'peak intensity rainfall' and surface run off catchment area for the proposed site will lead to engineered reservoirs being required > 25,000mt<sup>3</sup>, which will be significant.

7.18 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.

7.19 From recent experience, local residents also 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.

7.20 The drainage and water flow problems related to this proposed site are further complicated by the combined sewer that takes surface water and foul drainage from Quarndon and Allestree north of Memorial Road and west of Quarn Drive. Experience would indicate that there is insufficient capacity in the 300mm diameter sewer crossing the site to take the added foul drainage from 400 houses.

7.21 More important is the possible effect downstream of the site of such an input. Residents have already 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. The sewer passing through the site and its projection to the south would need

increasing in capacity to service the proposed site, hence requiring costly, long term works before any of the 400 houses could be occupied.

7.22 The site should not, therefore, be regarded as deliverable now.

## **8. NPPF - SECTION 11 - CONSERVING AND ENHANCING THE NATURAL ENVIRONMENT.**

8.1 Earlier in this document, the point was made that protecting good quality agricultural land because of its potential to provide food no longer appears to be a priority for the planning system. Paragraph 109 of the NPPF does, however, make it clear that “the planning system should contribute to and enhance the natural and local environment by...protecting and enhancing valued landscapes, geological conservation interests and soils...”

8.2 The following paragraph says “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.”

8.3 It would be hard to find another area in AVBC of higher amenity value than the broad sweep of countryside on the western boundary of Derby of which AVBC/2013/0010 forms a part. That is irrespective of its value in creating a setting for Kedleston Hall and the Park. Public views of this countryside abound.

8.4 Recently the view from Kedleston Road and the public footpath leading to the farms has changed because of the Somme Road development, an allocation made in the current Local Plan for specific historic reasons. Roofs of the new houses are visible during the day and at night the lights can be intrusive in an otherwise tranquil stretch of countryside. Rather than create a precedent for proposed change AVBC/2013/0010 the Somme Road development only illustrates how detrimental further housing in this area would be.

8.5 The proposed site is also home to a diversity of wildlife, fauna and flora. A number of European red and amber listed mammals have been observed on the site and the surrounding area. This appears to have been overlooked by AVBC.

8.6 Moreover, two nature conservation areas, Quarndon and Markeaton Stones, are located within 500m of the site. Despite, rejecting other alternative sites due the proximity of these assets, AVBC overlooked them in their analysis of AVBC/2013/0010

## **9. NPPF - ACHIEVING SUSTAINABLE DEVELOPMENT**

9.1 It may seem strange concluding this document by reference to the most fundamental aspect of the NPPF but all that has been said before leads KV to the conclusion **that proposed change AVBC/2013/0010 would not result in sustainable development.**

9.2 Those promoting the Kedleston Road site argue that it is sustainable development. They have used the three strands set out in paragraph 7 of the NPPF - an economic role, a social role and an environmental role - to make their case. This is consistent with paragraph 8 which says these roles should not be undertaken in isolation because they are mutually dependent.

9.3 On the economic front, it is pointed out that the New Homes Bonus would pay more than £6m to AVBC over the six years following construction; that new residents would bring new spending power into the local economy; each new home built creates 1.5 direct full-time jobs with a further 0.9 in the supply chain equating to 960 jobs for their 400 houses; that proposed enhancements to local roads would help improve existing congestion; there could be a new convenience store to serve local residents and that every £1 spent on housing puts £3 into the local economy.

9.4 These claims could apply to any new housebuilding site and are not justification for housing in this particular location. Moreover planning decisions should not be undertaken because of financial considerations as the recent Planning Practice Guidance confirms.

9.5 In respect of the social role, it is claimed that: the development would provide houses to meet the area's identified need; it would provide affordable housing helping people onto the housing ladder; the development would provide contributions to existing services like doctors and schools; and the amenities of Derby City centre would be easily accessible to residents.

9.6 Only the first two should carry any weight but again this could also be said of any site included in the Local Plan. The mechanism for securing financial contributions through a 106 Obligation by AVBC to enhance existing services in Derby City, if that is possible, needs close scrutiny. It appears to Allestree residents that all the schools and medical centres are at or very near to capacity with little opportunity to expand so it is not clear what good a financial

contribution would be. Far better, if contributions are to be made by developers, for that money to be spent where there is a real prospect of building a new community as at Denby.

9.7 Finally, on the environmental role, it is claimed by the promoters of the site that developing it would avoid having to use green belt land; that it would provide significant areas of open space for the local community; that it would create a managed buffer between housing and the wider countryside; where possible it would protect on-site trees and hedgerows and provide a wildlife corridor around Markeaton Brook; it will protect the setting of Kedleston Hall and its registered park and garden and that the diversion of Kedleston Road will divert the traffic away from existing properties into the site providing existing residents with quieter and safer access to their properties.

9.8 These comments address only one of the positive improvements in the quality of the built, natural and historic environment sought by paragraph 9 of the NPPF - widening the choice of quality homes. The others listed include, but are not limited to, making it easier for jobs to be created, moving from a net loss of bio-diversity to achieving net gains for nature, replacing poor design with better design and improving the conditions in which people live, work, travel and take leisure. The residents of Allestree clearly feel that their living conditions will be considerably worsened if this land is allocated for housing.

9.10 The promoters of the scheme also seem to ignore the requirement in paragraph 10 of the NPPF that 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.

9.11 As an aide memoir, paragraph 6 of the NPPF says the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 14 confirms there is a presumption in favour of sustainable development.

9.12 Definitions of what constitutes “sustainable development” vary but the most commonly used one, the Bruntland definition from the 1987 World Commission on Environment and Development’s “Our Common Future” says “sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

9.13 At is simplest the loss of these fields to housing now will compromise the ability of future generations to decide how they should best be used to serve the community.

9.14 Paragraph 6 of the NPPF confirms that 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.”

9.15 In KV’s view building houses on the Kedleston Road site would not be sustainable development for all the reasons given in this objection. As such the proposed changes would conflict with current national planning policy and not be legally compliant. They would also not be sound.

9.16 The Core planning principles set out in paragraph 17 of the NPPF include one that planning should “be genuinely plan-led, empowering local people to shape their surroundings” and another that planning should be “a creative exercise in finding ways to enhance and improve the places in which people live their lives.”

9.17 Accordingly, KV would ask that proposed change AVBC/2013/0010 is dropped by AVBC immediately.

**Annex 1 - Kedleston Voice Action Group, Objection to the Proposed Allocation Of Site  
Av111, Kedleston Road, Allestree, Transport And Highway Infrastructure**

## **Annex 2 – Flooding History and Risk Assessment – Markeaton Brook**